# RIDGWAY PLANNING COMMISSION AGENDA

Tuesday, April 24<sup>th</sup>, 2018 Planning Commission Regular Meeting: 5:30 pm Ridgway Community Center 201 North Railroad Street, Ridgway, Colorado

**ROLL CALL** Chairperson: Doug Canright, Commissioners: John Clark, Thomas Emilson, Larry Falk, Ellen Hunter, Bill Liske, and Jennifer Nelson

# **REGULAR MEETING:** 5:30 pm

#### PUBLIC HEARINGS:

- 1. **Application:** Conditional Use Permit; **Location:** Trail Town Condominiums, Building B; **Address:** 150 Palomino Trail; **Zone:** General Commercial (GC); **Applicant:** Robert Kaiser **Owner:** Strength LLC
- Application: Deviation from Single-Family Home Design Standards; Location: Block 22, Lot 5; Address: TBD Sherman Street; Zone: Downtown Service (DS); Applicant: Will McGown Owner: Will and Eugenia McGown
- Application: Preliminary Plat for Lena Street Commons; Location: East of Blocks 31 and 32, north of Hartwell Park/Charles Street, east of Lena Street, south of Otto Street, and west of the Library District property and Town of Ridgway property at North Railroad Street; Address: 316 North Lena Street; Zone: General Commercial (GC) and Historic Business (HB); Applicant: Tate Rogers Owner: Arthur Travis Spitzer Revocable Trust

# OTHER BUSINESS:

- 4. Master Plan process update
- 5. Downtown Parking Assessment update call for photos
- 6. Ridgway Area Joint Planning Board Tom McKenney was appointed by council on 4/11/18

#### APPROVAL OF MINUTES:

7. Minutes from the meeting of March 27<sup>th</sup>, 2018

# ADJOURN REGULAR MEETING

# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Ridgway Planning Commission will hold a **PUBLIC HEARING** at the Town Hall Community Center, 201 N. Railroad Street, Ridgway, Colorado, on <u>Tuesday, April</u> <u>24<sup>th</sup>, 2018 at 5:30 p.m.</u>, to receive and consider all evidence and reports relative to the application described below:

Application for:	Conditional Use Permit
Location:	Trail Town Condominiums, Building B
Address:	150 Palomino Trail
Zoned:	General Commercial (GC)
Applicant:	Robert Kaiser
Property Owner:	Strength LLC

**ALL INTERESTED PARTIES** are invited to attend said hearing and express opinions or submit written testimony for or against the proposal, to the Town Clerk.

**FURTHER INFORMATION** on the above application may be obtained or viewed at Ridgway Town Hall, or by phoning 626-5308, Ext. 222.

Shay Colum

Shay Coburn, Town Planner

DATED: April 13, 2018

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PLANNING & ZONING	PERMIT         Receipt # <u>CHV # 1009 \$100 - *</u> Date Received <u>4 11 19 *</u> By <u>\$C</u> *         * For Office Use Only
ACTION REQUES	STED
TEMPORARY USE PERMIT[] 7-3-13cCONDITIONAL USE PERMIT[\] 7-3-14CHANGE IN NON-CONFORMING USE [] 7-3-15OTHER:[]	VARIANCE []7-3-16 REZONING []7-3-17 SUBDIVISION []7-4-1 thru 7-4-12
NAME: Robert B. Kalser NAME: 7 MAILING ADDRESS: 4431 CP.22 MAILING A	WNERS OF RECORD: Triple Strength LLC ADDRESS: 37090 Hwy. 550 monter algunay, CO. NE NO:
ADDRESS OF PROPERTY: 150 Palomino ACREAGE/SQUARE FOOTAGE: 924 ZON BRIEF DESCRIPTION OF REQUESTED ACTION: Con a Secp Rental and output	ING DISTRICT: GC nditional Use permit for

# ATTACHMENTS REQUIRED FOR ALL ACTIONS:

- 1. Evidence of ownership or written notarized consent of legal owner(s).
- 2. Copy of all site plans drawn to scale showing location of building(s), elevations, abutting streets, and all dimensions, must be submitted on paper size of 8.5 x 11 or 11 x 17.
- 3. A filing fee payable to the Town of Ridgway.

# FILING FEE SCHEDULE:

Temporary Use	\$ 100.00
Conditional Use	100.00
Change in Nonconforming Use	100.00
Variances & Appeals	150.00
Rezoning	200.00
Reviews Pursuant to 7-3-18	100.00
Variance from Flood Plain Reg's	100.00
Deviations from Single Family	
Design Standards	100.00

#### Subdivisions a. Sketch Plan \$ 200.00 (plus \$10.00 per lot or unit) b. Preliminary Plat 400.00 (plus \$20.00 per lot or unit) c. Final Plat 300.00 d. Minor Subdivision 200.00 e. Lot Split 100.00 f. Replat/amended plats 100.00 g. Planned Unit Development (a. b. & c.)

# ADDITIONAL COSTS:

Applicant and owner shall be jointly and severally responsible for legal, engineering, planning, administrative and miscellaneous fees, including recording costs, if incurred. (R.M.C. 7-3-20(B) and 7-4-12(B)). Water and sewer tap fees and development excise taxes are due at approval of final plats.

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Town / County 2 State

# PLANNING & ZONING PERMIT

Page 2 of 2

Date

# SPECIFIC ATTACHMENTS REQUIRED FOR EACH ACTION:

# **CONDITIONAL USE PERMITS:**

- 1. The site plan shall show off-street parking requirements, landscaping and architectural features.
- 1/1/2. Information showing compliance with applicable criteria.
  - -3. Notice of hearing shall be posted at Town Hall 10 days before the hearing.
  - 2 -4. Property shall be posted at least 10 days prior to the hearing.

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# CHANGES IN NON-CONFORMING USE:

- 1. Description of existing non-conformity.
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# VARIANCE:

- 1. Site plan showing details of the variance request and existing uses within 100 ft. of property.
- 2. Information showing compliance and/or non-compliance with applicable criteria.
- 3. Notice of hearing shall be posted at Town Hall 10 days before the hearing.

# **REZONING:**

- 1. Legal description, present zoning and requested zoning of property.
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# **SUBDIVISION:**

- 1. All requirements established by Municipal Code Sections 7-4-1 through 7-4-12.
- 2. Affidavit of notice sent to all surface and mineral owners and lessees of mineral rights. (Proof of proper notice must be submitted prior to the hearing.)
- 3. The Preliminary Plat shall be submitted 21 days prior to the hearing.
- 4. The Final Plat shall be submitted 20 days prior to the next scheduled Planning & Zoning meeting.
- 5. Sketch plan required in subdivisions consisting of more than 5 proposed lots or units.

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Signature of Applicant/Applicapts

Signature of Owner/Owners

April 7, 2018

Rockin' K Jeep Rentals R. Brenner Kaiser (Manager) 150 Palomino Trail Unit K Ridgway, Colorado 81432 (970) 216-4285

Dear Mrs. Shay Coburn and the Town of Ridgway,

My name is R. Brenner Kaiser I am planning on opening a Jeep Rental business here in town. This business will not negatively impact public health, safety, or welfare. It will have no effect on health or safety at all, and will potentially improve the publics welfare by bringing more tourists and potential customers to Ridgway. I believe for this reason, that this Jeep rental business will also be beneficial to the Town's Master Plan. My company will be located in an existing building with suitable parking, therefore, there will be no impact on general safety or convience to the public.

Ridgway is known for it's outdoor lifestyle and natural beauty. This business is a perfect addition to the already flourishing outdoor adventure crowd. As stated previously, this business is expected to attract people to the area, which in all likelihood, will increase property values for the surrounding area. The location of the business was previously built with the intention of handling a large amount of customers, so the traffic pattern will not be affected or add additional hazards. The building has ample parking, and customers will be exchanging their parking spots with the Jeeps'.

This business will only operate during normal business hours, there will be no significant increase in lights, noise, odors, or vibrations. The building where Rockin' K Jeep Rental will operate from is existing and I will not be making any exterior modifications which will visually impact the existing look. This building also has an exisiting storage area, so there will not be any need for additional outdoor storage. All Jeeps used by this business will be new, meticulously maintained throughout their time in service, and will meet or exceed all local, state, and national emissions standards. All vehicles will be under full factory warrany and all maintenance and mechanical work will occur at the dealership the Jeeps were purchased from. No mechanical maintenance or service work will be done on Rockin' K Jeep Rental premises.

Thank you for your time and consideration, please do not hesitate to contact me for any clarification or concerns.

Sincerely,

(manager)

R. Brenner Kaiser (Manager)

#### STAFF REPORT

Request:	Conditional Use Permit
Legal:	Trail Town Condominiums, Building B
Address:	150 Palomino Trail
Parcel #s:	430516405002
Zone:	General Commercial (GC)
Applicant:	Robert Kaiser
Owner:	Strength LLC
Initiated By:	Shay Coburn, Town Planner
Date:	April 24, 2018

# REQUEST

Applicant is requesting a conditional use permit to have a jeep rental business in the General Commercial district. "Automobile and other vehicle sales or service establishments" are a conditional use in this district.

This property is on the east side of Highway 550 near many other commercial uses, in the Trail Town Condominiums. The Applicant is renting a portion of Building B in the Trail Town Condominiums.

The Applicant has submitted an application, letter dated April 7, 2018, and applicable



fee. The property and public hearing have been noticed in compliance with the Town Municipal Code.

#### CODE REQUIREMENTS

#### RMC §7-3-9 "GC" General Commercial District

Applicable code provisions for this public hearing:

(A) Intent: This District encompasses lands along the river and Highways 550 and 62. Its purpose is to create areas for retail, wholesale and service businesses, <u>tourist and auto oriented uses</u>, storage, manufacturing and industrial activities which require adequate space, light and air whose operations are quiet and clean, and extractive industry. Each use will be required to mitigate its particular negative impacts, as they exist, if they exist, so as to provide for the reasonable enjoyment of adjacent properties.

(C) Conditional Uses:

(5) Farm implement, mobile home, automobile and other vehicle sales or service establishments.

(D) Performance Standards

(1) No use shall be established or maintained in the "GC" District which results in an unreasonable hazard to the community, creates a public or private nuisance, or creates unreasonable smoke, dust, noise, fumes, odors, vibrations or light observable off the premises.

(2) Buildings containing more than 10,000 square feet of gross floor area will be required to mitigate the visual impacts of their size by means of design, landscaping, berming and other methods of site treatment, and must be compatible with the mass and scale of existing buildings on adjacent properties, or if there are no such buildings compatible with the mass and scale of buildings in the Town generally. (Ord 1-2014)

(3) Buildings containing more than 25,000 square feet of gross floor area shall not be allowed. (Ord 1-2014)

(4) All uses shall be required to mitigate the impacts of their operations by means of landscaping, screening, site design, fencing or other methods to assure the reasonable enjoyment of adjacent property.

(5) All outdoor storage areas must be screened by means of fencing, landscaping or other methods.

(6) (a) Residential uses must provide off-street parking as required by Subsection 7- 3-10(C).

(b) Repealed by Ordinance 19-1999

(c) Repealed by Ordinance 19-1999

(d) Residences shall be minimum of 21 feet wide with an average roof pitch of at least 3 to 12 and a minimum eave overhang of 12 inches.

(7) Drive-in restaurants, drive-in theatres, or any other retail stores and service establishments with drive-through facilities, other than banks or pharmacies, shall not be allowed in the "GC" District. (Ord 6-2004)

(8) Boarding and Rooming House(s) shall not be allowed in the "GC" District. (Ord 5-2016)

(9) A Dormitory shall not be allowed in the "GC" District. (Ord 5-2016)

# RMC §7-3-14 Conditional Uses

(A) Uses listed as conditional uses for the various zoning districts provided in this Section shall be allowed only if the Planning Commission determines, following review pursuant to Subsection 7-3-18, that the following criteria are substantially met with respect to the type of use and its dimensions:

(1) The use will not be contrary to the public health, safety, or welfare.

(2) The use is not materially adverse to the Town's Master Plan.

(3) Streets, pedestrian facilities, and bikeways in the area are adequate to handle traffic generated by the use with safety and convenience.

(4) The use is compatible with existing uses in the area and other allowed uses in the District.

(5) The use will not have an adverse effect upon other property values.

(6) The location of curb cuts and access to the premises will not create traffic hazards.

(7) The use will not generate light, noise, odor, vibration, or other effects which would unreasonably interfere with the reasonable enjoyment of other property in the area.

(8) Visual impact due to a building's size shall be mitigated by means of design, landscaping, berming, and other methods of site treatment, and must be compatible with the mass and scale of existing buildings on adjacent properties, or if there are no such buildings, compatible with the mass and scale of buildings in the Town generally. (Ord 1-2014)

(B) The burden shall be upon the applicant to prove that these requirements are met.

# ANALYSIS

"Automobile and other vehicle sales or service establishments" are a conditional use in the General Commercial District. This use may be considered if the Performance Standards of §7-3-9(D) and the criteria for a conditional use permit listed in §7-3-14 are met. The following is an analysis of applicable standards and criteria.

# RMC §7-3-9 (D) Performance Standards

(1) This tourist-oriented vehicle rental establishment will not result in an unreasonable hazard to the community or create a nuisance. The business will have four rental vehicles to start. Should the business cause any issues related to unreasonable smoke, dust, noise, fumes, odors, vibrations, or light, the Town will work with the Applicant at that time.

(2) This building is not larger than 10,000 square feet.

(3) This building is not more than 25,000 square feet.

(4) The use proposed is in an existing building. Landscaping is part of the larger condominium development. Additional screening, site design and fencing should not be needed to assure reasonable enjoyment of adjacent property.

(5) There will be no outdoor storage. The rental vehicles will be parked in front of the unit just like all other vehicles park in this commercial area. The only difference will be that a customer will arrive in their own vehicle then take off in on the business's vehicles and then swap vehicles again at the end of their rental time. Similar to item (1) of this list, if this becomes an issue, the Town will work with the Applicant to mitigate any issues.

(6) No residence is proposed.

- (7) No drive-in restaurant, theater or other drive-through facility is proposed.
- (8) No board or rooming house is proposed.
- (9) No dormitory is proposed.

#### RMC §7-3-14 Conditional Uses

(1) The use will not be contrary to the public health, safety, or welfare.

There should be no impact to the public's health, safety and welfare due to this use.

(2) The use is not materially adverse to the Town's Master Plan.

The proposed use is in an existing commercial area. The description of the commercial land use in the 2011 Land Use Plan mentions that the purpose is to create areas for retail and wholesale business and tourist and auto-oriented uses. In addition, Goal number 5 in the Land Use Plan, titled "Economy," includes policies that directly support the Applicant's proposal. For example, (4) supporting and

nurturing a successful business environment, and (5) promoting innovative enterprises that uphold the Town's vision and add to the local economy.

Staff could not identify any goals or policies that would make this use adverse to the master plan.

(3) Streets, pedestrian facilities, and bikeways in the area are adequate to handle traffic generated by the use with safety and convenience.

This proposed use is in an existing commercial area which contains a road network and some sidewalks. This use should not impact traffic much, especially with only four vehicles. If traffic and safety become a problem, further discussion and mitigation may be required.

(4) The use is compatible with existing uses in the area and other allowed uses in the District.

This use is compatible with surrounding commercial uses and may even compliment the neighboring uses. The Applicant has noted that the Jeeps will be "meticulously maintained" and all maintenance and mechanical work will occur off-site.

(5) The use will not have an adverse effect upon other property values.

The use should not have an adverse effect upon property values. It may actually increase property values and attract more visitors to the surrounding businesses.

(6) The location of curb cuts and access to the premises will not create traffic hazards.

Curb cuts are existing in the area and will not change with this use.

(7) The use will not generate light, noise, odor, vibration, or other effects which would unreasonably interfere with the reasonable enjoyment of other property in the area.

This use should not generate unreasonable light, noise, vibration, or other effects. Customers will likely arrive in a similar vehicle to the one they would rent. If noise or fumes become a problem, the Town will work with the applicant to mitigate the issue.

(8) Visual impact due to a building's size shall be mitigated by means of design, landscaping, berming, and other methods of site treatment, and must be compatible with the mass and scale of existing buildings on adjacent properties, or if there are no such buildings, compatible with the mass and scale of buildings in the Town generally. (Ord 1-2014)

The building is existing - this is simply a new use within one of the units. The new use will not change the size of the building.

#### STAFF RECOMMENDATION

The conditional use must meet the required performance standards and conditional use criteria to be allowed. These criteria and performance standards exist due to the impact this use may have on the surrounding area.

Given that the analysis above shows compliance with the performance standards and conditional use criteria, Staff recommends approval of this application for a Conditional Use with the condition that the Town reserves the right to work with the Applicant if noise/fumes/vibration or outdoor storage/traffic becomes a problem.



Posted property from Hunter Parkway.



Property posted from Palomino Trail/parking area in front of unit.

# NOTICE OF PUBLIC HEARING

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Application for:	Deviation from Single-Family Home Design Standards
Location:	Block 22, Lot 5
Address:	TBD Sherman Street
Zoned:	Downtown Service (DS)
Applicant:	Will McGown
Property Owner:	Will and Eugenia McGown

**ALL INTERESTED PARTIES** are invited to attend said hearing and express opinions or submit written testimony for or against the proposal, to the Town Clerk.

**FURTHER INFORMATION** on the above application may be obtained or viewed at Ridgway Town Hall, or by phoning 626-5308, Ext. 222.

Shay Colum

DATED: April 13, 2018

Shay Coburn, Town Planner

# **PLANNING & ZONING PERMIT**

Incomplete Applications will be Rejected

Receipt # Date Received

By\_

\* For Office Use Only

# ACTION REQUESTED

TEMPORARY USE PERMIT[CONDITIONAL USE PERMIT[CHANGE IN NON-CONFORMING USE [OTHER:Deviation of Mun. Code6-6-3(E)-min.width to	] 7-3-13c ] 7-3-14 ] 7-3-15 <b>X</b> ] <u>6-6-5</u>	VARIANCE REZONING SUBDIVISION	[ ] 7-3-16 [ ] 7-3-17 [ ] 7-4-1 thru 7-4-12
APPLICANT/APPLICANTS: NAME: しいしてきらっしか MAILING ADDRESS: イチドル みっちょうし CITY: ビアル・ハマトット ブル・フォットフ TELEPHONE NO.: (ほっこ) らこもらししろ FAX:	NAME: لن زلا MAILING AI	VNERS OF RECO خ قسومیر ۲ جرمد DDRESS: 47 44 Ber ph is (۲۸. 38 11) E NO: (۹۵۱) 528.6	- Fiéld

# ADDRESS OF PROPERTY: Lot 5 Block 22, NKl arner of Sherman and Lawe ACREAGE/SQUARE FOOTAGE: 10900 / 4757 59FL. ZONING DISTRICT: DS

BRIEF DESCRIPTION OF REQUESTED ACTION: Davistion from Single Family Design Standards 6-6-3 (5 Min width of 21'. Max. bui lisble width is only 2212'. Place approve the design of the Highwar Reichence as drean interns of the the structural Fortprint most the store, but 1" floor living das not 2nd floor living das. Each loved exceeds the min. sy fl of 504, 21×24. Code 6-6-3 (E) is at odds with code 6-6-4 as they partien to thes sking lot 5.

# ATTACHMENTS REQUIRED FOR ALL ACTIONS:

- 1. Evidence of ownership or written notarized consent of legal owner(s).
- 2. Copy of all site plans drawn to scale showing location of building(s), elevations, abutting streets, and all dimensions, must be submitted on paper size of 8.5 x 11 or 11 x 17.
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Variance from Flood Plain Reg's	$\geq$	<b>≈100.</b> 00	
Deviations from Single Family			
Design Standards		100.00	>

# Subdivisions

a. Sketch Plan	\$ 200.00
(plus \$10.00 per lot or unit)	
<ul> <li>b. Preliminary Plat</li> </ul>	400.00
(plus \$20.00 per lot or unit)	
c. Final Plat	300.00
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<ol> <li>Replat/amended plats</li> </ol>	100.00
g. Planned Unit Development	(a. b. & c.)

# ADDITIONAL COSTS:

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# SPECIFIC ATTACHMENTS **REQUIRED** FOR EACH ACTION:

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Signature of Applicant/Applicants

Date 18 Date

Signature of Owner/Owners



Account Information Account Summary Remarks Owner Information Owner Information Owner Information Sale History Assessment History Tax History Estimate Taxes Verify E-mail Land Transfers 219186 Document Date 08/14/2017 Reception Number 219185 Document Fee S.16 Price 47.500 Crantor GREAT AMERICAN HOME COMPANY Crantor GREAT AMERICAN HOME COMPANY Crantor Crantor Filter Forms Real NOV	Document Search   Account Search   View	Created Report(s)   Sale Search   Help?   Logout Public   Link to Treasurer Website
Remarks     Document Information       Owner Information     08/14/2017       Sale History     Reception Number       Sale History     219185       Tax History     Document Fee       Yerity E-mail     Sale Price       Land     Sale Price       Land     Grantor       219185     Grantor       219185     Grantor       219185     Grantor       219232     GREAT AMERICAN HOME COMPANY       210190     GREAT AMERICAN HOME COMPANY       209235     Remarks       108023     Account Number       113004     Parcel Number       B : 139 P. 70     Parcel Number       Print Forms     Assource Home	Account Information	Account: R001934 WARRANTY DEED JOINT TENANTS
	Remarks Owner Information Owner Information Sale History Assessment History Tax History Estimate Taxes Verify E-mail Account Detail Land Transfers 219185 213293 210273 210190 209976 209235 188735 L0189 186023 119304 B: 139 P: 70 External Links Link to Treasurer Web Print Forms Real NOV	08/14/2017 Reception Number 219185 Document Fee \$4.75 Sale Price 47,500 GREAT AMERICAN HOME COMPANY Remarks Account Number R001934 Parcel Number

Sale Date 08/11/2017		
Book	Page	
	Grantee	
MC GOWN EUGENIA		
MC GOWN WILLIAM		

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To whom it may concern,

Just as an introduction, the McGown family (my wife Gigi and our children Ryan (14) and Thomas (10) and I) reside in Memphis, Tennessee, but we have been coming out west to the Ridgway area in the summers for the past 10 years. We typically stay in Ridgway State Park and have long enjoyed the unparralled majesty of the area and the beauty and soul of the town of Ridgway. We have watched Ridgway blossom through the years into a haven for creatives and dreamers, and we count ourselves among them. I am a woodworker and furniture designer. Our daughter Ryan is also an artist. We are a family inspired by art in all facets but especially the natural and unparralled beauty of the San Juans.

We love Ridgway and the direction it's going. A little over a year ago, we purchased land in Ridgway at the NW corner of Sherman and Laura. We chose our lot because it was in town, and we have always loved the park, the restaurants, the Sherbino, the shops and the feeling of community and shared values. We could not be more pleased with the improvements in the historic downtown area, and we want to contribute to this community in any way we can. We completely support the city's goal of intentional planned growth and its implementation and enforcement of community zoning standards.

We have designed a home to build on one of our lots on Sherman, and we have requested a variance in the footprint requirement of 6-6-3(e). We urge the Ridgway Planning Committee to grant us this variance as it does not conflict with the letter or spirit of Ridgway's overall zoning plan.

We have submitted plans and photos of a model of McGown Residence. We believe those plans speak for themselves better than we are able to describe them here. However, in an attempt to do just that, we set forth that the proposed architectural design of the McGown Residence will provide design features that are set forth in 6-6-4 in the following ways:

- 1. Provide relief and contrast to the building street and street side elevations incorporating solids and voids to break up plain wall elevations and
- 2. Variation of building mass

As shown in the submitted plans, elevations and models, the design provides relief and contrast to the building's front, side, and rear elevations by incorporating solids and voids to break up plain wall surfaces in many aspects and on all views. These include a varied setback in the front elevation, voids in the side and rear elevations for protected outside living areas, and a horizontal band that ties the front deck to the rear balcony while providing the house a cohesive element. This band breaks up plain two story walls enabling a subtle material change – this design pays homage to the brilliant current Ridgway firehouse. The use of voids and offsets create a great variation of massing and a multitude of differing living spaces that create an intriguing design that will sit and function well in Ridgway. These pockets functionally enable protected passive cooling in the summer months regardless of the threat of inclement weather.

(3) Variation in roof lines or use of historic roof pitch

The roof lines of the McGown residence compliment the building's mass by having offset and varied roof lines, some of which are consistent with a historic roof of 10:12. Though this dwelling derives its architectural influences from many genres, they are melded into a single design that sits beautifully on a

challenging narrow lot, embraces the surroundings, and compliments its neighbors (especially the church) in terms of scale, and furthers the Ridgway style.

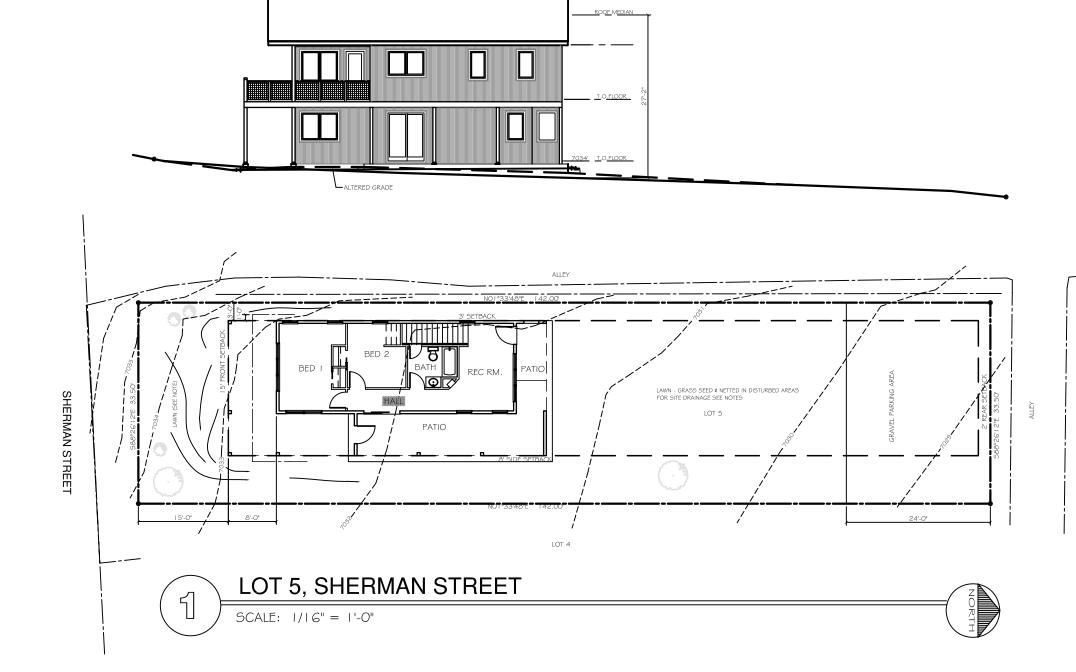
Reason for the deviation:

As mentioned above, the side and rear voids provide relief, contrast, and a variation of building mass by breaking up plain wall surfaces on the side and rear elevations that will be totally negated by the requirement of fitting a 21'x24' rectangle inside the footprint as explained to me. The maximum building width is 22.5' for this preexisting nonconforming lot. The difference of 1.5' will not give enough contrast to read as anything more than a box. However, *McGraw-Hill Dictionary of Scientific & Technical Terms* defines a building footprint as "the area on a project site that is used by the building structure and is defined by the perimeter of the building plan." By this definition, the 21'x 24' rectangle fits within the footprint perimeter as designed since the 2<sup>nd</sup> story wall structure is carried to the ground via massing walls and columns.

The McGown Residence has been designed to fit onto its narrow lot of 33.5' in conformance with all other codes set by the most recent zoning and building requirements of the Town of Ridgway. A variance has been previously given on April 24, 2007 for this lot which reduces the western, alley side setback to 3' but leaves the eastern setback at 8'. IN THE ALTERNATIVE, if the planning committee denies our variance request of the 21' x 24' rectangle criteria, we request that you grant us a variance reducing the eastern setback to 4' so that we can implement a design change that will meet the 21' by 24' rectangle standard along with the other design criteria. We own the lots to the east to Laura St that have a total frontage of 108.5' on Sherman.

Thanks, Will McGown McGown Studio, 405 Monroe Memphis, TN 38103 www.mcgowninc.com www.memphisrocker.com www.memphisedge.org www.memphisheritage.org 901.528.WOOD (9663)

# MCGOWN RESIDENCE



# NOTES:

# GENERAL:

- ALL CONSTRUCTION IS TO COMPLY WITH THE 2006 I.R.C., 2009 I.E.C.C. AS WELL AS ALL OTHER GUIDELINES AND SPECIFICATIONS REQUIRED BY THE GOVERNING TOWN/COUNTY OR ANY OTHER APPLICABLE AGENCIES.

# CLIMATE & GEO DESIGN REQUIREMENTS:

- WIND LOAD: 90 mph
- FROST LINE DEPTH: 40"
- SNOW LOAD: 68 lbs
- ICE SHIELD REQUIRED; PROVIDE HIGH TEMP BARRIER UNDER ALL METAL ROOFS.

# FINAL GRADING:

- PROVIDE POSITIVE DRAINAGE AWAY FROM FOUNDATION PERIMETER.
- MAINTAIN EXISTING DRAINAGE ON LOT
- LAWN GRASS SEED & NETTED IN DISTURBED AREAS FOR SITE DRAINAGE SEE NOTES

- EXISTING DRAINAGE PATTER

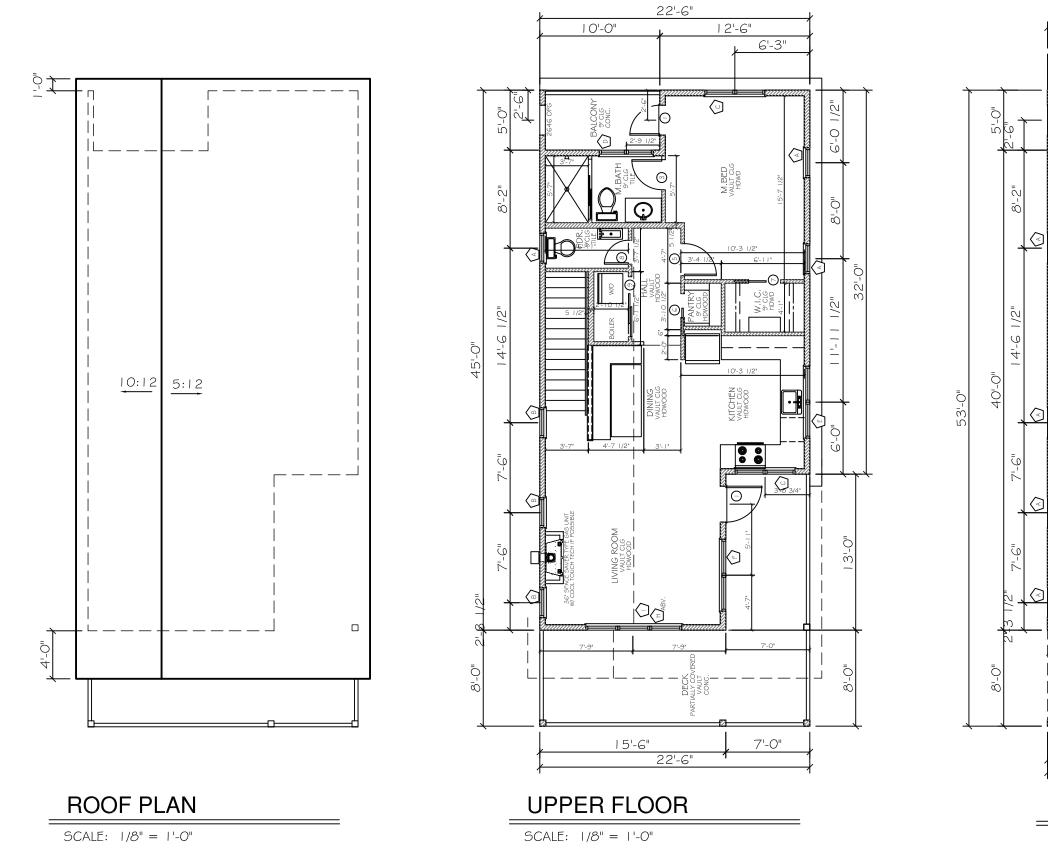


= HARDY DROUGHT RESISTANT AND REGIONALLY APPROPRIATE MINIMUM | I/2" DIA. TREE; DWARF OR SLOW-GROWING ON SOUTH PROPERTY AREA; EXACT SPECIES TBD (2 REQUIRED FOR LOT 5 - | PER EVERY 2000S.F.)

0

= HARDY DROUGHT RESISTANT AND REGIONALLY APPROPRIATE SHRUB OR GRASSES; 5 GALLON SIZE; SPECIES T.B.D. (3 REQUIRED - I PER EVERY I O' OF STREET FRONT)

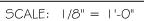
# MCGOWN RESIDENCE

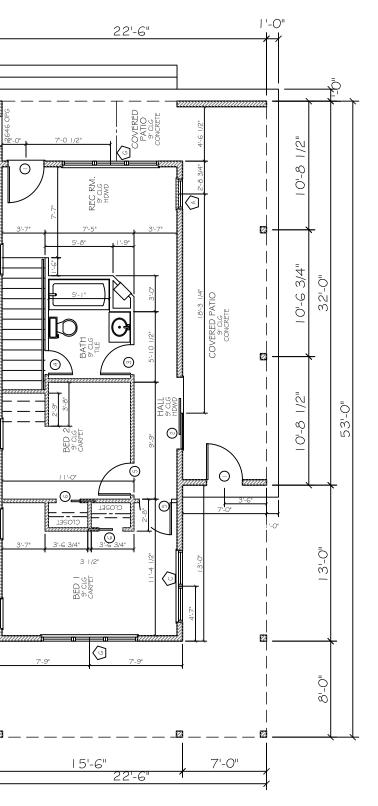


SC



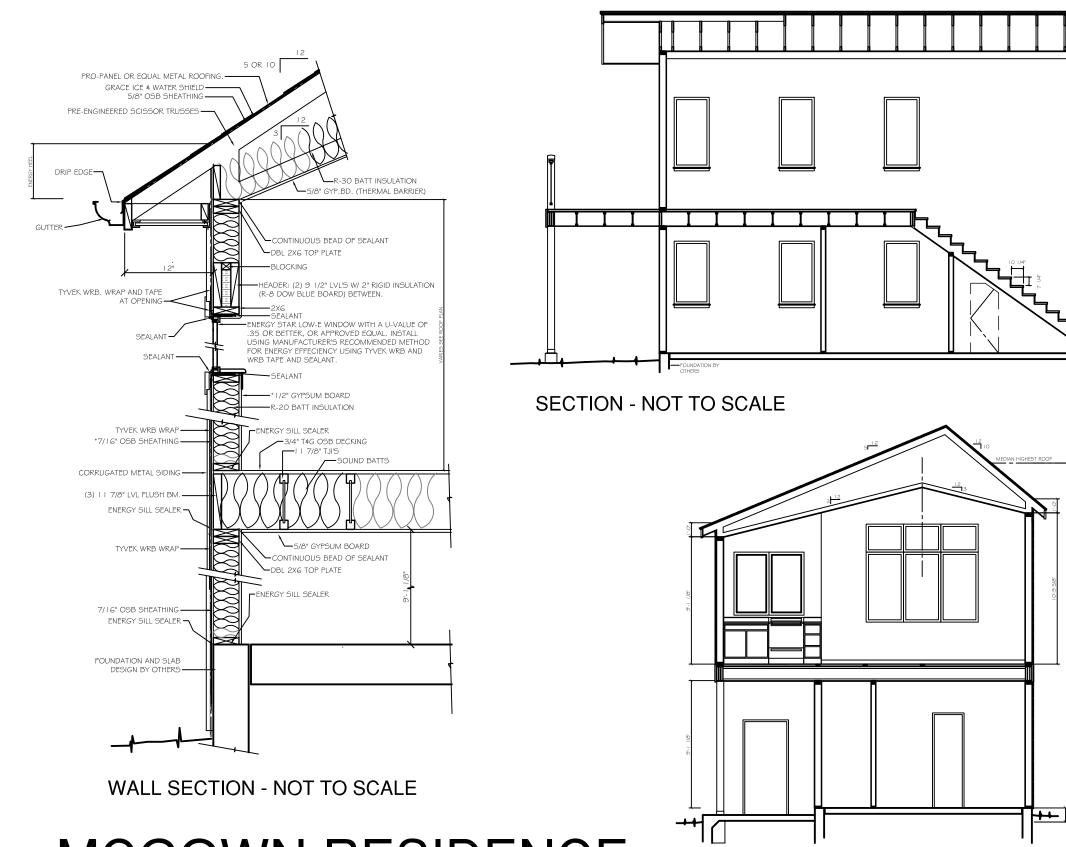


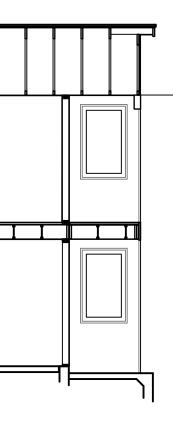






# MCGOWN RESIDENCE





SECTION - NOT TO SCALE





# PLANNING AND ZONING COMMISSION

# MINUTES OF THE REGULAR MEETING

# APRIL 24, 2007

# ROLL CALL

The Chairperson called the meeting to order at 5:40 p.m. with Commissioners Anderson, Petruccelli, Whaling, Mayor Pro Tem Clark, Mayor Willits and Chairperson Hunter in attendance. Commissioner Liske was absent.

# PUBLIC HEARINGS

# 1. <u>Application for Final Plat of Parkside PUD; Location: West of River Park Subdivision, 6.767</u> <u>acres; Zoned: Residential; Applicant: Brian Kolowich</u>

Application dated 4-4-07 and Town Clerk's Notice of Public Hearing dated 4-5-07. Letter dated 4-3-07 from developer Brian Kolowich representing title holders Marsim LLC and Ralph Rischman, presenting the conditions placed at preliminary plat and measures in which they were mitigated. E-mail from Town Engineer dated 4-18-7 presenting infrastructure items for final plat application; E-mail dated 4-12-07 from the Town Attorney transmitting comments on the proposed final plat map. Staff Report dated 4-26-07 from Town Manager and Assistant Planner noting the plat consists of 23 lots, inclusive of four duplex and two triplex lots. The application was made under a Planned Unit Development for purposes of clustering density and deviating on road width requirements. Over the course of the past two years the applicant has been performing improvements as required for the subdivision; most improvements are completed at this time; the project has proceeded in a diligent manner and there are no major issues pending. Proposed plat map and notes dated 4-2-07.

Applicant Kolowich explained the Town Council "approved a pressurized irrigation system" similar to the one in the adjacent RiverPark Subdivision. The project also includes a park area which has been seeded and will be dedicated to the Town. He further reported the project has been regraded and the "entire project" hydro-seeded.

Chairperson Hunter inquired into the landscape plan. Mr. Kolowich explained he was not required to prepare a landscape plan at the time of preliminary plat approval, though the subdivision covenants contain landscape requirements.

There was discussion between the Commission and applicant regarding planting trees along the Green Street right-of-way. It was expressed by members of the Commission that it was an oversight that a required landscape plan was not submitted.

Speaking from the floor Andy Mueller stated "it would be good from a community perspective to get trees in there and growing". He also noted "I feel it is appropriate for the Town to impose on the developer to landscape the park".

The Commission reviewed the proposed plat map and plat notes and agreed to include a note on Lots 4, 5, 6 and 13 designating them as duplex lots, Lots 14 and 15 as tri-plex lots, and further noting they are deed restricted; an error in Plat Note 6 (c) was noted; Plat Note 2 will be deleted per recommendation of the Town Attorney; staff to ask the Town Attorney if Note 6 (b), which reference 5 (c) should also include 5 (i); strike Plat Note 6 (f) regarding wood burning stove permits; the Town Engineer will research sewer tap fees for the tri-plex units contained in Plat Note 6 (d).

It was noted by the Commission that approval of the Preliminary Plat has expired and the application is outside the two year timeframe and the Town can require a landscape plan. They agreed that the developer should be required to install trees in the right-of-way.

Speaking from the audience, Joe Hornsberger spoke in support of the planting of trees noting, the landscaping would "benefit the community".

There was discussion between the Commission and Mr. Kolowich. <u>Mr. Kolowich agreed to</u> plant 16 trees on the west side of Green Street, and the Commission noted he would be responsible to maintain them for the first year. They also agreed the caliber of the trees will be two to two and half inch in size. Mr. Kolowich agreed to re-phrase the covenants and require lots on Laura Street to meet established Town landscaping requirements and half the trees will be planted at the front of the lot, or facing the street on the right-of-way.

# ACTION:

It was moved by Commissioner Petruccelli with a second by Commissioner Whaling to recommend to the Town Council approval of Final Plat for Parkside PUD with the following conditions:

1) the Developer shall plant 16 trees of two to two and half inch caliber along Green Street

2) include all conditions recommended in the Staff Report dated 4-26-07 and Town Attorney's Memo dated 4-12-07

3) the Developer shall water and maintain the trees for twelve months after planting

4) the covenants shall be changed to require property owners along Laura Street to plant two trees close to the street on each lot

5) all changes noted earlier in the meeting shall be made to the final plat map and plat notes.

The motion carried unanimously.

2. <u>Application for Sketch Plan Review of RiverSage Subdivision; Location: North end of Town</u> <u>boundaries, adjacent to Sweetwater Subdivision to the south and Highway 550 to the east;</u> <u>Zoned: currently unzoned; Applicant: RiverSage LLC</u>

Application dated 4-5-07 and Town Clerk's Notice of Public Hearing dated 4-6-07. Staff Report 4-25-07 from Assistant Planner and Town Manager explaining the applicant is requesting sketch plan review for a Planned Unit Development (PUD) involving the creation of a residential subdivision of 19 lots, preserved open space and memorial park. The property, comprising the northern most aspect of the Town boundary, was annexed into the Town on 2-14-07. The property abuts Highway 550, Sweetwater Subdivision to the south, Eagle Hill Ranch Subdivision to the west and Dallas Meadows Subdivision to the north. Sketch Plan Map dated 4-3-07. Applicant Rick Weaver presented the Commission with a letter dated 4-24-07 responding to the items contained in the Staff Report.

Chairman Hunter explained the Commission toured the site on 4-23-07. The Commission discussed the zoning designations which will be made by the Town Council within the upcoming months.

There was discussion pertaining to the items contained in the Staff Report between the Commission, applicant and his attorney, Andy Mueller.

The Commission agreed there should be as little scaring as possible to the land from the roads and utility easements; the proposed "hammer head cul-de-sac's" should be eliminated and widened along with a stretch of the road to create vehicle pull out areas.

# ACTION:

Mayor Pro Tem Clark moved, with a second by Mayor Willits to <u>approve sketch plan for RiverSage</u> <u>PUD with the following conditions</u>:

1) confirmation of school bus location at Sweetwater Cul-de-sac

2) expand the size of cul-de-sacs and provide turn-outs whenever possible in the long spur of the road

- 3) utilities to follow the new road instead of existing service road if possible
- 4) increase size of cantilevering pedestrian path to six feet if possible
- 5) complete road cut and fill analysis for proposed road
- 5) include all items contained in the staff report.

The motion carried unanimously.

The Commission took a recess at 8:30 p.m. and reconvened the meeting at 8:45 p.m.

3. <u>Application for Conditional Use Permit to install a gas generator outside the southwest corner</u> of the Ridgway Fire Station; Location: 251 North Railroad; Zoned: Historic Business; Applicant: <u>Closser Consulting for Verizon Wireless</u>

Application dated 4-11-07 from Closser Consulting for Verizon Wireless on behalf of the Ridgway Fire Protection District; Town Clerk's Notice of Public Hearing dated 4-11-07. Letter dated 4-9-07 from Closser Consulting transmitting a project description, information on generator type, installation and sound analysis and map. Staff Report from the Town Manager and Assistant Planner reporting Verizon Wireless is leasing interior work and microwave space in the Ridgway Fire Station, on the west side of Railroad Street. The applicant is an independent contractor retained by Verizon, and has met with the Fire Chief and Town Staff on several occasions regarding construction of an external wall within which an outdoor generator will be located. The proposed structure is to be located on the southern aspect of the west wall of the fire station, adjacent to Hartwell Park.

Assistant Planner Jen Coates noted the applicants have amended the request to include a second back-up generator for emergency power for the fire department. The generators, she noted will run once a week for a half hour.

Applicant Dave Closser answered questions from the Commission. He explained he would like approval for both generators and to extend the wall out from the originally proposed width.

# ACTION:

On a motion by Mayor Pro Tem Clark with a second by Commissioner Anderson to <u>approve the</u> <u>Conditional Use Permit for two generators on the south side of the Fire Station with changes allowing</u> for construction of wall height to fully cover the generators and installation of a gate to prohibit entry <u>from the outside</u> carried unanimously.

4. <u>Application for Conditional Use Permit to perform light industrial manufacturing within the general commercial zoning district and Conditional Use Permit for residence above commercial building; Location: 397 Palomino Trail, Lot 9, Eastside Subdivision; Zoned: General Commercial; Applicant: Ben Lockard</u>

Application dated 4-13-07 with applicants findings to mitigate items proposed in the conditional use; Town Clerk's Notice of Hearing dated 4-13-07. Letter dated 4-21-07 from Ridgway-Ouray Lodge and Suites opposing the application noting the location of the proposed manufacturing facility is not suitable to adjacent uses. Staff Report dated 4-27-07 from Town Manager and Assistant Planner reporting the applicant is seeking two conditional use permits for property located in Eastside Subdivision in the General Commercial District. One permit for manufacturing and industrial use, specifically a woodshop for the manufacture of cabinetry. The other is for a second floor residence above the commercial use. The proposed structure totals 8500 square feet, the downstairs consists of 5200 square fee including a 600 square foot office and 600 square foot show room. Upstairs includes a 2100 square foot residence and two 600 square foot offices. The proposed structure will contain a variety of uses, all of which are allowed as uses-by-right or conditional uses in the district.

Mayor Pro Tem Clark noted that the general commercial zone was created before the industrial zones and the guidelines were written when no other options were available for industrial uses.

Applicant Ben Lockard answered questions from the Commission regarding sound mitigation. Mr. Lockard explained the north wall of the building, which is adjacent to the hotel, will be constructed from SIP panels or ICF walls filled with concrete. The product which offers the highest sound resistance will be used.

# SPEAKING FROM THE AUDIENCE:

Mary Beth Hollenbeck and Bob Kelly expressed concerns regarding sound mitigation.

Andy Mueller stated "the use is what our community should be encouraging". "I encourage you to ensure the mitigation of sound, but try to make this happen".

Mayor Pro Tem Clark noted for the record the Commission had a received a letter from Ridgway Lodge expressing concerns about compatibility of the adjacent use and sound mitigation.

The Applicant noted the proposed use will provide six jobs with benefits. He explained "I own two other businesses in the area"; the facility "will be a fully green compliant workplace, and

will be a sustainable, environmental friendly business". The business will be a "full scale production" facility, the "new equipment will mitigate sound to 82 decibels" and use "internal dust collectors". All "wood dust and scraps" will be "recycled into useable building material". Mr. Lockard suggested that he could retain a "sound specialist engineer" to "spec out how much decibels the wall will impede". <u>The Commission agreed that the use could be required to comply with industrial zone sound regulations</u>.

There was discussion among the Commissioners regarding the exterior of the building and elevations from Highway 550.

ACTION:

Mayor Pro Tem Clark moved, with a second by Commissioner Whaling to <u>approve the request for two</u> <u>Conditional Use Permits at 397 Palomino Trail, Lot 9, Eastside Subdivision allowing for light industrial</u> <u>use in general commercial zoning and for construction of a residence above a commercial building</u>. <u>Conditions upon the approval include</u>:

1) the commercial use must meet the noise limits established for the Industrial 1 Zone of 55 decibels and all other I-1 guidelines must be met

2) all landscaping requirements of the Town must be met

3) a sound engineer shall certify to the Building Inspector that construction and equipment used will meet the 55 decibel requirement.

The motion carried unanimously.

Commissioner Anderson and Mayor Willits left the meeting at 10:00 p.m.

5. <u>Application for Variance of lot width (33.5 feet instead of 50 feet) and Variance for east side</u> setback (zero instead of 8 feet); Location: Lot 5, Block 22 (Highway 62 between Laura and Mary); Zoned: Historic Residential; Applicant: Kari Wage for David and Josephine Calhoon

Application and Town Clerk's Notice of Public Hearing dated 4-13-07. Letter dated 8-16-06 from Attorney Andy Mueller presenting his clients, David and Josephine Calhoon's position that Lot 5, of Block 22, though it does not meet existing size regulations, is a "pre-existing non-conforming lot". Staff Report dated 4-27-07 from the Assistant Planner and Town Manager noting the applicant seeks variance for required lot size, lot width and east-side setback.

Applicant Kari Wage addressed the Commission and explained "the lot was severed off in 1956 prior to Town regulations" requiring 50 feet of frontage in historic residential. "The lot is 33 feet and does not meet dimensional requirements for a building apron" she noted, and requested a variance on the east side set-back, since there is an overhead power line on the west side of the property.

There was discussion between the Commission and the applicant. <u>The Commission</u> agreed that a set back on the alley, or west side would be preferable, this would allow the property owner to the east to build without encroachment issues. Attorney Mueller requested consideration of a two foot setback on the west side without a roof eave, or three feet with a roof eave.

ACTION:

On a motion by Commissioner Petruccelli with a second by Mayor Pro Tem Clark the motion to approve the variance request for Lot 5, Block 22 to allow a three foot setback on the west side with an eave overhang or two feet with no eave overhang and approve the variance for lot width and lot size, with the eight foot easement to remain on the east side carried unanimously.

# **INFORMAL DISCUSSIONS**

# <u>Informal discussion on steep slope issues on River Park Drive, River Park PUD, Filing 2</u>

Architect Doug MacFarlane explained Lots 201 & 204 located on the south side of River Park Drive contain "25 feet of fall across the lots". To avoid steep slopes in driveways, and potential drainage problems in garages, the developer would like the Commission to consider issuing a variance for the lots allowing "five feet of relief from the (building) height regulations". He suggested the height could be "measured from the low point of the house", "or measure from finish grade instead of existing grade". He explained this would "create a workable design scenario and make the driveway and drainage work".

There was discussion and it was noted that the sites are located on a open space and look up a hillside, and increases in building height would not obstruct views. <u>The</u> <u>Commission agreed with the concept</u>.

# APPROVAL OF MINUTES

# 5. <u>Minutes of the regular meeting of April 3, 2007</u>

Town Engineer Fagan noted she would like to add a few items to the minutes and would meet with the Town Clerk after the meeting. <u>The Commission agreed</u>.

# ACTION:

It was moved by Mayor Pro Tem Clark, seconded by Commission Whaling and unanimously carried to <u>approve the minutes of the April 3, 2007 meeting</u>.

The meeting was adjourned at 10:40 p.m.

Respectfully submitted,

Pam Kraft, MMC Town Clerk

#### STAFF REPORT

Request:	Deviation from Single-Family Home Design Standards
Legal:	Block 22, Lot 5
Address:	TBD Sherman Street
Parcel #:	430517401004
Zone:	Downtown Service (DS)
Applicant:	Will McGown
Owner:	Will and Eugenia McGown
Initiated By:	Shay Coburn, Planner
Date:	April 24, 2018

#### REQUEST

The Applicant is requesting a deviation from the Single-Family Home Design Standards in Chapter 6 Section 6 of the Ridgway Municipal Code. More specifically, RMC §6-6-3(E) requiring a minimum footprint of 21 feet by 24 feet, exclusive of the garage, for single-family homes. The Applicant is proposing a building width of 15.5' feet with a 7' wide covered porch.

The subject property is in the Downtown Service District and fronts Sherman Street.



The Applicant has submitted an application, architectural drawings the of proposed single-family house design, photos of a model, letter dated April 13, 2018, Planning Commission minutes from April 24, 2007, and the applicable fee for this public hearing. The property and public hearing have been noticed in compliance with the Town Municipal Code.

#### CODE REQUIREMENTS

The subject property is zoned Downtown Service where single-family homes are a use-by-right subject to the provision of Chapter 6 Section 6 of the Ridgway Municipal Code (RMC). RMC 6-6 contains Single-Family Home Design Standards. These design standards are applicable to all newly constructed or installed single-family homes.

The legislative declaration for the Single-Family Home Design Standards is defined in RMC §6-6-1, as follows:

Ridgway is defined in part by eclectic architecture and neighborhoods vary in age and character. A goal of the Town's Master Plan is to create a well-integrated community that meets the needs of residents of various income levels, ages and stages of family life cycles. One way of achieving this is to encourage

a mix of housing types and densities, rather than segregating them into separate districts. In accomplishing this, it is acknowledged that the visual appearance of a property affects more than just the property involved. New and altered structures impact the surrounding neighborhood both in character and property value. These standards have been adopted to encourage a mix of housing types, while helping to ensure that this will not be detrimental to the character of the neighborhoods or to property values in general.

RMC §6-6-3(E) has the following requirement:

(E) Minimum Width:

"The building footprint may be any shape, but must fully enclose a 24 ft. x 21 ft rectangle within the perimeter, exclusive of any attached garage".

This request for a deviation is considered under RMC §6-6-5 based upon the following:

(A) The Planning and Zoning Commission may approve deviations form one or more of the requirements of this Section §6-6 on the basis of finding that:

- (1) The proposed architecture or construction standards provide compensating features that meet the intent and objectives of these standards.
- (2) The proposed structure will be compatible and harmonious with structures in the immediate vicinity.

(B) Requests for deviations shall be reviewed pursuant to the procedures of Subsection 7-3-18 of the Ridgway Municipal Code, subject to the fees set in Subsection 7-3-20.

Applicable review procedures as described in RMC §7-3-18 are as follows:

(E) At the hearing scheduled, the applicant and other interested parties may appear and present such evidence and testimony as they may desire. Anyone presenting evidence or testimony shall be subject to cross-examination by other interested parties, although the Reviewing Board may limit testimony, evidence, and cross-examination which is merely cumulative and is not required to follow any set procedure during the hearing, nor to strictly follow the Rules of Evidence as applied by the Courts. The hearing may be tape recorded or otherwise electronically recorded. The applicant, or other interested party may, if he desires, have the hearing recorded by a court reporter, at his expense. The hearing may be continued from time to time as necessary. The burden is upon the applicant in all cases to establish that all applicable criteria for any action are met, including proper notice.

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(G) <u>The Reviewing Board may approve the requested action only upon finding that all applicable criteria</u> <u>and requirements of these Zoning Regulations or other Town ordinances have been met</u>. If it determines that such criteria have not been met, the application shall be denied. The application may be granted upon conditions or limitations which the Reviewing Board determines are necessary in order to ensure that the applicable criteria are met. Such conditions or limitations shall be provided to the applicant and interested parties, in writing, as part of the decision.

#### ANALYSIS

In addition to the above code requirements, it is important to know that a variance to lot width and lot size was approved on April 24, 2007 for this property (see attached meeting minutes). With this approval, the west side setback was reduced to three feet with a one-foot overhang, or a two-foot setback with no overhang. As explained by the applicant in the letter submitted, they also own the adjoining properties. This means that they could reconfigure the lots to comply with the requirements of this district but that would likely entail some a subdivision.

The following two criteria must be met for the Planning Commission to approve this request.

1) The proposed architecture or construction standards provide compensating features that meet the intent and objectives of these standards.

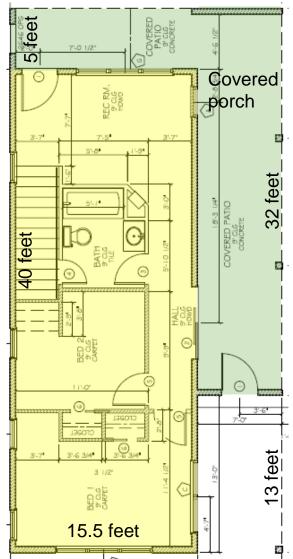
The proposed single-family home has a rectangular footprint of 15.5 feet by 40 feet (shaded in yellow below) with an attached about 7 foot by 32-foot covered porch (shaded in green below). The structure is two stories with a larger second floor that can enclose the 21-foot by 24-foot minimum requirement. There is some architectural variation present with solids and voids, and some roof line variation. Compensating features such as the recessed entry, second floor decks, and first floor covered porch, all contribute to

architectural interest for the structure. Detailed materials were not identified on the plans but were confirmed via email with the Applicant. They will be very similar to the new firehouse in Town with rusty metal siding, wood details, and pro-panel or similar metal roofing.

# (2) The proposed structure will be compatible and harmonious with structures in the immediate vicinity.

While most of the surrounding property is vacant, there are a few single-story structures in the immediate vicinity plus the two-story church at North Laura. In addition, the overall size of the proposed building (~1,600 sq. ft.) is much smaller than the residence just to the west at about 2,800 square feet. While it is difficult to judge compatibility with the immediate vicinity given the surrounding vacant land, this unit is generally compatible and harmonious with the larger area. This unit has a fairly small footprint which seems appropriate in the Downtown Service district.

Height will need to be double checked at the time of building permit as it is extremely close to the maximum allowable.



# STAFF RECOMMENDATION

The apparent intent of the Single-Family Home Design Standards is to avoid homes that are uniform in design and eliminate rectangular, single-wide modular structures. The proposed design seemingly meets the overall intent of these regulations. The drawings and model submitted show that compensating design features have been provided and that this proposed structure will be compatible with the surrounding structures.

Staff recommends approval of the requested deviation to the Single-Family Home Design Standards for a footprint less than the required 21 feet by 24 feet based on the site plans and elevations submitted with this application.



Posted property from Sherman St. looking north

# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Ridgway Planning Commission will hold a **PUBLIC HEARING** at the Town Hall Community Center, 201 N. Railroad Street, Ridgway, Colorado, on <u>Tuesday, April</u> <u>24<sup>th</sup>, 2018 at 5:30 p.m.</u>, to receive and consider all evidence and reports relative to the application described below:

Application for:	Preliminary Plat for Lena Street Commons
Location:	Tract of land lying east East of Blocks 31 and 32, north of Hartwell Park/Charles Street, east of Lena Street, south of Otto Street, and west of the Library District property and Town of Ridgway property at North Railroad Street
Address:	316 N Lena St
Zoned:	General Commercial (GC) and Historic Business (HB)
Applicant:	Tate Rogers
Property Owner:	Arthurn Travis Spitzer Recocable Trust

**ALL INTERESTED PARTIES** are invited to attend said hearing and express opinions or submit written testimony for or against the proposal, to the Town Clerk.

**FURTHER INFORMATION** on the above application may be obtained or viewed at Ridgway Town Hall, or by phoning 626-5308, Ext. 222.

Shay Colum

DATED: April 12, 2018

Shay Coburn, Town Planner

PLANNING & ZONI	NG PERMIT		
	Receipt #* Date Received* By*		*
			*
Incomplete Applications will be Rejected			
	* For Office Use Only		
ACTION REQU	JESTED		
TEMPORARY USE PERMIT [ ] 7-3-13c	VARIANCE	[x] 7-3-16	
CONDITIONAL USE PERMIT [x] 7-3-14	REZONING	[ ]7-3-17	-
CHANGE IN NON-CONFORMING USE [ ] 7-3-15	SUBDIVISION	[x] 7-4-1 thru	17-4-12
OTHER: [ ]			
ADDRESS OF PROPERTY: 316 N. Lena St Ridgway C	o 81432		
ACREAGE/SQUARE FOOTAGE: 1.606 acres Z	ONING DISTRICT: GC		
	ee Additional application		
	<u>opprovide</u>		
ICANT/APPLICANTS: OWNER			

APPLICANT/APPLICANT: NAME:Tate Rogers MAILING ADDRESS: 2867 CR 23 CITY:Ridgway, CO TELEPHONE NO:970-729-2366 FAX:970.626.2530

OWNER/OWNERS OF RECORD: NAME: Authur Travis Spitzer Revocable Trust dated January 2000 MAILING ADDRESS: PO BOX 3081 CITY: Telluride, CO TELEPHONE NO:970.728.2424 FAX: 970.728.9439

# ATTACHMENTS REQUIRED FOR ALL ACTIONS:

- 1. Evidence of ownership or written notarized consent of legal owner(s).
- 2. Copy of all site plans drawn to scale showing location of building(s), elevations, abutting streets, and all dimensions, must be submitted on paper size of 8.5 x 11 or 11 x 17. (12 copies unless otherwise noted)
- 3. A filing fee payable to the Town of Ridgway.

# FILING FEE SCHEDULE:

Temporary Use	\$ 100,00
Conditional Use	100.00
Change in Nonconforming Use	100.00
Variances & Appeals	150.00
Rezoning	200.00
<b>Reviews Pursuant to 7-3-18</b>	100.00
Variance from Flood Plain Reg's	100.00
Deviations from Single Family	
Design Standards	100.00

# Subdivisions

a.	Sketch Plan	200.00
	(plus \$10.00 per lot or unit)	
b.	Preliminary Plat	400.00
	(plus \$20.00 per lot or unit)	
C.	Final Plat	300,00
q.	Minor Subdivision	200.00
e.	Lot Split	100.00
f.	Replat/amended plats	100.00
g,	Planned Unit Development	(a.b.&c.)

# **ADDITIONAL COSTS:**

Applicant and owner shall be jointly and severally responsible for legal, engineering, planning, administrative and miscellaneous fees, including recording costs, if incurred. (R.M.C. 7-3-20(B) and 7-4-12(B)). Water and sewer tap fees and development excise taxes are due at approval of final plats.

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# PLANNING & ZONING PERMIT

#### Page 2 of 3

# SPECIFIC ATTACHMENTS REQUIRED FOR EACH ACTION:

#### **CONDITIONAL USE PERMITS:**

- 1. The site plan shall show off-street parking requirements, landscaping and architectural features.
- 2. Information showing compliance with applicable criteria.
- 3. Notice of hearing shall be posted at Town Hall 10 days before the hearing.
- 4. Property shall be posted at least 10 days prior to the hearing.

#### **TEMPORARY USE PERMITS:**

- 1. The site plan shall show off-street parking requirements, landscaping and architectural features.
- 2. Information showing compliance with applicable criteria.
- 3. Property shall be posted at least 10 days prior to the hearing.

# CHANGES IN NON-CONFORMING USE:

- 1. Description of existing non-conformity.
- 2. Information showing compliance with applicable criteria.
- 3. Notice of hearing shall be posted at Town Hall 10 days before the hearing.
- 4. Property shall be posted at least 10 days prior to the hearing.

#### VARIANCE:

- 1. Site plan showing details of the variance request and existing uses within 100 ft. of property.
- 2. Information showing compliance and/or non-compliance with applicable criteria.
- 3. Notice of hearing shall be posted at Town Hall 10 days before the hearing.

#### **REZONING:**

- 1. Legal description, present zoning and requested zoning of property.
- 2. Notice of hearing shall be posted 10 days before the date of the hearing.
- 3. Property shall be posted at least 10 days prior to the hearing.

#### SUBDIVISION:

- 1, All requirements established by Municipal Code Sections 7-4-1 through 7-4-12.
- 2. Affidavit of notice sent to all surface and mineral owners and lessees of mineral rights.
- (Proof of proper notice must be submitted prior to the hearing.)
- 3. The Preliminary Plat shall be submitted 21 days prior to the hearing.
- 4. The Final Plat shall be submitted 20 days prior to the next scheduled Planning & Zoning meeting.
- 5. Sketch plan required in subdivisions consisting of more than 5 proposed lots or units.

Applicant and owner shall be jointly and severally responsible for legal, engineering, planning, administrative and miscellaneous fees, including recording costs, if incurred. (R.M.C. 7-3-20(B) and 7-4-12(B)). Water and sewer tap fees and development excise taxes are due at approval of final plats.

Signature of Applicant/Applicants

Thomas Gellemely Altorney-in-tast

Date

Signature of Owner/Owners

## APPLICATION FOR PRELIMINARY PLAT APPROVAL FOR LENA STREET COMMONS A PLANNED UNIT DEVELOPMENT

## April 14, 2017 Revised August 28, 2017

The Lena Street Commons P.U.D. is a proposed development on the western half of the block of land in the downtown core of the Town of Ridgway lying between Hartwell Park on the south, the Town of Ridgway Maintenance facilities on the north, Railroad Street on the east and Lena Street on the west.

The development has three major components to it. The southernmost portion consisting of 13,222 acres/sq. feet which is currently zoned Historic Business will, through this application, be subdivided into a Historic Business Zone Lot for appropriate and permitted Historic Business zone uses. The central section, consisting of approximately 1.25 acres is currently zoned General Commercial with a small portion on the southern end of the property zoned HB. The Applicant, through the PUD process, proposes to develop a residential townhome development on this central area which will contain 19 residential lots on which single family townhomes will be constructed ranging in size from 720 square feet to 1,876 square feet. The northern end of the property, containing approximately 12,500 sq. feet. is also zoned General commercial will be subdivided into one lot on which Applicant intends to construct and through this PUD process create four commercial condominiums for purchase and use by local tradespeople and/or other appropriate commercial uses. It is the Applicant's request that the commercial condominium plat being submitted as part of this plat application be given preliminary plat approval.

This proposal is submitted to the town pursuant to section 7-3-11, the Planned Unit Development section. As stated in that section it is the intent of the Planned Unit Development regulation in the Town of Ridgway to encourage the development of large tracts of land in accordance with overall development plan by providing flexibility with respect to dimensional requirements and by allowing increased densities and to promote the purposes of the Planned Unit Development Act of 1972. This proposal meets the criteria listed in subsection (B) which requires conformity with the Town's Master Plan and the consent of all owners of land within the PUD.

## I. MASTER PLAN<sup>1</sup> CONFORMANCE:

GOAL 1: GROWTH Promote growth and development that reinforces Ridgway's existing neighborhoods and businesses, complements the surrounding rural landscape, and celebrates vibrant community spaces.

The development of this property in a relatively dense manner with small, compact residential units and four commercial units will allow Ridgway to absorb additional growth, provide additional quality housing stock in an area of town which is close to the downtown core allowing easy pedestrian access to all Downtown Businesses, the River Corridor and Schools and other essential services. While the development is not identical to the surrounding commercial, institutional and/or vacant properties, it is respectful of and compatible with those existing uses and provides appropriate transition between the existing residential uses to the west and the institutional uses to the north and east. It is an appropriately scaled development for infill of a vacant property in the core of town. It clearly meets many of the policies stated under this Goal in the Master plan including promoting infill and mixed use development with live work components, it is directing growth to occur from the core outward. Any less dense of a development in this location would merely be encouraging widespread suburban style sprawl into Ridgway's neighboring agricultural operations. The three units of affordable housing in addition to the modest size of the units and their design to encourage live work situations bring significant public benefits and encourage diversity in the workforce and business opportunities in the Town. The property is not in a geohazard area, it is not on steep slopes or in flood ways, it is not in sensitive wildlife corridors and it does not push development beyond the growth boundaries of Town. This development will assist the Town in its role in the IGA with the County to absorb future growth in an appropriate manner.

# GOAL 3: HOUSING Encourage a diversity of housing opportunities that meet a range of income levels, and complement the Town's existing character and heritage.

This project provides a variety of housing sizes with a design that is aesthetically pleasing and includes over 15% of the units as affordable housing units. The units are designed for maximum flexibility and encourage live work opportunities for future residents.

<sup>&</sup>lt;sup>1</sup> All references to the "Master Plan" contained herein are to the 2011 Land Use Plan produced by the Town of Ridgway unless otherwise indicated.

# GOAL 5: ECONOMY Encourage and facilitate a vibrant, diverse and sustainable local economy that reflects Ridgway's social fabric, values, and character

This project increases walkability by providing 19 residential units within easy walking distance of the downtown core and thereby promoting patronage and use of businesses and services located there. The ability for ten of the units to be used for short term rental uses will also enhance the local economy by allowing homeowners to use their properties as short term rentals for portions of the year thereby allowing flexible living situations and supplementary income for those homeowners as well as providing a diversified tourist bed base and customers for Ridgway's local restaurants and merchants.

GOAL 7: ENVIRONMENT Improve Ridgway's impact to the environment by reducing its community-wide carbon footprint and promoting more sustainable practices on a variety of scales.

This project improves the Town's future impact on the environment because it is appropriately scaled infill development which encourages a low carbon, pedestrian lifestyle. It is located on the Uncompany Trial.

## II. DEVIATIONS FROM DIMENSIONAL REQUIREMENTS: RMC § 7-3-11(D)

The PUD regulations allow for and encourage deviation from dimensional requirements which would otherwise be required for the underlying zone. This project does seek approval for deviation from the dimensional requirements otherwise imposed by Section 7-3-10 for the GC zoning district in the following manner:

- 1. Lot width: All 19 proposed residential lots are less than 30' in width, ranging from 21' to 24' in width.
- 2. Lot Size: The 19 proposed residential lots are less than the required 5000 square feet and range from 840 square feet to 1,835 square feet in size.
- 3. **Maximum Lot Coverage:** Lot coverage in the GC zone is set at a 50% maximum. The lot coverage for the A units is 38%, however, the building coverage for the B, C, D and E Units exceeds the 50% limitation. For B, C and E the lot coverage is approximately 70% and for the D units the lot coverage is 100%.
- 4. **Front Setbacks:** The front setbacks on Lena street for both the commercial and residential units, as requested by Planning Commission, range from 5' to 10' instead of the 15' otherwise required in the GC zone.
- 5. **Side/Rear Setbacks:** The Applicant is requesting 0' internal side setbacks on all residential lots to achieve urban densities in the project and to avoid producing

condominiums which are hard if not impossible for the end user residents to finance on the standard mortgage market. The Applicant also requests a variance for a 2'6" side setback and portion of rear setback on the commercial condominium building.

6. **Structure Height on Two D Units:** Units 1D and 2D are proposed at a height of approximately 35' which is above the height listed in section 7-3-10, but, as addressed below, the GC zone allows for a height up to 35' through the conditional use process.

While Applicant does not believe that the Ridgway Municipal Code actually requires, or even empowers, the Town to address deviations of dimensional requirements in a Planned Unit Development through the variance provisions of Section 7-3-16, we are addressing the standards set forth in that section because we understand that the Town has a practice of analyzing such PUD dimensional variations through that process.

#### 7-3-16 VARIANCES AND APPEALS.

(A) The Planning Commission may grant a variance from the Dimensional Requirements, Sign Regulations, Design or Performance Standards and other provisions of these regulations not related to "use", and excluding Off-Street Parking Requirements, following the review procedure of Subsection 7-3-18, provided that the criteria of this Subsection will be met. Variances shall be granted only if all the following criteria are met:

# (1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Zoning Ordinance.

To achieve the stated goals of the Land Use Plan related to building the Town out from its core and providing appropriate density in the core of Town, this project, and any other infill project will need to vary from the town's dimensional requirements in the GC and/or HB zone. As recognized frequently by discourse at the Planning Commission and the Town Council, the Town of Ridgway needs infill development which provides additional quality housing stock, affordable and attainable housing units and brings additional density and vitality to the core of downtown. This proposal meets these needs, however, as contemplated by the PUD regulations, it cannot do so without varying from the strict letter of the zoning ordinance. If the standard setbacks and dimensional requirements were imposed upon this project it would impose unnecessary hardships on the development and prevent the addition of these 19 residential units to the housing inventory in Ridgway. Lena Street Commons Planned Unit Development Narrative August 28, 2017

# (2) The spirit of the ordinance will be observed, the public health, safety and welfare secured and substantial justice done by granting the variance.

The property is zoned GC. The uses allowed by right in the GC zone often require larger setbacks from neighboring properties to reduce their impact upon each other. While residential use is a conditional use (addressed below) it has a less significant impact on immediate neighbors than many of the uses the dimensional requirements were designed for. Additionally, using modern building techniques, all concerns regarding fire, noise and vibration can be addressed or mitigated in these 0' side lot line setback units. The design of the units is such that the public health safety and welfare will be addressed and mitigated. Additionally, due to the critical need for additional housing units in the Town of Ridgway, substantial justice for the town and its current and future residents will be achieved through approving this PUD with the dimensional deviations.

## III. CONDITIONAL USES IN GC ZONE: RMC § 7-3-9(C)

This PUD application includes a request to approve two conditional uses in the General Commercial Zone:

# (1) Single family homes which meet the requirements of Section 6-6, duplexes, multifamily residences, and dwelling units in buildings with non-residential uses, which are not used for rentals for periods of 31 days or less.

# (15) Buildings 27' to 35' in height or containing more than 10,000 square feet of gross floor area<sup>2</sup>.

It is appropriate for the Planning Commission to review this conditional use requirement in a comparative sense, i.e. what would be developed on this property as a use by right vs. what will be developed as a conditional use on the property with the granting of these conditional uses.

#### 7-3-14 CONDITIONAL USES.

<sup>&</sup>lt;sup>2</sup> Applicant would like the Town to recognize that a proper reading of the applicable building code provisions indicate that due to the construction techniques being implemented each of the individual townhomes is its own building. See, Tab 21 of the Application; See Also, Tab 21 the gross square footage calculation pursuant to RMC Section 7-3-2 provided by Sundra Hines demonstrates that the gross square footage of each grouping of Townhomes, even if considered one building, is under 10,000 square feet and therefore no conditional use permit regarding the size of any of the buildings is necessary for this project to move forward.

# (A) Uses listed as conditional uses for the various zoning districts provided in this Section shall be allowed only if the Planning Commission determines, following review pursuant to Subsection 7-3-18, that the following criteria are substantially met with respect to the type of use and its dimensions:

#### (1) The use will not be contrary to the public health, safety, or welfare.

Residential units of this nature, which are essentially single family homes, will promote the health, safety, and welfare of the community by providing additional sorely needed housing stock in the town while not endangering the health of the occupants or the neighbors. The construction of residences in this location is more compatible with existing uses in the area, i.e. the residential structures on the west side of Lena or the library to the east than many of the uses allowed in the GC zone. The commercial condominiums at the northern end are specifically not residential due to the proximity of the Town's sewer lagoons, the project has been designed with the health, safety, and welfare of its residents in mind.

#### (2) The use is not materially adverse to the Town's Master Plan.

As demonstrated above in the Master Plan discussion related to the PUD in general, this project is consistent with many of the applicable goals in in the Town's 2011 Land Use Plan, it is certainly not adverse to it.

# (3) Streets, pedestrian facilities, and bikeways in the area are adequate to handle traffic generated by the use with safety and convenience.

The location of this project in the downtown core allows for infill development where existing infrastructure has been designed to handle this type of density. The streets, utilities and sidewalks/bikeways are more than adequate to handle the additional density and vitality this project will bring to town.

#### (4) The use is compatible with existing uses in the area and other allowed uses in the District.

This use is compatible with the residential use on the west side of Lena Street. While it brings higher density and height than some of the residents and owners of those houses would like, it's residential nature is more compatible than most of the allowable commercial uses of the property. The well-designed units providing architectural relief and fenestration of building fronts facing Lena Street will provide a much more pleasing experience for the residents on the west side of Lena and those traveling along Lena Street. The height at 35 feet is certainly different than a vacant lot, but given the design elements in the building design, the buildings will present a much higher level of

Lena Street Commons Planned Unit Development Narrative August 28, 2017

experience than the standard commercial buildings allowed on the site. The project is compatible with the library and vacant town property to the east and given the design of the commercial condos buffering the northern end of the project, it is compatible with the Town's public works facilities to the north.

#### (5) The use will not have an adverse effect upon other property values.

The proposed project height and residential use will not negatively impact the neighboring properties and in fact, by cleaning up a vacant lot and removing an existing trailer and random storage area, the Applicant believes that this project will improve the values of neighboring properties.

#### (6) The location of curb cuts and access to the premises will not create traffic hazards.

There will be no traffic hazards created by this project.

(7) The use will not generate light, noise, odor, vibration, or other effects which would unreasonably interfere with the reasonable enjoyment of other property in the area.

There will be less of any of these offensive activities in this primarily residential project than if the property was developed as a use by right.

# (8) Visual impact due to a building's size shall be mitigated by means of design, landscaping, berming, and other methods of site treatment, and must be compatible with the mass and scale of existing buildings on adjacent properties, or if there are no such buildings, compatible with the mass and scale of buildings in the Town generally.

Applicant recognizes that the proposed structures are a significant change from the vacant state of the property, Applicant however, believes that the scale and design of the buildings is completely consistent with development in Town in both the HB and GC zones and that given the design elements, colors, materials, fenestration, and relief provided by the architectural design, the project is consistent with and compatible with the mass and scale of many of the most attractive buildings in town.

## IV. RMC § 7-3-9(D) APPLICABLE PERFORMANCE STANDARDS FOR GC ZONE

#### (6) (a) Residential uses must provide off-street parking as required by Subsection 7- 3-10(C).

Section 7-3-10(C)(1)(a) requires 2 spaces per dwelling unit which have been provided herein except for Lots 1E-4E which have only 722 square feet per unit and, as discussed at the Sketch plan phase of this project and detailed below, the Applicant is requesting a deviation from this performance standard on the number of parking spaces associated with these four, smaller units.

## (6) (d) Residences shall be minimum of 21 feet wide with an average roof pitch of at least 3 to 12 and a minimum eave overhang of 12 inches.

The B, C & E units will all have roof pitches from 3/12 to 6/12. The A units will have an average roof pitch of 2/12 and the D units will have an average roof pitch of 1/12. The PUD process allows the Town to approve buildings which vary from these performance standards. See the discussion above. Given the design elements and the location of the D units in their proximity to the Historic Business core of Town and their similar appearance to other buildings built along Lena Street it seems that these buildings meet the spirit of the ordinance and should be approved as part of the PUD process. Both the A units and the D units are tastefully designed with significant architectural variation. Additionally, the mixed use of a variety of materials on both units assist in achieving the goal of presenting an interesting, friendly appearance.

## V. LANDSCAPING AND EXTERIOR APPEARANCE

In order to preserve the aesthetically pleasing appearance of the PUD and the longevity of the landscaping, the Governing Documents for the development place the landscaping and exterior maintenance of all structures in the control of the two Associations being created to govern this Project.

#### POWER OF ATTORNEY

Arthur Travis Spitzer, Trustee of the Arthur Travis Spitzer Revocable Trust dated January 2000 ("Trust") is acquiring certain real property and any improvements thereon which is generally and currently described as:

A TRACT OF LAND LYING EAST OF BLOCKS 31 AND 32, TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO, WEST OF THE WEST LINE OF THE RAILROAD RIGHT OF WAY BETWEEN OTTO STREET AND CHARLES STREET, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF LENA STREET AND THE NORTH LINE OF CHARLES STREET EXTENDED; THENCE NORTH 01°33'48" EAST 666.00 FEET ALONG THE EAST LINE OF LENA STREET TO THE SOUTH LINE OF OTTO STREET EXTENDED; THENCE SOUTH 88°26'12" EAST 41.61 FEET ALONG SAID SOUTH LINE EXTENDED TO THE WEST RIGHT OF WAY LINE OF THE DENVER & RIO GRANDE WESTERN RAILROAD RIGHT OF WAY; THENCE SOUTH 23°29'17" EAST 102.20 FEET ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 03°48'17" EAST 575.94 FEET ALONG SAID RIGHT OF WAY LINE TO THE NORTH LINE OF CHARLES STREET EXTENDED; THENCE NORTH 88°26'12" EAST 138.77 FEET TO THE POINT OF BEGINNING, COUNTY OF OURAY, STATE OF COLORADO ("**Trust Property**").

The ownership conveyance of the Trust Property is occurring pursuant to a certain General Warranty Deed ("Trust Property Conveyance").

I, Arthur Travis Spitzer, ("Principal") in my capacity as Trustee of the Arthur Travis Spitzer Revocable Trust dated January 2000 ("Trust"), the owner of the Trust Property and all density rights associated therewith, do hereby appoint Thomas G. Kennedy ("Authorized Agent") as my agent for the Trust and as my agent for myself to act for the Trust and for myself in any lawful way only with respect to matters relating to the matters and affairs of the Trust relating to each of the following ("Limited Delegated Powers"):

(a) Execution of contracts and agreements providing for architectural services and/or construction services in connection design and development of improvements on the Trust Property.

(b) Execution of any and all closing documents, including but not limited to deeds of conveyance and/or assignment of rights and closing statements for the purchase of Trust Property.

(c) Execution of any and all land use applications with the Town of Ridgway and/or the County of Ouray, State of Colorado.

(d)

Execution of any leases, easements and/or agreements benefiting and burdening the Trust

Property.

(e) Execution of agreements, documents and instruments, including easements, development agreements, other agreements, plats, land use applications, plans and permits with the Town of Ridgway, Colorado ("Town") concerning the development, use and occupancy Trust Property, including its development, procurement of entitlements, use and occupancy and related matters.

#### RESTRICTIONS AND LIMITATIONS CONCERNING THE GRANT OF POWER

1. My Agent is authorized and empowered to execute such instruments, agreements, documents, applications, certifications, affirmations and other documents related to or necessary and appropriate in connection with the exercise of the Limited Delegated Powers as they pertain to this Trust exclusively. No other powers, other than the Limited Delegated Powers provided for above, are hereby granted.

This power of attorney may be amended in any manner or revoked in writing by myself or my 2. Executor at any time. Absent amendment or revocation, the authority granted in this power of attorney is effective when this power of attorney is signed and continues in effect until December 31, 2017, unless sooner terminated in writing by myself or my Executor, as named in any Will of mine then in effect. This power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent.

I agree that any third party who receives a copy of this document may act under it. Revocation of 3. the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

I hereby revoke any and all other powers of attorney that I have granted in connection with the 4. Limited Delegated Powers. I hereby intend that the powers granted in this Power of Attorney shall replace and supersede the grants in any and all such prior powers of attorney I have granted in connection with the Limited Delegated Powers.

Signed and made effective as of \_ March 29 , 2017.

#### PRINCIPAL:

Arthur Travis Spitzer Revocable Trust dated January 2000

By: Arthur Travis Spitzer, Trustee

March 29, 2017 Date:

STATE OF COLORADO ) ) ss. COUNTY OF SAN MIGUEL )

Subscribed to and sworn to before me this 29th day of March, 2017, by Arthur Travis Spitzer, Trustee of the Arthur Travis Spitzer Revocable Trust dated January 2000.

Witness my hand and official seal.

<u>Anne M Connor</u> Notary Public

My Commission Expires: 10/29/18

ANNE M. CONNOR NOTARY PUBLIC STATE OF COLORADO NOTARY ID #20104042840 My Commission Expires October 29, 2018

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TOWN HALL PO Box 10 | 201 N. Railroad Street | Ridgway, Colorado 81432 | 970.626.5308 | www.town.ridgway.co.us

## AUTHORIZATION OF AGENT

I/we, the undersigned owner/s of the following described real property located in the Town of Ridgway, Ridgway, Colorado, hereby authorize:

FATE VLOGET (Name of Authorized A

To act in my /our behalf in applying for the following permits from the Town of Ridgway, as required by existing Town of Ridgway regulations pertaining to zoning, building, encroachment, excavation, and/or utilities.

Legal property description (include: lot, block, subdivision, physical address):

Subd. Townof Ridgway Trat of land East of Block 31 5 32 West of the West line of the Bylload Tight of Way Between OTTO ST and charles ST ATRA Discoe's mobile home parts 516 T45 R 8 Arthur Travis Spitter Revocable Trust dated January 2000 Date: 4/3/17 Signature: (Property Owner of Record) Date: Signature: \_\_\_\_ (Property Owner of Record) Date: Signature: (Property Owner of Record)



TOWN HALL PO Box 10 + 201 N. Railroad Street | Ridgway, Colorado 81432 | 970.626.5308 | www.town.ridgway.co.us

#### TOWN OF RIDGWAY, COLORADO ACKNOWLEDGMENT OF FEES AND COSTS Arthur Travis Spitzer Resocuble

Tate Rogers ("Applicant") and Trust dated January 2000 ("Owner") do hereby acknowledge that with the filing of an application, or seeking Town review under Chapter 7, Section 3 or Section 4 of the Town of Ridgway Municipal Code, that it is subject to the requisite fees and costs associated with such action, in accordance with 7-3-20 and 7-4-12, including out-of-pocket legal fees and/or engineering fees.

Applicant and Owner acknowledge that no plat shall be recorded, improvement accepted, lien released, building permit issued, tap approved or final approval action taken until all fees then due are paid to the Town.

Applicant and Owner acknowledge that the Town may suspend review of submittals, inspection of improvements, and processing of a subdivision, as it deems appropriate, unless all amounts are paid as due.

Applicant and Owner further acknowledges that unpaid fees may be certified to the Ouray County Treasurer for collection as delinquent charges against the property concerned.

Acknowledged this 3rd day of April ,2017.

APPLICANT: authorized signer print name

is spitzer Resocable Trust Istal January 2000 PROPERTY OWNER:

Thomas G. Kennely AIF, authorized signer (print name) Documentary Fee: \$75.00

Tab 5 218237 Page 1 of 3 Warranty Deed Michelle Nauer, Clerk & Recorder RP \$0.00 Ouray County, CO 04-03-2017 09:50 AM Recording Fee \$23.00



Warranty Deed (Pursuant to 38-30-113 C.R.S.) State Documentary Fee Date: March 31, 2017 \$ 75.00

THIS DEED, made on March 31, 2017 by DANIEL S. CHOATE, TRUSTEE OF THE DANIEL S. CHOATE TRUST, DATED MAY 22, 2007 AND CARLA CHOATE, TRUSTEE OF THE CARLA CHOATE TRUST, DATED MAY 22, 2007 Grantor(s), of the County of OURAY and State of COLORADO for the consideration of (\$750,000.00) \*\*\* Seven Hundred Fifty Thousand and 00/100 \*\*\* dollars in hand paid, hereby sells and conveys to ARTHUR TRAVIS SPITZER, TRUSTEE OF THE ARTHUR TRAVIS SPITZER REVOCABLE TRUST DATED JANUARY 2000 Grantee(s), whose street address is P.O.BOX 3601 TELLURIDE, CO 81435, County of SAN MIGUEL, and State of COLORADO, the following real property in the County of Ouray. and State of Colorado, to wit:

#### SEE ATTACHED "EXHIBIT A"

also known by street and number as: 316 N LENA ST RIDGWAY CO 81432

with all its appurtenances and warrants the title to the same, subject to general taxes for the year 2017 and those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Grantee(s) in accordance with Record Title Matters (Section 8.2) of the Contract to Buy and Sell Real Estate relating to the above described real property; distribution utility easements, (including cable TV); those specifically described rights of third parties not shown by the public records of which Grantee(s) has actual knowledge and which were accepted by Grantee(s) in accordance with Off-Record Title Matters (Section 8.3) and Current Survey Review (Section 9) of the Contract to Buy and Sell Real Estate relating to the above described real property; inclusions of the Property within any special tax district; Any special assessment if the improvements were not installed as of the date of Buyer's signature on the Contract to Buy and Sell Real Estate, whether assessed prior to or after Closina; and other NONE

THE DANIEL S. CHOATE TRUST, DATED MAY 22, 2007

DANIEL S. CHOATE, TRUSTEE

THE CARLA CHOATE TRUST, DATED MAY 22, 2007

Le Trustee

RIA CHOATE, TRUSTEE

State of COLORADO

County of OURAY

The foregoing instrument was acknowledged before me on this day of March 31, 2017 by DANIEL S. CHOATE, TRUSTEE OF THE DANIEL S. CHOATE TRUST, DATED MAY 22, 2007 AND CARLA CHOATE, **TRUSTEE OF THE CARLA CHOATE TRUST, DATED MAY 22, 2007** 

Form 13050 <sup>C</sup> 12/2015 wd.16.odt 1-16



Warranty Deed (Photographic)

) ss.

OU85004324

{27862470}

**JEFFREY BURGESS** NOTARY PUBLIC STATE OF COLORADO NOTARY 1D 20144024470 MY COMMISSION EXPIRES 06/19/2018

Notary Public 06.19.2010 My commission expires

When Recorded Return to: ARTHUR TRAVIS SPITZER, TRUSTEE OF THE ARTHUR TRAVIS SPITZER REVOCABLE TRUST DATED JANUARY 2000

P.O.BOX 3601 TELLURIDE, CO 81435

#### **EXHIBIT A**

A TRACT OF LAND LYING EAST OF BLOCKS 31 AND 32, TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO, WEST OF THE WEST LINE OF THE RAILROAD RIGHT OF WAY BETWEEN OTTO STREET AND CHARLES STREET, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF LENA STREET AND THE NORTH LINE OF CHARLES STREET EXTENDED; THENCE NORTH 01°33'48" EAST 666.00 FEET ALONG THE EAST LINE OF LENA STREET TO THE SOUTH LINE OF OTTO STREET EXTENDED; THENCE SOUTH 88°26'12" EAST 41.61 FEET ALONG SAID SOUTH LINE EXTENDED TO THE WEST RIGHT OF WAY LINE OF THE DENVER & RIO GRANDE WESTERN RAILROAD RIGHT OF WAY; THENCE SOUTH 23°29'17" EAST 102.20 FEET ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 03°48'17" EAST 575.94 FEET ALONG SAID RIGHT OF WAY LINE TO THE NORTH LINE OF CHARLES STREET EXTENDED; THENCE NORTH 88°26'12" EAST 138.77 FEET TO THE POINT OF BEGINNING, COUNTY OF OURAY, STATE OF COLORADO.

NOTE: THE ABOVE LEGAL DESCRIPTION IS REAL PROPERTY ONLY AND DOES NOT INCLUDE MANUFACTURED HOUSING.

Tab 6 Title Policy

## Land Title Guarantee Company

Date: April 28, 2017



#### ARTHUR TRAVIS SPITZER REVOCABLE TRUST DATED JANUARY 2000 P.O.BOX 3601 TELLURIDE, CO 81435 travis@concordiacapital.net

#### Subject: Attached Title Policy OX85004324.2275313 for 316 N LENA ST, RIDGWAY, CO 81432

Enclosed please find the Owner's Title Insurance Policy for your purchase of the property listed above.

This title policy is the final step in your real estate transaction, and we want to take a moment to remind you of its importance. Please review all information in this document carefully and be sure to safeguard this policy along with your other legal documents.

Your owner's policy insures you as long as you own the property and requires no additional premium payments.

Please feel free to contact any member of our staff if you have questions or concerns regarding your policy, or you may contact the Final Policy Department at Phone: 303-850-4158 or Email Address: finals@ltgc.com

As a Colorado-owned and operated title company for over 45 years, with offices throughout the state, we take pride in serving our customers one transaction at a time. We sincerely appreciate your business and welcome the opportunity to assist you with any future real estate needs. Not only will Land Title be able to provide you with the title services quickly and professionally, but you may also be entitled to a discount on title premiums if you sell or refinance the property described in the enclosed policy.

Thank you for giving us the opportunity to work with you on this transaction. We look forward to serving you again in the future.

Sincerely,

Land Title Guarantee Company



#### **OWNER'S POLICY OF TITLE INSURANCE**

ANY NOTICE OF CLAIM AND ANY OTHER NOTICE OR STATEMENT IN WRITING REQUIRED TO BE GIVEN TO THE COMPANY CUNDER THIS POLICY MUST BE GIVEN TO THE COMPANY AT THE ADDRESS SHOWN IN SECTION 18 OF THE CONDITIONS.

#### **\***COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation, (the

"Company"), insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

- 1. Title being vested other than as stated in Schedule A.
- Any defect in or lien or encumbrance on the title; This covered Risk includes but is not limited to insurance against loss from

   (a) A defect in the Title caused by
  - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation; (ii) failure of any person or Entity to have authorized a transfer or convevance:

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered; (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

- 3. Unmarketable Title.
- 4. No right of access to and from the Land.
- 5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

- 6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
- 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
- 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
- 9. Title being vested other than as stated in Schedule A or being defective

(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

- (i) to be timely, or
- (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
- Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions. OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY



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AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY Adopted 6-17-06

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#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
  - or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
  - Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

#### CONDITIONS

#### **1. DEFINITION OF TERMS**

2.

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
- (i) The term "Insured" also includes
  - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization; (C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

- (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured.
   (2) if the grantee wholly owns the named Insured
  - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are
  - both wholly-owned by the same person or Entity, or
  - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
- (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defensed as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenue, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
 (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
 (j) "Title": The estate or interest described in Schedule A.

"Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

#### 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

#### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

#### 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

#### 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action the liable for and will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not

#### insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must to so diligently.
(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

#### 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligation to the Insured to during the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to the company that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

#### 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in the subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expensed incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

#### 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

#### (i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

#### 9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

#### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. **11. LIABILITY NONCUMULATIVE** 

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

#### **12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days. 13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the

Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss. (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

#### **14. ARBITRATION**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons, Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

#### 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim or loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy. (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

#### **16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

#### 17. CHOICE OF LAW; FORUM

(a) Choice of Law; The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum; Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

#### **18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

ANTI-FRAUD STATEMENT: Pursuant to CRS 10-1-128(6)(a), it is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

This anti-fraud statement is affixed to and made a part of this policy.

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#### Schedule A

**Order Number:** OU 85004324

**Policy Number:** OX85004324.2275313

**Amount:** \$750,000.00

#### **Property Address:**

316 N LENA ST, RIDGWAY, CO 81432

1. Policy Date:

April 03, 2017 at 5:00 P.M.

2. Name of Insured:

ARTHUR TRAVIS SPITZER, TRUSTEE OF THE ARTHUR TRAVIS SPITZER REVOCABLE TRUST DATED JANUARY 2000

3. The estate or interest in the Land described or referred to in this Schedule and which is covered by this policy is:

A FEE SIMPLE

4. Title to the estate or interest covered by this policy at the date is vested in:

ARTHUR TRAVIS SPITZER, TRUSTEE OF THE ARTHUR TRAVIS SPITZER REVOCABLE TRUST DATED JANUARY 2000

5. The Land referred to in this Policy is described as follows:

A TRACT OF LAND LYING EAST OF BLOCKS 31 AND 32, TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO, WEST OF THE WEST LINE OF THE RAILROAD RIGHT OF WAY BETWEEN OTTO STREET AND CHARLES STREET, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF LENA STREET AND THE NORTH LINE OF CHARLES STREET EXTENDED; THENCE NORTH 01°33'48" EAST 666.00 FEET ALONG THE EAST LINE OF LENA STREET TO THE SOUTH LINE OF OTTO STREET EXTENDED; THENCE SOUTH 88°26'12" EAST 41.61 FEET ALONG SAID SOUTH LINE EXTENDED TO THE WEST RIGHT OF WAY LINE OF THE DENVER & RIO GRANDE WESTERN RAILROAD RIGHT OF WAY; THENCE SOUTH 23°29'17" EAST 102.20 FEET ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 03°48'17" EAST 575.94 FEET ALONG SAID RIGHT OF WAY LINE; THENCE STREET EXTENDED; THENCE NORTH 88°26'12" EAST 138.77 FEET TO THE POINT OF BEGINNING, COUNTY OF OURAY, STATE OF COLORADO.

NOTE: THE ABOVE LEGAL DESCRIPTION IS REAL PROPERTY ONLY AND DOES NOT INCLUDE MANUFACTURED HOUSING.

This Policy Valid only if Schedule B is attached.

Land Title Guarantee Company Representing Old Republic National Title Insurance Company

(Schedule B)

Order Number 85004324

Policy Number OX85004324.2275313

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE BY REASON OF THE FOLLOWING:

1) ANY FACTS, RIGHTS, INTERESTS, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY AN INSPECTION OF THE LAND OR THAT MAY BE ASSERTED BY PERSONS IN POSSESSION OF THE LAND.

2) EASEMENTS, LIENS OR ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.

3) ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION, OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE THAT WOULD BE DISCLOSED BY AN ACCURATE AND COMPLETE LAND SURVEY OF THE LAND AND NOT SHOWN BY THE PUBLIC RECORDS.

4) ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR OR MATERIAL HERETOFORE OR HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.

5) (A) UNPATENTED MINING CLAIMS; (B) RESERVATIONS OR EXCEPTIONS IN PATENTS OR IN ACTS AUTHORIZING THE ISSUANCE THEREOF; (C) WATER RIGHTS, CLAIMS OR TITLE TO WATER.

6) 2017 TAXES AND ASSESSMENTS NOT YET DUE OR PAYABLE.

7) RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED MAY 12, 1892, IN BOOK 8 AT PAGE <u>484</u>.

NOTE: THE ATTACHED IMPROVEMENT SURVEY PLAT PREPARED BY ORION SURVEYING, DATED APRIL 22, 2016 IS FOR INFORMATIONAL PURPOSES ONLY. SAID DOCUMENT IS REFERENCED AS OUR ESI 27139848

NOTE: THIS POLICY DOES NOT INSURE ANY MOBILE HOME(S) IN PLACE OR TO BE PLACED ON THE PREMISES INSURED HEREIN.

ITEM NOS. 1 THROUGH 3 OF THE STANDARD EXCEPTIONS ARE HEREBY DELETED.

ITEM NO. 4 OF THE STANDARD EXCEPTIONS IS DELETED AS TO ANY LIENS OR FUTURE LIENS RESULTING FROM WORK OR MATERIAL CONTRACTED FOR OR FURNISHED AT THE SPECIFIC, DIRECT REQUEST, AND WITH THE ACTUAL KNOWLEDGE OF DANIEL S. CHOATE, TRUSTEE OF THE DANIEL S. CHOATE TRUST, DATED MAY 22, 2007 AND CARLA CHOATE, TRUSTEE OF THE CARLA CHOATE TRUST, DATED MAY 22, 2007.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY SHALL HAVE NO LIABILITY FOR ANY LIENS ARISING FROM WORK OR MATERIAL FURNISHED AT THE SPECIFIC, DIRECT REQUEST, AND WITH THE ACTUAL KNOWLEDGE OF ARTHUR TRAVIS SPITZER, TRUSTEE OF THE ARTHUR TRAVIS SPITZER REVOCABLE TRUST DATED JANUARY 2000.

# PRELIMINARY PLAT OF LENA STREET COMMONS A PLANNED UNIT DEVELOPMENT SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, N.M.P.M.

CERTIFICATE OF DEDICATION AND OWNERSHIP:

lands in the Town of Ridgway, Colorado, to wit: A tract of land lying East of Blocks 31 and 32, Town of Ridgway, County of Ouray,

State of Colorado, West of the West line of the railroad right of way between Otto Street and Charles Street, more particularly described as follows: Beginning at the point of intersection of the East line of Lena Street and the North line of Charles Street extended;

Thence North 01°33'48" East 666.00 feet along the East line of Lena Street to the South line of Otto Street extended;

Thence South 88°26'12" East 41.61 feet along said South line extended to the West right of way line of the Denver & Rio Grande Western Railroad right of way; Thence South 23°29'17" East 102.20 feet along said right of way line;

Thence South 03°48'20" East 575.94 feet along said right of way line to the North line of Charles Street extended;

Thence North 88°26'12" West 138.77 feet to the Point of Beginning, County of Ouray, State of Colorado.

Has by these presents laid out, platted and subdivided the same into lots, as shown on this plat, under the name of Lena Street Commons Subdivision. The following easements are dedicated, granted and conveyed to the Town of Ridgway, Colorado as shown:

Utility easements for Town utilities (including storm drainage) and public utilities; Storm drainage easements for Town storm drainage features and facilities;

Pedestrian and non-motorized vehicle easements as shown and identified hereon; Private easements are reserved or conveyed for purposes as indicated on the plat.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_

Arthur Travis Spitzer Revocable Trust

by\_\_\_\_\_ Arthur Travis Spitzer STATE OF COLORADO ) ) ss. COUNTY OF \_\_\_\_\_ ) The foregoing Certificate of Ownership and Dedication was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, by \_\_\_\_\_(type in name of signatory), \_\_\_\_\_(type in representative capacity), of \_\_\_\_\_(type in owner's name).

Witness my hand and official seal. My Commission expires \_\_\_\_\_ (SEAL)

\_\_\_\_\_ Notary Public

TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO

KNOW ALL MEN BY THESE PRESENTS that the undersigned, being the owner of certain

ATTORNEY'S CERTIFICATE:

\_\_\_\_\_ at attorney at law duly licensed to practice before the courts of record of Colorado, do hereby certify that I have examined the Title Policy numbered \_\_\_\_\_ issued by \_\_\_\_\_ and according to that title policy, of all land herein platted and that title to such land is in the dedicator(s) and owners, and that based upon my review of said title commitment, the property dedicated hereon has been dedicated free and clear of all liens and encumbrances. except as follows: Dated this \_\_\_\_\_, A.D., 20\_\_\_\_, \_\_\_\_\_ Attorney at Law CERTIFICATE OF IMPROVEMENTS COMPLETION: The undersigned, Town Manager of the Town of Ridgway, do certify that all improvements and utilities required by the current Subdivision Regulations of the Town of Ridgway have been installed in this Subdivision in accordance with the specifications of the Town except for the following which have been secured pursuant to Town subdivision regulations: Date:\_\_\_\_\_

Town Manager

OURAY COUNTY TREASURER:

I certify that as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, \_\_\_\_, there are no delinguent taxes due, nor are there any tax liens, against the property described herein or any part thereof, and that all current taxes and special assessments have been paid in full.

\_\_\_\_\_

Date:\_\_\_\_\_

Ouray County Treasurer

PLANNING COMMISSION:

Approved by the Ridgway Town Planning Commission this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, by

\_\_\_\_\_

\_\_\_\_\_, Chairman.

TOWN COUNCIL:

Approved by the Ridgway Town Council this \_\_\_\_\_day of \_\_\_\_\_, A.D.

20\_\_\_\_, by

\_\_\_\_\_, Mayor.

TOWN ATTORNEY'S CERTIFICATE: Approved for recording this \_\_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_\_

## ENGINEER'S CERTIFICATE:

\_\_\_\_\_, a Registered Engineer in the State of Colorado, do certify that the streets, curb gutter & sidewalk, sanitary sewer system, the water distribution system, fire protection system and the storm drainage system for this subdivision are properly designed, meet the Town of Ridgway specifications, are adequate to serve the Subdivision shown hereon.

Date:\_\_\_\_\_ \_\_\_\_\_

## BASIS OF BEARINGS:

The bearing between the found rebar and cap at the intersection of N. Lena Street and Otto Street, and the found rebar and cap at the intersection of N. Railroad Street and Otto Street, bears South 88°26'01" East (ASSUMED).

LINEAL UNITS STATEMENT:

## SURVEYORS CERTIFICATE:

I, Nicholas Barrett, hereby certify that this plat was prepared under my direct supervision and that said survey is accurate to the best of my knowledge, conforms to all requirements of the Colorado Revised Statutes, and all applicable Town of Ridgway regulations, and that all required monuments have been set as shown.

Nicholas Barrett

## RECORDER'S CERTIFICATE:

Reception No. \_\_\_\_\_.

County Clerk & Recorder

\_\_\_\_\_ Town Attorney

> Registration Number Engineer

The Lineal Unit used on this plat is U.S. Survey Feet

L.S. 38037



This plat was filed for record in the office of the Clerk and Recorder of Ouray County at \_\_\_\_\_, m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, 20\_\_\_,

\_\_\_\_\_, by \_\_\_\_\_\_ Deputy

				LENA STREET COMMONS
		DEL-MONT CONS		ARTHUR TRAVIS SPITZER REVOCABLE TRUST
		125 Colorado Ave. ▼ Montrose, CO 81401 ▼ www.del-mont.com ▼ ser	(970) 249-2251 ▼ (970) 249-2342 FAX	ADDRESS & PHONE: 640 SHERMAN STREET, UNIT C
nce any legal action er you first discover ct in this survey be	FIELD BOOK:	drawn by: TMC/PJI	date: <b>3-29-18</b>	RIDGWAY, CO 81432 970-626-2600
tification shown hereon.	sheet: 1 of 4	file: 17009C_PLAT	JOB NO.: 17009	PRELIMINARY PLAT

# PRELIMINARY PLAT OF LENA STREET COMMONS A PLANNED UNIT DEVELOPMENT SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, N.M.P.M.

NOTES:

## 1. FORMATION OF COMMON INTEREST COMMUNITIES:

- (A) In connection with the development of the Lena Street Commons property, the property is being separated into two separate common interest ownership communities, consisting of: (1) the Lena Street Commons Commercial Condominiums ("Commercial Condominiums"), which shall be managed and administered by the Lena Street Commons Commercial Condominium Owners Association, Inc., a Colorado nonprofit corporation ("Commercial Condominium Association"); and (2) the Lena Street Commons Townhome ("Townhomes") which shall be managed and administered by the Lena Street Commons Townhome Association, Inc., a Colorado nonprofit corporation ("Townhome Association").
- (B) The Commercial Condominiums will consist of certain condominium units ("Commercial Unit(s)") and certain common elements ("Commercial Common Elements") which shall be developed in compliance with the site specific approvals granted by the Town. The Commercial Unit(s) and Commercial Common Elements will be depicted upon a certain Condominium Map for the Lena Street Commons Commercial Condominiums ("Commercial Condominium Map) and described in a certain Condominium Declaration for the Lena Street Commons Commercial Condominiums ("Commercial Condominium Declaration"), which will be submitted to the Town for its final review, approval and recordation at such as the improvements relating to the Commercial Condominiums have been constructed. The Commercial Units, including future improvements thereon, may be separately owned by individual owners ("Commercial Unit Owners") and may be used in accordance with applicable Town laws and regulations and the terms, conditions and provisions of the Commercial Condominium Declaration. The exterior walls and roof of the future improvements being constructed on Commercial Condominium Units will be designated as Commercial Common Elements on the Commercial Condominium Map and shall be owned and maintained by the Commercial Condominium Association as provided for in the Commercial Condominium Declaration.
- (C) The Townhomes will consist of certain platted lots as depicted and described on the Plat ("Townhomes Lot(s)") and certain common areas ("Townhomes Common Areas") as the same are depicted on this Plat. The Townhomes Lots may each be improved with a single-family townhome residence (each, a "Townhome Residences"), which shall be developed in compliance with the site specific approvals granted by the Town. Rights to undertake and complete the Townhome Residences on each Townhome Lot and annex the improvements into the Townhomes are provided for in the Declaration for the Lena Street Commons Townhome ("Townhomes Declaration"). As provided for in the Townhomes Declaration, the design of the Townhome Residences contemplates that improvements will extend to the lot lines of each of the Townhome Lots, unless otherwise indicated and that improvements contemplate the use of shared walls, foundations, roofs and other structural components ("Party Walls"), the operation, maintenance and repair of which are provided for in the Townhomes Declaration. The Townhomes Lots and the Townhome Residences, including future improvements thereon, may be separately owned by individual owners ("Townhomes Lots Owners") and may be used in accordance with applicable Town laws and regulations and the terms, conditions and provisions of the Townhomes Declaration. The Townhome Common Area depicted heron shall be transferred to and owned by the Townhome Association. The exterior of all Townhome Residences shall be maintained by the Townhome Association as provided for in the Townhomes Declaration. Upon failure to properly maintain such properties and/or improvements shown hereon, or in the need to abate a nuisance or public hazard, the Town, following the provision of reasonable notice and cure, may cause the maintenance or repair to be performed, and assess the costs thereof to such owner(s), or the Town may certify such charges as a delinguent charge to the County Treasurer to be collected similarly to taxes or in any lawful manner.
- (D) Declarant reserves the right, but not the obligation, to combine the Townhomes or the Commercial Condominiums into a master community.
- (E) Lot F is proposed for future development and can be developed as its own separate common interest ownership community. Development on Lot F is not currently proposed for inclusion in either the Townhomes or the Commercial Condominiums, although the Declarant has reserved the right to annex the property into either of the respective common interest ownership communities.
- 2. DEVELOPMENT AGREEMENT:

The Owner and the Town have entered into a certain "Development Agreement" concerning the property covered by this Plat, which was recorded on \_\_\_\_\_, 2018 in Reception No. \_\_\_\_\_\_.

3. VESTED RIGHTS AND PHASING PLAN:

The Development Agreement establishes certain vested property rights and phasing timing and sequencing for the development of the property. Please refer to the Development Agreement for all terms, conditions and requirements relating to the vested property rights and phasing timing and sequencing for the development of the property.

4. PROVISION OF DEED RESTRICTED HOUSING:

The Development Agreement requires that the Owner construct and provide deed restricted housing in connection with the development of the project. As provided for in the Development Agreement, each Townhome Residence developed on Lot 1E3E, Lot 4E and Lot 1B ("Deed Restricted Units"), shall be deed restricted which establish restrictions on ownership and pricing of the Deed Restricted Units. The Phasing Plan reflected in the Development Agreement establishes the timing and sequencing by which the Owner must construct and convey the Deed Restricted Units. Please refer to the Development Agreement for all terms, conditions and requirements relating to the Deed Restricted Units

5. SHORT-TERM RENTALS:

The Development Agreement authorizes the use and operation of short-term rentals in those Townhome Residences included in the Phase C Building and the Phase D Building. These units are subject to all Town Regulations, including: short-term rental regulations, lodging and sales taxes, any applicable licensing, and any future amendments to the Municipal Code. Short-term rentals are prohibited in those Townhome Residences included in the Phase B Building and the Phase E Building as well as the commercial condominium units included in the Phase A Building.

TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO

## 6. STORM WATER SYSTEM MAINTENANCE:

Each Townhomes Lot Owner shall have the obligation to maintain all gutters and downspouts on their respective Townhome Lot as provided for in the Townhomes Declaration. Said gutters and downspouts shall be tied into the drainage system maintained by the Townhome Association in the Townhome Common Area identified on the Plat. A non-exclusive, perpetual easement is established, granted and conveyed on and over each Townhomes Lot for the use and benefit of the Townhomes Association to enable the Townhomes Association to undertake such maintenance in the event that a Townhomes Lot Owner fails to do so, which actions may be taken by the Association in the manner provided for in the Townhomes Declaration. Within the Commercial Condominiums, the Commercial Condominiums Association shall have the obligation to maintain all gutters and downspouts in a working manner as provided for in the Commercial Condominiums Declaration. The drainage and storm water drainage system shall be maintained jointly by the Townhome Association and the Commercial Condominium Association. The Townhome Association and the Commercial Condominium grant each other reciprocal, perpetual, non-exclusive easements for the use, operation, repair and maintenance of the shared drainage and storm water systems. The Town is not responsible or liable in any manner for the maintenance, repair, or operation of any pipelines, ditches or improvements as located within this project. This responsibility is intended to be performed jointly by the Townhome Association and the Commercial Condominium Association. If said maintenance is not properly performed, the Town of Ridgway, following the provision of reasonable notice and cure, may cause the work to be done, assess the cost to the said owners, may certify such charges as delinquent charges to the County Treasurer to be collected similarly to taxes, may record a lien on said lots which may be foreclosed in any lawful manner.

## 7. SNOW REMOVAL:

Snow removal within this PUD and on sidewalk in the public right-of-way abutting this PUD is the responsibility of the Townhome Association. The Townhome Association shall have an easement over the Commercial Common Element for Snow Removal. The cost and expense of the snow removal shall be equitably allocated between the Townhome Association and the Commercial Condominium Association. In the event that said maintenance and snow removal in the public right-of-way is not properly performed, the Town of Ridgway, following the provision of reasonable notice and cure, may cause the work to be done, assess the cost to the said owners, may certify such charges as delinquent charges to the County Treasurer to be collected similarly to taxes, may record a lien on said lots which may be foreclosed in any lawful manner, or may pursue any other remedy available in order to collect such charges.

### 8. PEDESTRIAN SIDEWALKS:

The pedestrian walkways depicted on this Plat are hereby subject to a non-exclusive, perpetual easement to the Town for use by the public for pedestrian access, subject to reasonable regulations imposed by the Townhome Association. Any required maintenance and repair of the sidewalks shall be undertaken by the respective lownhome Associatio or the Commercial Condominium Association upon which the sidewalks are located.

### 9. COMMERCIAL CONDOMINIUMS EASEMENT FOR ACCESS, UTILITIES, DRAINAGE AND OTHER USES:

- a. A portion of the area attributable to the Lena Street Commercial Condominiums shall be subject to a perpetual, non-exclusive easement for pedestrian, non-motorized and motorized access for the use and benefit of all owners and occupants of all Commercial Units and the Townhomes Lots. The area of this easement is depicted on the Plat.
- b. An additional portion of the area attributable to the Lena Street Commercial Condominiums shall be subject to a blanket perpetual, non-exclusive easement for the installation, use, operation and maintenance of underground utilities and necessary appurtenant above ground structures including but not limited to, electric, gas, water, sanitary sewer, storm sewer, phone and cable for the use and benefit of all Commercial Units and the Townhomes Lots.
- c. An additional portion of the area attributable to the Lena Street Commercial Condominiums shall be subject to a perpetual, non-exclusive 5' easement for the installation, use, operation and maintenance of underground utilities and necessary appurtenant above around structures including but not limited to, electric, gas, water, sanitary sewer, storm sewer, phone and cable for the use and benefit of all Commercial Units, the Townhomes Lots and Lot F.
- d. The areas of these easements are depicted on the Plat.
- e. The cost and expense of maintaining, repairing, replacing and upgrading these access and utility improvements and facilities shall be equitably allocated between the Commercial Units and the Townhomes Lots.
- 10. TOWNHOMES EASEMENT FOR ACCESS, UTILITIES, DRAINAGE AND OTHER USES:
- a. Portions of the Townhome Common Area as depicted hereon shall be subject to a perpetual, non-exclusive easement for access for the use and benefit of all owners and occupants of all of the Townhomes Lots.
- b. The entire portion of the Townhome Common Area shall be subject to a blanket perpetual, non-exclusive easement for underground utilities including but not limited to, electric, gas, water, sanitary sewer, storm sewer, phone and cable for the use and benefit of all of the Townhomes Lots.
- c. An additional portion of the area attributable to portions of Townhome Common Area as depicted hereon shall be subject to a perpetual, non-exclusive 5' easement for the installation, use, operation and maintenance of underground utilities and necessary appurtenant above ground structures including but not limited to, electric, gas, water, sanitary sewer, storm sewer, phone and cable for the use and benefit of all Commercial Units, the Townhomes Lots and Lot F.
- d. Portions of the Townhome Lots as depicted hereon shall be subject to a perpetual, non-exclusive easement for utilities for the use and benefit of the owners and occupants of certain of the Townhomes Lots as designated hereon.
- e. The areas of these easements are depicted on the Plat.

## 11. LOT F EASEMENTS FOR ACCESS AND UTILITIES:

## 12. COMMERCIAL COMMON ELEMENT MAINTENANCE:

The Commercial Common Elements shall be owned in undivided interests by the Commercial Unit Owners and maintained (subject to the various easements granted herein to the Townhome Association) by the Commercial Condominium Association. The shared cost and expense of using, maintaining and repairing the facilities and systems being used by the Townhome Lots and Commercial Units shall be equitably allocated between the Townhomes Association and the Commercial Condominium Association. The Town is not responsible or liable in any manner for the maintenance, repair, or operation of such properties and/or improvements, nor shall the Town be responsible for future dedications of such properties. Upon failure to properly maintain such properties and/or improvements shown hereon, or in the need to abate a nuisance or public hazard, the Town, following the provision of reasonable notice and cure, may cause the maintenance or repair to be performed, and assess the costs thereof to such owner(s), or the Town may certify such charges as a delinquent charge to the County Treasurer to be collected similarly to taxes or in any lawful manner.

#### 13. TOWNHOME COMMON AREA MAINTENANCE:

The Townhome Association shall have the obligation to maintain the Townhome Common Area owned by the Townhome Association and improvements located within the Townhome Common Area as provided for in the Townhomes Declaration. This obligation shall include but not be limited to the maintenance and repair of all access ways and commonly owned utilities and drainage facilities and landscaping therein. The Town is not responsible or liable in any manner for the maintenance, repair, or operation of such properties and/or improvements, nor shall the Town be responsible for future dedications of such properties. Upon failure to properly maintain such properties and/or improvements shown hereon, or in the need to abate a nuisance or public hazard, the Town, following the provision of reasonable notice and cure, may cause the maintenance or repair to be performed, and assess the costs thereof to such owner(s), or the Town may certify such charges as a delinquent charge to the County Treasurer to be collected similarly to taxes or in any lawful manner.

### 14. TOWNHOMES LOT E PARKING:

The parking area for the Townhomes Lots designated as the E lots is located on the Common Area owned by the Townhome Association. It shall be maintained by the Townhome Association as provided for in the Townhomes Declaration.

## 15. LANDSCAPING AND IRRIGATION:

All landscaping and irrigation systems, whether located on the Townhome Common Area or the Commercial Common Element shall be planted or installed and maintained by the Townhome Association. The costs of maintenance, repair and replacement of any landscaping and landscaping materials and irrigation system shall be equitably allocated between the Townhome Association and the Commercial Condominium Association. The Townhome Association is granted and conveyed a perpetual, non-exclusive easement over the Commercial Common Element for irrigation and landscaping of all landscaping areas within the Townhomes and Commercial Condominiums. The Townhome Association may run an irrigation line from a tap located on Commercial Common Element owned by the Commercial Condominium Association. If landscaping maintenance is not properly performed, the Town of Ridgway, following the provision of reasonable notice and cure, may cause the work to be done, assess the cost to the said owners, may certify such charges as delinquent charges to the County Treasurer to be collected similarly to taxes, may record a lien on said lots which may be foreclosed in any lawful manner, or may pursue any other remedy available in order to collect such charges.

### 16. OUTDOOR LIGHTING:

All outdoor lighting fixtures shall comply with Town regulations and the operational costs of such facilities be shall be equitably allocated between the Townhome Association and the Commercial Condominium Association.

### 17. MAXIMUM ALLOWABLE DWELLING UNITS:

The maximum number of Lots and dwelling units allowed on the Townhome Lots is 19. Each Townhomes Lot is limited to one principal dwelling unit for which applicable excise tax has been paid.

#### 18. LOT F:

As provided for in the Development Agreement, with the recordation of this Plat, no land use or development approvals are being granted for Lot F. The owner of Lot F will need to pursue and obtain any required development approvals and permits to undertake development of improvements on Lot F.

### 19. GEOTECHNICAL STUDY:

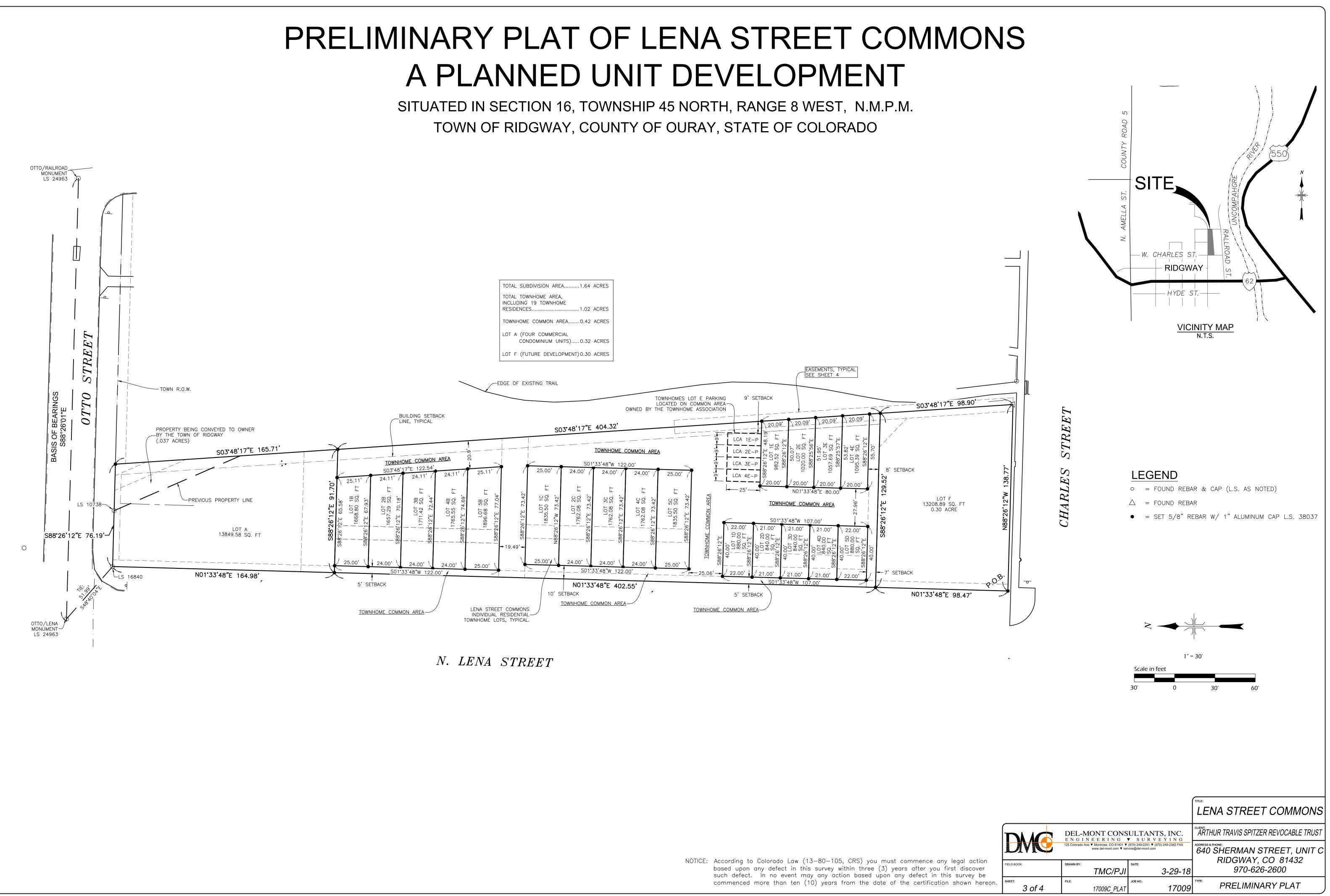
The geotechnical report by Lambert & Associates, Project Number M17001GE dated March 23, 2017, recommends a site and structure specific geotechnical engineering study be performed during the planning phase of each building to provide site and structure specific suggestions and recommendations.

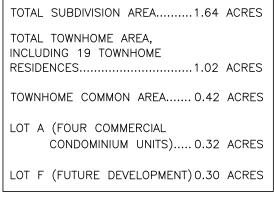
NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

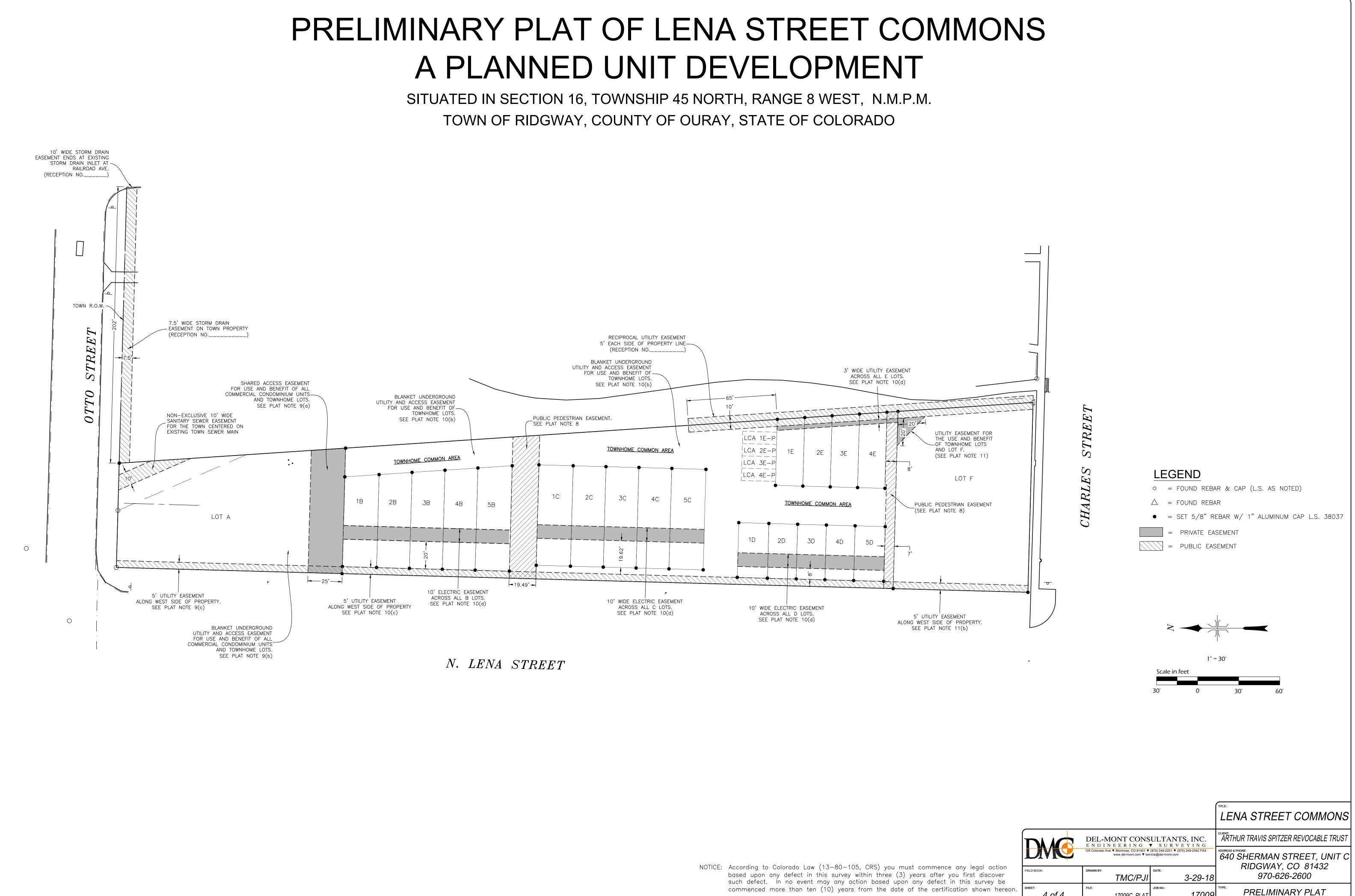
a. Portions of Lot F as depicted hereon shall be subject to a perpetual, non-exclusive easement for underground utilities including but not limited to, electric and storm sewer for the use and benefit of all of the Townhomes Lots.

b. An additional portion of the area attributable to Lot F shall be subject to a perpetual, non-exclusive 5' easement for the installation, use, operation and maintenance of underground utilities and necessary appurtenant above ground structures including but not limited to, electric, gas, water, sanitary sewer, storm sewer, phone and cable for the use and benefit of all Commercial Units and the Townhomes Lots.

				LENA STREET COMMONS
		DEL-MONT CONS	ULTANTS, INC. ▼ SURVEYING	ARTHUR TRAVIS SPITZER REVOCABLE TRUS
		125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX www.del-mont.com ▼ service@del-mont.com		ADDRESS & PHONE: 640 SHERMAN STREET, UNIT (
	FIELD BOOK:	drawn by: TMC/PJI	date: <b>3-29-18</b>	RIDGWAY, CO 81432 970-626-2600
•	SHEET: 2 of 4	file: 17009C_PLAT	јов но.: 17009	PRELIMINARY PLAT







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	DEL-MONT CONS	,	ARTHUR TRAVIS SPITZER REVOCABLE TRUST
	125 Colorado Ave. ▼ Montrose, CO 81401 ▼ www.del-mont.com ▼ ser		ADDRESS & PHONE: 640 SHERMAN STREET, UNIT (
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sheet: 4 of 4	FILE: 17009C_PLAT	JOB NO.: 17009	PRELIMINARY PLAT

## LENA STREET COMMONS

## DRAINAGE REPORT

March 29, 2018

Prepared by:





Lena Street Commons Drainage Report

## LENA STREET COMMONS

## DRAINAGE REPORT



I hereby certify that this report for the drainage design of the Lena Street Commons was prepared by me (or under my direct supervision) in accordance with the provisions of the Town of Ridgway storm drainage criteria for the owners thereof.

David Schieldt, P.E.



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Appendix A – Site Maps

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## 1.0 General Location and Description

Tate Rogers in coordination with Del-Mont Consultants, Inc. (DMC) is in the process of designing the proposed Lena Street Commons development. The scope of work includes the construction of multiple townhome/condominium structures, supporting infrastructure, paving of the site, and other site modifications. The purpose of this report is to present the findings from the hydrologic analysis that was performed on the existing property as well as the proposed layout of the property.

#### 1.1 Site Location

The proposed facility is located on a 1.64 acre (including newly acquired triangle piece) parcel situated in Section 16, Township 45 North, Range 9 West, New Mexico Principal Meridian in Ouray County, Colorado. The facility is accessed from N. Lena Street between Charles Street and Otto Street.

#### 1.2 Site Description

The site naturally drains from south to north/north east and is covered by native vegetation and weeds. The southern portion of the site currently has a building and gravel driveway. The site currently discharges along the eastern boundary, flowing across the property located to the east, ultimately draining to Otto Street or Railroad Street. There are no water quality features in place to treat the discharge. Site layout details will be discussed in more detail in **Section 2**.



## 2.0 Drainage Basins and Sub-Basins

The property functions overall as one drainage basin flowing to the property to the east. Water leaving the site eventually enters the Town's stormwater system at south west corner of the intersection of Otto St. and Railroad St. and eventually enters the Uncompany River. Proposed conditions produce several smaller sub-basins. These sub-basins will be discussed in detail in the following sections.

#### 2.1 Existing Drainage Sub-Basins

The existing site is comprised of one sub-basin; Existing Parcel. A map illustrating the delineation of the sub-basin can be found in **Appendix A**. With the exception of a bike path and a bmx track, there is currently no development present on the neighboring property to the east adjacent to the site.

#### Table 2-1: Existing Sub-Basin Acreages

Sub-Basin	Total Area (Acres)
Existing Parcel	1.64

#### 2.2 Proposed Drainage Sub-Basins

The proposed site is divided into nine different sub-basins; Basins A-G, West Grass, and East Grass. A map illustrating the delineation of the sub-basins can be found in **Appendix A**. Basins B-G flow to the stormwater system located on the eastern side of the project while the remaining basins flow to Otto Street ultimately flowing to the intersection of Otto and Railroad. **Table 2-2** presents the proposed sub-basins and their corresponding acreages.

#### Table 2-2: Proposed Sub-Basin Acreages

Sub-Basin	Total Area (Acres)
Basin A	0.068
Basin B	0.202
Basin C	0.229
Basin D	0.180
Basin E	0.158
Basin F	0.351
Basin G	0.326
West Grass	0.088
East Grass	0.029



## 3.0 Drainage Design Criteria

#### 3.1 Methodology

The hydrologic/hydraulic analysis of the site was performed using the Autodesk Storm and Sanitary analysis utilizing the SWMM engine platform model for a 25 year, 24 hour rainfall event and a 100 year, 24 hour rainfall event per Town of Ridgway Standards. The Curve Number method of determining rainfall losses due to infiltration was used. Runoff for all site conditions was computed for the 25 year and 100 year, 24 hour storms. Rainfall depths were obtained for the region from NOAA Atlas 14, Volume 8, Version 2 and rainfall distribution curves were developed using a SCS Type 2 24-hour rainfall distribution. Modeling results are presented in **Appendix D**.

Soil data was obtained from a USDA Soils Report and did not give a hydrologic soil group for the site so in an effort to be conservative, a hydrologic soil group C was used for the site. The soils report is included in **Appendix B**.

#### 3.2 Land Cover Hydrologic Properties

Curve numbers and corresponding Manning's N values, for hydrologic soil group C, were assigned to the various land cover types found on the project, both existing and proposed, and are presented in **Table 3-1**.

Land Cover Type	Curve Number	Manning's N	
Grass Cover <50%, Poor	86	0.15	
Grass Cover >50%, Good	79	0.15	
Gravel Road	89	0.024	
Pavement/Concrete/Building	98	0.015	

#### Table 3-1: Land Cover Hydrologic Properties

#### 3.3 Weighted Design Values

Utilizing the land cover hydrologic properties presented above, a weighted curve number and Manning's N value was calculated for each of the sub-basins presented in **Section 2.0** to be used for analysis. **Table 3-2** presents the weighted design values for existing conditions and **Table 3-3** presents the weighted design values for proposed conditions. Detailed calculations can be found in **Appendix C**.

#### Table 3-2: Existing Sub-Basin Weighted Design Values

Sub-Basin	Total Area (Acres)	Ū	
Existing Parcel	1.64	0.134	86.6



Sub-Basin	Total Area (Acres)	Weighted Manning's N	Weighted Curve Number
Basin A	0.068	0.015	98
Basin B	0.202	0.015	98
Basin C	0.229	0.017	97.7
Basin D	0.180	0.079	88.9
Basin E	0.158	0.018	97.6
Basin F	0.351	0.030	96.0
Basin G	0.326	0.150	79
West Grass	0.088	0.150	79
East Grass	0.029	0.150	79

#### Table 3-3: Proposed Sub-Basin Weighted Design Values

## 4.0 Drainage Facility Design

### 4.1 Historical Drainage

Per Town of Ridgway requirements, the historical discharge rate from the 25 year – 24 hour storm shall be utilized to determine the allowable discharge rate for the proposed improvements. Values presented in **Table 3-2** were used in the model to calculate a historical discharge rate for the existing sub-basins. **Table 4-1** presents the discharge rates for the existing sub-basins for both the 25-year and 100-year 24-hour storm events.

#### Table 4-1: Existing Sub-Basin Discharge Values

Sub-Basin	25-Year Discharge (CFS)	100-Year Discharge (CFS)
Existing Parcel	1.61	2.59

#### 4.2 Proposed Drainage

Values presented in **Table 3-3** were utilized in the model to calculate the runoff for the proposed conditions as well as to size the underground detention pipes and weir outlet structures. Except for the West Grass and East Grass sub-basins, all runoff from the project site will be routed through the underground pipe detention system for both the 25-year and 100-year events. The proposed pipes have all been sized to provide detention for both storm events.

Utilizing the imperviousness, site characteristics, and pipe characteristics, the flow limiting orifices and weirs were sized according to the criteria to detain the 25-year and 100-year storm and discharge at or less than historic discharge rates presented in **Table 4-1**. The design of the outlet structures are detailed in the grading drawings provided with the site submittal application. Although the large pipes are surcharged, orifice sizes were modified as necessary to ensure the inlets did not backup and overtop the grates.

The model of the proposed site conditions was utilized to calculate discharge flow rates from each sub-basin in order to size the stormwater line that connects to the Town infrastructure. **Table 4-2** presents the hydraulic capacity of the storm pipe leaving the site (excluding large detention pipes) and the required capacity to discharge flow in the 25 year event through the site. A map showing designation of the stormwater lines can be found in **Appendix A** along with detailed design of the stormwater lines.

Table 4-2. Stornwater Line Hydraulic Capacity – 25 Tear Event					
Pipe #	Pipe Diameter (in)	Total Capacity (cfs)	Required Flow Capacity (cfs)	Remaining Capacity (cfs)	
0	12	5.12	1.13	3.99	

#### Table 4-2: Stormwater Line Hydraulic Capacity – 25 Year Event

**Table 4-3** presents the discharge rates for the proposed sub-basins for both the 25-year and 100-year 24-hour storm events. This discharge value represents the flow rate that the pipes are receiving. The ultimate discharge from the pipes and flow control orifices (total discharge from site) is summarized in **Table 5-1**.

Sub-Basin	25-Year Discharge	100-Year Discharge
	(CFS)	(CFS)
Basin A	0.20	0.25
Basin B	0.59	0.76
Basin C	0.67	0.86
Basin D	0.45	0.59
Basin E	0.46	0.59
Basin F	1.02	1.30
Basin G	0.22	0.40
West Grass	0.15	0.21
East Grass	0.04	0.06

 Table 4-3: Proposed Sub-Basin Discharge Values (Pre-Detention)

Utilizing the flow rates presented above, the model was utilized to analyze the flow path of water through the pipe system. With the installation of the weir structures, the piping system releases the water in the required 120 hours after the end of an event greater than a 5-year storm set forth by the State.

## 5.0 Conclusions

#### 5.1 Drainage Concept

The drainage design has been prepared using sound engineering judgement and practices and will provide an effective means of controlling runoff on the project site as well as protect the site from damage. The design has been completed according to Town of Ridgway Standards and will result in no downstream impacts to any people or structures. Historic flow paths, discharge rates, and water quality have been maintained.

#### 5.2 Compliance with the Town of Ridgway Standards

Per Town of Ridgway requirements, the historical discharge rate from the 25 year – 24 hour storm shall be utilized to determine the allowable discharge rate for the proposed improvements. To demonstrate compliance with this requirement, the existing site is one basin and the proposed conditions were combined into two overall basins. **Table 5-1** presents the overall discharge rates for the combined basins. For the proposed conditions, the grass areas discharge to the offsite basin (Otto Street) and Basins A-G discharge to the piping system.

Sub-Basin	25-Year Discharge (CFS)		100-Year Discharge (CFS)	
	Existing	Proposed	Existing	Proposed
Otto Street	1.61	0.19	2.59	0.27
Basins A-G		1.13		5.11
Total	1.61	1.32	2.59	5.38

Table 5-1: Overall Sub-Basin Discharge Values (Post Detention)

**Table 5-1** illustrates the proposed condition discharge rate is less than the required discharge rate from the 25-year, 24-hour storm event, resulting in compliance with the Town of Ridgway requirements. The discharge from the 100-year event is slightly higher than existing but the piping system is designed to not cause injury to neighboring properties.

As discussed in previous sections, the detention pipes have been designed to meet all criteria set forth in the Town of Ridgway standards. The development of this project will cause no injury to the neighbor's property.



## 6.0 References

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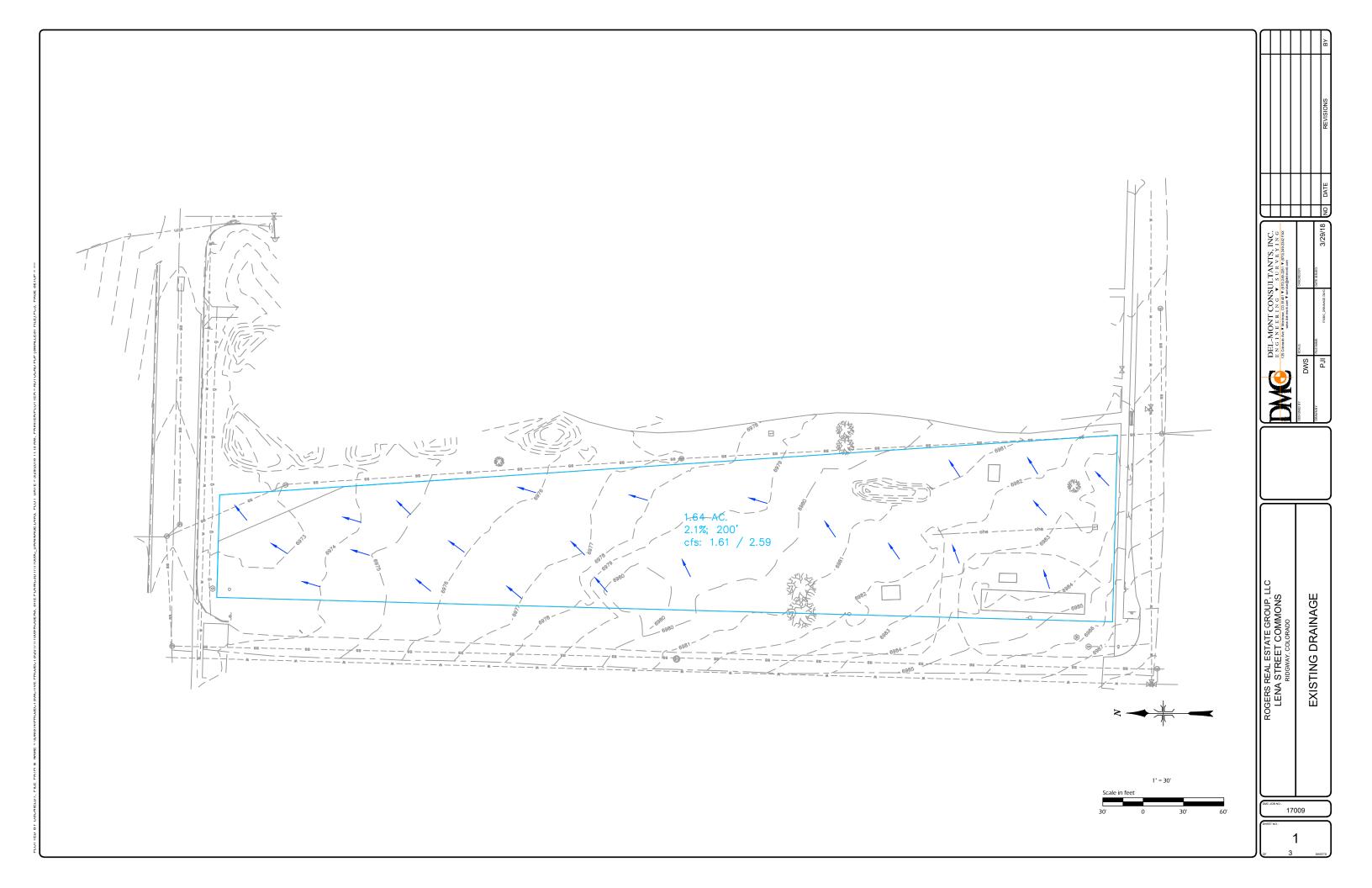
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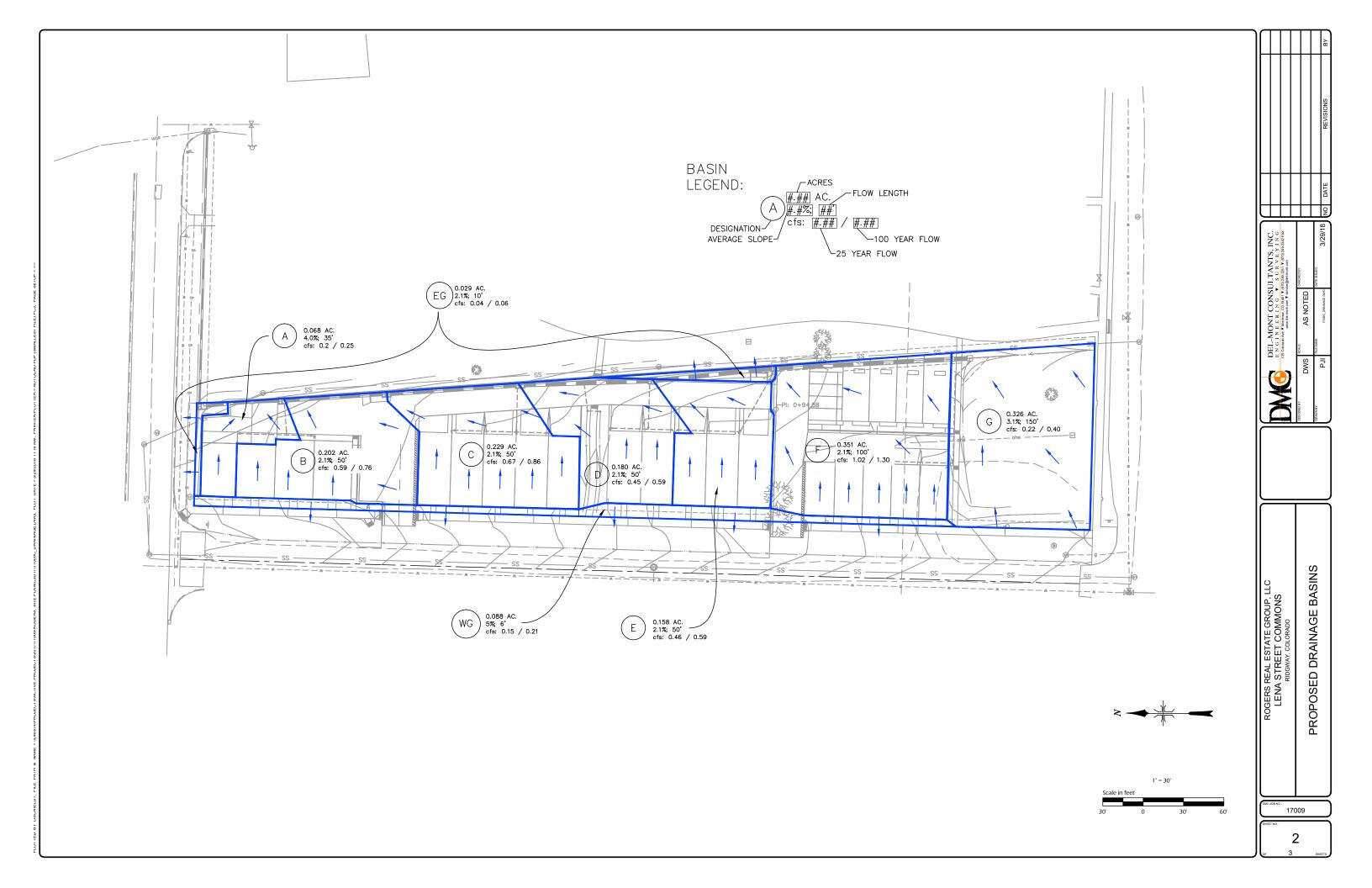
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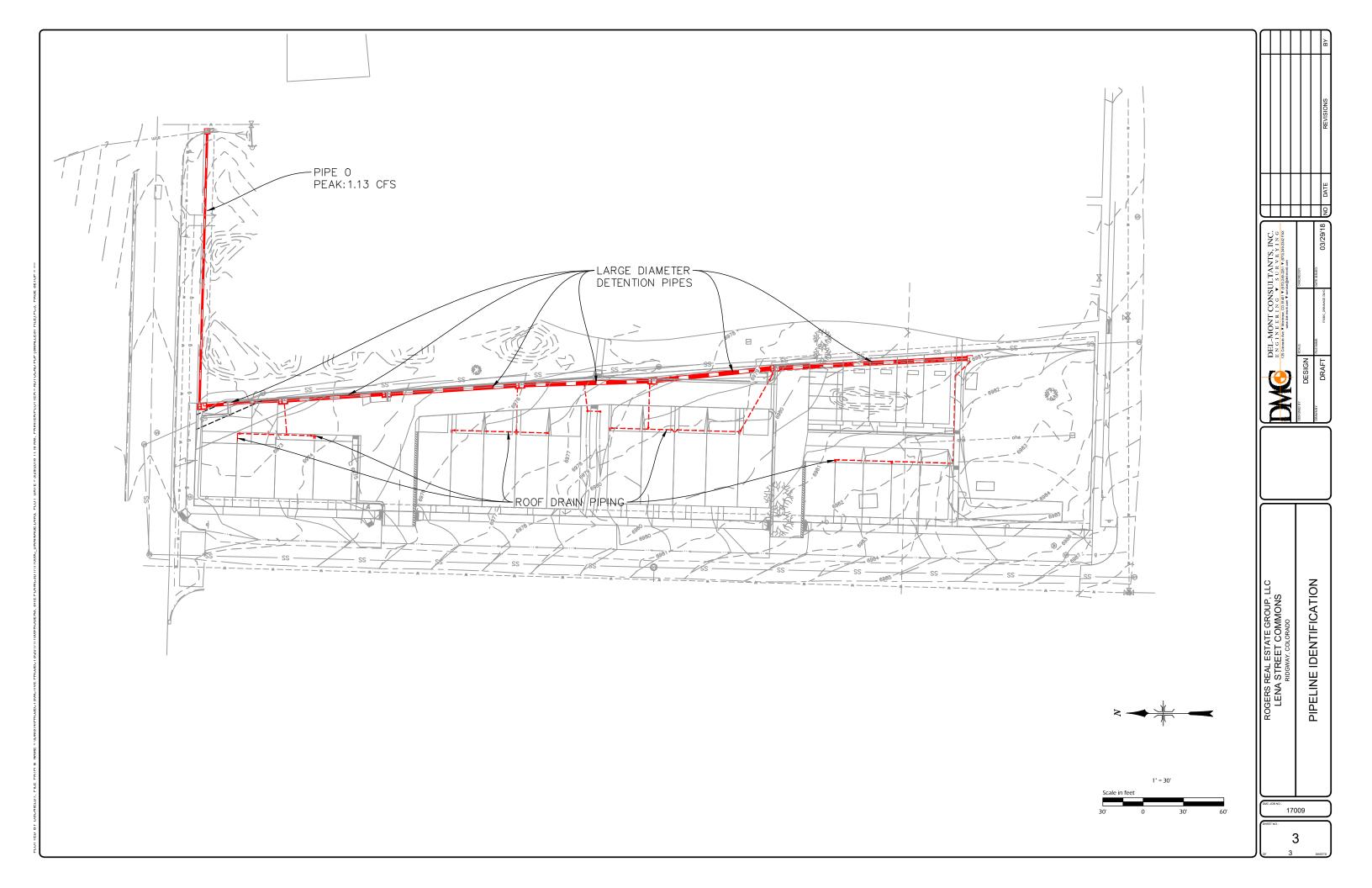


















United States Department of Agriculture

Natural Resources Conservation Service A product of the National Cooperative Soil Survey, a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations, and local participants Custom Soil Resource Report for Ridgway Area, Colorado, Parts of Delta, Gunnison, Montrose, and Ouray Counties



## Preface

Soil surveys contain information that affects land use planning in survey areas. They highlight soil limitations that affect various land uses and provide information about the properties of the soils in the survey areas. Soil surveys are designed for many different users, including farmers, ranchers, foresters, agronomists, urban planners, community officials, engineers, developers, builders, and home buyers. Also, conservationists, teachers, students, and specialists in recreation, waste disposal, and pollution control can use the surveys to help them understand, protect, or enhance the environment.

Various land use regulations of Federal, State, and local governments may impose special restrictions on land use or land treatment. Soil surveys identify soil properties that are used in making various land use or land treatment decisions. The information is intended to help the land users identify and reduce the effects of soil limitations on various land uses. The landowner or user is responsible for identifying and complying with existing laws and regulations.

Although soil survey information can be used for general farm, local, and wider area planning, onsite investigation is needed to supplement this information in some cases. Examples include soil quality assessments (http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/health/) and certain conservation and engineering applications. For more detailed information, contact your local USDA Service Center (https://offices.sc.egov.usda.gov/locator/app?agency=nrcs) or your NRCS State Soil Scientist (http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/contactus/? cid=nrcs142p2\_053951).

Great differences in soil properties can occur within short distances. Some soils are seasonally wet or subject to flooding. Some are too unstable to be used as a foundation for buildings or roads. Clayey or wet soils are poorly suited to use as septic tank absorption fields. A high water table makes a soil poorly suited to basements or underground installations.

The National Cooperative Soil Survey is a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations, and local agencies. The Natural Resources Conservation Service (NRCS) has leadership for the Federal part of the National Cooperative Soil Survey.

Information about soils is updated periodically. Updated information is available through the NRCS Web Soil Survey, the site for official soil survey information.

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# **How Soil Surveys Are Made**

Soil surveys are made to provide information about the soils and miscellaneous areas in a specific area. They include a description of the soils and miscellaneous areas and their location on the landscape and tables that show soil properties and limitations affecting various uses. Soil scientists observed the steepness, length, and shape of the slopes; the general pattern of drainage; the kinds of crops and native plants; and the kinds of bedrock. They observed and described many soil profiles. A soil profile is the sequence of natural layers, or horizons, in a soil. The profile extends from the surface down into the unconsolidated material in which the soil formed or from the surface down to bedrock. The unconsolidated material is devoid of roots and other living organisms and has not been changed by other biological activity.

Currently, soils are mapped according to the boundaries of major land resource areas (MLRAs). MLRAs are geographically associated land resource units that share common characteristics related to physiography, geology, climate, water resources, soils, biological resources, and land uses (USDA, 2006). Soil survey areas typically consist of parts of one or more MLRA.

The soils and miscellaneous areas in a survey area occur in an orderly pattern that is related to the geology, landforms, relief, climate, and natural vegetation of the area. Each kind of soil and miscellaneous area is associated with a particular kind of landform or with a segment of the landform. By observing the soils and miscellaneous areas in the survey area and relating their position to specific segments of the landform, a soil scientist develops a concept, or model, of how they were formed. Thus, during mapping, this model enables the soil scientist to predict with a considerable degree of accuracy the kind of soil or miscellaneous area at a specific location on the landscape.

Commonly, individual soils on the landscape merge into one another as their characteristics gradually change. To construct an accurate soil map, however, soil scientists must determine the boundaries between the soils. They can observe only a limited number of soil profiles. Nevertheless, these observations, supplemented by an understanding of the soil-vegetation-landscape relationship, are sufficient to verify predictions of the kinds of soil in an area and to determine the boundaries.

Soil scientists recorded the characteristics of the soil profiles that they studied. They noted soil color, texture, size and shape of soil aggregates, kind and amount of rock fragments, distribution of plant roots, reaction, and other features that enable them to identify soils. After describing the soils in the survey area and determining their properties, the soil scientists assigned the soils to taxonomic classes (units). Taxonomic classes are concepts. Each taxonomic class has a set of soil characteristics with precisely defined limits. The classes are used as a basis for comparison to classify soils systematically. Soil taxonomy, the system of taxonomic classification used in the United States, is based mainly on the kind and character of soil properties and the arrangement of horizons within the profile. After the soil

scientists classified and named the soils in the survey area, they compared the individual soils with similar soils in the same taxonomic class in other areas so that they could confirm data and assemble additional data based on experience and research.

The objective of soil mapping is not to delineate pure map unit components; the objective is to separate the landscape into landforms or landform segments that have similar use and management requirements. Each map unit is defined by a unique combination of soil components and/or miscellaneous areas in predictable proportions. Some components may be highly contrasting to the other components of the map unit. The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The delineation of such landforms and landform segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, onsite investigation is needed to define and locate the soils and miscellaneous areas.

Soil scientists make many field observations in the process of producing a soil map. The frequency of observation is dependent upon several factors, including scale of mapping, intensity of mapping, design of map units, complexity of the landscape, and experience of the soil scientist. Observations are made to test and refine the soil-landscape model and predictions and to verify the classification of the soils at specific locations. Once the soil-landscape model is refined, a significantly smaller number of measurements of individual soil properties are made and recorded. These measurements may include field measurements, such as those for color, depth to bedrock, and texture, and laboratory measurements, such as those for content of sand, silt, clay, salt, and other components. Properties of each soil typically vary from one point to another across the landscape.

Observations for map unit components are aggregated to develop ranges of characteristics for the components. The aggregated values are presented. Direct measurements do not exist for every property presented for every map unit component. Values for some properties are estimated from combinations of other properties.

While a soil survey is in progress, samples of some of the soils in the area generally are collected for laboratory analyses and for engineering tests. Soil scientists interpret the data from these analyses and tests as well as the field-observed characteristics and the soil properties to determine the expected behavior of the soils under different uses. Interpretations for all of the soils are field tested through observation of the soils in different uses and under different levels of management. Some interpretations are modified to fit local conditions, and some new interpretations are developed to meet local needs. Data are assembled from other sources, such as research information, production records, and field experience of specialists. For example, data on crop yields under defined levels of management are assembled from farm records and from field or plot experiments on the same kinds of soil.

Predictions about soil behavior are based not only on soil properties but also on such variables as climate and biological activity. Soil conditions are predictable over long periods of time, but they are not predictable from year to year. For example, soil scientists can predict with a fairly high degree of accuracy that a given soil will have a high water table within certain depths in most years, but they cannot predict that a high water table will always be at a specific level in the soil on a specific date.

After soil scientists located and identified the significant natural bodies of soil in the survey area, they drew the boundaries of these bodies on aerial photographs and

identified each as a specific map unit. Aerial photographs show trees, buildings, fields, roads, and rivers, all of which help in locating boundaries accurately.

# Soil Map

The soil map section includes the soil map for the defined area of interest, a list of soil map units on the map and extent of each map unit, and cartographic symbols displayed on the map. Also presented are various metadata about data used to produce the map, and a description of each soil map unit.

#### Custom Soil Resource Report Soil Map



	MAP L	EGEND	)	MAP INFORMATION
Area of Int	terest (AOI) Area of Interest (AOI)	8	Spoil Area Stony Spot	The soil surveys that comprise your AOI were mapped at 1:24,000.
	Soil Map Unit Polygons Soil Map Unit Lines Soil Map Unit Points	© ⊘ ↓	Very Stony Spot Wet Spot Other Special Line Features	Warning: Soil Map may not be valid at this scale. Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of
Special (2) (2)	Point Features Blowout Borrow Pit	Water Fea	atures Streams and Canals	contrasting soils that could have been shown at a more detailed scale. Please rely on the bar scale on each map sheet for map
× ◇ ※	Clay Spot Closed Depression Gravel Pit Gravelly Spot	*** ~	Rails Interstate Highways US Routes	Source of Map: Natural Resources Conservation Service Web Soil Survey URL: Coordinate System: Web Mercator (EPSG:3857)
∴ © ∧ ⊯	Landfill Lava Flow Marsh or swamp	Backgrou	Major Roads Local Roads Ind Aerial Photography	Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more
* 0 0	Mine or Quarry Miscellaneous Water Perennial Water			accurate calculations of distance or area are required. This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.
× + ∷	Rock Outcrop Saline Spot Sandy Spot			Soil Survey Area: Ridgway Area, Colorado, Parts of Delta, Gunnison, Montrose, and Ouray Counties Survey Area Data: Version 8, Sep 28, 2016 Soil map units are labeled (as space allows) for map scales
	Severely Eroded Spot Sinkhole Slide or Slip Sodic Spot			Date(s) aerial images were photographed: Aug 7, 2011—Aug 8, 2011
ø	Sour Shor			The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background

#### MAP LEGEND

#### MAP INFORMATION

imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

## Map Unit Legend

Ridgway Area, Colorado, Parts of Delta, Gunnison, Montrose, and Ouray Counties (CO677)						
Map Unit Symbol         Map Unit Name         Acres in AOI         Percent of A						
900	Urban land, 0 to 5 percent slopes	2.7	100.0%			
Totals for Area of Interest		2.7	100.0%			

## **Map Unit Descriptions**

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

Most minor soils have properties similar to those of the dominant soil or soils in the map unit, and thus they do not affect use and management. These are called noncontrasting, or similar, components. They may or may not be mentioned in a particular map unit description. Other minor components, however, have properties and behavioral characteristics divergent enough to affect use or to require different management. These are called contrasting, or dissimilar, components. They generally are in small areas and could not be mapped separately because of the scale used. Some small areas of strongly contrasting soils or miscellaneous areas are identified by a special symbol on the maps. If included in the database for a given area, the contrasting minor components are identified in the map unit descriptions along with some characteristics of each. A few areas of minor components may not have been observed, and consequently they are not mentioned in the descriptions, especially where the pattern was so complex that it was impractical to make enough observations to identify all the soils and miscellaneous areas on the landscape.

The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The objective of mapping is not to delineate pure taxonomic classes but rather to separate the landscape into landforms or landform segments that have similar use and management requirements. The delineation of such segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, however,

onsite investigation is needed to define and locate the soils and miscellaneous areas.

An identifying symbol precedes the map unit name in the map unit descriptions. Each description includes general facts about the unit and gives important soil properties and qualities.

Soils that have profiles that are almost alike make up a *soil series*. Except for differences in texture of the surface layer, all the soils of a series have major horizons that are similar in composition, thickness, and arrangement.

Soils of one series can differ in texture of the surface layer, slope, stoniness, salinity, degree of erosion, and other characteristics that affect their use. On the basis of such differences, a soil series is divided into *soil phases*. Most of the areas shown on the detailed soil maps are phases of soil series. The name of a soil phase commonly indicates a feature that affects use or management. For example, Alpha silt loam, 0 to 2 percent slopes, is a phase of the Alpha series.

Some map units are made up of two or more major soils or miscellaneous areas. These map units are complexes, associations, or undifferentiated groups.

A *complex* consists of two or more soils or miscellaneous areas in such an intricate pattern or in such small areas that they cannot be shown separately on the maps. The pattern and proportion of the soils or miscellaneous areas are somewhat similar in all areas. Alpha-Beta complex, 0 to 6 percent slopes, is an example.

An association is made up of two or more geographically associated soils or miscellaneous areas that are shown as one unit on the maps. Because of present or anticipated uses of the map units in the survey area, it was not considered practical or necessary to map the soils or miscellaneous areas separately. The pattern and relative proportion of the soils or miscellaneous areas are somewhat similar. Alpha-Beta association, 0 to 2 percent slopes, is an example.

An *undifferentiated group* is made up of two or more soils or miscellaneous areas that could be mapped individually but are mapped as one unit because similar interpretations can be made for use and management. The pattern and proportion of the soils or miscellaneous areas in a mapped area are not uniform. An area can be made up of only one of the major soils or miscellaneous areas, or it can be made up of all of them. Alpha and Beta soils, 0 to 2 percent slopes, is an example.

Some surveys include *miscellaneous areas*. Such areas have little or no soil material and support little or no vegetation. Rock outcrop is an example.

# Ridgway Area, Colorado, Parts of Delta, Gunnison, Montrose, and Ouray Counties

#### 900—Urban land, 0 to 5 percent slopes

#### Map Unit Composition

*Urban land:* 100 percent *Estimates are based on observations, descriptions, and transects of the mapunit.* 

#### **Description of Urban Land**

#### Interpretive groups

Land capability classification (irrigated): None specified Land capability classification (nonirrigated): 8 Hydric soil rating: Unranked

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Appendix C Site Specific Physical Design Properties



## Lena Street Commons Drainage Design

Existing Conditions

Total Area					
Area Name	(sf)	(acres)	Flow Length	Width (A/L)	Slope (%)
Existing Parcel	71438.4	1.64	200	357.19	2.1

			D-Store
Land Cover Type	Curve Number	Mannings N	Pervious
Grass Cover < 50%, Poor	86	0.15	0.1
Grass Cover > 50%, Good	79	0.15	0.15
Gravel Road	89	0.024	0.07
Pavement/Concrete/Building	98	0.015	0.05

## **Roughness Coefficient and Curve Number Analysis**

ExistingParcel					
Description	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover <50%, Poor	1.44	0.15	0.2160	86	123.8400
Gravel Road	0.16	0.024	0.0038	89	14.2400
Pavement/Concrete/Building	0.04	0.015	0.0006	98	3.9200
		sum	0.2204		142.0000
Total Area (ac)	1.640	Weighted	0.134414634		86.58536585
Weighted Manning's 'n'	0.134				
Weighted Curve Number	86.59				
Dstore Pervious (in)	0.14				

## Lena Street Commons Drainage Design

Proposed Conditions

Total Area						
Area Name	(sf)	(acres)	Flow Length	Width (A/L)	Slope (%)	
Basin A	2962	0.068	35	84.63	4	
Basin B	8799	0.202	50	175.98	2.1	
Basin C	9975	0.229	50	199.50	2.1	
Basin D	7855	0.180	50	157.10	2.1	
Basin E	6890	0.158	50	137.80	2.1	
Basin F	15305	0.351	100	153.05	2.1	
Basin G	14207	0.326	150	94.71	3.1	
West Grass	3848	0.088	6	641.33	5	
East Grass	1263	0.029	10	126.32	2.1	

Land Cover Type	Curve Number		D-Store Pervious
Grass Cover > 50%, Good	79	0.15	0.15
Gravel Road	89	0.024	0.07
Pavement/Concrete/Building	98	0.015	0.05

## **Roughness Coefficient and Curve Number Analysis**

Basin A					
Description	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.00	0.15	0.0000	79	0.0000
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.07	0.015	0.0010	98	6.6640
		sum	0.0010		6.6640
Total Area (ac)	0.068	Weighted	0.015		98
Weighted Manning's 'n'	0.015				
Weighted Curve Number	98				
Dstore Pervious (in)	0.15				

Basin B					
Description	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.00	0.15	0.0000	79	0.0000
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.20	0.015	0.0030	98	19.7960
		sum	0.0030		19.7960
Total Area (ac)	0.202	Weighted	0.015		98
Weighted Manning's 'n'	0.015				
Weighted Curve Number	98				
Dstore Pervious (in)	0.15				

#### Basin C

<b>Description</b>	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.003	0.15	0.0005	79	0.2720
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.23	0.015	0.0034	98	22.1045
		sum	0.0039		22.3766
Total Area (ac)	0.229	Weighted	0.017030026		97.71429259
Weighted Manning's 'n'	0.017				
Weighted Curve Number	97.71				
Dstore Pervious (in)	0.15				

Basin D					
Description	<u>Total Area (ac)</u>	Manning's 'n'	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.09	0.15	0.0129	79	6.7828
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.09	0.015	0.0014	98	9.2578
		sum	0.0143		16.0406
Total Area (ac)	0.180	Weighted	0.07927753		88.95353278
Weighted Manning's 'n'	0.079				
Weighted Curve Number	88.95				
Dstore Pervious (in)	0.15				

Basin E					
<b>Description</b>	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.003	0.15	0.0005	79	0.2720
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.15	0.015	0.0023	98	15.1635
		sum	0.0028		15.4355
Total Area (ac)	0.158	Weighted	0.017939042		97.58635704
Weighted Manning's 'n'	0.018				
Weighted Curve Number	97.59				
Dstore Pervious (in)	0.15				

Basin F					
Description	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.038	0.15	0.0057	79	2.9924
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.31	0.015	0.0047	98	30.7206
		sum	0.0104		33.7130
Total Area (ac)	0.351	Weighted	0.029554067		95.95164979
Weighted Manning's 'n'	0.030				
Weighted Curve Number	95.95				
Dstore Pervious (in)	0.15				

## Basin G

Description	<u>Total Area (ac)</u>	Manning's 'n'	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.326	0.15	0.0489	79	25.7657
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.00	0.015	0.0000	98	0.0000
		sum	0.0489		25.7657
Total Area (ac)	0.326	Weighted	0.15		79
Weighted Manning's 'n'	0.150				
Weighted Curve Number	79				
Dstore Pervious (in)	0.15				

West Grass					
<b>Description</b>	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.088	0.15	0.0133	79	6.9787
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.00	0.015	0.0000	98	0.0000
		sum	0.0133		6.9787
Total Area (ac)	0.088	Weighted	0.15		79
Weighted Manning's 'n'	0.150				
Weighted Curve Number	79				
Dstore Pervious (in)	0.15				

East Grass					
Description	<u>Total Area (ac)</u>	<u>Manning's 'n'</u>	<u>A*n</u>	<u>CN</u>	<u>A*CN</u>
Grass cover >50%, Good	0.029	0.15	0.0044	79	2.2910
Gravel Road	0.00	0.024	0.0000	89	0.0000
Pavement/Concrete/Building	0.00	0.015	0.0000	98	0.0000
		sum	0.0044		2.2910
Total Area (ac)	0.029	Weighted	0.15		79
Weighted Manning's 'n'	0.150				
Weighted Curve Number	79				
Dstore Pervious (in)	0.15				

## Appendix D SWMM Modeling Results



#### **Project Description**

File Name ...... Rogers\_Proposed with triangle.SPF

#### **Project Options**

Flow Units	
Elevation Type	Elevation
Hydrology Method	EPA SWMM
EPA SWMM Infiltration Method	SCS Curve Number
Link Routing Method	Hydrodynamic
Enable Overflow Ponding at Nodes	YES
Skip Steady State Analysis Time Periods	

#### **Analysis Options**

Start Analysis On	,	00:00:00
End Analysis On		00:00:00
Start Reporting On	Mar 20, 2017	00:00:00
Antecedent Dry Days	0	days
Runoff (Dry Weather) Time Step		days hh:mm:ss
Runoff (Wet Weather) Time Step		days hh:mm:ss
Reporting Time Step		days hh:mm:ss
Routing Time Step	10	seconds

#### Number of Elements

	Qty
Rain Gages	1
Subbasins	10
Nodes	17
Junctions	8
Outfalls	3
Flow Diversions	0
Inlets	0
Storage Nodes	6
Links	38
Channels	0
Pipes	8
Pumps	0
Orifices	24
Weirs	6
Outlets	0
Pollutants	0
Land Uses	0
	-

#### **Rainfall Details**

SN	Rain Gage	Data	Data Source	Rainfall	Rain	State	County	Return	Rainfall	Rainfall
	ID	Source	ID	Туре	Units			Period	Depth	Distribution
								(years)	(inches)	
1	Rain Gage-01	Time Series	25 year	Cumulative	inches	Colorado	Ouray	25	2.13	SCS Type II 24-hr

#### **Subbasin Summary**

SN Subbasin ID	Area	Impervious Area	Weighted Curve Number	Average Slope	Equivalent Width	Impervious Area Manning's Roughness	Manning's	Total Rainfall	Total Infiltration	Total Runoff	Total Runoff Volume	Peak Runoff	Time of Concentration
	(ac)	(%)		(%)	(ft)	0	0	(in)	(in)	(in)	(ac-in)	(cfs)	(days hh:mm:ss)
1 BasinA	0.07	100.00	98.00	4.0000	85.00	0.0150	0.1500	2.13	0.0000	2.13	0.14	0.20	0 00:04:24
2 BasinB	0.20	100.00	98.00	2.1000	176.00	0.0150	0.1500	2.13	0.0000	2.11	0.43	0.59	0 00:06:38
3 BasinC	0.23	96.00	97.70	4.0000	199.50	0.0150	0.1500	2.13	0.0080	2.09	0.48	0.67	0 00:05:20
4 BasinD	0.18	52.00	89.00	4.0000	157.00	0.0150	0.1500	2.13	0.3750	1.64	0.30	0.45	0 00:14:01
5 BasinE	0.16	98.00	97.60	4.0000	138.00	0.0150	0.1500	2.13	0.0040	2.10	0.33	0.46	0 00:05:24
6 BasinF	0.35	89.00	96.00	4.0000	153.00	0.0150	0.1500	2.13	0.0380	2.04	0.72	1.02	0 00:08:47
7 BasinG	0.33	0.00	79.00	2.1000	95.00	0.0150	0.1500	2.13	1.1820	0.77	0.25	0.22	0 00:51:01
8 East Grass	0.03	2.00	79.00	2.1000	210.00	0.0150	0.1500	2.13	1.1590	0.78	0.02	0.04	0 00:07:20
9 ExistingParcel	1.64	2.00	86.60	2.1000	357.00	0.0150	0.1500	2.13	0.8780	1.07	1.75	1.61	0 01:00:03
10 West Grass	0.09	15.00	79.00	5.0000	640.00	0.0150	0.1500	2.13	1.0050	0.96	0.08	0.15	0 00:05:10

LENA Commons 25-Year 24-Hour Event

#### Node Summary

SN Element ID	Element	Invert Elevation	Ground/Rim (Max)	Initial	Surcharge Elevation		Peak Inflow		Max	Min	Time of		otal Time Flooded
D	Туре	Elevation	Elevation	Water	Elevation	Area	Innow	Attained	Surcharge Depth		Flooding	Flooded	Flooded
			Elevation	Elevation				Allameu	Attained	Allaineu	Occurrence	volume	
		(ft)	(ft)	(ft)	(ft)	(ft²)	(cfs)	(ft)	(ft)	(ft)	(days hh:mm)	(ac-in)	(min)
1 1-Out	Junction	6970.46	6973.89	0.00	0.00	0.00	1.15	6970.80	0.00	3.73	0 00:00	0.00	0.00
2 2-Out	Junction	6970.68	6974.61	0.00	0.00	0.00	3.70	6972.84	0.00	1.84	0 00:00	0.00	0.00
3 3-Out	Junction	6970.93	6975.50	0.00	0.00	0.00	0.85	6972.85	0.00	2.83	0 00:00	0.00	0.00
4 4-Out	Junction	6971.23	6976.39	0.00	0.00	0.00	0.67	6973.78	0.00	2.61	0 00:00	0.00	0.00
5 5-Out	Junction	6971.53	6978.58	0.00	0.00	0.00	0.53	6974.34	0.00	4.24	0 00:00	0.00	0.00
6 6-Out	Junction	6972.60	6979.83	0.00	0.00	0.00	0.40	6975.11	0.00	4.72	0 00:00	0.00	0.00
7 CurbInletBox2	Junction	6970.63	6973.62	0.00	0.00	0.00	5.66	6972.53	0.00	1.09	0 00:00	0.00	0.00
8 InletBox2	Junction	6972.99	6980.50	0.00	0.00	0.00	0.45	6976.52	0.00	3.98	0 00:00	0.00	0.00
9 CurbInletBox1(ex)	Outfall	6967.99					1.13	6968.31					
10 ExSiteDisch	Outfall	6972.00					1.61	6972.00					
11 OttoSt	Outfall	6972.00					0.19	6972.00					
12 1	Storage Node	6969.56	6973.89	0.00		0.00	1.68	6972.46				0.00	0.00
13 2	Storage Node	6969.68	6974.61	0.00		0.00	1.14	6972.86				0.00	0.00
14 3	Storage Node	6969.93	6975.50	0.00		0.00	0.85	6973.77				0.00	0.00
15 4	Storage Node	6970.23	6976.39	0.00		0.00	0.68	6974.34				0.00	0.00
16 5	Storage Node	6970.53	6978.58	0.00		0.00	0.53	6975.11				0.00	0.00
17 6	Storage Node	6971.60	6979.83	0.00		0.00	1.02	6976.52				0.00	0.00

## Link Summary

		From	To (Outlet)	Length	Inlet				•		•					Total Time Reported
ID 1	Туре	(Inlet) Node	Node		Invert Elevation	Invert Elevation	Slope	Height	Roughness	Flow	Capacity	Design Flow Ratio	Velocity	Depth	Total Depth	Surcharged Condition
				(ft)	(ft)	(ft)	(%)	(in)		(cfs)	(cfs)		(ft/sec)	(ft)	Ratio	(min)
1 Pipe-0 F	Pipe	1-Out	CurbInletBox1(ex)			6967.99	1.2200	12.000	0.0100		5.11	0.22	5.04	0.33	0.33	0.00 Calculated
	Pipe	CurbInletBox2				6970.56		18.000	0.0100		5.91	0.28	1.22		1.00	10.00 SURCHARGED
	Pipe	2-Out	CurbInletBox2		6970.68			18.000	0.0100		6.39	0.86	3.12		1.00	8.00 SURCHARGED
	Pipe	3-Out	2		6970.93			24.000	0.0100	0.85	12.97	0.07	0.83	1.95	0.98	0.00 Calculated
	Pipe	4-Out	3			6971.03		30.000	0.0100		23.91	0.03	0.95	2.50	1.00	
	Pipe	5-Out	4		6971.53			30.000	0.0100	0.53	24.04	0.02	1.02	2.50	1.00	68.00 SURCHARGED
	Pipe	6-Out	5		6972.60			30.000	0.0100		23.62	0.02	1.25	2.50	1.00	4.00 SURCHARGED
	Pipe	InletBox2	6			6972.70		30.000	0.0150		16.24	0.02	0.41	2.50	1.00	
91-1 (	Orifice	1	1-Out			6970.46		4.000		0.56						
	Orifice	1	1-Out			6970.46		3.000		0.29						
11 1-3 (	Orifice	1	1-Out		6969.56	6970.46		3.000		0.23						
12 1-4 (	Orifice	1	1-Out			6970.46		2.000		0.07						
13 2-1 (	Orifice	2	2-Out		6969.68	6970.68		1.500		0.07						
	Orifice		2-Out			6970.68		1.500		0.07						
15 2-3 (	Orifice	2	2-Out			6970.68		2.000		0.11						
16 2-4 (	Orifice	2	2-Out		6969.68	6970.68		3.000		0.17						
17 3-1 (	Orifice	3	3-Out		6969.93	6970.93		1.500		0.06						
18 3-2 (	Orifice	3	3-Out		6969.93	6970.93		1.500		0.06						
19 3-3 (	Orifice	3	3-Out		6969.93	6970.93		2.000		0.11						
20 3-4 0	Orifice	3	3-Out		6969.93	6970.93		3.000		0.24						
21 4-1 (	Orifice	4	4-Out		6970.23	6971.23		1.500		0.06						
22 4-2 (	Orifice	4	4-Out		6970.23	6971.23		1.500		0.06						
23 4-3 (	Orifice	4	4-Out		6970.23	6971.23		1.500		0.06						
24 4-4 (	Orifice	4	4-Out		6970.23	6971.23		1.500		0.06						
25 5-1 (	Orifice	5	5-Out		6970.53	6971.53		1.500		0.05						
26 5-2 0	Orifice	5	5-Out		6970.53	6971.53		1.500		0.05						
27 5-3 (	Orifice	5	5-Out		6970.53	6971.53		1.500		0.05						
		5	5-Out		6970.53	6971.53		1.500		0.05						
	Orifice		6-Out			6972.60		1.500		0.07						
30 6-2	Orifice	6	6-Out		6971.60	6972.60		1.500		0.07						
31 6-3 (	Orifice	6	6-Out			6972.60		2.000		0.13						
	Orifice	6	6-Out		6971.60	6972.60		2.000		0.13						
	Weir	1	1-Out		6969.56	6970.46				0.01						
	Weir	2	2-Out			6970.68				1.01						
	Weir	3	3-Out			6970.93				0.39						
	Weir	4	4-Out			6971.23				0.49						
	Weir	5	5-Out		6970.53	6971.53				0.32						
38 Weir6	Weir	6	6-Out		6971.60	6972.60				0.00						

#### Subbasin Hydrology

#### Subbasin : BasinA

#### Input Data

Area (ac)	0.07
Impervious Area (%)	100.00
Weighted Curve Number	98.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	85.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

#### Composite Curve Number

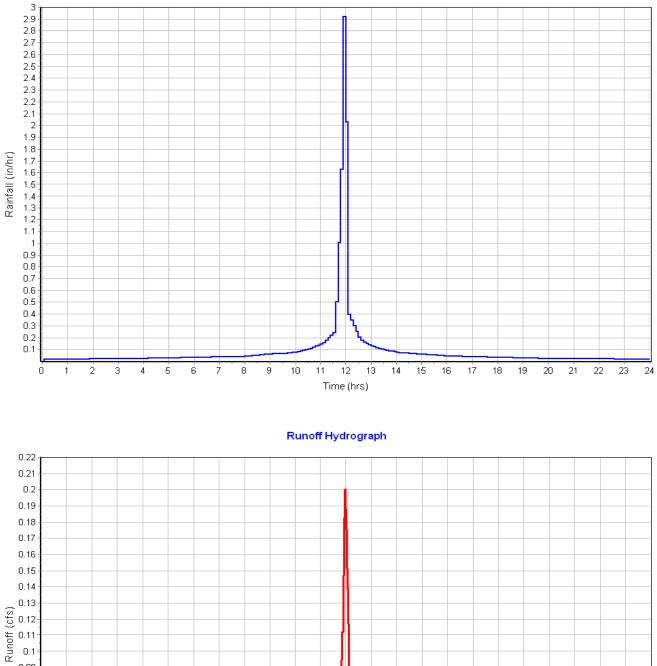
D	nposite Curve Number				
		Area	Soil	Curve	
	Soil/Surface Description	(acres)	Group	Number	
	-	0.07	-	98.00	
	Composite Area & Weighted CN	0.07		98.00	

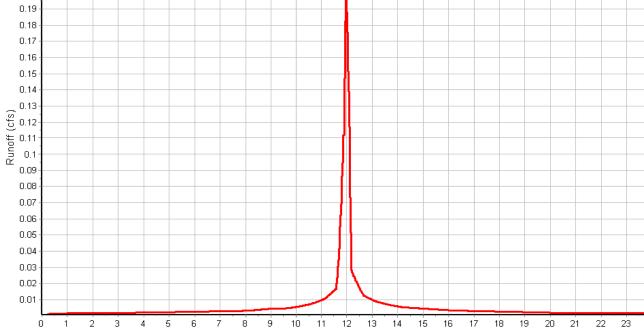
#### Subbasin Runoff Results

Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0000
Total Runoff (in)	2.13
Peak Runoff (cfs)	0.20
Weighted Curve Number	98.00
Time of Concentration (days hh:mm:ss)	0 00:04:24

#### Subbasin : BasinA

#### **Rainfall Intensity Graph**





Time (hrs)

#### Subbasin : BasinB

#### Input Data

Area (ac)	0.20
Impervious Area (%)	100.00
Weighted Curve Number	98.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	176.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

#### Composite Curve Number

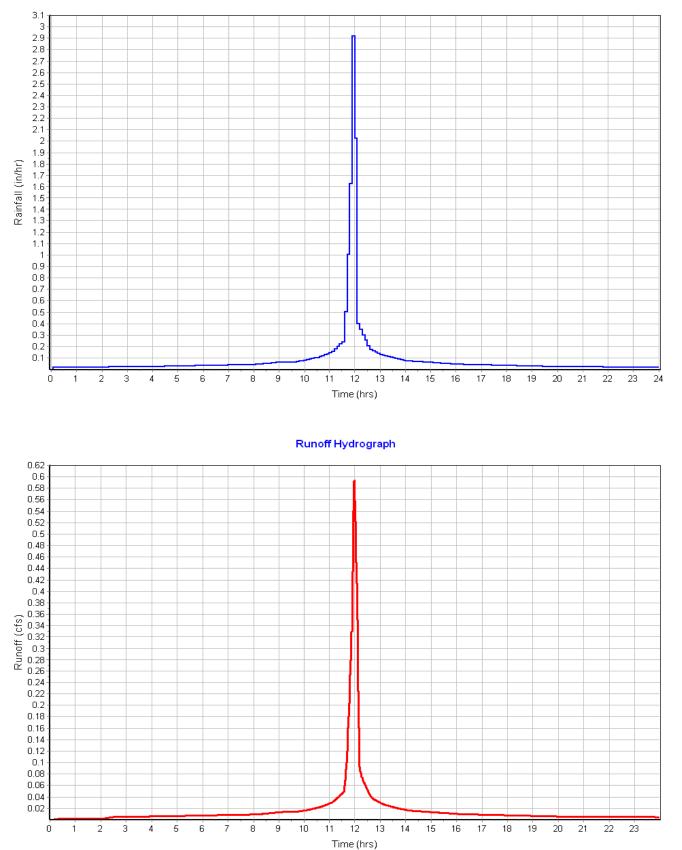
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.20	-	98.00
Composite Area & Weighted CN	0.20		98.00

#### Subbasin Runoff Results

Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0000
Total Runoff (in)	2.11
Peak Runoff (cfs)	0.59
Weighted Curve Number	98.00
Time of Concentration (days hh:mm:ss)	0 00:06:38

#### Subbasin : BasinB

#### **Rainfall Intensity Graph**



## Subbasin : BasinC

## Input Data

Area (ac)	0.23
Impervious Area (%)	96.00
Weighted Curve Number	97.70
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	199.50
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

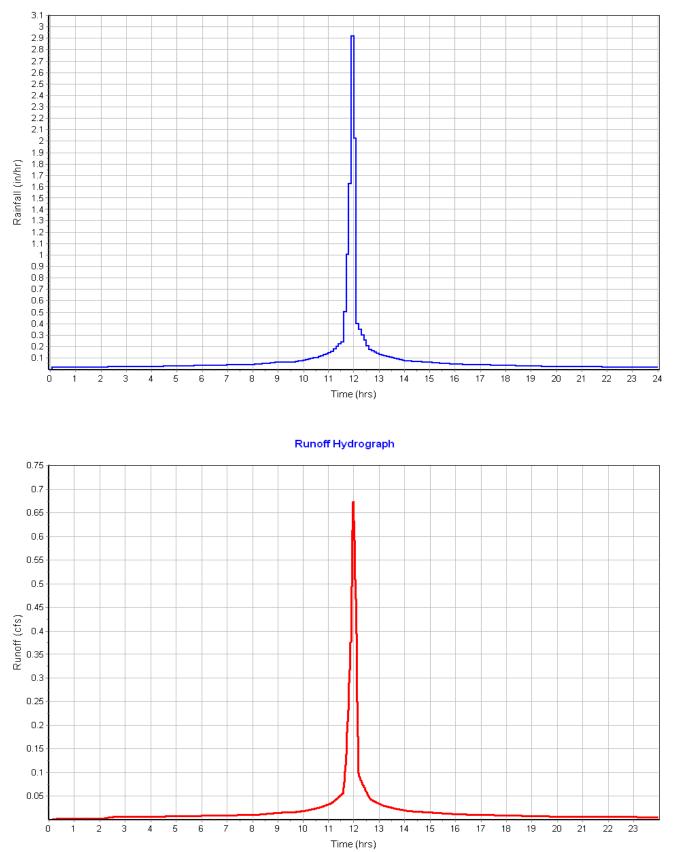
# Composite Curve Number

	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.23	-	97.70
Composite Area & Weighted CN	0.23		97.70

Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0080
Total Runoff (in)	2.09
Peak Runoff (cfs)	0.67
Weighted Curve Number	97.70
Time of Concentration (days hh:mm:ss)	0 00:05:20

### Subbasin : BasinC

## **Rainfall Intensity Graph**



## Subbasin : BasinD

## Input Data

Area (ac)	0.18
Impervious Area (%)	52.00
Weighted Curve Number	89.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	157.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

# Composite Curve Number

	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.18	-	89.00
Composite Area & Weighted CN	0.18		89.00

Total Rainfall (in)	. 2.13
Total Runon (in)	0.00
Total Evaporation (in)	. 0.0000
Total Infiltration (in)	0.3750
Total Runoff (in)	1.64
Peak Runoff (cfs)	0.45
Weighted Curve Number	89.00
Time of Concentration (days hh:mm:ss)	. 0 00:14:01

### Subbasin : BasinD

0.02

0 1

2 3

4 5 6 7

8

ġ.

10

11 12 13

Time (hrs)

15 16

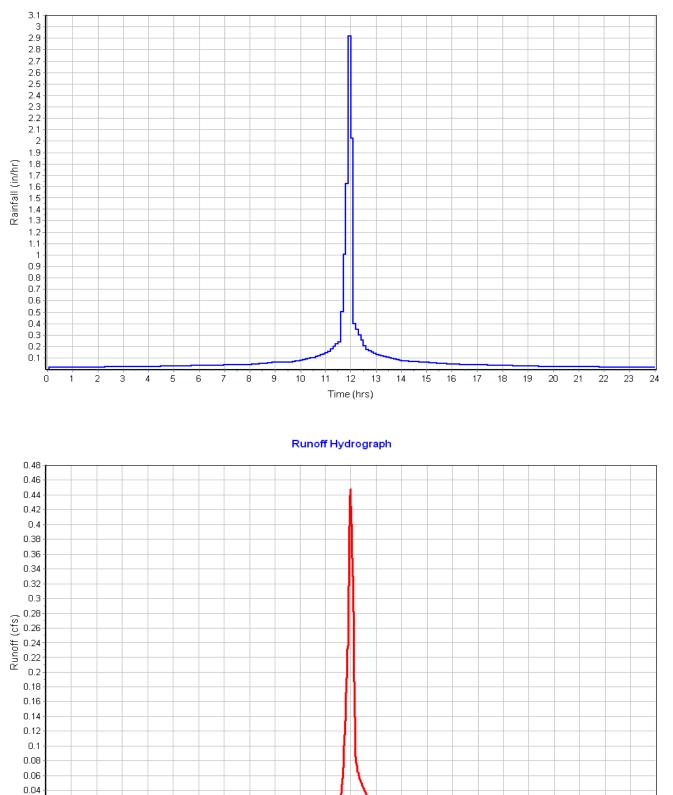
17 18 19

20 21

22 23

14

## **Rainfall Intensity Graph**



## Subbasin : BasinE

## Input Data

Area (ac)	0.16
Impervious Area (%)	98.00
Weighted Curve Number	97.60
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	138.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

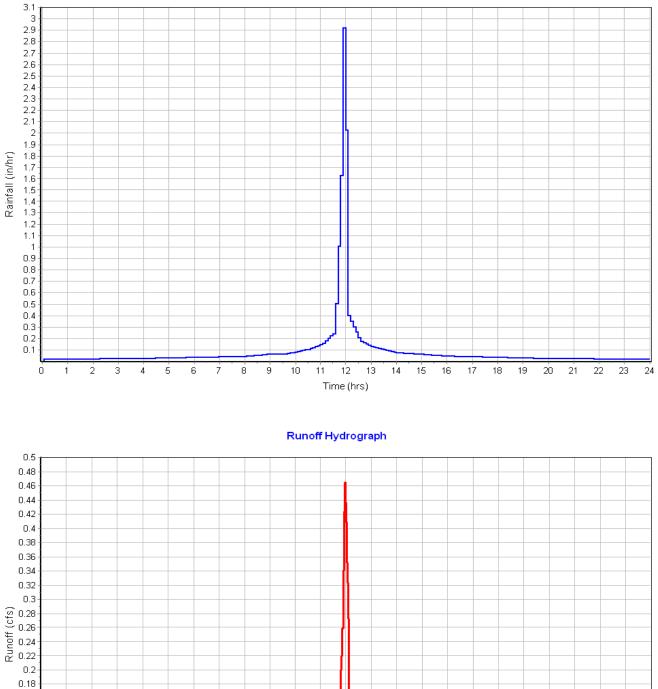
# Composite Curve Number

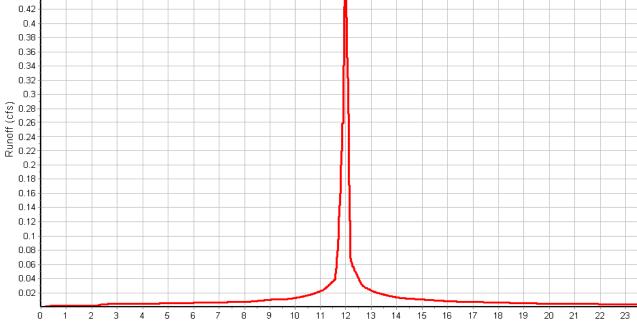
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.16	-	97.60
Composite Area & Weighted CN	0.16		97.60

Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0040
Total Runoff (in)	2.10
Peak Runoff (cfs)	0.46
Weighted Curve Number	97.60
Time of Concentration (days hh:mm:ss)	0 00:05:24

### Subbasin : BasinE

## **Rainfall Intensity Graph**





Time (hrs)

## Subbasin : BasinF

## Input Data

Area (ac)	0.35
Impervious Area (%)	89.00
Weighted Curve Number	96.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	153.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

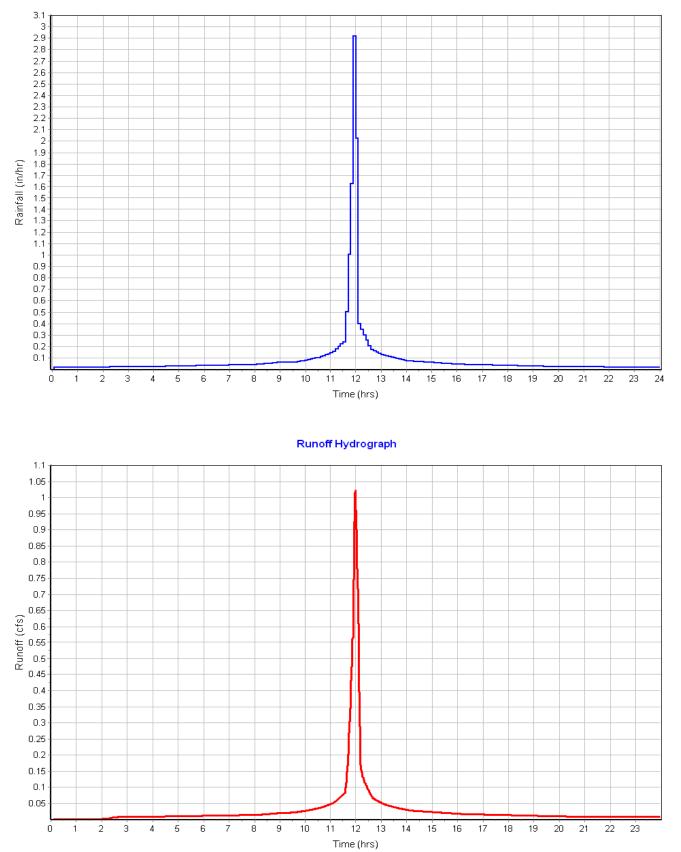
# Composite Curve Number

	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.35	-	96.00
Composite Area & Weighted CN	0.35		96.00

Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0380
Total Runoff (in)	2.04
Peak Runoff (cfs)	1.02
Weighted Curve Number	96.00
Time of Concentration (days hh:mm:ss)	0 00:08:47

### Subbasin : BasinF

## **Rainfall Intensity Graph**



## Subbasin : BasinG

## Input Data

Area (ac)	0.33
Impervious Area (%)	0.00
Weighted Curve Number	79.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	95.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

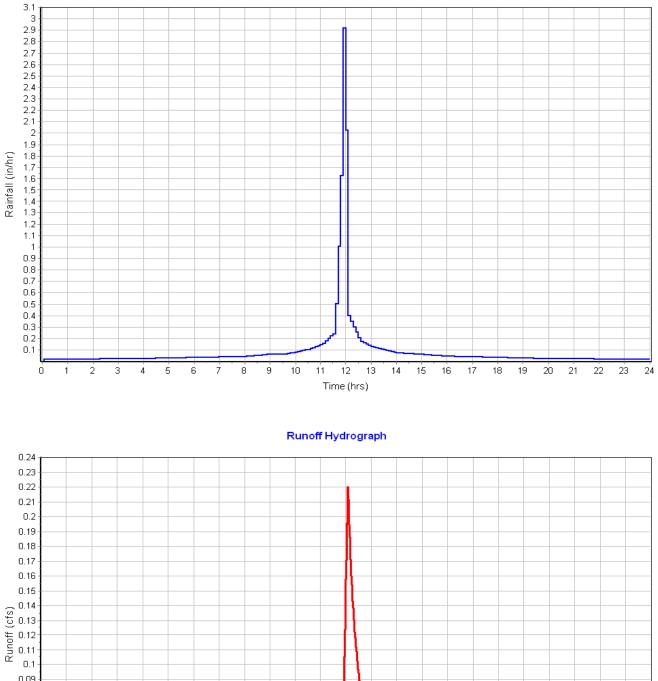
# Composite Curve Number

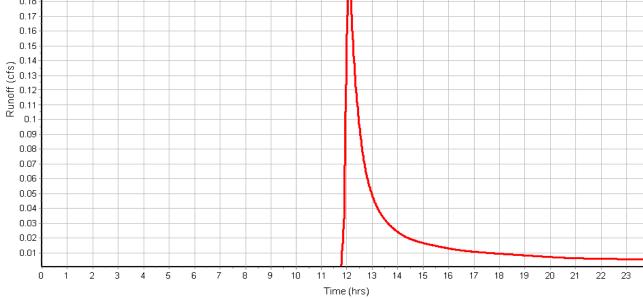
Area	Soil	Curve
(acres)	Group	Number
0.33	-	79.00
0.33		79.00
	(acres) 0.33	(acres) Group 0.33 -

Total Rainfall (in)	. 2.13
Total Runon (in)	0.00
Total Evaporation (in)	. 0.0000
Total Infiltration (in)	1.1820
Total Runoff (in)	0.77
Peak Runoff (cfs)	0.22
Weighted Curve Number	79.00
Time of Concentration (days hh:mm:ss)	. 0 00:51:01

### Subbasin : BasinG

## **Rainfall Intensity Graph**





## Subbasin : East Grass

## Input Data

Area (ac)	0.03
Impervious Area (%)	2.00
Weighted Curve Number	79.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	210.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

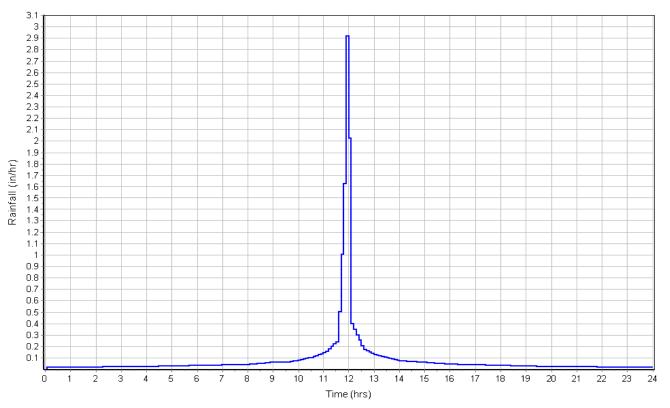
## **Composite Curve Number**

	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.03	-	79.00
Composite Area & Weighted CN	0.03		79.00

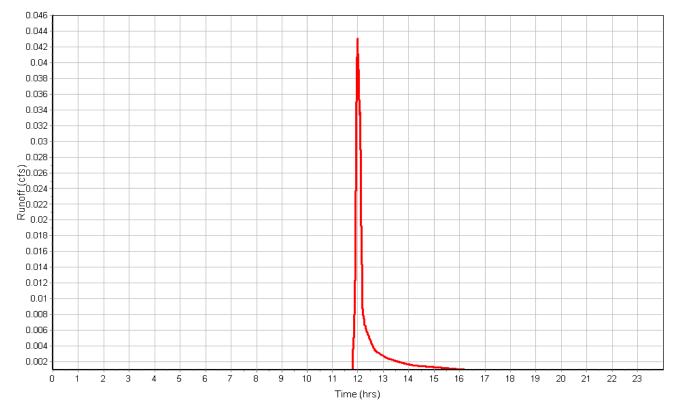
Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	1.1590
Total Runoff (in)	0.78
Peak Runoff (cfs)	0.04
Weighted Curve Number	79.00
Time of Concentration (days hh:mm:ss)	0 00:07:20

### Subbasin : East Grass

## **Rainfall Intensity Graph**







# Subbasin : ExistingParcel

# Input Data

Area (ac)	1.64
Impervious Area (%)	2.00
Weighted Curve Number	86.60
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	357.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

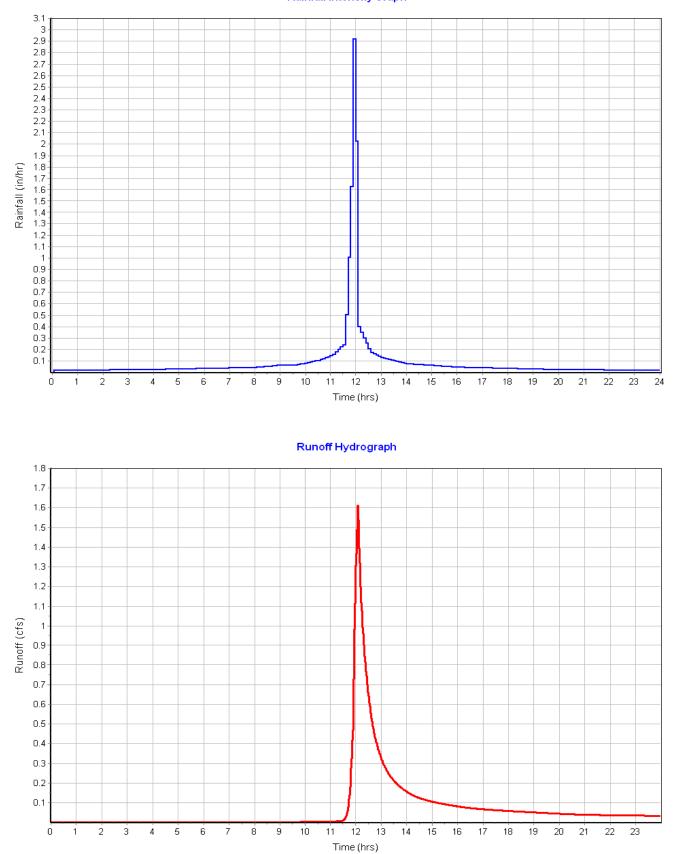
# Composite Curve Number

	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	1.64	-	86.60
Composite Area & Weighted CN	1.64		86.60

Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.8780
Total Runoff (in)	1.07
Peak Runoff (cfs)	1.61
Weighted Curve Number	86.60
Time of Concentration (days hh:mm:ss)	0 01:00:03

### Subbasin : ExistingParcel

# Rainfall Intensity Graph



## Subbasin : West Grass

## Input Data

Area (ac)	0.09
Impervious Area (%)	15.00
Weighted Curve Number	79.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	5.0000
Equivalent Width (ft)	640.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

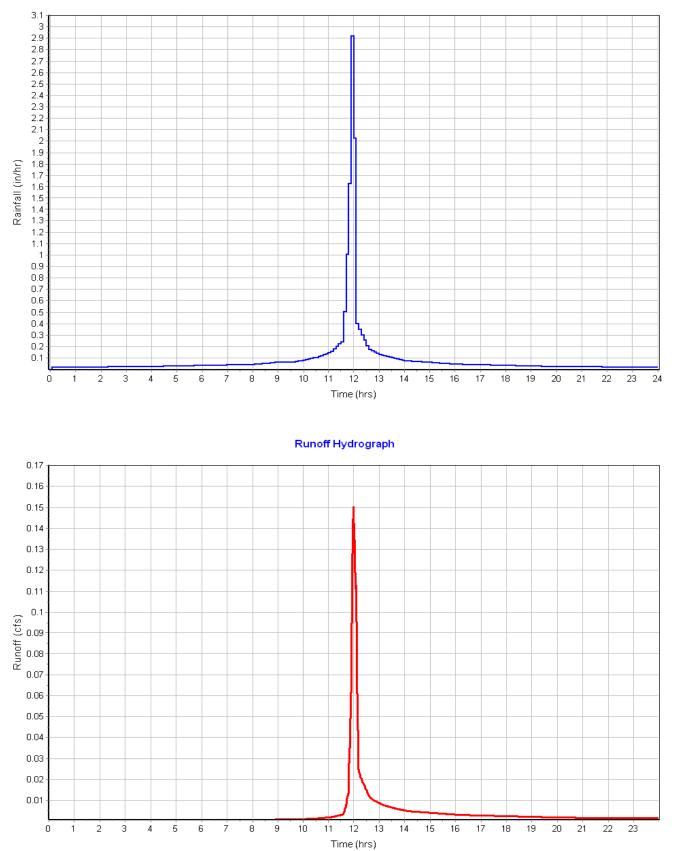
## **Composite Curve Number**

	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.09	-	79.00
Composite Area & Weighted CN	0.09		79.00

Total Rainfall (in)	2.13
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	1.0050
Total Runoff (in)	0.96
Peak Runoff (cfs)	0.15
Weighted Curve Number	79.00
Time of Concentration (days hh:mm:ss)	0 00:05:10

### Subbasin : West Grass

## **Rainfall Intensity Graph**



LENA Commons 25-Year 24-Hour Event

# **Junction Input**

SN Element	Invert	Ground/Rim	Ground/Rim	Initial	Initial	Surcharge	Surcharge	Ponded	Minimum
ID	Elevation	(Max)	(Max)	Water	Water	Elevation	Depth	Area	Pipe
		Elevation	Offset	Elevation	Depth				Cover
	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft²)	(in)
1 1-Out	6970.46	6973.89	3.43	0.00	-6970.46	0.00	-6973.89	0.00	0.00
2 2-Out	6970.68	6974.61	3.93	0.00	-6970.68	0.00	-6974.61	0.00	0.00
3 3-Out	6970.93	6975.50	4.57	0.00	-6970.93	0.00	-6975.50	0.00	0.00
4 4-Out	6971.23	6976.39	5.16	0.00	-6971.23	0.00	-6976.39	0.00	0.00
5 5-Out	6971.53	6978.58	7.05	0.00	-6971.53	0.00	-6978.58	0.00	0.00
6 6-Out	6972.60	6979.83	7.23	0.00	-6972.60	0.00	-6979.83	0.00	0.00
7 CurbInletBox2	6970.63	6973.62	2.99	0.00	-6970.63	0.00	-6973.62	0.00	17.88
8 InletBox2	6972.99	6980.50	7.51	0.00	-6972.99	0.00	-6980.50	0.00	60.12

LENA Commons 25-Year 24-Hour Event

## **Junction Results**

SN Element ID	Peak Inflow		Max HGL Elevation		Max Surcharge		Average HGL Elevation	Average HGL Depth	Time of Max HGL	Time of Peak	Total Flooded	Total Time Flooded
		Inflow	Attained	Attained	Depth	Attained	Attained	Attained	Occurrence	Flooding	Volume	
					Attained					Occurrence		
	(cfs)	(cfs)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(days hh:mm)	(days hh:mm)	(ac-in)	(min)
1 1-Out	1.15	0.00	6970.80	0.34	0.00	3.73	6970.56	0.10	0 12:04	0 00:00	0.00	0.00
2 2-Out	3.70	0.00	6972.84	2.16	0.00	1.84	6970.92	0.24	0 12:04	0 00:00	0.00	0.00
3 3-Out	0.85	0.00	6972.85	1.92	0.00	2.83	6971.60	0.67	0 12:04	0 00:00	0.00	0.00
4 4-Out	0.67	0.00	6973.78	2.55	0.00	2.61	6971.96	0.73	0 12:10	0 00:00	0.00	0.00
5 5-Out	0.53	0.00	6974.34	2.81	0.00	4.24	6972.33	0.80	0 12:09	0 00:00	0.00	0.00
6 6-Out	0.40	0.00	6975.11	2.51	0.00	4.72	6973.13	0.53	0 12:09	0 00:00	0.00	0.00
7 CurbInletBox2	5.66	0.20	6972.53	1.90	0.00	1.09	6970.89	0.26	0 12:04	0 00:00	0.00	0.00
8 InletBox2	0.45	0.22	6976.52	3.53	0.00	3.98	6973.52	0.53	0 12:10	0 00:00	0.00	0.00

# Pipe Input

SN Element ID	Length	Inlet Invert	Inlet Invert		Outlet Invert		Average Pipe Slope Shape	Pipe Diameter or	Pipe Width	Manning's Roughness		Exit/Bend Losses		Initial Flap Flow Gate	No. of Barrels
		Elevation	Offset	Elevation				Height		5					
	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(%)	(in)	(in)					(cfs)	
1 Pipe-0	202.64	6970.46	0.00	6967.99	0.00	2.47	1.2200 CIRCULAR	12.000	12.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
2 Pipe-1	37.35	6970.63	0.00	6970.56	1.00	0.07	0.1900 CIRCULAR	18.000	18.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
3 Pipe-2	22.86	6970.68	0.00	6970.63	0.00	0.05	0.2200 CIRCULAR	18.000	18.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
4 Pipe-3	77.10	6970.93	0.00	6970.78	1.10	0.15	0.1900 CIRCULAR	24.000	24.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
5 Pipe-4	99.50	6971.23	0.00	6971.03	1.10	0.20	0.2000 CIRCULAR	30.000	30.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
6 Pipe-5	98.40	6971.53	0.00	6971.33	1.10	0.20	0.2000 CIRCULAR	30.000	30.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
7 Pipe-6	91.70	6972.60	0.00	6972.42	1.89	0.18	0.2000 CIRCULAR	30.000	30.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
8 Pipe-7	139.00	6972.99	0.00	6972.70	1.10	0.29	0.2100 CIRCULAR	30.000	30.000	0.0150	0.5000	0.5000	0.0000	0.00 No	1

# **Pipe Results**

SN Element	Peak	Time of	Design Flow	Peak Flow/	Peak Flow	Travel	Peak Flow	Peak Flow	Total Time	Froude Reported	
ID	Flow	Peak Flow	Capacity	Design Flow	Velocity	Time	Depth	Depth/	Surcharged	Number Condition	
		Occurrence		Ratio				Total Depth			
								Ratio			
	(cfs)	(days hh:mm)	(cfs)		(ft/sec)	(min)	(ft)		(min)		
1 Pipe-0	1.13	0 12:04	5.11	0.22	5.04	0.67	0.33	0.33	0.00	1.52 Calculated	
2 Pipe-1	1.68	0 12:04	5.91	0.28	1.22	0.51	1.50	1.00	10.00	0.58 SURCHARGE	D
3 Pipe-2	5.52	0 12:05	6.39	0.86	3.12	0.12	1.50	1.00	8.00	0.43 SURCHARGE	D
4 Pipe-3	0.85	0 12:10	12.97	0.07	0.83	1.55	1.95	0.98	0.00	0.06 Calculated	
5 Pipe-4	0.68	0 12:10	23.91	0.03	0.95	1.75	2.50	1.00	10.00	0.04 SURCHARGE	D
6 Pipe-5	0.53	0 12:10	24.04	0.02	1.02	1.61	2.50	1.00	68.00	0.11 SURCHARGE	D
7 Pipe-6	0.41	0 12:11	23.62	0.02	1.25	1.22	2.50	1.00	4.00	0.64 SURCHARGE	D
8 Pipe-7	0.32	0 11:58	16.24	0.02	0.41	5.65	2.50	1.00	31.00	0.08 SURCHARGE	D

# Storage Nodes

# Storage Node : 1

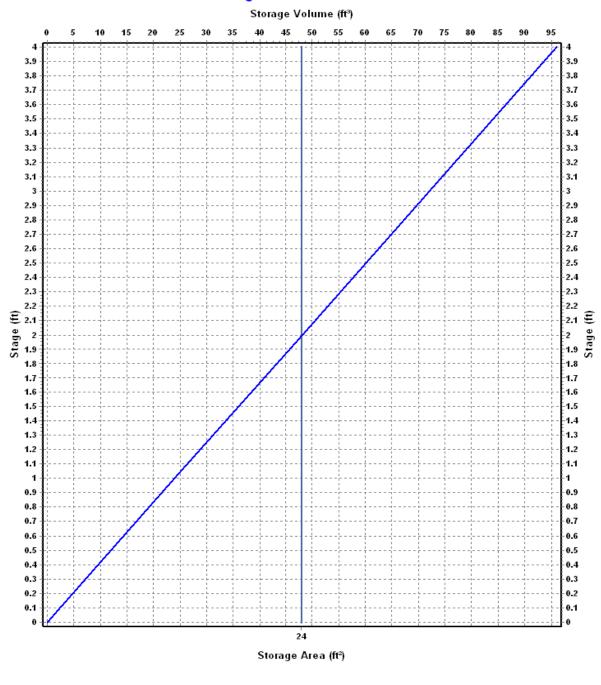
# Input Data

Invert Elevation (ft)	6969.56
Max (Rim) Elevation (ft)	6973.89
Max (Rim) Offset (ft)	4.33
Initial Water Elevation (ft)	0.00
Initial Water Depth (ft)	6969.56
Ponded Area (ft <sup>2</sup> )	0.00
Evaporation Loss	0.00

## Storage Area Volume Curves

Storage Curve : Inlet w/ Weir

Storage Area	Storage Volume
(ft <sup>2</sup> )	(ft <sup>3</sup> )
24	0.000
24	24.00
24	48.00
24	72.00
24	96.00
	Area (ft²) 24 24 24 24 24



# Storage Area Volume Curves

- Storage Area - Storage Volume

## Storage Node : 1 (continued)

# **Outflow Weirs**

SN Element ID	ment Weir Fl Type G		Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir1	Rectangular	No	6972.63	3.07	4.00	1.00	3.33

## **Outflow Orifices**

SN	Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
2	1-1 1-2 1-3 1-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	4.00 3.00 3.00 2.00		. ,	6970.46 6970.96 6971.46 6971.96	0.61 0.61 0.61 0.61

# **Output Summary Results**

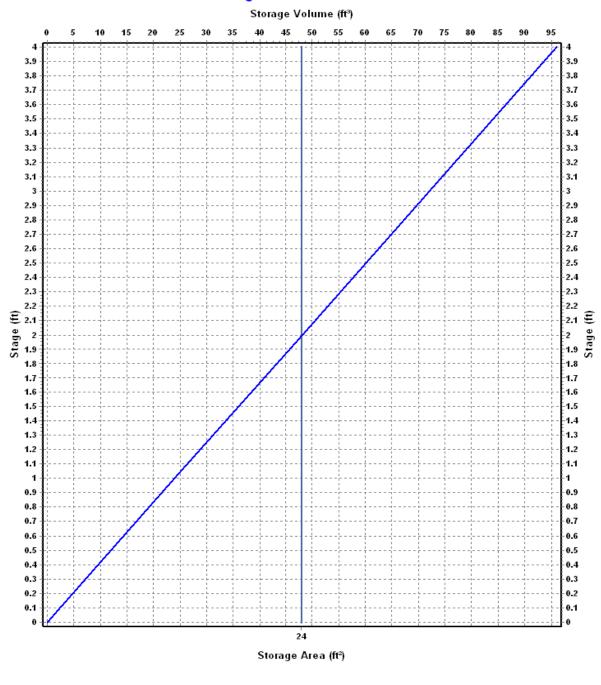
Peak Inflow (cfs)	1.68
Peak Lateral Inflow (cfs)	0.00
Peak Outflow (cfs)	1.15
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6972.46
Max HGL Depth Attained (ft)	2.9
Average HGL Elevation Attained (ft)	6970.73
Average HGL Depth Attained (ft)	1.17
Time of Max HGL Occurrence (days hh:mm)	0 12:04
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

Storage Node : 2

## Input Data

# Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft <sup>2</sup> )	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00
1 2 3	24 24 24	24.00 48.00 72.00



# Storage Area Volume Curves

- Storage Area - Storage Volume

# Storage Node : 2 (continued)

# **Outflow Weirs**

SN Element ID	Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir2	Rectangular	No	6972.68	3.00	4.00	1.00	3.33

## **Outflow Orifices**

SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
1 2-1 2 2-2 3 2-3 4 2-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	1.50 1.50 2.00 3.00			6970.68 6971.18 6971.68 6972.18	0.61 0.61 0.61 0.61

# **Output Summary Results**

Peak Inflow (cfs)	1.14
Peak Lateral Inflow (cfs)	0.59
Peak Outflow (cfs)	1.23
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6972.86
Max HGL Depth Attained (ft)	3.18
Average HGL Elevation Attained (ft)	6971.51
Average HGL Depth Attained (ft)	1.83
Time of Max HGL Occurrence (days hh:mm)	0 12:04
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

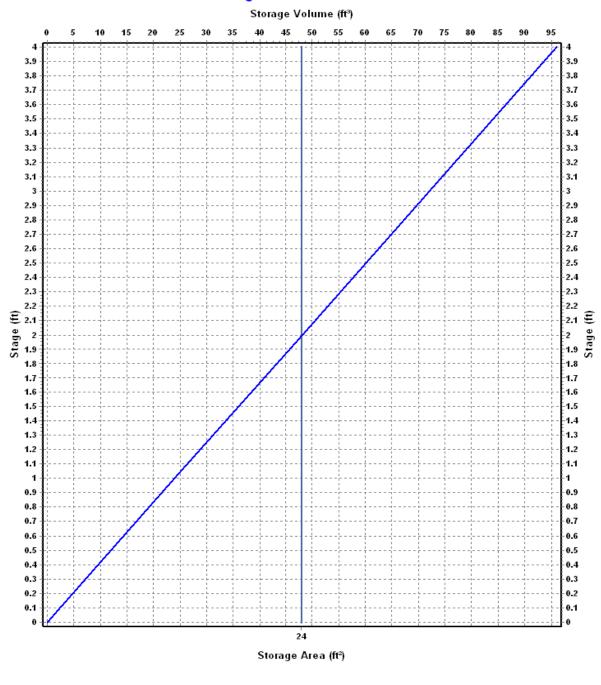
## Storage Node : 3

## Input Data

Invert Elevation (ft)         6965           Max (Rim) Elevation (ft)         6975           Max (Rim) Offset (ft)         5.57           Initial Water Elevation (ft)         0.00           Initial Water Depth (ft)         -696           Ponded Area (ft²)         0.00	5.50 , , , , , , , , , , , , , , , , , , ,
Evaporation Loss 0.00	)

# Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft²)	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00



# Storage Area Volume Curves

- Storage Area - Storage Volume

## Storage Node : 3 (continued)

# **Outflow Weirs**

SN Eleme ID	ent Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir3	8 Rectang	ular No	6973.68	3.75	4.00	1.00	3.33

## **Outflow Orifices**

SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Orifice Diameter	Rectangular Orifice Height	Orifice Width	Elevation	Orifice Coefficient
				(in)	(in)	(in)	(ft)	
1 3-1	Side	CIRCULAR	No	1.50			6970.93	0.61
2 3-2	Side	CIRCULAR	No	1.50			6971.43	0.61
3 3-3	Side	CIRCULAR	No	2.00			6971.93	0.61
4 3-4	Side	CIRCULAR	No	3.00			6972.43	0.61

# **Output Summary Results**

Peak Inflow (cfs)	0.85
Peak Lateral Inflow (cfs)	0.67
Peak Outflow (cfs)	0.85
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6973.77
Max HGL Depth Attained (ft)	3.84
Average HGL Elevation Attained (ft)	6971.85
Average HGL Depth Attained (ft)	1.92
Time of Max HGL Occurrence (days hh:mm)	0 12:10
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

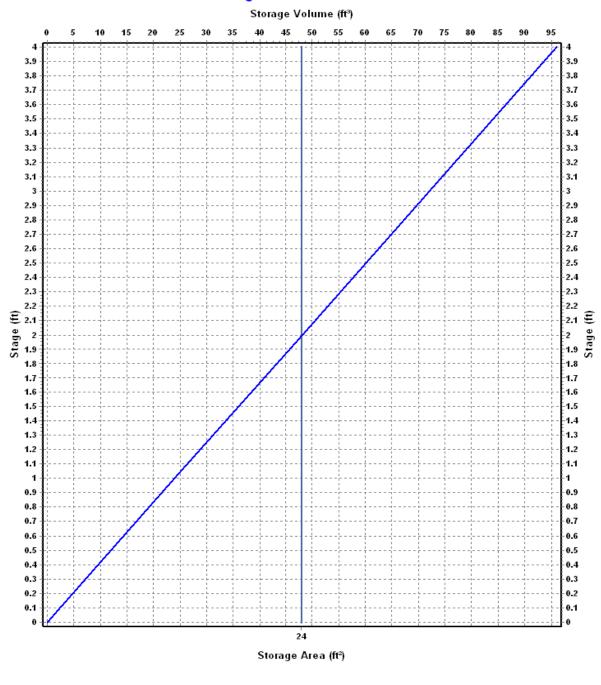
## Storage Node : 4

## Input Data

Invert Elevation (ft)         6970           Max (Rim) Elevation (ft)         6976           Max (Rim) Offset (ft)         6.16           Initial Water Elevation (ft)         0.00           Initial Water Depth (ft)         6970           Ponded Area (ft <sup>2</sup> )         0.00           Evaporation Loss         0.00	6.39 0.23
---	--------------

# Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft <sup>2</sup> )	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00
1 2 3	24 24 24	24.00 48.00 72.00



# Storage Area Volume Curves

- Storage Area - Storage Volume

# Storage Node : 4 (continued)

# **Outflow Weirs**

SN Element ID	Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir4	Rectangular	No	6974.23	4.00	4.00	1.00	3.33

## **Outflow Orifices**

SN Elei ID	ment Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter	Rectangular Orifice Height	Rectangular Orifice Width	Orifice Invert Elevation	Orifice Coefficient
				(in)	(in)	(in)	(ft)	
 1 4-1	Side	CIRCULAR	No	1.50			6971.23	0.61
2 4-2	Side	CIRCULAR	No	1.50			6971.73	0.61
3 4-3	Side	CIRCULAR	No	1.50			6972.23	0.61
4 4-4	Side	CIRCULAR	No	1.50			6972.73	0.61

# **Output Summary Results**

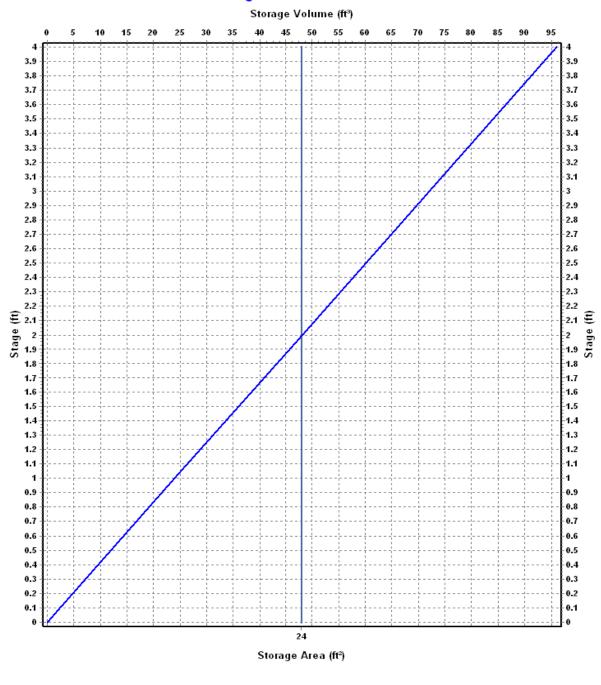
Peak Inflow (cfs)	0.68
Peak Lateral Inflow (cfs)	0.45
Peak Outflow (cfs)	0.67
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6974.34
Max HGL Depth Attained (ft)	4.11
Average HGL Elevation Attained (ft)	6972.17
Average HGL Depth Attained (ft)	1.94
Time of Max HGL Occurrence (days hh:mm)	0 12:09
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

## Storage Node : 5

## Input Data

# Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft²)	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00



# Storage Area Volume Curves

- Storage Area - Storage Volume

# Storage Node : 5 (continued)

# **Outflow Weirs**

SN Element ID	Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir5	Rectangular	No	6975.03	4.50	4.00	1.00	3.33

## **Outflow Orifices**

	Element O D T			Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Orifice	Orifice Invert Elevation (ft)	Orifice Coefficient
1 5 2 5 3 5 4 5	5-2 S 5-3 S	ide ide	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	1.50 1.50 1.50 1.50 1.50			6971.53 6972.03 6972.53 6973.03	0.61 0.61 0.61 0.61

# **Output Summary Results**

Peak Inflow (cfs)	0.53
Peak Lateral Inflow (cfs)	0.46
Peak Outflow (cfs)	0.53
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6975.11
Max HGL Depth Attained (ft)	4.58
Average HGL Elevation Attained (ft)	6972.51
Average HGL Depth Attained (ft)	1.98
Time of Max HGL Occurrence (days hh:mm)	0 12:09
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

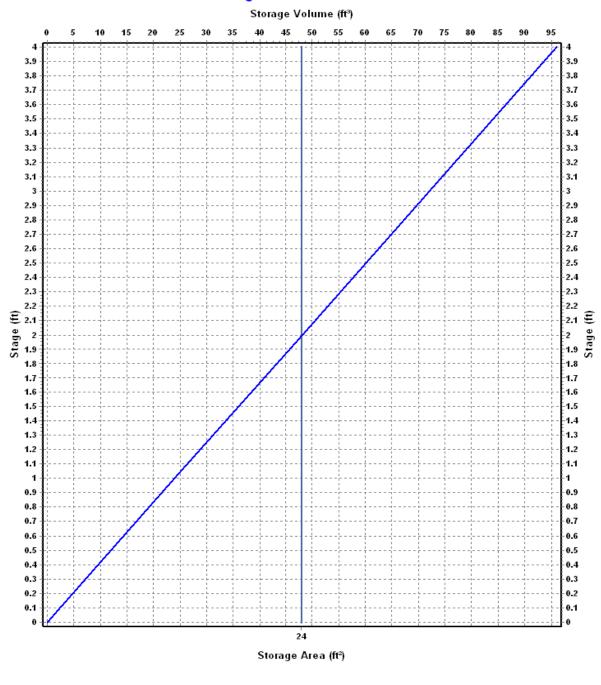
## Storage Node : 6

## Input Data

Max (Rim) Elevation (ft)
Max (Rim) Offset (ft)
Initial Water Elevation (ft) 0.00 Initial Water Depth (ft)
Ponded Area (ft <sup>2</sup> )
Evaporation Loss 0.00

# Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft²)	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00



## Storage Area Volume Curves

- Storage Area - Storage Volume

## Storage Node : 6 (continued)

## **Outflow Weirs**

SN Element ID	Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir6	Rectangular	No	6976.60	5.00	4.00	1.00	3.33

## **Outflow Orifices**

SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
1 6-1 2 6-2 3 6-3 4 6-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	1.50 1.50 2.00 2.00			6972.60 6973.10 6973.60 6974.10	0.61 0.61 0.61 0.61

## **Output Summary Results**

Peak Inflow (cfs)	1.02
Peak Lateral Inflow (cfs)	1.02
Peak Outflow (cfs)	0.58
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6976.52
Max HGL Depth Attained (ft)	4.92
Average HGL Elevation Attained (ft)	6973.27
Average HGL Depth Attained (ft)	1.67
Time of Max HGL Occurrence (days hh:mm)	0 12:10
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

## **Project Description**

File Name ...... Rogers\_Proposed with triangle.SPF

## **Project Options**

# **Analysis Options**

Start Analysis On	,	00:00:00
End Analysis On		00:00:00
Start Reporting On	Mar 20, 2017	00:00:00
Antecedent Dry Days	0	days
Runoff (Dry Weather) Time Step		days hh:mm:ss
Runoff (Wet Weather) Time Step		days hh:mm:ss
Reporting Time Step		days hh:mm:ss
Routing Time Step	10	seconds

## **Number of Elements**

Qty
1
10
17
8
3
0
0
6
38
0
8
0
24
6
0
0
0

## **Rainfall Details**

SN	Rain Gage	Data	Data Source	Rainfall	Rain	State	County	Return	Rainfall	Rainfall
	ID	Source	ID	Туре	Units			Period	Depth	Distribution
								(years)	(inches)	
1	Rain Gage-01	Time Series	100 vear	Cumulative	inches	Colorado	Ourav	100	2.71	SCS Type II 24-hr

## Subbasin Summary

SN Subbasin ID	Area	Impervious Area	Weighted Curve Number	Average Slope	Equivalent Width	Impervious Area Manning's Roughness	Pervious Area Manning's Roughness	Total Rainfall	Total Infiltration	Total Runoff	Total Runoff Volume	Peak Runoff	Time of Concentration
	(ac)	(%)		(%)	(ft)	-	-	(in)	(in)	(in)	(ac-in)	(cfs)	(days hh:mm:ss)
1 BasinA	0.07	100.00	98.00	4.0000	85.00	0.0150	0.1500	2.71	0.0000	2.71	0.18	0.25	0 00:04:00
2 BasinB	0.20	100.00	98.00	2.1000	176.00	0.0150	0.1500	2.71	0.0000	2.69	0.54	0.76	0 00:06:02
3 BasinC	0.23	96.00	97.70	4.0000	199.50	0.0150	0.1500	2.71	0.0090	2.67	0.61	0.86	0 00:04:51
4 BasinD	0.18	52.00	89.00	4.0000	157.00	0.0150	0.1500	2.71	0.4070	2.19	0.39	0.59	0 00:12:44
5 BasinE	0.16	98.00	97.60	4.0000	138.00	0.0150	0.1500	2.71	0.0050	2.68	0.42	0.59	0 00:04:54
6 BasinF	0.35	89.00	96.00	4.0000	153.00	0.0150	0.1500	2.71	0.0400	2.62	0.92	1.30	0 00:07:58
7 BasinG	0.33	0.00	79.00	2.1000	95.00	0.0150	0.1500	2.71	1.3420	1.19	0.39	0.40	0 00:46:20
8 East Grass	0.03	2.00	79.00	2.1000	210.00	0.0150	0.1500	2.71	1.3150	1.20	0.03	0.06	0 00:06:39
9 ExistingParcel	1.64	2.00	86.60	2.1000	357.00	0.0150	0.1500	2.71	0.9650	1.56	2.55	2.59	0 00:54:32
10 West Grass	0.09	15.00	79.00	5.0000	640.00	0.0150	0.1500	2.71	1.1410	1.40	0.12	0.21	0 00:04:42

LENA Commons 100-Year 24-Hour Event

## Node Summary

SN Element ID	Element Type	Invert Elevation	Ground/Rim (Max)	Initial Water	Surcharge Elevation		Peak Inflow		Max Surcharge	Min Freeboard	Time of Peak	Total <sup>-</sup> Flooded	Total Time Flooded
	.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		Elevation					Attained	Depth	Attained	Flooding		
									Attained		Occurrence		
		(ft)	(ft)	(ft)	(ft)	(ft <sup>2</sup> )	(cfs)	(ft)	(ft)	(ft)	(days hh:mm)	(ac-in)	(min)
1 1-Out	Junction	6970.46	6973.89	0.00	0.00	0.00	5.88	6972.18	0.00	2.35	0 00:00	0.00	0.00
2 2-Out	Junction	6970.68	6974.61	0.00	0.00	0.00	6.47	6974.68	0.00	0.00	0 12:14	0.02	6.00
3 3-Out	Junction	6970.93	6975.50	0.00	0.00	0.00	12.04	6974.72	0.00	0.96	0 00:00	0.00	0.00
4 4-Out	Junction	6971.23	6976.39	0.00	0.00	0.00	3.49	6974.63	0.00	1.76	0 00:00	0.00	0.00
5 5-Out	Junction	6971.53	6978.58	0.00	0.00	0.00	1.99	6974.74	0.00	3.84	0 00:00	0.00	0.00
6 6-Out	Junction	6972.60	6979.83	0.00	0.00	0.00	1.46	6975.29	0.00	4.54	0 00:00	0.00	0.00
7 CurbInletBox2	Junction	6970.63	6973.62	0.00	0.00	0.00	10.98	6973.50	0.00	0.12	0 00:00	0.00	0.00
8 InletBox2	Junction	6972.99	6980.50	0.00	0.00	0.00	0.70	6976.80	0.00	3.70	0 00:00	0.00	0.00
9 CurbInletBox1(ex)	Outfall	6967.99					5.11	6968.81					
10 ExSiteDisch	Outfall	6972.00					2.59	6972.00					
11 OttoSt	Outfall	6972.00					0.27	6972.00					
12 1	Storage Node	6969.56	6973.89	0.00		0.00	5.15	6973.04				0.00	0.00
13 2	Storage Node	6969.68	6974.61	0.00		0.00	6.99	6974.61				0.21	4.00
14 3	Storage Node	6969.93	6975.50	0.00		0.00	9.70	6974.82				0.00	0.00
15 4	Storage Node	6970.23	6976.39	0.00		0.00	2.60	6974.74				0.00	0.00
16 5	Storage Node	6970.53	6978.58	0.00		0.00	2.03	6975.29				0.00	0.00
17 6	Storage Node	6971.60	6979.83	0.00		0.00	1.67	6976.78				0.00	0.00

LENA Commons 100-Year 24-Hour Event

# Link Summary

SN Element			To (Outlet)	Length	Inlet											Total Time Reported
ID	Туре	(Inlet) Node	Node		Invert Elevation		Slope	Height	Roughness	FIOW	Capacity	Design Flow Ratio	Velocity		Deptn/ Total Depth	Surcharged Condition
				(10)	(1)	(10)	(0()	<i>(</i> )		( , , )	(1)		(1)	(1)	Ratio	( )
( D' ) )	D.	101	0.11.10.4(.)	(ft)	(ft)	(ft)	(%)	(in)	0.0100	(cfs)	(cfs)	1.00	(ft/sec)	(ft)	0.04	(min)
1 Pipe-0	Pipe	1-Out			6970.46			12.000	0.0100		5.11	1.00	7.03		0.91	0.00 Calculated
2 Pipe-1	Pipe	CurbInletBox2			6970.63			18.000	0.0100		5.91	0.87	2.92		1.00	50.00 SURCHARGED
3 Pipe-2	Pipe	2-Out	CurbInletBox2		6970.68			18.000	0.0100		6.39	1.72	6.21	1.50	1.00	50.00 SURCHARGED
4 Pipe-3	Pipe	3-Out	2		6970.93			24.000	0.0100		12.97	0.50	2.05		1.00	49.00 SURCHARGED
5 Pipe-4	Pipe	4-Out	3	99.50		6971.03		30.000	0.0100		23.91	0.16	0.96		1.00	40.00 SURCHARGED
6 Pipe-5	Pipe	5-Out	4		6971.53			30.000	0.0100		24.04	0.09	1.07	2.50	1.00	90.00 SURCHARGED
7 Pipe-6	Pipe	6-Out	5		6972.60			30.000	0.0100		23.62	0.07	1.24		1.00	21.00 SURCHARGED
8 Pipe-7	Pipe	InletBox2	6	139.00	6972.99		0.2100	30.000	0.0150		16.24	0.03	0.34	2.50	1.00	49.00 SURCHARGED
9 1-1	Orifice	1	1-Out			6970.46		4.000		0.60						
10 1-2	Orifice	1	1-Out			6970.46		3.000		0.33						
11 1-3	Orifice	1	1-Out			6970.46		3.000		0.30						
12 1-4	Orifice	1	1-Out		6969.56	6970.46		2.000		0.11						
13 2-1	Orifice		2-Out			6970.68		1.500		0.09						
14 2-2	Orifice	2	2-Out		6969.68	6970.68		1.500		0.08						
15 2-3	Orifice	2	2-Out		6969.68	6970.68		2.000		0.12						
16 2-4	Orifice	2	2-Out		6969.68	6970.68		3.000		0.21						
17 3-1	Orifice	3	3-Out		6969.93	6970.93		1.500		0.06						
18 3-2	Orifice	3	3-Out		6969.93	6970.93		1.500		0.06						
19 3-3	Orifice	3	3-Out		6969.93	6970.93		2.000		0.10						
20 3-4	Orifice	3	3-Out		6969.93	6970.93		3.000		0.24						
21 4-1	Orifice	4	4-Out		6970.23	6971.23		1.500		0.06						
22 4-2	Orifice	4	4-Out		6970.23	6971.23		1.500		0.06						
23 4-3	Orifice	4	4-Out		6970.23	6971.23		1.500		0.06						
24 4-4	Orifice	4	4-Out			6971.23		1.500		0.06						
25 5-1	Orifice	5	5-Out			6971.53		1.500		0.05						
26 5-2	Orifice	5	5-Out			6971.53		1.500		0.05						
27 5-3	Orifice	5	5-Out			6971.53		1.500		0.05						
28 5-4	Orifice	5	5-Out			6971.53		1.500		0.05						
29 6-1	Orifice	6	6-Out			6972.60		1.500		0.08						
30 6-2	Orifice		6-Out			6972.60		1.500		0.08						
31 6-3	Orifice	6	6-Out			6972.60		2.000		0.15						
32 6-4	Orifice	6	6-Out			6972.60		2.000		0.15						
33 Weir1	Weir	1	1-Out			6970.46				4.77						
34 Weir2	Weir	2	2-Out			6970.68				3.97						
35 Weir3	Weir	3	3-Out			6970.93				11.73						
36 Weir4	Weir	4	4-Out			6971.23				3.40						
37 Weir5	Weir	5	5-Out			6971.53				1.78						
38 Weir6	Weir	6	6-Out			6972.60				1.05						
00 110	TTUI	v	0 Out		007 1.00	0012.00				1.00						

## Subbasin Hydrology

## Subbasin : BasinA

## Input Data

Area (ac)	0.07
Impervious Area (%)	100.00
Weighted Curve Number	98.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	85.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## Composite Curve Number

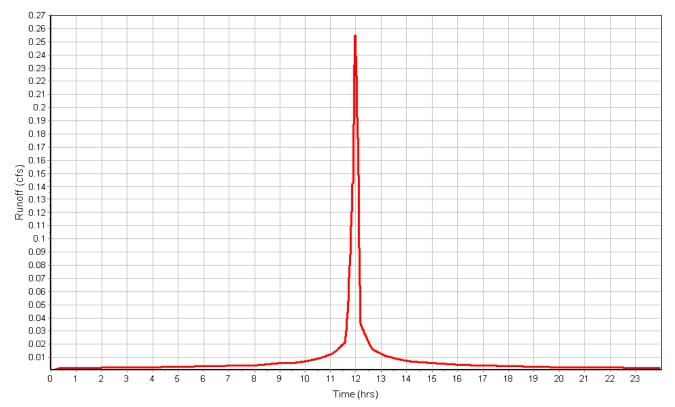
D	nposite Curve Number				
		Area	Soil	Curve	
	Soil/Surface Description	(acres)	Group	Number	
	-	0.07	-	98.00	
	Composite Area & Weighted CN	0.07		98.00	

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0000
Total Runoff (in)	2.71
Peak Runoff (cfs)	0.25
Weighted Curve Number	98.00
Time of Concentration (days hh:mm:ss)	0 00:04:00

#### Subbasin : BasinA

#### 3.8 3.6 3.4 3.2 3 2.8 2.6 2.4 2.2-Rainfall (in/hr) 2 1.8 1.6 1.4 1.2 1 0.8 0.6 0.4 0.2 5 7 8 ģ 16 Ó 1 ż з 4 6 10 11 12 13 14 15 17 18 19 20 21 22 23 24 Time (hrs)





#### Subbasin : BasinB

## Input Data

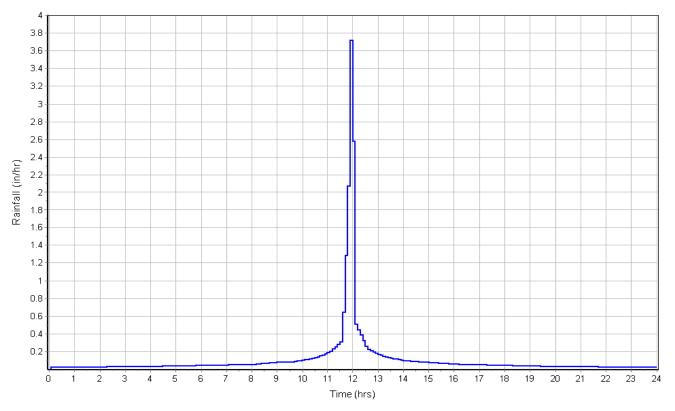
Area (ac)	0.20
Impervious Area (%)	100.00
Weighted Curve Number	98.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	176.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## Composite Curve Number

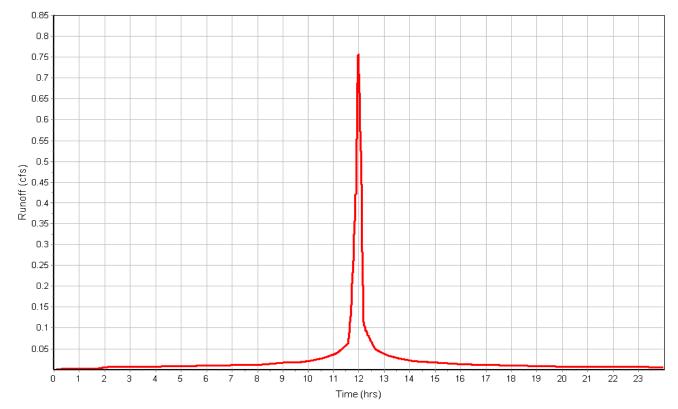
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.20	-	98.00
Composite Area & Weighted CN	0.20		98.00

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0000
Total Runoff (in)	2.69
Peak Runoff (cfs)	0.76
Weighted Curve Number	98.00
Time of Concentration (days hh:mm:ss)	0 00:06:02

#### Subbasin : BasinB







#### Subbasin : BasinC

## Input Data

Area (ac)	0.23
Impervious Area (%)	96.00
Weighted Curve Number	97.70
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	199.50
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

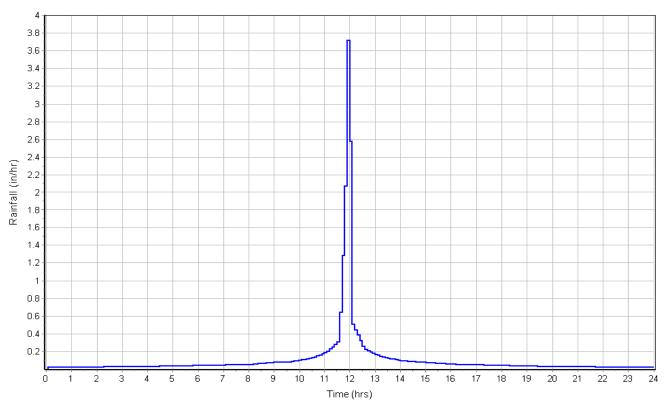
## Composite Curve Number

	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.23	-	97.70
Composite Area & Weighted CN	0.23		97.70

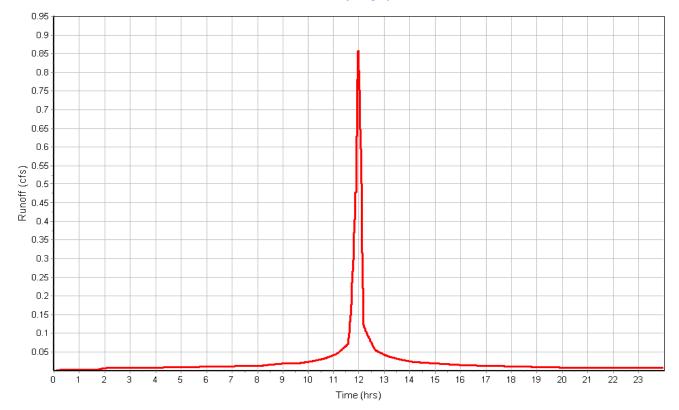
Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0090
Total Runoff (in)	2.67
Peak Runoff (cfs)	0.86
Weighted Curve Number	97.70
Time of Concentration (days hh:mm:ss)	0 00:04:51

#### Subbasin : BasinC









#### Subbasin : BasinD

## Input Data

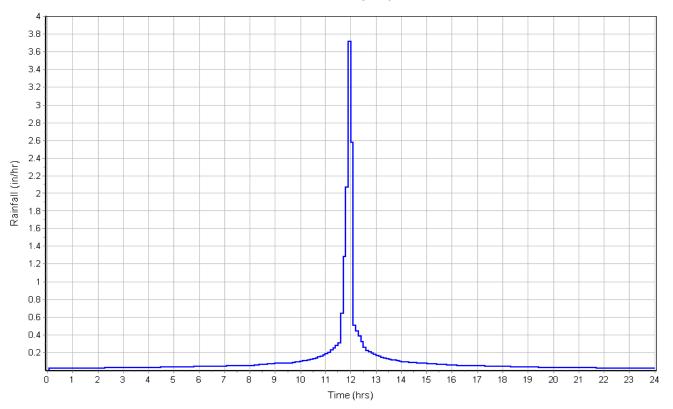
Area (ac)	0.18
Impervious Area (%)	52.00
Weighted Curve Number	89.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	157.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## **Composite Curve Number**

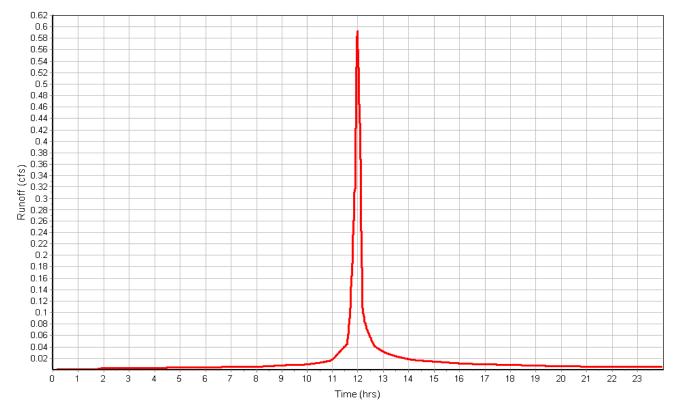
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.18	-	89.00
Composite Area & Weighted CN	0.18		89.00

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.4070
Total Runoff (in)	2.19
Peak Runoff (cfs)	0.59
Weighted Curve Number	89.00
Time of Concentration (days hh:mm:ss)	0 00:12:44

#### Subbasin : BasinD







#### Subbasin : BasinE

## Input Data

Area (ac)	0.16
Impervious Area (%)	98.00
Weighted Curve Number	97.60
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	138.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## Composite Curve Number

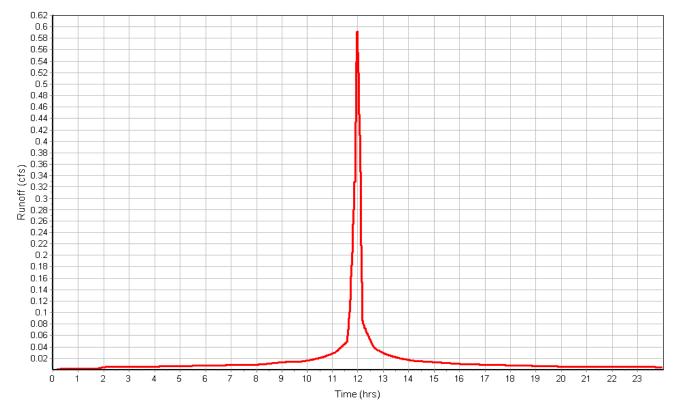
Area	Soil	Curve
(acres)	Group	Number
0.16	-	97.60
0.16		97.60
	(acres) 0.16	(acres) Group 0.16 -

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0050
Total Runoff (in)	2.68
Peak Runoff (cfs)	0.59
Weighted Curve Number	97.60
Time of Concentration (days hh:mm:ss)	0 00:04:54

#### Subbasin : BasinE

#### 4 3.8 3.6 3.4 3.2 3 2.8 2.6 2.4 Rainfall (in/hr) 2.2 2 1.8 1.6 1.4 1.2 1 0.8 0.6 0.4 0.2 5 ź 8 ģ 16 Ó 1 ż 3 4 6 10 11 12 13 14 15 17 18 19 20 21 22 23 24 Time (hrs)





#### Subbasin : BasinF

## Input Data

Area (ac)	0.35
Impervious Area (%)	89.00
Weighted Curve Number	96.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	4.0000
Equivalent Width (ft)	153.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## **Composite Curve Number**

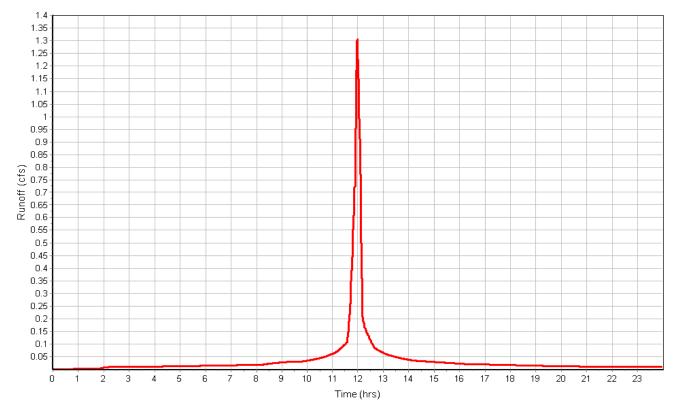
Area	Soil	Curve
(acres)	Group	Number
0.35	-	96.00
0.35		96.00
	(acres) 0.35	(acres) Group 0.35 -

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.0400
Total Runoff (in)	2.62
Peak Runoff (cfs)	1.30
Weighted Curve Number	96.00
Time of Concentration (days hh:mm:ss)	0 00:07:58

#### Subbasin : BasinF

#### 4 3.8 3.6 3.4 3.2 3 2.8 2.6 2.4 Rainfall (in/hr) 2.2 2-1.8 1.6 1.4 1.2 1 0.8 0.6 0.4 0.2 5 ź 8 ģ 10 16 Ó 1 ż 3 4 6 11 12 13 14 15 17 18 19 20 21 22 23 24 Time (hrs)





#### Subbasin : BasinG

## Input Data

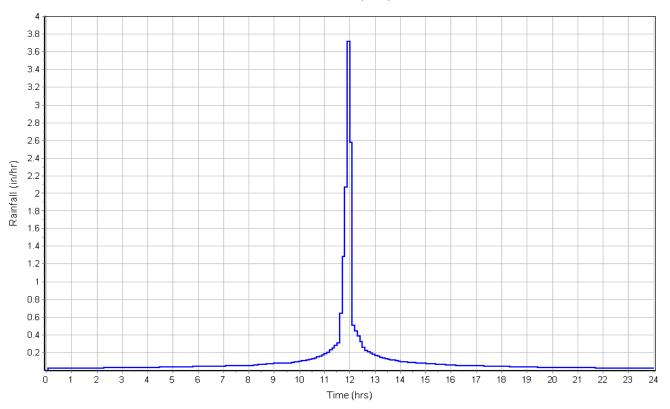
Area (ac)	0.33
Impervious Area (%)	0.00
Weighted Curve Number	79.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	95.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## Composite Curve Number

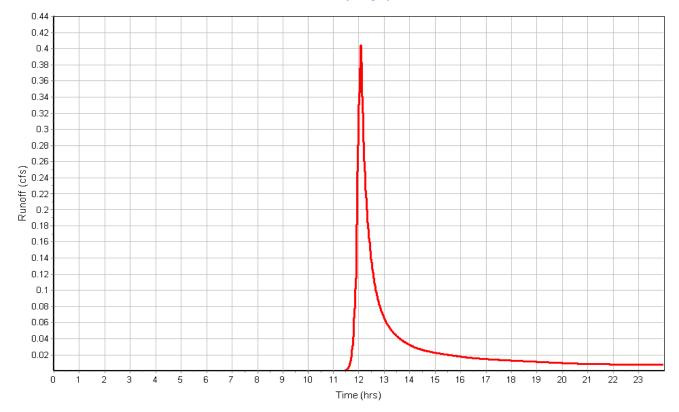
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.33	-	79.00
Composite Area & Weighted CN	0.33		79.00

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	1.3420
Total Runoff (in)	1.19
Peak Runoff (cfs)	0.40
Weighted Curve Number	79.00
Time of Concentration (days hh:mm:ss)	0 00:46:20

#### Subbasin : BasinG



## Runoff Hydrograph



## Subbasin : East Grass

## Input Data

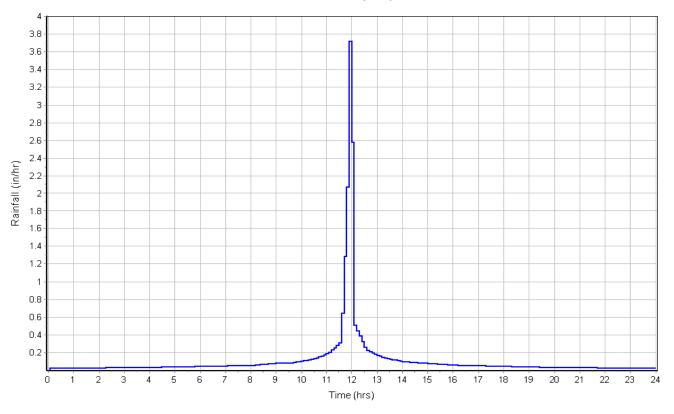
Area (ac)	0.03
Impervious Area (%)	2.00
Weighted Curve Number	79.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	210.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## **Composite Curve Number**

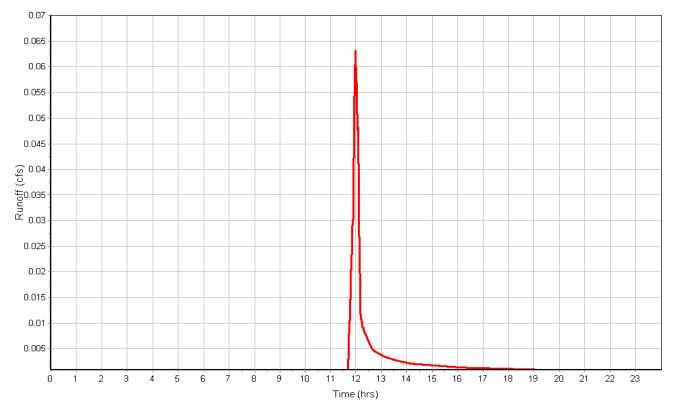
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.03	-	79.00
Composite Area & Weighted CN	0.03		79.00

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	1.3150
Total Runoff (in)	1.20
Peak Runoff (cfs)	0.06
Weighted Curve Number	79.00
Time of Concentration (days hh:mm:ss)	0 00:06:39

#### Subbasin : East Grass



## Runoff Hydrograph



## Subbasin : ExistingParcel

## Input Data

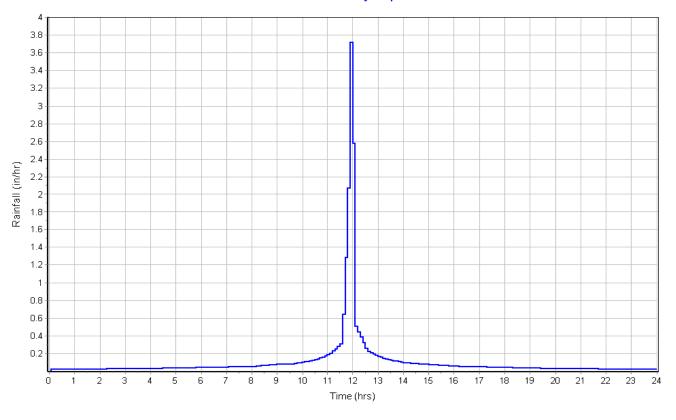
Area (ac)	1.64
Impervious Area (%)	2.00
Weighted Curve Number	86.60
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	2.1000
Equivalent Width (ft)	357.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## Composite Curve Number

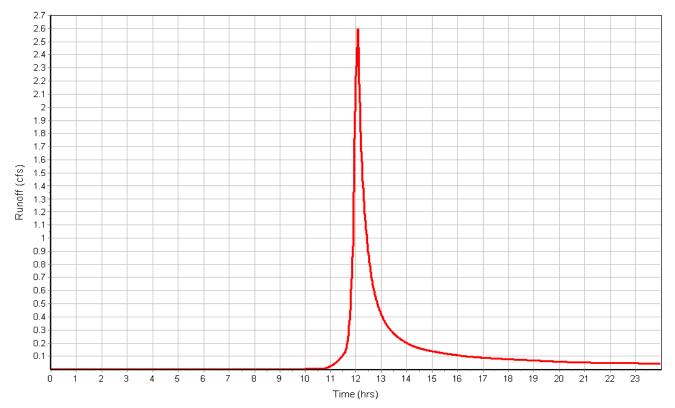
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	1.64	-	86.60
Composite Area & Weighted CN	1.64		86.60

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	0.9650
Total Runoff (in)	1.56
Peak Runoff (cfs)	2.59
Weighted Curve Number	86.60
Time of Concentration (days hh:mm:ss)	0 00:54:32

#### Subbasin : ExistingParcel







## Subbasin : West Grass

## Input Data

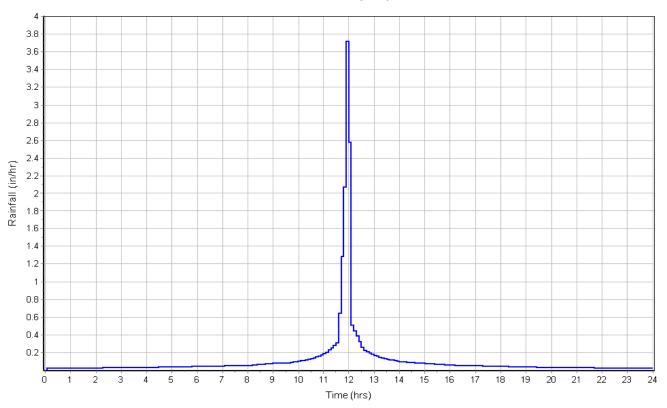
Area (ac)	0.09
Impervious Area (%)	15.00
Weighted Curve Number	79.00
Conductivity (in/hr)	0.1500
Drying Time (days)	7.00
Average Slope (%)	5.0000
Equivalent Width (ft)	640.00
Impervious Area	
Manning's Roughness	0.0150
Pervious Area	
Manning's Roughness	0.1500
Curb & Gutter Length (ft)	0.00
Rain Gage ID	Rain Gage-01

## Composite Curve Number

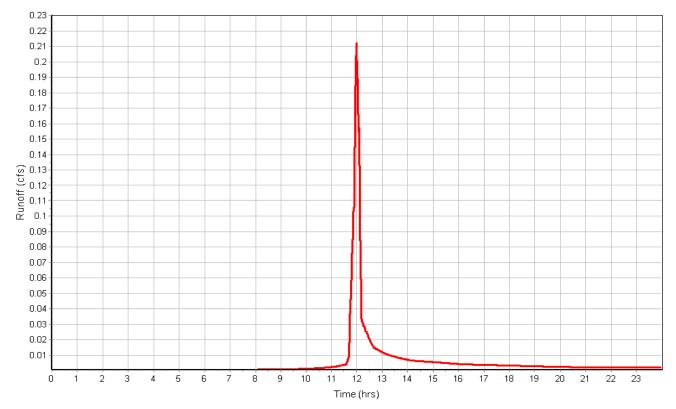
	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
-	0.09	-	79.00
Composite Area & Weighted CN	0.09		79.00

Total Rainfall (in)	2.71
Total Runon (in)	0.00
Total Evaporation (in)	0.0000
Total Infiltration (in)	1.1410
Total Runoff (in)	1.40
Peak Runoff (cfs)	0.21
Weighted Curve Number	79.00
Time of Concentration (days hh:mm:ss)	0 00:04:42

#### Subbasin : West Grass







## **Junction Input**

SN Element	Invert Elevation	Ground/Rim (Max)	Ground/Rim (Max)	Initial Water	Initial Water	Surcharge Elevation	Surcharge Depth	Ponded Area	Minimum Pipe
		Elevation	· · ·	Elevation	Depth				Cover
	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft <sup>2</sup> )	(in)
1 1-Out	6970.46	6973.89	3.43	0.00	-6970.46	0.00	-6973.89	0.00	0.00
2 2-Out	6970.68	6974.61	3.93	0.00	-6970.68	0.00	-6974.61	0.00	0.00
3 3-Out	6970.93	6975.50	4.57	0.00	-6970.93	0.00	-6975.50	0.00	0.00
4 4-Out	6971.23	6976.39	5.16	0.00	-6971.23	0.00	-6976.39	0.00	0.00
5 5-Out	6971.53	6978.58	7.05	0.00	-6971.53	0.00	-6978.58	0.00	0.00
6 6-Out	6972.60	6979.83	7.23	0.00	-6972.60	0.00	-6979.83	0.00	0.00
7 CurbInletBox2	6970.63	6973.62	2.99	0.00	-6970.63	0.00	-6973.62	0.00	17.88
8 InletBox2	6972.99	6980.50	7.51	0.00	-6972.99	0.00	-6980.50	0.00	60.12

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## **Junction Results**

SN Element ID	Peak Inflow		Max HGL Elevation		Max Surcharge		0	Average HGL Depth	Time of Max HGL	Time of Peak	Total Flooded	Total Time Flooded
		Inflow	Attained	Attained	Depth	Attained	Attained	Attained	Occurrence	Flooding	Volume	
					Attained					Occurrence		
	(cfs)	(cfs)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(days hh:mm)	(days hh:mm)	(ac-in)	(min)
1 1-Out	5.88	0.00	6972.18	1.72	0.00	2.35	6970.58	0.12	0 12:13	0 00:00	0.00	0.00
2 2-Out	6.47	0.00	6974.68	4.00	0.00	0.00	6970.99	0.31	0 12:05	0 12:14	0.02	6.00
3 3-Out	12.04	0.00	6974.72	3.79	0.00	0.96	6971.67	0.74	0 12:08	0 00:00	0.00	0.00
4 4-Out	3.49	0.00	6974.63	3.40	0.00	1.76	6972.00	0.77	0 12:06	0 00:00	0.00	0.00
5 5-Out	1.99	0.00	6974.74	3.21	0.00	3.84	6972.36	0.83	0 12:05	0 00:00	0.00	0.00
6 6-Out	1.46	0.00	6975.29	2.69	0.00	4.54	6973.11	0.51	0 12:03	0 00:00	0.00	0.00
7 CurbInletBox2	10.98	0.25	6973.50	2.87	0.00	0.12	6970.91	0.28	0 12:48	0 00:00	0.00	0.00
8 InletBox2	0.70	0.40	6976.80	3.81	0.00	3.70	6973.48	0.49	0 12:02	0 00:00	0.00	0.00

# Pipe Input

SN Element ID	Length	Inlet Invert	Inlet Invert		Outlet Invert		Average Pipe Slope Shape	Pipe Diameter or		Manning's Roughness		Exit/Bend Losses		Initial Flap Flow Gate	No. of Barrels
		Elevation	Offset	Elevation	Offset	•		Height		0					
	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(%)	(in)	(in)					(cfs)	
1 Pipe-0	202.64	6970.46	0.00	6967.99	0.00	2.47	1.2200 CIRCULAR	12.000	12.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
2 Pipe-1	37.35	6970.63	0.00	6970.56	1.00	0.07	0.1900 CIRCULAR	18.000	18.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
3 Pipe-2	22.86	6970.68	0.00	6970.63	0.00	0.05	0.2200 CIRCULAR	18.000	18.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
4 Pipe-3	77.10	6970.93	0.00	6970.78	1.10	0.15	0.1900 CIRCULAR	24.000	24.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
5 Pipe-4	99.50	6971.23	0.00	6971.03	1.10	0.20	0.2000 CIRCULAR	30.000	30.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
6 Pipe-5	98.40	6971.53	0.00	6971.33	1.10	0.20	0.2000 CIRCULAR	30.000	30.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
7 Pipe-6	91.70	6972.60	0.00	6972.42	1.89	0.18	0.2000 CIRCULAR	30.000	30.000	0.0100	0.5000	0.5000	0.0000	0.00 No	1
8 Pipe-7	139.00	6972.99	0.00	6972.70	1.10	0.29	0.2100 CIRCULAR	30.000	30.000	0.0150	0.5000	0.5000	0.0000	0.00 No	1

# **Pipe Results**

SN Element	Peak	Time of	Design Flow	Peak Flow/	Peak Flow	Travel	Peak Flow	Peak Flow	Total Time	Froude Reported
ID	Flow	Peak Flow	Capacity	Design Flow	Velocity	Time	Depth	Depth/	Surcharged	Number Condition
		Occurrence		Ratio				Total Depth		
								Ratio		
	(cfs)	(days hh:mm)	(cfs)		(ft/sec)	(min)	(ft)		(min)	
1 Pipe-0	5.11	0 12:13	5.11	1.00	7.03	0.48	0.91	0.91	0.00	1.55 Calculated
2 Pipe-1	5.15	0 12:08	5.91	0.87	2.92	0.21	1.50	1.00	50.00	0.59 SURCHARGED
3 Pipe-2	10.97	0 12:48	6.39	1.72	6.21	0.06	1.50	1.00	50.00	0.44 SURCHARGED
4 Pipe-3	6.45	0 12:04	12.97	0.50	2.05	0.63	2.00	1.00	49.00	0.05 SURCHARGED
5 Pipe-4	3.79	0 12:05	23.91	0.16	0.96	1.73	2.50	1.00	40.00	0.03 SURCHARGED
6 Pipe-5	2.17	0 12:05	24.04	0.09	1.07	1.53	2.50	1.00	90.00	0.07 SURCHARGED
7 Pipe-6	1.58	0 12:03	23.62	0.07	1.24	1.23	2.50	1.00	21.00	0.64 SURCHARGED
8 Pipe-7	0.42	0 12:01	16.24	0.03	0.34	6.81	2.50	1.00	49.00	0.04 SURCHARGED

## Storage Nodes

## Storage Node : 1

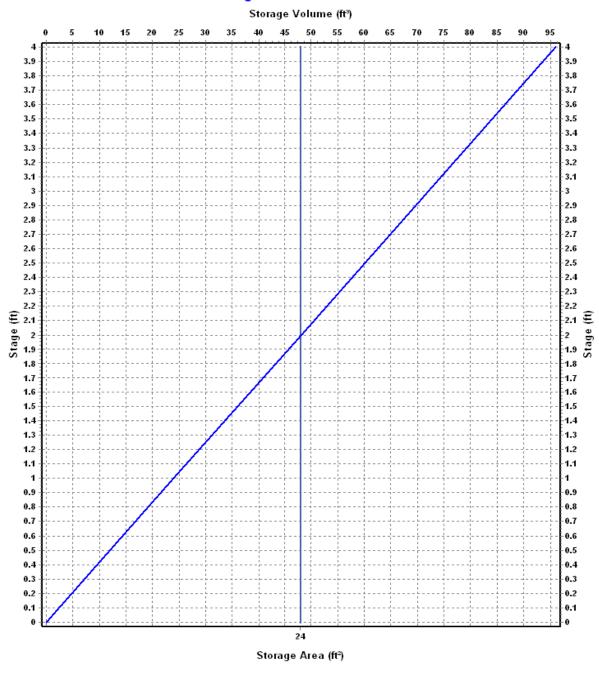
## Input Data

Invert Elevation (ft)	6969.56
Max (Rim) Elevation (ft)	6973.89
Max (Rim) Offset (ft)	4.33
Initial Water Elevation (ft)	0.00
Initial Water Depth (ft)	6969.56
Ponded Area (ft <sup>2</sup> )	0.00
Evaporation Loss	0.00

## Storage Area Volume Curves

#### Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft²)	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00



## Storage Area Volume Curves

— Storage Area 🛛 — Storage Volume

## Storage Node : 1 (continued)

## **Outflow Weirs**

SN Element ID	Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir1	Rectangular	No	6972.63	3.07	4.00	1.00	3.33

## **Outflow Orifices**

SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
 1 1-1 2 1-2 3 1-3 4 1-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	4.00 3.00 3.00 2.00	()	()	6970.46 6970.96 6971.46 6971.96	0.61 0.61 0.61 0.61

## **Output Summary Results**

Peak Inflow (cfs)	5.15
Peak Lateral Inflow (cfs)	0.00
Peak Outflow (cfs)	5.88
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6973.04
Max HGL Depth Attained (ft)	3.48
Average HGL Elevation Attained (ft)	6970.77
Average HGL Depth Attained (ft)	1.21
Time of Max HGL Occurrence (days hh:mm)	0 12:08
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

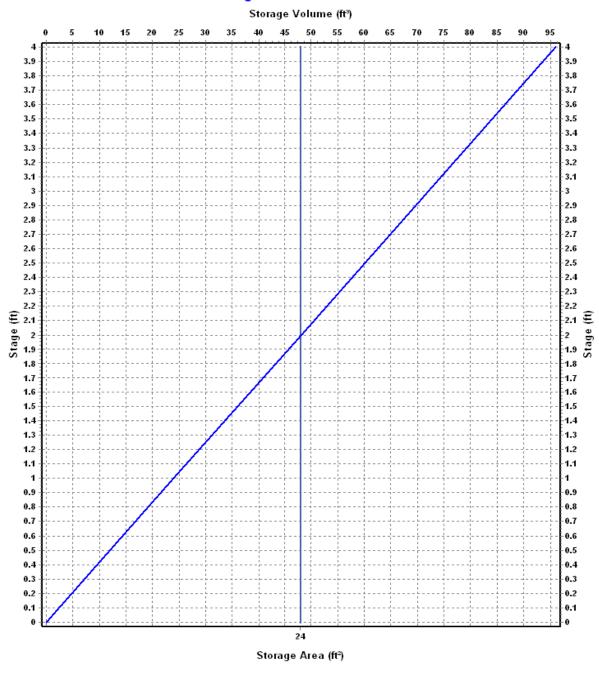
## Storage Node : 2

## Input Data

Invert Elevation (ft) Max (Rim) Elevation (ft)	
Max (Rim) Offset (ft)	
Initial Water Elevation (ft)	
Initial Water Depth (ft)	6969.68
Ponded Area (ft <sup>2</sup> )	0.00
Evaporation Loss	0.00

# Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft <sup>2</sup> )	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00
1 2 3	24 24 24	24.00 48.00 72.00



## Storage Area Volume Curves

— Storage Area 🛛 — Storage Volume

## Storage Node : 2 (continued)

## **Outflow Weirs**

SN Eleme ID	ent Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir2	Rectang	ular No	6972.68	3.00	4.00	1.00	3.33

## **Outflow Orifices**

SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
1 2-1 2 2-2 3 2-3 4 2-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	1.50 1.50 2.00 3.00			6970.68 6971.18 6971.68 6972.18	0.61 0.61 0.61 0.61

## **Output Summary Results**

Peak Inflow (cfs)	6.99
Peak Lateral Inflow (cfs)	0.76
Peak Outflow (cfs)	4.57
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6974.61
Max HGL Depth Attained (ft)	4.93
Average HGL Elevation Attained (ft)	6971.59
Average HGL Depth Attained (ft)	1.91
Time of Max HGL Occurrence (days hh:mm)	0 12:05
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0.21
Total Time Flooded (min)	4
Total Retention Time (sec)	0.00

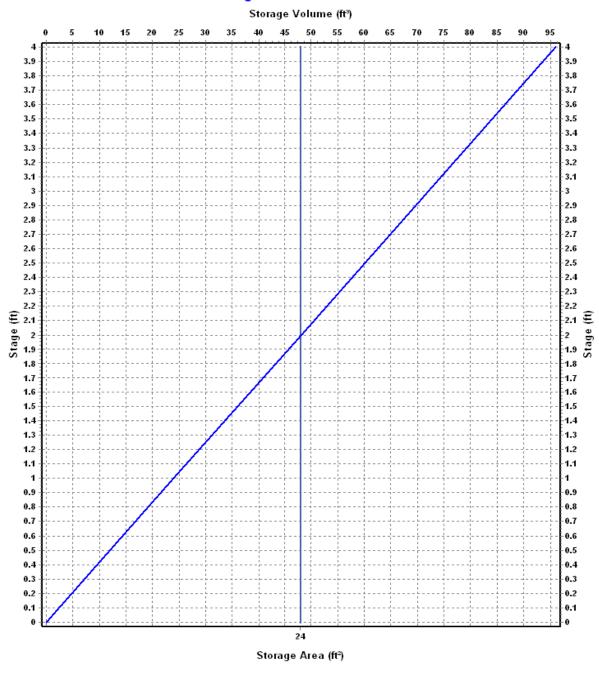
#### Storage Node : 3

#### Input Data

6969.93 6975.50 5.57 0.00 -6969.93 0.00
0.00

## Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft <sup>2</sup> )	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00
1 2 3	24 24 24	24.00 48.00 72.00



#### Storage Area Volume Curves

— Storage Area 🛛 — Storage Volume

#### Storage Node : 3 (continued)

#### **Outflow Weirs**

SN Eleme ID	ent Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir3	8 Rectang	ular No	6973.68	3.75	4.00	1.00	3.33

#### **Outflow Orifices**

SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
1 3-1 2 3-2 3 3-3 4 3-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	1.50 1.50 2.00 3.00			6970.93 6971.43 6971.93 6972.43	0.61 0.61 0.61 0.61

#### **Output Summary Results**

Peak Inflow (cfs)	9.70
Peak Lateral Inflow (cfs)	0.86
Peak Outflow (cfs)	12.04
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6974.82
Max HGL Depth Attained (ft)	4.89
Average HGL Elevation Attained (ft)	6971.91
Average HGL Depth Attained (ft)	1.98
Time of Max HGL Occurrence (days hh:mm)	0 12:10
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

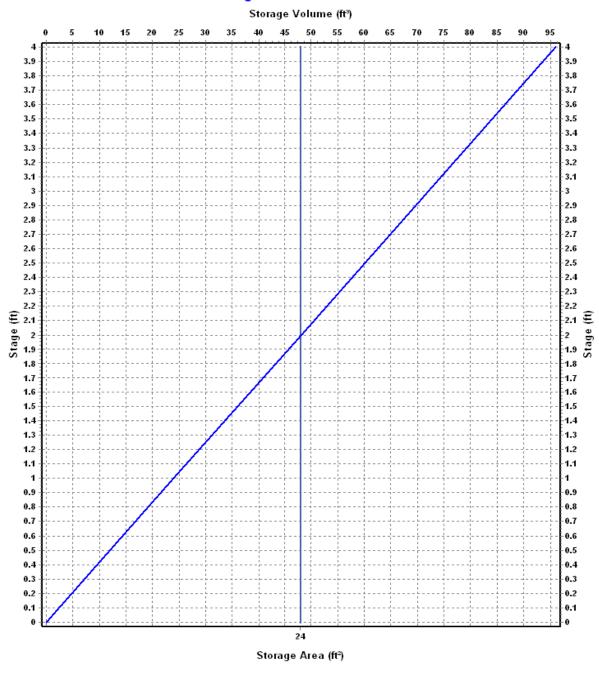
#### Storage Node : 4

#### Input Data

Invert Elevation (ft) Max (Rim) Elevation (ft) Max (Rim) Offset (ft) Initial Water Elevation (ft) Initial Water Depth (ft) Ponded Area (ft <sup>2</sup> ) Evaporation Loss	6976.39 6.16 0.00 -6970.23 0.00
Evaporation Loss	0.00

## Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft <sup>2</sup> )	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00
1 2 3	24 24 24	24.00 48.00 72.00



#### Storage Area Volume Curves

— Storage Area 🛛 — Storage Volume

#### Storage Node : 4 (continued)

#### **Outflow Weirs**

SN Eleme ID	ent Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir4	Rectang	ular No	6974.23	4.00	4.00	1.00	3.33

#### **Outflow Orifices**

SN Elemo ID	ent Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
 1 4-1	Side	CIRCULAR	No	1.50			6971.23	0.61
2 4-2	Side	CIRCULAR	No	1.50			6971.73	0.61
3 4-3	Side	CIRCULAR	No	1.50			6972.23	0.61
4 4-4	Side	CIRCULAR	No	1.50			6972.73	0.61

#### **Output Summary Results**

Peak Inflow (cfs)	2.60
Peak Lateral Inflow (cfs)	0.59
Peak Outflow (cfs)	3.49
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6974.74
Max HGL Depth Attained (ft)	4.51
Average HGL Elevation Attained (ft)	6972.24
Average HGL Depth Attained (ft)	2.01
Time of Max HGL Occurrence (days hh:mm)	0 12:05
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

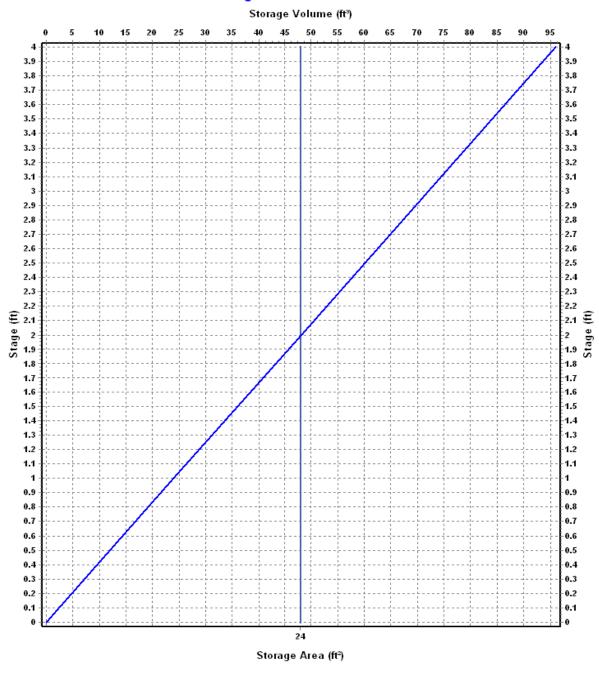
#### Storage Node : 5

#### Input Data

Invert Elevation (ft) Max (Rim) Elevation (ft) Max (Rim) Offset (ft) Initial Water Elevation (ft) Initial Water Depth (ft) Ponded Area (ft <sup>2</sup> ) Evaporation Loss	6978.58 8.05 0.00 -6970.53 0.00
Evaporation Loss	0.00

## Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft²)	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00



#### Storage Area Volume Curves

— Storage Area 🛛 — Storage Volume

#### Storage Node : 5 (continued)

#### **Outflow Weirs**

SN Eleme ID	ent Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir5	Rectang	ular No	6975.03	4.50	4.00	1.00	3.33

#### **Outflow Orifices**

:	SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
	1 5-1 2 5-2 3 5-3 4 5-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	1.50 1.50 1.50 1.50		. ,	6971.53 6972.03 6972.53 6973.03	0.61 0.61 0.61 0.61

#### **Output Summary Results**

Peak Inflow (cfs)	2.03
Peak Lateral Inflow (cfs)	0.59
Peak Outflow (cfs)	1.99
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6975.29
Max HGL Depth Attained (ft)	4.76
Average HGL Elevation Attained (ft)	6972.56
Average HGL Depth Attained (ft)	2.03
Time of Max HGL Occurrence (days hh:mm)	0 12:04
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

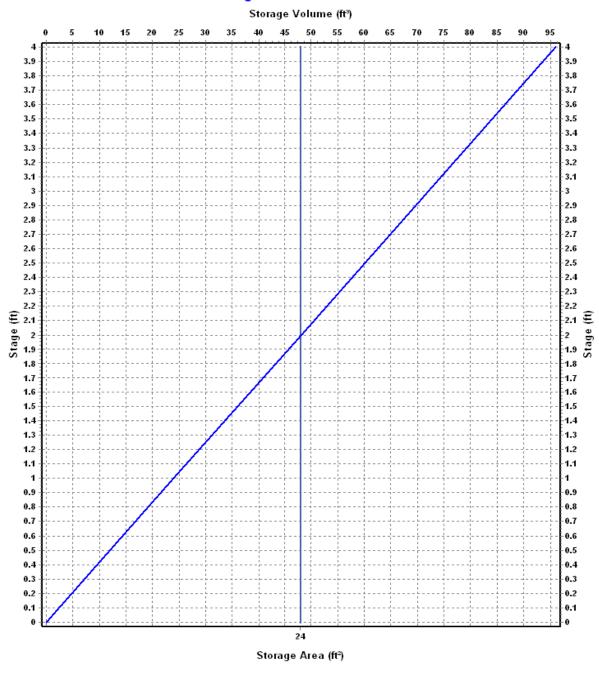
#### Storage Node : 6

#### Input Data

Invert Elevation (ft)	6971.60
Max (Rim) Elevation (ft)	6979.83
Max (Rim) Offset (ft)	8.23
Initial Water Elevation (ft)	0.00
Initial Water Depth (ft)	-6971.60
Ponded Area (ft <sup>2</sup> )	0.00
Evaporation Loss	0.00

## Storage Area Volume Curves Storage Curve : Inlet w/ Weir

Stage	Storage Area	Storage Volume
(ft)	(ft <sup>2</sup> )	(ft <sup>3</sup> )
0	24	0.000
1	24	24.00
2	24	48.00
3	24	72.00
4	24	96.00
1 2 3	24 24 24	24.00 48.00 72.00



#### Storage Area Volume Curves

— Storage Area 🛛 — Storage Volume

#### Storage Node : 6 (continued)

#### **Outflow Weirs**

SN Element ID	Weir Type	Flap Gate	Crest Elevation	Crest Offset	Length	Weir Total Height	Discharge Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir6	Rectangular	No	6976.60	5.00	4.00	1.00	3.33

#### **Outflow Orifices**

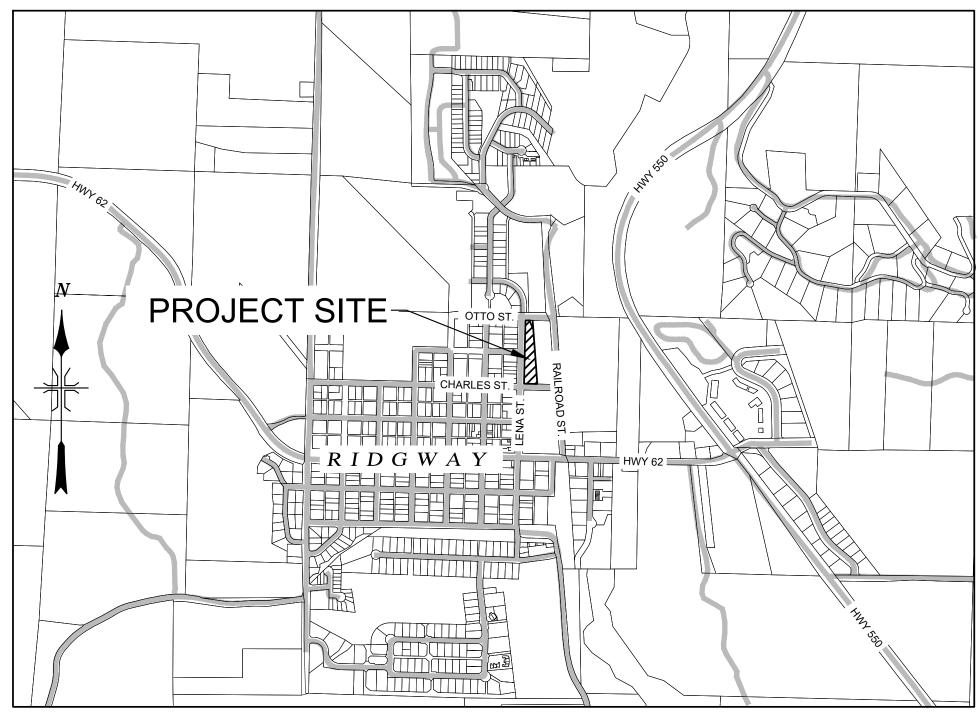
SN Element ID	Orifice Type	Orifice Shape	Flap Gate	Circular Orifice Diameter (in)	Rectangular Orifice Height (in)	Rectangular Orifice Width (in)	Orifice Invert Elevation (ft)	Orifice Coefficient
1 6-1 2 6-2 3 6-3 4 6-4	Side Side Side Side	CIRCULAR CIRCULAR CIRCULAR CIRCULAR	No No	1.50 1.50 2.00 2.00			6972.60 6973.10 6973.60 6974.10	0.61 0.61 0.61 0.61

#### **Output Summary Results**

Peak Inflow (cfs)	1.67
Peak Lateral Inflow (cfs)	1.30
Peak Outflow (cfs)	1.46
Peak Exfiltration Flow Rate (cfm)	0.00
Max HGL Elevation Attained (ft)	6976.78
Max HGL Depth Attained (ft)	5.18
Average HGL Elevation Attained (ft)	6973.27
Average HGL Depth Attained (ft)	1.67
Time of Max HGL Occurrence (days hh:mm)	0 12:02
Total Exfiltration Volume (1000-ft <sup>3</sup> )	0.000
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0.00

# LENA STREET COMMONS RIDGWAY, COLORADO

## CIVIL CONSTRUCTION PLANS



NOT TO SCALE



## DRAWING INDEX

9

11

12

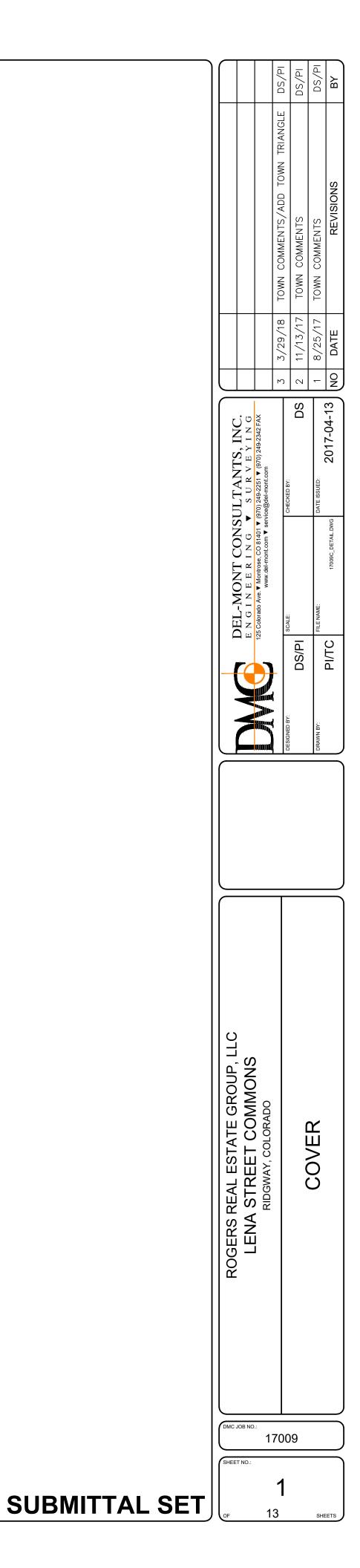
13

SHEET NO. DRAWING NAME

- 1 COVER
  - SITE PLAN
- MASTER GRADING AND DRAINAGE PLAN
- **GRADING PLAN UNIT A**
- **GRADING PLAN UNIT B**
- GRADING PLAN UNIT C
- GRADING PLAN UNIT D & E
- GRADING PLAN HB LOT
- UTILITY PLAN
- 10 STORM DRAIN PLAN & PROFILE
  - STORM DRAIN PLAN & PROFILE
  - ROOF DRAIN PROFILES
    - DETAILS

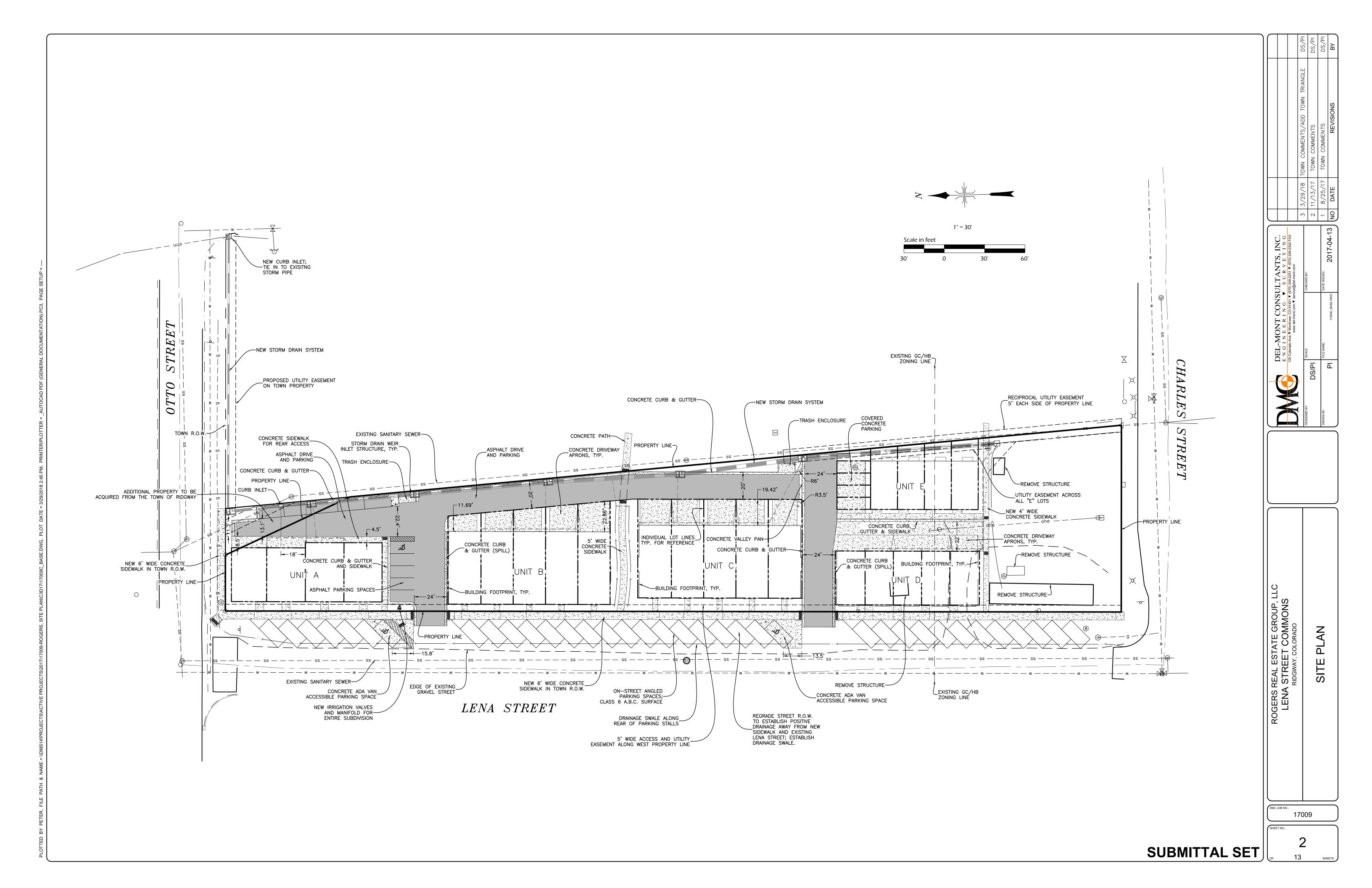
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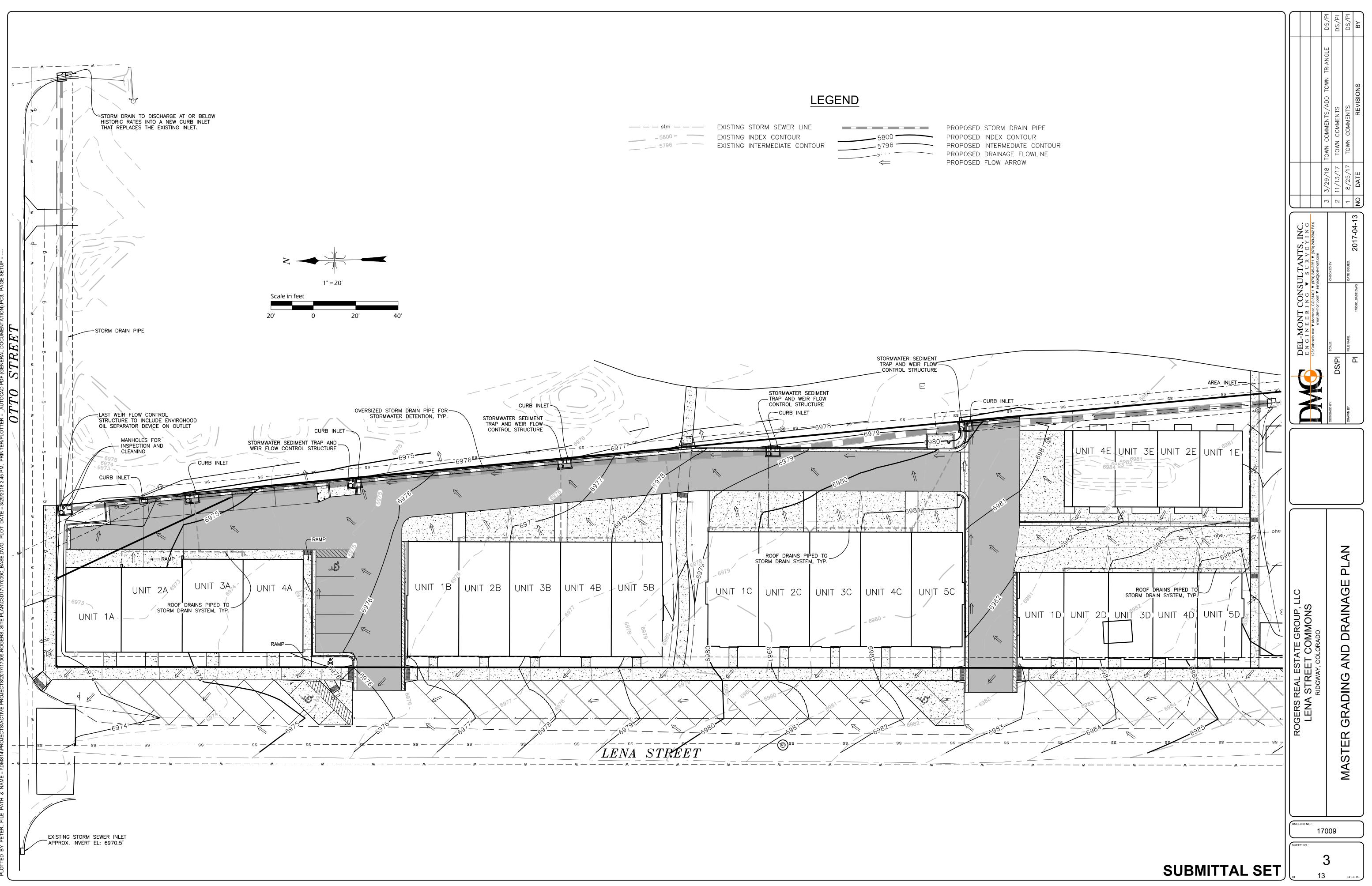
DEL-MONT CONSULTANTS, INC. E N G I N E E R I N G ▼ S U R V E Y I N G 125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX www.del-mont.com ▼ service@del-mont.com



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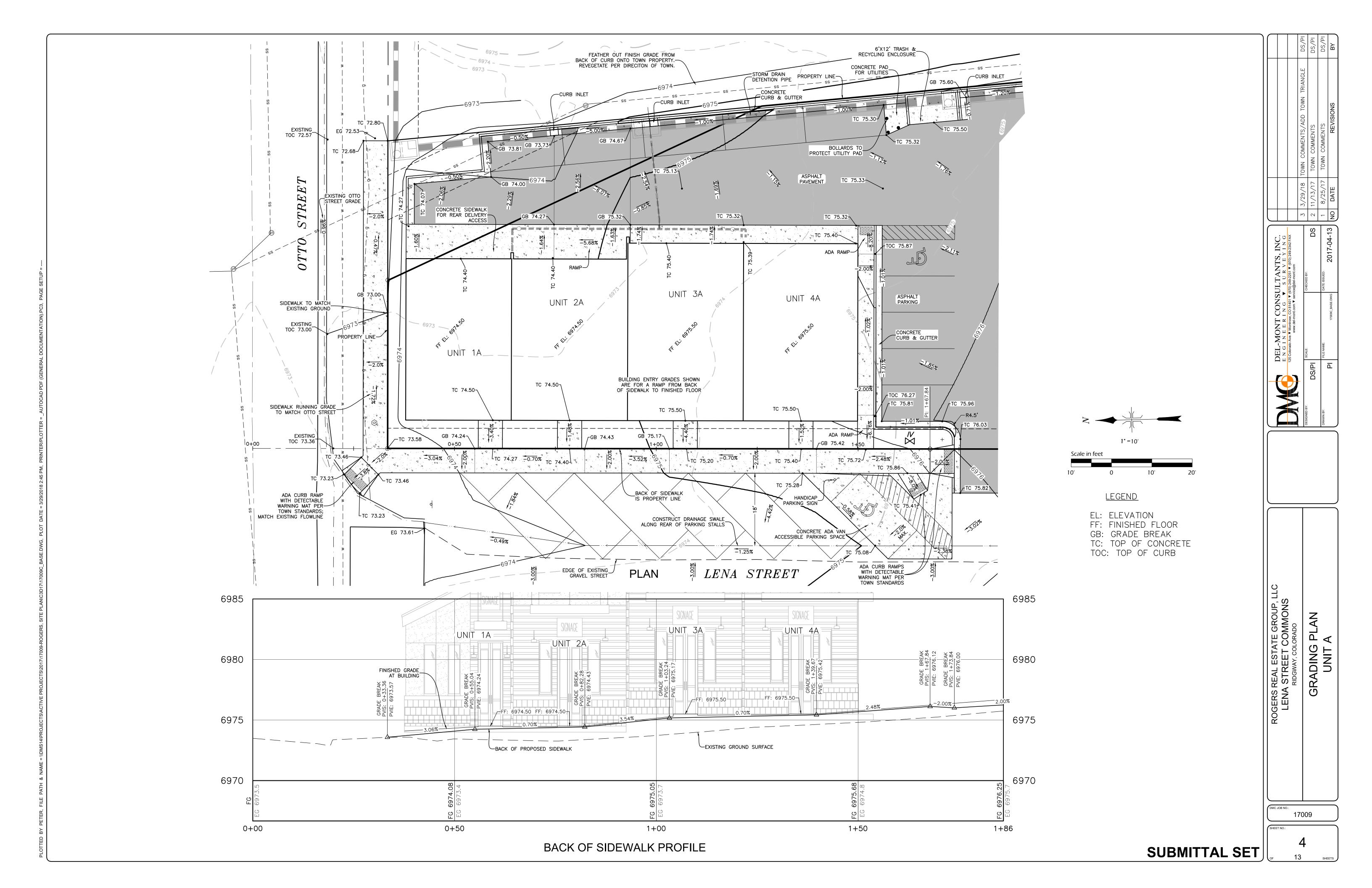
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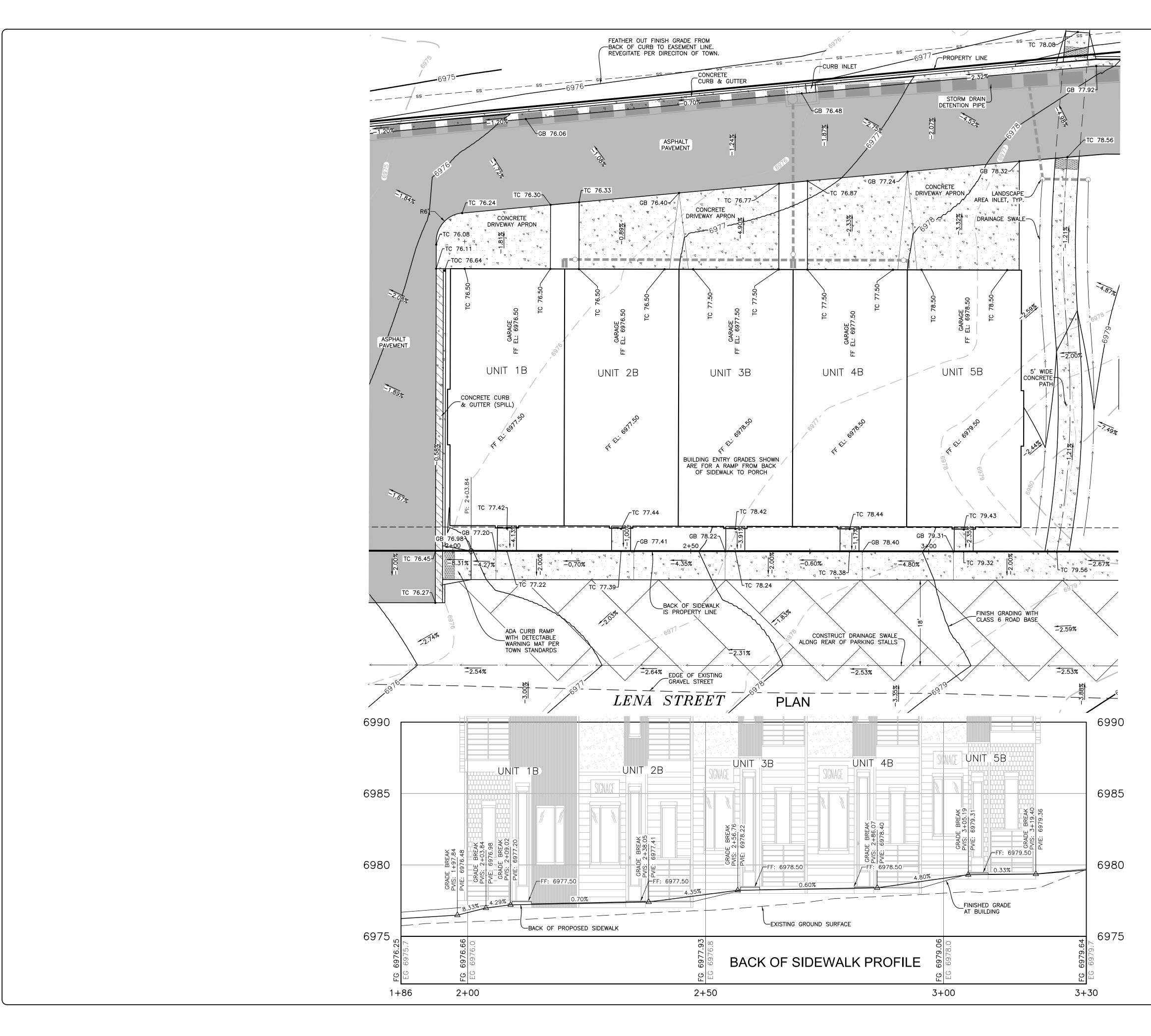




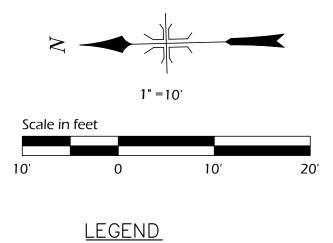
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EXISTING INTERMEDIATE CONTOUR	579
	EXISTING INDEX CONTOUR

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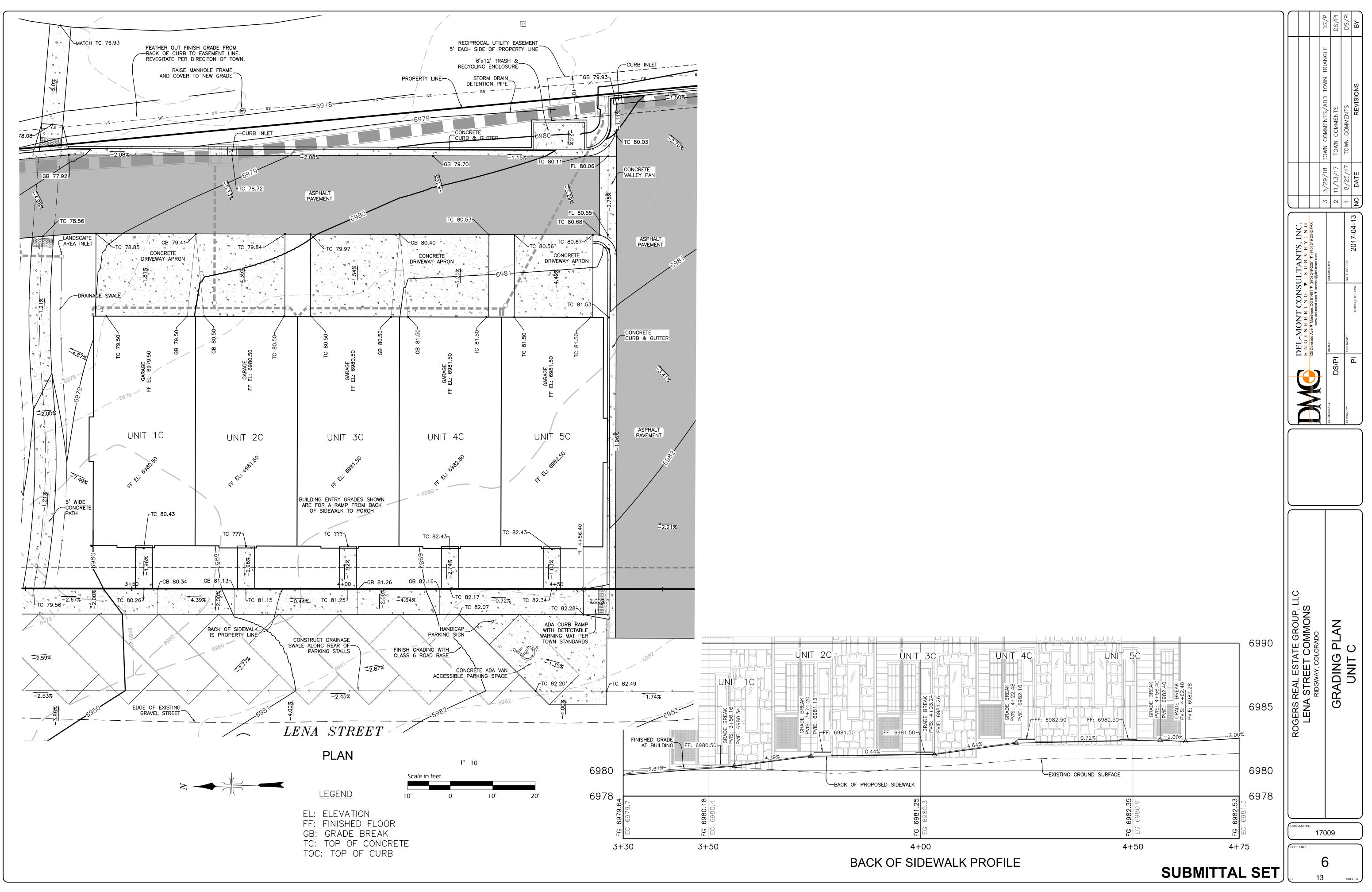


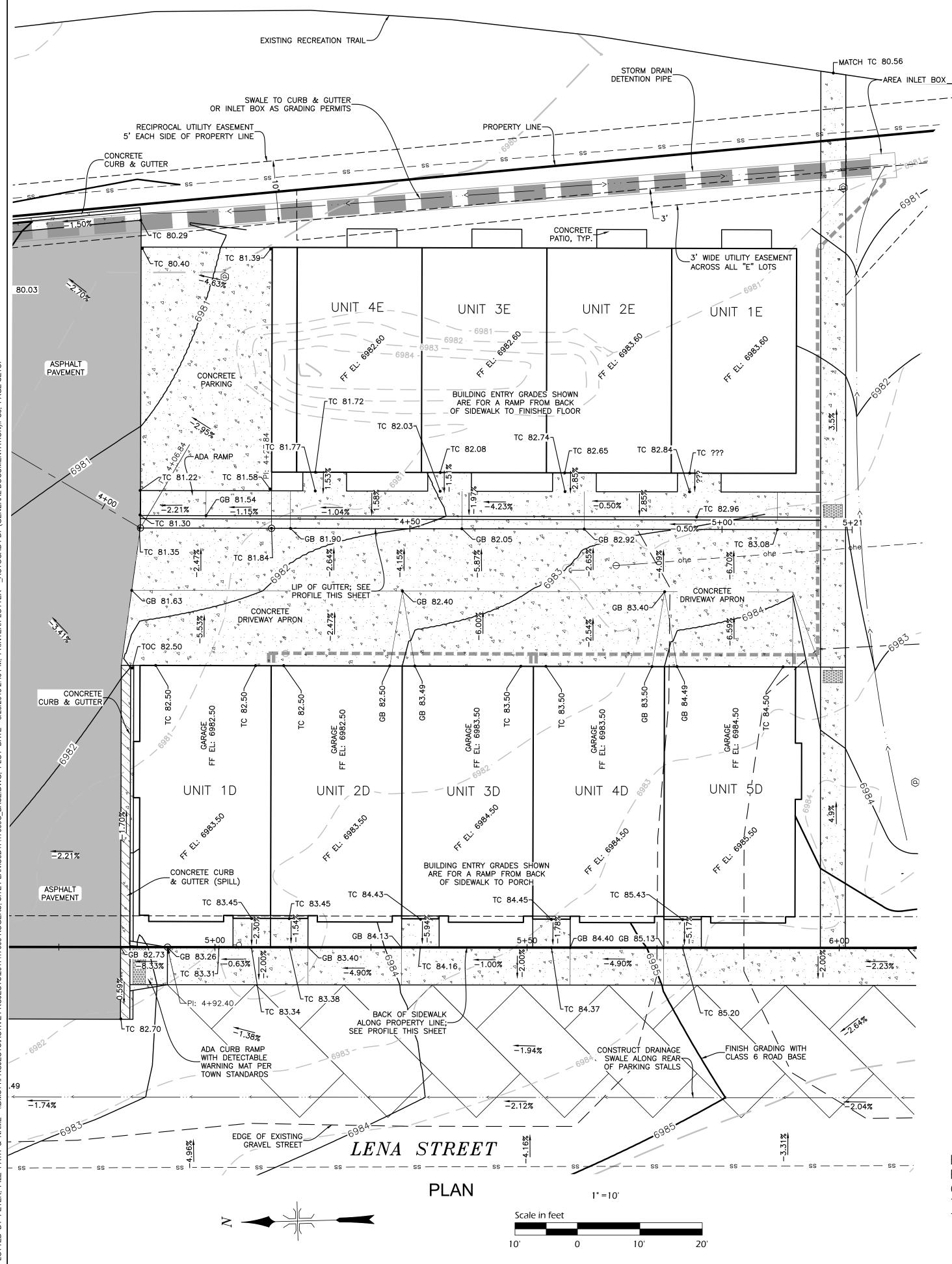
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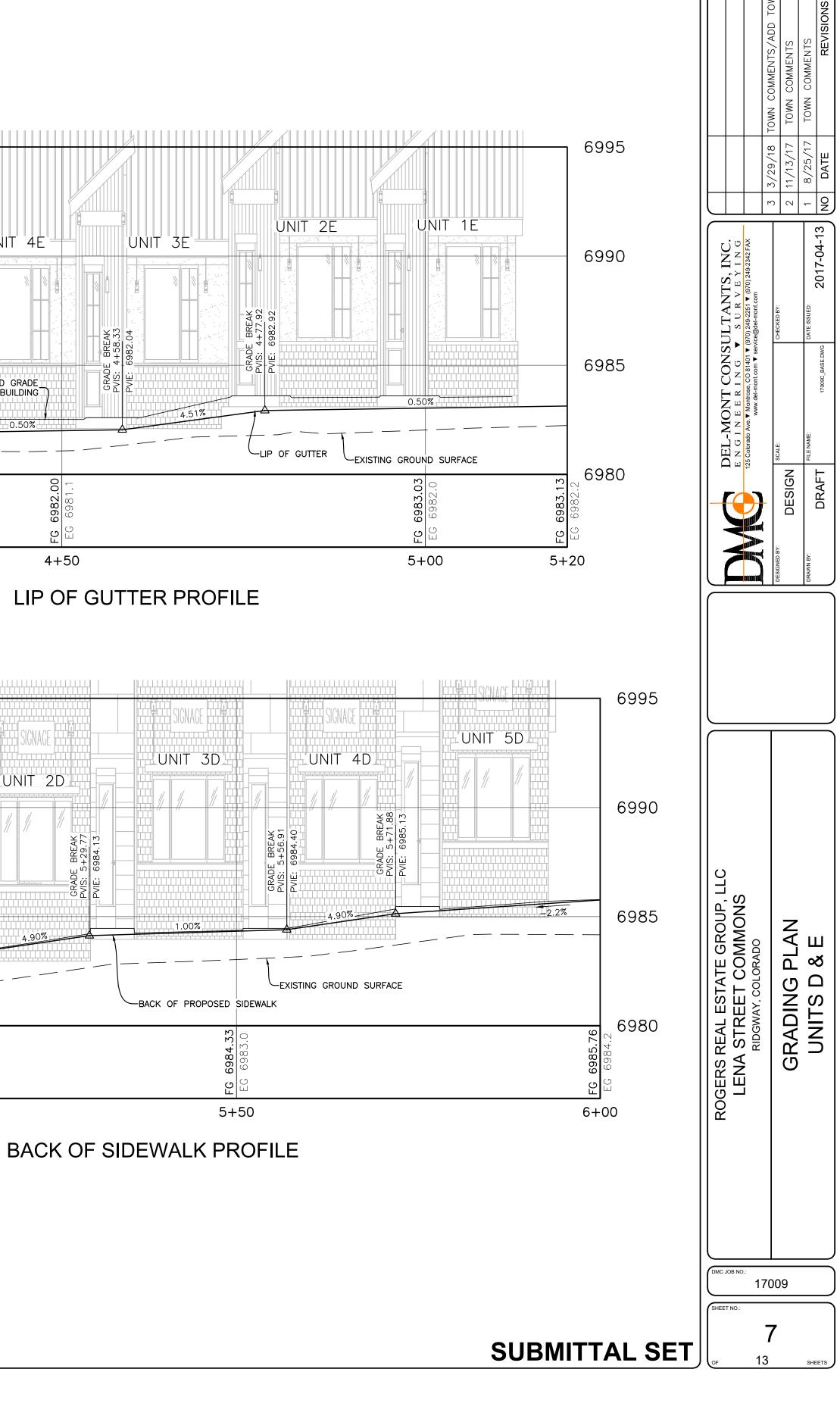
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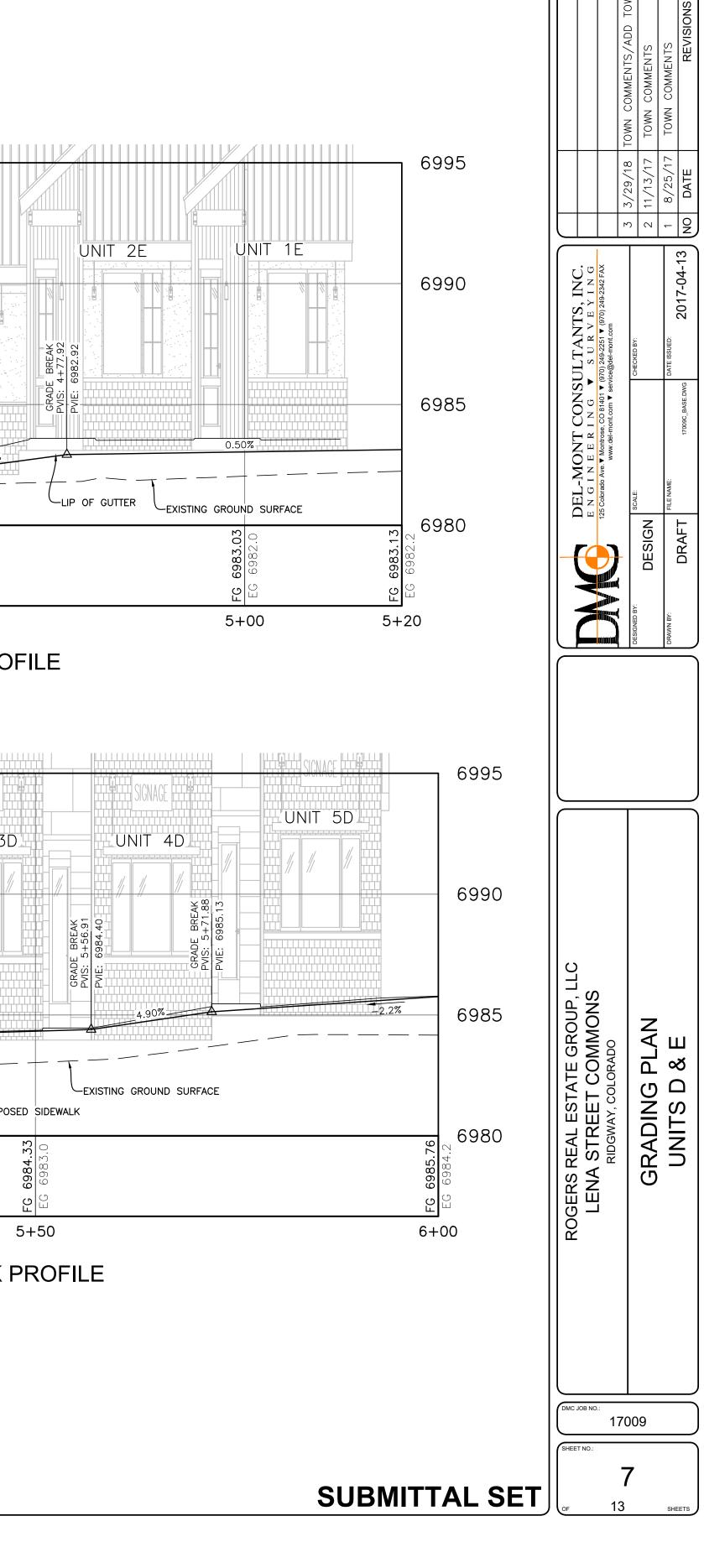
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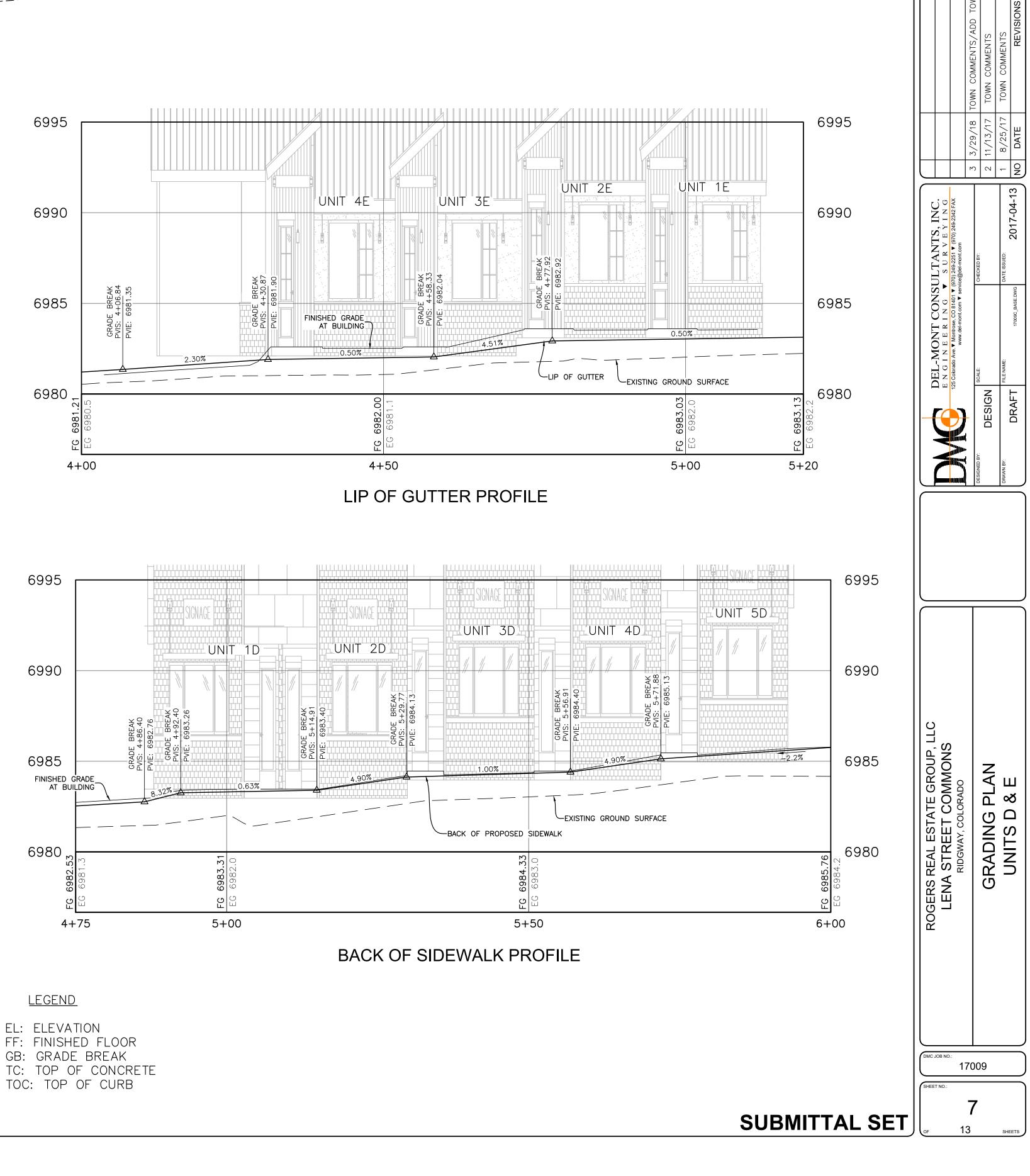


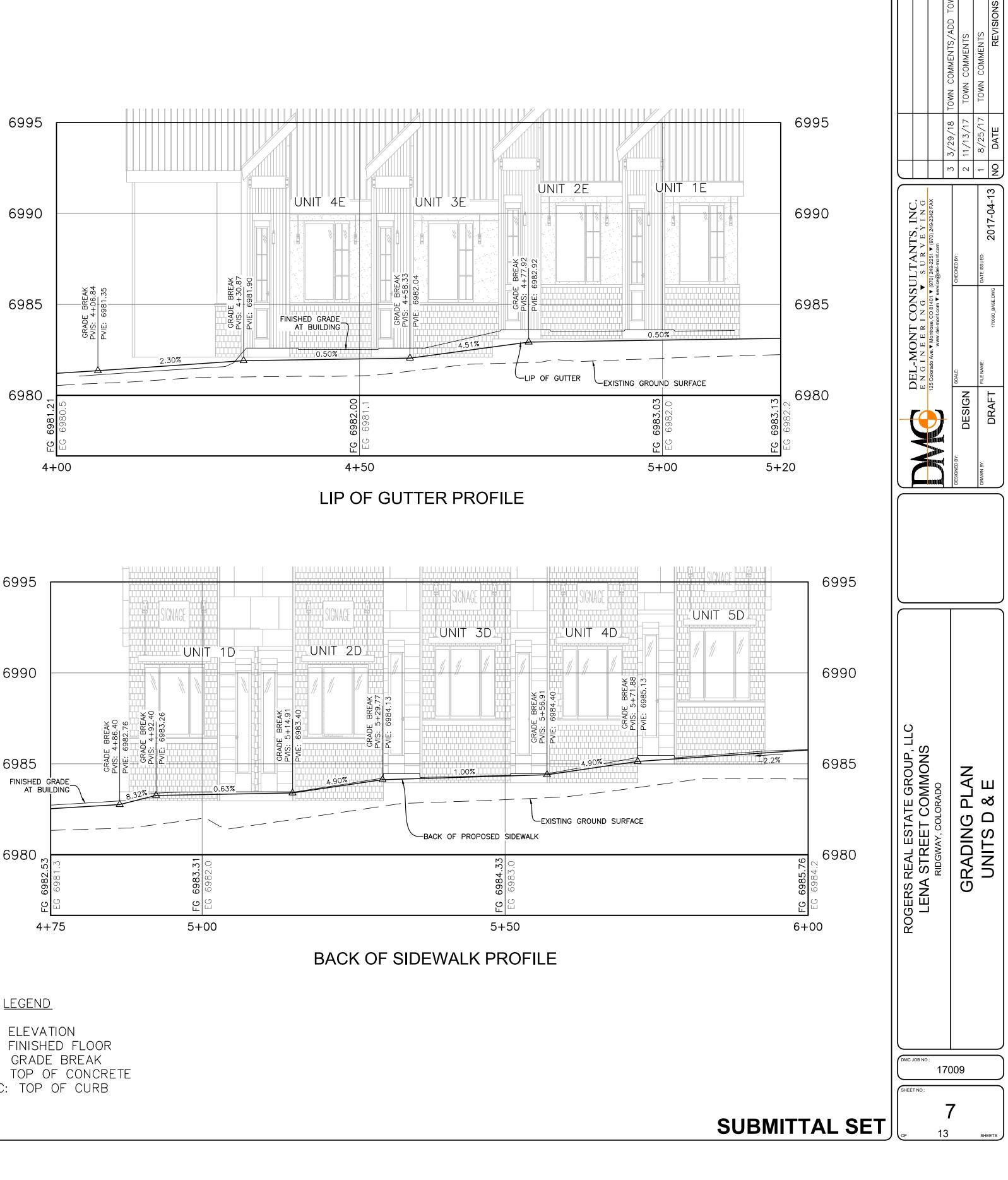


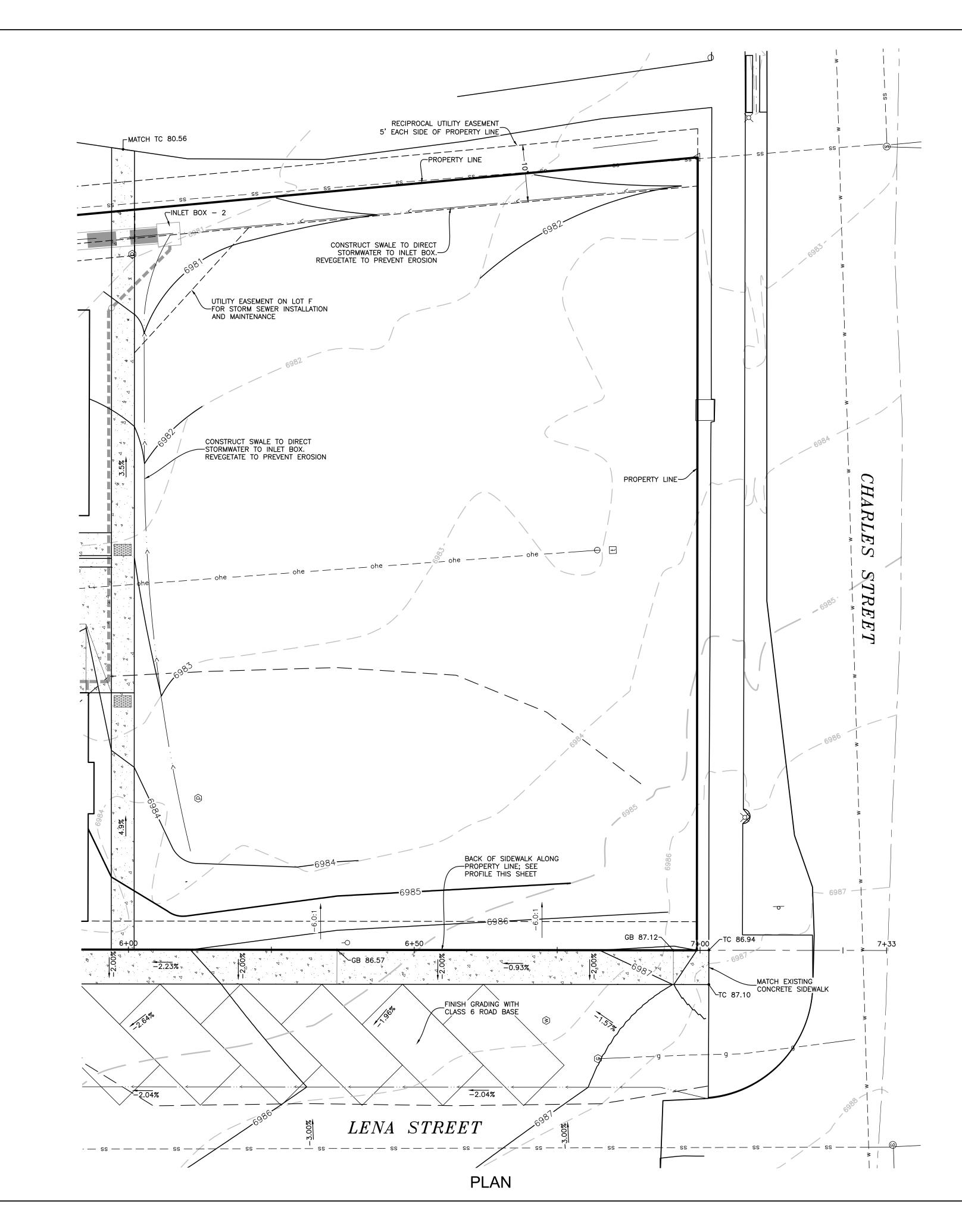
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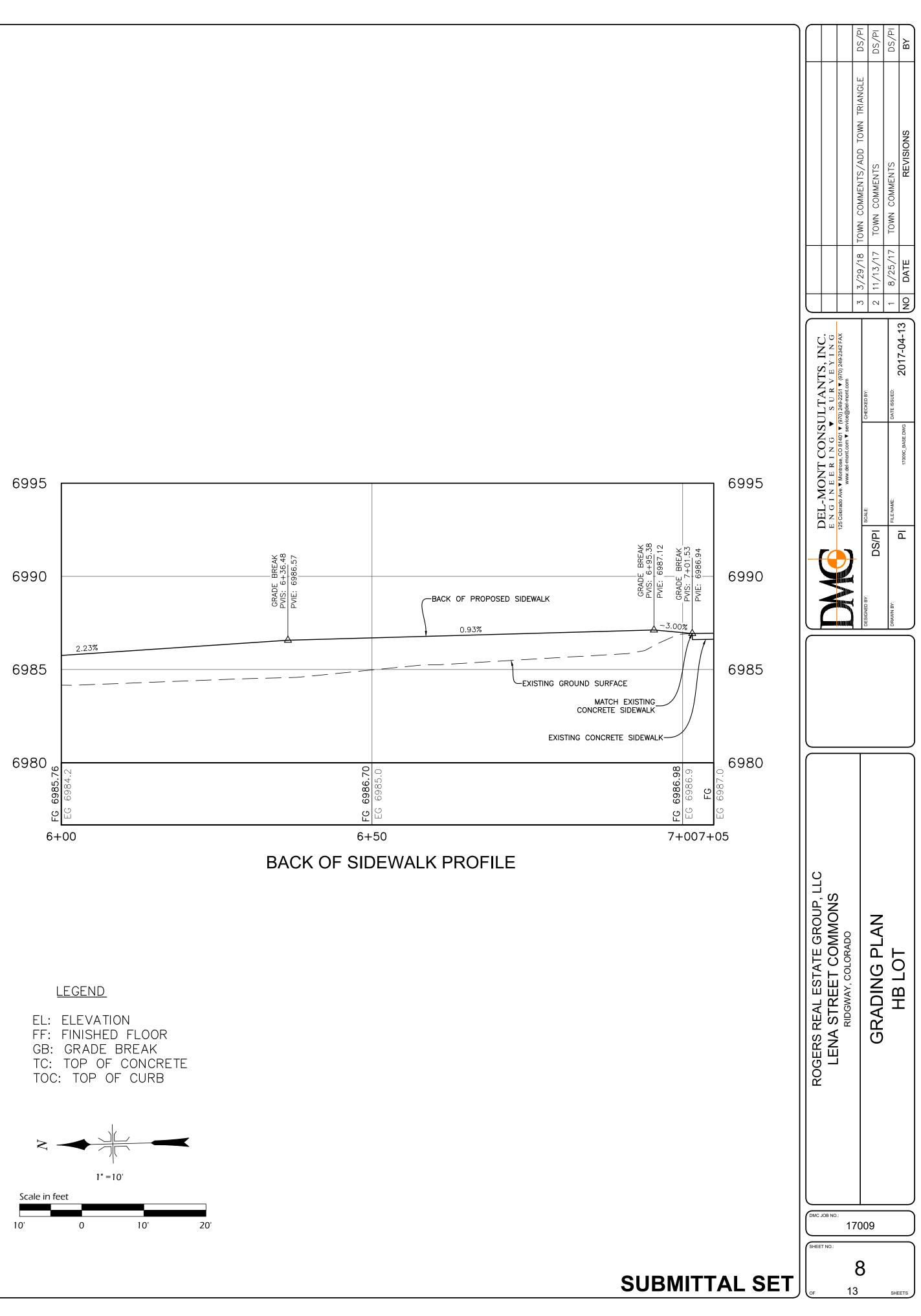


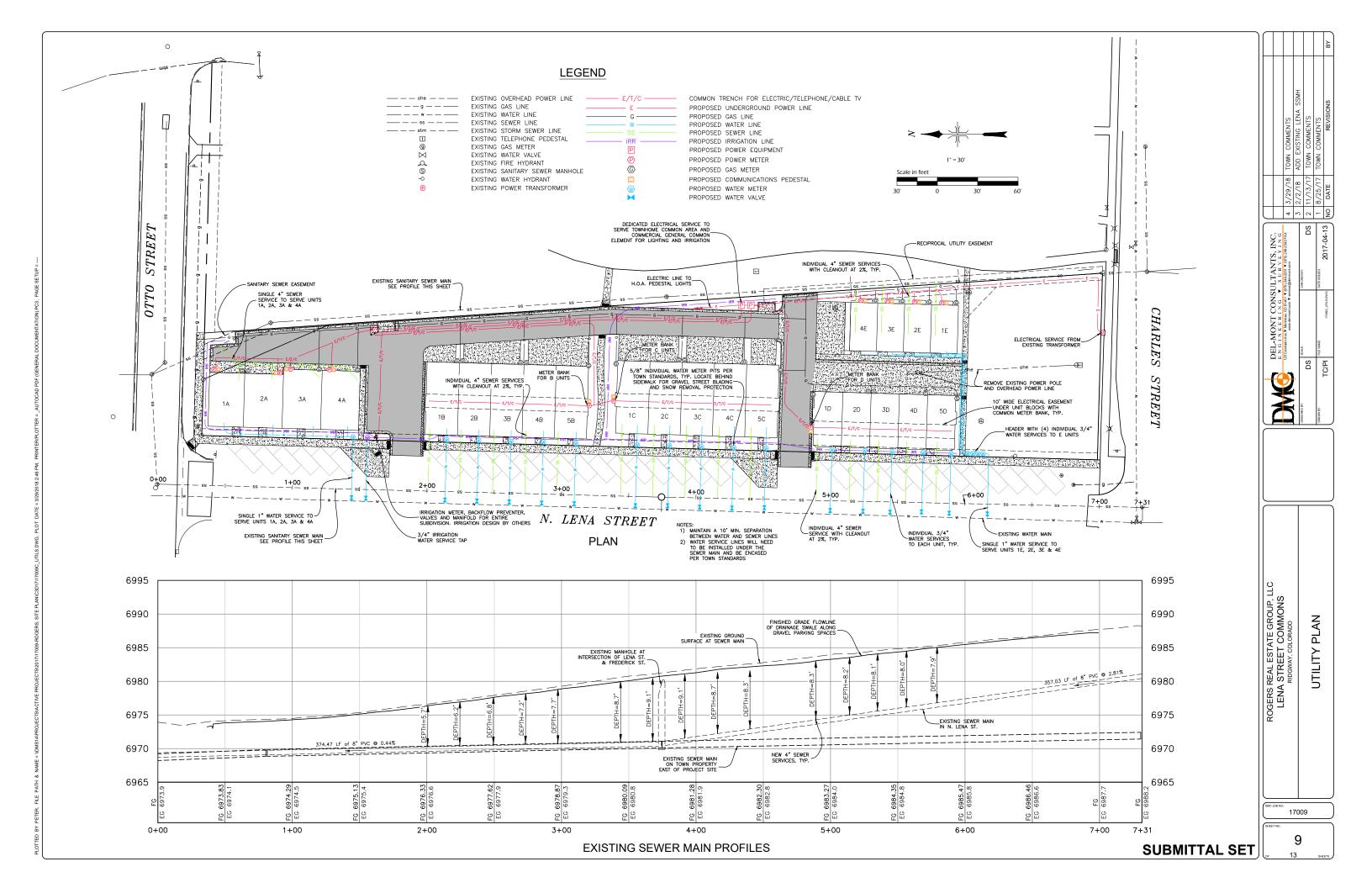


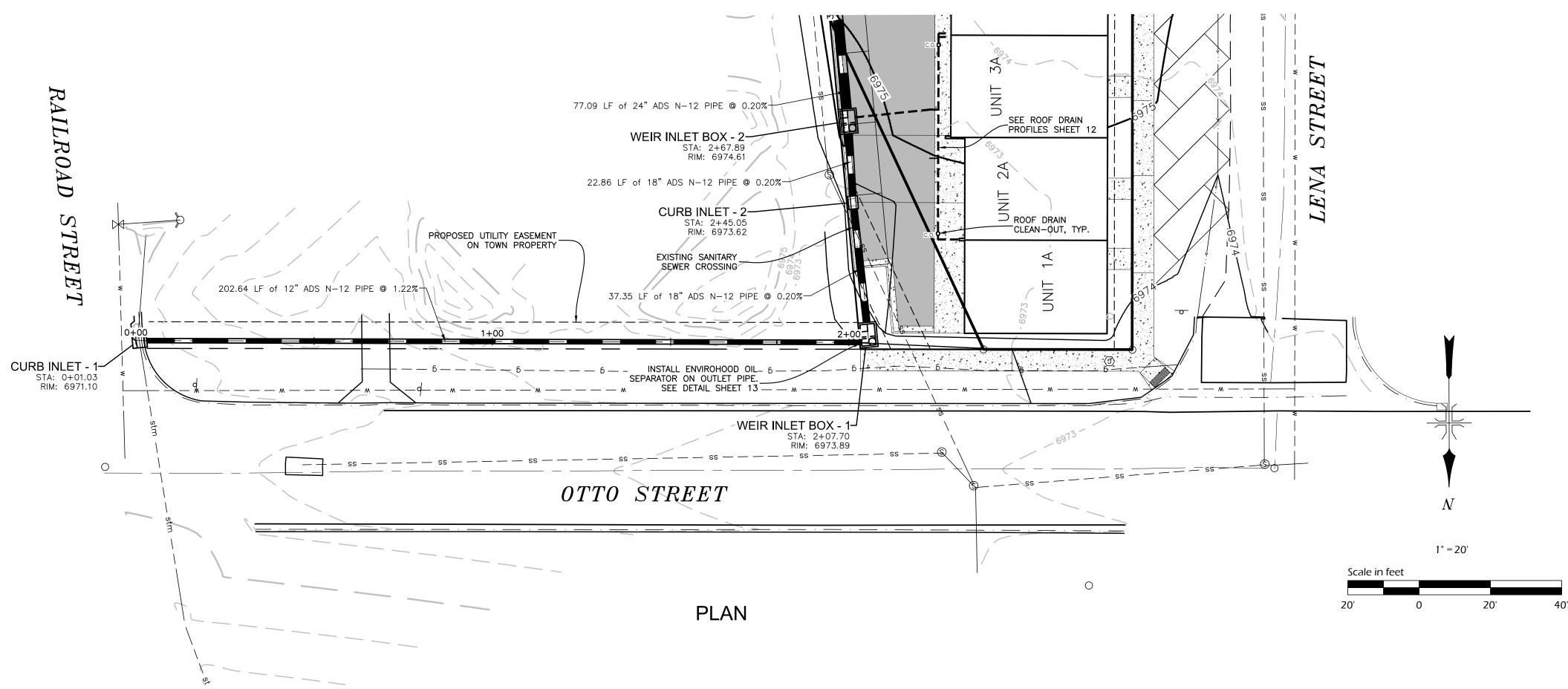


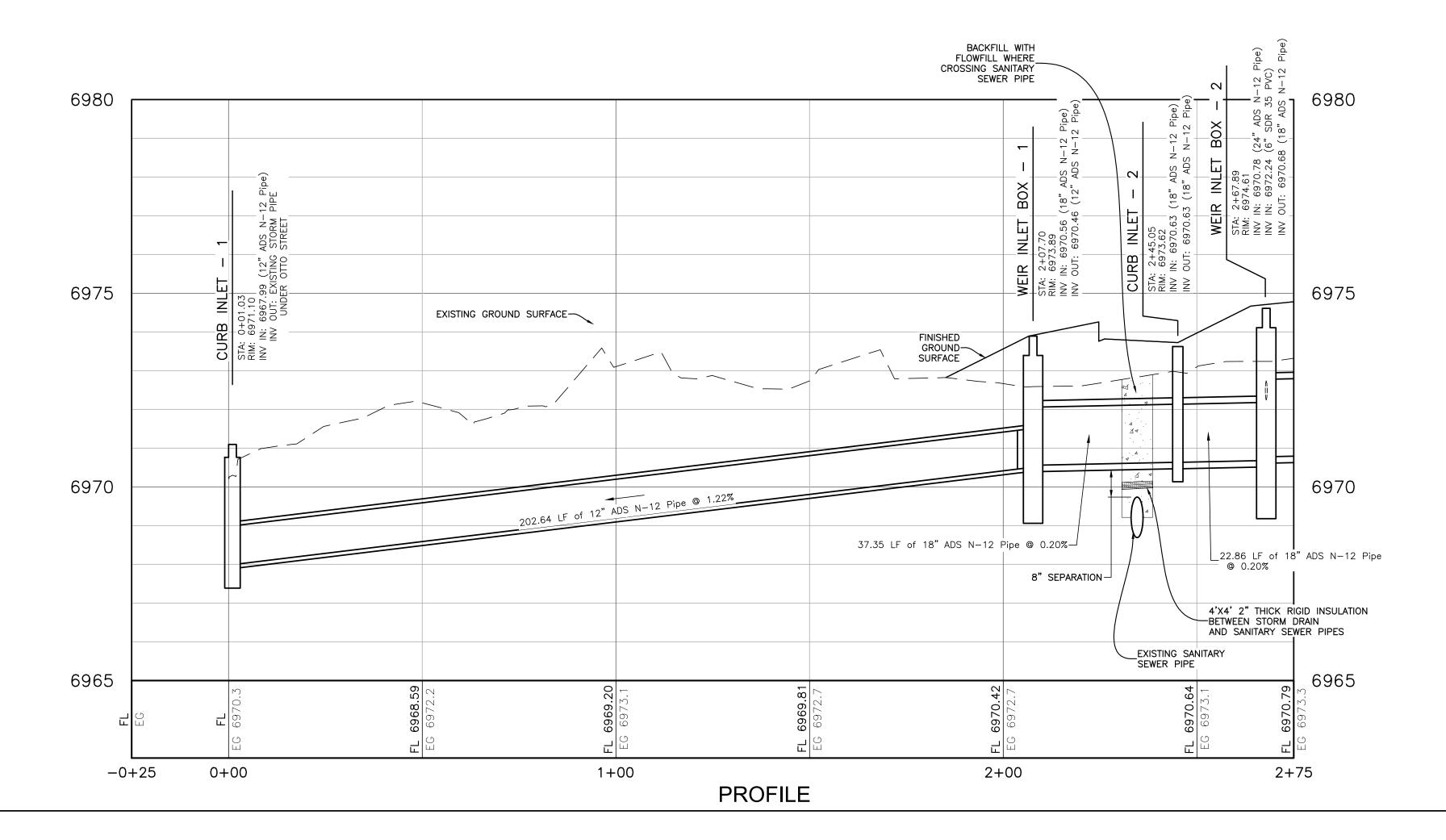




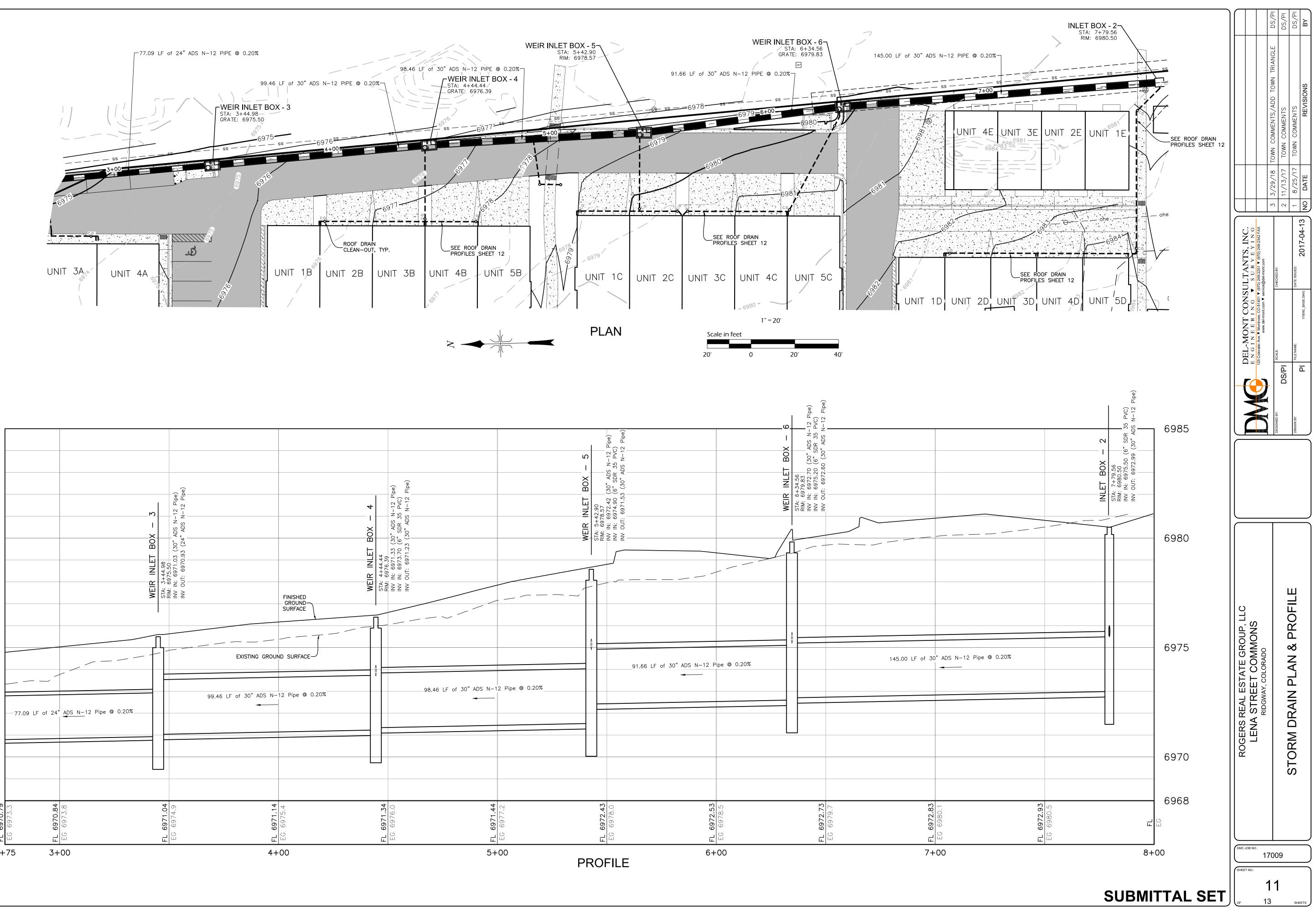


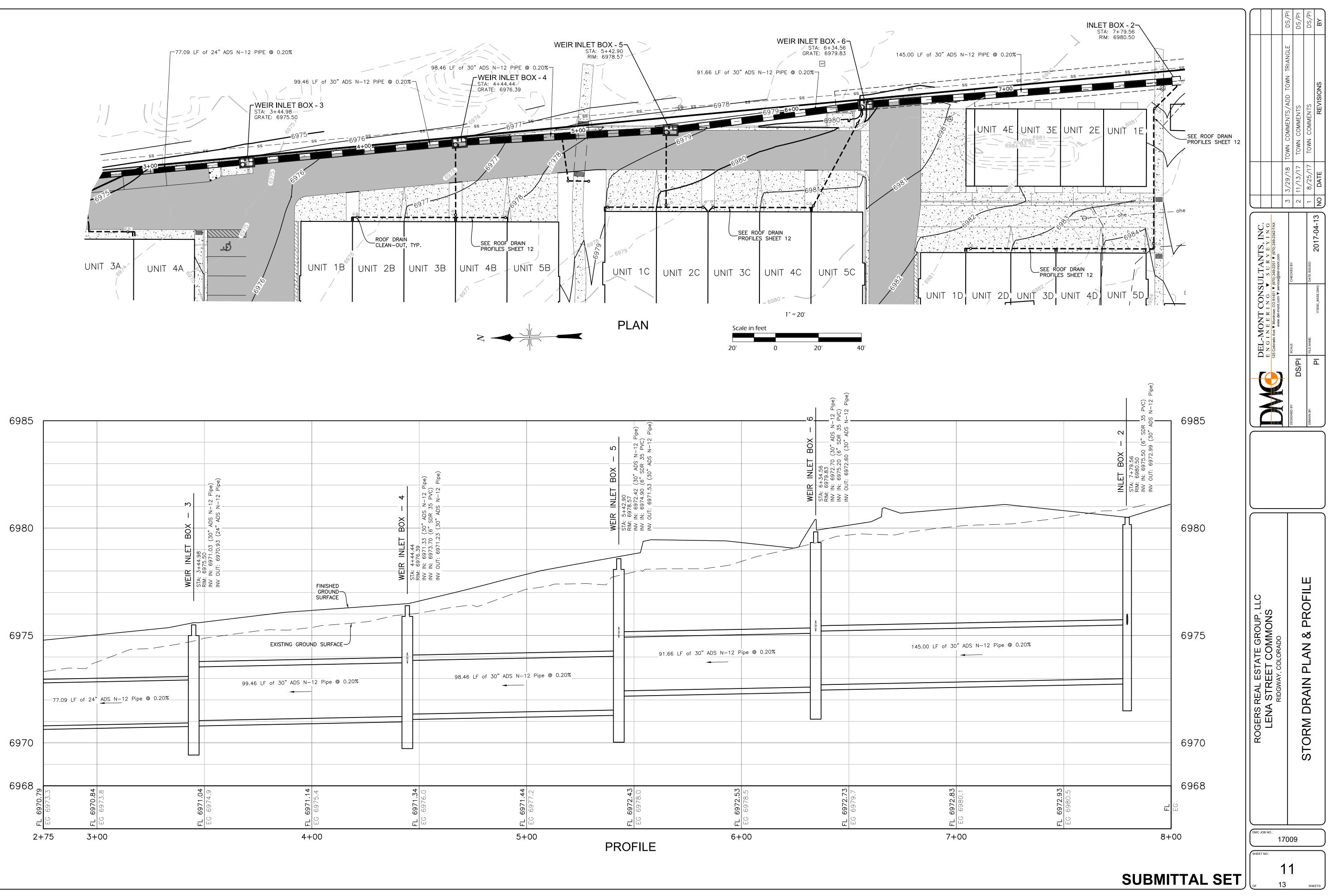


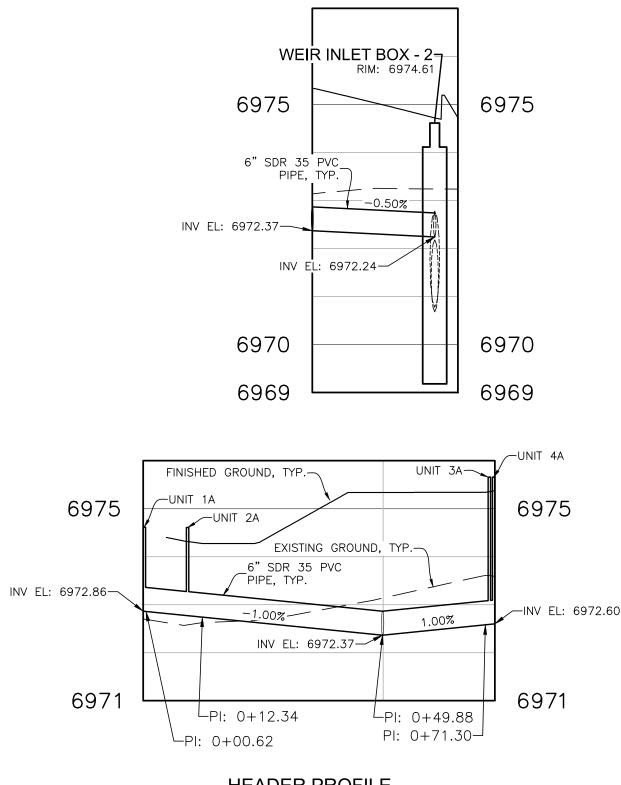




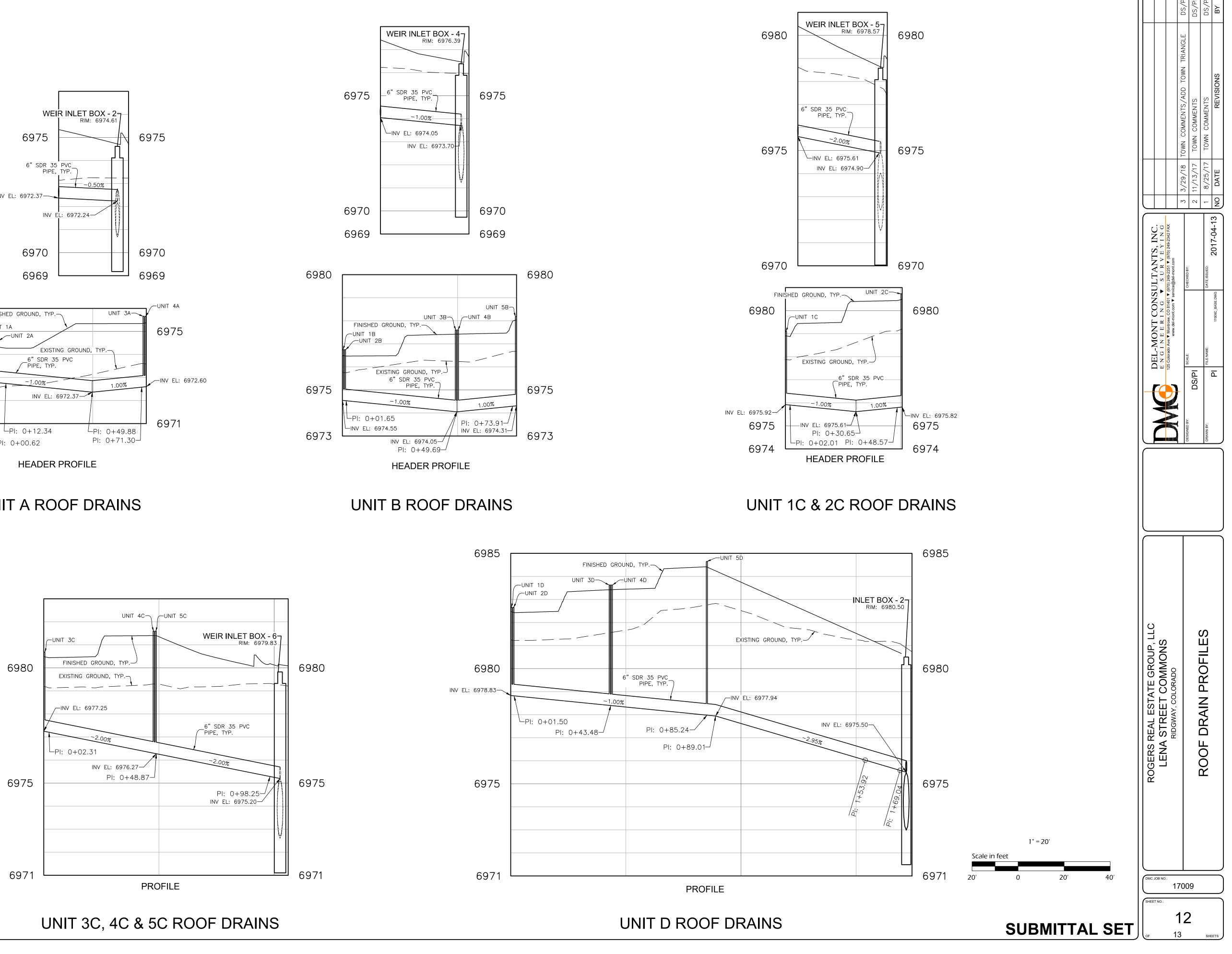
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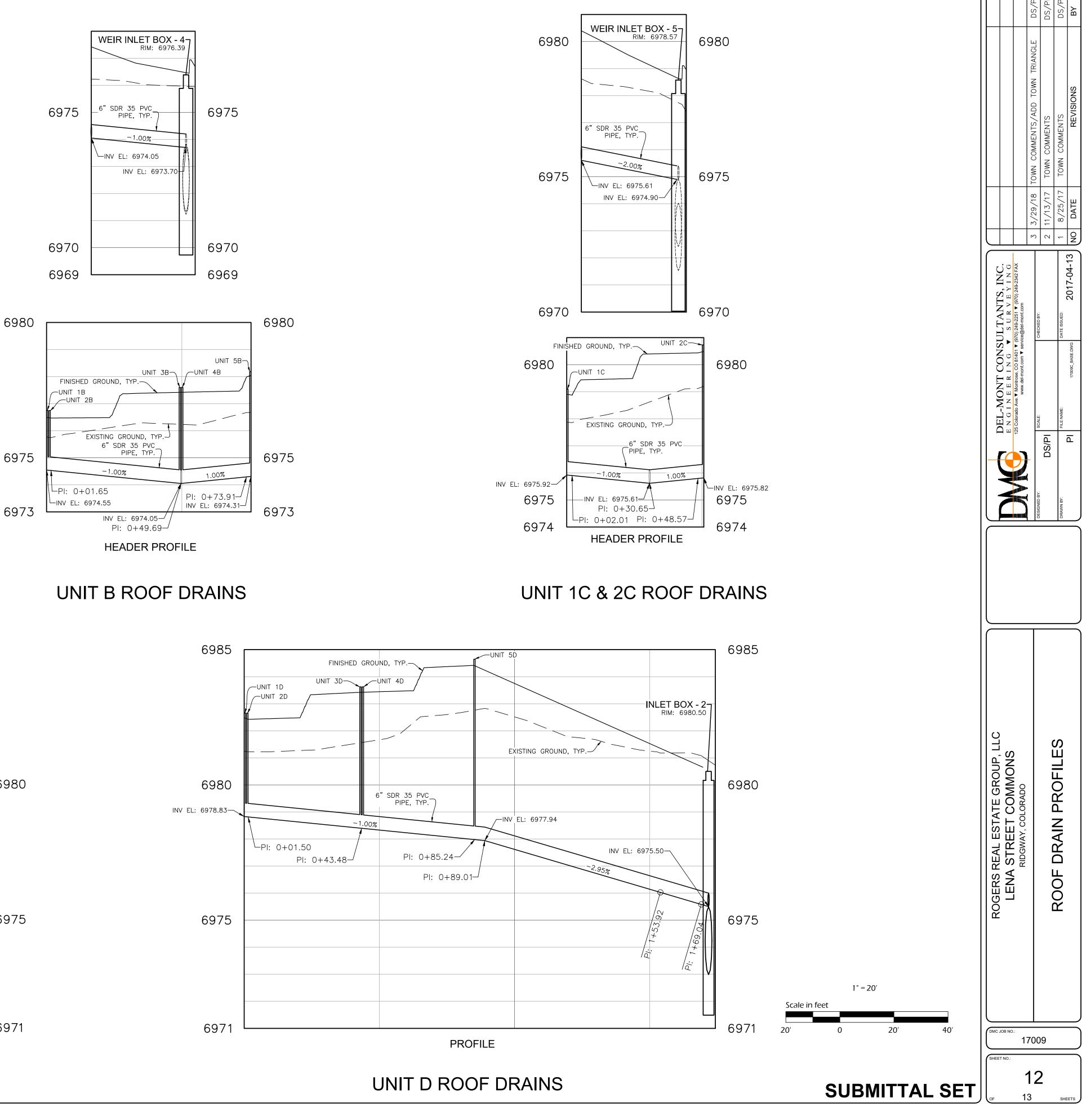


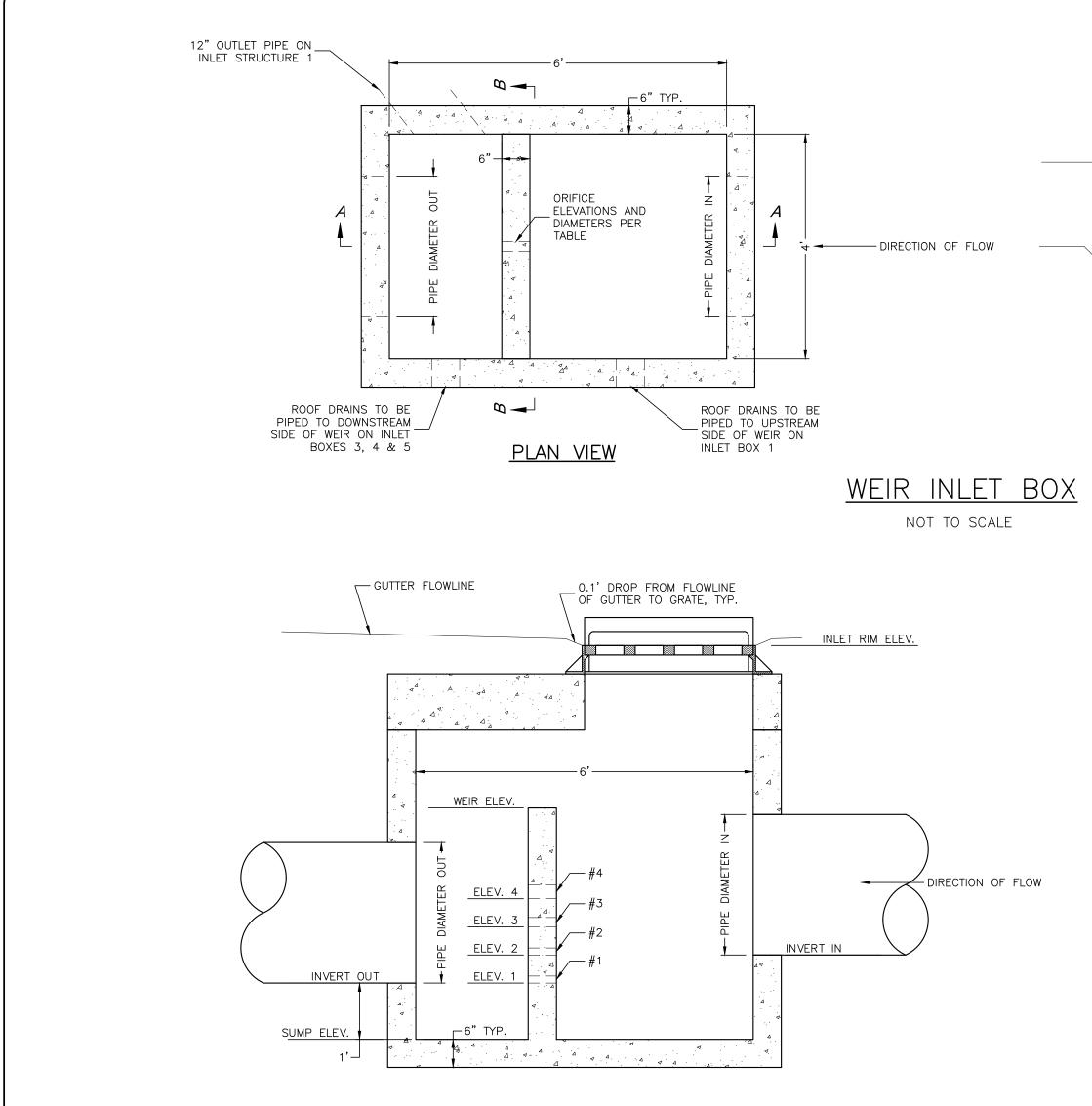




UNIT A ROOF DRAINS

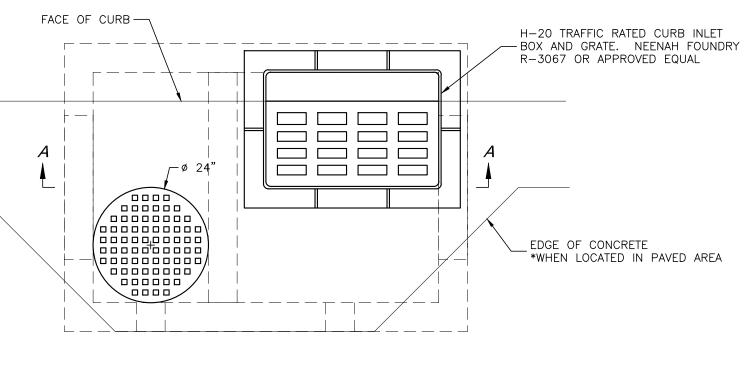




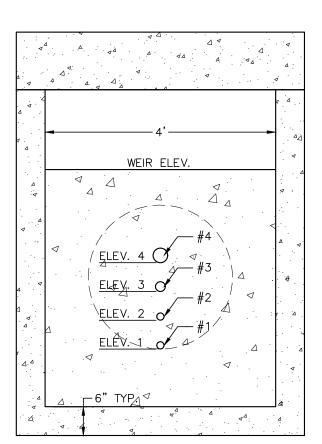


<u>SECTION A-A</u>

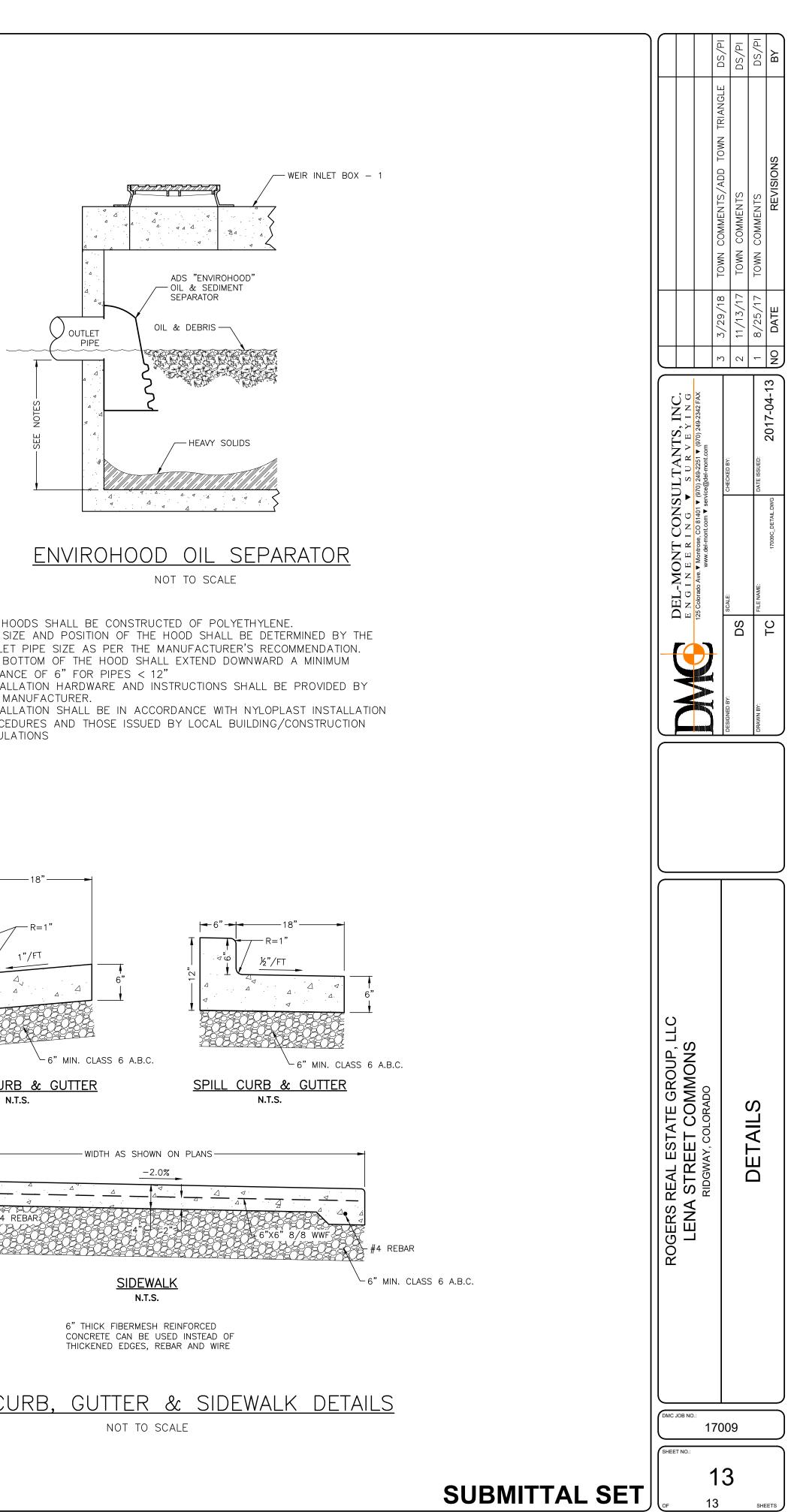
WEIR INLET BOX - ELEV./DIA. DETAILS								
Inlet #	Orifice #	Invert Elevation	Diameter (in)	Sump Elevation	Weir Elevation	Invert In	Invert Out	Rim Elevation
	1-1	6970.46	4					
1	1-2	6970.96	3	6060.46		6970.56	6970.46	6973.89
1	1-3	6971.46	3	6969.46	69.46 6972.63	6970.56	6970.46	
	1-4	6971.96	2					
	2-1	6970.68	1.5					
n	2-2	6971.18	1.5		co.70 co	6970.78	6970.68	6974.61
2	2-3	6971.68	2	6969.68	6972.68			
	2-4	6972.18	3					
	3-1	6970.93	1.5		6973.68	6971.03	6970.93	6975.50
ſ	3-2	6971.43	1.5					
3	3-3	6971.93	2	6969.93				
	3-4	6972.43	3					
	4-1	6971.23	1.5		6974.23	6971.33	6971.23	
4	4-2	6971.73	1.5	6070.22				6076 20
4	4-3	6972.23	1.5	6970.23				6976.39
	4-4	6972.73	1.5					
	5-1	6971.53	1.5			6072.42	6074 52	6070 57
F	5-2	6972.03	1.5					
5	5-3	6972.53	1.5	6970.53	6975.03	6972.42	6971.53	6978.57
	5-4	6973.03	1.5					
	6-1	6972.60	1.5					
c	6-2	6973.10	1.5	6071 60		6072 70	6072.60	6070.92
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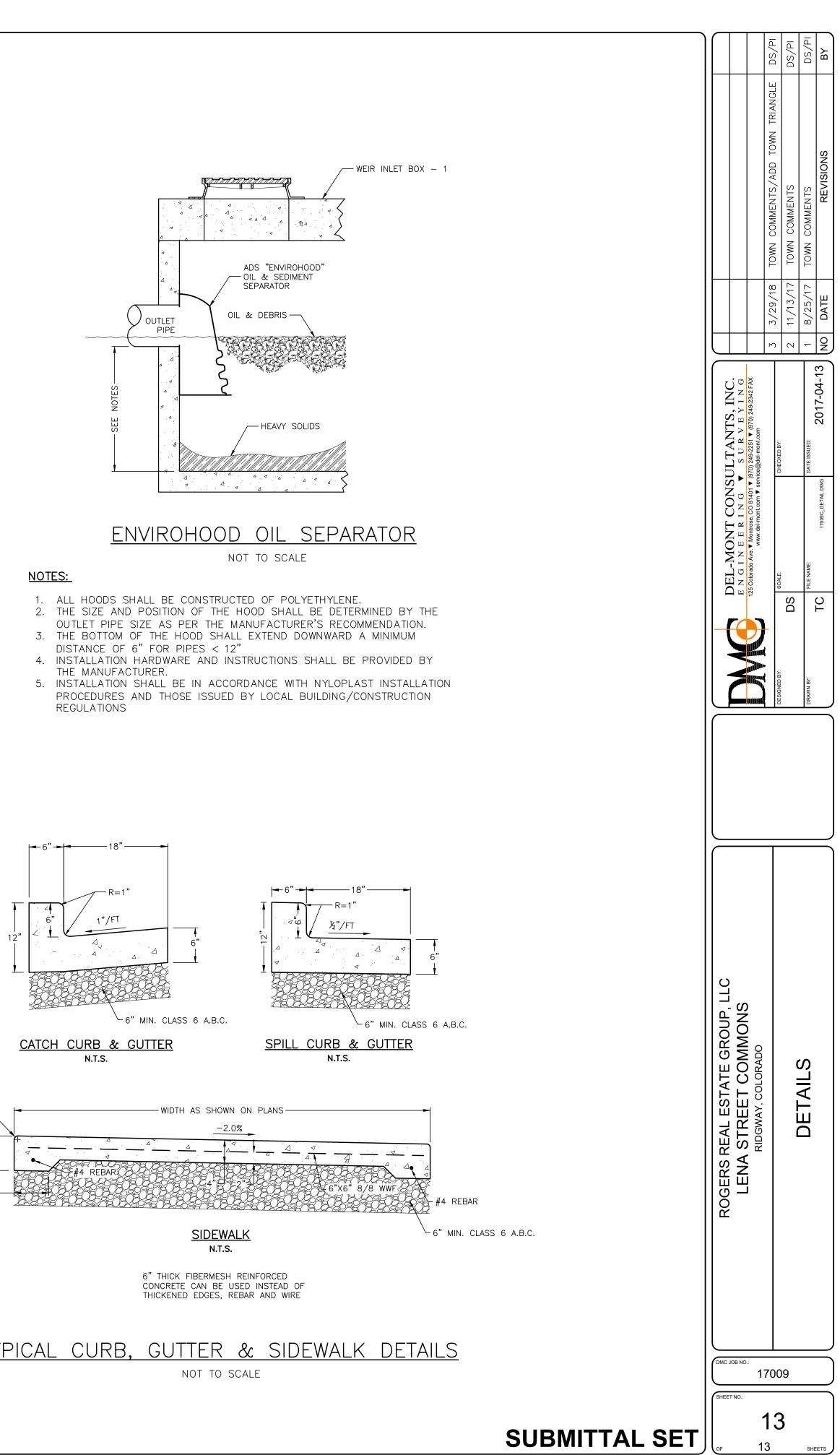
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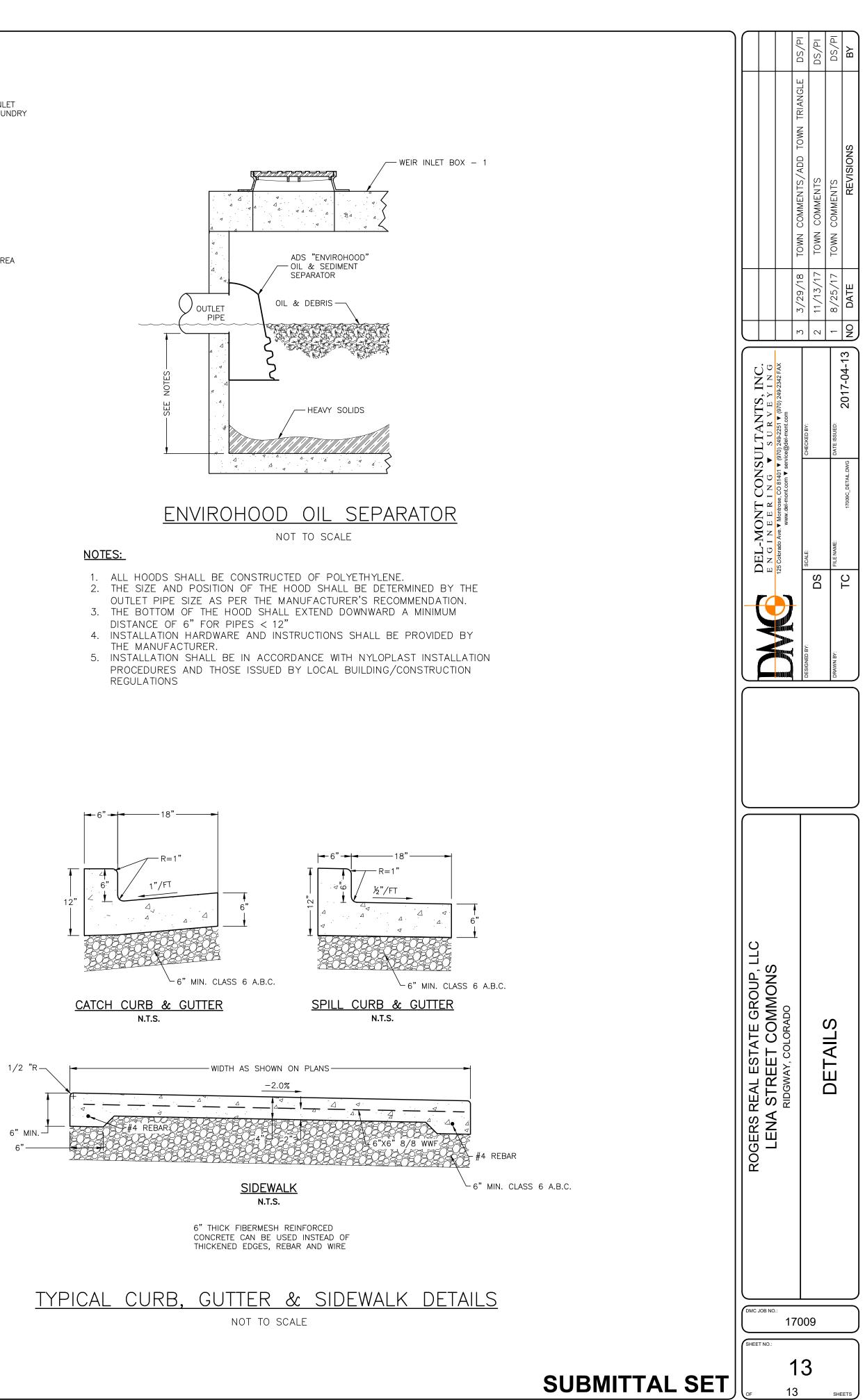


<u>SECTION B-B</u>



- DISTANCE OF 6" FOR PIPES < 12"
- REGULATIONS





## Karp Neu Hanlon

www.mountainlawfirm.com

<u>Glenwood Springs – Main Office</u> 201 14<sup>th</sup> Street, Suite 200 P. O. Drawer 2030 Glenwood Springs, CO 81602 Aspen 323 W. Main Street Suite 301 Aspen, CO 81611 <u>Montrose</u> 1544 Oxbow Drive Suite 224 Montrose, CO 81402 Andrew A. Mueller *Partner* 

aam@mountainlawfirm.com Office: (970) 945-2261 Fax: (970) 945-7336 \*Direct Mail to Glenwood Springs Office

August 27, 2017

Re: Lena Commons PUD Application

Dear Town of Ridgway Planning Department:

Applicant has provided in its Application for Preliminary Plat Approval for the Lena Street Commons PUD a copy of the current title policy for the subject property. The title policy reflects that the property's minerals have not been severed from the surface. As such, title to the property's mineral estate is unified with title to the property's surface and is vested in the surface owner, the Arthur Travis Spitzer Revocable Trust u/t/a dated January 2000. Because the Trust provided written consent to the filing of the Application by Applicant Tate Rogers, no notice to the Trust under CRS § 24-65.5-103(1) is required. To the extent the Town requires certification in writing of Applicant's compliance with the CRS § 24-65.5-103(1) notification requirements in this scenario, this writing serve as such certification.

Very truly yours,

KARP NEU HANLON, P.C.

Andrew A. Mueller

PLB:bsw



SURVEYING



125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX www.del-mont.com ▼ service@del-mont.com

DEL-MONT CONSULTANTS. INC.

August 28, 2017

Town of Ridgway 201 N. Railroad Street Ridgway, CO 81432

Re: Fire Protection for the proposed Lena Commons Development

To whom it may concern,

The Lena Commons project is located on N. Lena Street between Charles Street and Otto Street. Fire hydrants that can potentially provide fire protection to the project are located at the following locations:

ENGINEERING

- Charles St. and N. Railroad St. (Southeast of project)
- Lena St. and Frederick (directly West of project, across street)
- Lena St. and Otto St. (Northwest corner of project, across street)
- Otto St. and N. Railroad St. (Northeast of project)

Based on the results of the hydrant flow tests performed by Mark Bray on June 23, 2017 (results letter attached), the hydrants mentioned above have the ability to adequately provide the required 1,500 gpm to the project site.

Sincerely,

Schoolt

David Schieldt, P.E.



Montrose Fire Protection District

441 South Uncompany Ave., Montrose, CO 81401 | (970) 249-9181 Serving Montrose since 1888



June 23, 2017

David Schieldt, P.E./C.F.M. Del-Mont Consultants, Inc. Montrose, CO 81401

On June 23, 2017 at 1:15pm I conducted a hydrant flow test, with permission from the Town of Ridgway Public Works, to determine water flow for the Lena St. Commons project. I used our 2  $\frac{1}{2}$ " Hose Monster to conduct the flow. I flowed the hydrant at Otto St and N. Lena and took the static and residual on the hydrant at Fredrick and N. Lena. Initially I had a static of 92 and only saw a 10% decrease with flow. NFPA recommends a minimum of 20% decrease so I conducted a second flow flowing both 2  $\frac{1}{2}$ " outlets. At some point after the first flow, the static pressure increased and maintained at 120 psi. I conducted the final flow with 1 outlet flowing. The results of the flows are as follows......

Initial flow (one outlet flowing) Static- 92 Residual- 80 Pitot- 30 Observed flow- 919 GPM Available flow at 20psi 2418 GPM

Second flow (two outlets flowing) Static- 120 Residual-50 Pitot- 8 Observed flow 475 Available flow at 20 psi 576

Final flow (one outlet flowing) Static- 120 Residual- 80 Pitot- 30 Observed flow- 919 GPM Available at 20 psi 1507

If you require any further information feel free to let me know.

Sincerely,

/s/Mark A. Bray, Fire Prevention Specialist

## 11. Articles of Incorporation: Townhomes

Document must be filed electronically. Paper documents are not accepted. Fees & forms are subject to change. For more information or to print copies of filed documents, visit <u>www.sos.state.co.us</u>.

ABOVE SPACE FOR OFFICE USE ONLY

#### Articles of Incorporation for a Nonprofit Corporation

filed pursuant to § 7-122-101 and § 7-122-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the nonprofit corporation is

Lena Street Commons Townhomes Association, Inc.

(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)

2. The principal office address of the nonprofit corporation's initial principal office is

Street address

316 NORTH LENA STREET (Street number and name)

	RIDGWAY	CO	81432
	(City)	(State) United S	(ZIP/Postal Code)
	(Province – if applicable)	(Country	)
Mailing address	P.O. BOX 3601		
(leave blank if same as street address)	(Street number and na	me or Post Office	Box information)
	TELLURIDE	CO	81435-3601
	(City)	(State) United S	(ZIP/Postal Code) tates .
	(Province – if applicable)	(Country	9

are

Name (if an individual)				
OR	(Last)	(First)	(Middle) (	Suffix
(if an entity)	THE LAW OFFICES	S OF THOMAS	G. KENNEDY, P.O	0.
(Caution: Do not provide both d	nn individual and an entity name.)			
Street address	307 EAST COLOR	ADO AVENUE		
	SUITE 203	treet number and name	<i>)</i>	
	TELLURIDE	СО	81435-3081	
	(City)	(State)	(ZIP Code)	

Mailing address	P.O. BOX 3081			
(leave blank if same as street address)	(Street number and na	me or Post Office	Box information)	
	TELLURIDE	СО	81435-3081	
	(City)	(State)	(ZIP Code)	
e following statement is adopted by marking the	box.)			
] The person appointed as registered	agent above has consented to	o being so app	pointed.	
e true name and mailing address of	the incorporator are			
-	<b>I</b> 1			
Name (if an individual)				
(ii an individual)	(Last)	(First)	(Middle)	(Suffix
OR				
(if an entity)	THE LAW OFFICES O	F THOMAS	G. KENNEDY,	P.C.
(Caution: Do not provide both an individ	dual and an entity name.)			
Mailing address	P.O. BOX 3081			
Mailing address		name or Post Off	ice Box information)	
Mailing address		name or Post Off	ice Box information) 81435-3081	
Mailing address	(Street number and		81435-3081 (ZIP/Postal Co	de)

The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. (If the following statement applies, adopt the statement by marking the box.)

SEE ATTACHMENT

The nonprofit corporation will have voting members.

6. Provisions regarding the distribution of assets on dissolution:

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.) The delayed effective date and, if applicable, time of this document is/are

(mm/dd/yyyy hour:minute an/pm)

#### Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes. This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

RISNER-TINDALL	KIMBERLY	Α.	
(Last) P.O. BOX 3081	(First)	(Middle)	(Suffix)
(Street number o	and name or Post Offi	ce Box information)	
TELLURIDE	CO	81435-3081	
(City)	(State) United St	(ZIP/Postal Code) tates .	

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

#### **Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

#### ADDENDUM TO ARTICLES OF INCORPORATION OF LENA STREET COMMONS TOWNHOMES ASSOCIATION, INC.

#### A COLORADO NONPROFIT CORPORATION

Capitalized terms not otherwise defined herein shall have the meaning set forth in the Declaration of Covenants, Conditions and Restrictions for Lena Street Commons Townhomes Owners Association and any supplement or amendment thereto ("Declaration"). All of the lands that become subject to said Declaration from time to time are hereinafter referred to as the "Community." In the event of a conflict between the terms, conditions and provisions of this Addendum and the Articles of Incorporation, this Addendum shall control.

#### ARTICLE ONE Purposes

The business, objectives and purposes for which the corporation is formed are as follows:

1. To be and constitute the "Association", to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Lena Street Commons Townhomes ("Declaration") establishing a plan for Lena Street Commons Townhomes, a planned community located in the Town of Ridgway, Ouray County, Colorado ("Community"), said Declaration to be recorded in the office of the County Clerk and Recorder of Ouray County, Colorado.

2. To perform all obligations and duties of the Association and to exercise all rights and powers of the Association, as specified in the Declaration.

3. To provide an entity for the furtherance of the interest of the Owners of separate platted lots ("Lots") within the Community.

#### ARTICLE TWO

#### Powers

In furtherance of its purposes, but not otherwise, the corporation shall have the following powers:

1. All of the powers conferred upon non-profit corporations by the common law and the statutes of the State of Colorado in effect from time to time.

2. All of the powers necessary or desirable to perform the obligations and duties and exercise the rights and powers of the Association under the Declaration, including, without limitation, the following powers:

a. To make and collect general, limited and/or special assessments against Members for the purpose of defraying the costs, expenses and any losses of the Association, or of exercising its powers or of performing its functions.

b. To manage, control, operate, maintain, repair and improve Community common elements, as defined in the Act and the Declaration.

c. To enforce covenants, restrictions or conditions affecting any Community property, to the extent the Association may be authorized under any such covenants, restrictions or conditions, and to make and enforce rules and regulations for use of the Community.

d. To engage in activities which will actively foster, promote and advance the common ownership interests of Owners of the Lots.

e. To buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, withdraw, grant or obtain easements, licenses, permits and the like, hold, use, operate and otherwise deal with and in, real, personal and mixed property of all kinds, and any right or interest therein, for any purpose of the Association.

f. To borrow money for any purpose of the Association, limited in amount or in other respects as may be provided in the Bylaws of the Association (the "Bylaws").

g. To enter into, make, perform or enforce contracts of every kind and description, and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association or any Members, with or in association with any person, firm, association, corporation or other entity or agency, public or private.

h. To act as agent, trustee, or other representative of other corporations, firms, individuals, and as such to advance the business or ownership interests of such corporations, firms or individuals, including, without limitation, any Members.

i. To adopt, alter, and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association, provided, however, that such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration.

j. The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article.

#### ARTICLE THREE Memberships

1. The corporation shall be a membership corporation without certificates or shares of stock. Subject to the limitations set forth in the Declaration. There shall be one class of membership.

2. There shall be one "**Membership**" in the Association for each Lot within the Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and shall collectively be the "**Member**" of the Association with respect to that Lot, and the Membership appurtenant to that Lot shall automatically pass with fee simple title to the Lot. Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, and may not otherwise be separated from ownership of a Lot.

3. All Members shall be entitled to vote on all matters, with each vote allocated in the manner set forth in the Declaration. Cumulative voting is prohibited. No person or entity other than an Owner of a Lot may be a Member of the corporation.

4. A membership in the corporation and the share of a Member in the assets of the corporation shall not be assigned, encumbered or transferred in any manner except as an appurtenance to transfer of title to the Lot to which the membership pertains; provided, however, the rights of membership may be

assigned to the holder of the mortgage, deed of trust or other security instrument on a Lot as further security for a loan secured by a lien on such Lot.

5. A transfer of membership shall occur automatically upon the transfer of title to the Lot to which the membership pertains; provided, however, the Bylaws may contain reasonable provisions and requirements with respect to recording such transfers on the books and records of the corporation.

6. The corporation may suspend the voting rights of a Member for failure to comply with rules and regulations or the Bylaws or with any other obligations of the Owners of a Lot under the Declaration or any agreement created thereunder.

7. The corporation, through its Bylaws, may establish requirements concerning the manner and method by which voting rights and other rights attributable to a Lot that is owned by a firm, corporation, partnership, limited liability company, association or other legal entity or any combination thereof may be exercised.

8. The Bylaws may contain provisions, not inconsistent with the foregoing, setting forth the rights, privileges, duties and responsibilities of the Members.

#### ARTICLE FOUR Board

1. The business and affairs of the corporation shall be conducted, managed and controlled by a Board (the "Board"), the members of which are designated as "Directors".

2. The Board shall initially consist of three (3) Directors, but may consist of as many as five (5) Directors. The method of voting on actions by the Board shall occur in the manner provided for by the Bylaws.

3. The method of election and the term of office of Directors of the Board shall be determined by the Bylaws. A member of the Board need not have an ownership interest in a Lot. A member of the Board need not be a Member of the Community.

4. Directors may be removed and vacancies on the Board shall be filled in the manner provided in the Bylaws in the manner provided for by the Bylaws.

#### ARTICLE FIVE Inurement and Dissolution

1. No part of the income or net earnings of the Association shall inure to the benefit of, or be distributable to, any Member, Director, or officer of the Association or to any other private individual, except that: (i) reasonable compensation may be paid for services rendered to or for the Association affecting one or more of its purposes; (ii) reimbursement may be made for any expenses incurred for the Association by any officer, Director, Member, agent or employee, or any other person or corporation, pursuant to and upon authorization of the Board; and (iii) rebates of excess membership dues, fees, or Assessments may be paid.

2. In the event of dissolution of the Association, the property and assets thereof remaining after providing for all obligations shall then be distributed pursuant to the Colorado Revised Nonprofit Corporation Act at Article 134, and if the Community is terminated then pursuant to the Colorado Common Interest Ownership Act at Section 38-33.3-218.

#### ARTICLE SIX Elimination of Certain Liabilities of Directors

There shall be no personal liability, either direct or indirect, of any Director of the Association to the Association or to its Members for monetary damages for any breach or breaches of fiduciary duty as a Director; except that this provision shall not eliminate the liability of a Director to the Association or its Members for monetary damages for any breach, act, omission, or transaction as to which the Colorado Revised Nonprofit Corporation Act or the Colorado Common Interest Ownership Act prohibits expressly the elimination of liability. This provision is in the Association's original Articles of incorporation and thus is effective on the date of the Association's incorporation. This provision shall not limit the rights of Directors of the Association for indemnification or other assistance from the Association in accordance with applicable law. This provision shall not restrict or otherwise diminish the provisions of Colorado Revised Statutes, Section 13-21-115.7 (concerning no liability of directors except for wanton and willful acts or omissions), any amendment or successor provision to such Section, or any other law limiting or eliminating liabilities, such as Colorado Revised Statutes, Section 38-33.3-303(2) (fiduciary duties of officers and directors if appointed by Declarant; if not so appointed, then no liability except for wanton and willful acts or omissions). Any repeal or modification of the foregoing provisions of this Article by the Members of the Association or any repeal or modification of the provision of the Colorado Revised Nonprofit Corporation Act which permits the elimination of liability of directors by this Article shall not affect adversely any elimination of liability, right or protection of a Director of the Association with respect to any breach, act, omission, or transaction of such Director occurring prior to the time of such repeal or modification.

#### ARTICLE SEVEN Dissolution

In the event of the dissolution of the corporation, either voluntarily by the members hereof, by operation of law, or otherwise, then the assets of the corporation shall be deemed to be owned by the members in proportion to each Member's Ownership of the Common Elements of the Community.

# BYLAWS OF THE LENA STREET COMMONS TOWNHOMES ASSSOCIATION, INC. A COLORADO NONPROFIT CORPORATION

### ARTICLE 1 INTRODUCTION AND PURPOSE

Effective Date:

These Bylaws ("**Bylaws**") of the Lena Street Commons Townhomes Association, Inc., a Colorado Nonprofit Corporation ("Association") have been duly adopted by the Association through its Board ("Board") as that term is defined in the Declaration (defined below) and are hereby deemed to be made effective as of the Effective Date. The Association for itself and on behalf of its Owners, hereby amends, restates, terminates, supersedes and replaces in its entirety any and all prior Bylaws for the Association, including any and all other previous amendments thereto. Each Owner is deemed to be a "Member" of the Association.

<u>Section 1.1 – Introduction</u>. These are the Bylaws of the Lena Street Commons Townhomes Association, Inc., a Colorado nonprofit corporation, which Association shall operate under the Colorado nonprofit Corporation Act ("Corporation Act"), as amended, and the Colorado Common Interest Ownership Act, as amended ("Act").

<u>Section 1.2 - Purposes</u>. The purposes for which the Association was formed are to preserve and enhance the value of the properties of Owners and to govern the Common Areas and affairs of The Lena Street Commons Townhomes, a Planned Community located in the Town of Ridgway, Ouray County, Colorado ("Community"). The Community was created pursuant to certain "Governing Documents", including, without limitation, the Subordinate Declaration for The Lena Street Commons Townhomes ("Declaration"), the Plat for The Lena Street Commons Townhomes as defined and referenced in the Declaration ("Plat"), the Articles of Incorporation for the Association, and any Rules and Regulations, Governance Policies and Guidelines, as the same have been or may be amended and supplemented from time to time. Terms which are defined in the Declaration shall have the same meaning herein, unless defined otherwise in these Bylaws.

<u>Section 1.3 - Persons Subject to Bylaws</u>. All present or future Owners, tenants, guests, agents, contractors or any person that use or occupy, in any matter, any Lot or Common Areas within the Community, are subject to the terms and provisions of these Bylaws, and the other Governing Documents of the Community. The mere acquisition, rental or use of a Lot will signify that the Governing Documents of the Community are acceptable, ratified and will be complied with.

### ARTICLE 2 BOARD

# Section 2.1 - Number and Qualification.

(a) The affairs of the Community and the Association shall be governed by a Board which shall consist of three (3) persons. A Board member shall serve in the manner provided for in the Declaration. A member of the Board must be an Owner, except for Board members appointed by the Declarant. If any Lot is owned by a partnership or corporation, any officer, partner or employee of that Owner shall be eligible to serve as a Board member and shall be deemed to be an Owner for the purposes of these Bylaws. At any meeting at which Board members are to be elected, the Owners may, by resolution, adopt specific procedures for conducting the elections, which are not inconsistent with these Bylaws or the Corporation Act.

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(b) The Board shall elect the officers. The Board members and officers shall take office upon election.

<u>Section 2.2 - Powers and Duties</u>. The Board may act in all instances on behalf of the Association, except as provided in the Governing Documents, these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Governing Documents and the Act, the powers and duties necessary for the administration of the affairs of the Association and the Community, including the following powers and duties:

(a) Adopt amendments to these Bylaws;

(b) Adopt and amend the Rules and Regulations and the Governance Policies and Guidelines;

(c) Adopt and amend budgets for revenues, expenditures and reserves;

(d) Collect assessments for Common Expenses, Limited Common Expenses and Special Assessments from Owners. The Board shall determine the frequency for collecting assessments;

(e) Hire and discharge management companies or managers of either the Association and/or on behalf of individual Owners;

(f) Hire and discharge employees, independent contractors and agents other than managing agents of either the Association;

(g) By resolution, establish committees of Board members, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Owner within 15 days after publication of notice of that action, and the committee's action must be ratified, modified or rejected by the Board at its next regular meeting.

(h) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents or Bylaws in the Association's name, on behalf of the Association on matters affecting the Community;

(i) Make contracts and incur liabilities on behalf of the Association, provided that in the event that the Association intends to enter into a contract or otherwise incur liability for goods or services that in the aggregate is anticipated to require the expenditure of \$20,000 or more, the Board shall first prepare and submit a request for proposals, review all bids responding to the request for proposals and award the contract to the bid that the Board, in the exercise of its good faith and commercially reasonable judgment, determines to be the superior bid with consideration given to the price/cost of the services or goods, timeframe for performance, skills and reputation of contractor and such other factors deemed relevant to the Board;

(j) Regulate the use, maintenance, repair, replacement and modification of Common Areas;

(k) Cause additional improvements to be made as a part of the Common Areas;

(1) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property; provided that Common Areas may be conveyed or subjected to a security interest only pursuant to Section 312 of the Act;

(m) Grant or obtain easements, licenses or permits for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Areas and/or adjacent property;

(n) Impose and receive a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Areas, other than Limited Common Areas;

(o) Impose a reasonable charge for late payment of assessments and, after notice and hearing, levy reasonable fines for violation of the Governing Documents or these Bylaws;

(p) Impose a reasonable charge for the preparation and recording of amendments to the Governing Documents or statements of unpaid assessments;

(q) Provide for the indemnification of the Association's officers, Board members, committee members;

(r) Obtain and maintain officer and director liability insurance for the Association's officers, Board members, committee members;

(s) Exercise any other powers conferred by the Declaration, the Plat or these Bylaws;

(t) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association; and

(u) Exercise any other power necessary and proper for the governance and operation of the Association.

<u>Section 2.3 - Association Manager</u>. The Board may employ a management company or Manager for the Community, at a compensation established by the Board, to perform duties and services authorized by the Board. Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Board and to fulfill the requirements of the budget. Regardless of any delegation to a management company or Manager, the Members of the Board shall not be relieved of responsibilities under the Governing Documents, these Bylaws or Colorado law.

<u>Section 2.4 - Removal of Board Member by Owners</u>. Except as provided for in the Declaration with respect to the rights of Declarant during the Declarant Control Period, the Owners, following the expiration of the Declarant Control Period, may, by a vote of at least two-thirds of the votes at any meeting of the Owners at which a quorum is present, may remove a Board member with or without cause and shall thereupon appoint a replacement Board member.

<u>Section 2.5 - Vacancies</u>. Vacancies in the Board, caused by any reason other than the removal of a Board member by a vote of the Owners, may be filled at a special meeting of the Board held for that purpose at any time after the occurrence of the vacancy, even though the Board members present at that meeting may constitute less than a quorum. These appointments shall be made by a majority of the remaining elected Board members constituting the Board. Each person so elected or appointed shall be a Board member for the remainder of the term of the Board member so replaced.

<u>Section 2.6 - Regular Meetings</u>. The first regular meeting of the Board shall occur within 30 days after the annual meeting of the Owners at which the Board shall have been elected. The Board shall establish the time and place of the Board meeting. No notice shall be necessary to the newly elected Board members in order to legally constitute such meeting, provided a majority of the Board members are

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Bylaws.1a.doc Page 3 of 10 present. The Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings. With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Board or any committee thereof shall be open to attendance by all Owners of the Association or their representatives. Without limiting the generality of the foregoing, no rule or regulation may be validly adopted during an executive session. Agendas for meetings of the Board shall be made reasonably available for examination by all Owners of the Association or their representatives. The Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association.

<u>Section 2.7 - Special Meetings</u>. Special meetings of the Board may be called by the President or by a majority of the Board members on at least three business days' notice to each Board member. The notice shall be hand-delivered, mailed or e-mailed and shall state the time, place and purpose of the meeting.

<u>Section 2.8 - Location of Meetings</u>. All meetings of the Board shall be held within Colorado, unless all Board members consent in writing to another location.

<u>Section 2.9 - Waiver of Notice</u>. Any Board member may waive notice of any meeting in writing, including notice given by email. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice. If all the Board members are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

<u>Section 2.10 - Quorum of Board Members</u>. At all meetings of the Board, the presence of both of the Board members shall constitute a quorum for the transaction of business. At a meeting at which a quorum is present, the votes of a majority of the Board members present at a meeting at which a quorum is present shall constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

<u>Section 2.11 - Telephone Communication in Lieu of Attendance</u>. A Board member may attend and fully participate in a meeting of the Board by using an electronic or telephonic communication method whereby the Board member may be reasonably heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Board. The Board member's vote shall be counted and the presence noted as if that Board member were present in person on that particular matter. The Board member shall be counted as being present for purposes of establishing a quorum.

<u>Section 2.12 - Proxies</u>. At any Board meeting, a Board member will be absent from the meeting who has otherwise been provided with information on an item coming before the Board and has become familiar with the subject matter, may provide the Board with a directed proxy directing the Board how to record the Board members' vote on a particular matter and, thereupon, the Board shall so record the vote. A Board member shall not grant a general proxy to any person and any such general proxy shall be rejected by the Board. A Board member inay not revoke a proxy given pursuant to this provision except by actual notice of revocation to the person presiding over a meeting of the Board. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate one month after its date, unless a different termination date is otherwise set forth on its face. Proxies shall be filed with the Secretary of the Association at or before the appointed time of each meeting. Proxies shall conform to C.R.S. Section 7-127-203.

Section 2.13 - Consent to Corporate Action. If all the Board members, separately or collectively

consent in writing to any action taken or to be taken by the Association, and the number of the Board members constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Board. The Secretary shall file these consents with the minutes of the meetings of the Board.

<u>Section 2.14 – Disputes Among Board Members</u>. If the two Board members cannot mutually agree upon a course of action, the Board Members shall refer the matter to Dirk DePagter or such other person mutually agreeable to the Board Members to vote on the matter and resolve the tie vote.

# ARTICLE 3 OWNERS AND MEMBERSHIP

<u>Section 3.1 - Ownership</u>. Ownership of a Lot is required in order to qualify for membership in the Association. Ownership is more fully addressed in the Articles of Incorporation and the Declaration.

<u>Section 3.2 - Annual Meeting</u>. Annual meetings of Owners shall be held during each of the Association's fiscal year at such date and time as determined by the Board and set forth in the notice. At these meetings, the Board members shall be elected by ballot of the Owners, in accordance with the provisions of these Bylaws, the Declaration and the Articles of Incorporation. The Owners may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association. Each Owner may participate in the annual meeting by telephone.

<u>Section 3.3 - Budget Meeting</u>. Meetings of the Owners to consider proposed budgets shall be called in accordance with the Act. The budget may be considered at annual or special meetings called for other purposes as well.

<u>Section 3.4 - Special Meetings</u>. Special meetings of the Association may be called by the President, by a majority of the Board or by Owners comprising 35% of the votes in the Association. Each Owner may participate in any special meeting by telephone.

<u>Section 3.5 - Place of Meetings</u>. Meetings of the Owners shall be held anywhere (i) in the Community, (ii) the Town of Mountain Village of the Town of Ridgway, or (iii) the County of Ouray, Colorado, and may be adjourned to a suitable place convenient to the Owners, as may be designated by the Board or the President.

<u>Section 3.6 - Notice of Meetings</u>. The Secretary or other officer specified in the Bylaws shall cause notice of meetings of the Owners to be hand-delivered, sent prepaid by United States mail to the mailing address of each Lot or to the mailing address designated in writing by the Owner or by e-mail to those Owners that are able to receive e-mail and that specify they wish to receive notices by e-mail, not less than 10 days in advance of a meeting. No action shall be adopted at a meeting except as stated in the notice.

<u>Section 3.7 - Waiver of Notice</u>. Any Owner may, at any time, waive notice of any meeting of the Owners in writing (e-mailed accepted), and the waiver shall be deemed equivalent to the receipt of notice.

<u>Section 3.8 - Adjournment of Meeting</u>. At any meeting of Owners, a majority of the Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.9 - Order of Business. The order of business at all meetings of the Owners shall be as follows:

(a) Roll call (or check-in procedure);

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- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Board Nominations;
- (f) Election of Board members on the Board;
- (g) Ratification of budget;
- (h) Unfinished business; and
- (i) New business.

### Section 3.10 - Voting.

(a) Each Lot in the Community shall have the voting rights as established in the Declaration.

If title to a Lot is held by an entity, including, without limitation, a firm, corporation, (b) partnership, trust, limited liability company, association or other legal entity or any combination thereof (hereinafter "entity"), that entity must appoint a "delegate" to represent such Included Property. Any such delegate must, at the time of the appointment and continuing throughout the period of representation of the entity, own at least a 5% equity interest in the entity. To appoint a delegate, the entity's governing body or officer must notify the Board of the appointment in writing prior to the commencement of the meeting for which the delegate is attending and participating. The Association may require proof of such equity ownership from time to time to evidence the qualification of the delegate to represent such a Lot and in the absence of such demonstration to the reasonable satisfaction of the Association, the Association may reject the right of the delegate to act on behalf of the entity until such time as satisfactory information is provided and accepted by the Association. A duly empowered delegate may participate in meetings and vote on matters requiring the vote of the Association Owners. A delegate may be a candidate for the Board and, if elected, serve as a Board member. The foregoing shall not preclude a delegate to act on behalf of an entity if duly appointed by a properly executed proxy given by the entity in conformance with these Bylaws. The moderator of the meeting may require reasonable evidence that a person voting on behalf of an entity is qualified to vote. A delegate may serve on the Board or as an officer for the Association.

<u>Section 3.11 - Quorum</u>. Except as otherwise provided in these Bylaws, a quorum is deemed present throughout any meeting of the Owners of the Association if both Owners of Lot A and Lot B are present at the meeting in person, by telephone or by proxy.

<u>Section 3.12 - Majority Vote</u>. Provided a quorum of allocated votes is present in person or by proxy, the affirmative vote of a majority of the total allocated votes so present in person or by telephone shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles, or these Bylaws. If the two Lot Owners cannot mutually agree upon a course of action, the Owners shall refer the matter to Dirk DePagter or such other person mutually agreeable to the Owners to vote on the matter and resolve the tie vote.

<u>Section 3.13 - Proxies.</u> At any meeting of the Owners, the vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner or by the Owner's duly authorized attorney-in-fact, designating a particular person present at the meeting to vote on behalf of the Owner. An Owner may provide the Association with a directed proxy indicating how the Owner directs the Association to record the Owners vote on a particular matter. If a Lot is owned by more than one person, each owner of the Lot may vote or register protest to the casting of a vote by the other owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this provision except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different

termination date is otherwise set forth on its face. Proxies shall be filed with the Secretary of the Association at or before the appointed time of each meeting. Proxies shall conform to C.R.S. Section 7-127-203. All proxies shall be reviewed by the Association's Secretary or designee as to the following: (a) Validity of the signature; (b) Signatory's authority to sign for the Owner; (c) Authority of the Owner to vote; (d) Conflicting proxies; and (e) Expiration of the proxy.

Section 3.14 - Action by Written Ballot. A vote on any action that may be taken at an annual, regular or special meeting of Owners may be taken without a meeting of the Owners, provided that the Association shall deliver a written ballot to every Owner entitled to vote on the matter by e-mail or mail, which sets forth each proposed action and provides an opportunity to vote for or against each proposed action by responding to the Association. All solicitations for votes by written ballot shall be mailed or e-mailed and shall indicate the number of responses needed to meet quorum requirements, state the percentage of approvals necessary to approve each matter, specify the time by which the response ballot must be received by the Association in order to be counted, specify the approved methods of submitting ballots. and be accompanied by written information regarding the matter to be voted upon. Ballots must be received by the Association no later than 21 calendar days from the date of the ballot, unless a different time is specified by the Board and reflected in the ballot. The Association and the Owners must send their ballots in accordance with Article 8 of these Bylaws (Notices). If so provided for in the written ballot, an action shall be deemed to be approved should an Owner fail to timely respond or otherwise act upon each matter identified for a vote in the written ballot. Approval by written ballot shall be valid when the number of votes cast by the ballot equals or exceeds the quorum required at a meeting authorizing the action and the number of approvals equals or exceeds the number required to approve the matter at a meeting. After the time to respond to the ballot has expired, the Association will tally the results and notify the Owners of the results within 15 days, unless a different time is specified by the Board.

<u>Section 3.15 - Election of Board Members</u>. Cumulative voting for Board members shall not be permitted.

<u>Section 3.16 - Chairman of Meetings</u>. At any meeting of the Owners, the Owners present shall select a Chairman and a Secretary of the meeting.

<u>Section 3.17 - Owner Addresses for Notices</u>. An Owner shall provide written notice to the Association if they wish to receive notices by United States mail only; otherwise, any notices given by the Association may be sent at the option of the Association by either (1) United States Mail (postage prepaid), or (2) e-mail. Notices include, but are not limited to, any notice required to be given by law, or otherwise given by the Association under these Bylaws or any other governing document of the Association to any Owner, or any other written instrument to be given to any Owner. Notices may be mailed or e-mailed to such Owner mailing address or e-mail address of the Lot as shown upon the Association's records. The Owner is responsible for updating the Association records if their contact information changes. If more than one Owner owns a particular Lot, then any notice or other written instrument may be addressed to all of such Owners and may be mailed or e-mailed in one mailing or e-mail message in accordance with the foregoing. Any notice or other written instrument given by the Board in accordance with the foregoing will be deemed to have been given on the date that it is mailed or e-mailed.

Section 3.18 - Rules at Meeting. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and Owners. In the absence of such rules, Robert's Rules of Order shall be used.

### ARTICLE 4 OFFICERS

<u>Section 4.1 - Designation</u>. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all of whom shall be elected by the Board. The Board may appoint an assistant

Treasurer, an assistant Secretary and other officers as it finds necessary. The President, but no other officers, needs to be a Board member. Any two offices may be held by the same person, except the offices of President and Secretary. An officer need not be an Owner of the Association.

<u>Section 4.2 - Election of Officers</u>. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board. They shall hold office at the pleasure of the Board.

<u>Section 4.3 - Removal of Officers</u>. Upon the affirmative vote of a majority of the Board members, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for that purpose.

<u>Section 4.4 - President</u>. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Owners and the Board. The President shall have all of the general powers and duties which are incident to the office of President of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to, the power to appoint committees from among the Owners from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association. The President may fulfill the role of Treasurer in the absence of the Treasurer. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

<u>Section 4.5 - Vice President</u>. The Vice President may exercise and perform the actions, powers, duties and functions of the President should the President be unavailable to undertake such the actions, powers, duties and functions.</u>

<u>Section 4.6 - Secretary</u>. The Secretary shall keep the minutes of all meetings of the Owners and the Board. The Secretary shall have charge of the Association's books and papers as the Board may direct and shall perform all the duties incident to the office of Secretary of a nonprofit corporation organized under the laws of the State of Colorado. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

<u>Section 4.7 - Treasurer</u>. The Treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board and shall perform all the duties incident to the office of Treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Board. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the Treasurer is also a Board member.

<u>Section 4.8 - Agreements, Contracts, Deeds, Checks, etc.</u> Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Board.

<u>Section 4.9 - Statements of Unpaid Assessments</u>. The Treasurer, assistant treasurer, a manager employed by the Association, if any, or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments, in

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Bylaws.1a.doc Page 8 of 10 accordance with Section 316 of the Act. The Association may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Board. Any unpaid fees may be assessed as a Common Expense against the Lot for which the certificate or statement is furnished.

### ARTICLE 5 ENFORCEMENT

Section 5.1 - Abatement and Enjoinment of Violations by Owners. The Board shall have the right to enforce the Declaration, any Rules, and any Governance Policies adopted by the Board and remedy violations thereof in the manner prescribed in the Declaration, any Rules, and any Governance Policies, including the right to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

<u>Section 5.2 - Fines for Violation</u>. By resolution, following notice and hearing, the Board may levy reasonable fines per day for each day that a violation of the Governing Documents or Rules persists after Notice and Hearing and more specifically defined in the Declaration, but this amount shall not exceed that amount necessary to insure compliance with the rule or order of the Board.

# ARTICLE 6 INDEMNIFICATION

The Board members and officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in the Corporation Act, the provisions of which are incorporated by reference and made a part of this document.

# ARTICLE 7 RECORDS

<u>Section 7.1 - Records and Audits</u>. The Association shall maintain financial records consistent with the Governance Policies of the Association. The cost of any audit shall be a Common Expense unless otherwise provided in the Governing Documents.

<u>Section 7.2 - Examination</u>. All records maintained by the Association or the Manager shall be available for examination and copying by any Owner, any Eligible First Mortgagee, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

### ARTICLE 8 MISCELLANEOUS

<u>Section 8.1 - Notices</u>. Any and all notices to the Association or the Board shall be sent to the office of the Manager, or, if there is no Manager, to the office of the Association, or to such other address as the Board may designate by written notice to all Association Owners, which may be a mailing address or e-mail address. Except as otherwise provided, all notices to any Owners shall be sent to the Association Owner's mailing address or e-mail address (as determined by the Association) as it appears in the records of and as provided by the Owner to the Association. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. An Owner has an affirmative duty to notify the Association, through its Manager, of their mailing address, phone number, cell number, fax number and email address and any changes to such information as such changes occur from time to time.

Section 8.2 - Fiscal Year. The Board shall establish the fiscal year of the Association, which shall initially be deemed to commence on January 1 and expire on December 31, unless and until changed by the Board.

<u>Section 8.3 - Waiver</u>. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

<u>Section 8.4 - Office</u>. The principal office of the Association shall be at such place as the Board may from time to time designate.

<u>Section 8.5 - Working Capital</u>. A working capital fund is established pursuant to the Declaration. Any amounts paid into this fund shall not be considered as advance payment of assessments. Unless waived by Declarant, each Lot's share of the working capital fund may be collected and then contributed to the Association by the Declarant at the time the sale of the Lot is closed or at the termination of the Period of Declarant Control. If the payment of the capital fund contribution is waived by Declarant, Declarant is not obliged to otherwise fund the waived contribution to the working capital fund. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment.

<u>Section 8.6 - Reserves</u>. As a part of the adoption of the regular budget the Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Areas and those Limited Common Areas that it is obligated to maintain, based upon age, remaining life and quantity and replacement cost of major Common Area improvements.

### ARTICLE 9

# AMENDMENTS TO BYLAWS

<u>Section 9.1 - Vote of Board</u>. The Bylaws may be amended by affirmative vote of both Board Members, following notice and opportunity to comment to all Owners, at any meeting duly called for such purpose.

<u>Section 9.2 - Restrictions on Amendments</u>. No amendment of the Bylaws shall be contrary to or inconsistent with any provision of the Declaration.

# APPROVAL AND EXECUTION

The foregoing Bylaws are hereby adopted by the Association as of the Effective Date.

**LENA STREET COMMONS TOWNHOME ASSOCIATION, INC.** a Colorado Nonprofit Corporation

By	

Printed Name:	
Title:	

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LENA STREET COMMONS TOWNHOMES

THIS DECLARATION OF COVENANTS. CONDITIONS AND RESTRICTIONS FOR THE LENA **STREET COMMONS TOWNHOMES** ("Declaration"), made effective as of ("Effective Date"), is made and entered into by Arthur Travis Spitzer Revocable Trust ("Declarant").

### **RECITALS**

1. Declarant is the owner of that certain real property situated in the Town of Ridgway, Ouray County, Colorado ("Property"), as more particularly described on attached Exhibit "A". and depicted on the Plat (defined below). The Property is subject to those easements and agreements currently of record and those which are to be recorded subsequent to the recordation of this Declaration pursuant to the rights of Declarant hereunder and/or those easements and agreements which are required or necessary and appropriate in furtherance of the Town Development Approvals and Requirement (defined below).

2. Declarant intends to develop the Property as a planned community entitled "The Lena Street Commons Townhomes" under the Act [defined below]("Community"). The Community does not include air space units and is not being formed as a condominium community.

3. The Community will be developed in accordance with any and all site specific approvals granted to Declarant for the Property by the Town of Ridgway ("Town") as well as the applicable and effective laws, regulations, charters and codes properly made applicable to the Property (collectively, the "Town Development Approvals and Requirements"). In the event of a conflict between the Governing Documents (defined below) and the Town Development Approvals and Requirements, the applicable Town Development Approvals and Requirements shall control

The Community has been approved for multifamily residential development pursuant to 4. the Town Development Approvals and Requirements, which will occur in a Townhome configuration consistent with these Declarations and the Town Development Approvals and Requirements and the Town Laws. The Community has been platted into 19 separate Lots as depicted and described on the Plat. Each Lot may be developed with one "Dwelling" and other related improvements. The Dwelling is anticipated to extend to the respective property boundary lines of each Lot and is further contemplated to share a party wall with an adjoining "Dwelling" on the adjacent lots. In such instances the "Zero Lot Line Setback Easements" and the "Party Wall" provisions provided for below shall apply. Each Owner acknowledges that the design and construction of the Dwellings and other improvements in the Community, as it may expand from time to time and the marketing and sales of Lots and Dwellings, have been and/or will be performed by individual and/or companies with respect to any issues related thereto and each Owner further acknowledges that it shall have no rights or remedies with respect to any such issues against Declarant or its affiliates.

Lena Street Commons Townhomes Association, Inc., a Colorado non-profit corporation 5. ("Association") has been formed as an association to exercise the functions set forth herein and to own, lease, hold, operate, care for and manage certain property for the common benefit of Owners and Occupants of Lots within, and of any other person acquiring an interest in, the Community.

The Plat depicted Parcel A, which is being developed as a separate CIOA community. 6. Parcel A is not being subjected to the Governing Documents is not part of the Community and is not subject to the jurisdiction of the Association, except pursuant to any separate agreements between the Association and any association formed for Parcel A.

7. Declarant desires to establish covenants, conditions and restrictions upon the Community and certain mutually beneficial restrictions and limitations with respect to the proper use, occupancy, improvement and enjoyment thereof, all for the purposes of enhancing and protecting the

value, desirability and attractiveness of the Community and enhancing the quality of life within the Community.

8. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring any interest in the Community shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements contained in this Declaration, as it may be amended from time to time.

9. The Community will be developed in accordance with any and all site specific approvals granted to Declarant for the Property by the Town of Ridgway ("**Town**") as well as the applicable and effective laws, regulations, charters and codes properly made applicable to the Property (collectively, the "**Town Development Approvals and Requirements**"). In the event of a conflict between the Governing Documents (defined below) and the Town Development Approvals and Requirements shall control

### DECLARATION

NOW, THEREFORE, for the purposes set forth above and herein, Declarant for itself and its successors and assigns hereby declares that the Community and any other property, if any, which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Community, and all of which shall run with the land and be binding upon and inure to the benefit of (i) the Community and every part thereof, (ii) Declarant and its successors and assigns, (iii) the Association and its successors and assigns, (iv) every Member of the Association, and (v) all Owners, Occupants and other Persons having or acquiring any right, title or interest in or to the Community or any part thereof, or any Improvement thereon, and their respective heirs, personal representatives, successors and assigns. Provided always, that to the extent this Declaration provides that Declarant shall not be bound by or is exempt from the application of certain covenants, conditions and restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions.

#### ARTICLE ONE DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1. <u>Act</u>. "Act" shall mean the Colorado Common Interest Ownership Act as set forth in C.R.S. 38-33.3-101, et seq., as the same may be amended from time to time.

1.2. <u>Allocated Interests</u>. "Allocated Interests" means the Common Expense liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

(a) The Common Expense liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Community. Such fraction is then multiplied by the Common Expense or the Assessment in question to determine that Lot's share thereof. The Common Expense liability of a Lot is determined without reference to the size, location, value or use of the Lot.

(b) One (1) vote in the Association is allocated to each Lot in the Community.

(c) The foregoing allocations may not discriminate in favor of Lots owned by Declarant or an affiliate of Declarant.

(d) If Lots are added to or withdrawn from the Community, (i) the Common Expense liability for each Lot shall be reallocated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Community following the addition or withdrawal of such Lots, and (ii) one (1) vote in the Association shall continue to be allocated to each Lot in the Community following the addition or-withdrawal of such Lots.

The Allocated Interests for the Community are specifically set forth on **<u>Exhibit "B"</u>** attached hereto and made a part hereof by this reference, as said **<u>Exhibit "B"</u>** may be amended from time to time.

1.3. <u>Articles of Incorporation</u>. "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Lena Street Commons Townhomes Owners Association, Inc., which have been filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

1.4. <u>Assessment</u>. "Assessment" means a Regular Assessment, Special Assessment, or Reimbursement Assessment.

1.5. <u>Association.</u> "Association" means the Lena Street Commons Townhome Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

1.6. <u>Association Property</u>. "Association Property" means, to the extent of the Association's interest therein: (a) all real and personal property, including Improvements, now or hereafter owned or leased by the Association, (b) all Common Areas now or hereafter owned, leased or maintained by the Association, together with the Improvements thereon, including, without limitation, parking areas, driveways, trails, retaining walls, stairways, recreation facilities, stormwater management facilities, berms, landscaping, irrigation systems, snowmelt systems, utilities and the like; (c) the beneficial rights in and to all easements created or reserved on any Plat, or any Supplemental Plat, or in this Declaration or in any separate agreement, for the use and benefit of the Association and/or the Owners, and (d) any water rights, ditch rights, and water systems, sewer systems, facilities and/or features (or interests therein) that may be owned, leased or maintained by the Association or which the Association and/or the Owners are entitled to use. Association Property may be located within or outside the Community. With the exception of easements which are Association Property, Association Property does not include the Lots or the Improvements constructed thereon. The ownership of the Association Property is subject to the Permitted Exceptions.

1.7. **Budget**. "Budget" means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Executive Board pursuant to this Declaration.

1.8. **<u>Bylaws</u>**. "Bylaws" means the Bylaws of the Association which have been or will be adopted by the Executive Board of the Association, as the same may be amended from time to time.

1.9. <u>Common Area</u>. "Common Area" means any portion of the Community designated in this Declaration or on a Plat or any Supplemental Plan as Common Area, General Common Area or Limited Common Area and which is owned or leased or maintained by the Association for the common use and enjoyment of the Owners and Occupants or some of them.

1.10. <u>**Common Expenses**</u>. "Common Expenses" means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.11. <u>Community</u>. "Community" means Lena Street Commons Townhomes and any additional real property which may from time to time be annexed into the Community and made subject to this Declaration by Supplemental Declaration and Supplemental Plat, including all Lots and G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc

Association Property, together with all Improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. If any property is subsequently withdrawn from the Community pursuant to the provisions of this Declaration, the terms and conditions of these Declarations shall no longer apply to such withdrawn property.

1.12. <u>Community Standard</u>. "Community Standard" means the standard, level and degree of condition and attractiveness of the exterior finishes of a Dwelling and the exterior lawns, landscaping and other exterior Improvements on a Lot as initially determined by the Developer during the Declarant Control Period and thereafter by the Association, which shall be uniformly established and applied throughout the Community. The Community Standard shall be a reasonable standard of care in providing for the repair, management and maintenance of the properties for which they are responsible so that the entire Community will reflect a pride of ownership

1.13. **Declarant**. "Declarant" means Arthur Travis Spitzer Revocable Trust, its successors, assigns, and affiliates. A Person shall be deemed to be a "successor and assign" of Declarant if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in that written instrument. The term "affiliate of Declarant" shall have the meaning set forth in Section 38-33.3-103(1) of the Act.

1.14. **Declaration**. "Declaration" means this instrument and all Supplemental Declarations, as this instrument and such Supplemental Declarations may be amended from time to time. The term Declaration includes the Plat recorded with this Declaration and all amendments to this Declaration and supplements to the Plat without specific reference thereto.

1.15. **Deed of Trust**. "Deed of Trust" means a Mortgage.

1.16. **Design Guidelines**. "Design Guidelines" means the duly adopted rules, regulations, procedures, standards, guidelines and requirements promulgated from time to time by the Design Review Committee, governing the review and approval or disapproval of proposed Improvements within the Community, the performance of construction activities, and such other matters as the Design Review Committee considers necessary or appropriate, as may be amended or supplemented from time to time.

1.17. <u>Design Review Committee</u>. "Design Review Committee" means the Design Review Committee provided for in this Declaration.

1.18. **<u>Dwelling</u>**. "Dwelling" means a single-family residence that may be constructed on each Lot in accordance with the Governing Documents and the Town Development Approvals and Requirements.

1.19. <u>Eligible First Mortgagee</u> "Eligible First Mortgagee" means a First Mortgagee which has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for herein.

1.20. **<u>First Mortgagee</u>** "First Mortgagee" means any Person named as a Mortgagee in any First Mortgage.

1.21. **Executive Board**. "Executive Board" or "Executive Board" means the Executive Board of the Association.

1.22. <u>Governing Documents</u> "Governing Documents" means this Declaration, the Plat, the Articles of Incorporation and Bylaws of the Association and any and all rules, regulations and policies adopted for the Community from time to time and the Town Development Approvals and Requirements, as the same may be amended or supplemented from time to time.

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1.23. <u>Household Pets</u>. "Household Pets" means generally recognized household pets such as dogs, cats, fish, birds, rodents, and non-poisonous reptiles.

1.24. **Improvements**. "Improvements" means any improvements, structural or otherwise, alterations, additions, repairs, excavation, grading, landscaping or other work which in any way alter any property within the Community, or the improvements located thereon, from its natural or improved state existing on the date this Declaration or a Supplemental Declaration for such property was first Recorded, including, but not limited to, dwelling units, buildings, outbuildings, additions, hot tubs, patio covers, awnings, the painting, staining or other change of any exterior surfaces of any visible structure, walkways, outdoor sculptures or artwork, sprinkler or irrigation systems, garages, carports, roads, driveways, parking areas, pathways, ponds, ditches, fences, screening walls, retaining walls, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation and any berming and any noise attenuation walls or barriers), hedges, windbreaks, plantings, planted trees and shrubs, gardens, poles, signs, tanks, solar equipment, wind harnessing or other energy generating equipment, exterior air conditioning, water softener fixtures, utilities, irrigations lines and systems, antennae and satellite dishes or receivers. Once an Improvement has been constructed or accomplished on a property within the Community, any subsequent alteration of or addition to or removal of that Improvement shall also constitute an "Improvement" hereunder.

1.25. <u>Lease</u>. "Lease" means and refers to any agreement for the leasing, rental, use or occupancy of a residential dwelling located on a Lot within the Community for Short Term Rentals or Long Term Rentals. The required terms and procedures for Leases are more particularly set forth below.

1.26. <u>Limited Common Area</u>. "Limited Common Area" means a Common Area that is designated by this Declaration, a Supplemental Declaration, a Plat or an amended or a Supplemental Plat, for the exclusive use of one or more Lots in the Community but fewer than all of the Lots.

1.27. <u>Live-Work Lot.</u> "Live-Work Lot" means a Dwelling that may be used for Live/Work purposes in accordance with the Governing Documents and the Town Development Approvals and Requirements.

1.28. <u>Lot</u>. "Lot" means any part of the Community which is designated as a Lot on a Plat or an amended or Supplemental Plat, together with all Improvements thereon and appurtenances thereto.

1.29. Long Term Rentals "Long Term Rentals" means the rental of a Lot to any third person for residential purposes for a term of 30 consecutive days or longer.

1.30. <u>**Rules and Regulations**</u>. "Rules and Regulations" means rules and regulations adopted from time to time by the Executive Board, as provided for in of this Declaration.

1.31. <u>Member</u>. "Member" means each Lot Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

1.32. **Mortgage**. "Mortgage" means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Lot, creating a real property security interest in a Lot and Recorded in the records of the Clerk and Recorder of Ouray County. "First Mortgage" means a mortgage which is the first and most senior of the Mortgages on the same Lot. The term "Mortgage" does not mean a statutory, tax or judicial lien. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

1.33. <u>Mortgagee</u>. "Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

1.34. <u>Mortgagor</u>. "Mortgagor" means the maker, obligor or grantor of a Mortgage. The term "Mortgagor" includes a trustor or grantor under a Deed of Trust.

1.35. <u>Notice and Hearing</u>. "Notice and Hearing" means a written notice and public hearing before the Executive Board, or a panel appointed by the Executive Board, as set forth in the Bylaws.

1.36. Occupant "Occupant" means: (a) any Person who is a tenant in a residence on a Lot pursuant to a Lease with the Owner thereof; (b) any Person who is present within the Community as a family member, guest or invitee of an Owner or the Association; (c) any person who is a guest, invitee, servant, tenant, employee, or licensee of Owner who is occupying a Lot and/or is present on the Common Areas for any period of time; or (d) any Person who is occupying a Dwelling as an Owner. "Occupant" also means any Person who is present within the Community as a family member, guest or invitee of an Owner, an Occupant, the Declarant, or the Association.

1.37. <u>Official Records</u> "Official Records" shall mean the Office of the Clerk and Recorder for Ouray County, Colorado.

1.38. <u>Owner</u>. "Owner" means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. The term "Owner" shall be analogous to the term "Lot Owner", as that term is defined in the Act.

1.39. <u>**Party Walls**</u>. "Party Walls" mean and refer to the dividing wall between each adjoining Dwelling.

1.40. <u>Permitted Exceptions</u>. "Permitted Exceptions" means all liens, encumbrances, reservations, restrictions, conditions, easements and other matters of record which encumber the title to all or any part of the Community, as of the date this Declaration or a Supplemental Declaration is Recorded. This Declaration and shall be subject to such Permitted Exceptions.

1.41. <u>**Person**</u>. "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, or any other entity capable of holding title to real property pursuant to the laws of the State of Colorado.

1.42. **Plat**. "Plat" means the Final Record Plat recorded on \_\_\_\_\_\_, 201\_\_\_ in the Official Records in Plat Book \_\_\_\_, Plat \_\_\_\_\_, Reception No. \_\_\_\_\_\_, as said Plat may be amended from time to time. By this reference, said Plat is incorporated in this Declaration. The term "Plat" shall also mean and refer to each Supplemental Plat and/or amended Plat.

1.43. **<u>Record or Recorded</u>**. "Record" or "Recorded" means an instrument of record in, or the act of recording an instrument in the Official Records.

1.44. **<u>Regular Assessment</u>**. "Regular Assessment" means a charge against an Owner and the Owner's Lot for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Executive Board in accordance with this Declaration and are allocated to the Lots in accordance with the Allocated Interests, except that Common Expenses that in the judgment of the Executive Board benefit fewer than all of the Lots may be allocated exclusively to the Lots benefited.

1.45. **Reimbursement Assessment** "Reimbursement Assessment" means a charge determined by the Executive Board in its sole and reasonable discretion, assessed against a particular Owner or Occupants of Owner's Lot or Dwelling and against the Owner's Lot or Dwelling for the purpose of: (a) imposing fines and penalties and/or reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision of the Governing Documents and/or the performance of work undertaken by the Association as provided for herein, including, without limitation, work for repairing, maintaining or replacing Party Walls or other Improvements on a Lot; (b) imposing fines and penalties and/or reimbursing the Association for costs and expenses incurred by the Association in connection with the remedying of any violation of the Governing Documents by the Owner or by an Occupant, (c) imposing fines and penalties and/or reimbursing the Association for costs

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and expenses incurred by the Association in connection with correcting or repairing damage caused to any Association Property or any other Lot or Dwelling attributable to the misconduct and/or the actions or the inactions of the Owner or Occupant; or (d) for such other purposes set forth in the Governing Documents providing for the imposition of fines or the collection of costs, expenses and the like, together with late charges and interest and attorney fees and costs, as provided for in Governing Documents. Reimbursement Assessments shall also include each of those fees and costs for goods and services requested by and/or otherwise provided to an Owner or Occupant by the Association or the Managing Agent.

1.46. **<u>Rules</u>** "Rules" means any Rules and Regulations, Policies and Procedures promulgated by the Executive Board for the management, preservation, safety, control, and orderly operation of the Community in order to effectuate the intent and to enforce the obligations set forth in the Governing Documents, as amended and supplemented from time to time.

1.47. <u>Security Interest</u> "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

1.48. <u>Services Agreement</u> "Services Agreement" means any services agreement that may be executed between the Association, the Declarant and such other third party Service Provider providing such services to and on behalf of the Association and the Lot Owners, which services may be undertaken within the Real Estate or off-site on any other property.

1.49. <u>Services Provider</u> "Services Provider" means the party providing services to and on behalf of the Association and the Lot Owners in accordance with the Services Agreement.

1.50. <u>Short Term Rentals</u> "Short Term Rentals" means the rental of a Lot and Dwelling to any particular guest for overnight accommodation purposes in which consideration is being paid, provided that the rental to a particular guest does not extend longer than 29 consecutive days.

1.51. <u>Special Assessment</u>. "Special Assessment" means a charge against an Owner and the Owner's Lot for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair, maintenance or replacement of capital improvements to or upon or serving the Community, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating deficit of the Association, as authorized by the Executive Board from time to time as provided herein. Special Assessments shall be based on a Budget adopted by the Executive Board in accordance with this Declaration.

1.52. **Supplemental Declaration**. "Supplemental Declaration" means an amendment to this Declaration which annexes real property to the Community and subjects such real property to this Declaration and sets forth such amendments to this Declaration and such additional covenants, conditions, uses and restrictions as may be applicable to the annexed property.

1.53. **Supplemental Plat**. "Supplemental Plat" means an amendment to Plat for the purposes of annexing real property described therein to the Community.

1.54. <u>Subdivision Improvements Agreement</u> "Subdivision Improvements Agreement" or "SIA" means the agreement between Declarant and the Town, Recorded on \_\_\_\_\_\_, 201\_\_\_ at Reception No.\_\_\_\_\_\_ in the Official Records, providing for the installation of certain Improvements required by the Town as part of the Town Development Approvals and Requirements.

### ARTICLE TWO GENERAL RESTRICTIONS APPLICABLE TO THE COMMUNITY

It is the intention of Declarant to establish and impose a common and general plan for the improvement, development, use and occupancy of the Community, all in order to enhance the value, desirability, and attractiveness of the Community and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Community, including but not limited to all Lots, shall be owned, held, used, occupied, improved, altered, maintained, conveyed, leased, encumbered and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions, subject to such Declarant exemptions as may be set forth herein.

2.1. **Development Control**. The Property is hereby initially divided into19 Lots. Subject to the Town Development Approvals and Requirements, the maximum number of Lots that may, but need not be created in the Community is a total of 40 Lots, subject to the Town Development Approvals and Requirements. All Improvement shall be commenced, made, done, permitted, located, erected, improved, altered or removed within the Community in compliance with these Declarations and Town Development Approvals and Requirements. Construction of Improvements on a Lot shall comply with any setbacks established on the Plat.

2.2. <u>Violation of Law, Insurance, Etc</u>. No Owner or Occupant or Person shall do any act or cause or permit anything to be done or kept in or upon a Lot or a Dwelling constructed thereon, or the Association Property, which would result in the increase of, or cancellation of, insurance maintained by the Association or would be in violation of any federal, state, county, local or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any Rule or Regulation promulgated by the Association, or of any provision of this Declaration.

### 2.3. Residential Use and Occupancy of Lots.

(a) The Lots and Dwellings shall be developed, used and occupied for the purposes provided for in the Town Development Approvals and Requirements. The Town Development Approvals and Requirements allowed for all of the Lots and Dwellings to be used for residential uses. The Town Development Approvals and Requirements more specifically provided that some of the Lots and Dwellings could be used for "Live/Work" units (as noted on attached **Exhibit "B"**), some of Lots and Dwellings could be used for Short-Term Rental units (as noted on attached **Exhibit "B"**) and some of the Lots and Dwellings must be restricted for Affordable Housing in accordance with the Restrictions contained in the Plat (as noted on attached **Exhibit "B"**).

(b) Developer may use Lots for sales and marketing purposes and for

construction staging.

2.4. **Parcels**. Development on Parcels is restricted to active and passive open space uses, the use and development of access, utility, drainage and other infrastructure, parking, installation of landscaping, construction access for the Lots, underground construction shoring, and such other uses and activities allowed by the Town Development Approvals and Requirements.

2.5. <u>New Construction Required; No Temporary Buildings or Occupancy</u>. All Improvements constructed within or placed upon the Community shall be new. No mobile homes (single or double wide), and no used or temporary house, structure, tent, teepee, or non-permanent out-building (specifically including without limitation mobile homes and trailers) shall ever be placed, erected or allowed to remain within the Community except temporary structures or construction trailers used for construction purposes during the construction of a Dwelling, which temporary facilities shall be removed immediately following completion of construction and in any event no later than 18 months following commencement of construction or remodeling unless a written extension is granted by the Association. No trailer, mobile home, incomplete Dwelling or other structure other than a Dwelling

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc Page 8 of 62 completed in accordance with approved plans, shall ever be used or occupied at any time for residential purposes, either temporarily or permanently. No completed Dwelling on a Lot shall be occupied in any manner until all provisions of this Declaration have been complied with, and a Certificate of Compliance has been issued pursuant as provided for below. The work of constructing, altering or remodeling any Dwelling on a Lot or any other Improvement within the Community shall be prosecuted diligently from the commencement thereof until the completion thereof.

2.6. Development Control. All Improvement shall be commenced, made, done, permitted, located, erected, improved, altered or removed within the Community in compliance with these Declarations. Except as otherwise expressly provided in this Declaration, (i) no Dwelling, building, structure, fence, wall, landscaping or other Improvement shall be commenced, made, done, permitted, located, erected, improved, altered or removed within the Community without the prior written approval of the Design Review Committee, and (ii) all subsequent additions to or changes or alterations in any Dwelling, building, structure, fence, wall, landscaping or other Improvement, including without limitation exterior color scheme, and all changes in the grade of Lots, shall also be subject to the prior written approval of the Design Review Committee. No modifications from the approvals granted by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Community, the Executive Board and/or the Design Review Committee shall have the authority (without the prior approvals described above), to take whatever remedial action may be necessary anywhere in the Community to protect Persons and property until such time as applicable notice and/or approval procedures can reasonably be utilized. Further notwithstanding the foregoing, Design Review Committee approval shall not be required for Improvements made by Declarant in the exercise of any development rights or special Declarant rights reserved by Declarant in this Declaration.

# 2.7. Party Walls.

(a) **Party Walls Defined**. In connection with the development of the Dwellings it is anticipated that construction shall occur in a manner that certain shared elements and facilities will be constructed along and over the common boundaries of the Dwelling common walls (the "**Party Walls**") that will support and be integrated into adjacent Dwellings being constructed in the Community. The Party Walls consist of certain facilities and elements, including, without limitation, common walls, footings and roof elements which together form a structural part of and physically joins the adjoining Dwelling on each Lot. The boundary between the two adjacent Dwellings shall be the vertical boundary funning through the center of the Party Wall. The aspects of the improvements on either side of the Party Wall are deemed to be part of the Lot and Dwelling extending from the center of the Party Wall.

(b) **Party Wall Easement**. Each Owner that owns a Dwelling adjoining another Dwelling in which a Party Wall is present is hereby granted a reciprocal, perpetual easement of support and shelter over the portion of any Party Wall. Each Owner covenants to continue to provide support and shelter that presently exists (or will exist following construction of the Dwelling) as may be necessary to maintain the integrity of each Dwelling. Each Owner and the Association has a reasonable easement for mechanical, electrical, plumbing and other utility facilities (including pipes, ducts, and utility ways and chases) as well as for structural support necessary as may be necessary to maintain the integrity of each Dwelling.

(c) <u>Ownership of Party Walls</u>. Each Dwelling (and Lot) shall be deemed to include that portion of a Party Wall extending from the exterior surface of the Party Wall which is inside the Lot to the portion of the Party Wall lying on the Lot line, together with the necessary easements for perpetual lateral and subjacent support, maintenance, repair and inspection of the Party Wall with equal rights of joint use. (d) <u>Maintenance of Party Walls</u>. The cost of maintaining each Party Wall, including shared foundation elements/structures, or shared roof if the roofline is joined shall be shared equally by the Owners of the Dwellings within which Party Wall is included.

(e) **Protection of Party Walls**. No Owner shall have the right to destroy, remove or make any structural changes in or to a Party Wall that would jeopardize the structural integrity of any Improvement or Lot without the prior written consent of the affected Owners, any First Mortgagees of said Owners, and the Association. No Owner shall subject a Party Wall to the insertion or placement of timbers, beams or other materials in such a way as to adversely affect the Party Wall's structural integrity. No Owner shall subject a Party Wall to any use that in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by the Owner that owns a portion of the Party Wall. Notwithstanding the foregoing, all of the covenants and restrictions contained herein shall be subject to the Declarant Rights as set forth herein.

Damage by Intentional or Negligent Act of Owner. Should a Party (f) Wall be structurally damaged or destroyed by the intentional act or negligence of an Owner (the "Responsible Owner") or the Responsible Owner's agent, contractor, employee, tenant, family member, licensee, Guest or invitee, the Responsible Owner shall be responsible for promptly undertaking the work required to repair and/or rebuild the damaged or destroyed Party Wall substantially to its original form ("Party Wall Repair Work") at the sole cost and expense of the Responsible Owner. If the Responsible Owner fails or refuses to commence the Party Wall Repair Work within 30 days of the occurrence, the Association may, but need not undertake the Party Wall Repair Work and charge the Responsible Owner for any and all costs and expenses incurred by the Association in undertaking such work, including, without limitation, architectural/engineering expenses, construction costs (including contractor time, materials, supplies, equipment and other materials), permitting fees/taxes, and consulting fees (legal, accountant, manager, etc.)("Party Wall Repair Work Costs"). The Responsible Owner shall fully reimburse the Association for the Party Wall Repair Work Costs as a Reimbursement Assessment, which shall be repaid within 30 days of a reimbursement notice is sent to the Responsible Owner. In addition to the payment of the Party Wall Repair Work Costs, the Responsible Owner shall also compensate the other Owner(s) for any damages sustained to person or property as a result of such intentional or negligent act.

(g) **Damage from Other Causes**. Should a Party Wall be structurally damaged or destroyed by causes other than the intentional act or negligence of an Owner (or its agent, contractor, employee, tenant, family member, licensee, guest or invitee), the Party Wall Repair Work shall be undertaken by the Owners owning any portion of the Party Wall, each to pay an equal share of the Party Wall Repair Work Costs. Should either of the Owners fail or refuse to undertake the Party Wall Repair Work, the Association may, but need not, undertake the Party Wall Repair Work and in such event it shall assess equitably the costs incurred in connection with the Party Wall Repair Work Costs to each Owner owning any portion of the Party Wall, which assessment shall be deemed a Reimbursement Assessment, which shall be repaid within 30 days of a reimbursement notice is sent to the Owner.

(h) **<u>Rights Granted to Association</u>**. Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in the Community, does hereby irrevocably constitute and appoint Association (with full power of substitution) as said Owner's attorney-in-fact, in said Owner's name, place and stead, to take any and all actions and to execute and deliver any and all instruments as may be necessary or appropriate to Association to enable the Association to undertake any of the Party Wall Repair Work that the Association may elect to undertake hereunder. The Association is also granted a right of access to enter upon the Lots and Dwellings to undertake any work that the Association may elect to undertake hereunder

(i) **No Encroachment**. In the event that any portion of any constructed Improvement, including any Party Wall, shall protrude over an adjoining Lot, the Party Wall shall be deemed to run from the center of the Party Wall, not the common property lines and an encroachment easement shall be deemed to exist for the portion of the Party Wall encroaching beyond the common

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc Page 10 of 62 property line. Such protruding structure shall not be deemed to be an improper encroachment upon the adjoining Lot nor shall any action be maintained for the removal of or for damage because of such protrusion. The foregoing shall also apply to any replacements of any Party Wall if the same are constructed substantially in conformity with the previously existing Party Wall as originally constructed. If a Party Wall is in need of repair or is destroyed or damaged by an casualty, the Parties shall repair, restore or reconstruct it substantially to its original form.

(j) <u>Colorado Law</u>. Any matters concerning a Party Wall which are not covered by the terms of this Agreement shall be governed by the general rules of Colorado law regarding party walls. To the extent not inconsistent with the terms and conditions of this Declaration, the general rules of law of the State of Colorado concerning party walls shall be applicable hereto.

2.8. <u>Design Guidelines</u>. All excavation and other land disturbance, construction or installation of Improvements, landscaping and irrigation activities within the Community shall be strictly governed by the procedures, standards, guidelines, restrictions and requirements set forth in the Design Guidelines. A violation of the Design Guidelines shall constitute a violation of this Declaration and may be enforced in accordance with the terms hereof.

2.9. Legal Description of a Lot. Every instrument affecting the title to a Lot shall describe that Lot by its identifying Lot designation followed by the words "Lot \_\_\_\_\_, Lena Street Commons Townhomes in accordance with the recorded Declaration and Plat, Town of Ridgway, Ouray County, Colorado." Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Lot, but also the General and Limited Common Areas appurtenant thereto, if any. Each such description shall be construed to include a nonexclusive easement for ingress to and egress from the Lot, and use (consistent with the Plat and this Declaration) of the General and Limited Common Areas.

2.10. <u>Title to Lots</u>. The title to any Lot may be held and owned by one or more person, firm, corporation, partnership, association, trust or other legal entity including Declarant, or any number of combinations thereof. By acceptance by any grantee of his deed or other instrument of conveyance from the Declarant or any prior Owner, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the General Common Areas. Each Owner specifically agrees not to institute any action therefor. Furthermore, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association incurs in connection therewith.

2.11. **Right to Mortgage a Lot.** Each Owner shall have the right to mortgage or otherwise encumber his Lot without restriction. No Owner, however, shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof except the undivided interest therein appurtenant to his Lot. Any Mortgage or other encumbrance of any Lot within the Community shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure by private power of sale, judicial foreclosure, or otherwise.

2.12. <u>Annoving Light, Sound or Odor</u>. All exterior lighting installed or maintained on any Lot or on any Improvement located on a Lot shall be placed so that the light source is screened or shielded from the Dwelling on any other Lot and from the Association Property and all times, lights shall be installed and operated consistent with the Town Development Approvals and Requirements. No sound shall be emitted from any part of the Community (including without limitation any Lot), which is unreasonably loud or annoying to others, and no odor shall be emitted from any part of the Community. An Owner is exempt from these requirements governing noise during such times as the Owner is undertaking construction, repair or maintenance of Improvements on Association Property or on a Lot.

### 2.13. Noxious or Offensive Activities; Nuisances; Construction Activities. No

noxious or offensive activity shall occur or be allowed at any time on any property within the Community, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annovance to Owners, Occupants, Declarant or the Association, or which causes damage to neighboring property, or which interferes with the peaceful enjoyment or possession and proper use of the Community, or any part thereof, by Owners or Occupants. Any activity on a Lot, which interferes with satellite dish, television, cable or radio reception on another Lot shall be deemed a nuisance and shall be a prohibited activity. As used herein, the term "nuisance" shall not apply to any activities of Declarant which are reasonably necessary or appropriate to the development, improvement, maintenance, marketing and/or sale of the Community or any part thereof. Normal construction activities and parking, during daylight hours, in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. Construction activities which generate noise or odor on Sundays and holidays are not permitted. Lot and Association Property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Association. In addition, construction equipment and building materials may only be stored or kept within the Community during and in connection with the construction of Improvements thereon, and then may be kept only in areas approved by the Association, which also may require screening of the storage areas. All such equipment and materials shall be removed immediately following completion of construction.

2.14. **No Hazardous or Unsafe Activities**. No activity shall be conducted on, and no Improvement shall be constructed on, any property within the Community, which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, and except as allowed below, no explosives, gasoline, fireworks, or other volatile and/or incendiary materials or devices or any materials deemed hazardous or toxic substances under applicable environmental laws, rules, or regulations shall ever be used, kept, stored, permitted to remain or be released or disposed of on any Lot or elsewhere within the Community. Gasoline or fuel for an Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis in an enclosed structure on a Lot in an amount not to exceed 10 gallons.

2.15. <u>No Solid Fuel Burning Fireplaces. Outside Burning; Fire Hazards</u>. No solid fuel burning fireplaces or other devices shall be allowed within the Community, unless an Owner obtains a permit therefore pursuant to Town regulations. No exterior fires shall be lighted or permitted on any property within the Community except in a contained barbecue unit while attended and in use for cooking purposes. No Owner shall cause or permit any condition on his Lot which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for Association Property or for other Owners. Notwithstanding the foregoing, the Declarant shall have the right to perform burning activities in connection with the development, marketing and maintenance of the Community.

2.16. No Unsightliness; Outside Personal Property Storage and Visible Clothes Drying. -Equipment, objects, and conditions, all sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, etc.), and all snow removal, garden or maintenance equipment except when in actual use, shall be kept in an enclosed structure or in a screened area. Tasteful patio furniture and accessories, barbecue grills, and playground equipment and other outside personal property may be kept on the side or in the rear of a Lot and must be kept in an attractive and good condition. No laundry or wash shall be dried or hung outside on any Lot except that a retractable clothesline may be used in a deck area if shielded from view from the other Lots.

2.17. <u>Leasing of Lots</u>. Any Owner shall have the right to Lease his/her Lot under the following conditions:

2.17.1. The leasing of a Lot and Dwelling for Long Term Rentals or Short Term Rentals shall be subject to in all respects and governed by the provisions of the Governing Documents and the Town Development Approvals and Requirements.

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc Page 12 of 62 2.17.2. Each Owner who leases a Lot for Long Term Rentals or Short Term Rentals purposes shall be responsible for assuring compliance by the Occupant with all of the provisions of the Governing Documents and the Town Development Approvals and Requirements and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant. Any failure by the Occupant to comply with any of the Governing Documents and the Town Development Approvals and Requirements, in any respect, shall be a default by Occupant and Owner under the Governing Documents which may be enforced against the Occupant and/or Owner by the Executive Board. The Executive Board shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the Governing Documents, which notice shall specify a period of time in which the Occupant may cure the violation. If the violation continues uncured, or if it is repeated within the three-month period following the date of the first notice, the Owner hereby gives to the Association an irrevocable power of attorney to act on the Owner's behalf to give such statutory notices to the Occupant and to take such other actions as may be necessary or appropriate to evict the Occupant from the Lot.

### 2.18. Vehicle Parking, Storage, Operation and Repair.

(a) No parking or storage of vehicles shall occur in any Common Areas unless and except to areas designated for overflow parking, if any. The foregoing shall not apply to conditions during construction of Improvements undertaken pursuant to a construction plan approved by Declarant, provided that such parking shall not block access to another Lot.

(b) All parking required for a Lot shall be located on the Lot in designated

parking area.

2.19. Garbage: Trash: Compost: Containers. No refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain on any Lot or on Association Property, except that any approved container containing such materials may be placed next to the street not earlier than 6:00 a.m. on the designated morning of garbage collection and must be returned to its enclosed structure that same day. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition, and except when placed for pickup they shall not be visible from another Lot or Association Property. All such refuse, garbage, trash, plant waste, compost, metal, scrap materials, rubbish and debris shall be promptly removed from the Community and shall not be burned thereon. Compost structures and containers may be placed on a Lot or on Association Property in locations and in containers approved by the Association, provided that no such structure or container shall be larger than fifty-five (55) gallons. Notwithstanding the foregoing, the Association shall have the right to require that every Lot Owner purchase and use a designated garbage container intended to deter wildlife interaction. Garbage containers shall comply with all applicable Town requirements concerning type of containers, including bear proof containers.

2.20. <u>Animals</u>. Except as specifically permitted below or by the Rules and Regulations, no animals, reptiles, primates, fish, fowl or insects of any kind shall be kept, raised, bred, maintained or boarded within or upon any part of the Community.

(a) Each Lot shall be entitled to a maximum of no more than three (3) dogs or cats (or any combination thereof) and a reasonable number of other Household Pets, such dogs, cats or other Household Pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, or do not otherwise become a nuisance or threat to other Owners or Occupants. Contractors and subcontractors may not bring dogs or other pets into the Community. A Person shall only keep a Household Pet in the Community in accordance with all applicable laws, regulations and restrictions promulgated by the Town.

(b) A permitted dog, cat or other Household Pet must be restrained at all times within the Owner's or Occupant's Lot, and shall not be permitted outside such Lot except when

leashed, and accompanied by the pet's owner or the owner's representative. All Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws.

(c) The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and for any clean-up of the Owner's Lot and of streets, sidewalks, Association Property or other Lots necessitated by such pet.

2.21. Restrictions on Equipment, Tanks, Antennae, Satellite Dishes, Etc. Heating, air conditioning (including swamp coolers), air movement, wind collection, or refrigeration equipment must be screened from the view of neighboring properties and must receive the prior written approval of the Association. The use of solar energy systems (both passive and active) within the Community is encouraged, provided such systems comply with governmental guidelines for residential uses and meet the same architectural criteria as are applied to other Improvements within the Community, and are approved in advance by the Association. No tanks of any kind, whether elevated or buried, shall be erected, placed or permitted to remain upon any Lot or Association Property except in compliance with applicable federal and state regulations, and then only with the prior written approval of the Association. Any approved tank must be located underground or adequately concealed from view by fencing or screening approved by the Association. If an Owner wishes to install an antenna to receive video programming, the Owner shall notify the Association in writing of the proposed installation and location thereof at least ten days before the installation. The antenna installation and location shall comply with all fire, electrical and other applicable safety codes, and the installing Owner shall to the extent feasible install the antenna in a location that minimizes its visibility from neighboring Lots or Association Property. The installing Owner shall be obligated to paint the antenna so that it blends into the background against which it is mounted and to plant and maintain such reasonable landscaping as will screen the antenna, to the extent feasible, from neighboring Lots and Association Property. Provided always, that in the event that in any particular situation any of the foregoing requirements or restrictions cause an unreasonable delay or cost in the installation, maintenance or use of the antenna, or prevent the reception of acceptable quality signals, said requirements or restrictions shall be invalid as they apply to that particular situation. Satellite dishes that exceed one meter in diameter, and MDS antennas that exceed one meter in diameter or diagonal measurement, shall not be allowed within the Community. Mast antennas that extend higher than 12 feet above the roof line and antennas that are not used to receive video programming shall only be permitted within the Community if they receive the prior written approval of the Association as to design, location and screening from neighboring Lots and Association Property.

2.22. **<u>Restrictions on Mining or Drilling</u>**. Except as required by Declarant to install Improvements for the Community, no property within the Community shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for, developing or removing, water, geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, removing, distributing or storing underground water by Declarant or the Association. Nothing contained herein shall be construed to limit the rights of the owners of mineral interests severed from the surface of any portion of the Community prior to the recording of this Declaration.

2.23. **Excavations**. No excavation or other earth disturbance shall be performed or permitted within the Community except in connection with the construction of Improvements. Upon completion of construction, openings in the ground shall be backfilled and compacted and all disturbed ground shall be graded and landscaped. All such work shall comply with the Town Development Approvals and Requirements.

2.24. <u>No Interference with Waterways or Drainage or Irrigation Systems</u>. No Owner or Occupant shall construct, install, maintain or permit any Improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways and water features within the Community, (ii) any irrigation ditch, lateral, lake, pond or other water collection, storage or distribution system within or serving the Community, or (iii) normal drainage patterns within the Community, subject always to the rights of

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2.25. <u>Association Landscaping</u>. All landscaping within the Community shall be the responsibility of the Association, and no Owner or Occupant shall perform any landscaping activities within the Community (including without limitation the planting, grooming or removal of grass, trees, bushes or other vegetation, or the planting or tending of gardens).

Use of Easement Areas; Utility Installation. All easements shown on the 2.26. Subdivision Plat, Plat or a Supplemental Plat covering any portion of the Community have been created or reserved for the purposes indicated on such Plat and/or in Article 7 below. No Owner or Occupant may erect any structure of any type whatsoever in such easement areas, nor may an Owner or Occupant use the surface of such easement areas for any private use, other than driveways or landscaping which will not interfere with the use of said easement by the Persons or entities for whose benefit it has been created or reserved and which receives the prior written approval of the Association. With respect to easements created for access and/or utility purposes either by the terms of this Declaration or any other Recorded agreement or on a Plat, any and all bona fide public and private utility service companies shall have the right of access, ingress, egress, and use of such easement areas for the installation, operation and maintenance of utility facilities serving the Community, subject to the following limitations. Except as to special street lighting or other aerial facilities which may be required by the Town, no aerial utility lines or facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Community, whether upon Lots, Association Property, easements, streets, or rights-of-way of any type, either by a utility company, an Owner, the Association or any other person or entity (including but not limited to any person owning or acquiring any part of the Community) and all utility lines and facilities (including but not limited to water, sewer, gas, electricity, telephone, and cable ty) shall be buried underground. Provided, that during the construction of a Dwelling on a Lot a temporary overhead power line may be installed which shall be promptly removed upon completion of construction.

2.27. Signs and Advertising. With the exception of one entry/identification sign per Lot during the period of actual construction on the Lot, no sign, poster, billboard or advertising device of any kind shall be allowed or displayed upon any Lot or any Association Property within the Community except: (a) such signs as may be used by the Declarant or Association in connection with the development, marketing and sale of Lots in the Community or otherwise allowed by the Town Development Approvals and Requirements; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and for regulation of Association Property; (d) neighborhood monuments (*e.g.*, entrance and directional signs) which are compatible with the architecture of the area; (e) one security company sign; (f) one "For Sale" on each Lot; and (g) one security company signs. "For Rent" signs shall not be displayed anywhere within the Community.

2.28. <u>Flags or Displays</u>. Any exterior flags or other displays displayed in the Community shall conform with the Town Development Approvals and Requirements and the Act.

2.29. **Restoration of Improvements in the Event of Damage or Destruction**. In the event of damage to or destruction of any Improvement on any Lot, the Owner thereof shall cause the damaged or destroyed Improvement to be promptly restored or replaced to its original condition or such other condition as may be approved in writing by the Association, or the Owner shall cause the damaged or destroyed Improvement to be promptly demolished and the Lot to be suitably landscaped, subject to the approval of the Association, so as to present a pleasing and attractive appearance. Such

Improvements shall be repaired, restored or otherwise demolished and suitably landscaped within such reasonable time frame as may be established by the Association.

2.30. **Damage by Owners During Construction**. Each Owner is responsible for any damage caused to roads, streets, ditches, fences, trails, natural or constructed drainage courses, utilities, Association Property, Improvements on Association Property or to other Lots or Improvements thereon, during the construction or alteration of Improvements upon the Owner's Lot, including without limitation damage caused by any construction vehicles using the roads or streets within the Community. Damage shall include any degradation in the appearance or condition of such roads, streets, Association Property, or other Lots or Improvements. The responsible Owner shall promptly repair and clean up any such damage, at its sole expense. Each Owner shall also be responsible for any damage caused by utility cuts in roads, and for washouts and runoff damage, and to promptly repair any such damage. If the Owner fails to repair any such damage within 10 days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to perform such repairs on behalf of the Owner, and to levy a Reimbursement Assessment upon the Owner and its Lot to recover the costs thereof.

2.31. **<u>Right of Entry</u>**. During reasonable hours and upon reasonable notice to the Owner or Occupant of a Lot, any member of the Design Review Committee, any member of the Executive Board, and any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the Improvements thereon, except for the interior portions of any occupied dwelling (which shall require the permission of the Owner or Occupant, except in case of emergency, when no notice or permission shall be required), for the purpose of ascertaining whether or not the provisions of this Declaration and of the Design Guidelines have been or are being complied with, or for the purpose of exercising any rights or performing any responsibilities (maintenance, repair, etc.) established by this Declaration, and such individuals shall not be deemed guilty of trespass by reason of such entry. For purposes of this Section, "emergency" shall mean circumstances posing an imminent threat of injury or damage to persons or property.

2.32. **Restrictions on Resubdivision, Property Restrictions, Rezoning, and Time** <u>Sharing</u>. Except as expressly permitted in this Declaration, (i) no Lot shall ever be further subdivided or replatted by an Owner into smaller Lots or subjected to a condominium regime seeking to divide a Dwelling into multiple units, (ii) no physical portion less than all of any such Lot, nor any easement or divided interest therein, shall be conveyed, transferred or encumbered by the Owner, and (iii) no Lot may be combined with any other Lot nor the boundary lines adjusted between any two Lots.

(a) Declarant reserves the right to replat a Lot, or to combine two Lots owned by Declarant, or to adjust or remove boundary lines between Lots owned by Declarant, provided any necessary Town Development Approvals and Requirements are obtained, all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, and the necessary reallocation of Allocated Interests of the Owners is accomplished. In the case of the combination of two Lots, such interests shall be reallocated to reflect the fact that two Lots have been eliminated and one Lot created in its place, unless the Executive Board requires that the combined Lots continue to pay two Assessments. All costs relating to the foregoing activities shall be the sole responsibility and obligation of Declarant. Declarant's rights under this subsection (a) shall terminate upon the first to occur of (i) the date which is 30 years after the Recording of this Declaration, or (ii) Declarant's relinquishing of these rights by a Recorded instrument.

(b) The boundaries between adjoining Lots may also be adjusted or removed (*i.e.* the Lots combined) by the Owner(s) thereof other than Declarant, if (i) the written consent of the Executive Board is first obtained, in the sole discretion of the Executive Board, (ii) all applicable regulations and codes are complied with and all necessary Town Development Approvals and Requirements are obtained, (iii) the proposed adjustment or removal does not violate the terms of any document evidencing a security interest in the subject Lots, (iv) all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, and (v) the necessary reallocation of Allocated Interests of the Owners is accomplished pursuant to the guidelines set

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forth above or as otherwise required by the Executive Board. All costs relating to such activity (including the attorneys' fees and costs incurred by the Executive Board in reviewing and acting upon the matter) shall be the sole responsibility and obligation of the Owner(s) applying for the same.

(c) No Owner of a Lot shall grant or convey any easement rights affecting any portion of the Lot without the prior written consent of the Executive Board.

(d) No further covenants, conditions, restrictions or easements shall be Recorded by any Owner (except Declarant in the exercise of its reserved rights) or other Person against any Lot without the provisions thereof having been first approved in writing by the Executive Board for consistency with the Declaration and the general plan of development for the Community. Any covenants, conditions, restrictions or easements Recorded without such approvals being evidenced thereon shall be null and void. This provision does not apply to Mortgages.

(e) No application for rezoning of any Lot, and no application for any variance or special use permit for any Lot, shall be filed with any governmental authority by any Owner (except Declarant in the exercise of any reserved rights) unless the proposed use of the Lot has first been approved in writing by the Executive Board and the proposed use otherwise complies with the Declaration.

(f) No form of time-share or interval ownership or use program shall ever be created or allowed in connection with any Lot in the Community, and any such attempted ownership or use program shall be null and void and unenforceable.

2.33. <u>Health, Safety and Welfare</u>. In the event any uses, activities, or facilities within the Community are deemed by the Executive Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Executive Board may adopt Rules and Regulations governing the same in order to appropriately restrict and regulate such uses, activities or facilities within the Community. Such rules shall be consistent with the purposes and provisions of this Declaration.

2.34. <u>View Impairment</u>. Neither the Declarant nor the Association, guarantee or represent that any view over and across the Community from their Lot or Dwelling and/or the Common Areas, will be preserved without impairment. The Declarant and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement. The Association shall have the right to add trees and other landscaping to the Common Areas. There shall be no express or implied easements for view purposes or for the passage of light and air.

2.35. **Implementation and Variances**. The Executive Board may implement the restrictions set forth in this Article, or otherwise restrict and regulate the use and occupancy of the Community and the Lots by reasonable Rules and Regulations of general application adopted by the Executive Board from time to time. The Executive Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article (excepting any such restrictions with respect to which the Association has the authority to grant variances under this Declaration), if the Executive Board determines, in its sole discretion, (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, and (b) that the activity permitted under the variance, in the judgment of the Executive Board, will not have any material adverse effect on the Owners and Occupants of the Community (including neighboring Lots) and is consistent with the high quality of living intended to be promoted hereby throughout the Community. When an Owner applies for a variance, the Executive Board must give at least ten (10) days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots within the Community, at the current addresses for such Owners reflected in the Association files. The applying Owner must provide the Committee with an accurate list

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of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing. No variance shall conflict with the Town Development Approvals and Requirements or with ordinances or regulations of the Town. If a variance from the Town Development Approvals and Requirements or Town laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such variance before submitting a variance application to the Executive Board.

2.36. **Declarant Activities**. The Declaration shall in no way restrict Declarant's right and ability to develop, improve, maintain, repair, regulate, operate, administer, manage, market, sell, lease, encumber or dispose of the Community, the Lots, the Association Property or any part thereof, including the right to construct Improvements, place construction and office trailers, and install signs thereon, all in the complete discretion of Declarant.

### ARTICLE 3 MAINTENANCE OF THE LOTS AND ASSOCIATION PROPERTY

3.1. <u>General Maintenance of Community</u>. All property within the Community, including without limitation all Lots (including unimproved Lots, and Lots on which Improvements are under construction), Association Property, Improvements, and landscaping, shall be kept and maintained in a clean and attractive condition and in good order, condition and repair consistent with the Community Standard.

# 3.2. **Owners Responsibilities**.

(a) Except as specifically set forth in this Section or in a Supplemental Declaration, maintenance, repair, and upkeep of each Lot, the Dwelling and all other Improvements thereon (including attractive painting and refinishing thereof at regular intervals) shall be the responsibility of the Owner of the Lot. Such maintenance and repair shall be performed by each Owner whenever necessary or appropriate and at regular intervals in order to keep the Lot and Improvements in substantially the same condition and appearance as existed at the time of completion of construction, subject to normal wear and tear that cannot be avoided. Said Owner obligations shall include all maintenance, repair or replacement required as a consequence of any fire, wind, vandalism, theft or other casualty. With respect to a Lot, this maintenance obligation extends to all lands and landscaping within the Lot lines, excepting any areas or elements that are to be maintained by the Association, and includes without limitation the landscaping maintenance and weed control obligations set forth below. Unsightly conditions on a Lot shall constitute a nuisance under this Declaration. The foregoing notwithstanding, the provisions of Section 2.7 concerning the repair and maintenance of Party Walls shall control and prevail over the provisions of this Section 3.2.

(b) If an Owner fails to perform any of such obligations within ten (10) days following receipt of a written notice from the Executive Board requesting the same consistent with the Community Standard, the Executive Board shall have the right to enter upon the Lot of the Owner to cure the violation, to perform any needed repairs or maintenance, or to otherwise cause compliance with this Section, and to levy and collect a Reimbursement Assessment upon the Owner and its Lot for the costs and expenses incurred by the Association in connection therewith. The Executive Board shall have no right to enter into the interior of a Dwelling without the consent of the Owner except in the case of a clear emergency.

(c) An Owner may not remove vegetation from any Parcel without the approval of the Association and then only in accordance with the Town Development Approvals and Requirements.

(d) Each Owner shall undertake such other maintenance, repair and other actions on their Lot or a Parcel placed upon it by any other provisions of this Declaration and/or by the Town Development Approvals and Requirements, if any.

### 3.3. Association Responsibilities.

(a) The Association will maintain and repair the driveway within the Community as shown on the Plat will be owned and managed by the Association as a "private" street and pedestrian walkway ("**Private Driveway**"), inclusive of pedestrian walkways, retaining walls, drainage system, landscaping and lighting. The cost thereof shall be a Common Expense, provided, that if the Private Driveway is damaged by an Owner or Occupant, the expense of repairing the damage may be charged to that Lot Owner as a Reimbursement Assessment.

(b) Maintenance, repair, and upkeep of Association Property, including any Improvements thereon, shall be the responsibility of the Association. The cost of these obligations shall be a Common Expense. The Association may enter into contracts to have such responsibilities performed by third parties.

(c) The Association shall undertake such other maintenance, repair and other actions placed upon it by any other provisions of this Declaration and/or by the Town Development Approvals and Requirements.

### ARTICLE FOUR DESIGN REVIEW

Establishment of Design Review Committee. The Community shall have a Design 4.1. Review Committee, which shall consist of an odd number of members with a minimum of three (3) members and a maximum of seven (7) members, each of whom shall either be (i) a representative of the Declarant, (ii) an Owner or Occupant of a Lot in the Community, or (iii) a local architect, landscape architect or engineer. For so long as Declarant owns any Lots in the Community, or until Declarant relinquishes said right to the Association by written notice thereto, Declarant hereby reserves and shall have the sole right to appoint, and to remove without cause, all members of the Design Review Committee, for such terms as Declarant considers appropriate. Following the expiration or relinquishment or other termination of Declarant's right to appoint members of the Design Review Committee, all such members shall be appointed and removed from time to time by the Executive Board in its discretion, and shall serve for such term as may be established by the Executive Board from time to time. A member appointed by the Executive Board may be removed by the Executive Board at any time upon written notice, without cause. Subject to the three (3) member minimum and seven (7) member maximum, and to the membership criteria set forth above, Declarant, or following termination of Declarant's rights under this Section 5.1 the Executive Board, may increase or decrease the size of the Design Review Committee from time to time in its discretion. The Executive Board may hire or appoint a secretary for the Design Review Committee and shall provide appropriate compensation for any such secretarial services.

4.2. **Establishment of Subcommittees.** The Design Review Committee shall have the right but never the obligation to establish one or more subcommittees to perform one or more of the functions of the Design Review Committee. For purposes of this Declaration, all references to the Design Review Committee shall also refer to any subcommittee established by the Design Review Committee. The procedures for establishment of subcommittees, the rights and duties thereof, and the limitations thereon may be established and adopted by the Design Review Committee from time to time, in its discretion.

4.3. <u>Meetings and Actions of Committee</u>. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval for any Improvements and the granting of variances. The action of such Committee Representative within the authority of such Committee Representative shall constitute the action of the Design Review Committee. A majority of the members of the Design Review Committee shall constitute a quorum of the Committee. Actions of

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the Committee may be taken (without a meeting) by the written consent of a majority of the members thereof, or at a meeting at which a quorum is present in person, by the vote of a majority of such members constituting the quorum, but in no event less than two (2) members.

4.4. <u>Compensation</u>. The members of the Design Review Committee shall be entitled to reasonable compensation for their services on the Design Review Committee, which compensation shall be set by the Executive Board from time to time. The members of the Design Review Committee shall also be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder. Such compensation and expenses shall be paid by the Association and shall constitute a Common Expense.

4.5. <u>Records of Actions</u>. The Design Review Committee shall keep a permanent record of all final actions of the Design Review Committee.

Design Guidelines. The Design Guidelines have been approved by Declarant and 4.6. the County and adopted by the Association. The Design Guidelines establish an initial set of rules, procedures, standards, guidelines and requirements, including without limitation architectural, design and development standards and guidelines, which shall govern the review and approval or disapproval of proposed Improvements within the Community, and other matters provided for therein. The Design Review Committee may make such amendments, deletions or additions to the Design Guidelines as the Committee deems necessary or appropriate from time to time to accomplish the purposes of (and as are not in conflict with) this Declaration and to ensure the orderly and attractive development of the Community. Upon its adoption, each such amendment shall be provided to the Executive Board. The Design Guidelines (as they may be amended from time to time) are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on the Community, and on all Lot Owners, Occupants, Members or other Persons as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Review Committee, in its sole discretion, shall have the authority and obligation to determine the existence of any violation of the Design Guidelines or of any approvals granted or other decisions made by, or other requirements of, the Design Review Committee, which determination shall be binding on the Owners.

Design Review Fee; Repayment of Expenses. The Design Review Committee may 4.7. adopt, and may from time to time amend, a design review fee schedule which shall apply to requests for the original construction of a residential improvement, and for each subsequent request for approval of an Improvement on a Lot including remodels, renovations or other alterations of the original approval, except that no fee shall be charged for any proposed alteration or addition to an approved landscaping plan. The design review fee schedule shall be set forth in the Design Guidelines. The applicable fee must accompany each request for approval of any proposed Improvement. The Design Review Committee shall not take any action on a request for approval until all required fees are paid in connection therewith. All fees collected by the Design Review Committee shall be remitted to the Association to help defray the expenses of the Design Review Committee's operation. The Design Review Committee may retain such consultants as necessary to assist in the processing, review, implementation and inspection of applications, including, without limitation, architects, engineers, surveyors, legal counsel and other consultants. All other consulting fees and expenses incurred by the Design Review Committee in connection with its review of a particular application shall be charged back to the Owner submitting the application and must be paid in full before final approval of the application is granted by the Design Review Committee.

4.8. **<u>Pre-Purchase Review Encouraged</u>**. If a contract purchaser of a Lot believes that his eventual building plans may be in any way controversial, such purchaser is encouraged to submit a sketch plan to the Design Review Committee for review and comment in advance of closing on the Lot. The Committee shall make a good faith effort to accommodate the purchaser's schedule, but shall have no liability to the purchaser if it fails to perform a timely sketch plan review. No pre-purchase comments made to a purchaser by the Design Review Committee in the context of a sketch plan review shall constitute an approval of any kind. 4.9. <u>Design Review and Construction Process</u>. Every Owner proposing to make Improvements on its Lot must comply with the design review and construction procedures that are set forth in the Design Guidelines.

Submission of Plans, Specifications and Data; Time Frame for Approval. Prior to 4.10. commencement of work to accomplish any proposed Improvements, the Owner proposing to make such Improvements shall submit to the Design Review Committee such descriptions, surveys, plot plans, excavation plans, drainage plans, grading plans, roof plans, elevation drawings, construction plans, landscaping plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request, showing among other things the nature, kind, shape, bulk, massing, articulation, height, width, dimensions, exterior design, color, materials, and location of the proposed Improvements. All submissions shall conform to and be in accordance with the Design Guidelines, the Town Development Approvals and Requirements, and any Rules and Regulations and/or Policies promulgated by the Association and such other requirements and restrictions contained in this Declaration ("Design Review Criteria"). The Owner shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvements. Until receipt by the Design Review Committee of a complete application, including all required information and materials in connection with the proposed Improvements, the Design Review Committee may postpone review of the application. From and after the date on which the Design Review Committee receives all required information and materials in connection with the proposed Improvements, the Design Review Committee shall make reasonable efforts to conduct an initial review of the application within thirty (30) calendar days from the submission of the complete application. The Design Review Committee may approve, approve with conditions, continue, or deny the application. In the discretion of the Design Review Committee, one or more meetings may be held with the Owner to review and act upon the application. Notice of the application shall be sent to the other owners in the Community ten (10) days before the scheduled meeting date. The meeting shall be open to other Lot Owners who will be given a reasonable opportunity to discuss and present comments concerning the application.

Design Review Committee Action; Compliance Agreement The Design Review 4.11. Committee shall approve any proposed Improvements only if it determines in the exercise of its reasonable judgment that all pertinent provisions of the Design Review Criteria have been complied with; that the proposed Improvements will not be detrimental to the value or enjoyment of the surrounding areas in the Community; that the siting, design, bulk, height, appearance and overall aesthetic impact of the proposed Improvements will be in harmony with the surrounding areas in the Community: that the proposed Improvements will enhance the quality, wholesomeness, and attractiveness of the Community and the enjoyment thereof by Lot Owners; and that the upkeep and maintenance of the proposed Improvements will not become a burden on the Association. The Design Review Committee may condition its approval of any proposed Improvements upon the making of such changes therein as the Design Review Committee may deem reasonably appropriate, and may require that additional landscaping be performed on the subject Lot. The Committee shall require that the Lot Owner, as a condition of Final Approval, enter into a binding site plan compliance agreement, confirming the terms and conditions of the approval and Lot Owners requirement to conform with the approvals, bonding to insure repair or replacement to Association Property or other Lots impacted by construction activities undertaken by the Lot Owner and such other matters are reasonably required by the Committee. The approval by the Design Review Committee of any Improvement shall in no event imply or require that such approval will be granted again in the future for the same or a similar Improvement, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Guidelines, to grant or deny such approval in each instance on the merits of the particular application or proposal and considering the circumstances surrounding the same. In addition to the actions taken by the Committee, the Lot Owner shall be required to apply for and obtain any and all reviews, permits and approvals required by the Town. No decision by the Design Review Committee is intended to, nor shall it, be deemed to presume compliance with any required Town reviews.

4.12. <u>Decisions of Committee; Binding Effect</u>. Decisions of the Design Review Committee shall be made in accordance with the procedures established in the Design Guidelines, and shall be conclusive and binding on all interested parties.

Completion of Work After Approval. Following the approval of any proposed 4.13. Improvements by the Design Review Committee, the proposed Improvements shall be completed by the Lot Owner: (a) as promptly and diligently as possible but in no event in excess of the time periods set forth below; (b) in compliance with the Design Guidelines and with all applicable laws, regulations and codes, (c) in strict conformance with all plans and specifications and other materials furnished to and approved by the Design Review Committee; and (d) in accordance with any and all conditions imposed by the Design Review Committee. All Improvements approved by the Design Review Committee shall be completed, a Certificate of Compliance shall be obtained in accordance with Section 5.16 below, and all construction equipment, materials and debris shall be removed (i) within eighteen (18) months from the date of approval of such Improvements by the Design Review Committee, or (ii) within such other time period as the Design Review Committee may prescribe in its discretion. Provided, however, that any and all landscaping and/or gardening approved by the Design Review Committee which is related to the initial construction of a Dwelling on a Lot shall be completed no later than ninety (90) days immediately following the issuance of the Certificate of Occupancy for such Dwelling. Failure to comply with the terms and conditions of this Section 5.13 shall constitute noncompliance with the terms and provisions of this Declaration and the Design Review Committee and/or the Executive Board shall have the right to invoke all rights and remedies provided to them hereunder, including but not limited to, the right to seek injunctive relief and/or to impose fines and penalties.

4.14. <u>Right to Inspect</u>. Any member or authorized consultant of the Design Review Committee or of the Executive Board, or any authorized officer, employee or agent of the Declarant or of the Association, may (but shall not be obligated to) at any reasonable time enter upon any Lot, without being deemed guilty of trespass, in order to inspect Improvements constructed or being constructed on such Lot, to ascertain whether such Improvements have been or are being built or changed in compliance with the Design Guidelines, the approvals granted by the Design Review Committee, and this Declaration.

# 4.15. Notice of Completion; Inspection of Work; Correction of Defects.

(a) Upon the completion of any Improvements (excepting the related landscaping) for which plans and specifications have been approved by the Design Review Committee, the Owner shall submit to the Committee a written "Notice of Completion", on a form to be provided by the Committee, which Notice shall certify that the Improvements have been completed in accordance with all plans, specifications and other materials furnished to and approved by the Committee, any conditions imposed by the Committee, and with the Design Guidelines. Until receipt of such Notice, the Committee shall not be deemed to have any notice regarding completion of the Improvements.

(b) Within twenty-one (21) days following receipt of the Notice of Completion, the Design Review Committee or its duly authorized representative shall inspect the Improvements. If the Design Review Committee finds that the Improvements have not been completed as set forth in the Notice of Completion, it shall notify the Lot Owner in writing of such noncompliance within said twenty-one (21) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same. If for any reason other than the Lot Owner's act or neglect, the Committee fails to notify the Owner of any noncompliance or to issue to the Owner a Certificate of Compliance pursuant to Section 5.16 below prior to the expiration of said twenty-one (21) day period, the Improvements shall be deemed in compliance if the Improvements were, in fact, completed as of the date of the Notice of Completion and the Owner may proceed to request a Certificate of Occupancy from the Town.

(c) If upon the expiration of fifty (50) days from the date of such notification of non-compliance the Lot Owner shall have failed to remedy such noncompliance, the Design

Review Committee shall notify the Executive Board in writing of such failure. Thereupon the Executive Board (and its duly authorized representatives), at the Executive Board's option, may enter upon the Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove the noncomplying Improvement or otherwise remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses, including interest on monies expended and attorneys' fees incurred in connection therewith. If such expenses are not repaid by the Owner to the Association within fifty (50) days following delivery of a written demand therefor to the Owner, the Executive Board may levy a Reimbursement Assessment against such Owner and the Owner's Lot for all such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration, and the Lot Owner shall have no claim for damages or otherwise on account of the entry upon the property and remedying or removal of the noncomplying Improvement.

4.16. <u>Certificate of Compliance</u>. When the Design Review Committee is satisfied that the Improvements have been completed in accordance with all plans, specifications and other materials furnished to the Design Review Committee, any conditions imposed by the Committee, and with the Design Guidelines, it shall issue to the Owner a Certificate of Compliance with respect to said Improvements. Upon receipt of such Certificate, but not before, the Owner may proceed to apply to the Town for a Certificate of Occupancy. No newly-constructed Dwelling on a Lot shall be occupied until a Certificate of Compliance has been issued therefor by the Design Review Committee and a Certificate of Occupancy has been issued therefor by the Town.

4.17. **Improvements Must Conform to Approvals**. Other than work commenced by Declarant, no building, fence, wall, structure, landscaping or other Improvement of whatever type shall be commenced, constructed, erected, placed, installed, located, maintained or removed within the Community, nor shall there be any additions or changes to the exterior of any Dwelling or other structure or Improvement upon a Lot or the landscaping, grading or drainage thereof, including without limitation, the painting or staining (other than painting or staining with the same color and type of paint or stain as previously existed) of exterior walls, patio covers and fences, except in accordance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee and in compliance with the Design Guidelines and all pertinent provisions of this Declaration.

Committee Power to Grant Variances. The Design Review Committee may grant 4.18. variances from any of the restrictions set forth in Article 5 of this Declaration or the Design Guidelines pertaining to proposed Improvements and the criteria therefor, including restrictions upon height, size, floor area, setbacks, location or placement of structures, or similar restrictions, when (i) unique circumstances not created by the Lot Owner, such as topography, natural obstructions, or aesthetic or environmental considerations would otherwise result in substantial hardship or burden which is not suffered by other similarly-situated Lots, or (ii) when a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete, and (iii) in either case, when the Design Review Committee determines that the activity allowed by the variance will not have any material adverse effect on the Owners and Occupants of the Community (including neighboring Lots) and is consistent with the high quality of living intended to be promoted hereby throughout the Community. When an Owner applies for a variance, the Design Review Committee must give at least ten (10) days written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots that are situated within a radius of three hundred (300) feet of the Lot for which the variance is sought, at the current addresses for such Owners reflected in the Association files. The applying Owner must provide the Design Review Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing. All variances that are granted by the Design Review Committee must be evidenced in writing, must specify the Lot for which the variance is granted and the unique circumstances or change in circumstances justifying the variance, and must be signed by at least a

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Nonliability for Approval or Disapproval of Plans and Specifications or for Issuance 4.19. of Certificates of Compliance. The criteria for Design Review Committee approval of plans and specifications are set forth or referenced in Section 5.11 above. The Design Review Committee shall not be responsible for reviewing plans and specifications with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, the Town Development Approvals and Requirements or related mitigation requirements, or any other applicable laws or regulations. By its approval of any such plans and specifications, neither the Design Review Committee, the members thereof, the Association, any Member, the Executive Board nor the Declarant assumes or shall have any liability or responsibility with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, the Town Development Approvals and Requirements, or any other applicable laws or regulations, or for any defect in any Improvement constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the Executive Board nor the Declarant shall be liable to any Lot Owner, Occupant or other Person for any injury, damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, or any delay in granting such approval or disapproval, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the issuance of a Certificate of Compliance, or (d) the development, or manner of development of any property within the Community. The approval of plans and specifications by the Design Review Committee, and/or the issuance of a Certificate of Compliance by the Design Review Committee, shall not under any circumstances constitute or be deemed to be a representation or warranty that the plans, specifications or completed Improvements comply with applicable laws, resolutions, ordinances or regulations, including but not limited to, zoning ordinances, building codes, and environmental laws and related mitigation requirements.

4.20. **Declarant Exempt**. The foregoing notwithstanding, any Improvements proposed by Declarant are exempt from design review by the Design Review Committee.

4.21. <u>Enforcement</u>. The requirements and provisions of this Article 4 and/or of the Design Guidelines shall be enforceable in accordance with the rights and procedures set forth in this Declaration.

### ARTICLE FIVE ASSOCIATION PROPERTY, LOTS AND TITLE

5.1. **Use and Enjoyment of Association Property**. With the exception of Limited Common Areas, and except as otherwise provided in this Declaration or in the Rules and Regulations, each Owner shall have the non-exclusive right to use and enjoy Association Property in common with all other Owners. This right to use and enjoy Association Property shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and to such other users as may be authorized by this Declaration or by the Executive Board from time to time, and shall be appurtenant to each Lot,

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc Page 24 of 62 subject at all times to the provisions of this Declaration (including Declarant's reserved rights hereunder) or the Articles, Bylaws, and the Rules and Regulations. No Owner or Occupant shall place any structure or store or leave any materials or personal property upon Association Property, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to all parts of the Association Property (excepting Limited Common Areas) by all Owners. With respect to Limited Common Areas, each Owner and Occupant of a Lot designated by Declaration or Plat for the use of such Limited Common Area shall have the non-exclusive right to use and enjoy the same in common with all other Owners and Occupants of Lots so designated, for all purposes for which the Limited Common Area was created, subject to any Rules and Regulations relating thereto.

5.2. Association May Regulate Use of Association Property. The Association, acting through the Executive Board, shall have the right and authority to regulate the use of Association Property by the promulgation, enforcement and interpretation from time to time of such Rules and Regulations relating thereto as the Association considers necessary or appropriate for the protection and preservation of Association Property and the enhancement of the use and enjoyment thereof by Owners and Occupants and other authorized users. The Association, acting through the Executive Board, may for good cause suspend the right of any person to use and enjoy Association Property, including without limitation the right of a Member who or which is delinquent in the payment of any Assessments, and the right of any Member or other authorized user who is in violation of the terms and provisions of this Declaration or the Articles, Bylaws, any Rules and Regulations or the terms and provisions of any approvals granted by the Association.

5.3. <u>No Partition of Association Property</u>. No Owner or other Person shall have any right to partition or to seek the partition of Association Property or any part thereof.

5.4. Owner Liability for Owner or Occupant Damage to Association Property. Each Owner shall be liable to the Association for any damage to Association Property or for any expense, loss or liability suffered or incurred by the Association in connection with Association Property arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration, or the Rules and Regulations relating to Association Property. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against a Lot Owner to recover the costs, expenses, damages, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations.

5.5. **Damage or Destruction to Association Property**. In the event of damage to or destruction of Association Property, including Improvements thereon, by fire, geologic hazard condition, or other casualty, the Association shall repair or replace the same in accordance with the provisions of this Declaration. Repair, reconstruction, or replacement of Association Property shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of Association Property or for any other use deemed appropriate by the Executive Board.

5.6. <u>Condemnation of Association Property</u>. If any Association Property or part thereof or interest therein is taken under exercise of the power of eminent domain or by purchase in lieu thereof, the portion of any award in condemnation or the price payable for the deed in lieu that is attributable to the Association Property taken or purchased shall be paid to the Association. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners and Occupants and other Persons therein. Any award or funds received by the Association

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc Page 25 of 62 shall be held by the Association for the purposes stated in Section 5.5 above or as a reserve for future maintenance, repair, reconstruction, or replacement of Association Property or may be used for Improvements or additions to or operation of Association Property or for such other uses as may be deemed appropriate by the Executive Board. Except as may otherwise be provided by the Act, no Owner or other Person shall be entitled to participate as a party or otherwise in any condemnation proceedings nor to receive any proceeds therefrom.

5.7. <u>Title to Association Property Upon Dissolution of Association</u>. In the event of dissolution of the Association, the Association Property shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for the purposes for which the Association Property was held by the Association. If the foregoing is not possible, the Association Property shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to each Owner's Allocated Interest in the Common Expenses of the Association.

5.8. Mechanic's Liens on Association Property. Declarant shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Association shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot at the instance of the Lot Owner shall be the basis for filing a lien against Association Property. No labor performed or materials furnished with respect to Association Property at the instance of the Executive Board shall be the basis for filing a lien against any Lot.

5.9. <u>Amendment Deemed Included</u>. The reference to the Plat and the Declaration in any instrument shall be deemed to include any recorded supplements or amendments to the Plat or the Declaration, whether or not specific reference is made thereto.

5.10. **Transfer of General Common Areas.** All Owners and the Association, covenant that they shall neither by act nor omission, seek to abandon, subdivide, encumber, sell or transfer the Common Areas without the consent of: (i) the Owners, including Declarant if Declarant owns a Lot, representing an aggregate ownership interest of 66% or more of the Common Areas in the Association; (ii) the First Mortgagees representing an aggregate of 66% of the then-outstanding balances of such Mortgages covering or affecting any or all Lots; and (iii) during the Marketing Period, the consent of the Declarant. Any such action without the written consent of said Owners, First Mortgagees and, if applicable, the Declarant, shall be null and void. Notwithstanding the foregoing, nothing contained in this shall be construed to limit or prohibit a proportionate adjustment in the percentage ownership in the General Common Areas in connection with the combination, division, or partition of any Lot pursuant to the right of combination, division, or partition of a Lot by the Owner or between Owners thereof for the purpose of sale, use, or improvement of such Lot. Nothing to the foregoing withstanding, the Association shall not abandon, subdivide, encumber, sell or transfer a portion of the General Common Areas which has been properly designated as a Limited Common Area without the consent of the Owner(s) of the Lot(s) to which the Limited Common Area has been assigned.

## ARTICLE SIX DECLARANT'S RESERVED RIGHTS

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights ("**Reserved Rights**"), which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the Recording of this Declaration in the Town and ending on the date of termination of such rights established below. It is expressly understood that

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc Page 26 of 62 Declarant shall not be obligated to exercise any of these Reserved Rights, and that no consent shall be required from any Owner, Mortgagee, or the Association for the effective exercise of any of these Reserved Rights. Except as limited by this Article, such Reserved Rights may be exercised upon or in connection with all or any portion of the Community. Such Reserved Rights may be exercised with respect to different parcels of said real estate at different times, and in connection therewith Declarant hereby states that (i) no assurances are made regarding the boundaries of said different parcels or with respect to the order in which such parcels may be subjected to the exercise of these Reserved Rights, even if a reference to a phase or phasing appears in a legal description, Plat, Town Development Approvals and Requirements or other agreement relating to the property, and (ii) if a particular Reserved Right is exercised in any portion of the real estate subject to that Reserved Right, that Reserved Right is not required to be exercised in all or any portion of the remainder of that real estate. The Reserved Rights hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots and other portions of the Community hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article and elsewhere in this Declaration or even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Declaration. The following Reserved Rights are hereby reserved to Declarant and its successors and assigns:

**Construction of Improvements**. The right, but not the obligation, to construct 6.1. additional Improvements on Association Property at any time and from time to time for the Improvement and enhancement thereof for the benefit of the Association and the Owners, or some of them. Furthermore, the right throughout the Community to complete Improvements indicated on the Plat filed with this Declaration, and on any Supplemental Plats, as such Plat and Declaration may be amended from time to time. Furthermore, the right to construct and complete Improvements required by the terms of the SIA and the terms and conditions of any documents and agreements relating to the Town Development Approvals and Requirements executed by Declarant in connection with the Community, as may be amended from time to time. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted or other easements, upon or across any portion of the Community, as may be reasonably required for the construction by Declarant of the above-described Improvements or the effective exercise by Declarant of any of the other reserved rights described in this Article. The right to complete Improvements indicated on plats and maps filed with the Declaration and/or rights to construct improvements pursuant to the Town Development Approvals and Requirements, and such other rights indicated on the Map or elsewhere in this Declaration. When such improvements are completed, Declarant reserves the right to file a supplement to the Plat/Map for the purpose of annexing the completed improvements into the Community.

6.2. **Sales, Marketing and Management**. The right to construct, locate or operate, and to maintain upon, and to remove from, any part of the Community including Lots owned by Declarant and Association Property, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvements, the management of the development, and/or the promotion, marketing, sale or rental of Lots, the following:

6.2.1. Sales offices, management offices, and/or construction offices, and structures containing or relating to the same. Such offices, to the extent they are not situated on a Lot, are hereby declared to be personal property of the Declarant and shall in any case be removable by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be a Lot Owner;

6.2.2. Signs identifying and advertising the Community and the Lots therein, or relating to development or construction thereon;

6.2.3. Model residences constructed or to be constructed on Lots [;

6.2.4. Parking areas and facilities, and lighting, necessary or desirable in the marketing of the Community and the Lots;

6.2.5. Employees in offices; equipment; vehicles; and marketing and construction materials.

6.2.6. Together with the right to attract, invite or bring prospective purchasers of Lots into the Community at all times, and to permit them to use and enjoy the Association Property.

6.3. <u>Merger</u>. The right to merge or consolidate the Community with another Community of the same form of ownership.

6.4. **Declarant Control of Association**. The right to appoint or remove any Executive Board member or officer of the Association, as more specifically set forth herein, but only for and during the "Period of Declarant Control of Association" as defined herein.

6.5. Other Reserved Development Rights. Subject to compliance with any applicable Town requirements, the right with respect to all or any Declarant-owned portion of the Community (including the Lots) to (a) create Association Property (including Limited Common Areas); (b) combine Lots; (c) reconfigure Lots and/or Association Property, or otherwise modify or amend the recorded Plat; (d) amend the Town Development Approvals and Requirements; (e) convert Lots into Association Property; (f) annex any other property located in the Town of Ridgway into the Community and divide the same into Lots and Parcels and develop them with Dwellings and other Improvements, (g) de-annex some or any portion of the Property from the Community; and (h) convert Association Property into Lots. Additionally, in order to effectively exercise the rights reserved to Declarant under this Article, the right to amend this Declaration (without the consent of Owners, Mortgagees or the Association being required) for purposes of (i) complying with or qualifying for federal or state registration of the project (ii) satisfying title insurance requirements, or (iii) bringing any provision or provisions of the Declaration into compliance with the Act.

6.6. Owner Review, Acceptance and Waiver of Rights Re: Town Development <u>Approvals and Requirements and Declarant's Reserved Rights</u>. Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in the Community, acknowledges that the Owner has carefully reviewed and understands the Town Development Approvals and Requirements (as it may be amended from time to time) and the Declarant's reserved rights as set forth in this Article or elsewhere in this Declaration, that the Owner accepts and approves such matters and appreciates any potential impacts that the implementation of the Town Development Approvals and Requirements and/or the exercise of such reserved rights may have on the Owner's Lot, and expressly waives any rights the Owner may have to object to or to interfere in any way with the implementation of such Town Development Approvals and Requirements or the exercise of any and all rights of the Declarant under the Declaration.

6.7. **Declarant As Attorney-in-Fact for Owners.** Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in the Community, does hereby irrevocably constitute and appoint Declarant (with full power of substitution) as said Owner's attorney-in-fact, in said Owner's name, place and stead, to take any and all actions and to execute and deliver any and all instruments as may be necessary or appropriate to Declarant's exercise of the various rights reserved to Declarant under this Article or elsewhere in this Declaration specifically including without limitation Declarant's reserved right to use all existing easements within the Community, or to create, grant, use and/or replat and relocate additional or existing easements across any portion of the Community.

6.8. **Transfer of Declarant's Reserved Rights**. Any one or more rights created or reserved for the benefit of Declarant under this Article or elsewhere in this Declaration may be transferred to any Person by an instrument describing the right or rights transferred and Recorded in Ouray County. Such instrument shall be executed by the transferor Declarant and the transferee. The provisions of Section 38-33.3-304 of the Act shall apply to any transfer of special declarant rights.

6.9. **Termination of Declarant's Reserved Rights**. With the exception of Declarant's right to appoint or remove Executive Board members and officers of the Association, which is addressed in Section 9.5 below, the rights reserved to Declarant in this Article shall automatically terminate and expire upon the first to occur of (i) the date which is twenty (20) years after the Recording of this Declarant or (ii) Declarant's relinquishment and surrender of such rights by Recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of the development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate subject to the development right and the Association.

6.10. **Interpretation.** Recording of amendments to the Declaration and the Plat pursuant to Reserved Rights in the Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically vest in each existing Owner the reallocated Allocated Interests appurtenant to his Lot. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional land or Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Areas, whether or not reference is made to any Amendment of the Declaration or Plat.

## ARTICLE SEVEN EASEMENTS

The following "**Easements**" are hereby established by Declarant for the purposes stated and for the parties indicated. Declarant reserves the right to modify the location and/or use of any of the Easements Easement identified in this Article Four or anywhere else in this Declaration or on the Plat. Declarant also reserves the right to expand the Persons who may use the Easements. The rights reserved herein shall be exercised in the manner provided for in Article 6. Declarant's rights with respect to the modification of the Easements shall terminate twenty (20) after the date of recording of this Declaration and thereupon shall be transferred and assigned to the Association.

7.1. **Easements for Incidental Encroachments**. If any portion of an Improvement approved by the Association encroaches in its approved location upon an Association Property, including any future encroachments arising or resulting from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment.

7.2. **Blanket Association Utility and Drainage Easement Over Association Property**. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive blanket easement over, across, upon and under all roads in the Community and all Association Property for the construction, installation, testing, operation, monitoring, management, administration, maintenance, repair, removal and replacement of utilities and utility lines, irrigation lines and systems, water features, wetlands areas, drainage systems, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Community or any part thereof or neighboring lands, including but not limited to drainage, domestic water, irrigation water, sewer, gas, telephone, electricity, cable TV and other master TV and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes, and together with the right to grant any such easement rights to utility companies. The Association or other person or entity exercising such utility and drainage easement rights shall be obligated to restore, reseed, replant and/or re-landscape the surface of

the disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility or drainage work.

7.3. Association Administrative Easement Over Association Property. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under the Private Driveway and all Association Property (including without limitation all easements benefiting the Association) and a right to use the same for purposes of enabling the Association to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including without limitation the snowplowing and maintenance of private driveways and sidewalks.

7.4. **Declarant Easement Over Association Property**. There is hereby created, granted and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under the Private Driveway and all Association Property (including without limitation all easements benefiting the Association), including a right of access, ingress and egress thereto, and a right to use such roads and Association Property, and each and every part thereof, for all purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing and sale of the Community and all portions thereof and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Declaration or under the SIA or any other Declarant obligations relating to the Community. Declarant's rights with respect to this easement shall terminate upon the first to occur of (i) the date which is thirty (30) years after the Recording of this Declaration, or (ii) Declarant's relinquishment of all or a portion of this easement right by Recorded instrument.

7.5. <u>Utility and Drainage Easements</u>. There are hereby created, granted and reserved for the use and benefit of the Declarant, the Association, and appropriate public utilities, perpetual, non-exclusive easements over, upon, across and under those portions of the Community that are designated "Utility Easement" or "Drainage Easement" on the Plat. Utility Easements may be used for the installation, operation, maintenance, repair, removal or replacement of underground utility lines, vaults and related surface facilities. Drainage Easements may be used for the installation, operation, maintenance, repair, removal or replacement between Declarant and the Town or in any other separate agreement between Declarant and a utility supplier, the party causing the disturbance shall be obligated to restore, repair, reseed and/or re-landscape any area disturbed by the exercise of these easement rights to as close to its original condition as possible, as promptly as possible following the completion of any work within a Utility or Drainage Easement.

7.6. Zero Lot Line Easements. Due to the anticipated style of Dwelling to be placed on each of the Lots, (a) a Dwelling may be located on or so close to its property line, or (b) a Dwelling's roof overhang may encroach upon an adjoining Lot or Lots so as to make entry upon an adjoining Lot or Lots a necessary incident to the construction and maintenance of such Dwelling. In the event the above situation shall exist, then at the time of the commencement of the construction of such improvement, provided such construction shall commence within twenty (20) years after the date of recording of this Declaration, there shall thereby be created an easement or easements for the existence of such overhang if one shall encroach, not to exceed two (2) feet in depth and for the construction, maintenance, repair, replacement and/or reconstruction of such Dwelling which encroaches or is to located on or near its property line. Said easement or easements (a) shall be over and across the Lot or Lots immediately adjoining the Lot upon which such Dwelling is so located, and (b) shall extend the full depth of the adjoining Lot or Lots, and (c) shall extend into so much of the adjoining Lot or Lots as is necessary to provide the Owner of such Dwelling so located with an easement of such width that, when added to the space lying between the Dwelling and its property line, such easement shall be six (6) feet in width; and such Owner shall immediately repair, and be liable to make, full reimbursement for any damages caused by any failure immediately to repair any damage to the Lot or the Dwelling or other property thereon resulting from the use of this easement. The amount of such reimbursement may be collected by the Executive Board from such Owner as an Reimbursement Assessment. Construction of any structure shall be prohibited within these easements except as such structure shall be approved in writing by the

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Committee or the Executive Board. For title and other purposes, such easements shall not be considered or deemed to be encumbrances upon such adjoining Lot.

7.7. <u>Construction Access Easement.</u> There is hereby created, granted and reserved for the use and benefit of each Owner, subject to the approval of the Association, an easement to allow construction vehicles to access the rear of a Lot if necessary to undertake excavation of the Improvements.

7.8. <u>Construction Shoring Easement.</u> There is hereby created, granted and reserved for the use and benefit of each Owner, an easement granting the right to undertake underground shoring beyond the boundaries of a Lot line and into the setback areas on the adjoining Lot, provided that such shoring does not interfere with Improvements constructed on the other lot, nor does it interfere with reasonable shoring by the burdened Lot. The benefitted party shall be responsible for correcting any damage caused to the adjoining Lot subject to the approval of the Association and shall restore the burdened property to the condition that existed prior to the installation of the shoring. To the greatest extent possible, the type of shoring used shall allow for its removal once the excavation and backfilling has been completed.

7.9. **Blanket Emergency Services Easement**. There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all streets, roads, properties and areas within the Community, for use in the lawful performance of their duties.

7.10. **Easements Deemed Created**. All conveyances of Lots and Association Property hereafter made, whether by Declarant or otherwise, shall be deemed and construed to grant and reserve all of the easements referred to in this Article and elsewhere in this, even though no specific reference to such easements appears in the conveyancing instruments.

**Restrictions on Owners in Easement Areas**. Owners of Lots that are subject to any 7.11. easements created by this Declaration or by the Plat shall acquire no right, title or interest in any cables, conduits, mains, lines, or other equipment or facilities or improvements that may be installed upon, over or under the easement area by a beneficiary of said easement rights. Moreover, Owners and Occupants of Lots that are subject to any such easements are hereby prohibited from (i) constructing any Improvements upon the easement areas excepting driveways and any other Improvements expressly approved in writing in advance by the Association, (ii) altering or obstructing the flow of any water or drainage thereon, or (iii) landscaping the same, in any manner that might interfere with the full and proper exercise of said easement rights by any beneficiary thereof. Finally, said Owners and Occupants are hereby prohibited from violating any of the restrictions relating to the use of the easement areas as may be set forth in this Declaration. Any Owner or Occupant violating any of these restrictions shall be obligated to remove the offending improvement or landscaping and to restore the surface of the area to its original condition at the Owner's cost and expense, or otherwise to remedy the violation, within 30 days following a written request therefore from any easement beneficiary. If said Owner or Occupant fails to comply with the request in a timely manner, the Association shall have the right to enter upon the Owner's Lot to perform the necessary work and may assess the costs thereof against the Owner and the Owner's Lot in the form of a Reimbursement Assessment.

7.12. **<u>Recorded Easements and Licenses</u>**. In addition to the easements described in this Article and elsewhere in this Declaration, the recorded easements and licenses appurtenant to or included in the Community are made a part hereof by this reference.

#### ARTICLE EIGHT ASSOCIATION

8.1. <u>Association</u>. The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Community. The

Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of Association Property, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as may be provided in this Declaration, the Articles, Bylaws, and any Rules and Regulations. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it on behalf of the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

8.2. Association Executive Board. The affairs of the Association shall be managed by an Executive Board. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation or the Bylaws. A quorum shall be deemed present throughout any meeting of the Executive Board if persons entitled to cast at least fifty percent (50%) of the votes on the Executive Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Executive Board or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Without limiting the generality of the foregoing, no Rule or Regulation may be validly adopted during an executive session. Agendas for meetings of the Executive Board shall be made reasonably available for examination by all Members of the Association or their representatives. The Executive Board shall have all of the powers, authority and duties granted or delegated to it by the Act, this Declaration, the Articles or Bylaws. Except as provided in the Act, this-the Articles or Bylaws, the Executive Board may act in all instances on behalf of the Association. The Executive Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term. The Executive Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. If appointed by Declarant, in the performance of their duties, the members of the Executive Board and the officers of the Association are required to exercise the care required of fiduciaries of the Lot Owners. If not appointed by Declarant, no member of the Executive Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

8.3. <u>Membership in Association</u>. There shall be one Membership in the Association for each Lot within the Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and shall collectively be the "Member" of the Association with respect to that Lot, and the Membership appurtenant to that Lot, automatically pass with fee simple title to the Lot. Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, and may not otherwise be separated from ownership of a Lot.

8.4. **Voting Rights of Members**. Each Lot in the Community shall be entitled to one (1) vote in the Association. Occupants of Lots shall not have voting rights. If title to a Lot is owned by more than one (1) Person, such persons shall collectively cast their allocated vote. If only one of the multiple owners of a Lot is present at an Association meeting, such owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any of the multiple owners casts the vote allocated to that Lot. In the event of a protest being made by one or more multiple owners, and a majority of the multiple owners of the Lot cannot agree on how to cast their vote, any vote cast for that Lot shall be null and void with regard to the issue being voted upon. Such multiple owners and their Lot shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon. In accordance with Section 38-33.3-309 of the Act, and except as may otherwise be provided in the Bylaws, a quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at

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least twenty percent (20%) of the total allocated votes in the Association are present, in person or by proxy, at the beginning of the meeting. Provided a quorum of allocated votes entitled to vote is present in person or by proxy, the affirmative vote of a majority of the total allocated votes so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Declaration, the Articles, or the Bylaws. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner. If a Lot is owned by more than one person, each owner of the Lot may vote or register protest to the casting of a vote by the other owners of the Lot through a duly executed proxy. A Lot Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face. No vote allocated to a Lot owned by the Association may be cast. The Lot Owners, by a vote of sixty-seven percent (67%) of all allocated votes present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by Declarant.

Period of Declarant Control of Association. Notwithstanding any other provisions 8.5. hereof, Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Executive Board and the officers of the Association during the period commencing upon the Recording of this Declaration and terminating no later than the earlier of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business. During said Period of Declarant Control of the Association: (a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Lot Owners other than Declarant; and (b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Executive Board must be elected by Lot Owners other than Declarant. At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Executive Board, but in such event Declarant may require, for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Executive Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Executive Board or the Association. Not later than the termination of the Period of Declarant Control of the Association, the Owners (including Declarant) shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant, and the Executive Board shall elect the officers, with such Executive Board members and officers to take office upon election.

8.6. <u>**Turnover**</u>. Pursuant to Section 38-33.3-303(9) of the Act, within sixty (60) days after Owners other than Declarant elect a majority of the members of the Executive Board, Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by Declarant, including without limitation the following items:

(a) The original or a certified copy of the recorded Declaration as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial

information in conformity with generally accepted accounting principles and the reasons therefore. The expense of the audit shall not be paid for or charged to the Association.

(c) The Association funds or control thereof;

(d) All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of Association Property, and inventories of these properties;

(e) A copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of the improvements in the Community;

(f) All insurance policies then in force, in which the Owners, the Association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Community;

(h) Any other permits issued by governmental bodies applicable to the Community and which are currently in force or which were issued within one year prior to the date on which Lot Owners other than the Declarant took control of the Association;

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of Owners and Occupants and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records.

(k) Employment contracts in which the Association is a contracting party; and

(1) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

8.7. <u>Termination of Contracts and Leases of Declarant</u>. The following contracts and leases, if entered into before the Executive Board elected by the Owners pursuant to Section 38-33.3-303(7) takes office, may be terminated without penalty by the Association at any time after the Executive Board elected by the Owners pursuant to said Section 38-33.3-303(7) takes office, upon not less than ninety (90) days notice to the other party: (i) Any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) Any other contract or lease between the Association and Declarant or an affiliate of Declarant; or (iii) Any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing.

8.8. **Rules.** The Governing Documents establish a framework of covenants and conditions that govern the Community. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Executive Board and the Association's membership are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth herein. Generally, Rules are intended to enable the interpretation and implementation of this Declaration, the operation of the Association, and the use and enjoyment of the Common Areas (including Limited Common Areas).

8.8.1. **Executive Board Authority.** Subject to the notice requirements and the Executive Board's duty to exercise reasonable judgment and reasonableness on behalf of the Association and its Members, the Executive Board, at an open meeting of the Executive Board, may, by Resolution, adopt new Rules and modify, amend, supplement or rescind existing Rules by majority vote of the directors at any Executive Board meeting.

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8.8.2. <u>Membership Authority</u>. Subject to the notice requirements in subsection 8.3.3 below, Owners entitled to cast more than 50% of the weighted votes in the Association may also adopt new Rules and Regulations and modify or rescind existing Rules and Regulations at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as Declarant membership exists, any such action shall also be subject to the Declarant's approval. In no event shall any new or amended Rules and Regulations place additional restrictions on the Lot without the express approval of the Owner of the Lot.

8.8.3. **Notice** The Executive Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Executive Board or the membership at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Executive Board may adopt relating to the Common Areas, notwithstanding that such policies may be published as part of the Rules.

8.8.4. **Effective Date**. A Rules change adopted under this Section 6.3 shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant shall comply with such Rules, and each Owner shall see that Occupants claiming through such Owner comply with such Rules. Such Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. Such Rules may establish penalties (including the levying and collection of fines) for the violation of such Rules or of any provision of this Declaration, the Articles, or the Bylaws.

8.8.5. <u>Conflicts</u>. In the event of a conflict between the Rules and any provision of this Declaration, this Declaration shall control.

8.8.6. **Owners' Acknowledgment and Notice to Purchasers**. By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot is limited and affected by the Rules, which may change from time to time. All Lot purchasers are hereby notified that the Association may have adopted changes to the Rules and that such change may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

8.9. <u>Protection of Owners and Others</u>. Except as may be set forth in this Declaration (either initially or by amendment) all Rules that may be adopted by the Executive Board shall comply with the following provisions:

8.9.1. <u>Similar Treatment</u>. Similarly situated Lots shall be treated similarly.

8.9.2. **Holiday, Religious and other Displays.** No Rule and Regulation shall abridge an Owner's right to display religious or holiday symbols and decorations on his or her Lot of the kinds normally displayed in single-family residential neighborhoods. The Executive Board may regulate or prohibit signs or displays, the content or graphics of which the Executive Board deems to be obscene, vulgar, or similarly disturbing to the average person.

8.9.3. **Displays of American Flags.** No Rule and Regulation shall abridge an Owner's right display of the American flag in that Owner's Lot, in a window of the Owner's Lot, or on a balcony adjoining the owner's Lot if the American flag is displayed in a manner consistent with the federal flag code, P.L. 94-344; 90 Stat. 810; 4 U.S.C. Section 4 to Section 10. The Association may adopt reasonable rules regarding the placement and manner of display of the American flag. The Association rules may regulate the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

8.9.4. **Displays of Service Flags.** No Rule and Regulation shall abridge an Owner's right display a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military service of the Loted States during a time of war or armed conflict, on the inside of a window or door of the Owner's Lot. The Association may adopt reasonable rules regarding the size and manner of display of service flags; except that the maximum dimensions allowed shall be not less than nine inches by sixteen inches.

8.9.5. **Displays of Political Signs.** No Rule and Regulation shall abridge an Owner's right display of a political sign by an Owner in that Owner's Lot, in a window of the Owner's Lot; except that an Association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day. An Association may regulate the size and number of political signs that may be placed on an Owner's property if the Association's regulation is no more restrictive than any applicable Town or county ordinance that regulates the size and number of political signs on residential property. If the Town or county does not regulate the sign per political signs on residential property, the Association shall permit at least one political sign per political office or ballot issue that is contested in a pending election, with the maximum dimensions of thirty-six inches by forty-eight inches, on a unit owner's property. As used in this Section, "political sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

8.9.6. <u>Abridging Existing Rights</u>. No Rule shall require that an Owner dispose of personal property kept in or on a Lot in compliance with the Rules in effect at the time such personal property was brought onto the Lot. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the Rule.

8.9.7. <u>Reasonable Rights to Develop</u>. No Rule may unreasonably interfere with the ability of the Declarant to develop, market, and sell property in the Community, as determined solely by Declarant.

8.9.8. <u>Interference with Easements</u>. No Rule may unreasonably interfere with the exercise of any easement established by this Declaration or otherwise existing by separate document or instrument.

8.10. Education. The Executive Board may authorize, and account for as a common expense, reimbursement of Executive Board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of the Association. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of this Act. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and the Executive Board under Colorado law.

8.11. <u>Good Governance Policies</u>. The Association shall adopt responsible governing policies, including, but not limited to, policies as to the handling of conflicts of interest and investment of reserve funds. To the extent that other governance policies and practices are not otherwise formally adopted, the Association shall adhere to the requirements of the Colorado Revised Nonprofit Corporation Act as it relates to the governance of the Association. No policy of the Association shall be adopted that is inconsistent with the provisions of the Colorado Revised Nonprofit Corporation Act. In addition to the foregoing and to the extent not otherwise provided for in this Declaration or Articles of Incorporation and the Bylaws for the Association, to promote responsible governance, the Association shall:

A. Maintain accounting records using generally accepted accounting principles; and

- B. Adopt policies, procedures, and Rule concerning:
  - (1) Collection of unpaid assessments;

(2) Handling of conflicts of interest involving board members;

(3) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;

(4) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

brocedures and the schedule of fines;

(5) Investment of reserve funds;

(6) Procedures for the adoption and amendment of policies,

procedures, and rules.

#### ARTICLE NINE POWERS AND DUTIES OF ASSOCIATION

9.1. General Powers and Duties of Association. The Association shall have and may exercise all of the powers and rights and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act including those enumerated in Section 38-33.3-302 of the Act, as such laws may be amended from time to time, subject only to the limitations upon such powers as are contained in this Declaration. More specifically, and without limiting the generality of the foregoing, the Association shall have all of the powers and duties necessary (i) for the administration, management, governance and operation of the Community and the Association, (ii) to own, operate, improve, maintain, repair, manage, lease, encumber, and otherwise deal with Association Property, (iii) to improve, maintain and repair the Limited Common Areas, and (iv) to do any and all lawful things that may be authorized, required or permitted to be done by the Association under the Act and/or under the provisions of this Declaration.

9.2. <u>Power to Grant Easements</u>. The Association shall have the power to grant access, utility, drainage, irrigation, and such other easements upon, over, across or under Association Property as it deems necessary or desirable for the benefit of the Community or parts thereof, or for the benefit of all or less than all of the Owners, or for the benefit of lands situated outside the Community.

9.3. Power to Convey or Encumber Association Property. The Association shall have the power to convey, or subject to a security interest, portions of the Association Property if Owners entitled to cast at least sixty-seven percent (67%) of the allocated votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant, agree to that action, except that all Owner(s) of Lots to which any Limited Common Area is allocated must agree in order to convey that Limited Common Area or to subject it to a security interest. Proceeds of the sale are an asset of the Association. An agreement to convey, or subject to a security interest, Association Property must be evidenced by the execution of an agreement, in the same manner as a deed, by the Association. The agreement must specify a date after which the agreement will be void unless approved by the required percentage of allocated votes. Any grant, conveyance or deed executed by the Association must be recorded in the Official Records and is effective only upon Recordation. The Association, on behalf of the Owners, may contract to convey an interest in an Association Property, but the contract is not enforceable against the Association until approved, executed and ratified pursuant to this Section. Thereafter, the Association shall have all the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. Unless in compliance with this Section any purported conveyance, encumbrance, judicial sale, or other transfer of Association Property is void. A conveyance or encumbrance of Association Property pursuant to this Section shall not deprive any Lot of its rights of (i) access, ingress and egress to the Lot, and (ii) support of the Lot. A conveyance or encumbrance of Association Property pursuant to this Section shall not affect the priority or validity of preexisting encumbrances.

9.4. General Power to Provide Services and Facilities to Owners. The Association shall have the power, but not the obligation, to acquire, construct, operate, manage, maintain, repair and administer services and facilities for the benefit of the Owners, or some of them, including, without limitation, security, animal control, noise attenuation, vegetation control, insect and pest control, television service, parking facilities, transportation facilities, snow removal, signage, (including entry monuments), lighting, (including seasonal lighting), fencing, landscape walls, landscaping services and facilities, drainage facilities, including retention and detention ponds, irrigation facilities, water features, trash and solid waste disposal services, including recycling programs, utility services, recreational facilities and services, maintenance, and such other services, functions and facilities as are deemed appropriate by the Executive Board. The foregoing list shall not be deemed to be a representation by Declarant of services or facilities that will in fact be available for use by the Owners. The Association may enter into such agreements and arrangements as it may deem appropriate with any provider of utilities or services to the Community or any portion thereof, and may form or join any districts created to provide such services.

9.5. **Power to Provide Special Services to Owners**. The Association shall have the power to provide services to an Owner or group of Owners. Any service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing which shall provide for payment to the Association by such Owner or group of Owners of the costs and expenses of the Association in providing such services, including a fair share of the overhead expenses of the Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner or group of Owners and that the payment for such services shall, in the discretion of the Executive Board, be secured by a lien on the Lot(s) of the Owner or group of Owners.

9.6. <u>Power to Acquire Property and Construct Improvements</u>. The Association may acquire, hold, encumber and/or convey any right, title or interest in or to real or personal property, including Improvements. The Association may construct Improvements on Association Property and may demolish existing Improvements thereon.

9.7. Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce such Rules and Regulations as the Executive Board may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Property (including Limited Common Areas), and the use of any other property within the Community, including Lots. Any such Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant (and all other Persons who are authorized users of Association Property) shall comply with such Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish reasonable and uniformly applied penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or of any provision of this Declaration, the Articles, or the Bylaws.

9.8. **Power to Contract with Employees, Agents, Contractors, Districts, Consultants and** <u>Managers</u>. The Association shall have the power to contract with, and/or to employ and discharge employees, agents, independent contractors and consultants, including lawyers and accountants, and special districts, to perform any of the responsibilities of the Association under this Declaration, including without limitation maintenance responsibilities. The Association shall also have the power to retain and pay for the services of a manager or managers, which may be an affiliate of Declarant, to undertake any of the administrative or managerial responsibilities for which the Association may have responsibility under this Declaration, to the extent deemed advisable by the Association, and may delegate any of its duties, powers, or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers, or functions of the Association, the Association and its Executive Board shall remain ultimately responsible for the performance and exercise of such duties, powers, and functions.

9.9. **Power to Assign Future Income**. The Association shall have the power to assign its right to future income, including the right to receive Regular Assessments, but only following the affirmative vote of at least fifty-one (51) percent of the total allocated votes in the Association, at a duly-called meeting of the Members of the Association.

Duty to Accept Property and Facilities Transferred by Declarant. The Association 9.10. shall accept title to any real property, or interests in real property, including any Improvements and personal property thereon, transferred to the Association by Declarant, or Declarant's successors or assigns. Property interests transferred to the Association by Declarant or its successors or assigns may include fee simple title, undivided interests, easements, leasehold interests and licenses to use. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all monetary obligations, liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and all easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of record or otherwise in existence. Except as otherwise specifically approved by resolution of the Executive Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee. Any Improvements or personal property transferred to the Association by Declarant shall be in good working order, ordinary wear and tear excepted, and at the time of transfer Declarant shall make any repairs reasonably required to bring the transferred property into good working order. Subject only to the foregoing, the Association shall accept all properties transferred to it by Declarant in their "Where Is, As Is" condition, without recourse of any kind, and Declarant disclaims and shall not be deemed to make or to have made any representations or warranties, express or implied, by fact or law, with respect to the transferred properties or any aspect or element thereof, including without limitation warranties of merchantability, habitability, fitness for a particular purpose, or workmanlike construction.

9.11. **Duty to Manage and Care for Association Property**. The Association shall manage, operate, care for, maintain, repair and replace all Association Property and keep the same in a functional, clean and attractive condition for the benefit and enjoyment of the Owners. Except as otherwise specifically provided in this Declaration the Association shall also manage, operate, care for, maintain and repair the Limited Common Areas.

9.12. **Duty to Pay Taxes**. The Association shall pay any taxes and assessments levied upon Association Property (excepting Limited Common Areas) and any other taxes and assessments payable by the Association before they become delinquent. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings provided no sale or foreclosure of any lien for such tax or assessment occurs and provided further that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

9.13. **Duty to Keep Association Records**. The Association shall keep financial records in sufficient detail to enable the Association to carry out its responsibilities under this Declaration and to comply with the requirements of the Act, including, but not limited to, current records of paid and unpaid Assessments for each Lot. All financial and other records of the Association shall be made reasonably available for examination by the Owners and the authorized agents of the Owners.

9.14. **Duty to Support Association**. The Association shall take such actions, provide such funds, and do such other things as may be necessary or appropriate from time to time to support and

assist the Association in the performance of its responsibilities under this Declaration, and shall cooperate with said Committee to the fullest extent possible in such matters.

9.15. <u>Insurance</u>. Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall maintain and keep in effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

(a) <u>Casualty Insurance</u>. To the extent reasonably available, property insurance on all Association Property, including but not limited to Improvements and personalty, owned or leased by the Association, and on all property that must become Association Property. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

Liability Insurance. Comprehensive general liability insurance against claims (h)and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Association Property (including the Limited Common Areas), and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons, and, if the Association owns or operates motor vehicles, public liability or claims of liability for bodily injury (including death) and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, (a) have limits of not less than Five Million Dollars (\$5,000,000.00) per person and Five Million Dollars (\$5,000,000.00) per occurrence; (b) insure the Executive Board, the Association, the Association and its officers, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured as its interests may appear; (d) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of Association Property; (e) cover claims of one or more insured parties against other insured parties; (f) be written on an occurrence basis; and (g) shall name as additional insureds such other parties as may be required by specific agreements.

(c) <u>Contractual Liability Insurance</u>. To the extent reasonably available, contractual liability insurance covering such contractual obligations and liabilities, indemnifications, hold harmless agreements, and agreements to defend, as the Association may have or be a party to from time to time, with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall determine to be appropriate from time to time.

(d) **Fidelity Bonds**. To the extent reasonably available, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees, or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount no less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three (3) months aggregate Regular Assessments, plus reserves, as calculated from the current Budget of the Association; or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(e) <u>Worker's Compensation</u>. A Worker's Compensation policy, if necessary, to meet the requirements of law.

(f) **Directors and Officers Liability Insurance**. Directors and officers liability insurance with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall approve for all Association, Executive Board and Association directors, officers, members and managers, for any and all errors and/or omissions and other covered actions that occur during their tenure in office or employment. This insurance coverage shall be mandatory.

(g) <u>Other Insurance</u>. Such other insurance in such amounts as the Executive Board shall determine, from time to time, to be appropriate to protect the Association or the Owners, or as may be required by the Act.

(h) General Provisions Respecting Insurance. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained by it, the Association shall promptly cause notice of that fact to be delivered or sent prepaid by U.S. Mail to all Owners. Insurance policies carried pursuant to Sections 10.16(a) and 10.16(b) above shall provide that (i) each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Association Property or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any Person claiming by, through, or under such Owner or any other director, agent, or employee of the foregoing; (iii) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (iv) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in Sections 10.16(a) and 10.16(b) above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses. Any loss covered by the property insurance policy described in Section 10.16(a) above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and lienholders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. In the event more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient in light of the current values of the Association Property and in light of the possible or potential liabilities of the Association and other insured parties. The aforementioned insurance may be provided under blanket policies covering the Association Property and property of Declarant. In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit. Furthermore, to the extent reasonably available, insurance policies obtained by the Association shall contain the following provisions:

(1) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by an Owner, Occupant or Mortgagee.

(2) The conduct of any one or more Owners or Occupants shall not constitute grounds for avoiding liability on any such policies.

(3) Each policy must contain a waiver of any defenses based on coinsurance or on invalidity arising from the acts of the insured.

(4) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Occupant because of the conduct or negligent acts of the Association and its agents or other Owners or Occupants.

(5) Any "no other insurance" clause shall exclude insurance purchased by Owners, Occupants or Mortgagees.

(6) Coverage must not be prejudiced by (i) any act or neglect of Owners or Occupants when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Community over which the Association has no control.

(7) Coverage may not be canceled or substantially modified without at least thirty (30) days (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the Association.

(8) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

Association.

(9)

A recognition of any insurance trust agreement entered into by the

(10) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in *Best's Key Rating Guide* of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Colorado.

(i) **Nonliability of Association or Executive Board**. Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Executive Board member, nor the Declarant, shall be liable to any Owner, Occupant, Mortgagee or other Person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Occupant may desire.

(j) **Premiums**. Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that (i) liability insurance on Limited Common Areas shall be separately bid and the cost thereof shall only be included in the Regular Assessments of the Lots entitled to use such Limited Common Areas, and (ii) the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or Association Property, by an Owner

or Occupant, may at the Executive Board's election, be assessed against that particular Owner and his Lot as a Reimbursement Assessment.

(k) <u>Insurance Claims</u>. The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Executive Board has full and complete power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Association.

(1) **Benefit**. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Owners, or the Occupants, as their interests may appear.

(m) <u>Other Insurance to be Carried by Lot Owners</u>. Insurance coverage on the furnishings and other items of personal property belonging to a Lot Owner or Occupant, public liability insurance coverage upon each Lot, and casualty insurance coverage on the Dwelling and other Improvements constructed on Lots, shall be the responsibility of the Owner or Occupant of the Lot. No Lot Owner or Occupant shall maintain any insurance, whether on its Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the Improvements or fixtures on Association Property.

(n) **Insurance for Party Walls**. The Owner of Lots commonly benefitting from a Party Wall shall obtain casualty damage and other appropriate insurance providing for the reconstruction of the Party Wall in the event of damage requiring repair or replacement. The insurance shall name the other Lot Owner sharing the Party Wall as well as the Association as an additional insured.

9.16. Damage to Community. Any portion of the Community for which insurance is required under Section 38-33.3-313 of the Act which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Community is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) fifty-one percent (51%) of the Lot Owners, including owners of every Lot that will not be rebuilt, vote not to rebuild; or (iv) prior to the conveyance of any Lot to a person other than Declarant, a Mortgagee on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Community, and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Lots that are not rebuilt must be distributed to the Owners of those Lots, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all the Lots. In the event of damage to or destruction of all or a portion of the Association Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Association Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Reimbursement Assessment against the Owner or group of Owners responsible therefore, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Executive Board, but not sooner than sixty (60) days after written notice thereof. The Assessment provided for herein shall be a debt of each Owner assessed and a lien on his Lot, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged Association Property is not replaced,

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the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Community. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and first Mortgagees of their respective Lots, if any.

9.17. Limited Liability. Neither the Association nor its past, present or future officers or directors, nor any employee, agent or committee member of the Association or of the Association shall be liable to any Owner or Occupant or to any other Person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association, the Executive Board and the Association shall not be liable to any Owner or Occupant or other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Association, the Executive Board and the Association against claims, damages or other liabilities resulting from such good faith action or failure to act.

## ARTICLE TEN ASSESSMENTS

Assessment Obligation and Lien. Declarant, for each Lot, shall be deemed to covenant 10.1. and agree, and each Lot Owner, by acceptance of a deed therefore (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). No Owner shall have any right to set-off against an Assessment any claims that the Owner may have or may claim to have against the Association. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot against which each such Assessment is charged. The obligation for such payments by each Lot Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Lot Owner is liable for Assessments made against such Owner's Lot during his period of ownership of the Lot. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each Person who was an Owner of such Lot at the time when the Assessment became due. Upon the transfer of title to a Lot, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

10.2. **Statutory Lien**. The Association has a statutory lien pursuant to Section 38-33.3-316 of the Act on the Lot of an Owner for all Assessments levied against such Lot or fines imposed against such Lot's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Executive Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within 6 years after the full amount of Assessments becomes due.

10.3. <u>Lien Superior to Homestead and Other Exemptions</u>. An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the Loted States. The acceptance of a deed

subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

10.4. <u>Priority of Lien</u>. An Assessment Lien is prior to all other liens and encumbrances on a Lot except as follows:

(a) Liens and encumbrances Recorded before the recordation of this Declaration;

(b) A security interest on the Lot which has priority over all other security interests on the Lot and which was Recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to Section 11.7 below) which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;

(c) Liens for real estate taxes and other governmental assessments or charges against the Lot; and

(d) As may otherwise be set forth in the Act. The priority of mechanics' and materialmen's liens is not affected by the Act. This Article does not prohibit an action or suit to recover sums for which this Article creates a lien or

This Article does not prohibit an action or suit to recover sums for which this Article creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the lien for an Assessment.

10.5. **Perfection of Lien**. The Recording of this Declaration constitutes record notice and perfection of the statutory lien. No further Recordation of any claim of lien for Assessments is required; however, a claim may be Recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot as a Reimbursement Assessment.

## 10.6. **Regular Assessments**.

(a) A Regular Assessment shall be made annually against each Lot, based upon an annual Budget prepared by the Executive Board, for purposes of paying (i) the annual costs of operating and administering the Association and all other Common Expenses, (ii) reasonable reserves for contingencies, replacements, and other proper purposes, (iii) the costs of services rendered or expenditures incurred by the Association to or for less than all Lots, (iv) the costs of improving or maintaining Limited Common Areas, and reasonable reserves for such costs, which costs shall be assessed only to the Lots designated for the use of said Limited Common Areas, (unless such costs are for the general benefit of the Community), and (v) such other matters as may be reasonably determined by the Executive Board to be the subject of a Regular Assessment;

(b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Lot in the Community. Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense liabilities.

(c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot is conveyed by Declarant to a Person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Executive Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a

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(d) The Executive Board shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least thirty (30) days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Executive Board timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Executive Board levies the Regular Assessment and provides notice thereof. If a duly adopted Budget is amended during the calendar year, the Executive Board shall provide written notice to the Owners of any changes caused thereby in the remaining Regular Assessments due during that year.

(e) The Executive Board shall also mail to each Owner at least ten (10) days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to paragraph 11.6(d) above. Failure of the Executive Board to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Executive Board in fact provides such notice.

(f) In accordance with Section 38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's budget.

10.7. Association Budget. During the last three (3) months of each calendar year thereafter, the Executive Board shall prepare or cause to be prepared an operating budget ("Budget") for the next fiscal year. The Budget shall provide the allocation of any surplus funds remaining from any previous Budget period. Within ninety (90) days after adoption of any proposed Budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all the Lot Owners and shall set a date for a meeting of the Lot Owners to consider the Budget. The meeting shall be not less than 14 nor more than 60 days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. The Budget shall be considered by the Owners at that meeting whether or not a quorum of Owners is present and shall be deemed to be approved unless at least 67% of the weighted vote at the meeting veto the Budget. In the event that the proposed Budget is vetoed, the Budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent Budget proposed by the Executive Board, as may be reasonably adjusted for inflation based upon the Consumer Price Index published in the Wall Street Journal and may also be adjusted to account for increases in any non-discretionary costs, expenses and fees imposed by third parties, such as property taxes, utilities and similar items.

The annual Budget may provide for a Special Assessment in any calendar year, if considered necessary or appropriate by the Executive Board. Alternatively, the Executive Board may at any time adopt a Special Budget that provides for a Special Assessment.

10.8. <u>Special Assessments</u>. In addition to the other Assessments authorized in this Article, the Executive Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance or replacement of capital improvements (including related fixtures and personal property and including without limitation irrigation systems), to or upon or serving the Community, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating deficit of the Association. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot in the Community, and shall be due and payable to the Association on the due date fixed by the Executive Board in the

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notice given to the Owners of such Special Assessment, which due date shall be no earlier than thirty (30) days after the giving of such notice. Any Special Assessment for an Improvement or other expenditure which will benefit fewer than all of the Lots shall only be levied against the Lots benefited; provided, that expenditures in connection with Association Property (excepting Limited Common Areas) shall be deemed for the general benefit of all Lots, wherever located. If fewer than all of the Lots will be subject to the Special Assessment, then such Special Assessment shall be allocated equally amongst those Lots.

10.9. **Reimbursement Assessments**. In addition to the other Assessments authorized in this Article, the Executive Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles, Bylaws, Rules and Regulations or any approvals granted by the Association, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Executive Board for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, the Articles, Bylaws, or the Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

10.10. **Working Capital.** The Association shall establish an initial working capital fund equal to 1/4<sup>th</sup> of the yearly Regular Assessment for each Lot subject to the terms of this Declaration. The working capital fund may be used by the Association to cover the cost of initial expenses and any future expenses authorized by the Executive Board for which there are insufficient budgeted funds. The initial working capital fund shall be established upon the conveyance of the first Lot in the Project by Declarant to a third-party purchaser. Upon acquisition of record title to a Lot from Declarant, each such new Owner shall contribute to the working capital fund of the Association an amount equal to 1/4 of the yearly Regular Assessment for that Lot for the year in which the new Owner acquired title. Such payments shall not be considered advance payments of Regular Assessments. The working capital fund deposit made by such new Owner shall be non-refundable. In the event that Declarant makes payment of any working capital on behalf of any Lot, such amount shall be reimbursable to Declarant by the Lot purchaser at the closing of the sale of the Lot by Declarant to such purchaser.

10.11. **<u>Reserve Accounts.</u>** The Association may, but is not obligated to establish or fund reserve accounts for capital improvements or repairs to the Community. Declarant has no obligation to establish or fund any reserve accounts.

10.12. <u>Misconduct.</u> If any Common Expenses or Limited Common Expenses are caused by the misconduct of any Owner, the Executive Board may assess that expense exclusively against such Owner's Lot as a Reimbursement Assessment.

10.13. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Executive Board from time to time, which shall not be less than twelve percent (12%) nor more than twenty-one percent (21%) per year, and the Executive Board may also assess a bad check charge in the amount of 10 percent (10%) of the bad check or \$50.00, whichever is greater. The Executive Board may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The Executive Board may also suspend the delinquent Owner's use of Association Property and Association services or benefits, as provided in Section 13.4. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Executive Board may but shall not be required to record a Notice of

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc Page 47 of 62 Delinquent Assessment or charge against any Lot as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Executive Board, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Lot. The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Lot at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Lot in the discretion of the Lot against which the exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any of the Association by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Lot Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Regular Assessments.

10.14. **Statement of Unpaid Assessments**. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot, whether delinquent or not. The statement shall be furnished within fourteen (14) days after receipt of the request and is binding on the Association, the Executive Board, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request.

10.15. **Assessments for Tort Liability**. In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

10.16. <u>Audit</u>. The Association shall prepare audits as may be required by the Act or as otherwise elected by the Association.

## ARTICLE ELEVEN EMINENT DOMAIN

11.1. <u>Definition of Taking</u>. The term "taking", as used in this Article, shall mean condemnation by eminent domain or sale under threat of condemnation.

11.2. **Representation in Condemnation Proceedings of Association Property**. In the event of a threatened taking of all or any portion of the Association Property, the Owners hereby appoint the Association through such persons as the Executive Board may designate to represent the Association and all of the Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Association shall not be necessary.

11.3. **Award for Association Property**. Any awards received by the Association on account of the taking of Association Property shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners as their interests may appear. The rights of an Owner and the Mortgagee of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

11.4. **Taking of Lots**. If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for that Lot and its Allocated Interests whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides, that Lot's Allocated Interests are automatically reallocated to the remaining Lots (as appropriate) in proportion to the respective Allocated Interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken is thereafter Association Property. Otherwise, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot and its interest in the Association Property whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides.

(a) That Lot's Allocated Interests are reduced in proportion to the reduction in the size of the Lot; and

(b) The portion of Allocated Interests divested from the partially acquired Lot is automatically reallocated to that Lot and to the remaining Lots (as appropriate) in proportion to the respective interests of those Lots before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interests.

11.5. <u>Miscellaneous</u>. The court decree shall be recorded in Ouray County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

#### ARTICLE TWELVE GENERAL PROVISIONS

12.1 **Duration of Declaration**. The term of this Declaration shall be perpetual.

12.2 <u>Termination of Community.</u> The Community may be terminated only by the agreement of: (i) Owners holding at least 80% of the total allocated votes in the Association, and (ii) the holders of all first mortgages on Lots. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

## 12.3 Amendment of Declaration and Plat.

12.3.1 This Declaration and the Plat may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration may be amended by the Declarant in certain defined circumstances, including without limitation: (a) when the Declarant is exercising reserved rights hereunder, or (b) for purposes of correcting clerical, typographical, or technical errors. The Act also provides that the Declaration may be amended by the Declarant and/or the Association in certain defined circumstances.

12.3.2 In addition to the foregoing, this Declaration (including the Condominium Plat) may be amended only by the vote or agreement of Owners to which more than 51% of the votes in the Association are allocated.

12.3.3 In the event that written notice of an intent to amend this Declaration, the Plat or any of the Governing Documents requiring approval by the Owners, which notice complies with this Section 12.3.3 is sent to an Owner at the current address of the Owner on file with the Association and the Owner fails to respond by the expiration of the stated thirty day period, the Association shall count the non-responding Owner of the Lot as an affirmative vote. All ballots shall be returned to the President of the Association. The notice required by this Section shall include: (a) a copy of the proposed amendment, (b) a statement that the Owner has thirty days to vote to either approve or disapprove the proposed amendment in writing and that failure to vote will result in and be deemed to be a vote in favor of the proposed amendment, and (c) reasonably clear directions on the manner and method on which the Owner may vote on the proposed amendment and where to return the ballot. In the

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event that the Owner fails to respond by the expiration of the stated thirty day period, the Association shall count the non-responding Owner of the Lot as an affirmative vote. All ballots shall be returned to the President of the Association.

12.3.4 Pursuant to Section 38-33.3-217(4) of the Act, which provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted amendments), no amendment may: (i) create or increase special Declarant rights; or (ii) increase the number of Lots, in the absence of a vote or agreement of Lot Owners to which at least 51% of the votes in the Association are allocated, including 51% of the votes allocated to Lots.

12.3.5 Pursuant to Section 38-33.3-217(4.5) of the Act which provides that except to the extent expressly permitted or required by other provisions of the Act, no amendment may change the uses to which any Lot is restricted in the absence of a vote or agreement of Owners to which at least 51% of the votes in the Association for such Lots are allocated. This limitation does not apply in instances where the Declarant is amending the Declaration and/or the Governing Documents pursuant to its Reserved Rights, to the fullest extent allowed by the Act.

12.3.6 Under no circumstances shall any amendment to the Declaration, the Plat or any of the Governing Documents alter, limit, impair, reduce, eliminate, extinguish, terminate or otherwise affect the Reserved Rights of Declarant or any Lot owned by Declarant without the prior written consent and approval of Declarant, which Declarant may grant or withhold in Declarant's sole discretion.

12.3.7 No consent of any mortgage or trust deed holder shall be required to accomplish any amendment or supplement to this Declaration, the Plat or any of the Governing Documents.

12.3.8 An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Plat." With the exception of Declarant amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and recorded in the Official Records.

## 12.4 Compliance; Enforcement.

12.4.1 Every Owner and Occupant of a Lot in the Community shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Declaration and the Governing Document, and all approvals granted by the Executive Board, as the same or any of them may be amended from time to time. In addition to any other rights or remedies that may be provided to any Person under the terms and provisions of this Declaration and/or any Governing Document, the Association through its Executive Board, and every Owner (except an Owner that is delinquent in the payment of Assessments hereunder), shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Declaration or any Governing Document, and any approvals granted by the Executive Board. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Each remedy provided under this Declaration is cumulative and not exclusive.

12.4.2 A Person seeking to enforce this Declaration or any Governing Document shall first comply with any requirements for Alternative Dispute Resolution concerning the Claim as provided for in Section 12.5. Subject to the limitations contained in Section 12.6, such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, orders to stop work, orders to remove improvements

constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

12.4.3 The Executive Board shall have the following further rights and remedies:

A. The right to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters which shall constitute a lien upon the violator's Lot. In the event that any Person, including an occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Executive Board, the Owner shall pay the fine upon notice from the Executive Board.

Owner.

B. The right to levy and collect a Reimbursement Assessment against any

C. The right to enter upon any Lot within the Community, after giving the Owner or Occupant at least 5 days written notice of the nature of the violation (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation.

D. The right to cut off or suspend any or all Association services or benefits to the subject Owner or Occupant and his Lot until the violation is cured.

E. The right to suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 90 days delinquent in paying any Assessment).

F. The right to exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents).

G. The right to record a notice of violation with respect to any Lot on which a violation exists.

12.4.4 In any action brought under this Section 12.4, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith.

12.4.5 Failure by any party entitled to exercise any of the rights available to it under this Section 12.4 shall in no event be deemed a waiver of the right to do so in any other instance.

12.4.6 No Owner shall have the right to bring any claim for damages or any enforcement action against another Owner, Occupant, the Association, Declarant or an Affiliate of Declarant, until the aggrieved Owner has given the offending Owner, Occupant, the Association, Declarant or an Affiliate of Declarant written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem as provided for in Section 12.5.

12.4.7 Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration or the Governing Documents, or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

12.4.8 The decision for the Association to pursue an enforcement action in any particular case shall be left to the Executive Board's discretion, except that the Executive Board shall

not be arbitrary or capricious in taking enforcement action. For example, the Executive Board may determine that, in a particular case:

A. the Association's position is not strong enough to justify taking any or further action;

B. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

C. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources;

D. the Association is precluded from bringing an action because of applicable law, this Declaration or the Governing Documents;

E. that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

12.4.9 A decision by the Association and its Executive Board not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

12.4.10 The provisions of this Section 12.4 may not be modified, amended or deleted without the prior written consent of Declarant, which may be granted or withheld in the discretion of Declarant.

#### 12.5 Agreement to Encourage Alternative Dispute Resolution.

12.5.1 For purposes of this Section 12.5 only, the following terms have the following meanings:

(a) "AAA" means the American Arbitration Association.

(b) "Claimant" means any Party having a Claim.

(c) "Claim" means, except as excluded or exempted by the terms of this Section 12.5 (including Section 12.5.3 below), any claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based, including, without limitation, disputes arising out of or related to: (i) the interpretation, application or enforcement of any Governing Document; (ii) the location, planning, sale, development, design, construction and/or condition of the Lots and Community, including, without limitation, the soils of the Community; and (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party relating to the foregoing.

(d) "Inspecting Party" means a Party causing an inspection of the Subject Property to be made.

(e) "Party" means each of the following: (i) Declarant and its officers, owners, employees and agents (collectively, "Declarant Affiliates"); (ii) all Owners, the Association and all other Persons subject to this Declaration, their officers, owners, employees, and agents; (iii) any builder of any portion of the Project and its officers, owners, employees and agents; and (iv) any Person not otherwise subject to this Declaration who agrees to submit to this Section 12.5.

(f) "Respondent" means any Party against whom a Claimant asserts a

Claim.

(g) "Subject Property" means the property regarding which a Party contends a defect exists or another Claim pertains and/or property being inspected under the inspection right in Section 12.5.4 below.

(h) "Termination of Mediation" means a period of time expiring thirty (30) days after a mediator has been agreed upon by the Parties (however, a mediator shall be selected no later than forty-five (45) days after the Claimant has given notice of the Claim and if the Parties are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

12.5.2 Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.

(a) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. Accordingly, each Party agrees to resolve all Claims by using the procedures in this Section 12.5 and not by litigation. Further, each Party agrees that the procedures in this Section 12.5 shall be the sole and exclusive remedy that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Section 12.5, such Party shall reimburse all costs and expenses, including attorneys' fees, incurred by the other Party in such litigation or action within ten days after written demand.

(b) By accepting a deed for a Lot, each Owner agrees to be bound by and to comply with this Section 12.5.

(c) The Parties agree that no Claim may be started after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

12.5.3 Unless specifically exempted by this Article 20, all Claims between any of the Parties shall be subject to the provisions of this Article 20. Notwithstanding the foregoing, unless all Parties thereto otherwise agree, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim or cross-claim and shall not be subject to the provisions of this Section 12.5:

(a) Any action by the Association to enforce the provisions of the Governing Documents (other than this Section 12.5) against an Owner or Occupant;

(b) Any action by the Association to assess or collect any Assessments or to enforce or foreclose any Assessment Lien;

(c) Any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Section 12.5;

(d) Any action pursuant to the provisions of this Declaration concerning mechanics liens; and

(e) Any actions of the Association permitted by §217(7) of the Act.

12.5.4 Before any Party commences a proceeding involving another Party, including, without limitation, any alleged defect of any Lot or the Community, the Respondent shall have the right to access, inspect, correct the condition of, or redesign any portion of any improvement allegedly containing a defect or otherwise correct the alleged defect; *provided*, *however*, any correction to, or

redesign of, an improvement shall be made upon terms and conditions acceptable to all affected Parties. In exercising these inspection rights, the Inspecting Party shall:

(a) Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any improvements on the Subject Property at issue;

the Subject Property;

(b) Minimize any disruption or inconvenience to any Person who occupies

Subject Property; and

Remove daily all debris caused by the inspection and remaining on the

(d) In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property, repair and replace all damage, and restore the Subject Property to its pre-inspection condition unless the Subject Property is to be immediately repaired.

The Inspecting Party shall not permit any lien, claim or other encumbrance arising from the inspection to attach to the Subject Property. The Inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorneys' fees, resulting from any Inspecting Party's breach of this Section 20.4.

12.5.5 Mandatory Procedures.

(c)

(a) Before proceeding with any Claim against any Respondent, each Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely:

The nature of the Claim, including all Persons involved and each Respondent's role in the Claim;

The legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

The specific relief and/or proposed remedy sought.

(b) The Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(c) If the Parties cannot resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty days to submit the Claim to mediation under the auspices of the AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(i) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim.

(ii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a complete

settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

(iii) Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges.

(iv) If the Parties resolve any Claim through negotiation or mediation under this Section 12.5.5(c) and any Party later fails to comply with the settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the above procedures in this Section 12.5.5(c). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

(d) After receiving a Termination of Mediation, if Claimant wants to pursue the Claim, Claimant shall initiate final, binding arbitration of the Claim under the auspices of the AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate, and Claimant shall provide to Respondent a "Notice of Intent to Arbitrate" all within twenty days after the Termination of Mediation. If Claimant does not initiate final, binding arbitration of the Claim and provide a Notice of Intent to Arbitrate to Respondent within twenty days after the Termination of Mediation, then Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim.

The following arbitration procedures shall govern each arbitrated claim:

(i) The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

(ii) No Person shall serve as the arbitrator where that Person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any Person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator with fourteen days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

(iii) The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the Town of Ridgway unless the Parties otherwise agree.

(iv) The arbitration shall be presided over by a single arbitrator.

(v) No formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

(vi) Unless directed by the arbitrator, there shall be no post-hearing

briefs.

(vii) The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than fourteen days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

(viii) The arbitrator determines all issues about whether a Claim is covered by this Section 12.5. Notwithstanding anything herein to the contrary (including, but not limited G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Residential\Townhomes Decs.1b.doc to, Section 12.5.5(ix) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

(ix) The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys' fees and/or costs to the prevailing Party. Each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction.

(x) The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

(xi) The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

(xii) Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

12.5.6 If a Claim relates to the condition of a Lot, the Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective Mortgagees.

12.5.7 In the event that any provisions of this Section 12.5 conflict with any applicable federal or Colorado statutes which provide non-waivable legal rights, including, without limitation, the Colorado Construction Defect Action Reform Act or the Colorado Consumer Protection Act, then the non-waivable terms of such statute shall control and all other provisions herein remain in full force and effect as written.

12.5.8 THE PROVISIONS OF THIS SECTION 12.5 INURE TO THE BENEFIT OF DECLARANT AND THE DECLARANT AFFILIATES (AND ALL OTHER PARTIES DESCRIBED ABOVE) AND, NOTWITHSTANDING THE PROVISIONS OF SECTION 12.3 ABOVE, SHALL NOT EVER BE AMENDED WITHOUT THE WRITTEN CONSENT OF DECLARANT AND WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY PROPERTY AT THE TIME OF SUCH AMENDMENT. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION 12.5 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S AND THE DECLARANT AFFILIATES' WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS SECTION 12.5, DECLARANT AND THE DECLARANT AFFILIATES WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL BUYERS.

IN ANY EVENT, ANY AMENDMENT TO OR DELETION OF ALL OR ANY PORTION OF THIS SECTION 12.5 SHALL NOT APPLY TO CLAIMS BASED ON ALLEGED ACTS OR OMISSIONS THAT PREDATE SUCH AMENDMENT OR DELETION.

12.5.9 IN THE EVENT THAT A COURT FINDS THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS SECTION 12.5 ARE UNENFORCEABLE AND AS A RESULT A PARTY IS ALLOWED TO BRING A CLAIM IN COURT, THE PARTIES AGREE THAT ANY LAWSUIT, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT IN COURT SHALL BE TRIED ONLY BY A JUDGE AND NOT BY A JURY; AND EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT. 12.5.1 **Declarant to Consent to Amendments.** The provisions of this Section 12.5 may not be modified, amended or deleted without the prior written consent of Declarant, which may be granted or withheld in the discretion of Declarant.

12.6 **<u>Rights of First Mortgagees.</u>** Upon the filing of a written request therefor with the Association, the holder of a First Mortgage on any Lot in the Common Interest Community shall be entitled to:

12.6.1 Receive written notice of meetings of the Association where matters will be considered that, if approved, will require the consent of First Mortgagees or some of them;

12.6.2 Receive written notice from the Association that the Owner of the Lot is delinquent in the payment of Assessments thereon;

12.6.3 Upon written request, inspect the books and records of the Association during normal business hours;

12.6.4 Upon written request, receive copies of annual Association financial statements;

12.6.5 Upon written request, receive written notice of meetings of the Association where matters will be considered that, if approved, will require the consent of First Mortgagees or some of them;

12.6.6 Upon written request, receive written notice of condemnation proceedings affecting any Common Areas;

12.6.7 Upon written request, receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration; and

12.6.8 In addition, any First Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against the Common Areas and may pay any overdue premiums on hazard or general liability insurance policies covering the Common Areas, and shall be entitled to immediate reimbursement therefor from the Association, unless the Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if necessary.

12.6.9 This Declaration and the other Governing Documents may be amended or supplemented without the requirement to obtain the consent of any First Mortgagee or any other holder of a Mortgage as provided for in Section 12.3.

12.7 Notice. Each Owner, and each First Mortgagee if it so elects (as provided for in Section 12.6), shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the first-class U.S. Mail, certified and return receipt requested, with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of an Owner that has not provided such an address, to the Lot of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

12.8 <u>No Dedication to Public Use.</u> Nothing contained in this Declaration shall be deemed to be or to constitute a dedication of all or any part of the Community to the public or to any public use unless otherwise provided for in the Plat.

12.9 Safety and Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association, the Declarant, the Affiliates of Declarant and the Managing Agent, shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Occupants of such Owner's Lot that the Association, its Executive Board and committees, the Declarant, the Affiliates of Declarant and the Managing Agent are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and Common Areas and the contents of Lots, resulting from acts of third parties.

12.10 <u>Interpretation of Declaration.</u> The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Community, and to the extent possible, shall be construed so as to be consistent with the Act.

12.11 <u>Conflict With Condominium Plat.</u> In the event of any conflict or inconsistency between the provisions of this Declaration and the Condominium Plat, the provisions of said Condominium Plat shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Condominium Plat.

12.12 <u>Conflict With the Act.</u> In the event of any conflict or inconsistency between the provisions of the Governing Documents and the Act and/or the Colorado Revised Nonprofit Corporation Act, the respective provisions of the Act and/or the Colorado Revised Nonprofit Corporation Act shall govern and control and the Governing Documents shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Act and/or the Colorado Revised Nonprofit Corporation Act

12.13 <u>Governing Law; Jurisdiction.</u> The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for Ouray County, Colorado, and by acceptance of a deed to a Lot each Lot Owner voluntarily submits to the jurisdiction of such court.

12.14 <u>Costs and Attorneys' Fees.</u> In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

12.15 <u>Severability.</u> Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Association shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable but which in Association's reasonable opinion would be considered not to be unconscionable.

12.16 <u>Captions.</u> Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

12.17 <u>Singular Includes Plural.</u> Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

12.18 **Disclaimer Regarding Safety**. Declarant and the association hereby disclaim any obligation regarding the security of any persons or property within the community. Any owner or occupant of property within the community acknowledges that Declarant and the association are only obligated to do those acts specifically enumerated herein, or in the articles of incorporation and bylaws, and are not obligated to do any other acts with respect to the safety or protection of persons or property within the community.

**IN WITNESS WHEREOF**, Declarant has executed this Declaration as of the Effective Date.

**DECLARANT:** 

# **Arthur Travis Spitzer Revocable Trust**

By:		
Printed Name:		
Title:		
STATE OF COLORADO	)	
	) \$\$	
COUNTY OF	)	
The foregoing instrument was a	cknowledged before me this day of	,
201 by	, as the of Arthur Travis S	pitzer
Revocable Trust.		L
Witness my hand and official sea		
	My commission expires:	
Nederar Delli	·	
Notary Public		

## EXHIBIT "A" (LEGAL DESCRIPTION)

# EXHIBIT "B"

Lot	Allocated Interest	Allowable Uses	

14. Articles of Incorporation: Commercial Document must be filed electronically. Paper documents are not accepted. Fees & forms are subject to change. For more information or to print copies of filed documents, visit <u>www.sos.state.co.us</u>.

ABOVE SPACE FOR OFFICE USE ONLY

# Articles of Incorporation for a Nonprofit Corporation

filed pursuant to § 7-122-101 and § 7-122-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the nonprofit corporation is

(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)

2. The principal office address of the nonprofit corporation's initial principal office is

Street address

316 NORTH LENA STREET (Street number and name)

	RIDGWAY	CO 81432
	(City)	(State) (ZIP/Postal Code) United States
	(Province – if applicable)	(Country)
Mailing address	P.O. BOX 3601	
leave blank if same as street address)	(Street number and na	me or Post Office Box information)
	TELLURIDE	CO 81435-3601
	(City)	(State) (ZIP/Postal Code) United States .
ω	(Province – if applicable)	(Country)

 The registered agent name and registered agent address of the nonprofit corporation's initial registered agent are

Name				
(if an individual)	(Last)	(First)	(Middle)	(Suffix
OR	1	f		1
(if an entity)	THE LAW OFFICES	OF THOMAS	G. KENNEDY	P.C.
	an individual and an entity name.)			
Street address	307 EAST COLORA	ADO AVENUE		
<u></u>	SUITE 203	treet number and name	)	
	TELLURIDE	СО	81435-3081	
	(City)	(State)	(ZIP Code,	1

X

Mailing address	P.O. BOX 3081			
(leave blank if same as street address)	(Street number and nat	me or Post Office	Box information)	
	TELLURIDE	CO	81435-3081	
	(City)	(State)	(ZIP Code)	
The following statement is adopted by marking the	e box.)			
$\checkmark$ The person appointed as registered	agent above has consented to	being so app	ointed.	
The true name and mailing address of	the incorporator are			
Name (if an individual)				
	(Last)	(First)	(Middle)	(Suffix
OR				
	THE LAW OFFICES O	F THOMAS	G. KENNEDY,	P.C.
(if an entity) (Caution: Do not provide both an indiv.		F THOMAS	G. KENNEDY,	P.C.
(if an entity) (Caution: Do not provide both an indiv.		F THOMAS	G. KENNEDY,	P.C.
(if an entity)	idual and an entity name.) P.O. BOX 3081		G. KENNEDY,	P.C.
(if an entity) (Caution: Do not provide both an indiv.	idual and an entity name.) P.O. BOX 3081			P.C.
(if an entity) (Caution: Do not provide both an indiv.	idual and an entity name.) P.O. BOX 3081 (Street number and	name or Post Offi	ice Box information) 81435-3081 (ZIP/Postal Co	

- 5. (If the following statement applies, adopt the statement by marking the box.)
  - The nonprofit corporation will have voting members.
- 6. Provisions regarding the distribution of assets on dissolution:

TINC_NPC	Page 2 of 3	Rev. 2/12/2013
SEE ATTACHMENT		

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.) The delayed effective date and, if applicable, time of this document is/are \_\_\_\_\_

(mm/dd/yyyy hour:minute am/pm)

#### Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes. This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

RISNER-TINDALL	KIMBERLY	Α.	
(Last) P.O. BOX 3081	(First)	(Middle)	(Suffix)
(Street number	and name or Post Offic	ce Box information)	
TELLURIDE	СО	81435-3081	
(City)	(State) United St	(ZIP/Postal Ca ates	ode)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

#### **Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

#### ADDENDUM TO ARTICLES OF INCORPORATION OF LENA STREET COMMONS COMMERCIAL CONDOMINIUMS OWNERS ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION

Capitalized terms not otherwise defined herein shall have the meaning set forth in the Declaration of Covenants, Conditions and Restrictions for Lena Street Commons Commercial Condominiums Owners Association and any supplement or amendment thereto ("Declaration"). All of the lands that become subject to said Declaration from time to time are hereinafter referred to as the "Community." In the event of a conflict between the terms, conditions and provisions of this Addendum and the Articles of Incorporation, this Addendum shall control.

#### ARTICLE ONE Purposes

The business, objectives and purposes for which the corporation is formed are as follows:

1. To be and constitute the "Association", to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Lena Street Commons Commercial Condominiums ("Declaration") establishing a plan for Lena Street Commons Commercial Condominiums, located in the Town of Ridgway, Ouray County, Colorado ("Community"), said Declaration to be recorded in the office of the County Clerk and Recorder of Ouray County, Colorado.

2. To perform all obligations and duties of the Association and to exercise all rights and powers of the Association, as specified in the Declaration.

3. To provide an entity for the furtherance of the interest of the Owners of separate condominium units ("Units") within the Community.

# ARTICLE TWO

#### Powers

In furtherance of its purposes, but not otherwise, the corporation shall have the following powers:

1. All of the powers conferred upon non-profit corporations by the common law and the statutes of the State of Colorado in effect from time to time.

2. All of the powers necessary or desirable to perform the obligations and duties and exercise the rights and powers of the Association under the Declaration, including, without limitation, the following powers:

a. To make and collect general, limited and/or special assessments against Members for the purpose of defraying the costs, expenses and any losses of the Association, or of exercising its powers or of performing its functions.

b. To manage, control, operate, maintain, repair and improve Community common elements, as defined in the Act and the Declaration.

c. To enforce covenants, restrictions or conditions affecting any Community property, to the extent the Association may be authorized under any such covenants, restrictions or conditions, and to make and enforce rules and regulations for use of the Community.

d. To engage in activities which will actively foster, promote and advance the common ownership interests of Owners of the Units.

e. To buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, withdraw, grant or obtain easements, licenses, permits and the like, hold, use, operate and otherwise deal with and in, real, personal and mixed property of all kinds, and any right or interest therein, for any purpose of the Association.

f. To borrow money for any purpose of the Association, limited in amount or in other respects as may be provided in the Bylaws of the Association (the "Bylaws").

g. To enter into, make, perform or enforce contracts of every kind and description, and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association or any Members, with or in association with any person, firm, association, corporation or other entity or agency, public or private.

h. To act as agent, trustee, or other representative of other corporations, firms, individuals, and as such to advance the business or ownership interests of such corporations, firms or individuals, including, without limitation, any Members.

i. To adopt, alter, and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association, provided, however, that such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration.

j. The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article.

#### ARTICLE THREE Memberships

1. The corporation shall be a membership corporation without certificates or shares of stock. Subject to the limitations set forth in the Declaration. There shall be one class of membership.

2. There shall be one "**Membership**" in the Association for each Unit within the Community. The Person or Persons who constitute the Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit, and shall collectively be the "Member" of the Association with respect to that Unit, and the Membership appurtenant to that Unit shall automatically pass with fee simple title to the Unit. Declarant shall hold a Membership in the Association for each Unit owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Unit, and may not otherwise be separated from ownership of a Unit.

3. All Members shall be entitled to vote on all matters, with each vote allocated in the manner set forth in the Declaration. Cumulative voting is prohibited. No person or entity other than an Owner of a Unit may be a Member of the corporation.

4. A membership in the corporation and the share of a Member in the assets of the corporation shall not be assigned, encumbered or transferred in any manner except as an appurtenance to transfer of title to the Unit to which the membership pertains; provided, however, the rights of membership may be

assigned to the holder of the mortgage, deed of trust or other security instrument on a Unit as further security for a loan secured by a lien on such Unit.

5. A transfer of membership shall occur automatically upon the transfer of title to the Unit to which the membership pertains; provided, however, the Bylaws may contain reasonable provisions and requirements with respect to recording such transfers on the books and records of the corporation.

6. The corporation may suspend the voting rights of a Member for failure to comply with rules and regulations or the Bylaws or with any other obligations of the Owners of a Unit under the Declaration or any agreement created thereunder.

7. The corporation, through its Bylaws, may establish requirements concerning the manner and method by which voting rights and other rights attributable to a Unit that is owned by a firm, corporation, partnership, limited liability company, association or other legal entity or any combination thereof may be exercised.

8. The Bylaws may contain provisions, not inconsistent with the foregoing, setting forth the rights, privileges, duties and responsibilities of the Members.

#### ARTICLE FOUR Board

1. The business and affairs of the corporation shall be conducted, managed and controlled by a Board (the "Board"), the members of which are designated as "Directors".

2. The Board shall initially consist of three (3) Directors, but may consist of as many as five (5) Directors. The method of voting on actions by the Board shall occur in the manner provided for by the Bylaws.

3. The method of election and the term of office of Directors of the Board shall be determined by the Bylaws. A member of the Board need not have an ownership interest in a Unit. A member of the Board need not be a Member of the Community.

4. Directors may be removed and vacancies on the Board shall be filled in the manner provided in the Bylaws in the manner provided for by the Bylaws.

### ARTICLE FIVE Inurement and Dissolution

1. No part of the income or net earnings of the Association shall inure to the benefit of, or be distributable to, any Member, Director, or officer of the Association or to any other private individual, except that: (i) reasonable compensation may be paid for services rendered to or for the Association affecting one or more of its purposes; (ii) reimbursement may be made for any expenses incurred for the Association by any officer, Director, Member, agent or employee, or any other person or corporation, pursuant to and upon authorization of the Board; and (iii) rebates of excess membership dues, fees, or Assessments may be paid.

2. In the event of dissolution of the Association, the property and assets thereof remaining after providing for all obligations shall then be distributed pursuant to the Colorado Revised Nonprofit Corporation Act at Article 134, and if the Community is terminated then pursuant to the Colorado Common Interest Ownership Act at Section 38-33.3-218.

#### ARTICLE SIX Elimination of Certain Liabilities of Directors

There shall be no personal liability, either direct or indirect, of any Director of the Association to the Association or to its Members for monetary damages for any breach or breaches of fiduciary duty as a Director; except that this provision shall not eliminate the liability of a Director to the Association or its Members for monetary damages for any breach, act, omission, or transaction as to which the Colorado Revised Nonprofit Corporation Act or the Colorado Common Interest Ownership Act prohibits expressly the elimination of liability. This provision is in the Association's original Articles of incorporation and thus is effective on the date of the Association's incorporation. This provision shall not limit the rights of Directors of the Association for indemnification or other assistance from the Association in accordance with applicable law. This provision shall not restrict or otherwise diminish the provisions of Colorado Revised Statutes, Section 13-21-115.7 (concerning no liability of directors except for wanton and willful acts or omissions), any amendment or successor provision to such Section, or any other law limiting or eliminating liabilities, such as Colorado Revised Statutes, Section 38-33.3-303(2) (fiduciary duties of officers and directors if appointed by Declarant; if not so appointed, then no liability except for wanton and willful acts or omissions). Any repeal or modification of the foregoing provisions of this Article by the Members of the Association or any repeal or modification of the provision of the Colorado Revised Nonprofit Corporation Act which permits the elimination of liability of directors by this Article shall not affect adversely any elimination of liability, right or protection of a Director of the Association with respect to any breach, act, omission, or transaction of such Director occurring prior to the time of such repeal or modification.

#### ARTICLE SEVEN Dissolution

In the event of the dissolution of the corporation, either voluntarily by the members hereof, by operation of law, or otherwise, then the assets of the corporation shall be deemed to be owned by the members in proportion to each Member's Ownership of the Common Elements of the Community.

### BYLAWS OF THE LENA STREET COMMONS COMMERCIAL CONDOMINIUMS OWNERS ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION

### ARTICLE 1 INTRODUCTION AND PURPOSE

Effective Date:

These Bylaws ("**Bylaws**") of the Lena Street Commons Commercial Condominiums Owners Association, Inc., a Colorado Nonprofit Corporation ("Association") have been duly adopted by the Association through its Board ("Board") as that term is defined in the Declaration (defined below) and are hereby deemed to be made effective as of the Effective Date. The Association for itself and on behalf of its Owners, hereby amends, restates, terminates, supersedes and replaces in its entirety any and all prior Bylaws for the Association, including any and all other previous amendments thereto. Each Owner is deemed to be a "Member" of the Association.

<u>Section 1.1 – Introduction</u>. These are the Bylaws of the Lena Street Commons Commercial Condominiums Owners Association, Inc., a Colorado nonprofit corporation, which Association shall operate under the Colorado nonprofit Corporation Act ("Corporation Act"), as amended, and the Colorado Common Interest Ownership Act, as amended ("Act").

Section 1.2 - Purposes. The purposes for which the Association was formed are to preserve and enhance the value of the properties of Owners and to govern the Common Elements and affairs of The Lena Street Commons Commercial Condominiums located in the Town of Ridgway, Ouray County, Colorado ("Community"). The Community was created pursuant to certain "Governing Documents", including, without limitation, the Subordinate Declaration for The Lena Street Commons Commercial Condominiums ("Declaration"), the Condominium Map for The Lena Street Commons Commercial Condominiums as defined and referenced in the Declaration ("Map"), the Articles of Incorporation for the Association, and any Rules and Regulations, Governance Policies and Guidelines, as the same have been or may be amended and supplemented from time to time. Terms which are defined in the Declaration shall have the same meaning herein, unless defined otherwise in these Bylaws.

<u>Section 1.3 - Persons Subject to Bylaws</u>. All present or future Owners, tenants, guests, agents, contractors or any person that use or occupy, in any matter, any Unit or Common Elements within the Community, are subject to the terms and provisions of these Bylaws, and the other Governing Documents of the Community. The mere acquisition, rental or use of a Unit will signify that the Governing Documents of the Community are acceptable, ratified and will be complied with.

### ARTICLE 2 BOARD

#### Section 2.1 - Number and Qualification.

(a) The affairs of the Community and the Association shall be governed by a Board which shall consist of three (3) persons. A Board member shall serve in the manner provided for in the Declaration. A member of the Board must be an Owner, except for Board members appointed by the Declarant. If any Unit is owned by a partnership or corporation, any officer, partner or employee of that Owner shall be eligible to serve as a Board member and shall be deemed to be an Owner for the purposes of these Bylaws. At any meeting at which Board members are to be elected, the Owners may, by resolution, adopt specific procedures for conducting the elections, which are not inconsistent with these Bylaws or the Corporation Act.

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Commercial\Commercial\Commercial Bylaws.1a.doc Page 1 of 10 (b) The Board shall elect the officers. The Board members and officers shall take office upon election.

<u>Section 2.2 - Powers and Duties</u>. The Board may act in all instances on behalf of the Association, except as provided in the Governing Documents, these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Governing Documents and the Act, the powers and duties necessary for the administration of the affairs of the Association and the Community, including the following powers and duties:

(a) Adopt amendments to these Bylaws;

(b) Adopt and amend the Rules and Regulations and the Governance Policies and Guidelines;

(c) Adopt and amend budgets for revenues, expenditures and reserves;

(d) Collect assessments for Common Expenses, Limited Common Expenses and Special Assessments from Owners. The Board shall determine the frequency for collecting assessments;

(e) Hire and discharge management companies or managers of either the Association and/or on behalf of individual Owners;

(f) Hire and discharge employees, independent contractors and agents other than managing agents of either the Association;

(g) By resolution, establish committees of Board members, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Owner within 15 days after publication of notice of that action, and the committee's action must be ratified, modified or rejected by the Board at its next regular meeting.

(h) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents or Bylaws in the Association's name, on behalf of the Association on matters affecting the Community;

(i) Make contracts and incur liabilities on behalf of the Association, provided that in the event that the Association intends to enter into a contract or otherwise incur liability for goods or services that in the aggregate is anticipated to require the expenditure of \$20,000 or more, the Board shall first prepare and submit a request for proposals, review all bids responding to the request for proposals and award the contract to the bid that the Board, in the exercise of its good faith and commercially reasonable judgment, determines to be the superior bid with consideration given to the price/cost of the services or goods, timeframe for performance, skills and reputation of contractor and such other factors deemed relevant to the Board;

(j) Regulate the use, maintenance, repair, replacement and modification of Common Elements;

(k) Cause additional improvements to be made as a part of the Common Elements;

(1) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property; provided that Common Elements may be conveyed or

subjected to a security interest only pursuant to Section 312 of the Act;

(m) Grant or obtain easements, licenses or permits for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Elements and/or adjacent property;

(n) Impose and receive a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Elements, other than Limited Common Elements;

(o) Impose a reasonable charge for late payment of assessments and, after notice and hearing, levy reasonable fines for violation of the Governing Documents or these Bylaws;

(p) Impose a reasonable charge for the preparation and recording of amendments to the Governing Documents or statements of unpaid assessments;

(q) Provide for the indemnification of the Association's officers, Board members, committee members;

(r) Obtain and maintain officer and director liability insurance for the Association's officers, Board members, committee members;

(s) Exercise any other powers conferred by the Declaration, the Map or these Bylaws;

(t) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association; and

(u) Exercise any other power necessary and proper for the governance and operation of the Association.

<u>Section 2.3 - Association Manager</u>. The Board may employ a management company or Manager for the Community, at a compensation established by the Board, to perform duties and services authorized by the Board. Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Board and to fulfill the requirements of the budget. Regardless of any delegation to a management company or Manager, the Members of the Board shall not be relieved of responsibilities under the Governing Documents, these Bylaws or Colorado law.

<u>Section 2.4 - Removal of Board Member by Owners</u>. Except as provided for in the Declaration with respect to the rights of Declarant during the Declarant Control Period, the Owners, following the expiration of the Declarant Control Period, may, by a vote of at least two-thirds of the votes at any meeting of the Owners at which a quorum is present, may remove a Board member with or without cause and shall thereupon appoint a replacement Board member.

<u>Section 2.5 - Vacancies</u>. Vacancies in the Board, caused by any reason other than the removal of a Board member by a vote of the Owners, may be filled at a special meeting of the Board held for that purpose at any time after the occurrence of the vacancy, even though the Board members present at that meeting may constitute less than a quorum. These appointments shall be made by a majority of the remaining elected Board members constituting the Board. Each person so elected or appointed shall be a Board member for the remainder of the term of the Board member so replaced.

<u>Section 2.6 - Regular Meetings</u>. The first regular meeting of the Board shall occur within 30 days after the annual meeting of the Owners at which the Board shall have been elected. The Board shall establish the time and place of the Board meeting. No notice shall be necessary to the newly elected Board

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Commercial\Commercial Bylaws.1a.doc Page 3 of 10 members in order to legally constitute such meeting, provided a majority of the Board members are present. The Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings. With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Board or any committee thereof shall be open to attendance by all Owners of the Association or their representatives. Without limiting the generality of the foregoing, no rule or regulation may be validly adopted during an executive session. Agendas for meetings of the Board shall be made reasonably available for examination by all Owners of the Association or their representatives. The Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association.

<u>Section 2.7 - Special Meetings</u>. Special meetings of the Board may be called by the President or by a majority of the Board members on at least three business days' notice to each Board member. The notice shall be hand-delivered, mailed or e-mailed and shall state the time, place and purpose of the meeting.

<u>Section 2.8 - Location of Meetings</u>. All meetings of the Board shall be held within Colorado, unless all Board members consent in writing to another location.

<u>Section 2.9 - Waiver of Notice</u>. Any Board member may waive notice of any meeting in writing, including notice given by email. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice. If all the Board members are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

<u>Section 2.10 - Quorum of Board Members</u>. At all meetings of the Board, the presence of both of the Board members shall constitute a quorum for the transaction of business. At a meeting at which a quorum is present, the votes of a majority of the Board members present at a meeting at which a quorum is present shall constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 2.11 - Telephone Communication in Lieu of Attendance. A Board member may attend and fully participate in a meeting of the Board by using an electronic or telephonic communication method whereby the Board member may be reasonably heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Board. The Board member's vote shall be counted and the presence noted as if that Board member were present in person on that particular matter. The Board member shall be counted as being present for purposes of establishing a quorum.

Section 2.12 - Proxies. At any Board meeting, a Board member will be absent from the meeting who has otherwise been provided with information on an item coming before the Board and has become familiar with the subject matter, may provide the Board with a directed proxy directing the Board how to record the Board members' vote on a particular matter and, thereupon, the Board shall so record the vote. A Board member shall not grant a general proxy to any person and any such general proxy shall be rejected by the Board. A Board member may not revoke a proxy given pursuant to this provision except by actual notice of revocation to the person presiding over a meeting of the Board. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate one month after its date, unless a different termination date is otherwise set forth on its face. Proxies shall be filed with the Secretary of the Association at or before the appointed time of each meeting. Proxies shall conform to C.R.S. Section 7-127-203.

<u>Section 2.13 - Consent to Corporate Action</u>. If all the Board members, separately or collectively consent in writing to any action taken or to be taken by the Association, and the number of the Board members constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Board. The Secretary shall file these consents with the minutes of the meetings of the Board.

<u>Section 2.14 – Disputes Among Board Members</u>. If the two Board members cannot mutually agree upon a course of action, the Board Members shall refer the matter to Dirk DePagter or such other person mutually agreeable to the Board Members to vote on the matter and resolve the tie vote.

### ARTICLE 3 OWNERS AND MEMBERSHIP

Section 3.1 - Ownership. Ownership of a Unit is required in order to qualify for membership in the Association. Ownership is more fully addressed in the Articles of Incorporation and the Declaration.

<u>Section 3.2 - Annual Meeting</u>. Annual meetings of Owners shall be held during each of the Association's fiscal year at such date and time as determined by the Board and set forth in the notice. At these meetings, the Board members shall be elected by ballot of the Owners, in accordance with the provisions of these Bylaws, the Declaration and the Articles of Incorporation. The Owners may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association. Each Owner may participate in the annual meeting by telephone.

<u>Section 3.3 - Budget Meeting</u>. Meetings of the Owners to consider proposed budgets shall be called in accordance with the Act. The budget may be considered at annual or special meetings called for other purposes as well.

<u>Section 3.4 - Special Meetings</u>. Special meetings of the Association may be called by the President, by a majority of the Board or by Owners comprising 35% of the votes in the Association. Each Owner may participate in any special meeting by telephone.

<u>Section 3.5 - Place of Meetings</u>. Meetings of the Owners shall be held anywhere (i) in the Community, (ii) the Town of Mountain Village of the Town of Ridgway, or (iii) the County of Ouray, Colorado, and may be adjourned to a suitable place convenient to the Owners, as may be designated by the Board or the President.

<u>Section 3.6 - Notice of Meetings</u>. The Secretary or other officer specified in the Bylaws shall cause notice of meetings of the Owners to be hand-delivered, sent prepaid by United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Owner or by e-mail to those Owners that are able to receive e-mail and that specify they wish to receive notices by e-mail, not less than 10 days in advance of a meeting. No action shall be adopted at a meeting except as stated in the notice.

<u>Section 3.7 - Waiver of Notice</u>. Any Owner may, at any time, waive notice of any meeting of the Owners in writing (e-mailed accepted), and the waiver shall be deemed equivalent to the receipt of notice.

<u>Section 3.8 - Adjournment of Meeting</u>. At any meeting of Owners, a majority of the Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.9 - Order of Business. The order of business at all meetings of the Owners shall be as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Board Nominations;
- (f) Election of Board members on the Board;
- (g) Ratification of budget;
- (h) Unfinished business; and
- (i) New business.

### Section 3.10 - Voting.

(a) Each Unit in the Community shall have the voting rights as established in the Declaration.

If title to a Unit is held by an entity, including, without limitation, a firm, corporation, (b) partnership, trust, limited liability company, association or other legal entity or any combination thereof (hereinafter "entity"), that entity must appoint a "delegate" to represent such Included Property. Any such delegate must, at the time of the appointment and continuing throughout the period of representation of the entity, own at least a 5% equity interest in the entity. To appoint a delegate, the entity's governing body or officer must notify the Board of the appointment in writing prior to the commencement of the meeting for which the delegate is attending and participating. The Association may require proof of such equity ownership from time to time to evidence the qualification of the delegate to represent such a Unit and in the absence of such demonstration to the reasonable satisfaction of the Association, the Association may reject the right of the delegate to act on behalf of the entity until such time as satisfactory information is provided and accepted by the Association. A duly empowered delegate may participate in meetings and vote on matters requiring the vote of the Association Owners. A delegate may be a candidate for the Board and, if elected, serve as a Board member. The foregoing shall not preclude a delegate to act on behalf of an entity if duly appointed by a properly executed proxy given by the entity in conformance with these Bylaws. The moderator of the meeting may require reasonable evidence that a person voting on behalf of an entity is qualified to vote. A delegate may serve on the Board or as an officer for the Association.

<u>Section 3.11 - Quorum</u>. Except as otherwise provided in these Bylaws, a quorum is deemed present throughout any meeting of the Owners of the Association if both Owners of Unit A and Unit B are present at the meeting in person, by telephone or by proxy.

<u>Section 3.12 - Majority Vote</u>. Provided a quorum of allocated votes is present in person or by proxy, the affirmative vote of a majority of the total allocated votes so present in person or by telephone shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles, or these Bylaws. If the two Unit Owners cannot mutually agree upon a course of action, the Owners shall refer the matter to Dirk DePagter or such other person mutually agreeable to the Owners to vote on the matter and resolve the tie vote.

<u>Section 3.13 - Proxies.</u> At any meeting of the Owners, the vote allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner or by the Owner's duly authorized attorney-in-fact, designating a particular person present at the meeting to vote on behalf of the Owner. An Owner may provide the Association with a directed proxy indicating how the Owner directs the Association to record the Owners vote on a particular matter. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of a vote by the other owners of the Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this provision except by actual notice of revocation

to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face. Proxies shall be filed with the Secretary of the Association at or before the appointed time of each meeting. Proxies shall conform to C.R.S. Section 7-127-203. All proxies shall be reviewed by the Association's Secretary or designee as to the following: (a) Validity of the signature; (b) Signatory's authority to sign for the Owner; (c) Authority of the Owner to vote; (d) Conflicting proxies; and (e) Expiration of the proxy.

Section 3.14 - Action by Written Ballot. A vote on any action that may be taken at an annual, regular or special meeting of Owners may be taken without a meeting of the Owners, provided that the Association shall deliver a written ballot to every Owner entitled to vote on the matter by e-mail or mail, which sets forth each proposed action and provides an opportunity to vote for or against each proposed action by responding to the Association. All solicitations for votes by written ballot shall be mailed or e-mailed and shall indicate the number of responses needed to meet quorum requirements, state the percentage of approvals necessary to approve each matter, specify the time by which the response ballot must be received by the Association in order to be counted, specify the approved methods of submitting ballots, and be accompanied by written information regarding the matter to be voted upon. Ballots must be received by the Association no later than 21 calendar days from the date of the ballot, unless a different time is specified by the Board and reflected in the ballot. The Association and the Owners must send their ballots in accordance with Article 8 of these Bylaws (Notices). If so provided for in the written ballot, an action shall be deemed to be approved should an Owner fail to timely respond or otherwise act upon each matter identified for a vote in the written ballot. Approval by written ballot shall be valid when the number of votes cast by the ballot equals or exceeds the quorum required at a meeting authorizing the action and the number of approvals equals or exceeds the number required to approve the matter at a meeting. After the time to respond to the ballot has expired, the Association will tally the results and notify the Owners of the results within 15 days, unless a different time is specified by the Board.

<u>Section 3.15 - Election of Board Members</u>. Cumulative voting for Board members shall not be permitted.

<u>Section 3.16 - Chairman of Meetings</u>. At any meeting of the Owners, the Owners present shall select a Chairman and a Secretary of the meeting.

Section 3.17 - Owner Addresses for Notices. An Owner shall provide written notice to the Association if they wish to receive notices by United States mail only; otherwise, any notices given by the Association may be sent at the option of the Association by either (1) United States Mail (postage prepaid), or (2) e-mail. Notices include, but are not limited to, any notice required to be given by law, or otherwise given by the Association under these Bylaws or any other governing document of the Association to any Owner, or any other written instrument to be given to any Owner. Notices may be mailed or e-mailed to such Owner mailing address or e-mail address of the Unit as shown upon the Association's records. The Owner is responsible for updating the Association records if their contact information changes. If more than one Owner owns a particular Unit, then any notice or other written instrument may be addressed to all of such Owners and may be mailed or e-mailed in one mailing or e-mail message in accordance with the foregoing. Any notice or other written instrument given by the Board in accordance with the foregoing will be deemed to have been given on the date that it is mailed or e-mailed.

Section 3.18 - Rules at Meeting. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and Owners. In the absence of such rules, Robert's Rules of Order shall be used.

### ARTICLE 4 OFFICERS

<u>Section 4.1 - Designation</u>. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all of whom shall be elected by the Board. The Board may appoint an assistant Treasurer, an assistant Secretary and other officers as it finds necessary. The President, but no other officers, needs to be a Board member. Any two offices may be held by the same person, except the offices of President and Secretary. An officer need not be an Owner of the Association.

<u>Section 4.2 - Election of Officers</u>. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board. They shall hold office at the pleasure of the Board.

<u>Section 4.3 - Removal of Officers</u>. Upon the affirmative vote of a majority of the Board members, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for that purpose.

<u>Section 4.4 - President</u>. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Owners and the Board. The President shall have all of the general powers and duties which are incident to the office of President of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to, the power to appoint committees from among the Owners from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association. The President may fulfill the role of Treasurer in the absence of the Treasurer. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

<u>Section 4.5 – Vice President</u>. The Vice President may exercise and perform the actions, powers, duties and functions of the President should the President be unavailable to undertake such the actions, powers, duties and functions.

<u>Section 4.6 - Secretary</u>. The Secretary shall keep the minutes of all meetings of the Owners and the Board. The Secretary shall have charge of the Association's books and papers as the Board may direct and shall perform all the duties incident to the office of Secretary of a nonprofit corporation organized under the laws of the State of Colorado. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

<u>Section 4.7 - Treasurer</u>. The Treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board and shall perform all the duties incident to the office of Treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Board. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the Treasurer is also a Board member.

<u>Section 4.8 - Agreements, Contracts, Deeds, Checks, etc.</u> Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Board.

Section 4.9 - Statements of Unpaid Assessments. The Treasurer, assistant treasurer, a manager

employed by the Association, if any, or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments, in accordance with Section 316 of the Act. The Association may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Board. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

#### ARTICLE 5 ENFORCEMENT

Section 5.1 - Abatement and Enjoinment of Violations by Owners. The Board shall have the right to enforce the Declaration, any Rules, and any Governance Policies adopted by the Board and remedy violations thereof in the manner prescribed in the Declaration, any Rules, and any Governance Policies, including the right to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

<u>Section 5.2 - Fines for Violation</u>. By resolution, following notice and hearing, the Board may levy reasonable fines per day for each day that a violation of the Governing Documents or Rules persists after Notice and Hearing and more specifically defined in the Declaration, but this amount shall not exceed that amount necessary to insure compliance with the rule or order of the Board.

## ARTICLE 6 INDEMNIFICATION

The Board members and officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in the Corporation Act, the provisions of which are incorporated by reference and made a part of this document.

# ARTICLE 7 RECORDS

<u>Section 7.1 - Records and Audits</u>. The Association shall maintain financial records consistent with the Governance Policies of the Association. The cost of any audit shall be a Common Expense unless otherwise provided in the Governing Documents.

<u>Section 7.2 - Examination</u>. All records maintained by the Association or the Manager shall be available for examination and copying by any Owner, any Eligible First Mortgagee, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

#### ARTICLE 8 MISCELLANEOUS

Section 8.1 - Notices. Any and all notices to the Association or the Board shall be sent to the office of the Manager, or, if there is no Manager, to the office of the Association, or to such other address as the Board may designate by written notice to all Association Owners, which may be a mailing address or e-mail address. Except as otherwise provided, all notices to any Owners shall be sent to the Association Owner's mailing address or e-mail address (as determined by the Association) as it appears in the records of and as provided by the Owner to the Association. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. An Owner has an affirmative duty to notify the Association, through its Manager, of their mailing address, phone number, cell number, fax number and email address and any changes to such

G:\Clients\Spitzer, Travis.6013\Ridgway Property\Governing Documents\Commercial\Commercial Bylaws.1a.doc Page 9 of 10 information as such changes occur from time to time.

<u>Section 8.2 - Fiscal Year</u>. The Board shall establish the fiscal year of the Association, which shall initially be deemed to commence on January 1 and expire on December 31, unless and until changed by the Board.

<u>Section 8.3 - Waiver</u>. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

<u>Section 8.4 - Office</u>. The principal office of the Association shall be at such place as the Board may from time to time designate.

<u>Section 8.5 - Working Capital</u>. A working capital fund is established pursuant to the Declaration. Any amounts paid into this fund shall not be considered as advance payment of assessments. Unless waived by Declarant , each Unit's share of the working capital fund may be collected and then contributed to the Association by the Declarant at the time the sale of the Unit is closed or at the termination of the Period of Declarant Control. If the payment of the capital fund contribution is waived by Declarant, Declarant is not obliged to otherwise fund the waived contribution to the working capital fund. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment.

<u>Section 8.6 - Reserves</u>. As a part of the adoption of the regular budget the Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon age, remaining life and quantity and replacement cost of major Common Elements.

# ARTICLE 9 AMENDMENTS TO BYLAWS

<u>Section 9.1 - Vote of Board</u>. The Bylaws may be amended by affirmative vote of both Board Members, following notice and opportunity to comment to all Owners, at any meeting duly called for such purpose.

<u>Section 9.2 - Restrictions on Amendments</u>. No amendment of the Bylaws shall be contrary to or inconsistent with any provision of the Declaration.

# APPROVAL AND EXECUTION

The foregoing Bylaws are hereby adopted by the Association as of the Effective Date.

Lena Street Commons Commercial Condominiums Owners Association, Inc., a Colorado Nonprofit Corporation

By:	:	

Printed Name:	
Title:	

## CONDOMINIUM DECLARATION FOR THE LENA STREET COMMONS COMMERCIAL CONDOMINIUMS

## THIS CONDOMINIUM DECLARATION FOR THE LENA STREET COMMON

COMMERCIAL CONDOMINIUMS ("Declaration"), is made effective as of \_\_\_\_

201\_\_\_\_ ("Effective Date") and is made, adopted and published by Arthur Travis Spitzer Revocable Trust ("Declarant").

## ARTICLE ONE IMPOSITION OF COVENANTS

## 1.1. General Purposes.

1.1.1. Declarant is the current, fee simple owner of certain improved real estate situated in the Town of Ridgway, Ouray County, Colorado, more particularly described on attached <u>Exhibit A</u>, together with the beneficial rights and burdens arising from any agreement, covenants, easements and rights-of-way as well as any appurtenances affecting such land and any improvements constructed on the land now and in the future (together such interests are collectively referred to as the "**Real Estate**").

1.1.2. Title to the Real Estate is subject to those covenants, restrictions, agreements, easements and other documents or instruments described on attached <u>Exhibit B</u> (together such interests are collectively referred to as the "Existing Encumbrances").

1.1.3. Declarant desires by this Declaration to create a common interest community under the name and style of "The Lena Street Commercial Condominiums" ("**Community**") in which portions of said Real Estate will be designated for separate ownership and use and in which the remainder of said Real Estate will be designated for common ownership solely by the owners of the separate ownership portions.

1.1.4. This Declaration is executed and recorded subject to the terms and conditions contained in the Existing Encumbrances.

# 1.2. <u>Submission of Real Estate</u>.

1.2.1. Declarant hereby submits the Real Estate to condominium ownership under and pursuant to the provisions of the Colorado Common Interest Ownership Act, Section 38-33.3-101, et seq. of the Colorado Revised Statutes, as it may be amended from time to time ("Act"), and to this Declaration and the Plat/Map for The Lena Street Commercial Condominiums (as defined below).

1.2.2. This is the Declaration that is referred to in the Plat/Map for The Lena Street Commercial Condominiums recorded on \_\_\_\_\_\_, 201\_\_\_\_ in Plat Book \_\_\_\_, Page \_\_\_\_\_, Reception No. \_\_\_\_\_\_ in the Official Records ("Condominium Map" or "Map"). By this reference, the Condominium Map is incorporated in this Declaration.

1.2.3. The Community shall be deemed to be subject to any and all applicable terms and conditions contained in the Act.

1.3. <u>Covenants Running With the Land</u>. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of all Owners, and their respective heirs, executors, administrators, personal representatives,

successors, and assigns. All of the Real Estate shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the provisions of this Declaration.

1.4. <u>Subject to the Town of Ridgway Codes, Laws and Regulations and Town</u> <u>Approvals</u>. In all instances where Declarant has reserved rights to modify the Declaration, Map, Units and Common Elements, the exercise of such reserved rights are made expressly subject to the following described laws and regulations of the Town of Ridgway ("Town") and such site specific approvals granted by the Town for the Community (which are collectively referred to as the "Town Development Approvals and Requirements"). The use of a Unit is also made subject the Town Laws and the Town Approvals (defined below). The term Town Development Approvals and Requirements includes the following Town Laws and the Town Approvals:

1.4.1. <u>Town Laws</u>. Any and all applicable terms, conditions, requirements and restrictions contained in the Town of Ridgway Land Use Code, The Ridgway Design Guidelines and the Ridgway Municipal Code (collectively "Town Laws").

1.4.2. <u>Town Approvals.</u> Any and all applicable terms, conditions, requirements and restrictions contained in any site specific approvals for the Property ("**Town Approvals**"):

1.4.3. Nothing herein is intended to relieve a Person from complying with applicable provisions of the Town Laws and/or the Town Approvals, whether or not this requirement is expressly stated herein.

1.4.4. In the event of a conflict between the Condominium Documents (defined below) and the Town Development Approvals and Requirements, the applicable Town Development Approvals and Requirements shall control.

## ARTICLE TWO DEFINITIONS

Capitalized terms used in this Declaration and not defined elsewhere in this Declaration have the meanings given those terms in Article 2. The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

2.1. "Act" means the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

2.2. "Allocated Interests" means: (a) the undivided interests attributable to and allocated to each of the Units in the Common Elements, (b) the Common Expense Liability attributable to and allocated to each of the Units; and (c) the voting rights in the Association attributable to and allocated to each of the Units as provided for in the Condominium Documents.

2.3. "Articles of Incorporation" or "Articles" means the Articles of the Association, which have been filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.4. "Assessments" means the Annual Assessments, including Limited Common Expenses, Special Assessments and Reimbursement Assessments duly assessed pursuant to this Declaration.

2.5. "Association" means the Lena Street Commons Commercial Condominium Owners Association, Inc., a Colorado nonprofit corporation.

2.6. "**Board**" means the governing body of the Association, as provided for in this Declaration and as further empowered by the Articles of Incorporation and the Bylaws for the Association.

2.7. **"Budget"** means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Board pursuant to the Declaration.

2.8. "**Building**" means the building situated on the Real Estate and containing the Common Elements and the Units, together with (a) any additions or modifications or replacements that may hereafter be made thereto, and (b) all improvements and fixtures contained therein.

2.9. "**Bylaws**" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the internal affairs of the Association, including any amendments thereto.

2.10. "**Common Elements**" means all portions of the Community other than the Units. The Common Elements are owned or otherwise held in common by the Owners in undivided interests according to the Allocated Interests set forth pursuant to Section 2.2 above and consist of General Common Elements and Limited Common Elements.

"General Common Elements" means all tangible physical properties of, and other appurtenant interests associated with this Community, except the Limited Common Elements and the Units.

"Limited Common Elements" means those interests in the Common Elements which are either limited to or reserved in this Declaration, on the Map, or by authorized action of the Association, for the exclusive use of a Unit.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, fixture or other mechanical or structural element lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements.

2.11. "**Common Expenses**" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including all expenses incurred by the Association for any reason whatsoever in connection with the Common Elements, or the costs of any other item or service provided or performed by the Association pursuant to the Condominium Documents or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association, including, any fees and charges imposed by the Managing Agent pursuant to any Management Agreement. In the event that any common services furnished to the Community are part of services that are provided to or benefit property in addition to the Community, Common Expenses shall only include the cost of such services reasonably allocated to the services provided to the Community.

2.12. "**Common Expenses Liability**" means the liability for a share of the Common Expenses, including any Limited Common Expenses, attributable to and allocated to each Unit in accordance with the Allocated Interests assigned to the Unit and/or as otherwise provided for in this Declaration.

2.13. "**Community**" means the Community, including each of the Units and all of the Common Elements, together with all Improvements and other amenities now or hereafter located thereon,

and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

2.14. "**Condominium Documents**" means the basic documents creating and governing the Community, including, but not limited to, this Declaration, the Map, the Articles of Incorporation and Bylaws of the Association, any Rules promulgated by the Association and any other documents, policies and procedures relating to the Community adopted by the Association or the Board pursuant to this Declaration or the Act, as the same may be supplemented or amended from time to time.

2.15. "**Condominium Map**" or "**Map**" means the Condominium Map, which shall also be deemed to be that part of this Declaration that depicts all or any portion of the Community in three dimensions and is recorded in the Official Records. In interpreting the Condominium Map, the existing physical boundaries of each Unit as constructed shall be conclusively presumed to be its boundaries.

2.16. "**Declarant**" means Arthur Travis Spitzer Revocable Trust, its successors and assigns. A Person shall be deemed to be a "successor and assign" of Declarant if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in that written instrument.

2.17. "**Declaration**" means this Declaration for the Community, together with any supplement or amendment to this Declaration and recorded in the Official Records. The term Declaration includes the Map recorded with this Declaration and all amendments to this Declaration and supplements to the Map without specific reference thereto.

2.18. "Deed of Trust" means a Mortgage.

2.19. "Eligible First Mortgagee" means a First Mortgagee which has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for herein.

2.20. "First Mortgagee" means any Person named as a Mortgagee in any First Mortgage.

2.21. "**General Common Expenses**" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, for the general benefit of all of the Units.

2.22. **"Improvement(s)"** means the Building, improvements, alterations, additions, repairs to the Building, structural or otherwise, any excavation, grading, landscaping or other work which in any way alter the Real Estate or the improvements located thereon, from its natural or improved state existing on the date this Declaration was first recorded.

2.23. "Lease" means and refers to any agreement for the leasing, rental, use or occupancy of a Unit within the Community for Short Term Rentals or Long Term Rentals.

2.24. "LCE Parking Space" means each Parking Space identified as an "LCE Parking Space" on <u>Exhibit C</u>. Each LCE Parking Space is depicted on the Map and is allocated as a Limited Common Element to the Unit indicated on <u>Exhibit C</u>.

2.25. "LCE Storage Space" means each Storage Space identified as an "LCE Storage Space" on <u>Exhibit C</u>. Each LCE Storage Space is depicted on the Map and is allocated as a Limited Common Element to the Unit indicated on <u>Exhibit C</u>.

2.26. "**Long Term Rentals**" means the rental of a Unit to any third person for residential purposes for a term of thirty consecutive days or longer.

2.27. "**Management Agreement**" means any contract or arrangement, if any, entered into for purposes of administering the performance of the responsibilities of a Board relative to the operation, maintenance, and management of the Community or particular portions or aspects thereof.

2.28. "**Managing Agent**" means a person, firm, corporation, or other entity, if any, employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

2.29. "**Member**" means each Owner. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

2.30. "Mortgage" means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Unit, creating a real property security interest in a Unit and recorded in the Official Records. "First Mortgage" means a mortgage which is the first and most senior of the Mortgages on the same Unit. The term "Mortgage" does not mean a statutory, tax or judicial lien. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

2.31. "**Mortgagee**" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

2.32. "**Notice and Hearing**" means a written notice and hearing before the Board, or a panel appointed by the Board, as set forth in the Bylaws.

2.33. "Occupant" means: (a) any Person who is a tenant in a residence on a Unit pursuant to a Lease with the Owner thereof; (b) any Person who is present within the Community as a family member, guest or invitee of an Owner or the Association; (c) any person who is a guest, invitee, servant, tenant, employee, or licensee of Owner who is occupying a Unit and/or is present on the Common Elements for any period of time; or (d) any Person who is occupying a Unit and/or is present on the Common Elements.

2.34. "Official Records" means the Office of the Clerk and Recorder of OurayCounty, Colorado.

2.35. **"Parking Space(s)**" means a physical portion of the Community identified as a parking space on the Map.

2.36. "**Person**" means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision, or any other legally established entity and/or any combination thereof.

2.37. "**Real Estate**" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without horizontal boundaries and spaces that may be filled with air or water.

2.38. **"Regular Assessment"** means a charge against an Owner and the Owner's Unit for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Board in accordance

with the Declarations and are allocated to the Units in accordance with the Allocated Interests designated to that Unit, except that Common Expenses that in the judgment of the Board benefit fewer than all of the Units may be allocated exclusively to the Units benefited as Limited Common Expenses, as provided for herein.

2.39. "Reimbursement Assessment" means a charge determined by the Board in its sole and reasonable discretion, assessed against a particular Owner or Occupants of Owner's Unit and against the Owner's Unit for the purpose of: (a) imposing fines and penalties and/or reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision of the Condominium Documents; (b) imposing fines and penalties and/or reimbursing the Association for costs and expenses incurred by the Association in connection with the remedying of any violation of the Condominium Documents by the Owner or by an Occupant, (c) imposing fines and penalties and/or reimbursing the Association for costs and expenses incurred by the Association in connection with correcting or repairing damage caused to any Association Property or any other Unit attributable to the misconduct and/or the actions or the inactions of the Owner or Occupant; or (d) for such other purposes set forth in the Condominium Documents providing for the imposition of fines or the collection of costs, expenses and the like, together with late charges and interest and attorney fees and costs, as provided for in the Condominium Documents. Reimbursement Assessments shall also include each of those fees and costs for goods and services requested by and/or otherwise provided to an Owner or Occupant by the Association or the Managing Agent.

2.40. "**Rules**" means any Rules and Regulations, Policies and Procedures promulgated by the Board for the management, preservation, safety, control, and orderly operation of the Community in order to effectuate the intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time.

2.41. "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

2.42. "Services Agreement" means any services agreement that may be executed between the Association, the Declarant and such other third party Service Provider providing such services to and on behalf of the Association and the Unit Owners, which services may be undertaken within the Real Estate or off-site on any other property.

2.43. "Services Provider" means the party providing services to and on behalf of the Association and the Unit Owners in accordance with the Services Agreement.

2.44. "Short Term Rentals" means the rental of a Unit to any particular guest for overnight accommodation purposes in which consideration is being paid, provided that the rental to a particular guest does not extend longer than thirty consecutive days.

2.45. "**Special Assessment**" means a charge against an Owner and the Owner's Unit for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair, maintenance or replacement of capital improvements to or upon or serving the Community or any part thereof, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses or for funding any operating or reserve deficit of the Association, as authorized by the Board from time to time as provided herein.

2.46. "Storage Space(s)" means a physical portion of the Community identified as a storage space on the Map.

2.47. "Unit" means a Unit, which is a physical portion of the Community designated for separate ownership or occupancy and the boundaries of which are depicted, described or otherwise determined by this Declaration and the Map. Each Unit includes an appurtenant undivided interest in the Common Elements corresponding with the Allocated Interest assigned to each Unit as set forth on attached Exhibit C. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Community as more specifically set forth on Exhibit C and depicted on the Map. The boundaries of the Unit as depicted and/or otherwise described on the Map shall be conclusively be deemed to be the actual boundaries of the Unit. Changes to any Unit boundary, if any, shall be described on any amendment or supplement to a Map as provided for herein.

The boundaries of each Unit are as follows: (a) the upper horizontal boundary of each Unit is the unfinished ceiling as shown on the Map, such that the drywall, concrete or other structural material comprising the ceiling is a part of the Common Elements and the finished surface over such drywall, concrete or other structural material is a part of the Unit; (b) the lower horizontal boundary of each Unit is the unfinished floor of the lowest level of the Unit as shown on the Map, such that the concrete or other structural material comprising the floor is a part of the Common Elements and the finished surface over such concrete or other structural material is a part of the Unit; and (c) the vertical boundary of each Unit is the unfinished wall bounding each Unit on all sides as shown on the Map ("**Exterior Wall**"), such that the drywall, concrete or other structural material comprising such wall is a part of the Common Elements and the finished surface over such drywall, concrete or other structural material comprising such wall is a part of the Common Elements and the finished surface over such drywall, concrete or other structural material comprising such wall is a part of the Common Elements and the finished surface over such drywall, concrete or other structural material comprising such wall is a part of the Common Elements and the finished surface over such drywall, concrete or other structural material comprising such wall is a part of the Unit.

Where an Exterior Wall of a Unit is penetrated by an opening (e.g., a window or door), the Unit boundary at such penetration is the surface which would result from the extension of the nearest adjacent surface comprising the boundary that is penetrated by the opening.

All doors and windows in the Exterior Walls of a Unit are Limited Common Elements allocated to such Unit and the glazing, sashes, frames, sills, thresholds, hardware, flashing and other components of those doors and windows are parts of such doors and windows and are allocated as Limited Common Elements to such Unit.

2.48. **"Unit Owner**" or **"Owner**" means any person who owns record title to a Unit or an undivided interest therein. The term includes a contract seller but excludes a contract purchaser, and excludes any Person having a Security Interest in a Unit or an undivided interest therein, unless such Person has acquired record title to such Unit or undivided interest pursuant to a foreclosure or any proceedings in lieu of foreclosure.

### ARTICLE THREE GENERAL PROVISIONS AND RESTRICTIONS

#### 3.1. Division into Units. Allocated Interests. Maximum Number of Units.

3.1.1. The Real Estate and the Building are hereby initially divided into four Units. Subject to the Town Laws, the maximum number of Units that may, but need not, be created in the Community is a total of eight Units.

3.1.2. Each Unit shall consist of a separate fee simple estate in such Unit and the Allocated Interest for the Unit as set forth on **Exhibit C**. Each Owner shall own his or her appurtenant

undivided Allocated Interest in the Common Elements as a tenant-in-common with the other Owners, and shall have the non-exclusive right to use and enjoy the Common Elements, subject to the provisions of the Condominium Documents.

3.1.3. <u>Inseparability of a Unit</u>. Each Unit and its appurtenant undivided interest in the Common Elements shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Unit.

3.2. <u>Description of Units.</u> Every contract for sale, deed, lease, security interest and every other legal document or instrument shall legally describe a Unit as follows:

Unit,	_ Commercial Condominiums s, according to the
Condominium Map for	Commercial Condominiums s thereof
recorded on	_, 201 at Plat Book 1, Page,
Reception No.	and the Declaration for
Commercial Condominiums s recor	rded on, 201 at Reception
No, all in the Office o	of the Clerk and Recorder of OurayCounty, Colorado.

Such description shall be legally sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit and its appurtenant undivided interest in the Common Elements, and to incorporate all of the rights, interests, obligations, restrictions and burdens appurtenant or incident to ownership of a Unit as set forth in this Declaration and on the Condominium Map. Each such description shall be construed to include a non-exclusive easement over the Common Elements for appropriate ingress and egress to and from each Unit, and a non-exclusive right to use and enjoy the Limited Common Elements, and an exclusive or non-exclusive right to use and enjoy any Limited Common Elements designated for the use of that Unit, subject to all applicable provisions of this Declaration.

3.3. <u>Separate Assessments and Taxation - Notice to Assessor</u>. The Association, to the extent necessary, shall give written notice to the Assessor of OurayCounty, Colorado, of the creation of condominium ownership of this Community, as provided by the Act, so that each Unit, together with its undivided interest in the Common Elements, shall be deemed a separate parcel and subject to separate assessment and taxation.

3.4. **Relocation of Unit Boundaries.** Except as hereinafter specifically provided with respect to Declarant and its exercise of the Reserved Rights and subject to the Town Development Approvals and Requirements, no Owner or Owners may relocate the boundaries of any Unit(s) except by amendment to this Declaration in accordance with the applicable requirements hereof. In addition, any relocation of boundaries shall be done in accordance with the procedures set forth in the Act, in particular Sections 212 and 213. All costs incurred in connection with such relocation of boundaries shall be borne by the Owner or Owners of the affected Units, including all costs incurred by the Association in connection therewith. If Units are combined, the undivided interest in the Common Elements allocated to the combined Units which are later divided shall be reinstated to the undivided interests in the Common Elements which they had prior to the combination. An amendment to the Declaration and Condominium Map implementing a relocation of Unit boundaries under this Section shall be executed and filed in accordance with the Act.

3.5. **No Partition of Units or Common Elements.** Except as hereinafter specifically provided with respect to Declarant and its exercise of the Reserved Rights and subject to the Town Development Approvals and Requirements, no Owner may assert any right or bring any action for partition or subdivision with respect to such Owner's Unit or the Common Elements. By becoming an

Owner, each Owner waives any and all rights of subdivision or partition that such Owner may have with respect to such Owner's Unit and/or the Common Elements. This Section shall not, however, limit or restrict the right of the Owners of a Unit to bring a partition action pursuant to Section 38-28-101, et seq., of the Colorado Revised Statutes requesting the sale of the Unit and the division of the proceeds among such Owners; provided that no physical division of the Unit or of the Common Elements shall be permitted as a part of such action and no such action shall affect any other Unit. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is appurtenant is void.

3.6. **Encumbrances.** Any Owner shall have the right from time-to-time to Mortgage or encumber his interest in a Unit by a Mortgage or Deed of Trust.

Mechanic's Liens. If any Owner shall cause or permit any material to be furnished to 3.7. such Owner's Unit or any labor or services to be performed therein, neither the Association nor any other Owner of any other Unit shall be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done and such Owner shall be solely responsible to contractors, laborers, materialmen and other Persons furnishing labor, services or materials to such Owner's Unit. Nothing herein contained shall authorize any Owner or any Person dealing through, with or under any Owner to charge the Common Elements or any Unit other than that of such Owner with any mechanic's or materialmen's lien or other lien or encumbrance whatsoever. Notice is hereby given that the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is expressly denied. If, because of any act or omission of any Owner, any mechanic's or materialmen's lien or other lien or order for the payment of money shall be filed against any of the Common Elements or against any other Owner's Unit or against any other Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose or which act or omission forms the basis for such lien or order shall, at such Owner's own cost and expense, cause such lien or order to be canceled or bonded over in an amount and by a surety company reasonably acceptable to the party or parties affected by such lien or order within twenty (20) days after the filing thereof, and further such Owner shall indemnify and save harmless all such parties affected from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees resulting therefrom.

# 3.8. Additions, Alterations or Improvements.

3.8.1. **Units.** Except as hereinafter specifically provided with respect to Declarant and its exercise of the Reserved Rights no additions, alterations, changes or improvements shall be constructed, made, done or permitted to any Unit by any Owner, Occupant, or employee or agent thereof, without the prior written approval of the Board. Without limiting the generality of the foregoing, said restrictions shall apply to and include (a) alteration or change of any structural elements of a Unit, including the roof, (b) painting or other alteration or change of the exterior of a Unit, including doors and windows, (c) alteration or change of any Common Elements (including Limited Common Elements) appurtenant to the Units, or (d) addition, alteration, change or removal of any landscaping. The foregoing restrictions shall not apply to nonstructural additions, alterations, changes or improvements to the interior of a Unit, that are not visible from outside the Unit, and that are in compliance with all applicable laws, ordinances, regulations and codes. Except for alterations to a Limited Common Element which have received the prior written approval of the Board of the Association, no Owner or Occupant shall have any right to alter, change or improve in any way the Common Elements or any part thereof, said Common Elements being the exclusive responsibility and jurisdiction of the Association.

3.8.2. <u>Common Elements</u>. Except as hereinafter specifically provided with respect to Declarant and its exercise of the Reserved Rights, the Association, through its Board, shall have the right

and authority to make any changes, alterations, improvements or additions to the Common Elements, including the Limited Common Elements. No individual Owner shall have any right to do any of such things without the express prior written consent of the Board.

## 3.9. Association Maintenance Responsibilities.

3.9.1. <u>Common Elements</u>. Subject to the rights and requirements of the Association to allocate Common Expenses among certain Units, the Association shall be responsible for certain aspects relating to the maintaining, repairing, improving, restoring and replacing the General Common Elements and certain aspects of the Limited Common Elements, as follows:

A. Except as such obligations may otherwise be assigned to the Owner in Section 3.10, the Association is responsible for the sweeping, cleaning, operating, inspecting, maintaining, repairing and replacing the General Common Elements, including any necessary replacement of associated components, which work includes, without limitation, the following:

(1) The stairwells, entry features, pathways, platforms and steps and such other pedestrian and vehicular ingress/egress and maneuvering areas, including any and all related mechanical, electrical, plumbing and other service systems and equipment, systems;

Community signage;

(2) The landscaping, hardscaping, street and pathway lighting and

(3) Snow removal, except that snow removal on patios and decks that have been assigned as a Limited Common Element to a Unit shall be the responsibility of the Owner of the Unit to which the patio and deck has been assigned as a Limited Common Element. The Association shall remove snow from the Building roofs as is reasonably required from time to time, the cost of which shall be allocated as an expense to all Owners.

(4) The Parking Spaces, Storage Spaces, and vehicular ingress/egress and maneuvering areas, including necessary snow and ice removal, whether General Common Elements or Limited Common Elements;

(5) The mechanical, electrical, plumbing and other service systems, and all related equipment, systems and facilities whether a General Common Element or Limited Common Element;

(6) All structural elements and roofs, siding, foundations, common lighting and utilities and any entry features or signage;

(7) Any snow melt systems for the General Common Elements, other than a snow melt system for a deck or patio assigned to a Unit as a Limited Common Element, which shall be the responsibility of the Owner of the Unit; and

(8) The painting, staining, chinking or other resurfacing of the exterior surfaces of all walls and facades, exterior doors, windows, decks and balconies of the Units and General Common Elements, including the Limited Common Elements.

3.9.2. Each Unit is subject to an easement for the benefit of the Association and its Board, agents, employees and contractors, for purposes of accomplishing the maintenance and repair rights described in this Section 3.9.

3.9.3. If the need for such maintenance or repair to a Common Element results from the willful or negligent act of or from damage or destruction caused by an Owner or Occupant, the Board shall have the right to perform such maintenance or repair and to levy and collect a Reimbursement Assessment upon the Owner and the Owner's Unit for the costs and expenses incurred by the Association in connection therewith.

## 3.10. **Owner Maintenance Responsibilities**.

3.10.1. Each Owner of a Unit shall be responsible for:

A. Cleaning, sweeping, maintaining, repairing, improving, restoring and replacing as necessary:

(1) All interior elements and features of the Owner's Unit, including, without limitation, appliances, FF&E, personal property, hot tubs, vents, the interior non-supporting walls, improvements, fixtures, equipment, and appurtenances;

(2) All such other areas that have been assigned to the Unit as a Limited Common Element, including, without limitation, the deck and patio assigned to the Unit, including any related snowmelt system and deck/patio covering.

(3) All interior non-supporting walls, improvements, fixtures, equipment, appliances and appurtenances.

B. General cleaning, maintenance and repair of exterior doors and windows, which includes the replacement of cracked, chipped or broken glass (in conformance with the same door or window being replaced), including routine adjustments required to enable the normal, customary operation of the window and door and adequate weather stripping to prevent water intrusion. No changes to or replacement of exterior doors or windows may be made without the prior written approval of the Association.

C. Maintaining, repairing and replacing all snowmelt systems designated within the Unit or located on Limited Common Elements assigned to the Unit, including the replacement of any concrete or other materials affected by such servicing.

D. All elements and finishes associated with decks, railings and patios, including structural components and any damaged concrete.

E. Such other matters as reasonably determined by the Board and uniformly applied to all similarly styled Units.

3.10.2. In addition, each Owner shall be responsible for any damage to other Units or to the Common Elements resulting from the Owner's failure to perform or negligent performance of the Owner's maintenance and repair responsibilities as set forth herein.

3.10.3. Each Owner shall perform the Owner's maintenance and repair responsibilities in such manner as shall not unreasonably disturb or interfere with other Owners, Guests or Occupants.

3.10.4. If an Owner fails to perform any such maintenance or repair obligations within ten days (or shorter time if circumstances so require) following receipt of a written notice from the Board requesting the same, the Board shall have the right to enter upon the Owner's Unit to perform such obligations on the Owner's behalf and to levy and collect a Reimbursement Assessment upon the Owner and the Owner's Unit for the costs and expenses incurred by the Association in connection therewith.

3.10.5. Each Unit is subject to an easement for the benefit of the Association and its Board, agents, employees and contractors, for purposes of accomplishing the maintenance and repair rights described in this Section 3.10.

3.10.6. In the event of a conflict between the responsibilities of the Association under Section 3.9 and an Owner under Section 3.10, the Board shall reasonably determine the party responsible.

3.10.7. The Association, through its Board, shall promulgate and from time to time update a list of repair and maintenance responsibilities ("**Repair and Maintenance Outline List**") that an Owner is required as well as those repair and maintenance responsibilities of the Association, which will be consistent with the provisions of Section 3.9 and 3.10. The purpose of the Repair and Maintenance Outline List is to provide guidance and offer examples of the respective duties and obligations of the Owners and Association. In all events, the terms and conditions, including the respective rights, duties and obligations of the Association and the Owners as provided for in the Declaration shall control. In the event of any inconsistencies between requirements contained in the Repair and Maintenance Outline List and the Declaration, the requirements and provisions of the Declaration shall control. The Board may modify the Repair and Maintenance Outline List from time to time, which shall be circulated to the Owners when completed.

3.11. **Standard of Care**. The Association and the individual Owners shall each use a reasonable standard of care in performing their respective maintenance, repair and upkeep responsibilities so that the entire Community will reflect a pride of ownership. All repairs and replacements within the Community shall be substantially similar to the original construction and craftsmanship and shall be of first-class quality.

3.12. <u>Emergency Maintenance and Repair</u>. In the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Community or which conditions affect the common usage of Common Elements or inconvenience the Owners, the Board shall have the authority (without any notice being required) to take whatever remedial action and to undertake such maintenance, repairs and improvements as may be necessary anywhere in the Community to protect persons and property, including the right to gain reasonable access to a Unit to complete this work.

3.13. <u>Compliance with Laws</u>. No Owner or Occupant shall do any act or cause or permit anything to be done or kept in or upon its Unit, or any Common Elements, which would be in violation of any federal, state, city or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any rule or regulation promulgated by the Association, or of any provision of this Declaration, or which would result in the increase of, or cancellation of, insurance maintained by the Association.

# 3.14. Use and Occupancy of the Units.

3.14.1. The Units shall be occupied and used for any and all lawful purposes allowed by the Town Development Approvals and Requirements.

3.14.2. Without limiting any other rights or obligations hereunder, the following uses of Units, including appurtenant Limited Common Elements, are specifically prohibited:

(a) Bar, Nightclub or Dance Hall;

(b) Massage Parlor; Adult Book and/or Video; Businesses with nude or topless acts or employees;

(c) Uses and activities which cause an unreasonable amount of noise or odor in the reasonable discretion of the Board; and

(d) Uses and activities arising in connection with any and all growing, storing, maintaining, selling, distributing or using Marijuana, including, without limitation, any such activities relating to a Medical Marijuana Dispensary or any enterprise that in any way grows, cultivates distributes, transmits, gives, dispenses, supplies and/or otherwise provides marijuana to any person for any purposes, including, without limitation, for routine marijuana sales and distribution and/or any "medical use of marijuana" within the meaning of any applicable federal, state or local law, without regard to whether or not the marijuana is being distributed, transmitted, given, dispensed, cultivated, supplied or provided for cash, credit, barter or otherwise and/or for no consideration.

3.14.3. The Unit shall comply with all state and local regulations applicable to such Unit. Any commercial operation shall conduct its operations wholly within the confines of said Unit and its appurtenant Limited Common Elements unless the Board permits use of the General Common Elements for commercial purposes.

3.14.4. <u>Changes to Rights of Unit Owners</u>. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any right of the Owner of a Unit under this Section 3.14 without the prior written consent of the Owner of the Unit.

## 3.15. Vehicle Parking, Storage, Operation and Repair.

3.15.1. Parking Spaces may be used only for purposes of parking motor vehicles and not for storage or other non-conforming purposes.

3.15.2. Motorized vehicles of any kind shall only be parked or stored in designated parking areas.

3.15.3. No boats, trailers, buses, motor homes, mobile homes, campers (on or off supporting vehicles), motorcycles, off-road-motorcycles, snowmobiles, recreational vehicles, all-terrain vehicles, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned or inoperable vehicles (as defined below), or any other similar vehicles (excepting passenger automobiles and one ton or smaller pick-up trucks) shall be parked or stored in the Community except as approved in advance by the Board.

3.15.4. No motorized vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt in the Community. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incident thereto.

3.15.5. An "abandoned or inoperable vehicle" shall mean any motorized vehicle which does not display a current motor vehicle license or which is not capable of being driven under its own propulsion or which does not have an operable propulsion system within the vehicle. In the event that the Board shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this section, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), thereafter, the Board (as the case may be) shall have the right to remove the offending vehicle, or cause the vehicle to be removed and

stored, at the sole expense of the owner of the vehicle if the vehicle is located on a roadway, or at the sole expense of the Owner on which the vehicle is located, all without liability on the part of the Board.

3.15.6. The Board may cause any unauthorized vehicle parked in the Community to be immediately towed at the cost and expense of the owner of the unauthorized vehicle.

3.15.7. An Owner shall not sell, lease or otherwise convey all or any part of the parking rights it may have (whether by virtue of its ownership of a Unit or membership in the Association) and any attempted sale, lease, or other conveyance shall be void.

3.16. <u>Leasing of Units</u>. Any Owner shall have the right to Lease his/her Unit under the following conditions:

3.16.1. The leasing of a Unit for Long Term Rentals or Short Term Rentals shall be subject to in all respects and governed by the provisions of the Condominium Documents.

3.16.2. Each Owner who leases a Unit for Long Term Rentals or Short Term Rentals purposes shall be responsible for assuring compliance by the Occupant with all of the provisions of the Condominium Documents and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant. Any failure by the Occupant to comply with any of the Condominium Documents, in any respect, shall be a default by Occupant and Owner under the Condominium Documents which may be enforced against the Occupant and/or Owner by the Board. The Board shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the Condominium Documents, which notice shall specify a period of time in which the Occupant may cure the violation. If the violation continues uncured, or if it is repeated within the three-month period following the date of the first notice, the Owner hereby gives to the Association an irrevocable power of attorney to act on the Owner's behalf to give such statutory notices to the Occupant and to take such other actions as may be necessary or appropriate to evict the Occupant from the Unit.

3.17. <u>Annoying Light, Sound or Odor</u>. All exterior lighting installed or maintained on any Unit shall be consistent with the Town Development Approvals and Requirements. The use of the Units shall be subject to any applicable Town Development Approvals and Requirements that relate to noise or odor.

3.18. <u>No Hazardous or Unsafe Activities</u>. No activity shall be conducted on, and no improvement shall be constructed on, any property within the Community which is or might be unsafe or hazardous to any person or property.

3.19. <u>No Firearms</u>. The discharge of firearms, including but not limited to BB guns and pellet guns, upon or within any part of the Community (including the Units) is expressly prohibited.

3.20. <u>Garbage and Trash.</u> With the exception of dumpsters or other trash receptacles provided by the Association on Common Elements, no refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain anywhere within the Community, except that containers of such materials may be placed next to the street on the designated morning of garbage collection and must be returned to a Unit that same day. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition, and except when placed for pickup they shall be kept completely within a Unit.

3.21. <u>**Right of Entry**</u>. During reasonable hours and upon reasonable notice to the Owner or Occupant of a Unit, any member of the Board, and any authorized representative of the Board shall have the right to inspect any exterior portion of a Unit's Limited Common Elements and, with the permission

of the Owner or Occupant, the interior portion of the Unit. In the case of emergency, no notice or permission shall be required to inspect the interior of a Unit. The purpose of any such inspection shall be to ascertain whether or not the provisions of this Declaration have been or are being complied with, or for the purpose of exercising any rights or performing any responsibilities (maintenance, repair, etc.) established by this Declaration and such individuals shall not be deemed guilty of trespass by reason of such entry. For purposes of this section, "emergency" shall mean circumstances posing an imminent threat of injury or damage to persons or property.

3.22. <u>Association Landscaping</u>. All landscaping within the Community shall be the responsibility of the Association, and no Owner or Occupant shall perform any landscaping activities within the Community (including without limitation the planting, grooming or removal of grass, trees, bushes or other vegetation, or the planting or tending of gardens).

3.23. <u>Signs and Advertising</u>. Any exterior signs, posters, billboards or advertising devices shall conform with the Town Development Approvals and Requirements and this Declaration.

3.24. <u>Flags or Displays</u>. Any exterior flags or other displays displayed in the Community shall conform with the Town Development Approvals and Requirements and the Act.

3.25. <u>Health, Safety and Welfare, Rules</u>. In the event any uses, occupancies, activities, and facilities within the Community are deemed by the Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Board may adopt reasonable Rules of general application in order to appropriately restrict and regulate such uses, occupancies, activities or facilities within the Community. Such Rules shall be consistent with the purposes, provisions and limitations of this Declaration.

3.26. <u>View Impairment</u>. Neither the Declarant nor the Association, guarantee or represent that any view over and across the Community from their Unit and/or the Common Elements, will be preserved without impairment. The Declarant and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement. The Association shall have the right to add trees and other landscaping to the Common Elements. There shall be no express or implied easements for view purposes or for the passage of light and air.

3.27. **Variances**. The Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article 3, if the Board determines, in its discretion, (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete, and (b) that the activity permitted under the variance, in the judgment of the Board, will not have any material adverse effect on the Owners and Occupants of the Community, and is consistent with the high quality of living intended to be promoted hereby throughout the Community. When an Owner applies for a variance, the Board must give reasonable notice of the variance hearing to all Owners of Units in the Community. No variance shall conflict with ordinances or regulations of the Town of Ridgway. If a variance from Town laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such Town variance before submitting a variance application to the Board.

Notwithstanding the foregoing provisions of this Article Three, except for restrictions placed upon it by Town, Declarant shall be exempt from the restrictions in this Article Three to the extent that it impedes, in Declarant's sole discretion, its development, construction, sales, marketing or leasing activities.

# ARTICLE FOUR EASEMENTS

The following "**Easements**" are hereby established by Declarant for the purposes stated and for the parties indicated. Declarant reserves the right to modify the location and/or use of any of the Easements identified in this Article Four or anywhere else in this Declaration or on the Map. Declarant also reserves the right to expand the Persons who may use the Easements. Declarant also reserves the right to transfer and assign its rights under the Easements established in this Article Four to such Persons determined by Declarant, which assignment shall be made in writing and recorded in the Official Records.

4.1. Blanket Association Utility Easement over Common Elements. There is hereby created, granted and reserved to the Association, its agents, employees and assigns a perpetual, nonexclusive blanket easement over, across, upon and under the Common Elements and under the Units for the construction, installation, operation, maintenance, servicing, repair, removal and replacement of utilities and utility lines, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Community or any part thereof, including but not limited to water, sewer, gas, telephone, internet, electricity, elevators, cable TV and other master TV and communication systems, as well as for drainage and stormwater management, if any, together with an easement for access, ingress and egress to accomplish such purposes, and together with the right to grant any such easement rights to utility companies. The Association or other person or entity exercising such utility easement rights shall be obligated to restore, reseed, replant and/or re-landscape the surface of any disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility work, and shall be further obligated to exercise such easement rights at such times and in such manner as to interfere as little as reasonably possible with the occupancy, use and enjoyment of the Units by the Owners and Occupants thereof. Nothing granted herein shall authorize or empower the Association to damage or unreasonably affect the existence, use and enjoyment of any Unit in the event a utility allowed under this Section 4.1 is located in or under a Unit.

4.2. **Declarant Easement over Common Elements**. There is hereby created, granted and reserved to Declarant and its successors and assigns as well as its designees a non-exclusive easement over, across, upon and under all Common Elements (including without limitation all easements benefiting the Association), including a right of access, ingress and egress thereto, and a right to use such Common Elements and each and every part thereof for all purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing and sale of the Community and all portions thereof, and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Declarant obligations relating to the Community.

4.3. <u>Association Administrative Easement over Common Elements</u>. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under the Common Elements and a right to use the Common Elements for purposes of enabling the Association to perform its various responsibilities and to exercise its various rights under this Declaration.

4.4. <u>Association Easement in Units for Maintenance, Repair and Emergencies.</u> There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon all of the Units as reasonably necessary for the performance of the Association's rights and responsibilities under this Declaration and for the making of emergency repairs or reconstruction to the Building, the Units, and/or the Common Elements. For routine maintenance and non-emergency repairs, entry to a Unit shall be made only on a regular business day during regular business hours, after giving at least one day's notice in writing to the Owner. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time without notice or permission. The Board is hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Unit in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and/or damage results from the willful act or negligence of an Owner or Occupant, in which event such Owner shall be solely responsible for the costs of repairing/restoring such damage. These costs can be levied, assessed and collected by the Board as a Reimbursement Assessment pursuant to the provisions of this Declaration.

Support and Encroachment Easements. Each Unit is subject to a blanket easement 4.5. for support. Each Owner has an easement upon an adjoining Unit or Common Element for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting or movement of the Building, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachments occur due to the willful misconduct of an Owner. In the event a structure is partially or totally destroyed, and then repaired or rebuilt in substantially the same manner as originally constructed, the Owners agree that minor encroachments upon an abutting Unit or Common Element shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration or of deeds, mortgages, deeds of trust or other security instruments relating to Units, the actual location of a Unit shall be conclusively deemed to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Condominium Map.

4.6. <u>Blanket Emergency Services Easement</u>. There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons now or hereafter serving the Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all properties and areas within the Community, for use in the lawful performance of their duties.

4.7. <u>Other Easements</u>. The Map may show specific easements that are intended to be created, granted and reserved for the use and benefit of the particular Owner(s) of the Unit(s) and/or the Association as indicated and designated on the Map. Each such easement indicated on the Map is hereby established by the Declarant for the purposes established herein and on the Map, which easement shall be a perpetual, non-exclusive easement over, upon, along and across that portion of the Community depicted on the Map.

4.8. <u>Reservation of Uses.</u> Declarant reserves the right for the Owner of a Unit burdened by an easement on their Unit as provided for in this Article Four ("**Reserved Easements**"), for such Owner and the Owner's successors, transferees, designees and assigns, the right to use and enjoy the portion of the Unit covered by the Reserved Easements for all lawful and desired purposes.

## ARTICLE FIVE COMMON ELEMENTS

5.1. <u>Use and Enjoyment of Common Elements.</u> Except as otherwise provided in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Elements, other than the Limited Common Elements, in common with all other Owners (a) for all purposes for which

such Common Elements were established, and (b) as required for purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Unit owned by the Owner or Common Elements available for the Owner's use. This right to use and enjoy the Common Elements shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and shall be appurtenant to each Unit, subject at all times to the provisions of this Declaration, the Articles and Bylaws, and any Rules adopted by the Board from time to time. No Owner or Occupant shall place any structure or improvement whatsoever upon the Common Elements, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to or use of all parts of the Common Elements (excepting Limited Common Elements) by all Owners and by the Association.

5.2. <u>Association May Regulate Use of Common Elements</u>. The Association, acting through the Board, shall have the right and authority to regulate the use of the Common Elements (including the Limited Common Elements) by the promulgation, enforcement and interpretation from time to time of such Rules relating thereto as the Association considers necessary or appropriate for the protection and preservation of the Common Elements and the enhancement of the use and enjoyment thereof by the Owners and Occupants.

5.3. Owner Liability for Owner or Occupant Damage to Common Elements. Each Owner shall be liable to the Association for any damage to Common Elements or for any expense, loss or liability suffered or incurred by the Association in connection with the Common Elements arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration, or any Rules relating to the Common Elements. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against an Owner to recover the costs, expenses, damage, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations by the Owner or the Owner's Occupant.

5.4. **Damage or Destruction to Common Elements**. In the event of damage to or destruction of the Common Elements, including Improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of Article 7 below. Repair, reconstruction, or replacement of Common Elements shall be accomplished under such contracting and bidding procedures as the Association shall determine to be appropriate, and shall be performed at such times and in such manner as to interfere as little as reasonably possible with the occupancy, use and enjoyment of undamaged Units by the Owners and Occupants thereof. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of Common Elements or for any other use deemed appropriate by the Board.

#### ARTICLE SIX ASSOCIATION

6.1. <u>Association: General Powers.</u> The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Community. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Elements, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as may be provided in this Declaration, the Articles and the Bylaws. The Association shall have all of the powers, authority and duties as may be necessary

or appropriate for the management of the business and affairs of the Community, including without limitation all of the powers, authority and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act. The Association shall have the power to assign its right to future income, including the right to receive Common Expense assessments, but only upon the affirmative vote of the Owners of Units to which at least 51 percent of the votes in the Association are allocated. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

Association Board. The affairs of the Association shall be managed by the Board. 6.2. Until the expiration of the period of Declarant control as described in Section 6.7 below, the Board shall consist of three (3) members with each member entitled to one non-weighted vote. After expiration of the Declarant control period, the Board will consist of four members, with the Owner of each Unit appointing one member. Each Board member shall have one vote which shall be weighted in the same manner as that of the Owner's weighted vote as described in Section 2.2 above. A quorum shall be deemed present throughout any meeting of the Board if persons entitled to cast at least 51 percent of the weighted votes on the Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Board or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Without limiting the generality of the foregoing, no rule or regulation may be validly adopted during an executive session. Agendas for meetings of the Board shall be made reasonably available for examination by all Members of the Association or their representatives. The Board shall have all of the powers, authority and duties granted or delegated to it by the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles or Bylaws. Except as provided in the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles or Bylaws, the Board may act in all instances on behalf of the Association. The Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Community, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term. The Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association. No member of the Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

6.3. **<u>Rules.</u>** The Condominium Documents establish a framework of covenants and conditions that govern the Community. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Association's membership are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 6.4. Generally, Rules are intended to enable the interpretation and implementation of this Declaration, the operation of the Association, and the use and enjoyment of the Common Elements (including Limited Common Elements).

6.3.1. **Board Authority.** Subject to the notice requirements and the Board's duty to exercise reasonable judgment and reasonableness on behalf of the Association and its Members, the Board, at an open meeting of the Board, may, by Resolution, adopt new Rules and modify, amend, supplement or rescind existing Rules by majority vote of the directors at any Board meeting.

6.3.2. <u>Membership Authority</u>. Subject to the notice requirements in subsection 6.3.3 below, Owners entitled to cast more than 50% of the weighted votes in the Association may also adopt new Rules and Regulations and modify or rescind existing Rules and Regulations at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was

adopted. However, as long as Declarant membership exists, any such action shall also be subject to the Declarant's approval. In no event shall any new or amended Rules and Regulations place additional restrictions on the Unit without the express approval of the Owner of the Unit.

6.3.3. <u>Notice</u> The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the membership at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Elements, notwithstanding that such policies may be published as part of the Rules.

6.3.4. <u>Effective Date</u>. A Rules change adopted under this Section 6.3 shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant shall comply with such Rules, and each Owner shall see that Occupants claiming through such Owner comply with such Rules. Such Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. Such Rules may establish penalties (including the levying and collection of fines) for the violation of such Rules or of any provision of this Declaration, the Articles, or the Bylaws.

6.3.5. <u>Conflicts</u>. In the event of a conflict between the Rules and any provision of this Declaration, this Declaration shall control.

6.3.6. <u>Owners' Acknowledgment and Notice to Purchasers</u>. By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such change may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

6.4. <u>**Protection of Owners and Others**</u>. Except as may be set forth in this Declaration (either initially or by amendment) all Rules that may be adopted by the Board shall comply with the following provisions:

6.4.1. <u>Similar Treatment</u>. Similarly situated Units shall be treated similarly.

6.4.2. <u>Holiday, Religious and other Displays.</u> No Rule and Regulation shall abridge an Owner's right to display religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods. The Board may regulate or prohibit signs or displays, the content or graphics of which the Board deems to be obscene, vulgar, or similarly disturbing to the average person.

6.4.3. **Displays of American Flags.** No Rule and Regulation shall abridge an Owner's right display of the American flag in that Owner's Unit, in a window of the Owner's Unit, or on a balcony adjoining the owner's Unit if the American flag is displayed in a manner consistent with the federal flag code, P.L. 94-344; 90 Stat. 810<u>; 4 U.S.C. Section 4 to Section 10</u>. The Association may adopt reasonable rules regarding the placement and manner of display of the American flag. The Association rules may regulate the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

6.4.4. **Displays of Service Flags.** No Rule and Regulation shall abridge an Owner's right display a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's Unit. The Association may adopt reasonable rules regarding the size and manner of display of service flags; except that the maximum dimensions allowed shall be not less than nine inches by sixteen inches.

6.4.5. **Displays of Political Signs.** No Rule and Regulation shall abridge an Owner's right display of a political sign by an Owner in that Owner's Unit, in a window of the Owner's Unit; except that an Association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day. An Association may regulate the size and number of political signs that may be placed on an Owner's property if the Association's regulation is no more restrictive than any applicable Town or county ordinance that regulates the size and number of political signs on residential property. If the Town or county does not regulate the size and number of political signs on residential property, the Association shall permit at least one political sign per political office or ballot issue that is contested in a pending election, with the maximum dimensions of thirty-six inches by forty-eight inches, on a unit owner's property. As used in this Section, "political sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

6.4.6. <u>Abridging Existing Rights</u>. No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

6.4.7. <u>Reasonable Rights to Develop</u>. No Rule may unreasonably interfere with the ability of the Declarant to develop, market, and sell property in the Community, as determined solely by Declarant.

6.4.8. <u>Interference with Easements</u>. No Rule may unreasonably interfere with the exercise of any easement established by this Declaration or otherwise existing by separate document or instrument.

6.5. <u>Membership in Association</u>. There shall be one Membership in the Association for each Unit within the Community. The person or persons who constitute the Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit, and shall collectively be the "Member" of the Association with respect to that Unit, and the Membership appurtenant to that Unit shall automatically pass with fee simple title to the Unit. Membership in the Association shall not be assignable separate and apart from fee simple title to a Unit, and may not otherwise be separated from ownership of a Unit.

6.6. <u>Voting Rights of Members</u>. Each Unit in the Community shall have one vote in the Association which shall be weighted in accordance with the Allocated Interests as set forth on attached <u>Exhibit C</u>, as described in Section 2.2 above. Occupants of Units shall not have voting rights. If title to a Unit is owned by more than one (1) person, such persons shall collectively cast their allocated votes. If only one of the multiple owners of a Unit is present at the Association meeting, such owner is entitled to cast the votes allocated to that Unit. If more than one of the multiple owners is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit. In the event of a protest being made by one or more multiple owners and a majority of the

multiple owners of the Unit cannot agree on how to cast their votes, any votes cast for that Unit shall be null and void with regard to the issue being voted upon. Such multiple owners and their Unit shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon. A quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at least 30% of the weighted votes in the Association are present, in person or by proxy, at the beginning of the meeting. Provided a quorum of allocated votes is present in person or by proxy, the affirmative vote of a majority of the total allocated votes so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles, or the Bylaws. The votes allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of a vote by the other owners of the Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

### 6.7. Period of Declarant Control of Association.

6.7.1. Notwithstanding any other provisions hereof, Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Board and the officers of the Association during the period commencing upon the recording of this Declaration and terminating no later than the earlier of (a) 60 days after conveyance of 75 percent of the Units that may be created to Unit Owners other than Declarant or (b) 2 years after the last conveyance of a Unit by the Declarant in the ordinary course of business.

6.7.2. During said Period of Declarant Control of the Association:

6.7.2.1. Not later than 60 days after conveyance of 25 percent of the Units that may be created to Unit Owners other than Declarant, at least one member and not less than 25 percent of the members of the Board must be elected by Unit Owners other than Declarant.

6.7.2.2. Not later than 60 days after conveyance of 50 percent of the Units that may be created to Unit Owners other than Declarant, not less than 33-1/3 percent of the members of the Board must be elected by Unit Owners other than Declarant.

6.7.3. At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Board, but in such event Declarant may require for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Board or the Association.

#### ARTICLE SEVEN INSURANCE

7.1. **Insurance Requirements.** The following types of insurance shall be obtained, maintained and kept in full force and effect at all times by the party assigned the responsibility for obtaining such coverage. The cost of any coverage required to be obtained by the Association shall be paid by the Association and allocated to the benefitted owners of Units as a Common Expense.

# 7.1.1. Casualty Insurance.

A. The Association shall obtain, maintain and keep in full force and effect property casualty/damage insurance on the Units and the Common Elements. The insurance shall include the finished interior surfaces of the walls, floors and ceilings. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at a reasonable cost, coverage for vandalism and malicious mischief. Such insurance shall be for the full insurable replacement cost of the Units and other insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

B. The Owner of each Unit shall obtain, maintain and keep in full force and effect "contents insurance" covering damages attributable to theft, fire or other casualty on all furniture, fixtures, equipment and other personal property kept, included or otherwise maintained in their respective Unit at such Owners cost and expense.

7.1.2. <u>Liability Insurance</u>. The Association shall obtain, maintain and keep in full force and effect comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons. Such liability insurance shall, to the extent reasonably obtainable, (a) have limits of not less than One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00); (b) insure the Board, the Association and its officers, and their respective employees, agents and all persons acting as agents and the Managing Agent; (c) include the Owners as additional insured's, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements; (d) cover claims of one or more insured parties against other insured parties; and (e) be written on an occurrence basis.

7.1.3. <u>Worker's Compensation</u>. The Association may, in its discretion, obtain a Worker's Compensation policy, if necessary, to meet the requirements of law.

7.1.4. <u>Directors and Officers Liability Insurance</u>. The Association may, in its discretion, carry directors and officers liability insurance in such amount as the Board may deem appropriate.

7.1.5. <u>Fidelity Insurance</u>. The Association shall obtain and maintain fidelity insurance coverage for the Board, the Association and its officers, and their respective employees, agents and all persons acting as agents and the Managing Agent.

7.1.6. <u>Other Insurance</u>. The Association may, in its discretion, obtain such other insurance in such amounts as the Board shall determine, from time to time, to be appropriate to protect the Association or the Owners, or as may be required by the Act.

7.1.7. <u>Annual Review</u>. The Board shall revisit the coverage insurance coverage requirements at least every year to determine if any changes to the nature or amounts of the coverage's is necessary and appropriate.

# 7.2. <u>General Provisions Respecting Insurance</u>.

7.2.1. Insurance policies carried pursuant to Sections 7.1 above shall provide that (i) each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any person claiming by, through,

or under such Owner or any other director, agent or employee of the foregoing; (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in Sections 7.1 above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses. In addition, to the extent available at reasonable cost and terms, all Association insurance shall:

A. be written with a company authorized to do business in Colorado which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

B. be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members;

C. contain an inflation guard endorsement;

insurance clause;

D.

B.

E. provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

F. include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

7.2.2. In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insured's and provide:

A. a waiver of subrogation as to any claims against the Association's directors, officers, employees, and Managing Agent;

cash;

a waiver of the insurer's right to repair and reconstruct instead of paying

include an agreed amount endorsement, if the policy contains a co-

C. an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

D. an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

E. a cross liability provision; and

F. a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss. 7.2.3. Any loss covered by the property insurance policy described in Sections 7.1 above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, the Owners, and lienholders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, the Owners, and lienholders are not entitled to receive payments of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely restored or the Community is terminated. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

7.2.4. Insurance policies and insurance coverage shall be reviewed at least annually by the Board to ascertain whether coverage under the policies is sufficient in light of the current values of the insured property and in light of the possible or potential liabilities of the Association and other insured parties. In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

7.2.5. The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Reimbursement Assessment.

7.3. **Nonliability of Association or Board**. Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Board member, shall be liable to any Owner, Occupant, mortgagee or other person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Occupant may desire.

7.4. <u>Premiums</u>. Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances, or Common Elements, by an Owner or Occupant, may at the Board's election, be assessed against that particular Owner and his Unit as a Reimbursement Assessment.

7.5. <u>Insurance Claims</u>. The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter

into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Association.

7.6. **Benefit**. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Owners, or the Occupants, as their interests may appear.

7.7. **Other Insurance to be Carried by Owners**. Insurance coverage on the Units, improvements, furnishings and other items of personal property belonging to an Owner or Occupant, and public liability insurance coverage within and upon each Unit and any Limited Common Elements designated for that Unit shall be the responsibility of the Owner or Occupant of the Unit. Such policies shall conform to the requirements of this Article 7.

Damage to Community. Any portion of the Community for which insurance is 7.8. required under Section 38-33.3-313 of the Act that is damaged or destroyed must be repaired or replaced promptly by the Association unless: (a) the Community is terminated; (b) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (c) 67 percent of the Unit Owners, including owners of every Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged property to a condition compatible with the remainder of the Community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those properties, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Unit Owners or lienholders as their interests may appear in proportion to the Common Elements interests of the Units. In the event of damage to or destruction of all or a portion of the Common Elements due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Reimbursement Assessment against the Owner or group of Owners responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Board, but not sooner than 60 days after written notice thereof. The Assessment provided for herein shall be a debt of each Unit Owner assessed and a lien on his Unit, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged property is not repaired or replaced, the insurance proceeds attributable to the damaged property must be used to restore the damaged property to a condition compatible with the remainder of the Community. No distributions of insurance proceeds shall be made unless made jointly payable to the Unit Owners and First Mortgagees of their respective Units, if any.

#### ARTICLE EIGHT LIMITED LIABILITY

Neither the Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Association, nor the Managing Agent shall be liable to any Owner or Occupant or to any other Person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association and the Board shall not be liable to any Owner or Occupant or other person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Association and the Board against claims, damages or other liabilities resulting from such good faith action or failure to act.

#### ARTICLE NINE ASSESSMENTS

9.1. Assessment Obligation. Each Unit Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (a) Regular Assessments or charges, (b) Special Assessments, and (c) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Unit against which each such Assessment is charged. The obligation for such payments by each Unit Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Unit Owner is liable for Assessments made against such Owner's Unit during his period of ownership of the Unit. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each person who was an Owner of such Unit at the time when the Assessment became due. Upon the transfer of title to a Unit, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter. Assessments attributable to a Unit shall begin to accrue at such time as the Unit is annexed into the Community and made subject to this Declaration.

9.2. <u>Statutory Lien</u>. The Association has a statutory lien pursuant to §38-33.3-316 of the Act on the Unit of an Owner for all Assessments levied against such Unit or fines imposed against such Unit's Owner from the time the Assessment or fine becomes due ("Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of Assessments becomes due.

9.3. <u>Lien Superior to Unit and Other Exemptions</u>. An Assessment Lien shall be superior to any Unit exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the Unit and any other exemption as against said Assessment Lien.

9.4. **Priority of Lien**. An Assessment Lien is prior to all other liens and encumbrances on a Unit except as follows:

9.4.1. Liens and encumbrances recorded before the recordation of this Declaration;

9.4.2. A security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the

Association pursuant to the Declaration) which would have become due, in the absence of any acceleration, during the 6 months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association Lien created under this Article 9 of an action or a non-judicial foreclosure either to enforce or to extinguish the lien;

9.4.3. Liens for real estate taxes and other governmental assessments or charges against the Unit; and

9.4.4. As may otherwise be set forth in the Act. The priority of mechanics and materialmen's liens is not affected by the Act.

This Article 9 does not prohibit an action or suit to recover sums for which this Article 9 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the lien for an Assessment.

9.5. <u>Perfection of Lien</u>. The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Unit as a Reimbursement Assessment.

# 9.6. <u>Regular Assessments</u>.

9.6.1. A Regular Assessment shall be made annually against each Unit, based upon an annual Budget prepared by the Board, for purposes of paying: (a) the annual costs of operating and administering the Association and all other Common Expenses, (b) reasonable reserves for contingencies, replacements, and other proper purposes, if any, in such amounts and for such purposes, if at all, as determined by the Board; and (c) such other matters as may be reasonably determined by the Board to be the subject of a Regular Assessment;

9.6.2. Regular Assessments shall be allocated against each Unit in such amounts and such percentages corresponding to the Allocated Interests assigned to the Unit as set forth on attached **Exhibit**  $\underline{C}$ .

9.6.3. Regular Assessments, including Limited Common Expenses, shall be levied on a calendar year basis. Regular Assessments, including Limited Common Expenses, shall be paid in installments on a monthly, quarterly, semi-annual or annual basis, as the Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual or annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual or annual system by the Board, Regular Assessments, including Limited Common Expenses, shall be due and payable on the first day of each calendar quarter. Any Owner acquiring a Unit between installment due dates shall pay a pro rata share of the immediately preceding installment.

9.6.4. The Board shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least 30 days before the end of each calendar year. Written notice of the Regular Assessments, including Limited Common Expenses, shall be sent to each Owner. Failure of the Board timely to fix and levy the Regular Assessments, including Limited Common Expenses, for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments, including Limited Common Expenses, or any installments thereof for that or subsequent years as soon as the Board levies the Regular Assessments, including Limited Common Expenses, and provides notice thereof.

9.6.5. The Board may, but is not obligated, mail to each Owner at least 10 days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi annual or annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to subparagraph 9.6.4 above. Failure of the Board to send timely notice to any Owner of an installment of Regular Assessments, including Limited Common Expenses, due shall not relieve or release any Owner from liability for payment of that installment as soon as the Board in fact provides such notice.

9.6.6. In accordance with §38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's Budget.

#### 9.7. <u>Allocation of Limited Common Expenses</u>.

9.7.1. The Board, in the further exercise of its sole and commercially reasonable discretion, may, but need not, allocate certain portions of the Regular Assessments, Special Assessments or other Assessments as a "Limited Common Expense" to some of the Owners as provided below.

9.7.2. In the event that the Board elects to allocate Limited Common Expenses as provided for in this Section, the Board must do so in a uniform and equitable manner among all Units and Owners in the Community. The Board shall determine annually as part of the adoption of the Budget whether some or all of the following Limited Common Expenses are to be allocated to all Units or a class of Units. If the Board elects not to allocate some or all of the following costs and expenses as Limited Common Expenses, the costs and expenses will be allocated among all of the Owners in proportion to their Allocated Interests.

A. Common Expenses attributable to only a particular Unit or class of Units shall be allocated to the Owner of the affected Unit(s);

B. Costs and expenses associated with the maintenance, repair, improvement or replacement of a Limited Common Element serving one or more Units among the Owners of the Units designated and otherwise authorized to use and enjoy the Limited Common Element;

C. Costs and expenses associated with utilities, including, without limitation, gas, electric, trash, water and sewer and other utility expenses, (unless and to the extent that these are separately metered or provided), among the Owners of the Units designated and otherwise authorized to use such utilities and services;

D. Costs and expenses associated with the maintenance, repair, improvement or replacement of chutes, flues, ducts, wires, conduits, bearing walls, bearing columns or other fixtures serving one or more Units, but less than all Units among the Owners of the Units particularly benefitted by the chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture; and

E. Such other costs and expenses that the Board, in its reasonable discretion, determines benefits a limited class of Units and/or Owners.

9.7.3. In such event that the Board assessed a portion of the Regular Assessments as Limited Common Expenses, the Board shall assess such amounts only against the Unit(s) for which the Limited Common Expenses have been allocated. The Board shall allocate such Limited Common Expenses in a prorata manner based upon the respective size of each Unit to which the Limited Common

Expense is being assigned ("**Designated Unit Allocated Limited Common Expense**"). The Association shall only assess the Unit its Designated Unit Allocated Limited Common Expense and not the Designated Unit Allocated Limited Common Expense allocated to another Unit. The Association shall not lien the Owner of a Unit who has paid its Designated Unit Allocated Limited Common Expense for an amount equal to the Designated Unit Allocated Limited Common Expense allocated to another Unit, when the Owner of the other Unit has failed to pay its Designated Unit Allocated Limited Common Expense. The Board shall send written notice to each of the affected Owners that their Unit may be assessed with a Limited Common Expense.

9.8. Association Budget. During the last three (3) months of each calendar year thereafter, the Board shall prepare or cause to be prepared an operating budget ("Budget") for the next fiscal year. The Budget shall provide the allocation of any surplus funds remaining from any previous Budget period. Within ninety (90) days after adoption of any proposed Budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider the Budget. The meeting shall be not less than 14 nor more than 60 days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. The Budget shall be considered by the Owners at that meeting whether or not a quorum of Owners is present and shall be deemed to be approved unless at least 51% of the weighted vote at the meeting veto the Budget. In the event that the proposed Budget is vetoed, the Budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent Budget proposed by the Board, as may be reasonably adjusted for inflation based upon the Consumer Price Index published in the Wall Street Journal and may also be adjusted to account for increases in any non-discretionary costs, expenses and fees imposed by third parties, such as property taxes, utilities and similar items.

### 9.9. <u>Special Assessments</u>.

9.9.1. In addition to the Regular Assessments, including Limited Common Expenses, and Reimbursement Assessments authorized in this Article 9, the Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance, or replacement of capital improvements (including related fixtures and personal property) to or upon or serving the Community, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association. Except in the event of an emergency, where no membership vote shall be required, the Board shall not levy a Special Assessment without the approval of the Unit Owners in the Community as provided below.

9.9.2. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Owners no less than 30 or more than 60 days before the meeting. At the meeting, the presence of Owners in person or by proxy that are entitled to cast 50 percent of the weighted votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirements, and the required quorum at this second meeting shall be only 30 percent of the weighted votes in the Association. No such second meeting shall be held more than 60 days following the date of the first meeting.

9.9.3. Provided a quorum of Owners entitled to vote is present in person or by proxy in accordance with the quorum requirements set forth in the preceding paragraph, the Special Assessment shall be deemed to be approved, unless vetoed by the vote of Owners holding a majority of the weighted votes so present.

9.9.4. For purposes of this Section, the term "emergency" shall mean any circumstances or set of circumstances which pose an imminent threat of loss, damage or injury, actual or threatened, to

persons or property. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Unit in the Community, provided that Special Assessments that benefit fewer than all of the Units shall be allocated exclusively to the Units benefited. Special Assessments shall be due and payable to the Association on the due date fixed by the Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than 30 days after the giving of such notice.

9.10. **Reimbursement Assessments**. In addition to the Regular Assessments, including Limited Common Expenses, and Special Assessments authorized hereunder, the Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association or the Managing Agent for goods and services provided to an Owner of Occupant of a Unit or for reimbursements to the Association or Managing Agent for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles and Bylaws, or any Rules, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Board for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of the Condominium Documents, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than 30 days after the giving of such notice.

9.11. **Working Capital**. The Association shall establish an initial working capital fund equal to 1/4 of the yearly Regular Assessment for each Unit subject to the terms of this Declaration. The working capital fund may be used by the Association to cover the cost of initial expenses and any future expenses authorized by the Board for which there are insufficient budgeted funds. The initial working capital fund shall be established upon the conveyance of the first Unit in the Project by Declarant to a third-party purchaser. Upon acquisition of record title to a Unit from Declarant, each such new Owner shall contribute to the working capital fund of the Association an amount equal to 1/4 of the yearly Regular Assessment for that Unit for the year in which the new Owner acquired title. Such payments shall not be considered advance payments of Regular Assessments. The working capital fund deposit made by such new Owner shall be non-refundable. In the event that Declarant makes payment of any working capital on behalf of any Unit, such amount shall be reimbursable to Declarant by the Unit purchaser at the closing of the sale of the Unit by Declarant to such purchaser.

9.12. <u>Reserve Accounts.</u> The Association may, but is not obligated to establish or fund reserve accounts for capital improvements or repairs to the Community. Declarant has no obligation to establish or fund any reserve accounts.

9.13. <u>Misconduct.</u> If any Common Expenses or Limited Common Expenses are caused by the misconduct of any Owner, the Board may assess that expense exclusively against such Owner's Unit as a Reimbursement Assessment.

# 9.14. Effect of Nonpayment of Assessments; Remedies of the Association.

9.14.1. Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Board from time to time, which shall not be less than 12 percent nor more than 21 percent per year, and the Board may also assess a late charge thereon and/or may assess a bad check charge in the amount of 10 percent of the bad check or \$50.00, whichever is greater. The Board may also elect to accelerate the installment obligations of any Regular Assessment for which an

installment is delinquent. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Board may but shall not be required to record a Notice of Delinquent Assessment or charge against any Unit as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Board, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Unit.

9.14.2. The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Unit at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Unit in the discretion of the Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any Common Elements or by abandonment of the Unit against which the Assessments are made.

9.14.3. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Unit Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Regular Assessments.

9.15. <u>Statement of Unpaid Assessments.</u> The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit, whether delinquent or not. The statement shall be furnished within 14 days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

9.16. <u>Assessments for Tort Liability.</u> In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

9.17. <u>Audit</u>. The Association shall prepare audits as may be required by the Act or as otherwise elected by the Association.

# ARTICLE TEN EMINENT DOMAIN

10.1. **Definition of Taking.** The term "taking", as used in this Article 10, shall mean condemnation by eminent domain or sale under threat of condemnation.

10.2. **<u>Representation in Condemnation Proceedings of Common Elements.</u>** In the event of a threatened taking of all or any portion of the Common Elements, the Unit Owners hereby appoint the Association through such persons as the Board may designate to represent the Association and all of the Unit Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary

sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Association shall constitute sufficient notice to all Unit Owners, and service of process on each individual Unit Owner shall not be necessary.

10.3. <u>Award for Common Elements.</u> Any awards received by the Association on account of the taking of Common Elements shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Unit Owners as their interests may appear. The rights of a Unit Owner and the mortgage of a Unit as to any such distribution shall be governed by the provisions of the mortgage encumbering the Unit.

10.4. <u>**Taking of Units.</u>** If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for the acquired Unit and its Allocated Interests whether or not any Common Elements were acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units (as appropriate) in proportion to the respective Allocated Interests of those Units before the taking. Any remnant of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Unit and its interest in the Common Elements whether or not any Common Elements were acquired. Upon acquisition, unless the decree otherwise, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Unit and its interest in the Common Elements whether or not any Common Elements were acquired. Upon acquisition, unless the decree otherwise provides:</u>

10.4.1. That Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit; and

10.4.2. The portion of Allocated Interests divested from the partially acquired Unit is automatically reallocated to that Unit and to the remaining Units (as appropriate) in proportion to the respective interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

10.5. <u>Miscellaneous</u>. The court decree shall be recorded in the Official Records. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

#### <u>ARTICLE ELEVEN</u> SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS AND ADDITIONAL RESERVED RIGHTS

The Declarant hereby reserves for itself and its successors, assigns and designees, the following "**Special Declarant Rights**," "**Development Rights**" and "**Additional Reserved Rights**" for fifty years following the recordation of this Declaration, unless sooner terminated by the written election of Declarant, in its sole discretion (collectively the "**Reserved Rights**").

# 11.1. SPECIAL DECLARANT RIGHTS.

11.1.1. <u>Completion of Improvements.</u> The right to complete Improvements indicated on plats and maps filed with the Declaration and/or rights to construct improvements pursuant to the Town Development Approvals and Requirements, including the right to consolidate Units by inserting internal doors leading or connecting two Units, and such other rights indicated on the Map or elsewhere in this Declaration. When such improvements are completed, Declarant reserves the right to file a supplement to the Plat/Map for the purpose of annexing the completed improvements into the Community.

11.1.2. <u>Exercise of Reserved Rights.</u> The right to exercise: (a) any Special Declarant Rights, Additional Reserved Rights or Development Rights reserved in this Article; or (b) any other rights reserved or existing under the provisions of this Declaration or the Act.

11.1.3. <u>Consolidation on Merger</u>. The right to merge or consolidate the Community with a reasonably similar common interest community as determined by Declarant.

11.1.4. <u>Amendment of Declaration</u>. The right to amend the Declaration in connection with the exercise of any Development Rights, Special Declarant Rights or Additional Reserved Rights.

11.1.5. <u>Amendment of Community Map.</u> The right to amend the Condominium Map in connection with the exercise of any Development Rights, Special Declarant Rights or Additional Reserved Rights.

### 11.2. **DEVELOPMENT RIGHTS**.

11.2.1. **Relocate Boundaries of Units**. The Declarant reserves the right to undertake any of the following actions, provided that each Owner of a Unit being modified or changed pursuant to this authority must consents to the action (if other than Declarant):

- A. Relocate boundaries between adjoining Units;
- B. Enlarge, reduce or diminish the size of Units;
- C. Subdivide a Unit into one or more additional Units;
- D. Enlarge, reduce or diminish the size of areas of the Common Elements;
- E. Reduce or diminish the size of areas of the Common Elements; and

F. Re-designate uses and activities occurring on the Common Elements, except for Limited Common Elements, which re-designation of uses and activities will require the consent of the Owner of the Unit to which the right to use Limited Common Element was assigned.

11.2.2. <u>Create Additional Units.</u> The right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units.

11.2.3. <u>Annex Additional Real Property or Units.</u> The right to add Units and to subject additional property located in the Town of Ridgway to the provisions of this Declaration.

11.2.4. <u>Withdraw Real Estate.</u> The right to withdraw any portion of the Real Estate from the provisions of this Declaration, to the extent allowed by the Act.

11.2.5. <u>Master Associations and Subordinate Association</u>. The right to create master associations and/or subordinate associations and to subject all or portions of the Real Estate to such master association or subordinate association;

11.2.6. <u>Relocate Boundaries of Units</u>. In exercising its Reserved Rights, Declarant may modify the boundaries of any Common Element and include areas associated with a Common Element into a Unit, provided that Declarant shall not reduce an area designated as a Limited Common Element

without the consent of the Owner(s) of the Unit(s) to which the Limited Common Element has been assigned.

### 11.2.7. Other Rights.

A. The right to grant or withhold its approval and/or consent to any matter or action requiring the approval and/or consent pursuant to the Declaration;

B. The right to exercise any and all other Reserved Rights stated, established or otherwise reserved herein or otherwise allowed in the Act;

C. The right to amend the Declaration in connection with the exercise of any Reserved Rights; and

D. The right to amend the Condominium Map in connection with the exercise of any Reserved Rights.

### 11.3. ADDITIONAL RESERVED RIGHTS.

11.3.1. **Dedications.** The right to establish or obtain, from time to time, by dedication, grant or otherwise, utility and other easements or encroachment permits for purposes including but not limited to streets, paths, walkways, skyways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Community.

11.3.2. <u>Use Agreements.</u> The right to enter into, establish, execute, amend, and otherwise deal with contracts, agreements and leases for the use, operation, lease, repair, maintenance or regulations of recreational facilities and/or Common Elements, which may or may not be a part of the Community.

11.3.3. <u>Grant Easement</u>. The right to grant and convey an easement over portions of the Common Elements to adjoining property owners to enable pedestrian and vehicular access and/or the extension of utilities to serve adjoining property, provided that the grant of such easement does not preclude uses and activities of the Common Elements contemplated by this Declaration.

11.3.4. <u>Other Rights.</u> The right to exercise any other right reserved to Declarant in this Declaration or the other Condominium Documents.

11.3.5. **Parking/Storage Assignments.** THE RIGHT TO CONVERT ANY AND ALL PARKING SPACES AND STORAGE SPACES WITHIN THE PROJECT THAT ARE GENERAL COMMON ELEMENTS TO LIMITED COMMON ELEMENTS AND TO ALLOCATE EACH SO CONVERTED PARKING SPACE AND/OR STORAGE SPACE TO A PARTICULAR UNIT(S), AND TO RECEIVE CONSIDERATION FOR SUCH ALLOCATION. ANY PARKING SPACES AND STORAGE SPACES ALLOCATED AS LIMITED COMMON ELEMENTS AS OF THE RECORDING OF THIS DECLARATION ARE SET FORTH ON THE ATTACHED **EXHIBIT C**. ANY FURTHER ALLOCATIONS SHALL BE ACHIEVED BY DECLARANT RECORDING AN AMENDMENT TO **EXHIBIT C**.

Declarant reserves the right to reallocate any LCE Parking Space and/or LCE Storage Space by recording an amendment to <u>Exhibit C</u> with the consent of the Owner(s) allocated the affected LCE Parking Space and/or LCE Storage Space; the consent of other Owners, the Association, the Board or Mortgagees shall not be required, notwithstanding the procedures set forth in §208 of the Act.

11.4. <u>Assignment of the Declarant Rights.</u> Declarant reserves the right to transfer and assign some or all of the Reserved Rights to any Person, which will be evidenced by a written assignment recorded in the Official Records, and upon such assignment, such assignee may elect to exercise any assigned Reserved Rights subject to these Declarations and the Act and upon such election, the assignee shall assume all of the duties and obligations of the Declarant with respect to the Reserved Rights being so assigned. At such time that Declarant no longer owns a Unit in the Community, Declarant shall assign any and all Reserved Rights which Declarant continues to possess to the Association.

11.5. **No Further Authorizations Needed.** The consent of Owners or holders of Security Interests shall not be required for the Declarant or its assignees to exercise any Reserved Rights, and Declarant or its assignees may proceed without limitation at their option, subject to existing property use, zoning laws and any planned unit development requirements of the Town. Reserved Rights of the Declarant or its assignees may be exercised with respect to different parcels of the Community at different times. Additionally, Declarant or its assignees may exercise any Reserved Rights on all or any portion of the Community in whatever order is determined. Declarant or its assignees shall not be obligated to exercise any Reserved Rights or to expand the Community beyond the number of Units initially submitted.

11.6. <u>Amendment of the Declaration or Map.</u> If Declarant or its assignees elect to exercise any Reserved Rights, that party shall comply with the Act with respect to amending or supplementing the Map or the Declaration.

11.7. **Interpretation.** Recording of amendments to the Declaration and the Map pursuant to Reserved Rights in the Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically vest in each existing Owner the reallocated Allocated Interests appurtenant to his Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or mot reference is made to any Amendment of the Declaration or Map.

### ARTICLE TWELVE GENERAL PROVISIONS

12.1 **Duration of Declaration**. The term of this Declaration shall be perpetual.

12.2 <u>Termination of Community.</u> The Community may be terminated only by the agreement of: (a) Owners holding at least 80% of the weighted votes in the Association, and (b) all Eligible Mortgagees. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

# 12.3 Amendment of Declaration and Map.

12.3.1 This Declaration may be amended by the Declarant in certain defined circumstances, including without limitation: (a) when the Declarant is exercising Reserved Rights hereunder, (b) for purposes of correcting clerical, typographical, or technical errors; or (c) to comply with the requirements, standards or guidelines of recognized secondary mortgage markets and agencies.

12.3.2 In addition to the foregoing, subject to the provisions of this Declaration (including, but not limited to, Section 12.5) this Declaration (including the Condominium Map) may be

amended by the vote or agreement of Owners to which at least 51% of the weighted votes in the Association are allocated.

So long as Declarant has any rights or obligations under or pursuant to this Declaration or any of the other Condominium Documents (see Section Article Eleven above), any proposed amendment of any provision of the Condominium Documents shall require Declarant's prior written consent to such amendment. Any amendment made without Declarant's prior written consent as required herein shall be null and void and shall have no effect. The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant as set forth in a recorded instrument executed by Declarant, but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Article Eleven above; *provided*, *however*, in no event shall the provisions of this paragraph limit the rights of Declarant in Section 12.5 below.

12.3.3 Pursuant to Section 38-33.3-217(4.5) of the Act which provides that except to the extent expressly permitted or required by other provisions of the Act, no amendment may change the uses to which any Unit is restricted in the absence of a vote or agreement of Owners to which at least 51% of the weighted votes in the Association for such Units are allocated. This limitation does not apply in instances where the Declarant is amending the Declaration and/or the Condominium Documents pursuant to its Reserved Rights, to the fullest extent allowed by the Act.

12.3.4 Under no circumstances shall any amendment to the Declaration, the Map or any of the Condominium Documents alter, limit, impair, reduce, eliminate, extinguish, terminate or otherwise affect the Reserved Rights of Declarant or any Unit owned by Declarant without the prior written consent and approval of Declarant, which Declarant may grant or withhold in Declarant's sole discretion.

12.3.5 An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Map." With the exception of Declarant amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and recorded in the Official Records.

12.3.6 No amendment to this Declaration concerning any designated Town Enforceable Restrictions shall be effective unless approved by the Town, evidenced by its consent in the Declaration Amendment.

# 12.4 Compliance; Enforcement.

Owner.

12.4.1 Every Owner and Occupant of a Unit in the Community shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Declaration and the Condominium Documents, and all approvals granted by the Board, as the same or any of them may be amended from time to time.

12.4.2 The Board shall have the following rights and remedies:

A. The right to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters which shall constitute a lien upon the violator's Unit. In the event that any Person, including an Occupant, guest, or invitee of a Unit violates the Condominium Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

B. The right to levy and collect a Reimbursement Assessment against any

C. The right to enter upon any Unit within the Community, after giving the Owner or Occupant at least 5 days written notice of the nature of the violation (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation.

D. The right to cut off or suspend any or all Association services or benefits to the subject Owner or Occupant and his Unit until the violation is cured.

E. The right to suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 90 days delinquent in paying any Assessment).

F. The right to exercise self-help or take action to abate any violation of the Condominium Documents in a non-emergency situation (including removing personal property that violates the Condominium Documents).

G. The right to record a notice of violation with respect to any Unit on which a violation exists.

12.4.3 Failure by the Board to exercise any of the rights available to it under this Section 12.4 shall in no event be deemed a waiver of the right to do so in any other instance.

12.4.4 A decision by the Association and its Board not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

12.4.5 The Town is authorized to enforce compliance with a violation of a Town Enforceable Restrictions as established by and in the manner provided for in this Declaration.

#### 12.5 Agreement to Encourage Alternative Dispute Resolution.

12.5.1 For purposes of this Section 12.5 only, the following terms have the following meanings:

- (a) "AAA" means the American Arbitration Association.
- (b) "Claimant" means any Party having a Claim.

(c) "Claim" means, except as excluded or exempted by the terms of this Section 12.5 (including Section 12.5.3 below), any claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based, including, without limitation, disputes arising out of or related to: (i) the interpretation, application or enforcement of any Condominium Document; (ii) the location, planning, sale, development, design, construction and/or condition of the Units and Community, including, without limitation, the soils of the Community; and (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party relating to the foregoing.

(d) "Inspecting Party" means a Party causing an inspection of the Subject Property to be made.

(e) "Party" means each of the following: (i) Declarant and its officers, owners, employees and agents (collectively, "Declarant Affiliates"); (ii) all Owners, the Association and

all other Persons subject to this Declaration, their officers, owners, employees, and agents; (iii) any builder of any portion of the Project and its officers, owners, employees and agents; and (iv) any Person not otherwise subject to this Declaration who agrees to submit to this Section 12.5.

Claim.

(f) "Respondent" means any Party against whom a Claimant asserts a

(g) "Subject Property" means the property regarding which a Party contends a defect exists or another Claim pertains and/or property being inspected under the inspection right in Section 12.5.4 below.

(h) "Termination of Mediation" means a period of time expiring thirty (30) days after a mediator has been agreed upon by the Parties (however, a mediator shall be selected no later than forty-five (45) days after the Claimant has given notice of the Claim and if the Parties are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

12.5.2 Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.

(a) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. Accordingly, each Party agrees to resolve all Claims by using the procedures in this Section 12.5 and not by litigation. Further, each Party agrees that the procedures in this Section 12.5 shall be the sole and exclusive remedy that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Section 12.5, such Party shall reimburse all costs and expenses, including attorneys' fees, incurred by the other Party in such litigation or action within ten days after written demand.

(b) By accepting a deed for a Unit, each Owner agrees to be bound by and to comply with this Section 12.5.

(c) The Parties agree that no Claim may be started after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

12.5.3 Unless specifically exempted by this Article 20, all Claims between any of the Parties shall be subject to the provisions of this Article 20. Notwithstanding the foregoing, unless all Parties thereto otherwise agree, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim or cross-claim and shall not be subject to the provisions of this Section 12.5:

(a) Any action by the Association to enforce the provisions of the Condominium Documents (other than this Section 12.5) against an Owner or Occupant;

(b) Any action by the Association to assess or collect any Assessments or to enforce or foreclose any Assessment Lien;

(c) Any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Section 12.5;

(d) Any action pursuant to the provisions of this Declaration concerning mechanics liens; and

(e) Any actions of the Association permitted by §217(7) of the Act.

12.5.4 Before any Party commences a proceeding involving another Party, including, without limitation, any alleged defect of any Unit or the Community, the Respondent shall have the right to access, inspect, correct the condition of, or redesign any portion of any improvement allegedly containing a defect or otherwise correct the alleged defect; *provided*, *however*, any correction to, or redesign of, an improvement shall be made upon terms and conditions acceptable to all affected Parties. In exercising these inspection rights, the Inspecting Party shall:

(a) Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any improvements on the Subject Property at issue;

(b) Minimize any disruption or inconvenience to any Person who occupies the Subject Property;

Subject Property; and

Remove daily all debris caused by the inspection and remaining on the

(d) In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property, repair and replace all damage, and restore the Subject Property to its pre-inspection condition unless the Subject Property is to be immediately repaired.

The Inspecting Party shall not permit any lien, claim or other encumbrance arising from the inspection to attach to the Subject Property. The Inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorneys' fees, resulting from any Inspecting Party's breach of this Section 20.4.

12.5.5 Mandatory Procedures.

(c)

(a) Before proceeding with any Claim against any Respondent, each Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely:

The nature of the Claim, including all Persons involved and each Respondent's role in the Claim;

The legal or contractual basis of the Claim (i.e., the specific authority out

of which the Claim arises); and

The specific relief and/or proposed remedy sought.

(b) The Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(c) If the Parties cannot resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty days to submit the Claim to mediation under the auspices of the AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

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(i) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim.

(ii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a complete settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

(iii) Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges.

(iv) If the Parties resolve any Claim through negotiation or mediation under this Section 12.5.5(c) and any Party later fails to comply with the settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the above procedures in this Section 12.5.5(c). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

(d) After receiving a Termination of Mediation, if Claimant wants to pursue the Claim, Claimant shall initiate final, binding arbitration of the Claim under the auspices of the AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate, and Claimant shall provide to Respondent a "Notice of Intent to Arbitrate" all within twenty days after the Termination of Mediation. If Claimant does not initiate final, binding arbitration of the Claim and provide a Notice of Intent to Arbitrate to Respondent within twenty days after the Termination of Mediation, then Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim.

The following arbitration procedures shall govern each arbitrated claim:

(i) The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

(ii) No Person shall serve as the arbitrator where that Person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any Person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator with fourteen days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

(iii) The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the Town of Ridgway unless the Parties otherwise agree.

(iv) The arbitration shall be presided over by a single arbitrator.

(v) No formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

(vi) Unless directed by the arbitrator, there shall be no post-hearing

briefs.

(vii) The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than fourteen days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

(viii) The arbitrator determines all issues about whether a Claim is covered by this Section 12.5. Notwithstanding anything herein to the contrary (including, but not limited to, Section 12.5.5(ix) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

(ix) The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys' fees and/or costs to the prevailing Party. Each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction.

(x) The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

(xi) The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

(xii) Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

12.5.6 If a Claim relates to the condition of a Unit, the Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective Mortgagees.

12.5.7 In the event that any provisions of this Section 12.5 conflict with any applicable federal or Colorado statutes which provide non-waivable legal rights, including, without limitation, the Colorado Construction Defect Action Reform Act or the Colorado Consumer Protection Act, then the non-waivable terms of such statute shall control and all other provisions herein remain in full force and effect as written.

12.5.8 THE PROVISIONS OF THIS SECTION 12.5 INURE TO THE BENEFIT OF DECLARANT AND THE DECLARANT AFFILIATES (AND ALL OTHER PARTIES DESCRIBED ABOVE) AND, NOTWITHSTANDING THE PROVISIONS OF SECTION 12.3 ABOVE, SHALL NOT EVER BE AMENDED WITHOUT THE WRITTEN CONSENT OF DECLARANT AND WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY PROPERTY AT THE TIME OF SUCH AMENDMENT. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION 12.5 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S AND THE DECLARANT AFFILIATES' WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS SECTION 12.5, DECLARANT AND THE DECLARANT AFFILIATES WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL BUYERS. IN ANY EVENT, ANY AMENDMENT TO OR DELETION OF ALL OR ANY PORTION OF THIS SECTION 12.5 SHALL NOT APPLY TO CLAIMS BASED ON ALLEGED ACTS OR OMISSIONS THAT PREDATE SUCH AMENDMENT OR DELETION.

12.5.9 IN THE EVENT THAT A COURT FINDS THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS SECTION 12.5 ARE UNENFORCEABLE AND AS A RESULT A PARTY IS ALLOWED TO BRING A CLAIM IN COURT, THE PARTIES AGREE THAT ANY LAWSUIT, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT IN COURT SHALL BE TRIED ONLY BY A JUDGE AND NOT BY A JURY; AND EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT.

#### 12.6 **<u>Rights of Mortgagees.</u>**

12.6.1 Each Eligible Mortgagee shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee;

(b) Any sixty day delinquency in the payment of Assessments or other charges owed by an Owner whose Unit is subject to the Mortgage;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and

of Mortgagees.

(d) Any proposed action that requires the consent of a specified percentage

12.6.2 Any Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against the Common Elements and may pay any overdue premiums on hazard or general liability insurance policies covering the Common Elements, and shall be entitled to immediate reimbursement therefor from the Association, unless the Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if necessary.

12.6.3 In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, Units and/or all or a part of the Common Elements, neither the Owner nor any other Person shall take priority in receiving the distribution over the right of any First Mortgagee who is a beneficiary of a First Mortgage against a Unit.

12.6.4 If this Declaration or any Condominium Documents require the approval of any Eligible Mortgagees then, the Association shall send a dated, written notice and a copy of any proposed amendment by certified or registered mail "return receipt" requested to such Eligible Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof, or as otherwise delivered by such Eligible Mortgagee to the Association. An Eligible Mortgagee that does not deliver to the Association a negative response within sixty days after the date it receives proper notice shall be deemed to have approved the proposed amendment.

12.7 <u>Notice.</u> Each Owner shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or

required to be given hereunder to an Owner shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission to an Owner shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the firstclass U.S. Mail, certified and return receipt requested, with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of an Owner that has not provided such an address, to the Unit of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

12.8 **No Dedication to Public Use.** Nothing contained in this Declaration shall be deemed to be or to constitute a dedication of all or any part of the Community to the public or to any public use.

Safety and Security. Each Owner and Occupant of a Unit, and their respective guests 12.9 and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association, the Declarant (and any officers, owners, employees and agents thereof) and the Managing Agent, shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Occupants of such Owner's Unit that the Association, its Board and committees, the Declarant (and any officers, owners, employees and agents thereof) and the Managing Agent are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and Common Elements and the contents of Units, resulting from acts of third parties.

12.10 **Interpretation of Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Community, and to the extent possible, shall be construed so as to be consistent with the Act.

12.11 <u>Conflict With Condominium Map.</u> In the event of any conflict or inconsistency between the provisions of this Declaration and the Condominium Map, the provisions of said Condominium Map shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Condominium Map.

12.12 <u>Conflict With the Act.</u> In the event of any conflict or inconsistency between the provisions of the Condominium Documents and the Act and/or the Colorado Revised Nonprofit Corporation Act, the respective provisions of the Act and/or the Colorado Revised Nonprofit Corporation Act shall govern and control and the Condominium Documents shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Act and/or the Colorado Revised Nonprofit Corporation Act

12.13 <u>Governing Law; Jurisdiction.</u> The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Except as otherwise provided in this Declaration (including, but not limited to, Section 12.5) any legal action brought in connection

with this Declaration shall be commenced in the District Court for OurayCounty, Colorado, and by acceptance of a deed to a Unit each Unit Owner voluntarily submits to the jurisdiction of such court.

12.14 <u>Costs and Attorneys' Fees</u>. Except as otherwise provided in this Declaration (including, but not limited to, Section 12.5), in any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the substantially prevailing party shall recover its costs and expenses, including reasonable expert witness and attorneys' fees and costs incurred in connection therewith. An action shall be commenced only in a state court of competent jurisdiction located in OurayCounty, Colorado.

12.15 **Severability.** The provisions of this Declaration shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Declaration, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) the invalid or unenforceable provision shall be reformed, to the minimum extent required to render such invalid or unenforceable provision enforceable in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Declaration and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision.

12.16 <u>Captions.</u> Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

12.17 <u>Singular Includes Plural.</u> Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

**IN WITNESS WHEREOF**, the Declarant does hereby adopt, execute and publish this Declaration, intending it to become effective as of the Effective Date.

### **DECLARANT:**

#### **Arthur Travis Spitzer Revocable Trust**

By:	_
Printed Name:	
Title:	
STATE OF COLORADO	
COUNTRY OF	) ss
COUNTY OF	)
	wledged before me this day of, 201 by of Arthur Travis Spitzer Revocable Trust.
Witness my hand and official seal.	
	My commission expires:
Notary Public	
5	

# EXHIBIT A

(Legal Description of the Real Estate)

# EXHIBIT B

### (Existing Encumbrances)

All agreements, easements, covenants and restrictions of record as of the Effective Date, affecting the Real Property, including, without limitation, the following:

# EXHIBIT C

# (Allocated Interests)

Unit	Designated Use of Unit	Total Square Footage of Unit	Allocated Interest	LCE Storage Space	LCE Parking Space
Totals			100%		

Tab 17 Soil and Geological Study

# Lambert and Associates

CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

GEOTECHNICAL ENGINEERING STUDY

LENA STREET COMMONS

LENA STREET AND OTTO STREET

RIDGWAY, COLORADO

Prepared for: LENA COMMONS

PROJECT NUMBER: M17001GE

APRIL 13, 2017

P. O. BOX 3986 GRAND JUNCTION, CO 61602 (970) 245-6506 FAX: (970) 248-9758

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# Lambert and Associates

CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

April 13, 2017

Lena Commons 2867 County Road 23 Ridgway, Colorado

Attention: Mr. Tate Rogers

Subject: Geotechnical Engineering Study for the Proposed Lena Street Commons Development Ridgway, Colorado

Mr. Rogers:

Lambert and Associates is pleased to present our geotechnical engineering study for the subject project. The field study was completed March 14, 2017. The laboratory study was completed on March 1, 2017. The analysis was performed and the report prepared March 1 through April 13, 2017. Our geotechnical engineering report is attached.

We are available to provide material testing services for soil and concrete and provide foundation excavation observations during construction. We recommend that Lambert and Associates, the geotechnical engineer, for the project provide material testing services to maintain continuity between design and construction phases.

If you have any questions concerning the geotechnical engineering aspects of your project please contact us. Thank you for the opportunity to perform this study for you.

Respectfully submitted,

LAMBERT AND ASSOCIATES Daniel R. Lambert, P.E.

P. O. BOX 3986 GRAND JUNCTION, CO 61502 (970) 245-6506 FAX: (970) 248-9758 P. O. BOX 0045 MONTROSE, CO 81402 (970) 249-2154 FAX: (970) 249-3262

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Lambert and Associates Consulting Geotechnical Engineers and Material Testing

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#### 1.0 INTRODUCTION

This report presents the results of the geotechnical engineering study we conducted for the proposed multi-family residential development. The study was conducted at the request of Tate Rogers in accordance with our proposal for geotechnical engineering services dated December 9, 2016.

The conclusions, suggestions and recommendations presented in this report are based on the data gathered during our site and laboratory study and on our experience with similar soil conditions. Factual data gathered during the field and laboratory work are summarized in Appendices A and B.

1.1 Proposed Construction

It is our understanding the proposed development is to include approximately five (5) multi-family residential structures with four (4) to five (5) units each.

1.2 Scope of Services

Our services included geotechnical engineering field and laboratory studies, analysis of the acquired data and report preparation for the proposed site. The scope of our services is outlined below.

- The field study consisted of describing and sampling the soil materials encountered in nine (9) small diameter continuous flight auger advanced test borings in the general vicinity of the proposed structures.

- The materials encountered in the test borings were described and samples retrieved for the subsequent laboratory study.
- The laboratory study included tests of select soil samples obtained during the field study to help assess:
  - . the soil strength potential (internal friction angle and cohesion) of samples tested,
- the swell and expansion potential of the samples tested,
   the settlement/consolidation potential of the samples tested, and
  - . the moisture content and density of samples tested.
- This report presents our geotechnical engineering comments, suggestions and recommendations for planning and design of site development including:

Lambert and Associates consulting geotechnical engineers and material testing . viable foundation types for the conditions encountered,

- . allowable bearing pressures for the foundation types,
- . lateral earth pressure recommendations for design of laterally loaded walls,
- . geotechnical engineering considerations and recommendations for concrete slab on grade floors, and
- . geotechnical engineering considerations and recommendations for compacted structural fill.
- Our comments, suggestions and recommendations are based on the subsurface soil and ground water conditions encountered during our site and laboratory studies.
- Our study did not include any environmental or geologic hazard issues.

# 2.0 SITE CHARACTERISTICS

Site characteristics include observed existing and pre-existing site conditions that may influence the geotechnical engineering aspects of the proposed site development.

2.1 Site Location

The site is located south of Otto Street and east of Lena Street, Ridgway, Colorado. A project vicinity map s presented on Figure 1.

2.2 Site Conditions

The site is relatively flat exhibiting surface drainage toward the east. Portions of the site have previously been occupied by residential structures. A large pile of unknown soil and organic debris is located on the western central portion of the site and an existing residential structure currently occupies the southwestern portion of the site. The site is bordered to the west by Lena Street, to the north by Otto Street, to the south by Charles Street and to the west by an existing park and bike path.

2.3 Subsurface Conditions

The subsurface exploration consisted of observing, describing and sampling the soil materials encountered in nine (9) small diameter test borings. The approximate locations of the test borings are shown on Figure 2. The logs describing the soil materials encountered in the test borings are presented in Appendix A.

The soil materials encountered in the test borings consisted generally of silty clay materials underlain by silty, clayey gravels and cobbles. The granular materials were encountered at approximate depths of eleven (11) feet or deeper and extended to the maximum depths explored, approximately twenty (20) feet below existing site grades.

Free subsurface water was not encountered in our test borings during the drilling operations. However, increased moisture contents were observed at approximate depths of eight to twelve feet below existing site grades.

It may be necessary to install standpipe piezometers in areas where basements will be planned and the free subsurface water elevation monitored for a significant period of time to help identify the anticipated highest elevation of the free subsurface water.

It is difficult to predict if unexpected subsurface conditions will be encountered during construction. Since such conditions may be found, we suggest that the owner and the contractor make provisions in their budget and construction schedule to accommodate unexpected subsurface conditions.

2.4 Site Geology

A brief discussion of the general geology of the area near the site is presented in Appendix C. The surface geology of the site was determined by observation of the surface conditions at the site and observing the soils encountered in the test borings on the site.

2.5 Seismicity

According to the International Building Code, 2009 Edition, based on the subsurface conditions encountered and the assumption that the soils described in the test borings are likely representative of the top 100 feet of the soil profile, we recommend that the site soil profile be  $S_{\rm p}$ .

3.0 PLANNING AND DESIGN CONSIDERATIONS

A geologic hazard study was prepared for the proposed project on March 23, 2017, project number M17001GE.

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CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING All of the suggestions and design parameters presented in this report are based on high quality craftsmanship, care during construction and post construction cognizance of the potential for swell or settlement of the site support materials and appropriate post construction maintenance.

All construction excavations should be sloped to prevent excavation wall collapse. We suggest that as a minimum the excavation walls should be sloped at an inclination of one-and-onehalf (1-1/2) to one (1) (horizontal to vertical) or flatter. The area above the foundation excavations should be observed at least daily for evidence of slope movement during construction. If evidence of slope movement is observed we should be contacted immediately.

We anticipate that excavation and fill placement operations may be associated with the proposed site development. Excavations in the area which generate vertical or sloped exposures should be kept to a minimum.

Excavations which result in cut slopes with a vertical height greater than about four (4) feet or with a slope or structure above should be analyzed on a site specific basis. Temporary excavation cut slopes in competent material should not exceed a one-and-onehalf to one (1-1/2 to 1) (horizontal to vertical) inclination. All construction excavations should conform to Occupational Safety and Health Administration (OSHA) standards or safer. All permanent slopes should be constructed with inclinations of approximately three to one or flatter.

We anticipate that some embankment fill slopes will be constructed on the site. Fill slopes greater than about three (3) feet vertical height or fill slopes supporting structures will require additional analysis. We recommend that each proposed fill slope on the site be analyzed on a per site basis when the proposed site configuration and fill material has been determined. If fill slopes will be constructed on site we should be contacted to provide geotechnical engineering review and recommendations for the design and construction of the slopes.

Generally, fill material placed on a site surface which will be used to support structures or additional fill material should be placed so that the contact between the existing site surface and the added fill material will be strong enough to support the added load. This should be addressed on a site and fill area specific basis. The technique recommended will be based on the site configuration, the finished fill configuration the actual material

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to be used for the fill material and the size of the area thus constructed. Frequently the preparation of the site area to receive fill material will include removing organic and loose near surface native material in the area to receive fill material, placing the material in thin horizontal lifts which are compacted at the appropriate moisture content. Some fill areas could benefit from the installation of a subsurface drain system at the fill material/natural material contact. We are available to, and recommend that, we discuss this with you and provide site and fill specific recommendations when this portion of your development plan merits the additional study.

#### 4.0 ON-SITE DEVELOPMENT CONSIDERATIONS

We anticipate that the subsurface water elevation may fluctuate with seasonal and other varying conditions. Excavations may encounter subsurface water and soils that tend to cave or yield. If water is encountered it may be necessary to dewater construction excavations to provide more suitable working conditions. Excavations should be well braced or sloped to prevent wall collapse. Federal, state and local safety codes should be observed. All construction excavations should conform to Occupational Safety and Health Administration (OSHA) standards or safer.

The site construction surface should be graded to drain surface water away from the site excavations. Surface water should not be allowed to accumulate in excavations during construction. Accumulated water could negatively influence the site soil conditions. Construction surface drainage should include swales, if necessary to divert surface water away from the construction excavations.

Organic soil materials in areas to receive fill material or structure components should be removed. The organic soil materials are not suitable for support of the structure or structural components.

Man placed fill material exists on site. The quality of the man placed fill is not known and may not be suitable for support of the structure or structural components. The quality of the existing man placed fill should be verified or the fill removed and replaced with compacted structural fill prior to supporting building or building components on the fill.

It has been our experience that sites in developed areas may contain existing subterranean structures or poor quality man placed fill. If subterranean structures or poor quality man placed fill

are suspected or encountered, they should be removed and replaced with compacted structural fill as discussed under COMPACTED STRUC-TURAL FILL below.

The soil materials exposed in the bottom of the excavation may be moist and may become yielding under construction traffic during It may be necessary to use techniques for placement construction. of fill material or foundation concrete which limits construction traffic in the vicinity of the very moist soil material. Ιf yielding should occur during construction it may be necessary to construct a subgrade stabilization fill blanket or similar to provide construction traffic access. The subgrade stabilization blanket may include over excavating the subgrade soils one (1) to several feet and replacing with aggregate subbase course type The stabilization blanket may also include geotextile material. stabilization fabric at the bottom of the excavation prior to placement of aggregate subbase course stabilization fill. Other subgrade stabilization techniques may be available. We are available to discuss this with you.

## 5.0 FOUNDATION SUPPORT CHARACTERISTIC

Two criteria for foundation design which must be satisfied for satisfactory performance are:

- contact stresses must be low enough to preclude shear failure of the foundation soils which would result in lateral movement of the soils from beneath the foundation, and
- 2) settlement or heave of the foundation must be within amounts tolerable to the superstructure.

The soil materials encountered in the test borings have varying engineering characteristics that may influence the design and construction considerations of foundations. The characteristics include swell potential, settlement potential, bearing capacity and the bearing conditions of the soils supporting the foundations. These are discussed below.

5.1 Swell Potential

Some of the materials encountered in the test borings at the anticipated foundation depths may have swell potential. Swell potential is the tendency of the soil to increase in volume when it becomes wetted. The volume change occurs as moisture is absorbed into the soil and water molecules become attached to or adsorbed by

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the individual clay platlets. Associated with the process of volume change is swell pressure. The swell pressure is the force the soils applies on its surroundings when moisture is absorbed into the soil. Foundation design considerations concerning swelling soils include structure tolerance to movement and dead load pressures to help restrict uplift. The structure's tolerance to movement should be addressed by the structural engineer and is dependent upon many facets of the design including the overall structural concept and the building material. The uplift forces or pressure due to wetted clay soils can be addressed by designing the foundations to account for swelling soils.

5.2 Settlement Potential

Settlement potential of a soil is the tendency for a soil to experience volume change when subjected to a load. Settlement is characterized by downward movement of all or a portion of the supported structure as the soil particles move closer together resulting in decreased soil volume. Settlement potential is a function of foundation loads, depth of footing embedment, the width of the footing and the settlement potential or compressibility of the influenced soil. Foundation design considerations concerning settlement potential include the amount of movement tolerable to the structure and the design and construction concepts to help reduce the potential movement.

### 5.3 Soil Support Characteristics

The soil bearing capacity is a function of the engineering properties of the soils supporting the foundations, the foundation width, the depth of embedment of the bottom of the foundation below the lowest adjacent grade, the influence of the ground water and the amount of settlement tolerable to the structure.

Foundations for the structures should be placed on relatively uniform bearing conditions. Varying support characteristics of the soils supporting the foundation may result in nonuniform or differential performance of the foundation. The influence of nonuniform bearing conditions may be reduced by recognizing and accommodating during the site specific design.

#### 6.0 FOUNDATION RECOMMENDATIONS

Geotechnical engineering considerations which influence the foundation design and construction recommendations presented below are discussed in Appendix D.

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We have analyzed spread footing foundations as potential foundation systems for the proposed structures. These are discussed below. Due to the number of possible foundation types available and design and construction techniques there may be design alternatives which we have not presented in this report. We are available to discuss other foundation types.

We recommend that the entire structure be supported on only one foundation type. Combining foundation types will result in differential and unpredictable foundation performance between the varying foundation types. We recommend that the structure footprint not be traversed by the cut/fill contact which would result in a portion of the structure underlain by fill material and part of the structure underlain by materials exposed by excavated cut. If this condition will exist please contact us so that we can revise our recommendations to accommodate the cut/fill contact scenario.

All of the design parameters presented below are based on techniques performed by an experienced competent contractor and high quality craftsmanship and care during construction. We recommend post construction cognizance of the volume change potential of the near surface soil materials and the need for appropriate post construction maintenance.

The spread footing recommendations include recommended design and construction techniques to reduce the influence of movement of the soil materials supporting the foundation but should not be interpreted as solutions for completely mitigating the potential for movement from the support soil material volume change.

Exterior column supports should be supported by foundations incorporated into the foundation system of the structure not supported on flatwork. Column supports placed on exterior concrete flatwork may move if the support soils below the concrete slab on grade become wetted and swell or freeze and raise or settle. Differential movement of the exterior columns may cause stress to accumulate in the supported structure and translate into other portions of the structure.

## 6.1 Spread Footing Foundations

In our analysis it was necessary to assume that the material encountered in the test borings extended throughout the building site and to a depth below the maximum depth of the influence of the foundations. We should be contacted to observe the soil materials exposed in the foundation excavations prior to placement of foundations to verify the assumptions made during our analysis.

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Lambert and Associates CONSULTING GEOTECHNICAL ENGINEERB AND MATERIAL TESTING The bottom of the foundation excavations should be thoroughly cleaned and observed when excavated. Any loose or disturbed material exposed in the foundation excavation should be removed or compacted prior to placing foundation concrete.

The bottom of the foundation excavations should be compacted prior to placing compacted structural fill or foundation concrete. We suggest the materials exposed be compacted to at least ninety (90) percent of the materials moisture content-dry density relationship (Proctor) test, ASTM D1557. Excavation compaction is to help reduce the influence of any disturbance that may occur during the excavation operations. Any areas of loose, low density or yielding soils evidenced during the excavation compaction operation should be removed and replaced with compacted structural fill. Caution should be exercised during the excavation compaction operations. Excess rolling or compacting may increase pore pressure of the subgrade soil material and degrade the integrity of the support soils. Loose or disturbed material in the bottom of the foundation excavations which are intended to support structural members will likely result in large and unpredictable amounts of settlement, if the loose or disturbed material is not removed or compacted.

The bottom of any footings exposed to freezing temperatures should be placed below the maximum depth of frost penetration for the area. Refer to the local building code for details.

All footings should be appropriately proportioned to reduce the post construction differential settlement. Footings for large localized loads should be designed for bearing pressures and footing dimensions in the range of adjacent footings to reduce the potential for differential settlement. We are available to discuss this with you.

Foundation walls should be reinforced for geotechnical engineering purposes. The structural engineer should be consulted for foundation design. The structural engineering reinforcing design tailored for this project will be more appropriate than the suggestions presented above.

The structures may be founded on spread footings. We recommend the use of a blanket of structure fill material beneath the spread footing foundation members. Spread footings may be placed either on the natural undisturbed soils or on a blanket of compacted structural fill. The blanket of compacted structural fill is to help provide uniform support for the footings and to help reduce the theoretical calculated post construction settlement. The

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CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING theoretical calculated post construction settlement and associated fill thickness supporting the footings are presented below.

We suggest that you consider the foundation be supported on a blanket of compacted structural fill at least one (1) foot thick to help mask the influence of volume change soil materials supporting the footings. The blanket of compacted structural fill will not prevent movement of the footings from volume change in the support soil materials but will mask the influence of volume changes of the soils supporting the footings. If the footings are supported on a blanket of compacted structural fill the blanket of compacted structural fill should extend beyond each edge of each footing a distance at least equal to the fill thickness. This concept is shown on Figure 3. Geotechnical engineering recommendations for constructing compacted structural fill are presented below.

All footings should have a minimum depth of embedment of at least one (1) foot below the lowest adjacent grade when placed either on the natural undisturbed soils or a blanket of compacted structural fill. Deeper embedment will be needed for footings exposed to exterior climate.

The bearing capacity will depend on the minimum depth of embedment of the bottom of the footings below the lowest adjacent grade and the support characteristics of the soils supporting the foundation. Other characteristics may influence embedment. The embedment concept is shown on Figure 4. Bearing capacity and associated minimum depth of embedment of the bottom of the footing below the lowest adjacent grade are presented below.

## SPREAD FOOTING

SOIL BEARING	CAPACITY	
CONTINUOUS	ISOLATED	. D*
(POUNDS PER S	QUARE FOOT)	(feet)
1,125	1,500	0
1,300	1,700	. <b>1</b>
1,450	1,900	2
1,650	2,200	3

D\* Minimum depth of embedment for footings adjacent to level areas.

If deeper embedment is considered for increased bearing capacity greater than presented above, we should be contacted to provide additional analysis and recommendations as needed. The bearing

capacity design value is based on several considerations and these may change with depth.

The bearing capacity may be increased by about twenty (20) percent for transient loads such as wind and seismic loads.

It is our opinion that footings exposed to frost or freezing ground influences and all exterior footings should be embedded to frost depth or deeper. Interior footings should have a minimum depth of embedment of at least one (1) foot on all sides to provide a more predictable long term performance of the footing. We understand that construction techniques typically used in the area may result in some of the footings in the crawl space constructed without significant embedment of the bottom of the footing below the lowest adjacent grade. For this reason we have provided design values for footings constructed with little or no embedment. It is our opinion that the performance of footing constructed without embedment may be influenced by erosion, temperature changes, moisture content changes, swell potential of the soil supporting the footings and weathering of the soils supporting the footings and will have a less predictable settlement response than footings with embedment.

Exterior footings and footings with uneven backfill may result in movement of the footings. Embedment of the footings on all sides will help reduce the potential for movement of footings with uneven backfill. We do not recommend exterior footings or footings with uneven backfill be constructed without a minimum depth of embedment of the bottom of the footing below the lowest adjacent grade of at least one (1) foot on all sides of the interior footings and frost depth for exterior footings.

The minimum depth of embedment is sufficient only to develop the bearing capacity for design purposes and does not account for frost influences. Actual design and construction should result in interior footings with one (1) foot or more embedment and exterior footings with frost depth or more embedment. Typically deeper embedment will increase bearing capacity and decrease post construction settlement and decrease the influence of expansive soils.

The soil samples tested had measured swell pressures of approximately 350 to 850 pounds per square foot and the actual swell pressure of the support materials could be greater. When wetted the site soil materials have the ability to raise supported foundation members with loads less than the swell pressure. The foundation design should be as rigid as possible with as high of a

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dead load as can be available. The greater the dead load on the footings the less the potential for movement from the foundation soils should they become wetted. If the soils become wetted they will swell and will raise the foundation portions supported on the wetted soils. If the structure is supported on spread footings the owner must realize that post construction movement of the footings is likely. We are available to discuss the implications of supporting foundations on swelling soils.

Interior column loads supported on spread footings which are structurally connected to the other foundation members will provide more uniform performance of the interior footings with respect to the other foundation members and will help reduce the potential differential settlement between interior and exterior foundation members. The foundation walls should be designed to act as beams to distribute stresses associated with the swelling volume changes of soils. The beam design should be addressed by the project structural engineer.

Exterior column supports should be supported by foundations incorporated into the foundation system of the structure not supported on flatwork. Column supports placed on exterior concrete flatwork may move if the support soils below the concrete slab on grade become wetted and swell or freeze and raise or settle. Differential movement of the exterior columns may cause stress to accumulate in the supported structure and translate into other portions of the structure.

The calculated theoretical estimated post construction settlement and swell potential may be reduced by placing the footings on a blanket of compacted structural fill. The calculated theoretical estimated post construction settlement and associated thickness of compacted structural fill are presented below.

	CALCULATED THEORETICAL ESTIMATED POST
THICKNESS OF	CONSTRUCTION SETTLEMENT FOR
COMPACTED STRUCTURAL FILL	CONTINUOUS SPREAD FOOTINGS
SUPPORTING FOOTINGS	(INCHES)
0	7/8 to 1-1/8
í foot	5/8 to 7/8
2 feet	3/8 to 1/2
	•

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	CALCULATED THEORETICAL ESTIMATED POST
THICKNESS OF	CONSTRUCTION SETTLEMENT FOR
COMPACTED STRUCTURAL FILL	ISOLATED SPREAD FOOTINGS
SUPPORTING FOOTINGS	(INCHES)
0	1-1/8 to $1-1/2$
1 foot	3/4 to 1
2 feet	1/2 to 5/8

The calculated theoretical settlement estimated values above are appropriate for continuous spread footings with a width of about two (2) feet or less and isolated spread footings with a width of about three (3) feet or less. Larger footings should be analyzed on a footing, load and width specific basis.

Footings should be sized so that each footing is in a similar size and load range as nearby footings to encourage similar performance. Very large footings or heavily loaded footings will influence the support soil materials to a deeper depth than small or lightly loaded footings and therefore will have different post construction performance.

The calculated settlement estimates are theoretical only. Actual settlement could vary throughout the site and with time.

If the footings are supported on a blanket of compacted structural fill, the blanket of compacted structural fill should extend beyond each edge of each footing a distance at least equal to the fill thickness. This concept is shown on Figure 3 Compacted structural fill is discussed in Section 8.0 below.

The site soil samples tested have a measured swell pressure up to ' approximately 850 pounds per square foot and the actual swell pressure of the support material could be greater. This swell pressure was measured for soils at the initial moisture content of the soil sample tested. The swell potential of the site soil materials could vary significantly and could be greater than that measured. The measured swell pressure may be influenced by disturbance of the sample during the sampling operation and the soil suction potential and initial moisture content.

The foundation design should be as rigid as possible with as high of a dead load as can be available. The greater the dead load on the footings the less the potential for movement from the foundation soils should they become wetted. If the soils become wetted they will swell and will raise the foundation portions supported on the wetted soils.

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Changes in the initial moisture content will significantly influence the swell pressure of the site soils. If the initial moisture content of the foundation soils is less than that of the test sample the actual swell pressures will likely be significantly higher than measured. If the initial moisture content of the foundation soils is greater than that of the test sample the actual swell pressures may be less than measured.

If lightly loaded structure members are supported on spread footings on expansive soil material then the owner must realize that post construction movement of the footings is likely. These lightly loaded areas of the footing should be designed with sufficient structural integrity to resist the forces from swelling soils.

Foundation members that will have significantly small or low dead loads, such as foundations beneath wall openings such as doorways, may be provided with a strengthened grade beam and/or positive separation between the foundation concrete and the underlying soil materials. That separation may be provided by using commercial void form material. We recommend that the structural engineer be consulted concerning the void form design concept.

If the void form design concept is part of the foundation design we suggest that the foundation design may consider including a four (4) to six (6) inch corrugated paper void form material beneath the footings in the lightly loaded portions of the foundation. The corrugated paper void forms provide temporary support for foundation concrete during construction. The low strength of the void form material is intended to allow the underlying soil materials to expand into the void form thereby exerting less or no uplift pressure on the foundation in the areas it is used. We are available to discuss the implications of supporting foundations on swelling soils.

The bottom of the foundation excavations should be thoroughly cleaned and observed by the project Geotechnical Engineer or his representative when excavated. Any loose or disturbed material exposed in the foundation excavation should be removed or remedied prior to additional construction.

We recommend that we be contacted to observe the foundation excavations and backfill operations during construction to verify the soil support conditions and our assumptions upon which our recommendations are based. If necessary we may revise our recommendations based on our observations. We are available to provide

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material testing services during the construction phase of the project.

#### 7.0 INTERIOR FLOOR SLAB DISCUSSION

It is our understanding that, as currently planned, the floor may be either a concrete slab on grade or a supported structural floor. The natural soils that will support interior floor slabs are stable at their natural moisture content. However, the owner should realize that when wetted, the site soils may experience volume changes. The site soil samples tested had a measured swell pressures of 350 to 850 pounds per square foot and associated magnitudes of 0.8 to 3.5 percent of the wetted soil volume at a surcharge load of 100 pounds per square foot and the actual swell pressure could be greater.

The recommendations in this report do not address a monolithic floor slab/footing combination. The design and construction characteristics of the monolithic floor slab need geotechnical engineering design parameters tailored specifically for a monolithic slab and integral footing. Generally this type foundation/floor combination in this area with these site conditions does not perform as well as other choices.

Conditions which vary from those encountered during our field study may become apparent during excavation. We should be contacted to observe the conditions exposed at concrete slab on grade subgrade elevation to verify the assumptions made during the preparation of this report and to provide additional geotechnical engineering suggestions and recommendations as needed.

Engineering design dealing with swelling soils is an art which is still developing. The owner is cautioned that the soils on this site may have swelling potential and concrete slab on grade floors and other lightly loaded members may experience movement when the supporting soils become wetted. We suggest you consider floors suspended from the foundation systems as structural floors or a similar design that will not be influenced by subgrade volume changes. If the owner is willing to accept the risk of possible damage from swelling soils supporting concrete slab on grade floors, the following recommendations to help reduce the damage from swelling soils should be followed. These recommendations are based on generally accepted design and construction procedures for construction on soils that tend to experience volume changes when wetted and are intended to help reduce the damage caused by swelling soil materials. Lambert and Associates does not intend that

the owner, or the owner's consultants should interpret these recommendations as a solution to the problems of swelling soils, but as measures to reduce the influence of swelling soils.

The shallow soil materials tested have a low to moderate volume change potential under light loading conditions. Concrete slab on grade floors may experience significant movement when supported by the natural onsite soils. Concrete slab on grade floors will perform best if designed to tolerate movement introduced by the subgrade soil materials.

Concrete flatwork, such as concrete slab on grade floors, should be underlain by compacted structural fill. The layer of compacted fill should be at least one (1) foot thick or thicker and constructed as discussed under COMPACTED STRUCTURAL FILL below. A one (1) foot thick or thicker blanket of structural fill material beneath the concrete flatwork is not sufficient to entirely mask the settlement or swell potential of the subgrade soil material but will only provide better subgrade conditions for construction. The concrete slab on grade should be designed by a structural engineer to be compatible with the site soil conditions.

The calculated theoretical estimated post construction heave potential of the slab may be reduced by placing the slab on a blanket of compacted structural fill. The calculated theoretical estimated post construction heave and associated thickness of compacted structural fill are presented below.

THICKNESS OF COMPACTED	
STRUCTURAL FILL	CALCULATED THEORETICAL ESTIMATED POST
SUPPORTING SLABS	CONSTRUCTION HEAVE (INCHES)
0	5/8 to 1
1 foot	3/8 to 1/2
2 feet	1/4 to 3/8

The calculated post construction heave estimates are theoretical only. Actual heave could vary throughout the site and with time.

The natural soil materials exposed in the areas supporting concrete slab on grade floors should be kept very moist during construction prior to placement of concrete slab on grade floors. This is to help increase the moisture regime of the potentially expansive soils supporting floor slabs and help reduce the expansion potential of the soils. We are available to discuss this concept with you.

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CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING Concrete slab on grade floors should be provided with a positive separation, such as a slip joint, from all bearing members and utility lines to allow their independent movements and to help reduce possible damage that could be caused by movement of soils supporting interior slabs. The floor slab should be constructed as a floating slab. All water and sewer pipe lines should be isolated from the slab. Any equipment placed on the floating floor slab should be constructed with flexible joints to accommodate future movement of the floor slab with respect to the structure. We suggest partitions constructed on the concrete slab on grade floors be provided with a void space above or below the partitions to relieve stresses induced by elevation changes in the floor slab.

Floor slabs should not extend over foundations or foundation members. Floor slabs which extend over foundations or foundation members will likely experience post construction movement as a result of foundation movements. We are available to discuss this with you.

The concrete slabs should be scored or jointed to help define the locations of any cracking. We recommend that joint spacing be designed as outlined in ACI 224R. In addition joints should be scored in the floors a distance of about three (3) feet from, and parallel to, the walls.

It should be noted that when curing fresh concrete experiences shrinkage. This shrinkage almost always results in some cracks in the finished concrete. The actual shrinkage depends on the configuration and strength of the concrete and placing and finishing techniques. The recommended joints discussed above are intended to help define the location of the cracks but should not be interpreted as a solution to shrinkage cracks. The owner must understand that concrete flatwork will contain shrinkage cracks after curing and that all of the shrinkage cracks may not be located in control joints. Some cracking at random locations may occur.

If moisture migration through the concrete slab on grade floors will adversely influence the performance of the floor or floor coverings we suggest that a moisture barrier may be installed beneath the floor slab to help discourage capillary and vapor moisture rise through the floor slab. The moisture barrier may consist of a heavy plastic membrane, six (6) mil or greater, protected on the top and bottom by clean sand. The clean sand will help to protect the plastic from puncture. The layer of clean sand on the top of the plastic membrane will help the overlying concrete slab cure properly. According to the American Concrete Institute,

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proper curing requires at least three (3) to six (6) inches of clean sand between the plastic membrane and the bottom of the concrete. The plastic membrane should be lapped and taped or glued and protected from punctures during construction.

If the moisture content of the slab on grade floor will be influencial to the performance of the future floor coverings then the moisture content of the slab can be measured. We are available to monitor the floor slab moisture content prior to the installation of the floor covering. If this service is needed please contact us during the construction phase of the project.

The Portland Cement Association suggests that welded wire reinforcing mesh is not necessary in concrete slab on grade floors when properly jointed. It is our opinion that welded wire mesh may help improve the integrity of the slab on grade floors. We suggest that concrete slab on grade floors should be reinforced, for geotechnical purposes, with at least 6 x 6 - W2.9 x W2.9 (6 x 6 - 6 x 6) welded wire mesh positioned midway in the slab. The structural engineer should be contacted for structural design of floor slabs.

#### 8.0 COMPACTED STRUCTURAL FILL

Material characteristics desirable for compacted structural fill are discussed in Appendix D. Areas that are over excavated or slightly below grade should be backfilled to grade with properly compacted structural fill or concrete, not loose fill material. If backfilled with other than compacted structural fill material or concrete there will be significant post construction settlement proportional to the amount of loose material.

The natural on site soils are not suitable for use as compacted structural fill material supporting building or structure members because of their clay content and swell potential. The natural onsite soils may be used as compacted fill in areas that will not influence the structure such as to establish general site grade. We are available to discuss this with you.

All areas to receive compacted structural fill should be properly prepared prior to fill placement. The preparation should include removal of all organic or deleterious material. The areas to receive fill material should be compacted after the organic deleterious material has been removed prior to placing the fill material. The area may need to be moisture conditioned for compaction. Any areas of soft, yielding, or low density soil, evidenced during the excavation compaction operation should be removed. The area

excavated to receive fill should be moisture conditioned to wet of optimum moisture content as part of the preparation to receive fill. Fill should be moisture conditioned, placed in thin lifts not exceeding six (6) inches in compacted thickness and compacted to at least ninety (90) percent of maximum dry density as defined by ASTM D1557, modified moisture content-dry density (Proctor) test.

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After placement of the structural fill the surface should not be allowed to dry prior to placing concrete or additional fill material. This may be achieved by periodically moistening the surface of the compacted structural fill as needed to prevent drying of the structural fill. We are available to discuss this with you.

The soil materials exposed in the bottom of the excavation may be moist and may become yielding under construction traffic during construction. It may be necessary to use techniques for placement of fill materials or foundation concrete which limit construction traffic in the very moist soil materials. If yielding should occur during construction it may be necessary to construct a subgrade stabilization fill blanket or similar to provide construction traffic access. We are available to discuss this with you.

We recommend that the geotechnical engineer or his representative be present during the excavation compaction and fill placement operations to observe and test the material.

#### 9.0 LATERAL EARTH PRESSURES

Laterally loaded walls supporting soil, such as basement walls, will act as retaining walls and should be designed as such. Walls that are designed to deflect and mobilize the internal soil strength should be designed for active earth pressures. Walls that are restrained so that they are not able to deflect to mobilize internal soil strength should be designed for at-rest earth pressures. The values for the lateral earth pressures will depend on the type of soil retained by the wall, backfill configuration and construction technique. If the backfill is not compacted the lateral earth pressures will be very different from those noted below.

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Lateral earth pressure (L.E.P.) values are presented below:

	Level Backfill	
	with on-site soils	
	(pounds per cubic foot per foot of depth)	
Active L.E.P.	61	
At-rest L.E.P.	79	
Passive L.E.P.	. 203	

The soil samples tested have measured swell pressure of about 350 to 850 pounds per square foot and the actual swell pressure of the backfill material could be greater. Our experience has shown that the actual swell pressure may be much higher. If the retained soils should become moistened after construction the soil may swell against retaining walls. The walls should be designed to resist the swell pressure of the soil materials if these are used as part of the backfill within the zone of influence. The zone of influence to respect to respect

The above lateral earth pressures may be reduced by overexcavating the wall backfill area beyond the zone of influence and backfilling with crushed rock type material. The zone of influence concept is presented on Figure 5.

The lateral earth pressure design parameters may change significantly if the area near the wall is loaded or surcharged or is sloped. If any of these conditions occur we should be contacted for additional design parameters tailored to the specific site and structure conditions.

Suggested lateral earth pressure (L.E.P.) values if the backfill is overexcavated beyond the zone of influence and backfilled with crushed rock are presented below.

Level Backfill		
with crushed rock material		
(pounds per	cubic foot per	<u>foot of depth)</u>
	30	
	50	•

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Active L.E.P. At-rest L.E.P.

If the area behind a wall retaining soil material is sloped we should be contacted to provide lateral earth pressure design values tailored for the site specific sloped conditions.

Resistant forces used in the design of the walls will depend on the type of soil that tends to resist movement. We suggest that you consider a coefficient of friction of 0.20 for the on site soil.

The lateral earth pressure values provided above, for design purposes, should be treated as equivalent fluid pressures. The lateral earth pressures provided above are for level well drained backfill and do not include surcharge loads or additional loading as a result of compaction of the backfill. Unlevel or non-horizontal backfill either in front of or behind walls retaining soils will significantly influence the lateral earth pressure values. Care should be taken during construction to prevent construction and backfill techniques from overstressing the walls retaining soils. Backfill should be placed in thin lifts and compacted, as discussed in this report to realize the lateral earth pressure values.

Walls retaining soil should be designed and constructed so that hydrostatic pressure will not accumulate or will not affect the integrity of the walls. Drainage plans should include a subdrain behind the wall at the bottom of the backfill to provide positive drainage. Exterior retaining walls should be provided with perimeter drain or weep holes to help provide an outlet for collected water behind the wall. The ground surface adjacent to the wall should be sloped to permit rapid drainage of rain, snow melt and irrigation water away from the wall backfill. Sprinkler systems should not be installed directly adjacent to retaining or basement walls.

### 10.0 DRAIN SYSTEM

A drain system should be provided around building spaces below the finished grade and behind any walls retaining soil. The drain systems are to help reduce the potential for hydrostatic pressure to develop behind retaining walls. A sketch of the drain system is shown on Figure 6.

Subdrains should consist of a three (3) or four (4) inch diameter perforated rigid pipe surrounded by a filter. The filter should consist of a filter fabric or a graded material such as washed concrete sand or pea gravel. If sand or gravel is chosen the pipe should be placed in the middle of about four (4) cubic feet of aggregate per linear foot of pipe. The drain system should be sloped to positive gravity outlets. If the drains are daylighted the drains should be provided with all weather outlets and the outlets should be maintained to prevent them from being plugged or frozen. We do not recommend that the drains be discharged to dry

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CONBULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING well type structures. Dry well structures may tend to fail if the surrounding soil material becomes wetted and swells or if the ground water rises to a elevation of or above the discharge elevation in the dry well. We should be called to observe the soil exposed in the excavations and to verify the details of the drain system.

# 11.0 CRAWL SPACE CONSIDERATIONS

We anticipate that free subsurface water may be shallow enough during wetter seasons to exist in crawl space areas or create very moist conditions in crawl space areas. We suggest that if it is desired to reduce the influence of water in the crawl space area a foundation drain should be installed as discussed above.

The surface of the crawl space may be provided with a layer of about six (6) inches of clean washed gravel or an impervious geotextile fabric to reduce the inconvenience of very moist or muddy crawl space conditions if these should occur. The crawl space should be adequately vented to reduce the potential for humidity to accumulate in the crawl space area.

#### 12.0 BACKFILL

Backfill areas and utility trench backfill should be constructed such that the backfill will not settle after completion of construction, and that the backfill is relatively impervious for the upper few feet. The backfill material should be free of trash and other deleterious material. It should be moisture conditioned and compacted to at least ninety (90) percent relative compaction using a modified moisture content-dry density (Proctor) relationship test (ASTM D1557). Only enough water should be added to the backfill material to allow proper compaction. Do not pond, puddle, float or jet backfill soil materials.

Improperly placed backfill material will allow water migration more easily than properly recompacted fill. Improperly compacted fill is likely to settle, creating a low surface area which further enhances water accumulation and subsequent migration to the foundation soils.

Improperly placed backfill will allow water to migrate along the utility trench or backfill areas to gain access to the subgrade support soils with subsequent mobilization of the swell or settlement mechanism resulting in movement of the supported structure.



Moisture migration could also result in the inconvenience of free water in the crawl space.

Backfill placement techniques should not jeopardize the integrity of existing structural members. We recommend recently constructed concrete structural members be appropriately cured prior to adjacent backfilling.

# 13.0 SURFACE DRAINAGE

The foundation soil materials should be prevented from becoming wetted after construction. Post construction wetting of the soil support soil materials can initiate swell potential or settlement potential as well as decrease the bearing capacity of the support soil materials. Protecting the foundation from wetting can be aided by providing positive and rapid drainage of surface water away from the structure.

The final grade of the ground surface adjacent to the structure should have a well defined slope away from the foundation walls on The ability to establish proper site surface drainage all sides. away from the structure foundation system may be influenced by the existing topography, existing structure elevations and the grades and elevations of the ground surface adjacent to the proposed structure. We suggest where possible a minimum fall of the surface grade away from the structure be that which will accommodate other project grading constraints and provide rapid drainage of surface water away from the structure. If there are no other project constraints we suggest a fall of about one (1) foot in the first ten (10) feet away from the structure foundation. Appropriate surface drainage should be maintained for the life of the project. Future landscaping plans should include care and attention to the potential influence on the long term performance of the foundation and/or crawl space if improper surface drainage is not maintained.

Roof runoff should be collected in appropriate roof drainage collection devices, such as eve gutters or similar, and directed to discharge in appropriate roof drainage systems. Roof runoff should not be allowed to fall on or near foundations, backfill areas, flatwork, paved areas or other structural members. Downspouts and faucets should discharge onto splash blocks that extend beyond the limits of the backfill areas. Splash blocks should be sloped away from the foundation walls. Snow storage areas should not be located next to the structure. Proper surface drainage should be maintained from the onset of construction through the proposed project life.

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If significant water concentration and velocity occurs erosion may occur. Erosion protection may be considered to reduce soil erosion potential. A landscape specialist or civil engineer should be consulted for surface drainage design, erosion protection and landscaping considerations.

## 14.0 LANDSCAPE IRRIGATION

An irrigation system should not be installed next to foundations, concrete flatwork or paved areas. If an irrigation system is installed, the system should be placed so that the irrigation water does not fall or flow near foundations, flatwork or pavements. The amount of irrigation water should be controlled.

We recommend that wherever possible xeriscaping concepts be used. Generally, the xeriscape includes planning and design concepts which will reduce irrigation water. The reason we suggest xeriscape concepts for landscaping is because the reduced landscape water will decrease the potential for water to influence the long term performance of the structure foundations and flatwork. Many publications are available which discuss xeriscape. Colorado State University Cooperative Extension has several useful publications and most landscape architects are familiar with the subject. Montrose Botanical Society has a Botanical Garden, 1800 Pavilion Drive, south of Niagara Drive, Montrose, Colorado, that has a very good exhibit with examples and information regarding successful xeriscape concepts.

Due to the expansive nature of the soils tested we suggest that the owner consider landscaping with only native vegetation which requires only natural precipitation to survive. Additional irrigation water will greatly increase the likelihood of damage to the structure as a result of volume changes of the material supporting the structure.

Impervious geotextile material may be incorporated into the project landscape design to reduce the potential for irrigation water to influence the foundation soils.

## 15.0 SOIL CORROSIVITY TO CONCRETE

Our scope of services did not include performing chemical tests to help identify the potential for soil corrosivity to concrete.

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It has been our experience that much of the soils in the area contain sufficient water soluble sulfate content to be corrosive to concrete. We suggest sulfate resistant cement be used in concrete which will be in contact with the on-site soils. American Concrete Institute recommendations for sulfate resistant cement based on the water soluble sulfate content should be used.

If it is desirable by you or your design team to help identify the potential for corrosivity to concrete at the proposed development site we suggest that site specific chemical tests be performed.

#### 16.0 RADON CONSIDERATIONS

Our experience indicates that many of the soils in western Colorado produce small quantities of radon gas. Radon gas may tend to collect in closed poorly ventilated structures. Radon considerations are presented in Appendix D.

## 17.0 POST DESIGN CONSIDERATIONS

The project geotechnical engineer should be consulted during construction of the project to observe site conditions and open excavations during construction and to provide materials testing of soil and concrete.

This subsurface soil and foundation condition study is based on limited sampling; therefore, it is necessary to assume that the subsurface conditions do not vary greatly from those encountered in the field study. Our experience has shown that significant variations are likely to exist and can become apparent only during additional on site excavation. For this reason, and because of our familiarity with the project, Lambert and Associates should be retained to observe foundation excavations prior to foundation construction, to observe the geotechnical engineering aspects of the construction and to be available in the event any unusual or The cost of the geotechunexpected conditions are encountered. nical engineering observations and material testing during construction or additional engineering consultation is not included in the fee for this report. We recommend that your construction budget include site visits early during construction schedule for the project geotechnical engineer to observe foundation excavations and for additional site visits to test compacted soil.

We recommend that the observation and material testing services during construction be retained by the owner or the owner's engineer or architect, not the contractor, to maintain third party credibility. We are experienced and available to provide material testing services. We have included a copy of a report prepared by Van Gilder Insurance which discusses testing services during construction. It is our opinion that the owner, architect and engineer be familiar with the information. If you have any questions regarding this concept please contact us.

We suggest that your construction plans and schedule include provisions for geotechnical engineering observations and material testing during construction and your budget reflect these provisions.

It is difficult to predict if unexpected subsurface conditions will be encountered during construction. Since such conditions may be found, we suggest that the owner and the contractor make provisions in their budget and construction schedule to accommodate unexpected subsurface conditions.

#### 17.1 Structural Fill Quality

It is our understanding that the proposed development may include compacted structural fill. The quality of compacted structural fill will depend on the type of material used as structural fill, fill lift thickness, fill moisture condition and compactive effort used during construction of the structural fill. Engineering observation and testing of structural fill is essential as an aid to safeguard the quality and performance of the structural fill.

Fill materials placed on sloped areas require special placement techniques that key the fill materials unto the underlying support materials. These techniques include a toe key at the toe contact of the slope fill and benching the fill/natural contact up the slope into the competent natural material. The placing technique will also include subdrains at several locations to intercept subsurface water and route it away from the fill materials. We are available to discuss these techniques with you and your earthwork contractor.

Testing of the structural fill normally includes tests to determine the grain size distribution, swell potential and moisturedensity relationship of the fill material to verify the material suitability for use as structural fill. As the material is placed the in-place moisture content and dry density are tested to indicate the relative compaction of the placed structural fill. We

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recommend that your budget include provisions for observation and testing of structural fill during construction.

Testing of the compacted fill material should include tests of the moisture content and density of the fill material placed and compacted prior to placement of additional fill material. We suggest that a reasonable number of density tests of the fill material can best be determined on a site, material and construction basis although as a guideline we suggest one test per about each 300 to 500 square feet of each lift of fill material. Utility trench backfill may need to be tested about every 100 linear feet of lift of backfill.

17.2 Concrete Quality

It is our understanding current plans include reinforced structural concrete for foundations and walls and may include concrete slabs on grade and pavement. To insure concrete members perform as intended, the structural engineer should be consulted and should address factors such as design loadings, anticipated movement and deformations.

The quality of concrete is influenced by proportioning of the concrete mix, placement, consolidation and curing. Desirable qualities of concrete include compressive strength, water tightness and resistance to weathering. Engineering observations and testing of concrete during construction is essential as an aid to safeguard the quality of the completed concrete.

Testing of the concrete is normally performed to determine compressive strength, entrained air content, slump and temperature. We recommend that your budget include provisions for testing of concrete during construction. We suggest that a reasonable frequency of concrete tests can best be determined on a site, materials and construction specific basis although as a guideline American Concrete Institute, ACI, suggests one test per about each fifty (50) cubic yards or portion thereof per day of concrete material placed.

#### 18.0 LIMITATIONS

It is the owner's and the owner's representatives' responsibility to read this report and become familiar with the recommendations and suggestions presented. We should be contacted if any questions arise concerning the geotechnical engineering aspects of this project as a result of the information presented in this report.

The scope of services for this study does not include either specifically or by implication any environmental or biological (such as mold, fungi, bacteria, etc.) Assessment of the site or identification or prevention of pollutants, hazardous materials or conditions. If the owner is concerned about the potential for such contamination or pollution, other studies should be performed.

The proposed building site contains soil materials with significant swell potential. For this reason we suggest that you consult, as suggested by Senate Bill 13, a copy of Colorado Geological Survey Special Publication 11, "Home Construction on Shrinking and Swelling Soils", and a copy of CGS Special Publication 14, "Home Landscaping and Maintenance on Swelling Soils". We are available to discuss this with you.

The recommendations outlined above are based on our understanding of the currently proposed construction. We are available to discuss the details of our recommendations with you and revise them where necessary. This geotechnical engineering report is based on the proposed site development and scope of services as provided to us by Mr. Tate Rogers, on the type of construction planned, existing site conditions at the time of the field study, and on our findings. Should the planned, proposed use of the site be altered, Lambert and Associates must be contacted, since any such changes may make our suggestions and recommendations inappropriate. This report should be used ONLY for the planned development for which this report was tailored and prepared, and ONLY to meet information needs of the owner and the owner's representatives. In the event that any changes in the future design or location of the building are planned, the conclusions and recommendations contained in this report shall not be considered valid unless the changes are reviewed and conclusions of this report are modified or verified in writing. It is recommended that the geotechnical engineer be provided the opportunity for a general review of the final project design and specifications in order that the earthwork and foundation recommendations may be properly interpreted and implemented in the design and specifications.

This report does not provide earthwork specifications. We can provide guidelines for your use in preparing project specific earthwork specifications. Please contact us if you need these for your project.

This report presents both suggestions and recommendations. The suggestions are presented so that the owner and the owner's representatives may compare the cost to the potential risk or benefit for the suggested procedures.

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This report contains suggestions and recommendations which are intended to work in concert with recommendations provided by the other design team members to provide somewhat predictable foundation performance. If any of the recommendations are not included in the design and construction of the project it may result in unpredictable foundation performance or performance different than anticipated. We recommend that we be requested to provide geotechnical engineering observation and materials testing during the construction phase of the project as discussed in this report. The purpose for on site observation and testing by us during construction is to help provide continuity of service from the planning of the project through the construction of the project. This service will also allow us to revise our recommendations if conditions occur or are discovered during construction that were not evidenced during the initial study. We suggest that the owner and the contractor make provisions in their construction budget and construction schedule to accommodate unexpected subsurface conditions.

We represent that our services were performed within the limits prescribed by you and with the usual thoroughness and competence of the current accepted practice of the geotechnical engineering profession in the area. No warranty or representation either expressed or implied is included or intended in this report or our contract. We are available to discuss our findings with you. If you have any questions please contact us. The supporting data for this report is included in the accompanying figures and appendices.

This report is a product of Lambert and Associates. Excerpts from this report used in other documents may not convey the intent or proper concepts when taken out of context, or they may be misinterpreted or used incorrectly. Reproduction, in part or whole, of this document without prior written consent of Lambert and Associates is prohibited.

This report and information presented can be used only for this site, for this proposed development, and only for the client for whom our work was performed. Any other circumstances are not appropriate applications of this information. Other development plans will require project specific review by us.

We have enclosed a copy of a brief discussion about geotechnical engineering reports published by Association of Soil and Foundation Engineers for your reference.

Please call when further consultation or observations and tests are required.



If you have any questions concerning this report or if we may be of further assistance, please contact us.

Respectfully submitted LAMBERT AND ASSOCATINGSEC Daniel R. Lamber <sup>SP</sup>S琴?" Ŕ Geotechnical Engineer DRL/nr

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# THE PROFESSIONAL LIABILITY PERSPECTIVE

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## WHO HIRES THE TESTING LABORATORY?

It is one of those relatively small details in the overall scheme of things. Independent testing may be required by local building codes, or it may be insisted upon by lenders. Additional testing can usually be ordered by the design team during construction. Whatever the source of the requirement, many owners perceive it to be an unnecessary burden—an additional cost imposed principally for someone else's benefit.

What does this have to do with you? You may be the only one in a position to influence the use of testing and inspection services so they become more, rather than less likely to contribute to a successful outcome. There seems to be an almost irresistible inclination on the part of some owners to cast aside their potential value to the project in favor of the administrative and financial convenience of placing responsibility for their delivery into the hands of the general contractor.

Resist this inclination where you can. It is not in your client's best interests, and it is certainly not in yours. There are important issues of quality and even more important issues of life safety at stake. In the complex environment of today's construction arena, it makes very little sense for either of you to give up your control of quality control. Yet it happens altogether too often.

#### What's Behind this Misadventure?

The culprit seems to be the Federal Government. In the 1960's, someone came up with the idea that millions could be saved by eliminating the jobs of Federal workers engaged in construction inspection. The procurement model used to support this stroke of genius was the manufacturing segment of the economy, where producers of goods purchased by the Government had been required for years to conduct their own quality assurance programs. The result was a trendy new concept in Federal construction known as Contractor Quality Control (CQC).

It was a dumb idea. Costs were simply shifted from the Federal payroll to capital improvement budgets. Government contractors, selected on the basis of the lowest bid, were handed resources to assure the quality of their own performance. Some did so; many did not. All found themselves caught up in an impossible conflict between the demands of time and cost, on one hand, and the dictates of quality, on the other.

CQC was opposed by the Associated General Contractors of America, by independent testing laboratories, by the design professions, and by those charged with front-line responsibility for quality control in the Federal Agencies. Eventually, even the General Accounting Office came to the conclusion that it ought to be abandoned. But, once set in motion and fueled by the pervasive influence of the Federal Government, the idea spread-first to state and local governments; finally, to the private sector.

Why would the private sector embrace such an ill-conceived notion? Because so many

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owners view testing and inspection as an undertaking which simply duplicates something they are entitled to in any event. They are confident they will be protected by contract documents which cover every detail and contingency. They look to local building inspectors to assure compliance with codes. And they fully expect the design team to fulfill its obligation to safeguard the quality of the work.

## A Fox in the Henhouse

If testing is perceived as little more than an 'unnecessary, but unavoidable expense, why not make the general contractor responsible for controlling the cost? It may produce a savings, and it certainly eliminates an adminstrative headache. If contractual obligations dealing with the project schedule and budget can be enforced, surely those governing quality can be enforced, as well. Possibly so, but who is going to do it?

Some testing consultants will not accept CQC work. The reasons they give come from firsthand experience. They include: 1) inadequate to barely adequate scope, 2) selection based on the lowest bid; 3) nonnegotiable contract terms inappropriate to the delivery of a professional service; 4) intimidation of inspectors by field supervisors; and 5) suppression of low or failing test results. This ought to be fair warning to any owner.

## Keeping Both Hands on the Wheel

The largest part of the problem, from your point of view, is one of artful persuasion. If you cannot convince your client of the value of independent testing and inspection, no one can. Yet, if you do not, you are likely to find yourself responsible for an assurance of quality you are in no position to deliver. How can you keep quality control where it belongs and, in the process, prevent the owner from compromising his or her interests in the project as well as yours? Consider these suggestions:

1. Put the issue on an early agenda. It needs your attention. Anticipate the owner's inclination to avoid dealing with testing and inspection, and explain its importance to the success of the project. Persist, if you can, until your client agrees to hire the testing laboratory independently and to establish an adequate budget to meet the anticipated costs. A testing consultant hired by the owner cannot be fired by the general contractor for producing less than favorable results.

2. <u>Tailor the testing requirements carefully</u>. Scissors and paste can be your very worst enemies. Specify what the job requires, retain control of selection and hiring, make certain the contractor's responsibilities for notification for scheduling purposes are clear, and require that copies of all reports be distributed by the laboratory directly to you.

3. Insist on a preconstruction testing conference. It can be an essential element of effective coordination. Include the owner, the general contractor, major subcontractors, the testing consultant, and the design team. Review your requirements, the procedures to be followed, and the responsibilities of each of the parties. Have the testing consultant prepare a conference memorandum for distribution to all participants.

4. Monitor tests and inspections closely. Make certain your field representative is present during tests and inspections, so that deficiencies in procedures or results can be reported and acted upon quickly. Scale back testing if it becomes clear it is appropriate to do so under the circumstances; do not hesitate to order additional tests if they are required.

5. Finally, keep your client informed. Without your help, he or she is not likely to understand what the test results mean, nor will your actions in response to them make much sense. If additional testing is called for, explain why. Remember, it is an unexpected and, possibly, unbudgeted additional cost for which you will need to pave the way. In this sense, independent testing and inspection can serve an important, secondary purpose. You might view it as a communications resource. Use it in this way, and it just may yield unexpected dividends.

# IMPORTANT INFORMATION ABOUT YOUR GEOTECHNICAL ENGINEERING REPORT

More construction problems are caused by site subsurface conditions than any other factor. As troublesome as subsurface problems can be, their frequency and extent have been lessened considerably in recent years, due in large measure to programs and publications of ASFE/ The Association of Engineering Firms Practicing in the Geosciences.

The following suggestions and observations are offered to help you reduce the geotechnical-related delays, cost-overruns and other costly headaches that can occur during a construction project.

# A GEOTECHNICAL ENGINEERING REPORT IS BASED ON A UNIQUE SET OF PROJECT-SPECIFIC FACTORS

A geotechnical engineering report is based on a subsurface exploration plan designed to incorporate a unique set of project-specific factors. These typically include: the general nature of the structure involved, its size and configuration; the location of the structure on the site and its orientation; physical concomitants such as access roads, parking lots, and underground utilities, and the level of additional risk which the client assumed by virtue of limitations imposed upon the exploratory program. To help avoid costly problems, consult the geotechnical engineer to determine how any factors which change subsequent to the date of the report may affect its recommendations.

Unless your consulting geotechnical engineer indicates otherwise, your geotechnical engineering report should not be used:

- When the nature of the proposed structure is changed, for example, if an office building will be erected instead of a parking garage, or if a refrigerated warehouse will be built instead of an unrefrigerated one;
- when the size or configuration of the proposed structure is altered;
- when the location or orientation of the proposed structure is modified;
- when there is a change of ownership, or
- for application to an adjacent site.

Geotechnical engineers cannot accept responsibility for problems which may develop if they are not consulted after factors considered in their report's development have changed.

# MOST GEOTECHNICAL "FINDINGS" ARE PROFESSIONAL ESTIMATES

Site exploration identifies actual subsurface conditions only at those points where samples are taken, when they are taken. Data derived through sampling and subsequent laboratory testing are extrapolated by geo-

technical engineers who then render an opinion about overall subsurface conditions, their likely reaction to proposed construction activity, and appropriate foundation design. Even under optimal circumstances actual conditions may differ from those inferred to exist, because no geotechnical engineer, no matter how qualified, and no subsurface exploration program, no matter how comprehensive, can reveal what is hidden by earth, rock and time. The actual interface between materials may be far more gradual or abrupt than a report indicates. Actual conditions in areas not sampled may differ from predictions. Nothing can be done to prevent the unanticipated, but steps can be taken to help minimize their impact. For this reason, most experienced owners retain their geotechnical consultants through the construction stage, to identify variances, conduct additional tests which may be needed, and to recommend solutions to problems encountered on site.

# SUBSURFACE CONDITIONS CAN CHANGE

Subsurface conditions may be modified by constantlychanging natural forces. Because a geotechnical engineering report is based on conditions which existed at the time of subsurface exploration, construction decisions should not be based on a geotechnical engineering report whose adequacy may have been affected by time. Speak with the geotechnical consultant to learn if additional tests are advisable before construction starts.

Construction operations at or adjacent to the site and natural events such as floods, earthquakes or groundwater fluctuations may also affect subsurface conditions and, thus, the continuing adequacy of a geotechnical report. The geotechnical engineer should be kept apprised of any such events, and should be consulted to determine if additional tests are necessary.

# GEOTECHNICAL SERVICES ARE PERFORMED FOR SPECIFIC PURPOSES AND PERSONS

Geotechnical engineers' reports are prepared to meet the specific needs of specific individuals. A report prepared for a consulting civil engineer may not be adequate for a construction contractor, or even some other consulting civil engineer. Unless indicated otherwise, this report was prepared expressly for the client involved and expressly for purposes indicated by the dient. Use by any other persons for any purpose, or by the client for a different purpose, may result in problems. No individual other than the client should apply this report for its intended purpose without first conferring with the geotechnical engineer. No person should apply this report for any purpose other than that originally contemplated without first conferring with the geotechnical engineer.

# A GEOTECHNICAL ENGINEERING **REPORT IS SUBJECT TO** MISINTERPRETATION

Costly problems can occur when other design professionals develop their plans based on misinterpretations of a geotechnical engineering report. To help avoid these problems, the geotechnical engineer should be retained to work with other appropriate design professionals to explain relevant geotechnical findings and to review the adequacy of their plans and specifications relative to geotechnical issues.

# BORING LOGS SHOULD NOT BE SEPARATED FROM THE ENGINEERING REPORT

Final boring logs are developed by geotechnical engineers based upon their interpretation of field logs (assembled by site personnel) and laboratory evaluation of field samples. Only final boring logs customarily are included in geotechnical engineering reports. These logs should not under any circumstances be redrawn for inclusion in architectural or other design drawings, because drafters may commit errors or omissions in the transfer process. Although photographic reproduction eliminates this problem, it does nothing to minimize the possibility of contractors misinterpreting the logs during bid preparation. When this occurs, delays, disputes and unanticipated costs are the all-too-frequent result.

To minimize the likelihood of boring log misinterpretation, give contractors ready access to the complete geotechnical engineering report prepared or authorized for their use. Those who do not provide such access may proceed under the mistaken impression that simply disclaiming responsibility for the accuracy of subsurface information always insulates them from attendant liability. Providing the best available information to contractors helps prevent costly construction problems and the adversarial attitudes which aggravate them to disproportionate scale.

# **READ RESPONSIBILITY** CLAUSES CLOSELY

Because geotechnical engineering is based extensively on judgment and opinion, it is far less exact than other design disciplines. This situation has resulted in wholly unwarranted daims being lodged against geotechnical consultants. To help prevent this problem, geotechnical engineers have developed model clauses for use in written transmittals. These are not exculpatory clauses designed to foist geotechnical engineers' liabilities onto someone else. Rather, they are definitive clauses which Identify where geotechnical engineers' responsibilities begin and end. Their use helps all parties involved recognize their individual responsibilities and take appropriate action. Some of these definitive dauses are likely to appear in your geotechnical engineering report, and you are encouraged to read them dosely. Your geotechnical engineer will be pleased to give full and frank answers to your questions.

# OTHER STEPS YOU CAN TAKE TO REDUCE RISK

Your consulting geotechnical engineer will be pleased to discuss other techniques which can be employed to mitigate risk. In addition, ASFE has developed a variety of materials which may be beneficial. Contact ASFE for a complimentary copy of its publications directory.

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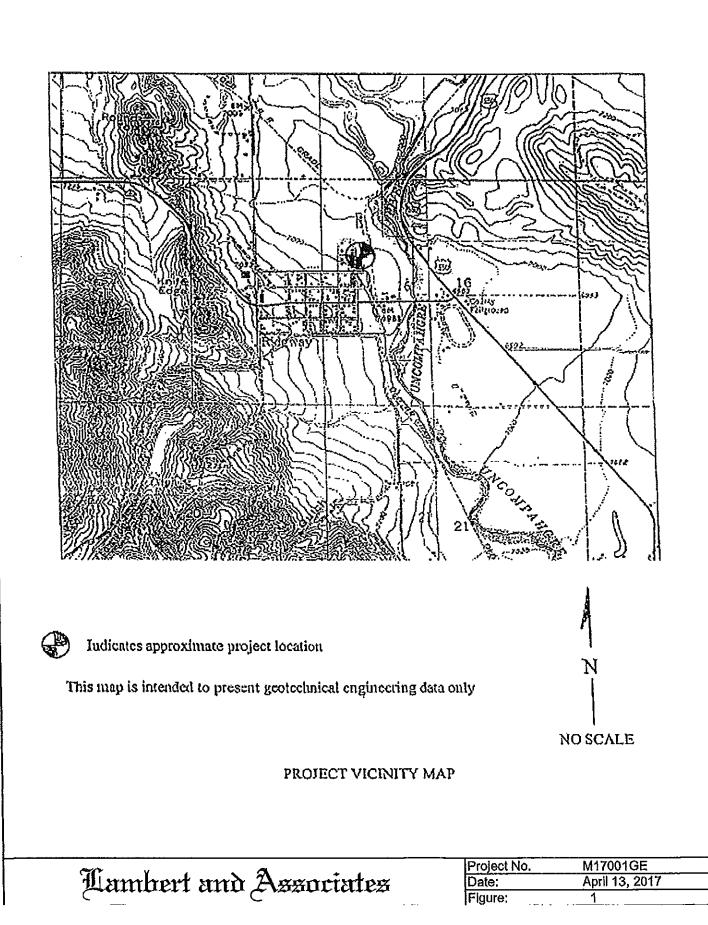
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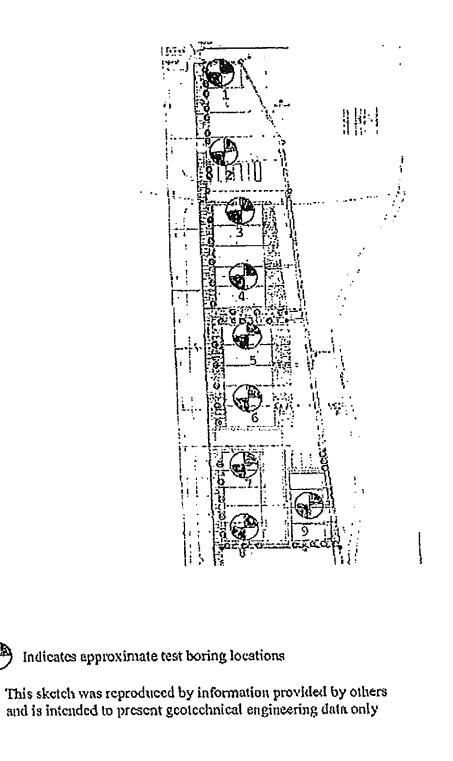
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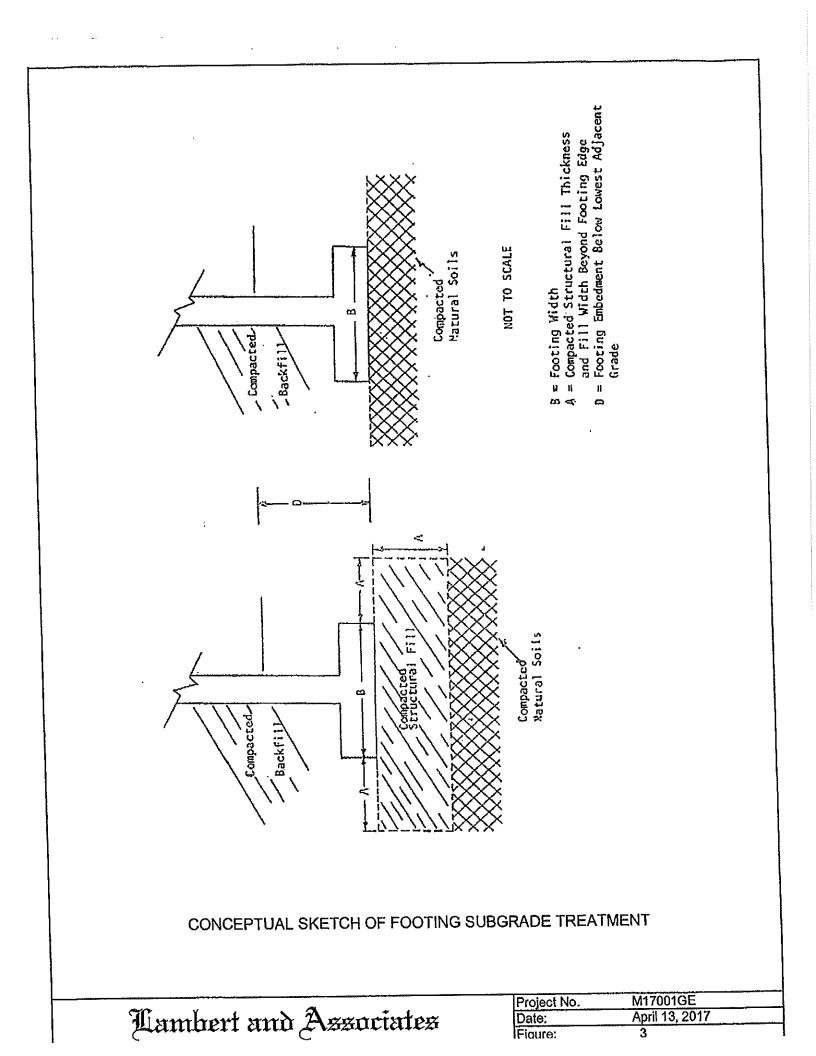


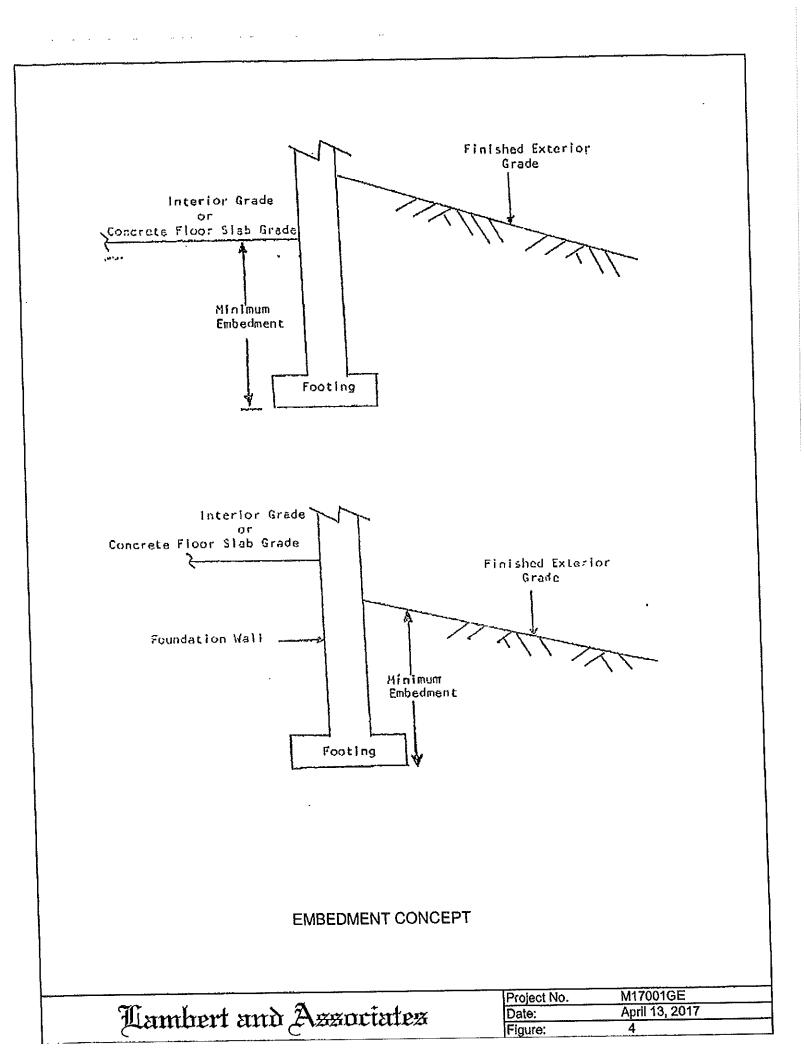
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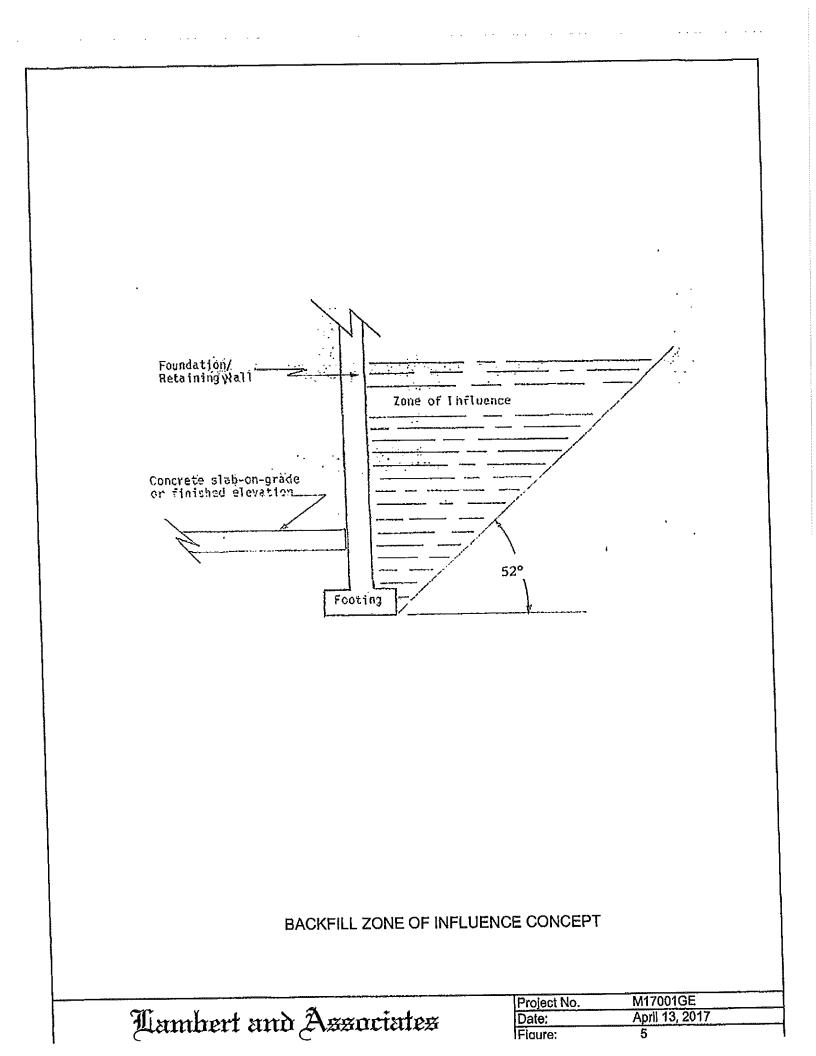
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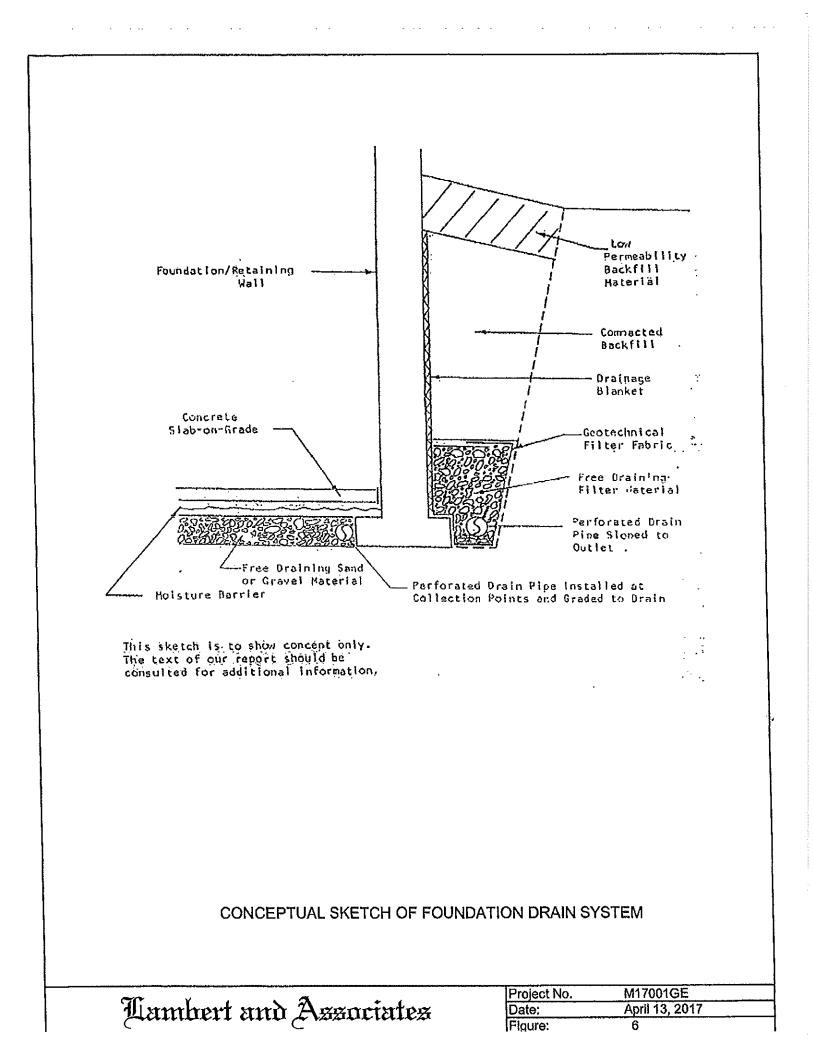
# TEST BORING LOCATION SKETCH

	Project No.	M17001GE
Lambert and Associates	Date:	April 13, 2017
	Figure:	2









#### APPENDIX A

The field study was performed on January 27, 31 and March 14, 2017. The field study consisted of logging and sampling the soils encountered in nine (9) small diameter test borings. The approximate locations of the test borings are shown on Figure 2. The log of the soils encountered in the test borings are presented on Figures A2 through A10.

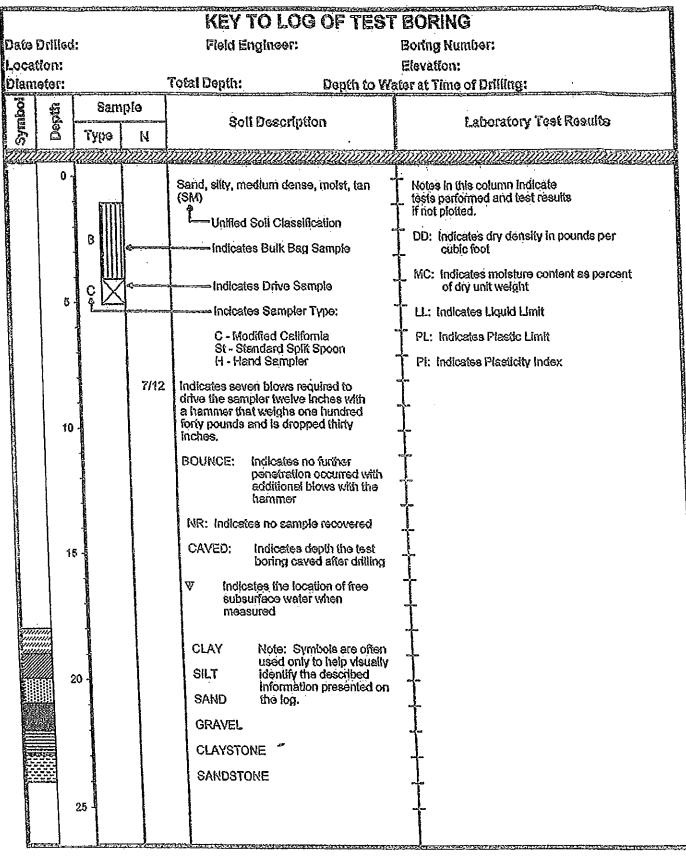
The test borings were logged by Lambert and Associates and samples of significant soil types were obtained. The samples were obtained from the test borings using a Modified California Barrel sampler and bulk disturbed samples were obtained. Penetration blow counts were determined using a 140 pound hammer free falling 30 inches. The blow counts are presented on the logs of the test borings such as 13/6 where 13 blows with the hammer were required to drive the sampler 6 inches.

The engineering field description and major soil classification are based on our interpretation of the materials encountered and are prepared according to the Unified Soil Classification System, ASTM D2488. The description and classification which appear on the test boring log is intended to be that which most accurately describes a given interval of the test boring (frequently an interval of several feet). Occasionally discrepancies occur in the Unified Soil Classification System nomenclature between an interval of the soil log and a particular sample in the interval. For example, an interval on the test boring log may be identified as a silty sand (SM) while one sample taken within the interval may have individually been identified as a sandy silt (ML). This discrepancy is frequently allowed to remain to emphasize the occurrence of local textural variations in the interval.

The stratification lines presented on the logs are intended to present our interpretation of the subsurface conditions encountered in the test boring. The stratification lines represent the approximate boundary between soil types and the transition may be gradual.

A1

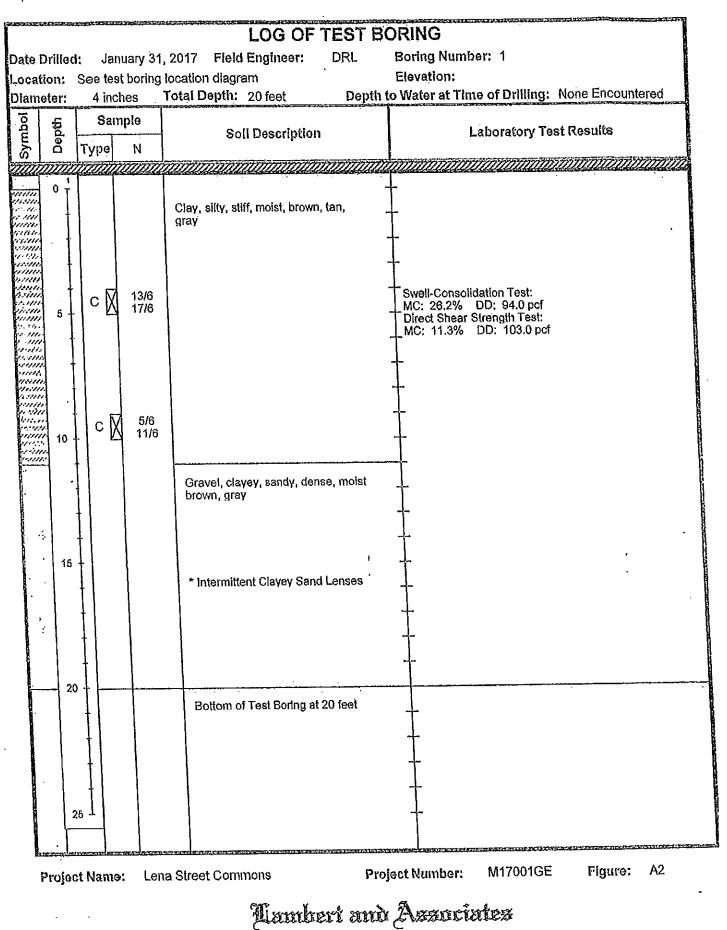
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Project Name: Lena Street Commons

Project Number: M17001GE

ASSIGNMENT SITUR ASSIGNERS AND MATERIAL TESTING



Date E	)rillec	l: Jai	nuary 31	LÓG OF TÉST , 2017 Field Engineer: DRL	BORING Boring Number: 2
Locati	lon:	See tes	st boring	location diagram	Elevation:
Diame		4 inc		Total Depth: 20 feet Dep	th to Water at Time of Drilling: None Encountered
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5. 2000		Турө 777777777			
				Clay, slity, stiff, moist, brown, tan, gray	
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		25 1		Bottom of Test Boring at 20 feet	
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Date I	) Tilleo	a <del>≈n≃</del> ≴: Ji	anuary 31	LOG OF TEST , 2017 Field Engineer: DRL	BORING Boring Number: 3			
Locat	lon:	Seé t	est boring	location diagram	Elevation: th to Water at Time of Drilling: None Encountered			
Diamo loquix	ter: Depth	Sa	ample	Soll Description	Laboratory Test Results			
ि तामग्र		Type Tinnin	•					
	10		12/6 8/6	Clay, silty, stiff, moist, brown, tan, gray Gravel, clayey, sandy, dense, moist brown, gray	Swell-Consolidation Test: MC: 12.8% DD: 91.0 pcf			
	- 15	20		Bottom of Test Boring at 15 feet				
	Proje	ect Na	me; Le	na Street Commons	Project Number: M17001GE Figure: A4			
	Tambert and Associates							

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Date D Locati Diame	on:	See test boring	location diagram		
Symbol	Depth	Sample Type N	Soil Description	Laboratory Test Results	
	5		Clay, silty, stiff, moist, brown, tan, gray * Increased Moisture Observed Gravel, clayey, sandy, dense, t brown, gray		
		20	Bottom of Test Boring at 15 fe	Project Number: M17001GE Figure: A5	
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CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

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D-4-	LOG OF TEST BORING Date Drilled: January 27, 2017 Field Engineer: DRL Boring Number: 5							
			st boring	location diagram	Elevation:			
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ି ନ ଆଧା	 100000	Type <i>1111111</i>	א <i>עווווווווו</i> ו					
				Clay, silty, stiff, moist, brown, tan, gray				
	5-	c	10/6 14/6	* Increased Moisture Observed	Swell-Consolidation Test: MC: 10.9% DD: 95.0 pcf Direct Shear Strength Test: MC: 8.8% DD: 102.0 pcf			
	2			Gravel, clayey, sandy, dense, moist brown, gray				
	15			Bottom of Test Boring at 15 feet				
	Proje	ct Nam	e: Ler	a Street Commons	Project Number: M17001GE Figure: A6			

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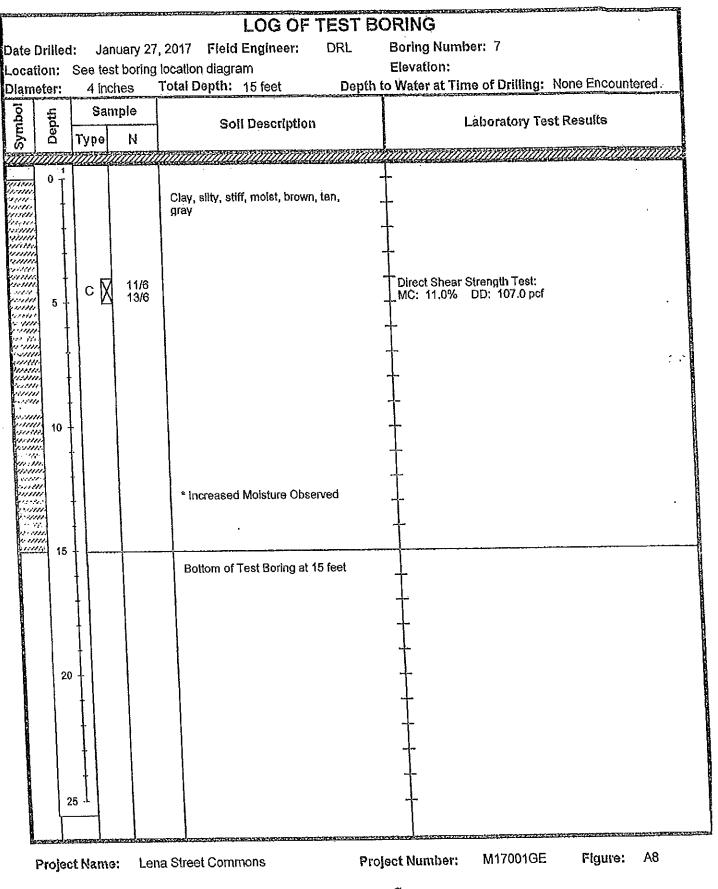
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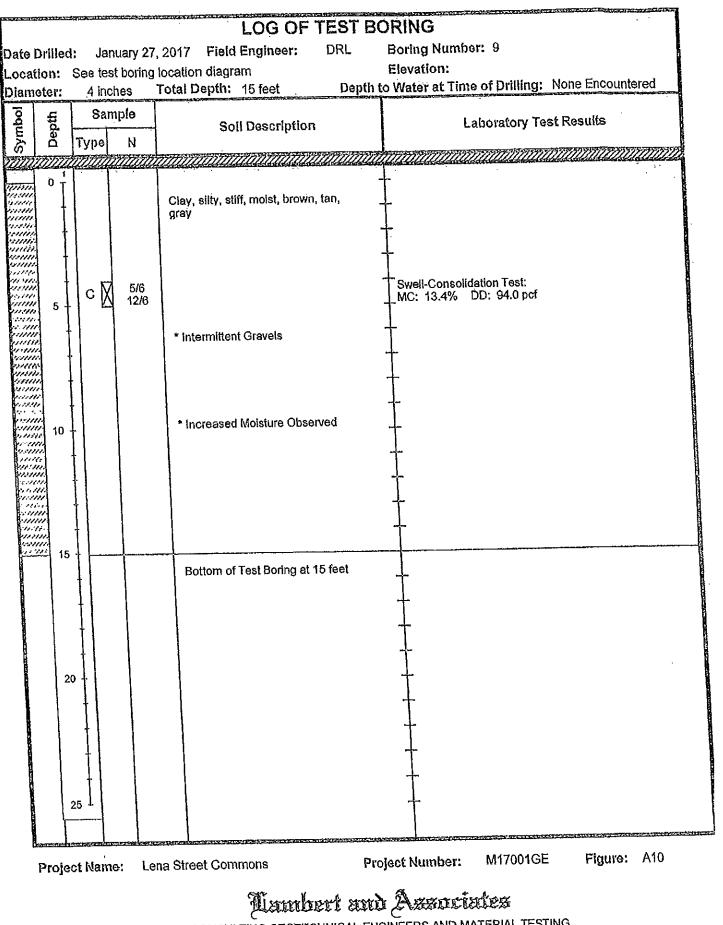
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LOG OF TEST BORING							
Date I	Drillec	ł: Ma	arch 14, 2	2017 Field Engineer: DRL	Boring Number: 8		
		See te	st boring	location diagram	Elevation: epth to Water at Time of Drilling: None Encountered		
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Symbol	Depth	[	mple	Soil Description	Laboratory Test Results		
6	0 7777777	Type	N MMMM			7	
		21421/23	<del>4.332.00</del>	Clay, silty, stiff, moist, brown, tan, gray			
	5			* Intermittent Gravels			
				* Increased Moisture Observed		ידי האב הדרוב ושימו היו היותי שהתיוויהים ביו היו יודעי ברושיין עד ביו מישיע לידים (אותה ביו ביו ביו ביו ביו אות מונה ביו	
	15	20		Bottom of Test Boring at 15 feet			
			*****			( <del>p.ap</del> c.22	
	Proj	ect Nan	no: Le	na Street Commons	Project Number: M17001GE Figure: A9		

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#### APPENDIX B

The laboratory study consisted of performing:

- . Moisture content and dry density tests,
- . Swell-consolidation tests,
- . Direct Shear Strength tests, and

It should be noted that samples obtained using a drive type sleeve sampler may experience some disturbance during the sampling operations. The test results obtained using these samples are used only as indicators of the in situ soil characteristics.

#### TESTING

Moisture Content and Dry Density

Moisture content and dry density were determined for each sample tested of the samples obtained. The moisture content was determined according to ASTM Test Method D2216 by obtaining the moisture sample from the drive sleeve. The dry density of the sample was determined by using the wet weight of the entire sample tested. The results of the moisture and dry density determinations are presented on the logs of borings, Figures A2 through A10.

#### Swell Tests

Loaded swell tests were performed on drive samples obtained during the field study. These tests are performed in general accordance with ASTM Test Method D2435 to the extent that the same equipment and sample dimensions used for consolidation testing are used for the determination of expansion. A sample is subjected to static surcharge, water is introduced to produce saturation, and volume change is measured as in ASTM Test Method D2435. Results are reported as percent change in sample height.

#### Consolidation Tests

One dimensional consolidation properties of drive samples were evaluated according to the provisions of ASTM Test Method D2435. Water was added in all cases during the test. Exclusive of special readings during consolidation rate tests, readings during an increment of load were taken regularly until the change in

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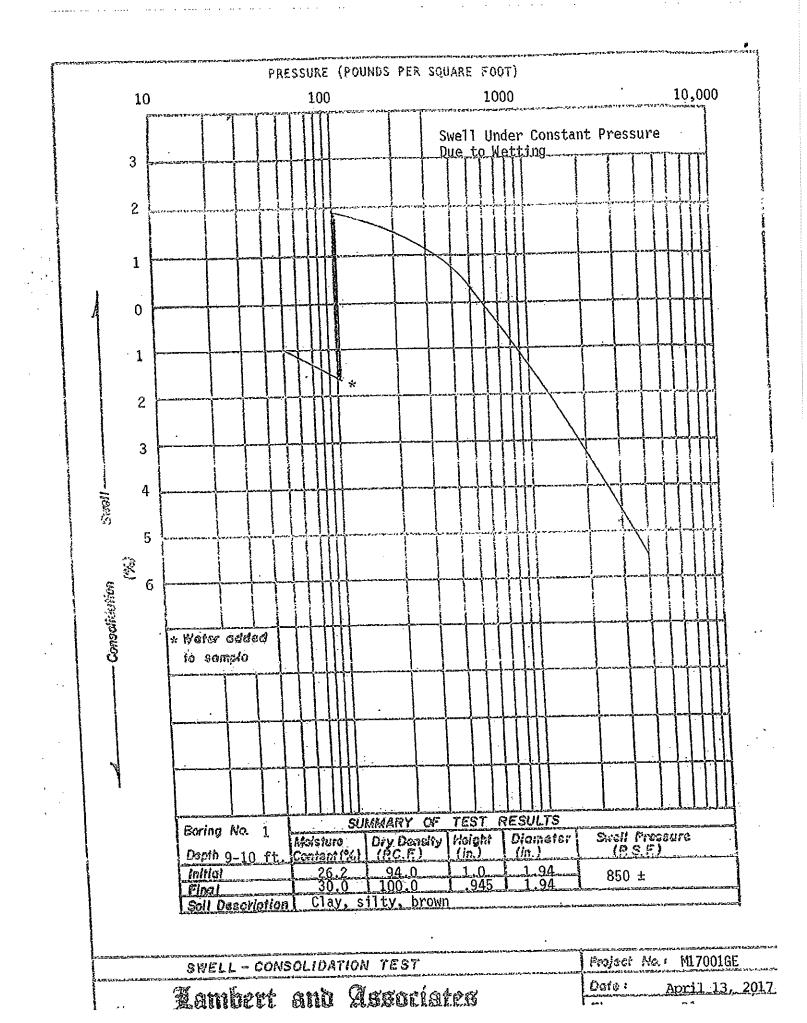
sample height was less than 0.001 inch over a two hour period. The results of the swell-consolidation load tests are summarized on Figures B1 through B4, swell-consolidation tests.

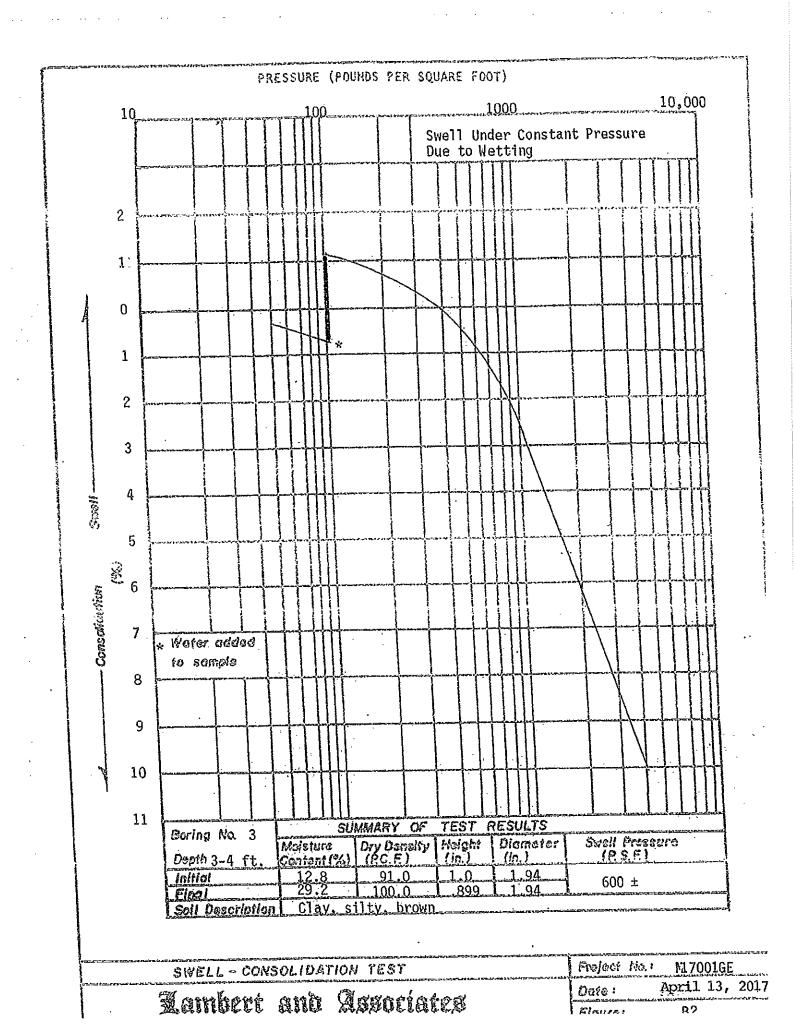
It should be noted that the graphic presentation of consolidation data is a presentation of volume change with change in axial load. As a result, both expansion and consolidation can be illustrated.

Direct Shear Strength Tests

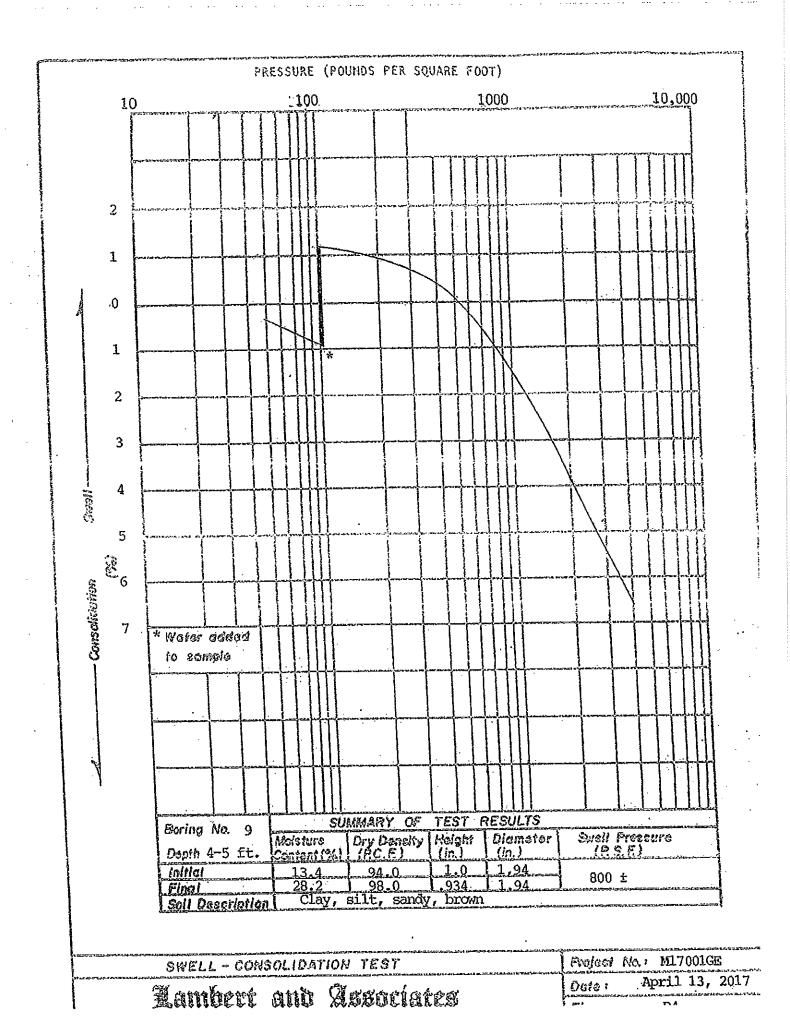
Direct shear strength properties of sleeve samples were evaluated in general accordance with testing procedures defined by ASTM Test Method D3080. The results of the direct shear strength tests are summarized on Figures B5 through B7, direct shear strength tests.

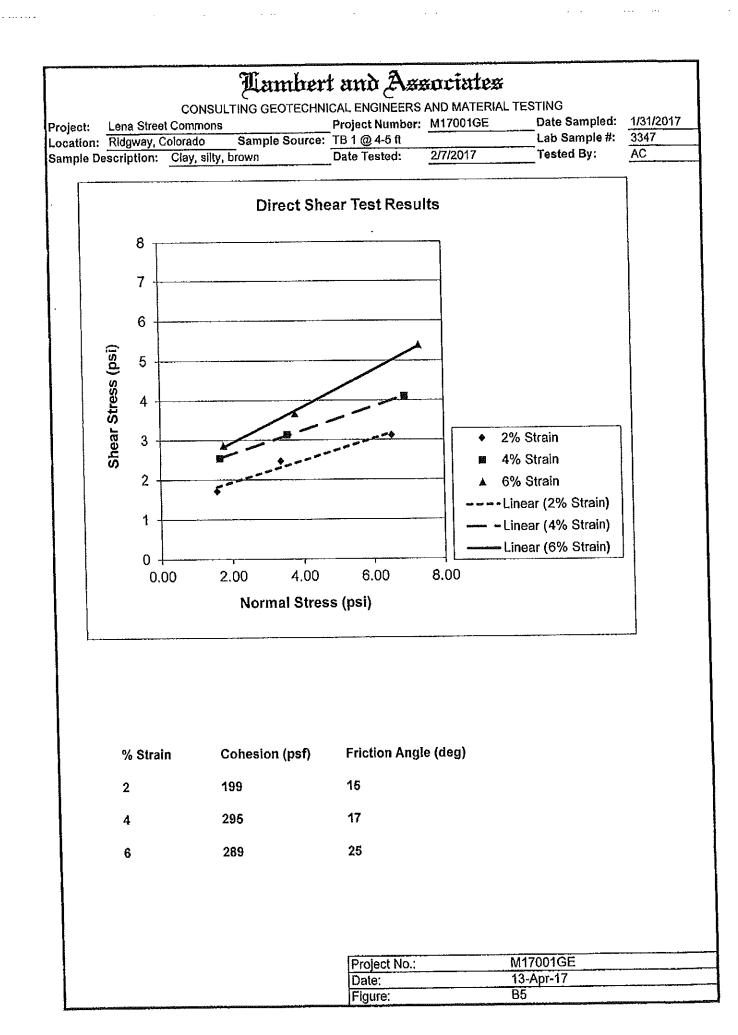


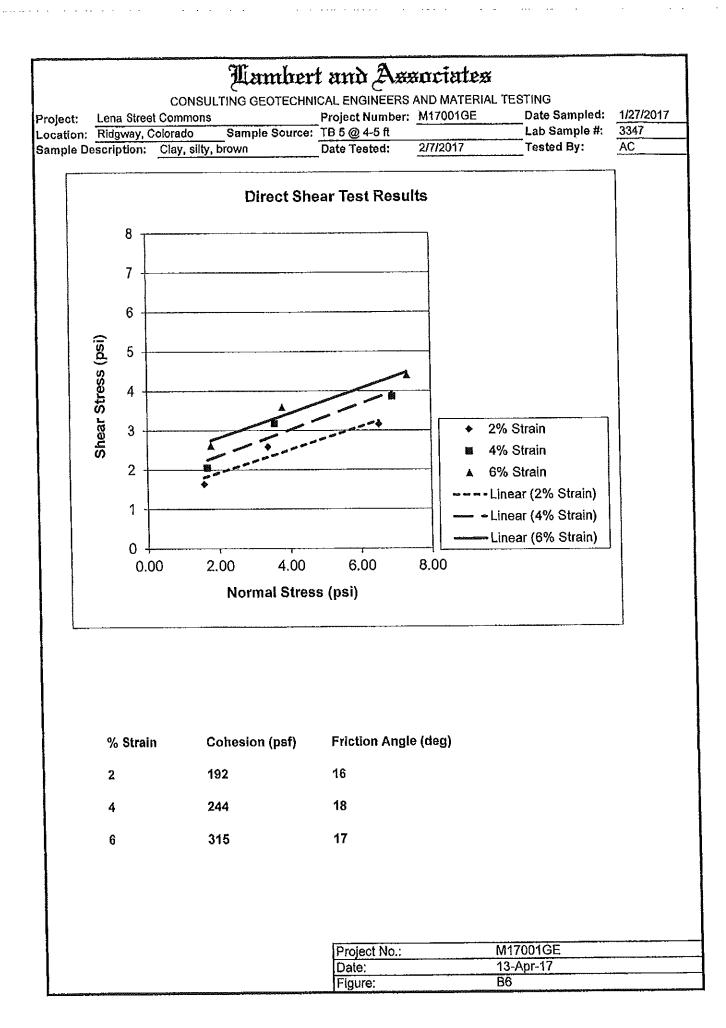


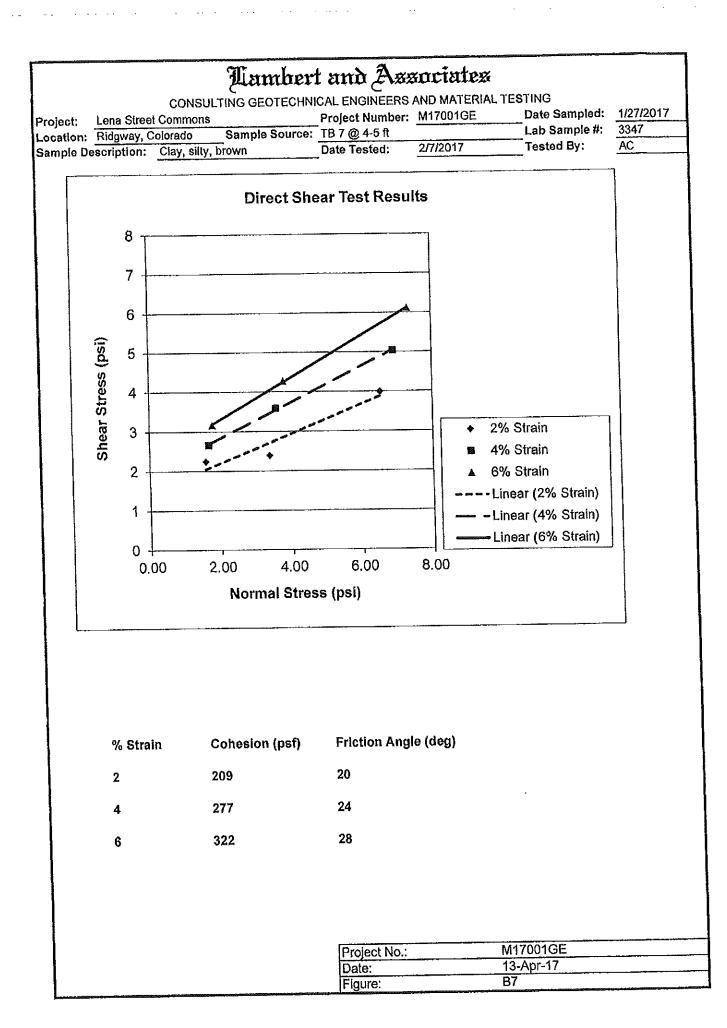


PRESSURE (POUNDS PER SQUARE FOOT) 10,000 1000 100 1.0 Swell Under Constant Pressure Due to Wetting 2 0. 2 Ą 6 ---- **[{6**00](j) 8 10 8 12 Consolication 14, \* Woter added 10 8000040 16 18 TEST RESULTS SUMMARY OF Boring No. 5 Scoll Proceure (P.S.F.) Dismoter Dry Danslty (RC.F.) Height Moisture (lo.)Depth 4-5 ft. (in.)Contont (%) <u>10.9</u> 25.9 initial 95.0 .94 1. 0 1 350 ± 108.0 863 .94 FlogL Soil Description Clay, silty, brown Project Na.: M17001GE SWELL - CONSOLIDATION TEST April 13, 2017 Date : Tamhert and Associates









#### APPENDIX C GEOLOGY DISCUSSION SOUTHWEST COLORADO GEOLOGY

Southwest Colorado exhibits many geologic features formed by a multitude of geologic processes. Regional inundation, uplift, volcanism and glaciation are responsible for some of the complex geology of the region. Many theories and speculations concerning the mode of occurrence of the regions's geology have been presented over the years. This cursory discussion of the geology of southwest Colorado presents some theories accepted by the geologic community, but is only intended to introduce the basic concepts and restraints that arise due to geologic activity.

Prior to the formation of the Rocky Mountains southwest Colorado was a primarily a flat lying region with little The North American continent was topographic expression. experiencing many episodes of deposition. The Transcontinental Sea was transgressing and regressing across the continent, these transgressions and regressions are the cause for such diverse rock types. The stratigraphic column in southwestern Colorado expresses rock types from variable depositional environments. Limestones are formed in deeper water, sandstones are formed in beach and tidal flat environments, while arkosic sandstone and conglomerates are formed in alluvial plains and fans. Particle size and mineralogic content in rock units are related to the depositional environment. A sandstone or conglomerate would not be likely to form in a deep sea environment because there would not be enough energy to carry such large particles a great distance from the source lands. As one observes the stratigraphic column of southwest Colorado a siltstone may be overlain by a sandstone which is in turn overlain regressional then siltstone. represents a This by а transgressional sequence. Many such sequences or combinations of other rock units are exhibited throughout southwest Colorado.

The final regression of the sea may have been caused by orogenic activity and uplift. This uplift was not confined to Colorado, it was a regional uplift that occurred in many stages. The uplift is what caused the formation of the ancestral rockies. The Larimide Orogenic episode is responsible for the formation of the San Juan dome. (Note: The San Juan dome theory is not accepted by the entire geologic community. It is used here for descriptive purposes). The San Juan dome was essentially an upwarp of the stratigraphy formed by sedimentation during the Transcontinental Sea. An actual dome probably never existed due to erosion during the uplift. The idea being that a dome of sediment and rock units would have existed had erosion and diastrophism not taken place.

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The orientation of bedding planes forms a radial pattern around the San Juan region which seems to vindicate this theory.

The stresses need to "upwarp" this large area were obviously tremendous. Locally occurring stresses may not be sufficient to move this quantity of material, global tectonics, directly or Compression of the entire indirectly, may have been involved. North American plate could have occurred. The magnitude of the stresses and the deep seated origin of these stresses also have caused extensive volcanism. Colorado has many large remnants of Calderas that were active during the orogenic activity. The Silverton and Lake City Calderas are the largest in the San Juan Activity in the Silverton Caldera has been estimated region. (radiometrically) to have occurred 22 million years ago. Calderas of this magnitude are believed to have formed by the collapse of epierogenic magma chambers. Volcanic and metamorphic rock bodies are common in the San Juan region, many of these units are related to the orogenic activity in the region.

Faults associated with local orogenic activity are another common geologic feature found in southwestern Colorado. As stated previously, extreme stresses were probably associated with the formation of the San Juan Mountains and may be responsible for deep-seated volcanic and metamorphic processes. These stresses had to be released, the geologic mode for stress release is faulting. Diastrophic activity in the area today is quite low, the lack of seismic activity indicates that stresses are not currently being released. An explanation for the loss of stresses is through faulting.

The last episode of regional geologic activity in the area was glaciation. The most recent period of glacial activity ended approximately 10,000 years ago. Glacial activity is responsible for much of the topographic expression in the area. "U-Shaped" valleys, moraine deposits, tarns, (glacial formed lakes), and rock glaciers are the most prominent features which are found in southwestern Colorado as a result of glacial activity. The valley configurations are a result of the erosional activity of the glaciers. Moraine deposits developed during the glacial activity. Rock glaciers are moving masses of rock which are thought to have an ice core which may be the last remnant of glacial ice. As the subsurface ice core moves and melts, the overlying mass of rock also moves.

C2

#### APPENDIX D

#### GENERAL GEOTECHNICAL ENGINEERING CONSIDERATIONS

#### D1.0 INTRODUCTION

Appendix D presents general geotechnical engineering considerations for design and construction of structures which will be in contact with soils. The discussion presented in this appendix are referred to in the text of the report and are intended as tutorial and supplemental information to the appropriate sections of the text of the report.

#### D2.0 FOUNDATION RECOMMENDATIONS

Two criteria for any foundation which must be satisfied for satisfactory foundation performance are:

- . contact stresses must be low enough to preclude shear failure of the foundation soils which would result in lateral movement of the soils from beneath the foundation, and
- . settlement or heave of the foundation must be within amounts tolerable to the superstructure.

The soils encountered during our field study have varying engineering characteristics that may influence the design and construction considerations of the foundations. The characteristics include swell potential, settlement potential, bearing capacity and the bearing conditions of the soils supporting the foundations. The general discussion below is intended to increase the readers familiarity with characteristics that can influence any structure.

D2.1 Swell Potential

Some of the materials encountered during our field study at the anticipated foundation depth may have swell potential. Swell potential is the tendency of the soil to increase in volume when it becomes wetted. The volume change occurs as moisture is absorbed into the soil and water molecules become attached to or adsorbed by the individual clay platlets. Associated with the process of volume change is swell pressure. The swell pressure is the force the soil applies on its surroundings when moisture is absorbed into the soil. Foundation design considerations concerning swelling soils include structure tolerance to movement and dead load pressures to help restrict uplift. The structure's tolerance to movement should be

D1 ·

**Lambert and Associates** CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

addressed by the structural engineer and is dependent upon many facets of the design including the overall structural concept and the building material. The uplift forces or pressure due to wetted clay soils can be addressed by designing the foundations with a minimum dead load and/or placing the foundations on a blanket of compacted structural fill. The compacted structural fill blanket will increase the dead load on the swelling foundations soils and will increase the separation of the foundation from the swelling soils. Suggestions and recommendations for design dead load and compacted structural fill structural fill below. Compacted presented are blanket recommendations are presented under COMPACTED STRUCTURAL FILL below.

D2.2 Settlement Potential

Settlement potential of a soil is the tendency for the soil to experience volume change when subjected to a load. Settlement is characterized by downward movement of all or a portion of the supported structure as the soil particles move closer together resulting in decreased soil volume. Settlement potential is a function of;

- . foundation loads,
- . depth of footing embedment,
- . the width of the footing, and

. the settlement potential or compressibility of the influenced soil.

Foundation design considerations concerning settlement potential include the amount of movement tolerable to the structure and the design and construction concepts to help reduce the potential movement. The settlement potential of the foundation can be reduced by reducing foundation pressures and/or by placing the foundations on a blanket of compacted structural fill. The anticipated post construction settlement potential and suggested compacted fill thickness recommendations are based on site specific soil conditions and are presented in the text of the report.

D2.3 Soil Support Characteristics

The soil bearing capacity is a function of;

- . the engineering properties of the soil material supporting the foundations,
- . the foundation width,
- . the depth of embedment of the bottom of the foundation below the
- . lowest adjacent grade,
- . the influence of the ground water, and
- , the amount of settlement tolerable to the structure.

Soil bearing capacity and associated minimum depth of embedment are presented in the text of the report.

D2

The foundation for the structure should be placed on relatively Varying support characteristics of the uniform bearing conditions. supporting the foundation may result in nonuniform or soils differential performance of the foundation. Soils encountered at foundation depths may contain cobbles and boulders. The cobbles and boulders encountered at foundation depths may apply point loads on the foundation resulting in nonuniform bearing conditions. The surface of the formational material may undulate throughout the building site. If this is the case it may result in a portion of the foundation for the structure being placed on the formational material and a portion of the foundation being placed on the overlying soils. Varying support material will result in nonuniform bearing conditions. The influence of nonuniform bearing conditions may be reduced by placing the foundation members on a blanket of compacted structural fill. Suggestions and recommendations for constructing compacted structural fill are presented under COMPACTED STRUCTURAL FILL below and in the text of the report.

#### D3.0 COMPACTED STRUCTURAL FILL

Compacted structural fill is typically a material which is constructed for direct support of structures or structural components.

There are several material characteristics which should be examined before choosing a material for potential use as compacted structural fill. These characteristics include;

- . the size of the larger particles,
- . the engineering characteristics of the fine grained portion of material matrix,
- . the moisture content that the material will need to be for

compaction with respect to the existing initial moisture content, the organic content of the material, and

the items that influence the cost to use the material.

Compacted fill should be a non-expansive material with the maximum aggregate size less than about two (2) inches and less than about twenty five (25) percent coarser than three quarter (3/4) inch size.

The reason for the maximum size is that larger sizes may have too great an influence on the compaction characteristics of the material and may also impose point loads on the footings or floor slabs that are in contact with the material. Frequently pit-run material or crushed aggregate material is used for structural fill material. Pitrun material may be satisfactory, however crushed aggregate material with angular grains is preferable. Angular particles tend to interlock with each other better than rounded particles.

The fine grained portion of the fill material will have a significant influence on the performance of the fill. Material which

has a fine grained matrix composed of silt and/or clay which exhibits expansive characteristics should be avoided for use as structural fill. The moisture content of the material should be monitored during construction and maintained near optimum moisture content for compaction of the material.

Soil with an appreciable organic content may not perform adequately for use as structural fill material due to the compressibility of the material and ultimately due to the decay of the organic portion of the material.

#### D4.0 RADON CONSIDERATIONS

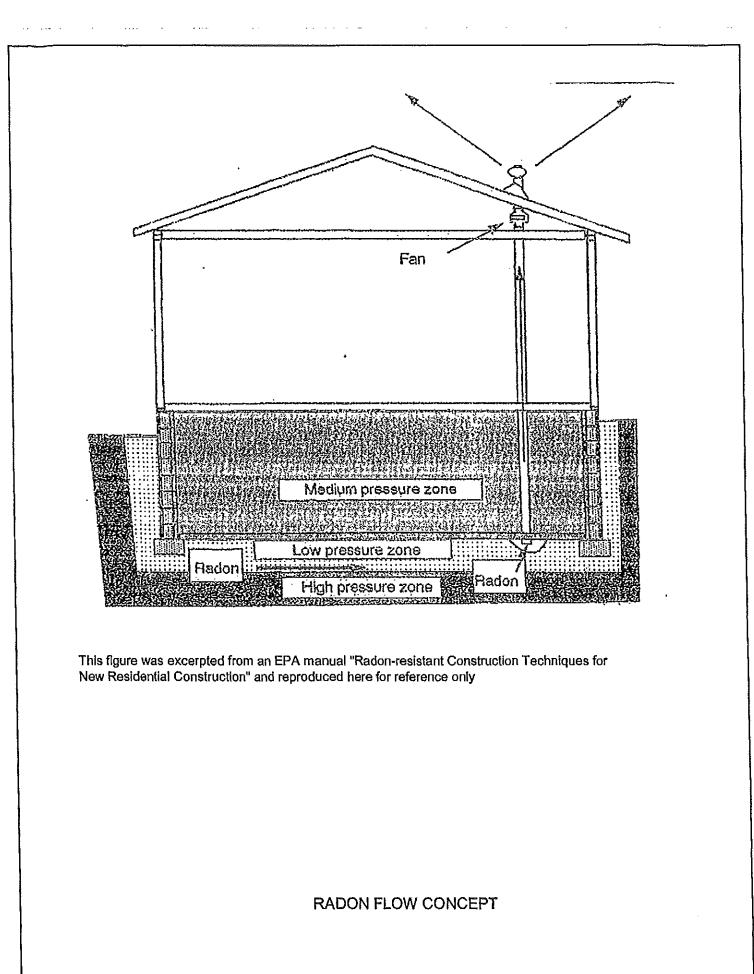
Information presented in "Radon Reduction in New Construction, An Interim Guide: OPA-87-009 by the Environmental Protection Agency dated August 1987 indicates that currently there are no standard soil tests or specific standards for correlating the results of soil tests at a building site with subsequent indoor radon levels. Actual indoor levels can be affected by construction techniques and may vary greatly from soil radon test results. Therefore it is recommended that radon tests be conducted in the structure after construction is complete to verify the actual radon levels in the home.

We suggest that you consider incorporating construction techniques into the development to reduce radon levels in the residential structures and provide for retrofitting equipment for radon gas removal if it becomes necessary.

Measures to reduce radon levels in structures include vented crawl spaces with vapor barrier at the surface of the crawl space to restrict radon gas flow into the structure or a vented gravel layer with a vapor barrier beneath a concrete slab-on-grade floor to allow venting of radon gas collected beneath the floor and to restrict radon gas flow through the slab-on-grade floor into the structure. These concepts are shown on Figure D1.

If you have any questions or would like more information about radon, please contact us or the State Health Department at 303-692-3030.

D4



	Project No.	M17001GE
Lambert and Associates	Date:	April 13, 2017
	Figure:	D1

## Replaced with docs sent 9/11/17

# BURGGRAAF ASSOCIATES INC.

Tab 18 Water Consumption Calculations

1404 Hawk Parkway, #218 - MONTROSE, CO 81401 (970) 946-3103 - mburggraaf@pagosa.net

April 12, 2017

Mr. Tate Rogers 565 Sherman St. Ridgeway, CO 81432

RE: Lena Street Commons BAI Project 7032

Dear Tate:

Pursuant your request, I've reviewed the domestic water, waste, electric and gas utility connection requirements for the subject project.

With regard to domestic water services:

- Each unit shall have a 5/8" meter connection. The meter connection will match the Town of Ridgeway standards for shut-off and backflow prevention.

Fixture unit calculations for individual units are as follows:

Building A - 5.0 FU per unit Building B - 12.8 FU per unit Building C - 12.8 FU per unit Building D - 17.2 FU per unit Building E - 10.7 FU per unit

- Each building will have a 2" water service from the main.
- Total estimated water use at final build-out is estimated to be 7650 gallons per day
   75 gallons per day per person (residential) 49 bedrooms x 2 people per bedroom
   25 gallons per day per person (commercial) 3 people per unit

With regard to sanitary waste services:

- Each unit shall have a 4" tap to the sewer main.

Total waste fixture units are as follow:

Building A - 7 FU per unit Building B - 20 FU per unit Building C - 20 FU per unit Building D - 17 FU per unit Building E - 21 FU per unit

 Total estimated sewage generation at final build-out is estimated to be 7650 gallons per day (see domestic water loading calculation above).

With regard to electric utility connections, two pad mounted transformer locations are recommended. Both are to be on the east side of the property with one serving buildings A and B and the second serving buildings C, D and E.

April 12, 2017

With regard to natural gas service - each building shall have a dedicated meter stack. Please see the civil plans for required locations.

If you have further questions or comments regarding any of the above information please don't hesitate to call or email.

Sincerely,

BURGORAAT ASSOCIATES INC.

Mark Bulggraaf, P.E. CC:

Nr. David Schieldt, Del Mont Consultants, Inc. (via email)

Sheet1

### Lena Street Commons Irrigation Assessment

			<u> </u>		
Description	Evergreens	Deciduous	Shrubs	Junipers	Orn. Grass
Qty. Plants	13	46	102	4	21
Qty. Emitter	2	2	1	1	1
Emitter Size	5	5	2	2	2
Total GPH	130	460	204	8	42
Hrs/Application	2	2	2	2	2
Frequency/Month	8	8	8	8	8
Total Gal/Month	2080	7360	3264	128	672
~			-	Gallons/Month	13504

#### Shrubs/Tree Water Use Analysis

#### Sod Water Use Analysis

Description	Sod
Sq. Ft.	3360
Inches/Day	0.2
Gallons/Day	420
<u>Gallons/Month</u>	<u>12600</u>

Total Monthly Water Usage BaselineMonthly Baseline26104

Anticipated Water Use	Per Month
April - 75% Usage	19578
May – 100% Usage	26104
June – 125% Usage	32630
July – 150% Usage	39156
4 4 4 9 9 9 4 1 1	00404
August – 100% Usage	26104
0	40570
Sept 75% Usage	19578

Note: The water usage tables listed here will vary based on many factors, weather, soil, plant health, etc. Also, water usage for new plants will be different than established plants. The numbers here would more accurately represent established landscapes. Expect a little higher use during establishment period.

### Lambert and Associates

CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

GEOLOGIC HAZARD AND CURSORY LEVEL GEOTECHNICAL ENGINEERING STUDY LENA STREET COMMONS RIDGWAY, COLORADO

Prepared for:

LENA COMMONS

PROJECT NUMBER: M17001GE

MARCH 23, 2017

P. O. BOX 3986 GRAND JUNCTION, CO 81502 (970) 248-8506 FAX: (970) 248-9768

P. O. BOX 0045 MONTROSE, CO 91402 (970) 249-2154 FAX: (970) 249-3262

### Lambert and Associates

CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

March 23, 2017

Lean Commons 2867 County Road 23 Ridgway, Colorado

Attention: Mr. Tate Rogers

PN: M17001GE

Subject: Geologic Hazards and Cursory Level Geotechnical Engineering Study for the Proposed Lena Street Commons Development Ridgway, Colorado

Mr. Rogers:

Lambert and Associates is pleased to present our geologic hazards and cursory level geotechnical engineering study for the subject project. The field study was completed March 14, 2017. The laboratory study was completed on March 1, 2017. The analysis was performed and the report prepared March 1 through 23, 2017. Our report is attached.

We are available to provide site and structure specific geotechnical engineering studies for design phase of the site development of the project. The cursory comments and suggestions are to provide a pre-design perspective of the information obtained during this study. We are available to provide material testing services for soil and concrete and provide foundation excavation observations during construction phase of the project. We recommend that Lambert and Associates be the geotechnical engineer for the project and provide material testing services to maintain continuity between design and construction phases.

If you have any questions concerning the information presented in this report for your project please contact us. Thank you for the opportunity to perform this study for you.

Respectfully submitted LAMBERT AND ASSOCIATES viel R. Lambe

P. O. BOX 3986 GRAND JUNCTION, CO 81502 (970) 245-6506 FAX: (970) 248-9758 P. O. BOX 0045 MONTROSE, CO 81402 (970) 249-2154 FAX: (970) 249-3262

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#### 1.0 INTRODUCTION

This report presents the results of the geologic hazard and cursory level geotechnical engineering study we conducted for the proposed Lena Street Development site located east of Lena Street and south of Otto Street, Ridgway, Colorado. The study was conducted at the request of Mr. Tate Rogers in general accordance with our proposal dated December 9, 2016.

The comments, suggestions and recommendations presented in this report are based on the data gathered during our site and laboratory study and on our experience with similar soil conditions. Factual data gathered during the field and laboratory work are summarized in Appendices A and B.

1.1 Proposed Construction

The proposed development will consist of approximately twenty three residential units and associated infrastructure.

1.2 Scope of Services

Our services for this Geologic Hazard and Cursory Level Geotechnical Engineering Study included the following scope of our services as outlined below.

- We performed a literature search and review of existing appropriate information.
- We observed the site geologic characteristics.
- The site characteristics observed are those outlined in the Geologic Hazard Colorado Geologic Survey Special Publication Number 6 which discusses H.B. 1041 and include:
  - . Avalanche
  - . Landslide
  - . Rockfall
  - . Mudflow
  - . Debris Fan
  - . Unstable Slopes
  - . Potentially Unstable Slopes
  - . Seismic Effect
  - . Radioactivity
  - . Ground Subsidence, and
  - . Expansive Soil and Rock.

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- The field study consisted of describing and sampling the soil materials encountered in nine (9) small diameter continuous flight auger test borings at the subdivision site area. Site conditions restricted and somewhat dictated the locations of the test borings.
- The field study included installing radon test canisters at three (3) locations.
- The soil materials encountered in the test borings were described and samples retrieved for the subsequent laboratory study.
  - The laboratory study included tests of select soil samples obtained during the field study to help identify the swell and consolidation potential of the samples tested. The laboratory test included the following tests of soil samples obtained during the field study:
    - . swell tests,
    - . consolidation tests,
    - . direct Shear Strength tests, and
    - . moisture content and dry density tests.
- This report presents our discussion of the observed geologic hazards on the site and general cursory level geotechnical engineering comments and suggestions for preliminary planning of the site development including:
  - . viable foundation types for the conditions encountered,
  - . geotechnical engineering comments and suggestions for concrete slab on grade floors,
  - . ground water elevation encountered and any special considerations,
  - . measured subsurface water levels,
  - . measured radon levels,
  - . geotechnical engineering considerations and recommendations
  - . for compacted structural fill.
- Our comments, suggestions and recommendations are based on the subsoil and ground water conditions encountered during our site studies.

- Our study did not address environmental or geotechnical engineering design level issues. Our study did not address site and structure specific soil design parameters.

#### 2.0 SITE CHARACTERISTICS

Site characteristics include observed existing and pre-existing site conditions that may influence the geotechnical engineering aspects of the proposed site development.

#### 2.1 Site Location

The site is located east of Lena Street and south of Otto Street in Ridgway, Colorado. A project vicinity map is presented on Figure 1.

#### 2.2 Site Conditions

The site is relatively flat exhibiting surface drainage toward the east. Portions of the site have previously been occupied by residential structures. A large pile of unknown soil and organic debris is located on the western central portion of the site and an existing residential structure currently occupies the southwestern portion of the site. The site is bordered to the west by Lena Street, to the north by Otto Street, to the south by Charles Street and to the west by an existing park and bike path.

#### 2.3 Subsurface Conditions

The subsurface exploration consisted of observing, describing and sampling the soil materials encountered in nine (9) small diameter test borings. The approximate locations of the test borings are shown on Figure 2. The logs describing the soil materials encountered in the test borings are presented in Appendix A.

The soil materials encountered in the test borings consisted generally of silty clay materials underlain by silty, clayey gravels and cobbles. The granular materials were encountered at approximate depths of eleven (11) feet or deeper and extended to the maximum depths explored, approximately twenty (20) feet below existing site grades.

Free subsurface water was not encountered in our test borings during the drilling operations. However, increased moisture contents were observed at approximate depths of eight to twelve feet below existing site grades.

It may be necessary to install standpipe piezometers in areas where basements will be planned and the free subsurface water elevation monitored for a significant period of time to help

identify the anticipated highest elevation of the free subsurface water.

It is difficult to predict if unexpected subsurface conditions will be encountered during construction. Since such conditions may be found, we suggest that the owner and the contractor make provisions in their budget and construction schedule to accommodate unexpected subsurface conditions.

#### 3.0 GENERAL REGIONAL GEOLOGY DISCUSSION

#### 3.1 Introduction

The proposed development site is located in the Uncompany River Valley north of the flanks of the San Juan Mountain range in southwestern Colorado. The region's geologic history is complex and the current expression of the area reflects the recent geologic events. A discussion of the southwestern Colorado geology is presented in Appendix C.

The Uncompandere River Valley is an area located from Ouray at the south to the confluence of the Uncompandere River with the Gunnison River near Delta to the north. The valley is flanked along the western edge by the Uncompandere Plateau along the southeastern edge by the mountainous areas of the northern San Juan Mountains and along the northeastern edge by the Gunnison Uplift.

The dominant geologic unit in the valley is the unconsolidated alluvial, colluvial and glacial quaternary soil deposits. Generally the soils consist of relatively granular soil deposits, often associated with relatively shallow groundwater. Other soils in the area are results of decomposition of the Mancos formational shale. These soils are generally clay soils which commonly exhibit expansive characteristics.

The formational Mancos shale, Dakota sandstone, and Morrison Formation Burro Canyon sandstone are the common sedimentary units in the valley. The Mancos shale and associated soils are by far the most common unit encountered during land development. The shale often crops out in rolling hills and flat-topped bluffs.

The Mancos shale is the formational geological unit underlying the north/west portion of the subject site and the Dakota sandstone formation in the geological unit underlying the south portion of the site. The Mancos shale consists of a thinly

laminated fissile carbonaceous shale. Portions of the unit consist of a blocky limestone. The shale weathers rapidly by exposure to air or water commonly producing expansive clay with shale fragments. Development of land with the presence of the Mancos shale requires geotechnical engineering assessment. This material is encountered throughout western Colorado and can be developed using prudent and proper geotechnical engineering techniques throughout planning, design and construction.

The Dakota sandstone formational material consists of interlayered claystone and sandstone with the sandstone layer becoming very thick. The claystone layers in the Dakota sandstone formational material commonly has a very high swell potential.

The Morrison Formation consists generally of shales and sandstones with some conglomerate. The sandstones are lenticular, meaning they thin and pinch our in either direction. The shale layers in the Morrison Formation typically have high to very high swell potential and weathers to expansive clay.

#### 4.0 GENERAL BACKGROUND DISCUSSION OF GEOLOGIC HAZARDS

This section of the report is intended to discuss the various geologic hazards which are not necessarily site specific which may be encountered when developing any parcel of land. The explanations are brief and are only intended to familiarize the reader with the definition of the basic generally formed hazards and the context in which they are discussed. The information is not intended to be site specific to the proposed subdivision.

In 1974 the Colorado Legislature passed House Bill 1041. The purpose of the bill, in brief, was to designate potential geologic hazards which, if present, may pose a threat to the loss of life and property. This section of the report provides a definition of these and other geologic hazards which were considered as part of this study. The definitions presented below are a paraphrased version of more lengthy discussion presented in Colorado Geological Survey Special Publication 6, "Guidelines and Criteria for Identification and Land-Use Control of Geologic Hazard and Mineral Resource Areas".

Site specific observed hazard considerations are presented in section 5.0.





#### 4.1 Radioactivity

Several locations in western Colorado have been mined for radioactive elements and by-products such as, Uranium, Thorium, and Vanadium. Tailings from these mines are one of the chief sources of hazards due to radioactivity. Other sources of radioactive hazards are natural surficial deposits of ore laden with radioactive elements and the sun. The emission of radiation may consist of the release of Alpha or Beta particles or Gamma rays. The radiation is released as part of the decay of a radiometrically unstable isotope. As this decay occurs, by products are produced. Gaseous radioactive substances, such as radon, are common radioactive hazards.

Site specific radioactivity hazard considerations are presented in section 5.1.

4.2 Seismic Effects

Hazards from diastrophic (earth movement) activity are any effects that may be directly or indirectly related to earthquakes. The effects of a formidable earthquake may be ground displacement, ground shaking, ground failure, abnormal water wave action and a host of other less prominent effects. Most of the State of Colorado is classified as a Zone 1 seismic risk on maps in the Uniform Building Code and other references. Zone 1 seismic risk areas are considered as low risk areas for hazards for seismic effects. The seismic risk zone map is presented on Figure 3. A small part of Colorado, in the vicinity of Pagosa Springs, is Zone 2B, most likely because of a recent event centered in Dulce, New Mexico.

In general, Colorado has had various sequences of seismic activity in the past. Initial seismic activity was associated with the relief of stresses during the uplift of the ancestral Rockies, during Paleozoic times. During the Cenozoic period little seismic activity occurred. Many of the fault trends associated with the uplift of the ancestral Rockies were fractured during the Neogene in association with the Laramide orogeny. An orogeny is a mountain building episode. The Laramide orogeny occurred about 68 to 75 million years ago and is credited with the formation of our current Rocky Mountains.

Recent activity, though mild, has occurred in the Montrose and Ridgway area.

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Site specific seismic considerations are presented in section 5.2.

#### 4.3 Ground Subsidence

Ground subsidence may be caused by man or natural processes. Subsidence of the ground surface may be attributed to collapsible soils, failure of subsurface voids, removal of subsurface fluids, or mining activities. Collapsible soils may cause settlement of structure, however, geotechnical analysis and foundation design have advanced considerably in the past decade and engineering procedures for dealing with collapsible soils is available. Subsurface voids may be caused by hydrothermal or mining activity. The presence of subsurface voids may be recognized through subsurface exploratory drilling and often surficial topographic evidence of such voids may be observed.

Site specific ground subsidence information is presented in Section 5.3.

#### 4.4 Landslides

"Landslide" is a term that is used in an extremely broad scope. Generally speaking, a landslide is the mass movement of a unit of ' material as a somewhat singular body. Commonly a landslide will move, or fail, on a semi-circular arc or plane. Features that are common to most landslides are; the main scarp, which is where the upper portion of the failure plane intersects the ground surface; transverse or extension fractures, this is the area of the slide that is usually in the lower third of the mass where bending of the materials occur; and the toe, this is the bottom of the slide which is often a lobate bulge in the ground surface. Landslides can encompass very large masses of soil, some covering several acres in size while others only encompass a few hundred square feet. Smaller movements are often referred to as slumps.

Site specific landslide considerations are presented in Section 5.4.

#### 4.5 Avalanches

Avalanches are a common process in the Rocky Mountains and adjacent areas in the high country of Colorado.

There are three primary zones within an avalanche path. The zone of accumulation and failure exists at the highest elevation in an avalanche path (usually 20 degrees to 45 degrees slope

gradient). This is the area where the avalanche begins. As the snow moves downslope it travels through the track which can be a relatively narrow chute which may be easily identified in the field, on topographic maps, and on areal photographs. The snow loses velocity and subsequently stops in the runout zone (usually less than 20 degrees slope gradient). The runout zone may also be easily identified in the field, on maps or photographs. Avalanches commonly occur at elevations in excess of 8,000 feet above sea level.

Avalanche considerations for this site are discussed in Section 5.5.

4.6 Rockfall

Rockfall is a hazard that may occur in areas where a rock becomes detached from a larger rock body or slope and moves downslope by the force of gravity. The movement of a singular rock may trigger the movement of other rocks downslope. Hazards from falling rocks generally occurs in areas beneath steep slopes or cliffs.

Rockfall hazard considerations for this site are presented in Section 5.6.

4.7 Flooding

Flooding of streams occurs when the gradient and size of the stream channel is not large enough to accommodate the amount of water flowing in the channel, therefore, water flow outside of the channel occurs.

Flooding considerations for this site are presented in Section 5.7.

4.8 Mudflows and Debris Fans

Mudflows are the mass movement of saturated soils downslope under the force of gravity. Debris fans occur under the same set of conditions, but the shape of the flow will be wider at the bottom due to decreased energy from slope gradient changes which gives the flow a "fan" appearance when viewed from above.

The site specific debris fan and mud flow considerations are presented in section 5.8.

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#### 4.9 Expansive Soil and Rock

Expansive materials are soils or rock that will experience volume changes as conditions such as moisture content and load are varied in or on them. Materials with clay are usually the most likely to exhibit expansive characteristics, however, a soil that is predominately sand, which is typically non-expansive, may exhibit expansive characteristics. A small amount of clay within the material matrix can expand and exert expansion forces throughout the sand. There are several design and construction techniques that may be used to reduce the effect of expansive soil materials.

Site specific expansive soil and rock considerations are presented in Section 5.9.

4.10 Slopes

An unstable slope may be considered as a slope that, due to natural factors, exhibits deterioration or movement of the materials within the slope. The movement of a slope is distinguished from a landslide in that a landslide will have a distinct failure plane which may or may not be evident in slope Generally speaking, slope movement is a slow, movement. continual movement whereas a landslide will be relatively rapid and occurs in intervals as the stresses required to cause failure become large. The natural factors often concerned with the destabilization of a slope are; slope angle, surface and subsurface water, seismic effects, and the nature of the material involved. Slope stability may be further influenced by construction and engineering. Careful planning, engineering, and construction may promote a more stable condition within a slope while unplanned development may decrease the stability of the slope.

Site specific slope stability considerations are presented in Section 5.10.

#### 5.0 GEOLOGIC HAZARDS DISCUSSION

This section of our report discusses the observed site geologic hazards in the same order as they were discussed above. Potential mitigation concepts and suggestions for continued engineering assessment are presented for each of the observed hazard conditions.

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The information presented below is based on field observations, literature research, observations of topographic maps and on discussions with other members of the project development design team.

#### 5.1 Radioactivity

There were no signs of naturally occurring radioactive mineral, rock deposits, or mine tailings observed on the site at the time of the field observations. A radiation survey was not included in our scope of work. A more detailed radiation survey may be performed if desired by the owner, at additional cost. Radon tests were conducted for the subject project.

The radon tests consisted of installing radon test kits provided by AccuStar in test borings about one (1) to two (2) feet deep and left for the recommended time of two (2) to four (4) days. The test kits were analyzed by AccuStar. The tests were performed to provide an indication of radon potential of the soils at the proposed development site.

Information presented in "Radon Reduction in New Construction, An Interim Guide" OPA-87-009 by the Environmental Protection Agency dated August 1987 indicates that currently there are no standard soil tests or specific standards for correlating the results of soils tests at a building site with subsequent indoor radon levels. Soil radon tests are only indicators of the potential for site soils to produce radon gas. Actual indoor levels can be affected by construction techniques and may vary greatly from soil radon tests be conducted in the home after construction is complete to verify the actual radon levels in the home.

The test results indicate a radon level of about 15.3 to about 51.7 picocuries per liter (pCi/L). The Environmental protection Agency recommends that follow up tests be performed if the initial measurements are about 4.0 pCi/L. Based on the radon test results we anticipate that the potential for radon gas may exist at this development site. We suggest that construction techniques be incorporated into the development to reduce radon levels in the residential structures and provide for retrofitting equipment for radon gas removal if it becomes necessary. Follow up radon tests should also be performed after completion of construction to verify radon levels in the structure.

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Much of the soil material and formational material in western Colorado produce small quantities of radon gas. We anticipate that the potential for radon gas may exist at this development site. We suggest that construction techniques be incorporated into the development to reduce radon levels in the residential structures and provide for retrofitting equipment for radon gas removal if it becomes necessary. Follow up radon tests should also be performed after completion of construction to verify radon levels in the structure.

Measures to reduce radon levels in residential structures include vented crawl spaces with vapor barrier at the surface of the crawl space to restrict radon gas flow into the house or a vented gravel layer with a vapor barrier beneath a concrete slabon-grade floor to allow venting or radon gas collected beneath the floor and to restrict radon gas flow through the slab-ongrade floor into the structure. These concepts are shown on Figure 4.

If you have any questions or would like more information about radon please contact us or the State Health Department at 303-692-3030.

5.1.1 Mitigation/Assessment

If individual lot or project owners require a more in depth analysis of potential radiation sources, including measurement of site background radiation, we suggest that this be done on a lot specific basis.

5.2 Seismic Effects

Labeled faults near the site are 86Q, 87Q, 88Q, 89Q and 179Q, approximately twenty five (25) miles north, west and south of the site. The fault labels are from Colorado Geological Survey Bulletin 43, "Earthquake Potential in Colorado". The fault number is followed by letters, the letters signify the oldest and youngest units displaced by the fault, or in the case of only one letter, the most recent movement.

The labeled faults are associated with the Uncompany block uplift and have displaced Quaternary period geologic units. (Kirkham, Rogers, 1981). The location of the faults is presented on Figure 5.

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#### 5.2.1 Mitigation/Assessment

Based on the information we have obtained and the site observations we do not feel that significant hazard such as rupture or significant shaking associated with seismic activity are likely on this site.

#### 5.3 Ground Subsidence

There does not appear to be any large scale mining features on or near the site. There was no evidence of excavations significant enough to pose a hazard.

Our consolidation tests, which measure settlement potential, indicate that settlement of the near surface soil materials is likely after imposed loads from structures or fills.

It has been our experience in the area that natural subsurface voids may exist near the drainages, either natural or man made. These may be a result of surface water eroding the subsurface soil materials resulting in voids of varying sizes with very limited if any surface expression.

#### 5.3.1 Mitigation/Assessment

Geotechnical engineering analysis and recommendations should be conducted on a lot and building specific basis to further assess the soil conditions, settlement potential and their influence on the proposed construction.

Observations of the site did not disclose any information which would indicate that subsurface voids exist, however our experience indicates that voids may exist without surface expression. For this reason we suggest that a geotechnical engineering study be performed for each proposed building site to help identify subsurface voids, if any, and that each foundation excavation be observed for evidence of potential subsurface voids.

#### 5.4 Landslides

Landslides are common in the Montrose area along the mesa edges and steep slopes. The relatively steep slope inclinations below the mesa, the relatively moist soil conditions and regular irrigation on the mesas can all attribute to an environment for landslides as well as mudflows and slope instabilities.

Based on our observations of the subject subdivision site it is our opinion that landslides are not located on or are influencing the subject lots.

5.4.1 Mitigation/Assessment

Based on our information we do not feel that landslides exist on or influencing the site.

5.5 Avalanches

The proposed development is located in a relative flat area with no steep slopes above the site.

5.5.1 Mitigation/Assessment

Based on our information we feel avalanche hazard does not exist.

5.6 Rockfall

Rockfall hazards exist in areas below talus slopes, loose boulders, or more commonly below fractured cliff exposures of formational material. Formational material talus slopes or loose rock is not exposed above the site.

5.6.1 Mitigation/Assessment

Based on our observations of the site we feel that rockfall hazard does not exist on or influence the proposed subdivision.

5.7 Flooding

No defined drainage channels exist on or directly adjacent to the subject site.

5.7.1 Mitigation/Assessment

Based on our observation of the site we do not feel that flooding hazard exists from the Uncompanyre River, however, a flood survey was not included in the scope of our services. If the owner desires, a flood study map can be provided at additional cost.

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5.8 Mudflow and Debris Fans

We did not observe any areas above or on the site that show signs of mudflow or debris fans.

5.8.1 Mitigation/Assessment

We do not feel that mudflow or debris fan hazards exist or influence the proposed development.

5.9 Expansive Soil and Rock

The Mancos shale and Dakota sandstone is the underlying formational material on the development. The Mancos shale and the claystone layers in the Dakota sandstone weathers to a clay and shale fragment soil. The soil, claystone and shale are almost always expansive in nature and construction problems may be associated with this type soil.

5.9.1 Mitigation/Assessment

If proper engineering, design and construction is done, construction on the expansive soil materials can typically be accommodated. We recommend that a geotechnical engineering study be performed on a site and structure specific basis for each lot prior to design and construction for the site area in order to address the geotechnical engineering characteristics of each lot and for each structure.

5.10 Slopes

The subject site is relatively flat and does not have any appreciable slopes.

5.10.1 Mitigation/Assessment

Proper engineering design and construction for structures on or adjacent to these slopes can provide a foundation which will be compatible with the slope conditions. We suggest that a geotechnical engineering study be performed on each lot prior to design and construction in order to address the slope influence on proposed site development and on proposed structure foundations.

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#### 6.0 CURSORY GEOTECHNICAL ENGINEERING COMMENTS

This section of our report presents our geotechnical engineering cursory level considerations for the proposed development. The information presented in this section of this report is intended to present general geotechnical engineering comments and suggestions for overview planning purposes and does not provide geotechnical engineering design and construction suggestions and recommendations.

A site and structure specific geotechnical engineering study should be performed for each proposed building site during the design phase of each structure to provide geotechnical engineering suggestions and recommendations for design and construction of the structures. Lambert and Associates is available to provide additional services on a site and structure specific basis.

The comments, suggestions and recommendations presented in this report are based on the data gathered during our site and laboratory study and on our experience with similar soil conditions. Factual data gathered during the field and laboratory work are summarized in Appendices A and B.

6.1 General On-site Construction and Development Considerations

We anticipate subsurface water elevation may fluctuate with seasonal and other varying conditions. Excavations may encounter subsurface water and soils that tend to cave. It may be necessary to dewater construction excavations to provide more suitable working conditions. Excavations should be well braced or sloped to prevent wall collapse. Federal, state and local safety codes should be observed.

6.2 Foundation Planning and Considerations

Two criteria for foundation design which must be satisfied for satisfactory performance are:

- contact stresses must be low enough to preclude shear failure of the foundation soils which would result in lateral movement of the soils from beneath the foundation, and
- 2) settlement or heave of the foundation must be within amounts tolerable to the superstructure.

The soil materials encountered in the test borings have varying engineering characteristics that may influence the design and construction considerations of foundations. The characteristics include swell potential, settlement potential, bearing capacity and the bearing conditions of the soils supporting the foundations. These are discussed below.

#### 6.2.1 Swell Potential

Some of the materials encountered in the test borings at the anticipated foundation depths may have swell potential. Swell potential is the tendency of the soil to increase in volume when it becomes wetted. The volume change occurs as moisture is absorbed into the soil and water molecules become attached to or adsorbed by the individual clay platlets. Associated with the process of volume change is swell pressure. The swell pressure is the force the soils applies on its surroundings when moisture is absorbed into the soil. Foundation design considerations concerning swelling soils include structure tolerance to movement and dead load pressures to help restrict uplift. The structure's tolerance to movement should be addressed by the structural engineer and is dependent upon many facets of the design including the overall structural concept and the building material. The uplift forces or pressure due to wetted clay soils can be addressed by designing the foundations to account for swelling soils.

#### 6.2.2 Settlement Potential

Settlement potential of a soil is the tendency for a soil to experience volume change when subjected to a load. Settlement is characterized by downward movement of all or a portion of the supported structure as the soil particles move closer together resulting in decreased soil volume. Settlement potential is a function of foundation loads, depth of footing embedment, the width of the footing and the settlement potential or compressibility of the influenced soil. Foundation design considerations concerning settlement potential include the amount of movement tolerable to the structure and the design and construction concepts to help reduce the potential movement.

#### 6.2.3 Soil Support Characteristics

The soil bearing capacity is a function of the engineering properties of the soils supporting the foundations, the foundation width, the depth of embedment of the bottom of the foundation below the lowest adjacent grade, the influence of the

ground water and the amount of settlement tolerable to the structure.

Foundations for the structures should be placed on relatively uniform bearing conditions. Varying support characteristics of the soils supporting the foundation may result in nonuniform or differential performance of the foundation. The influence of nonuniform bearing conditions may be reduced by recognizing and accommodating during the site specific design.

6.3 General Foundation Types

We anticipate that several foundation types are available for future structures. These include most commonly spread footings, mat foundation and drilled pier foundations. Driven piles may also be considered as a viable foundation system.

It is our opinion, based on our cursory review, that shallow continuous or isolated spread footings may be a viable foundation type to support structures on this site. The support characteristics will be influenced by the condition and character of the site soil materials, the swell potential of the support materials at each structure site and the settlement tolerable to the structure and the structure characteristics.

We recommend that these foundation alternatives be investigated on a site and structure specific basis during the planning phase of each lot development. Design parameters should be developed on site specific laboratory test data generated for the planned structure. These values and other design parameters should be determined for each building site and tailored for each structure.

A site and structure specific geotechnical engineering study should be performed for each proposed building site to provide geotechnical engineering suggestions and recommendations for design and construction of foundations. It is our opinion that Uniform Building Code (UBC) bearing capacity values are not appropriate for design because UBC does not consider site specific engineering characteristics of the soils.

Expansion and settlement characteristics of the foundation support soils should be tested for each building site and the anticipated post construction settlement analyzed on a site, structure and construction specific basis.

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Because of the anticipated expansive nature of some of the soil materials we feel that spread footings may experience significant post construction movement due to volume changes of the soils supporting the foundations. Drilled pier foundations may provide foundation systems with the least likelihood of post construction movement.

We recommend that we be contacted to perform a geotechnical engineering study for each proposed building site during the planning phase prior to foundation design to provide site specific geotechnical engineering design and construction suggestions and recommendations.

#### 6.4 Interior Floor Slab Comments

The natural soil materials encountered at the site will likely support interior floor slabs. The owner should realize that when loaded and wetted the site soil materials are likely to experience volume changes such as expansion and settlement. These volume changes could influence the performance of the slab on grade floors. The viability of a concrete slab on grade should be assessed during the site and structure specific study.

Engineering design dealing with swelling soil materials is an art which is still developing. The owners should be cautioned that the soils on this site may have swelling potential and concrete slab-on-grade floors and other lightly loaded members may experience movement when the supporting soils become wetted. We suggest lot owners consider floors suspended from the foundation systems as structural floors or a similar design that will not be influenced by subgrade volume changes.

If the owner is willing to accept the risk of possible damage from swelling or settling soil materials supporting concrete slab-on-grade floors, recommendations to help reduce the damage from swelling soils should be followed. Recommendations for concrete slab-on-grade floors on swelling or settling soil materials are based on generally accepted design and construction procedures for construction on soils that tend to experience volume changes when wetted and are intended to help reduce the damage caused by soil volume changes. Lambert and Associates does not intend that the owner, or the owner's consultants should interpret recommendations as a solution to the problems of swelling or settling soils, but as measures to reduce the influence of swelling or settling soils.

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A site and structure specific geotechnical engineering study should be performed to provide site and structure specific suggestions and recommendations for concrete slab-on-grade floors to help reduce the influence of swelling or settling soils.

6.5 Compacted Structural Fill

We anticipate that placement of compacted structural fill will be included in the site development. Compacted structural fill is typically a material which is constructed for direct support of structures or structural components.

There are several material characteristics which should be examined before choosing a material for potential use as compacted structural fill. These characteristics include: the size of the larger particles, the engineering characteristics of the fine grained portion of material matrix, the moisture content that the material will need to be for compaction with respect to the existing initial moisture content, the organic content of the material, and the items that influence the cost to use the material.

We typically suggest that the particle size of the compacted structural fill material be less than about two (2) to three (3) inches. The reason for this maximum size is that larger sizes may have too great an influence on the compaction characteristics of the material and may also impose point loads on the footings for floor slabs that are in contact with the material. Frequently pit-run material or crushed aggregate material is used for structural fill material. Pit-run material may be satisfactory, however crushed aggregate material with angular grains is preferable. Angular particles tend to interlock with each other better than rounded particles.

The fine grained portion of the fill material will have a significant influence on the performance of the fill. Material which has a fine grained matrix composed of silt and/or clay which exhibits expansive characteristics should be avoided for use as structural fill. The moisture content of the material should be monitored during construction and maintained near optimum moisture content for compaction of the material.

Soil with an appreciable organic content may not perform adequately for use as structural fill material due to the compressibility of the material and ultimately due to the decay of the organic portion of the material. Compacted fill should be a non-expansive material with the maximum aggregate size less

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than about three (3) inches and less than about twenty-five (25) percent coarser than three-quarter (3/4) inch size.

The suitability of the natural on-site soils for use as compacted structural fill should be determined on a building site specific basis.

All areas to receive compacted structural fill should be properly prepared prior to fill placement. The preparation should include removal of all organic or deleterious material and the area to receive fill should be compacted after the organic and deleterious material has been removed. Any areas of soft, yielding, or low density soil, evidenced during the excavation compaction operation should be removed. Fill should be moisture conditioned, placed in thin lifts and compacted.

We recommend that the geotechnical engineer or his representative be present during excavation compaction and fill placement operations to observe and test the material.

#### 6.6 Lateral Earth Pressures

The development may include basement or other walls retaining soil. If the development plans include basements or retaining walls we should be contacted to provide geotechnical engineering design recommendations for basement or retaining walls on a site and structure specific basis.

6.7 Backfill

Backfill areas and utility trench backfill should be constructed such that the backfill will not settle after completion of construction, and that the backfill is relatively impervious for the upper few feet. The backfill material should be free of trash and other deleterious material. It should be moisture conditioned and compacted. Only enough water should be added to the backfill material to allow proper compaction. Do not pond, puddle, float or jet backfill soils.

#### 6.8 Surface Drainage

The final grade of the ground surface should have a definite slope gradient to drain. Proper surface drainage should be maintained from the onset of construction through the proposed project life.

#### 6.9 Landscape Irrigation

An irrigation system should not be installed next to foundation walls, concrete flatwork or asphalt paved areas. If an irrigation system is installed, the system should be placed so that the irrigation water does not fall or flow near foundation walls, flatwork or pavements. The amount of irrigation water should be controlled.

#### 6.10 Soil Corrosivity to Concrete

Our scope of services did not include performing chemical tests to help identify the potential for soil corrosivity to concrete.

It has been our experience that much of the soils in the area contain sufficient water soluble sulfate content to be corrosive to concrete. We suggest sulfate resistant cement be used in concrete which will be in contact with the on-site soils. American Concrete Institute recommendations for sulfate resistant cement based on the water soluble sulfate content should be used.

#### 7.0 RADON CONSIDERATIONS

Our experience indicates that many of the soils in western Colorado produce small quantities of radon gas. Radon gas may tend to collect in closed poorly ventilated structures. Radon considerations are discussed in section 5.1 above.

#### 8.0 PRE-DESIGN AND PRE-CONSTRUCTION CONSIDERATIONS

The project geotechnical engineer should be consulted during planning, design and construction phases of the project development to provide continuing services. We recommend that a site and structure specific geotechnical engineering study be performed for each site during the planning phase of each site development. Lambert and Associates is available to provide additional site studies.

This geologic hazard and cursory level study is based on limited sampling; therefore, it is necessary to assume that the subsurface conditions do not vary greatly from those encountered in the field study. Our experience has shown that significant variations are likely to exist and can become apparent only during additional on site excavation. For this reason, and because of our familiarity with the project, Lambert and

Associates should be retained to provide on going consultation throughout the planning design and construction phases of the project to be available to comment on and provide recommendations with respect to the geotechnical engineering aspects of the project and to be available in the event any unusual or unexpected conditions are encountered. The cost of additional geotechnical engineering consultation and material testing during construction or any additional engineering services are not included in the fee for this report. We recommend that your budget include provision for additional engineering services.

We recommend that the observation and material testing services during construction be retained by the owner or the owner's engineer or architect, not the contractor, to maintain third party credibility. We are experienced and available to provide material testing services. We have included a copy of a report prepared by Van Gilder Insurance which discusses testing services during construction. It is our opinion that the owner, architect and engineer be familiar with the information. If you have any questions regarding this concept please contact us.

We suggest that your construction plans and schedule include provisions for geotechnical engineering observations and material testing during construction and your budget reflect these provisions.

#### 8.1 Structural Fill Quality

It is our understanding that the proposed development may include compacted structural fill. This section of our report is to provide some suggestions for you and your design team with respect to structural fill materials. The quality of compacted structural fill will depend on the type of material used as structural fill, fill lift thickness, fill moisture condition and compactive effort used during construction of the structural fill. Engineering observation and testing of structural fill is essential as an aid to safeguard the quality and performance of the structural fill.

Testing of the structural fill normally includes tests to determine the grain size distribution, swell potential and moisture-density relationship of the fill material to verify the material suitability for use as structural fill. As the material is placed the in place moisture content and dry density are tested to indicate the relative compaction of the placed structural fill. We recommend that your budget include

provisions for observation and testing of structural fill during construction.

Testing of the compacted fill material should include tests of the moisture content and density of the fill material placed and compacted prior to placement of additional fill material. We suggest that a reasonable number of density tests of the fill material can best be determined on a site, material and construction basis although as a guideline we suggest one test per about each 300 to 500 square feet of each lift of fill material. Utility trench backfill may need to be tested about every 100 linear feet of lift of backfill.

8.2 Concrete Quality

It is our understanding current plans include reinforced structural concrete for foundations and walls and may include concrete slabs on grade and pavement. This section of our report is to provide suggestions to you and your design team with respect to concrete quality. To insure concrete members perform as intended, the structural engineer should be consulted and should address factors such as design loadings, anticipated movement and deformations.

The quality of concrete is influenced by proportioning of the concrete mix, placement, consolidation and curing. Desirable qualities of concrete include compressive strength, water tightness and resistance to weathering. Engineering observations and testing of concrete during construction is essential as an aid to safeguard the quality of the completed concrete.

Testing of the concrete is normally performed to determine compressive strength, entrained air content, slump and temperature. We recommend that your budget include provisions for testing of concrete during construction. We suggest that a reasonable frequency of concrete tests can best be determined on a site, materials and construction specific basis although as a guideline American Concrete Institute, ACI, suggests one test per about each fifty (50) cubic yards or portion thereof per day of concrete material placed.

#### 9.0 LIMITATIONS

This geologic hazard and cursory level geotechnical engineering study is based on limited sampling, therefore it is necessary to assume that the subsurface conditions do not vary greatly from

those encountered in the test borings. Our experience has shown that significant variations are likely to exist and can become apparent only during additional on-site excavation. For this reason, and because of our familiarity with the project, Lambert and Associates is available to be retained to perform a geotechnical engineering study for each proposed building site.

This report presents geotechnical engineering cursory level comments and considerations. The information presented in this report is not intended to be used as design level geotechnical engineering recommendations. A site and structure specific geotechnical engineering study should be performed for each proposed building site to provide geotechnical engineering suggestions and recommendations for design and construction of foundations for structures on the proposed subdivision site.

It is the owner's and the owner's representatives responsibility to read this report and become familiar with the recommendations and suggestions presented. We should be contacted if any questions arise concerning the geotechnical engineering aspects of this project as a result of the information presented in this report.

The comments, suggestions and recommendations outlined above are based on our understanding of the currently proposed construction. We are available to discuss the details of our recommendations with you and revise them where necessary. This geotechnical engineering report is based on the proposed site development and scope of services as provided to us by Mr. Tate Rogers, on the type of construction planned, existing site conditions at the time of the field study, and on our findings. Should the planned, proposed use of the site be altered, Lambert and Associates must be contacted, since any such changes may make our suggestions and recommendations given inappropriate. This report should be used ONLY for the planned development for which this report was tailored and prepared, and ONLY to meet information needs of the owner and the owner's representatives.

We represent that our services were performed within the limits prescribed by you and with the usual thoroughness and competence of the current accepted practice of the geotechnical engineering profession in the area. No warranty or representation either expressed or implied is included or intended in this report or our contract. We are available to discuss our findings with you. If you have any questions please contact us. The supporting data for this report is included in the accompanying figures and appendices.

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This report is a product of Lambert and Associates. Excerpts from this report used in other documents may not convey the intent or proper concepts when taken out of context or they may be misinterpreted or used incorrectly. Reproduction, in part or whole, of this document without prior written consent of Lambert and Associates is prohibited.

We have enclosed a copy of a brief discussion about geotechnical reports published by Association of Soil and Foundation Engineers for your reference.

Please call when further consultation or observations and tests are required.

If you have any questions concerning this report or if we may be of further assistance, please contact us.

Respectfully submitted; LAMBERT AND ASSOCIATES

Daniel R. Lambert, P. E. Geotechnical Engineer

Reviewed by:

Dennis D. Lambert, P. E. Geotechnical Engineer

**Lambert and Associates** CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TERTING

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# IMPORTANT INFORMATION ABOUT YOUR GEOTECHNICAL ENGINEERING REPORT

More construction problems are caused by site subsurface conditions than any other factor. As troublesome as subsurface problems can be, their frequency and extent have been lessened considerably in recent years, due in large measure to programs and publications of ASFE/ The Association of Engineering Firms Practicing in the Geosciences.

The following suggestions and observations are offered to help you reduce the geotechnical-related delays, cost-overruns and other costly headaches that can occur during a construction project.

# A GEOTECHNICAL ENGINEERING REPORT IS BASED ON A UNIQUE SET OF PROJECT-SPECIFIC FACTORS

A geotechnical engineering report is based on a subsurface exploration plan designed to incorporate a unique set of project-specific factors. These typically include: the general nature of the structure involved, its size and configuration; the location of the structure on the site and its orientation; physical concomitants such as access roads, parking lots, and underground utilities, and the level of additional risk which the dient assumed by virtue of limitations imposed upon the exploratory program. To help avoid costly problems, consult the geotechnical engineer to determine how any factors which change subsequent to the date of the report may affect its recommendations.

Unless your consulting geotechnical engineer indicates otherwise, your geotechnical engineering report should not be used:

- When the nature of the proposed structure is changed, for example, if an office building will be erected instead of a parking garage, or if a refrigerated warehouse will be built instead of an unrefrigerated one;
- when the size or configuration of the proposed structure is altered;
- when the location or orientation of the proposed structure is modified;
- when there is a change of ownership, or
- for application to an adjacent site.

Geotechnical engineers cannot accept responsibility for problems which may develop if they are not consulted after factors considered in their report's development have changed.

# MOST GEOTECHNICAL "FINDINGS" ARE PROFESSIONAL ESTIMATES

Site exploration identifies actual subsurface conditions only at those points where samples are taken, when they are taken. Data derived through sampling and subsequent laboratory testing are extrapolated by geotechnical engineers who then render an opinion about overall subsurface conditions, their likely reaction to proposed construction activity, and appropriate foundation design. Even under optimal circumstances actual conditions may differ from those inferred to exist. because no geotechnical engineer, no matter how qualified, and no subsurface exploration program, no matter how comprehensive, can reveal what is hidden by earth, rock and time. The actual interface between materials may be far more gradual or abrupt than a report. indicates. Actual conditions in areas not sampled may differ from predictions. Nothing can be done to prevent the unanticipated, but steps can be taken to help minimize their impact. For this reason, most experienced owners retain their geotechnical consultants through the construction stage, to identify variances, conduct additional tests which may be needed, and to recommend solutions to problems encountered on site.

# SUBSURFACE CONDITIONS CAN CHANGE

Subsurface conditions may be modified by constantlychanging natural forces. Because a geotechnical engineering report is based on conditions which existed at the time of subsurface exploration, construction decisions should not be based on a geotechnical engineering report whose adequacy may have been affected by time. Speak with the geotechnical consultant to learn if additional tests are advisable before construction starts.

Construction operations at or adjacent to the site and natural events such as floods, earthquakes or groundwater fluctuations may also affect subsurface conditions and, thus, the continuing adequacy of a geotechnical report. The geotechnical engineer should be kept apprised of any such events, and should be consulted to determine if additional tests are necessary.

### GEOTECHNICAL SERVICES ARE PERFORMED FOR SPECIFIC PURPOSES AND PERSONS

Geotechnical engineers' reports are prepared to meet the specific needs of specific individuals. A report prepared for a consulting civil engineer may not be adequate for a construction contractor, or even some other consulting civil engineer. Unless indicated otherwise, this report was prepared expressly for the dient involved and expressly for purposes indicated by the dient. Use by any other persons for any purpose, or by the client for a different purpose, may result in problems. No indlvidual other than the client should apply this report for its intended purpose without first conferring with the geotechnical engineer. No person should apply this report for any purpose other than that originally contemplated without first conferring with the geotechnical engineer.

# A GEOTECHNICAL ENGINEERING REPORT IS SUBJECT TO MISINTERPRETATION

Costly problems can occur when other design professionals develop their plans based on misinterpretations of a geotechnical engineering report. To help avoid these problems, the geotechnical engineer should be retained to work with other appropriate design professionals to explain relevant geotechnical findings and to review the adequacy of their plans and specifications relative to geotechnical issues.

# BORING LOGS SHOULD NOT BE SEPARATED FROM THE ENGINEERING REPORT

Final boring logs are developed by geotechnical engineers based upon their interpretation of field logs (assembled by site personnel) and laboratory evaluation of field samples. Only final boring logs customarily are included in geotechnical engineering reports. These logs should not under any circumstances be redrawn for inclusion in architectural or other design drawings, because drafters may commit errors or omissions in the transfer process. Although photographic reproduction eliminates this problem, it does nothing to minimize the possibility of contractors misinterpreting the logs during bid preparation. When this occurs, delays, disputes and unanticipated costs are the all-too-frequent result.

To minimize the likelihood of boring log misinterpretation, give contractors ready access to the complete geotechnical engineering report prepared or authorized for their use. Those who do not provide such access may proceed under the mistaken impression that simply disclaiming responsibility for the accuracy of subsurface information always insulates them from attendant liability. Providing the best available information to contractors helps prevent costly construction problems and the adversarial attitudes which aggravate them to disproportionate scale.

# READ RESPONSIBILITY CLAUSES CLOSELY

Because geotechnical engineering is based extensively on judgment and opinion, it is far less exact than other design disciplines. This situation has resulted in wholly unwarranted daims being lodged against geotechnical consultants. To help prevent this problem, geotechnical engineers have developed model clauses for use in written transmittals. These are not exculpatory dauses designed to foist geotechnical engineers' liabilities onto someone else. Rather, they are definitive clauses which Identify where geotechnical engineers' responsibilities begin and end. Their use helps all parties involved recognize their individual responsibilities and take appropriate action. Some of these definitive dauses are likely to appear in your geotechnical engineering report, and you are encouraged to read them closely. Your geotechnical engineer will be pleased to give full and frank answers to your questions.

# OTHER STEPS YOU CAN TAKE TO REDUCE RISK

Your consulting geotechnical engineer will be pleased to discuss other techniques which can be employed to mitigate risk. In addition, ASFE has developed a variety of materials which may be beneficial. Contact ASFE for a complimentary copy of its publications directory.

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ASSOCIATION OF SOIL AND FOUNDATION ENGINEERS 8811 Colesville Road/Suite 225 Silver Spring, Maryland 20910 301/565-2733

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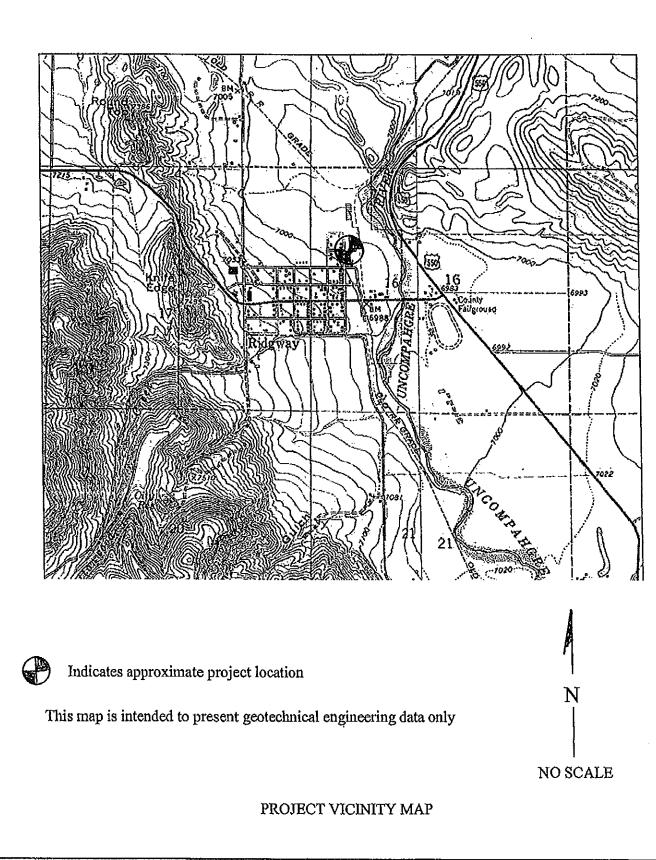
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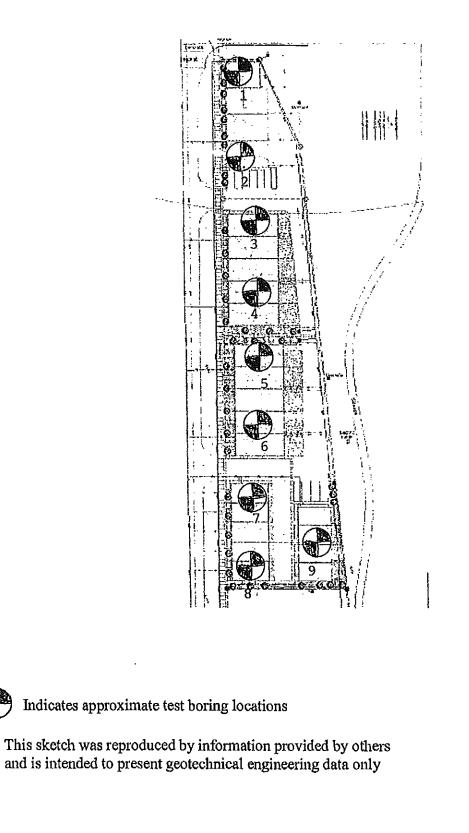
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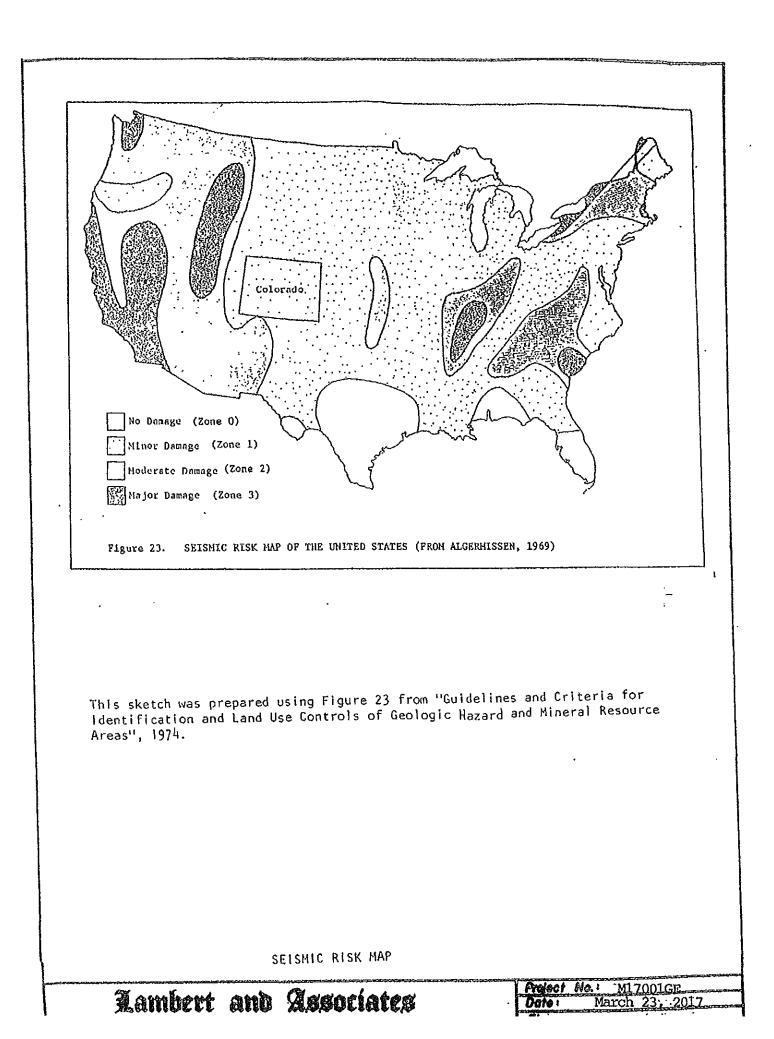
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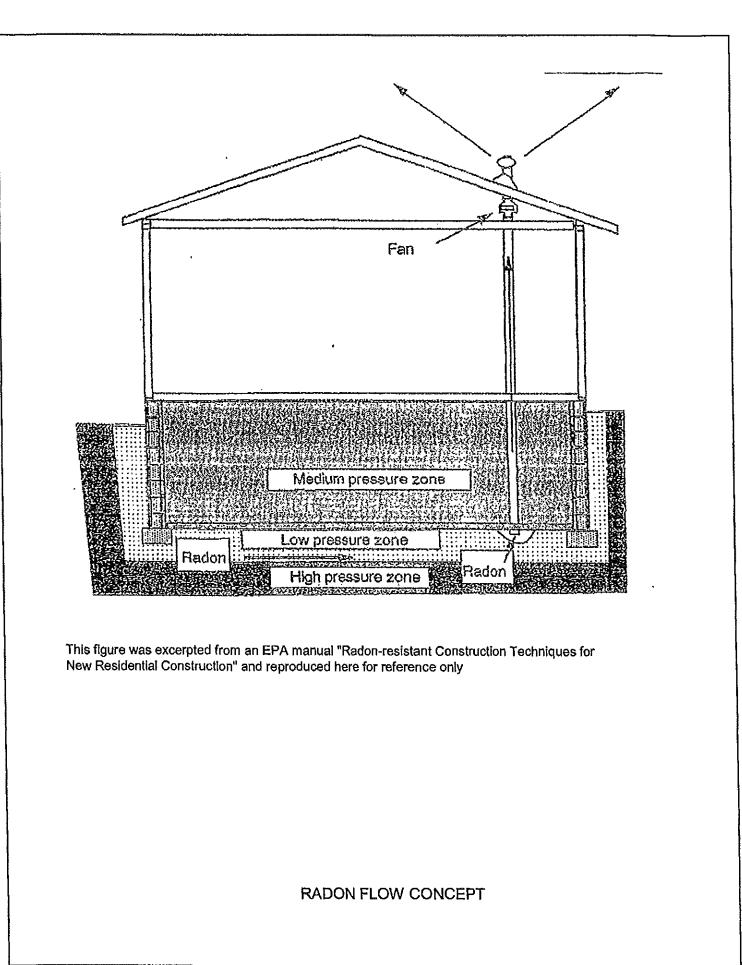


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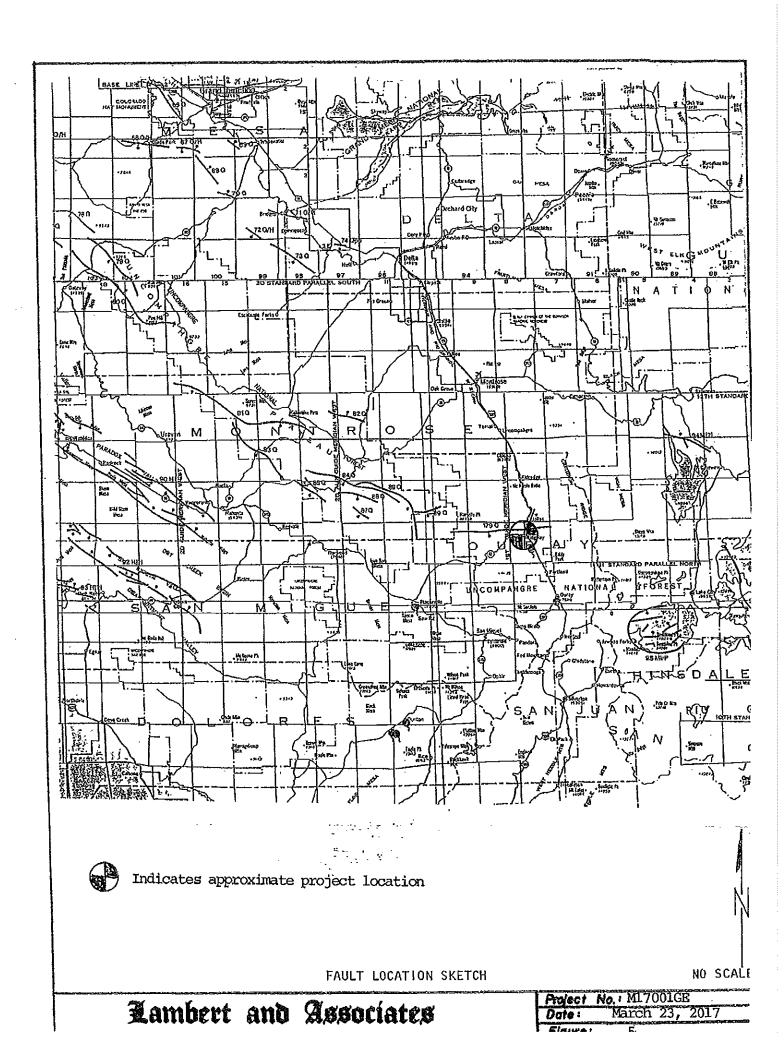
# TEST BORING LOCATION SKETCH

	Project No.	M17001GE
Lambert and Associates	Date:	March 23, 2017
	Figure:	2





	Project No.	M17001GE
Hambert and Associates	Date:	March 23, 2017
	Figure:	4



#### APPENDIX A

The field study was performed on January 27, 31 and March 14, 2017. The field study consisted of logging and sampling the soils encountered in nine (9) small diameter test borings. The approximate locations of the test borings are shown on Figure 2. The log of the soils encountered in the test borings are presented on Figures A2 through A10.

The test borings were logged by Lambert and Associates and samples of significant soil types were obtained. The samples were obtained from the test borings using a Modified California Barrel sampler and bulk disturbed samples were obtained. Penetration blow counts were determined using a 140 pound hammer free falling 30 inches. The blow counts are presented on the logs of the test borings such as 13/6 where 13 blows with the hammer were required to drive the sampler 6 inches.

The engineering field description and major soil classification are based on our interpretation of the materials encountered and are prepared according to the Unified Soil Classification System, ASTM D2488. The description and classification which appear on the test boring log is intended to be that which most accurately describes a given interval of the test boring (frequently an interval of several feet). Occasionally discrepancies occur in the Unified Soil Classification System nomenclature between an interval of the soil log and a particular sample in the interval. For example, an interval on the test boring log may be identified as a silty sand (SM) while one sample taken within the interval may have individually been identified as a sandy silt (ML). This discrepancy is frequently allowed to remain to emphasize the occurrence of local textural variations in the interval.

The stratification lines presented on the logs are intended to present our interpretation of the subsurface conditions encountered in the test boring. The stratification lines represent the approximate boundary between soil types and the transition may be gradual.

A1

	KEY TO LOG OF TEST BORING						
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	_	В	<b>[</b>	Indicates Bulk Bag Sample	DD: Indicates dry density in pounds per cubic foot		
	5 -	çX	<del>{</del>	Indicates Drive Sample	MC: Indicates molsture content as percent of dry unit weight		
	5.			Incloates Sampler Type:	LL: Indicates Liquid Limit		
	d. Annar			C - Modified California St - Standard Split Spoon	PL: Indicates Plastic Limit		
				H - Hand Sampler	Pl: Indicates Plasticity Index		
			7/12	Indicates seven blows required to drive the sampler twelve inches with	Ţ		
6	10 -			a hammer that weighs one hundred forty pounds and is dropped thirty	1		
	10 -			Inches.			
				BOUNCE: Indicates no further	4		
				penetration occurred with additional blows with the hammer			
				NR: Indicates no sample recovered			
	15 -			CAVED: Indicates depth the test boring caved after drilling			
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Project Name: Lena Street Commons

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**Lambert and Associates** consulting geotechnical engineers and material testing

LOG OF TEST BORING Date Drilled: January 27, 2017 Field Engineer: DRL Boring Number: 5 Location: See test boring location diagram Elevation:						
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Hambert and Associates consulting geotechnical engineers and material testing

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**Exambert and Associates** CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

	LOG OF TEST BORING						
Date I	Drilled	1: Ja	inuary 27	7, 2017 Field Engineer: D	RL Boring Number: 7		
Location: See test boring location diagram Diameter: 4 inches Total Depth: 15 feet I					Elevation:		
		1		Total Depth: 15 feet	Depth to Water at Time of Drilling: None Encountered.		
Symbol	Depth		mple	Soil Description	Laboratory Test Results		
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Pro	iect N	lame:	Lena S	Street Commons	Project Number: M17001GE Figure: A8		

# Lambert and Associates consulting geotechnical engineers and material testing

den in statistic (digi	LOG OF TEST BORING							
Date I	Drilled	d: Ma	arch 14,	2017 Field Engineer: Df	RL Boring Number: 8			
			-	location diagram	Elevation:			
Diam	eter:	T	ches	Total Depth: 15 feet	Depth to Water at Time of Drilling: None Encountered			
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Pro	Project Name: Lena Street Commons Project Number: M17001GE Figure: A9							

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# Lambert and Associates consulting geotechnical engineers and material testing

	LOG OF TEST BORING							
Date I				•		RL Boring Number: 9		
	.ocation: See test boring location diagram Diameter: 4 inches Total Depth: 15 feet D					Elevation:		
		T	attà Charaith		iotal Depth: 15 feet	Depth to Water at Time of Drilling: None Encountered		
Symbol	Depth		Sample		Soil Description	Laboratory Test Results		
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Pro	ject	Name		Lena S	Street Commons	Project Number: M17001GE Figure: A10		

# **Lambert and Associates** consulting geotechnical engineers and material. Testing

### APPENDIX B

The laboratory study consisted of performing:

, Moisture content and dry density tests,

- . Swell-consolidation tests,
- . Direct Shear Strength tests, and
- . Radon tests.

It should be noted that samples obtained using a drive type sleeve sampler may experience some disturbance during the sampling operations. The test results obtained using these samples are used only as indicators of the in situ soil characteristics.

#### TESTING

Moisture Content and Dry Density

Moisture content and dry density were determined for each sample tested of the samples obtained. The moisture content was determined according to ASTM Test Method D2216 by obtaining the moisture sample from the drive sleeve. The dry density of the sample was determined by using the wet weight of the entire sample tested. The results of the moisture and dry density determinations are presented on the logs of borings, Figures A2 through A10.

Swell Tests

Loaded swell tests were performed on drive samples obtained during the field study. These tests are performed in general accordance with ASTM Test Method D2435 to the extent that the same equipment and sample dimensions used for consolidation testing are used for the determination of expansion. A sample is subjected to static surcharge, water is introduced to produce saturation, and volume change is measured as in ASTM Test Method D2435. Results are reported as percent change in sample height.

#### Consolidation Tests

One dimensional consolidation properties of drive samples were evaluated according to the provisions of ASTM Test Method D2435.

Β1

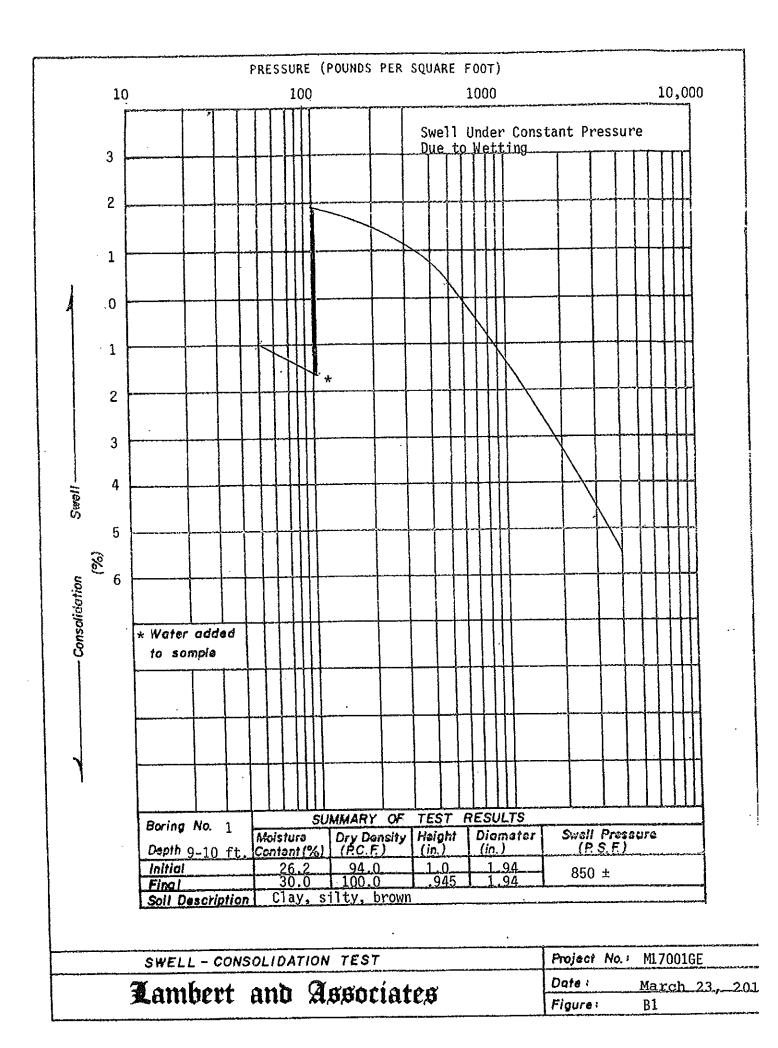
Lambert and Associates consulting geotechnical engineers and material testing Water was added in all cases during the test. Exclusive of special readings during consolidation rate tests, readings during an increment of load were taken regularly until the change in sample height was less than 0.001 inch over a two hour period. The results of the swell-consolidation load tests are summarized on Figures B1 through B4, swell-consolidation tests.

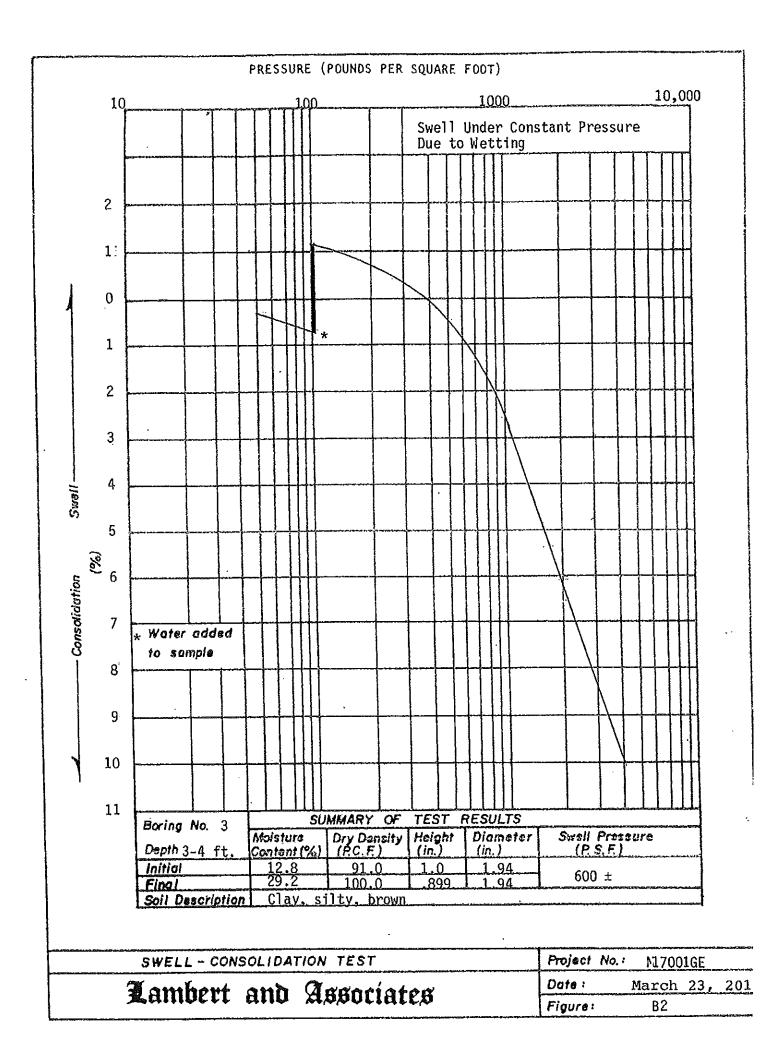
It should be noted that the graphic presentation of consolidation data is a presentation of volume change with change in axial load. As a result, both expansion and consolidation can be illustrated.

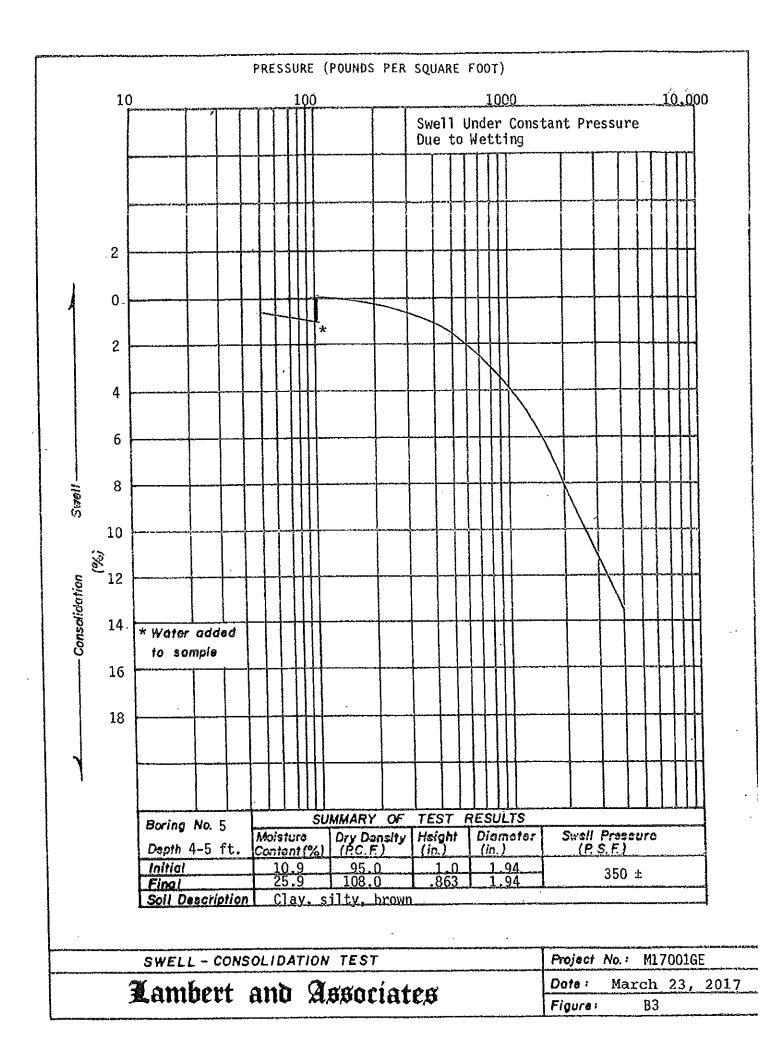
Direct Shear Strength Tests

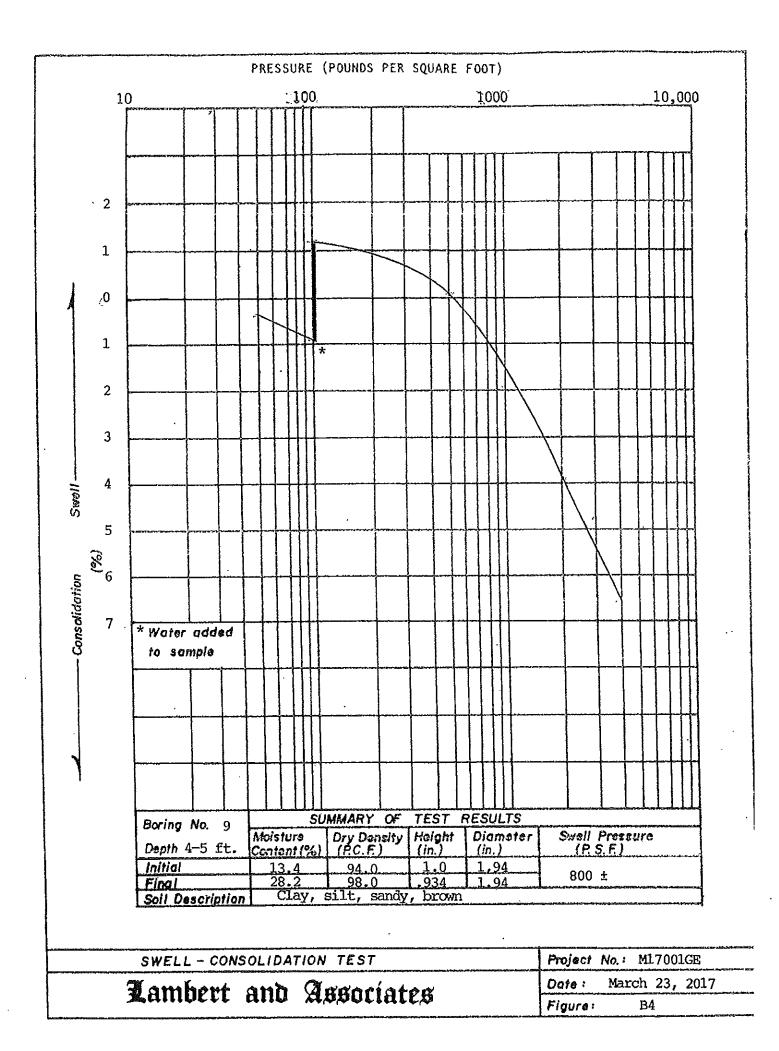
Direct shear strength properties of sleeve samples were evaluated in general accordance with testing procedures defined by ASTM Test Method D3080. The results of the direct shear strength tests are summarized on Figures B5 through B7, direct shear strength tests.

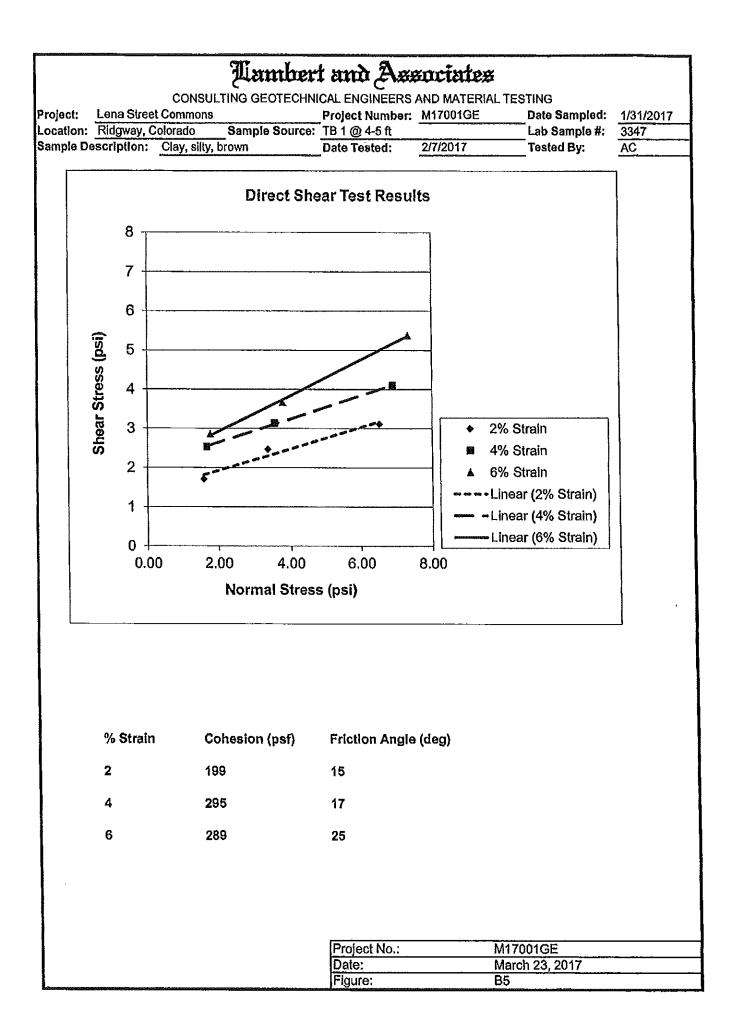


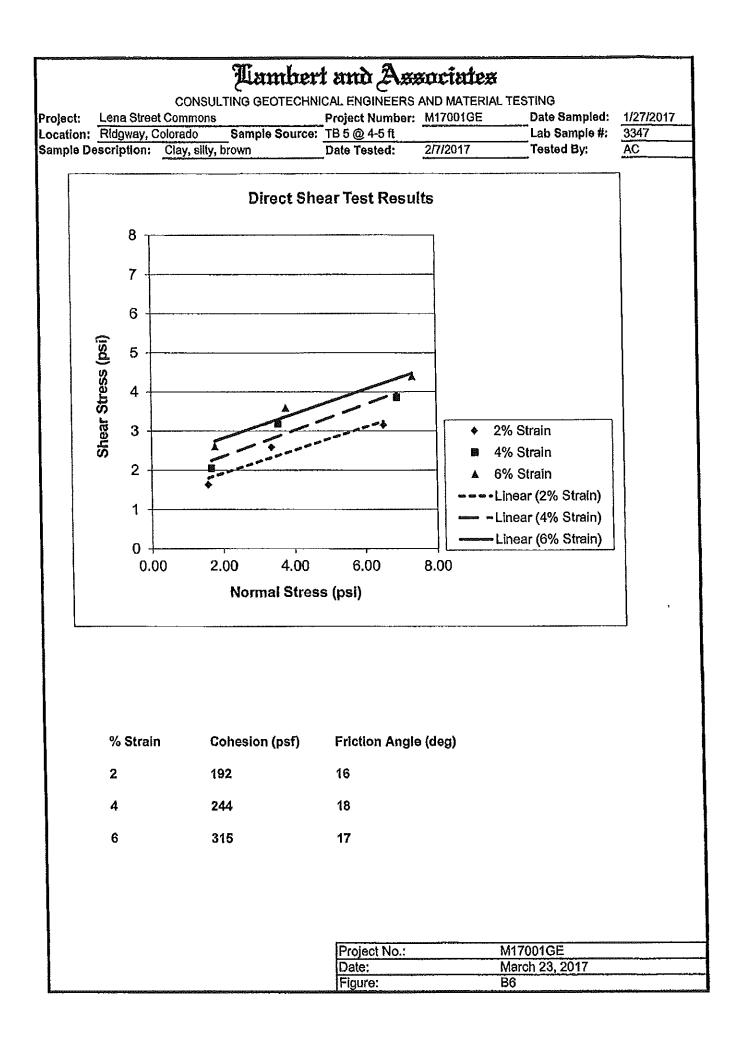


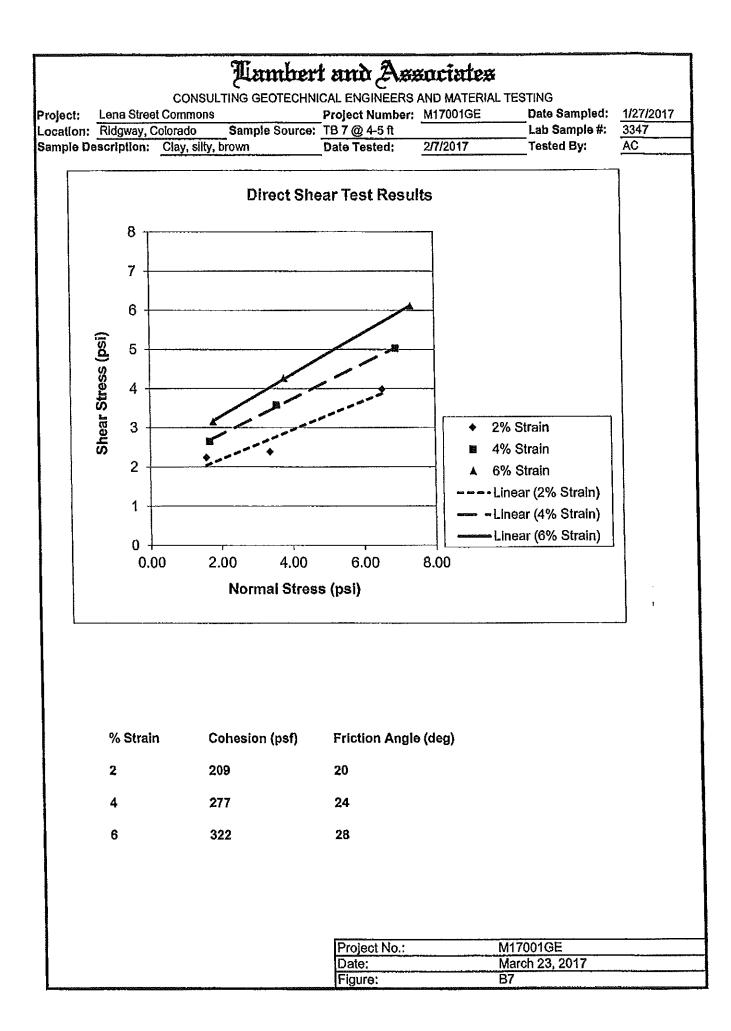












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### APPENDIX C GEOLOGY DISCUSSION SOUTHWEST COLORADO GEOLOGY

Southwest Colorado exhibits many geologic features formed by a multitude of geologic processes. Regional inundation, uplift, volcanism and glaciation are responsible for some of the complex geology of the region. Many theories and speculations concerning the mode of occurrence of the regions's geology have been presented over the years. This cursory discussion of the geology of southwest Colorado presents some theories accepted by the geologic community, but is only intended to introduce the basic concepts and restraints that arise due to geologic activity.

Prior to the formation of the Rocky Mountains southwest Colorado was a primarily a flat lying region with little The North American continent was topographic expression. experiencing many episodes of deposition. The Transcontinental Sea was transgressing and regressing across the continent, these transgressions and regressions are the cause for such diverse rock types. The stratigraphic column in southwestern Colorado expresses rock types from variable depositional environments. Limestones are formed in deeper water, sandstones are formed in beach and tidal flat environments, while arkosic sandstone and conglomerates are formed in alluvial plains and fans. Particle size and mineralogic content in rock units are related to the depositional environment. A sandstone or conglomerate would not be likely to form in a deep sea environment because there would not be enough energy to carry such large particles a great distance from the source lands. As one observes the stratigraphic column of southwest Colorado a siltstone may be overlain by a sandstone which is in turn overlain This represents а regressional then by а siltstone. transgressional sequence. Many such sequences or combinations of other rock units are exhibited throughout southwest Colorado.

The final regression of the sea may have been caused by orogenic activity and uplift. This uplift was not confined to Colorado, it was a regional uplift that occurred in many stages. The uplift is what caused the formation of the ancestral rockies. The Larimide Orogenic episode is responsible for the formation of the San Juan dome. (Note: The San Juan dome theory is not accepted by the entire geologic community. It is used here for descriptive purposes). The San Juan dome was essentially an upwarp of the stratigraphy formed by sedimentation during the Transcontinental Sea. An actual dome probably never existed due to erosion during the uplift. The idea being that a dome of sediment and rock units would have existed had erosion and diastrophism not taken place.

C1

Lambert and Associates consulting geotechnical engineers and material testing The orientation of bedding planes forms a radial pattern around the San Juan region which seems to vindicate this theory.

The stresses need to "upwarp" this large area were obviously tremendous. Locally occurring stresses may not be sufficient to move this quantity of material, global tectonics, directly or indirectly, may have been involved. Compression of the entire North American plate could have occurred. The magnitude of the stresses and the deep seated origin of these stresses also have caused extensive volcanism. Colorado has many large remnants of Calderas that were active during the orogenic activity. The Silverton and Lake City Calderas are the largest in the San Juan Activity in the Silverton Caldera has been estimated region. (radiometrically) to have occurred 22 million years ago. Calderas of this magnitude are believed to have formed by the collapse of epierogenic magma chambers. Volcanic and metamorphic rock bodies are common in the San Juan region, many of these units are related to the orogenic activity in the region.

Faults associated with local orogenic activity are another common geologic feature found in southwestern Colorado. As stated previously, extreme stresses were probably associated with the formation of the San Juan Mountains and may be responsible for deep-seated volcanic and metamorphic processes. These stresses had to be released, the geologic mode for stress release is faulting. Diastrophic activity in the area today is quite low, the lack of seismic activity indicates that stresses are not currently being released. An explanation for the loss of stresses is through faulting.

The last episode of regional geologic activity in the area was glaciation. The most recent period of glacial activity ended approximately 10,000 years ago. Glacial activity is responsible for much of the topographic expression in the area. "U-Shaped" valleys, moraine deposits, tarns, (glacial formed lakes), and rock glaciers are the most prominent features which are found in southwestern Colorado as a result of glacial activity. The valley configurations are a result of the erosional activity of the glaciers. Moraine deposits developed during the glacial activity. Rock glaciers are moving masses of rock which are thought to have an ice core which may be the last remnant of glacial ice. As the subsurface ice core moves and melts, the overlying mass of rock also moves.

C2

Lambert and Associates consulting geotechnical engineers and material testing



Tab 21 Letter Addressing Building Codes

IF REFERENCE TO RIDGWAY TOWN COMMENT 6-1 BUILDING REGULATIONS:

THE 2006 INTERNATIONAL RESIDENTIAL CODE STATES:

R317.2 TOWNHOUSES. EACH TOWNHOUSE SHALL BE CONSIDERED A SEPARATE BUILDING AND SHALL BE SEPARATED BY FIRE-RESISTANCE-RATED WALL ASSEMBLIES MEETING THE REQUIREMENTS OF SECTION R302 FOR EXTERIOR WALLS.

THE LENA STREET COMMONS TOWNHOUSE WILL USE A 2-HOUR FIRE RESISTANCE-RATED COMMON WALLS. THERE WILL BE NO PLUMBING OR MECHANICAL EQUIPMENT, DUCTS OR VENTS IN THE CAVITY OF THE COMMON WALLS. ELECTRICAL INSTALLATIONS WILL BE INSTALLED IN ACCORDANCE WITH CHAPTERS 33-42. PENETRATIONS OF ELECTRICAL OUTLET BOXES SHALL BE IN ACCORDANCE WITH SECTION R317.3 EACH INDIVIDUAL TOWNHOME WILL BE STRUCTURALLY INDEPENDENT PER R317.2.4 AND ITS STATED EXCEPTIONS.

SINCERELY,

SUNDRA HINES HINES DESIGNS 970-626-2300 SUNDRA@HINES-DESIGNS.COM Ridgway Municipal Code, Definitions 7-3-2

Tab 22 Building Square Footage Calculation

Gross Floor Area = The heated area of a building measured along the outside enclosing walls, excluding interior parking areas and outdoor common areas. Ord 1-2014.

### A units

3 @ 1,232 sq.ft. = 3,696 sq.ft.

<u>1@ 882 sq.ft.</u>

Total Gross Building = 4,578 sq.ft.

Note: Mezzanine areas not included in square footage calcs. per IBC

Mezzanine's are 3 @ 323 sq.ft. & 1 @ 259 sq.ft.

### **B** units

3 @ 1,647 sq.ft. = 4,941 sq.ft.

2 @ 1,651 sq.ft. = 3,302 sq.ft.

Total Gross Building = 8,243 sq.ft.

C units

3 @ 1,662 sq.ft. = 4,986

<u>2 @ 1,669 sq.ft. = 3,338 sq.ft.</u>

Total Gross Building = 8,324 sq.ft.

D units

3 @ 1,846 sq.ft. = 5,538 sq.ft.

<u>2 @ 1,855 sq.ft = 3,710 sq.ft.</u>

Total Gross Building = 9,248 sq.ft.

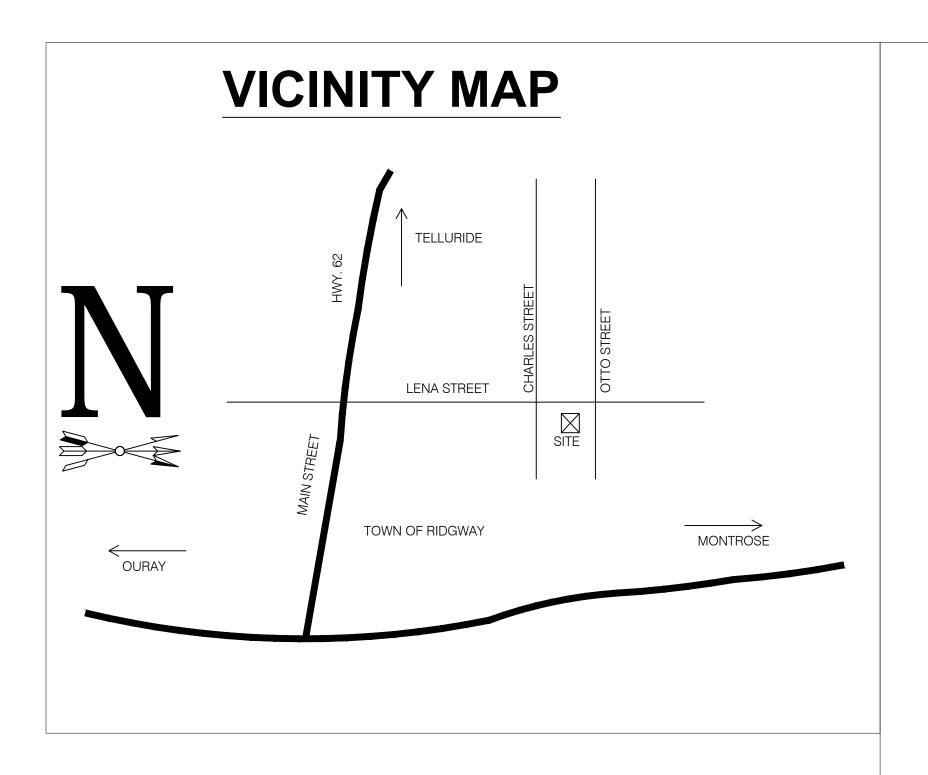
E units

4@720 sq.ft. = 2,880 sq.ft.

Note: Each unit to have 123 sq.ft. storage loft. This area is not included in the square footage calc.







# **SHEET INDEX**

CIVIL DRAWINGS:

1 COVER 2 SITE PLAN 3 MASTER GRADING AND DRAINAGE PLAN 4 GRADING PLAN - UNIT A 5 GRADING PLAN - UNIT B 6 GRADING PLAN - UNIT C 7 GRADING PLAN - UNIT D & E 8 GRADING PLAN - HB LOT 9 UTILITY PLAN 10 STORM DRAIN PLAN & PROFILE 11 STORM DRAIN PLAN & PROFILE 12 ROOF DRAIN PROFILES 13 DETAILS

PLAT DRAWINGS: 1 PLAT NOTES 2 PLAT NOTES 3 PLAT PLAN 4 PLAT & EASEMENT PLAN

# LENA STREET COMMONS

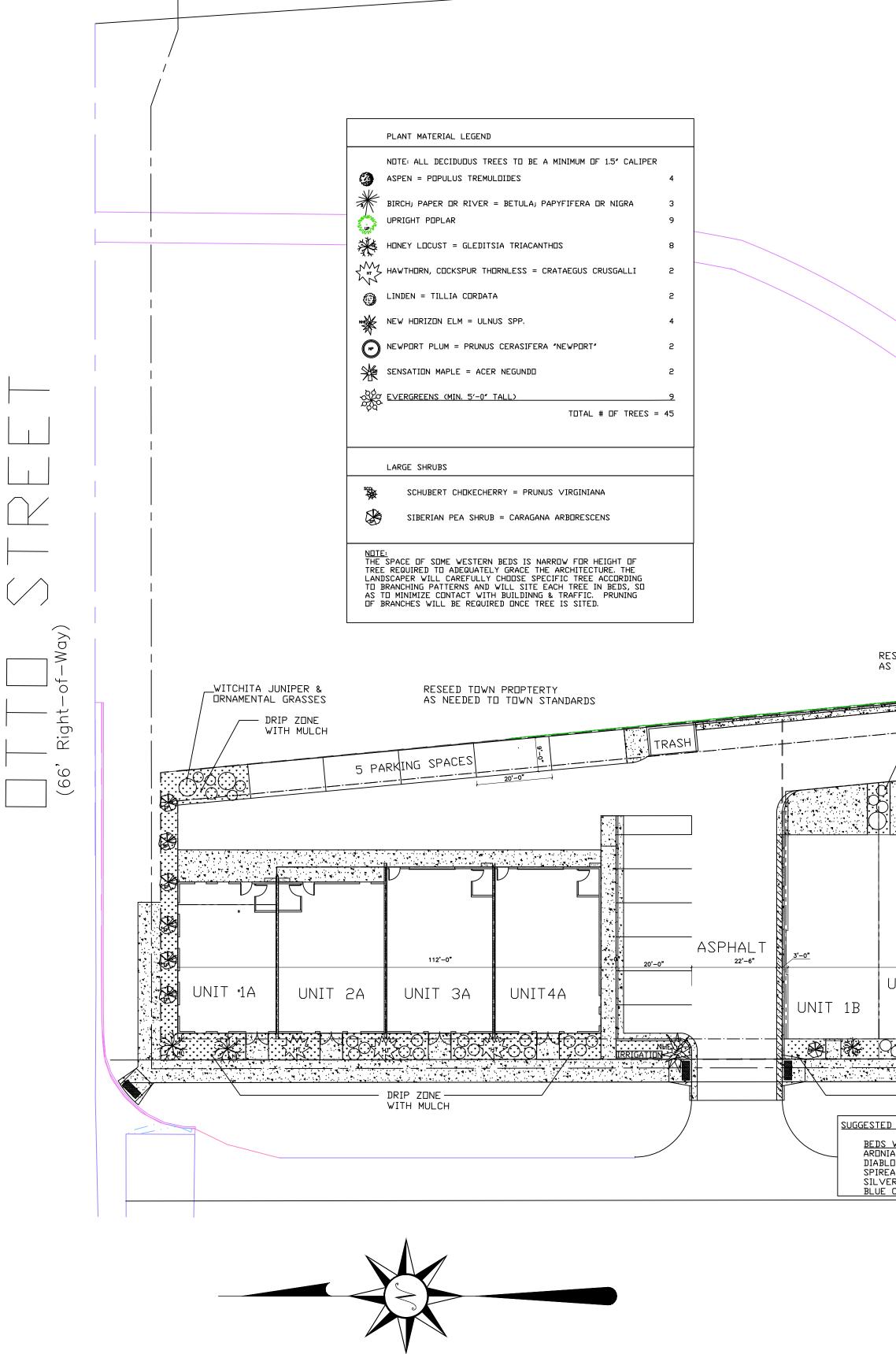
ARCHITECTURAL DRAWINGS:	PROJECT ADDRESS: TBD LENA STREET
	OWNER: TRAVIS SPITZER CONCORDIA CAPITAL
T 1.0 TITLE SHEET	
A 1.0 LANDSCAPE PLAN	(970)728-8651
A 1.1 ARCHITECTURAL SITE & LIGHTING PLAN	APPLICANT: TATE ROGERS ROGERS REAL ESTATE GROUP
A 1.2 ARCHITECTURAL SITE & LIGHTING PLAN	
A 2.1 UNIT A FLOOR PLAN	(970)626-2600 ARCHITECT: HINES DESIGNS
A 2.2 UNIT B GRADE LEVEL FLOOR PLAN	
A 2.3 UNIT B SECOND LEVEL FLOOR PLAN	SUNDRA HINES
A 2.4 UNIT C GRADE LEVEL FLOOR PLAN	188 MARIE STREET
A 2.5 UNIT C SECOND LEVEL FLOOR PLAN	RIDGWAY, CO 81432
A 2.6 UNIT D GRADE LEVEL FLOOR PLAN	(970)626-2300 CIVIL ENGINEER: DEL-MONT CONSULTANTS
A 2.7 UNIT D SECOND LEVEL FLOOR PLAN	125 COLORADO AVENUE
A 2.8 UNIT D THIRD LEVEL FLOOR PLAN	MONTROSE, CO 81401
A 2.9 UNIT E FLOOR PLAN	(970)249-2251
A 4.1 UNIT A BUILDING ELEVATIONS	LEGAL COUNCIL: ANDY MUELLER
A 4.2 UNIT B BUILDING ELEVATIONS	KERP NEU HANLON
A 4.3 UNIT B BUILDING ELEVATIONS	201 14TH ST STE.200
A 4.4 UNIT C BUILDING ELEVATIONS	P.O. 2038
A 4.5 UNIT C BUILDING ELEVATIONS	GLENWOOD SPRINGS, CO 81612
A 4.6 UNIT D BUILDING ELEVATIONS	(970)928-2116
A 4.7 UNIT D BUILDING ELEVATIONS	
A 4.8 UNIT E BUILDING ELEVATIONS	TOM KENNEDY
A 5.1 UNIT A BUILDING SECTIONS	THE LAW OFFICES OF THOMAS G. KENNEDY
A 5.2 UNIT B BUILDING SECTIONS	P.O. BOX 3081
A 5.3 UNIT C BUILDING SECTIONS	TELLURIDE, CO 81435
A 5.4 UNIT D BUILDING SECTIONS	(970) 728-2424
A 5.5 UNIT E BUILDING SECTIONS	

	D UNTS EAST ELEVATION



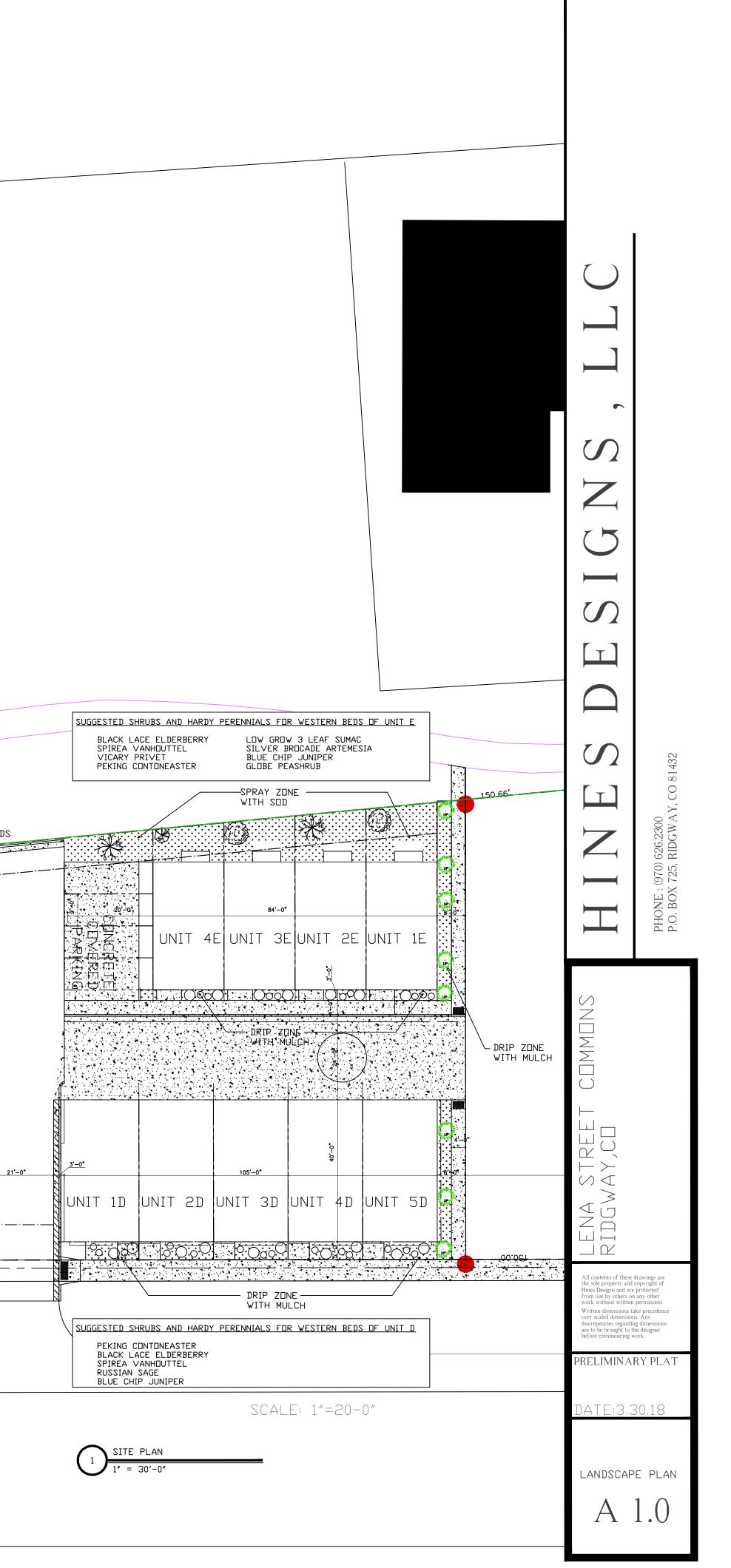
# **PROJECT INFORMATION**

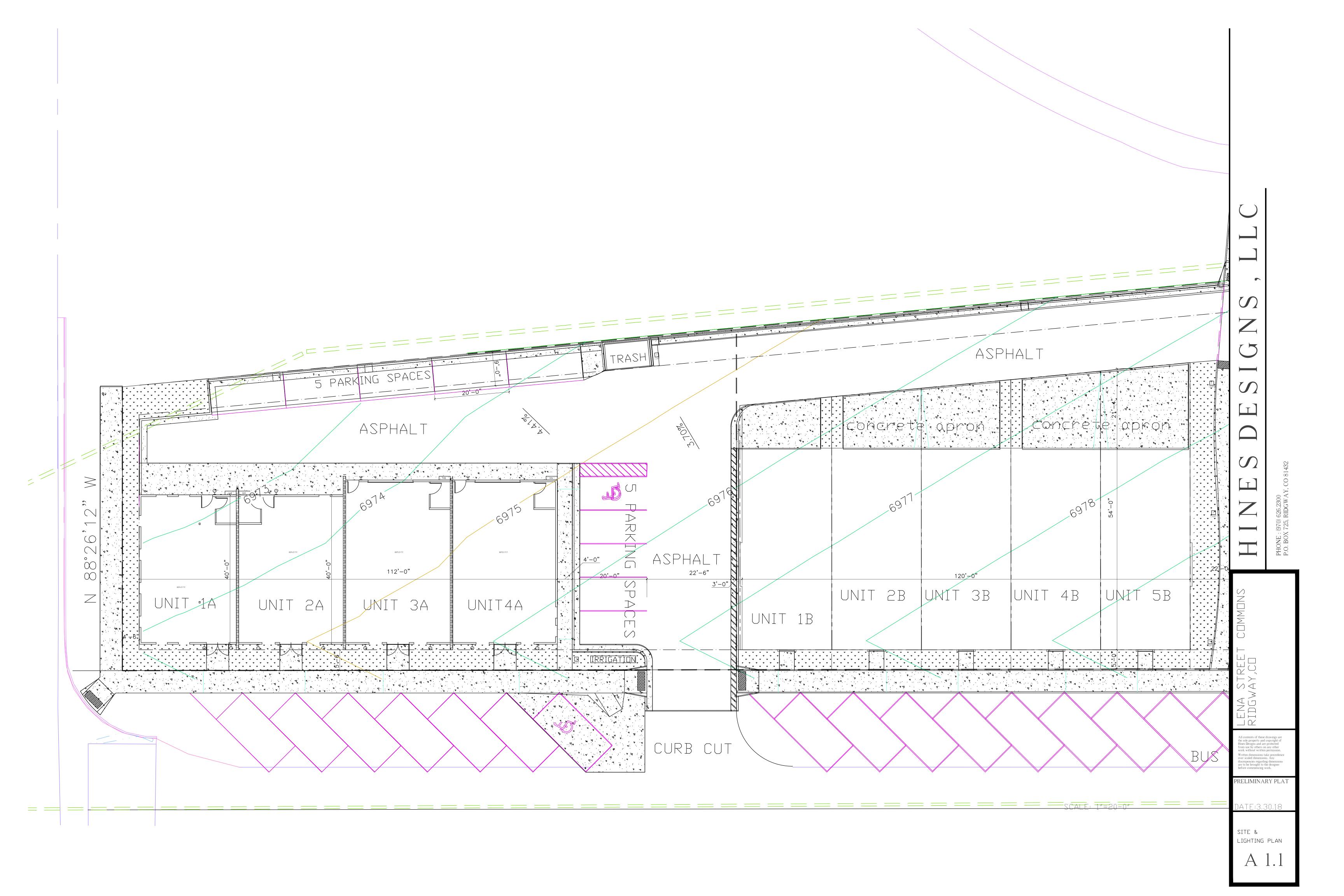
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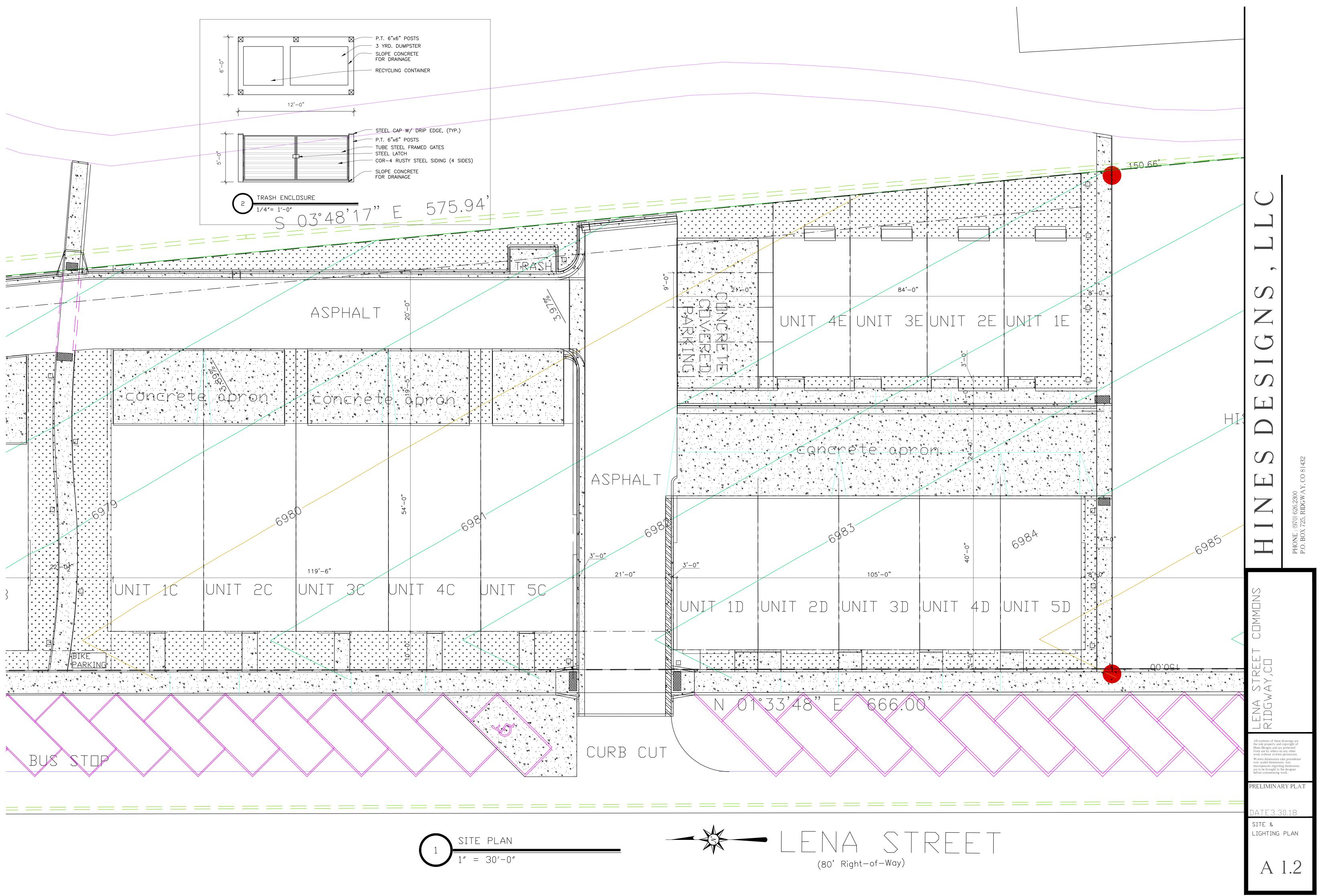


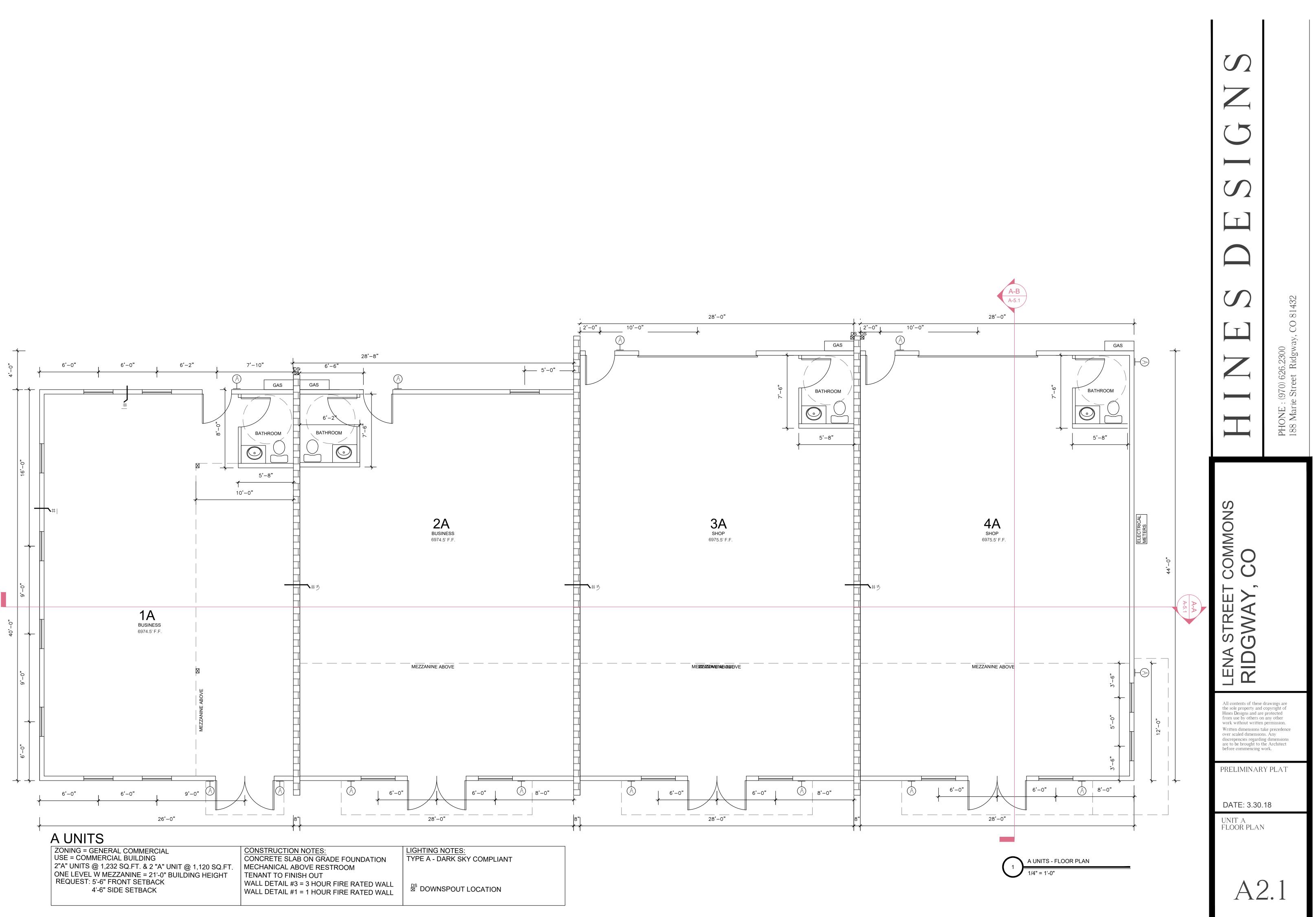


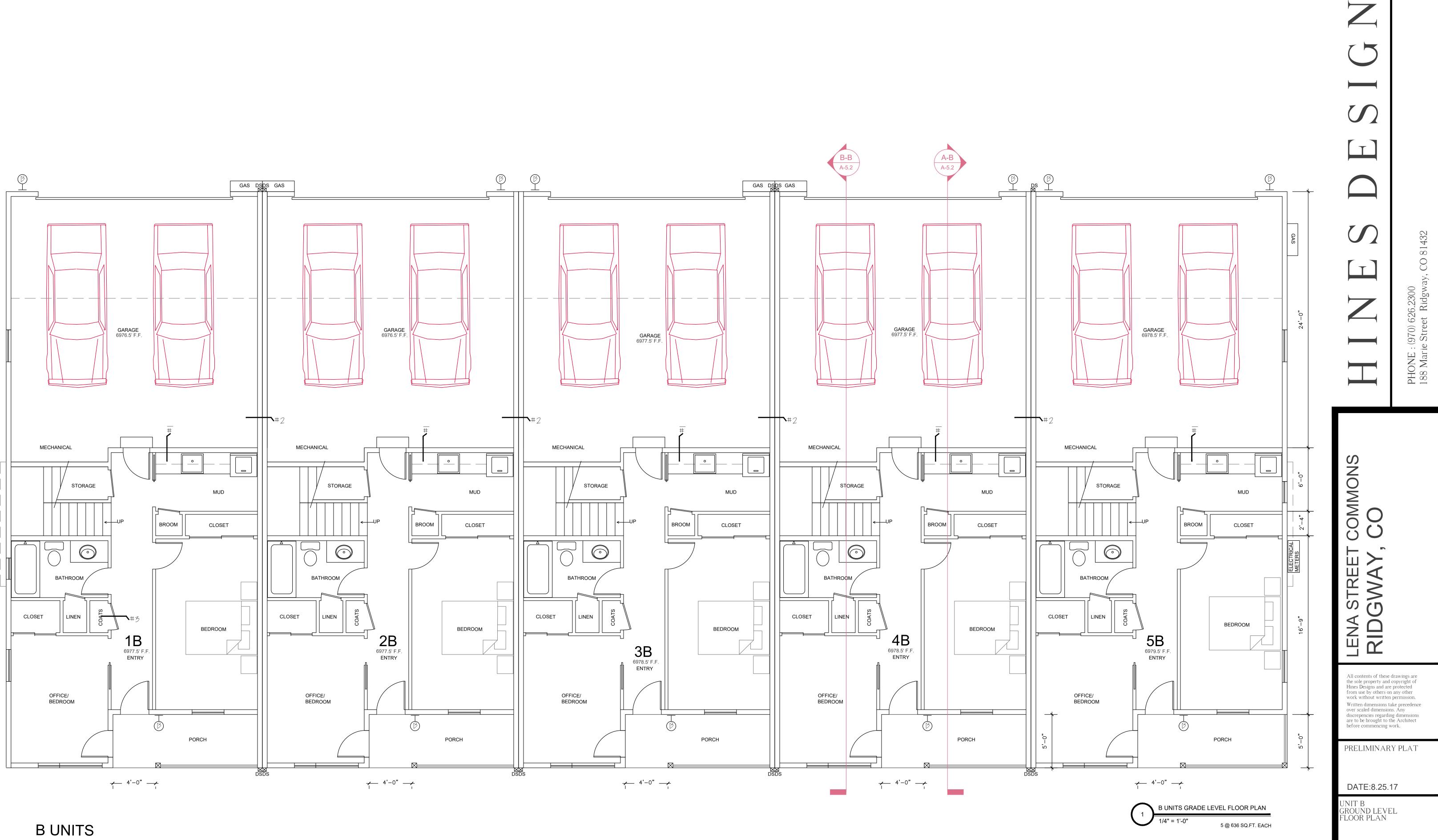
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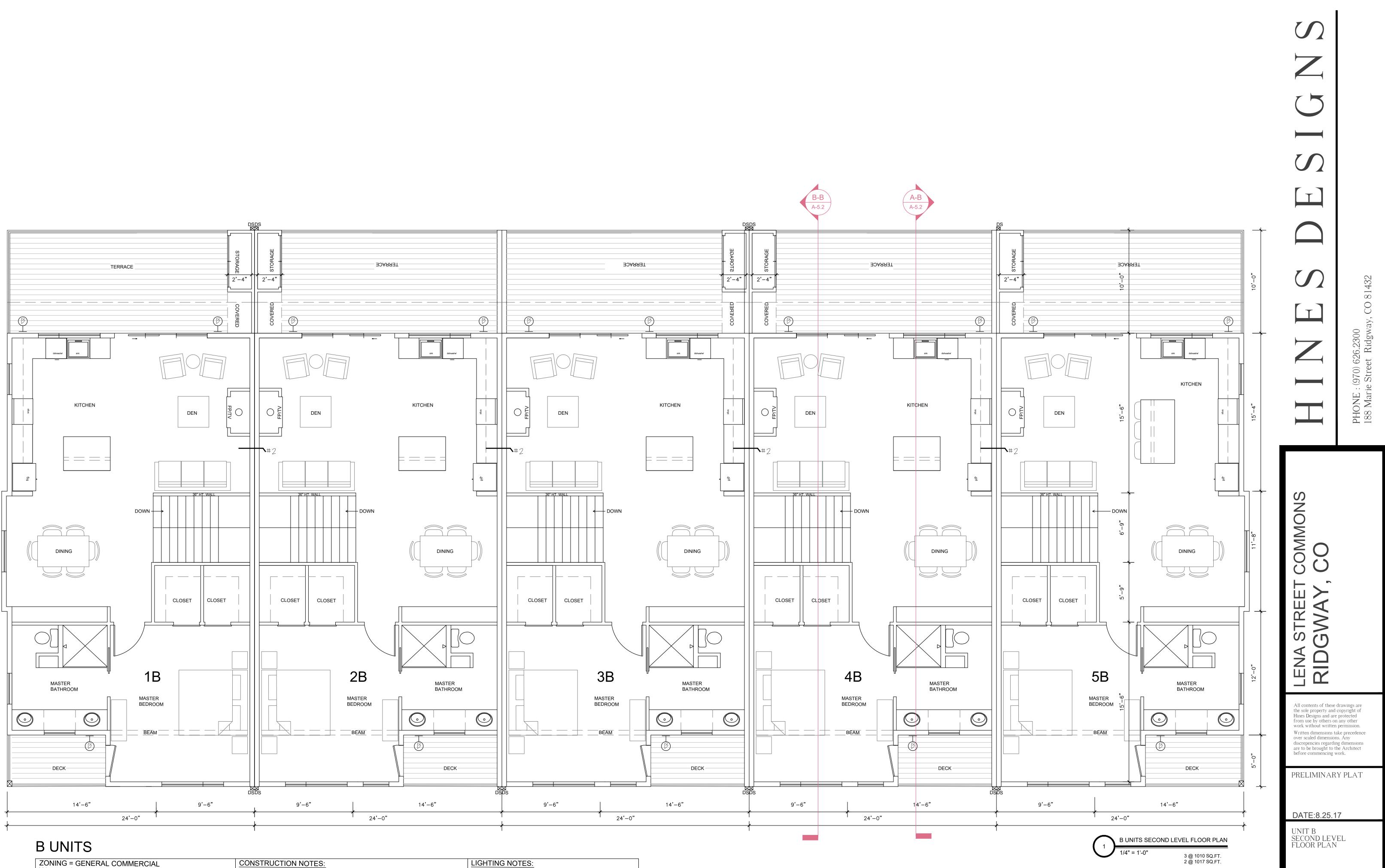
ZONING = GENERAL COMMERCIAL USE = HIGH DENSITY RESIDENTIAL 3"C" UNITS @ 1,647 SQ.FT. & 2 "C" UNITS @ 1,651 SQ.FT TWO STORY w/TWO CAR GARAGE=25'-9" BLDG. HT. REQUEST: 24'-0" LOT WIDTH 5'-0" FRONT SETBACK	CONSTRUCTION NOTES: CONCRETE SLAB ON GRADE FOUNDATION IN GARAGECCRAWLSPACE IN LIVING SPACE OF GRADE LEVEL MECHANICAL SYSTEM IN GARAGEWALL DETAIL #2 = 2 HOUR FIRE RATED WALL WALL DETAIL #1 = 1 HOUR FIRE RATED WALL
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LIGHTING NOTES: TYPE B - DARK SKY COMPLIANT

DOWNSPOUT LOCATION

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A2.3

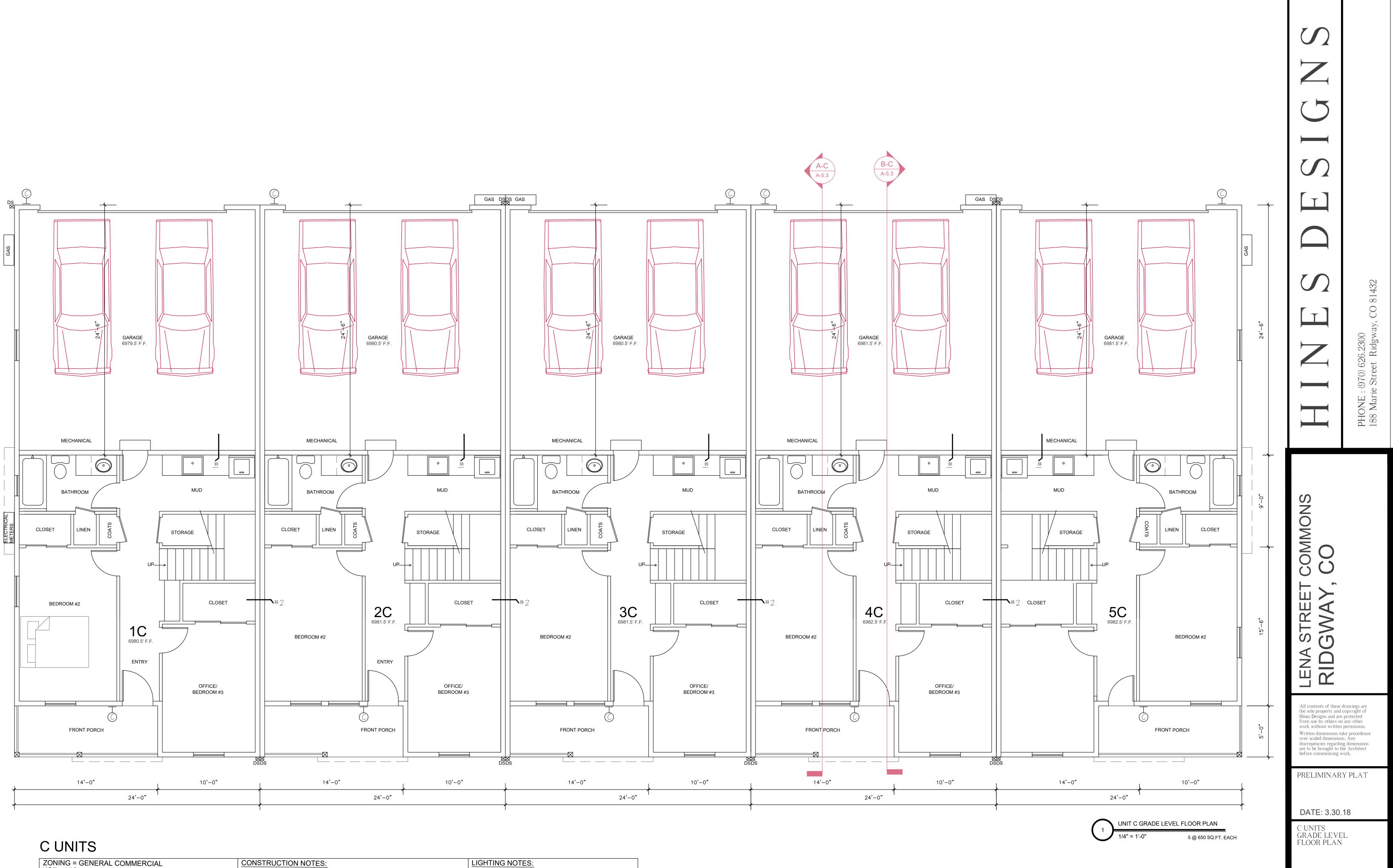
USE = HIGH DENSITY RESIDENTIAL 3"C" UNITS @ 1,647 SQ.FT. & 2 "C" UNITS @ 1,651 SQ.FT. CRAWLSPACE IN LIVING SPACE OF GRADE LEVEL TWO STORY w/TWO CAR GARAGE=25'-9" BLDG. HT. REQUEST: 24'-0" LOT WIDTH 5'-0" FRONT SETBACK

**CONSTRUCTION NOTES:** 

CONCRETE SLAB ON GRADE FOUNDATION IN GARAGE MECHANICAL SYSTEM IN GARAGE WALL DETAIL #2 = 2 HOUR FIRE RATED WALL WALL DETAIL #1 = 1 HOUR FIRE RATED WALL

DOWNSPOUT LOCATION

TYPE B - DARK SKY COMPLIANT

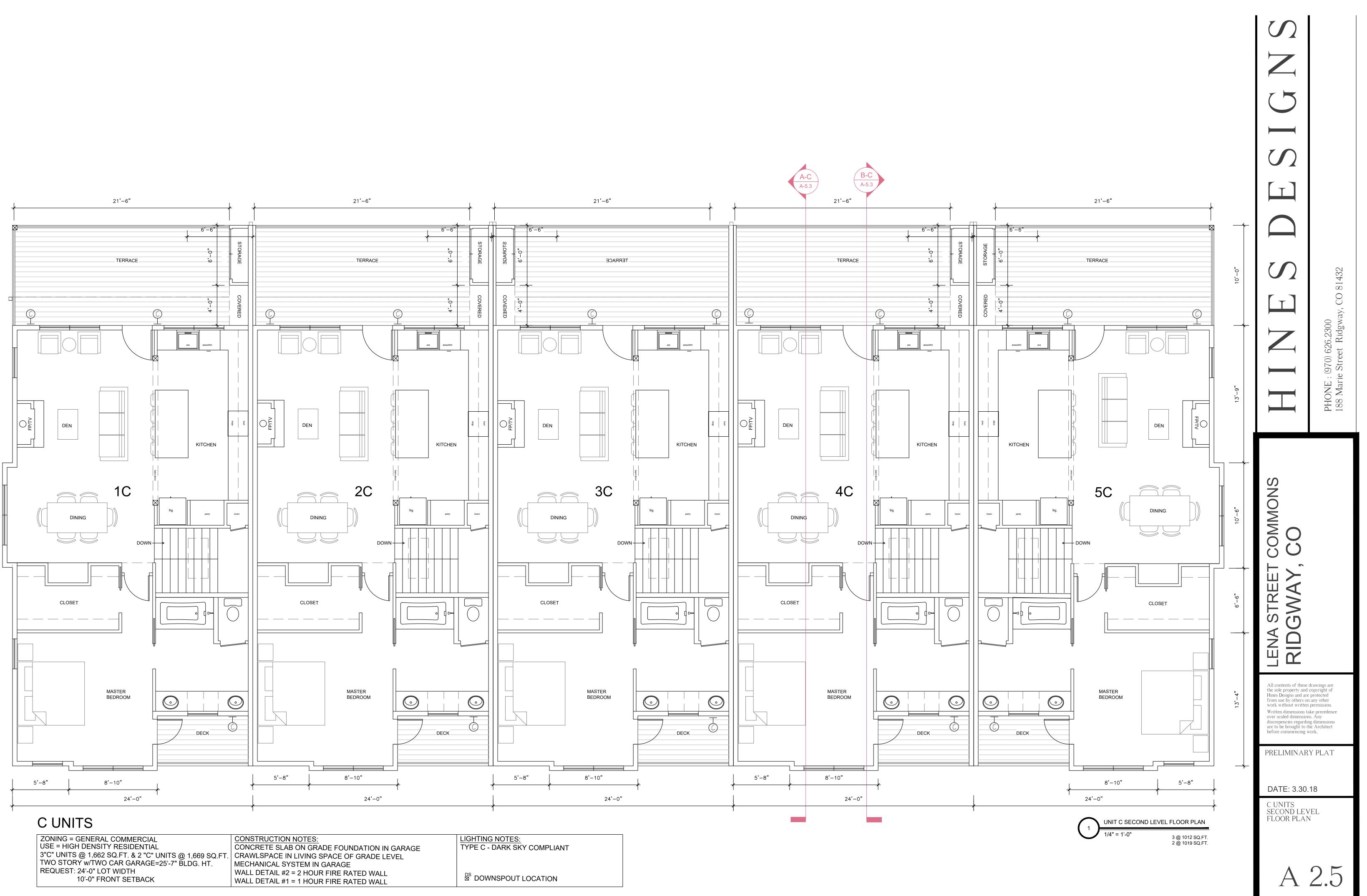


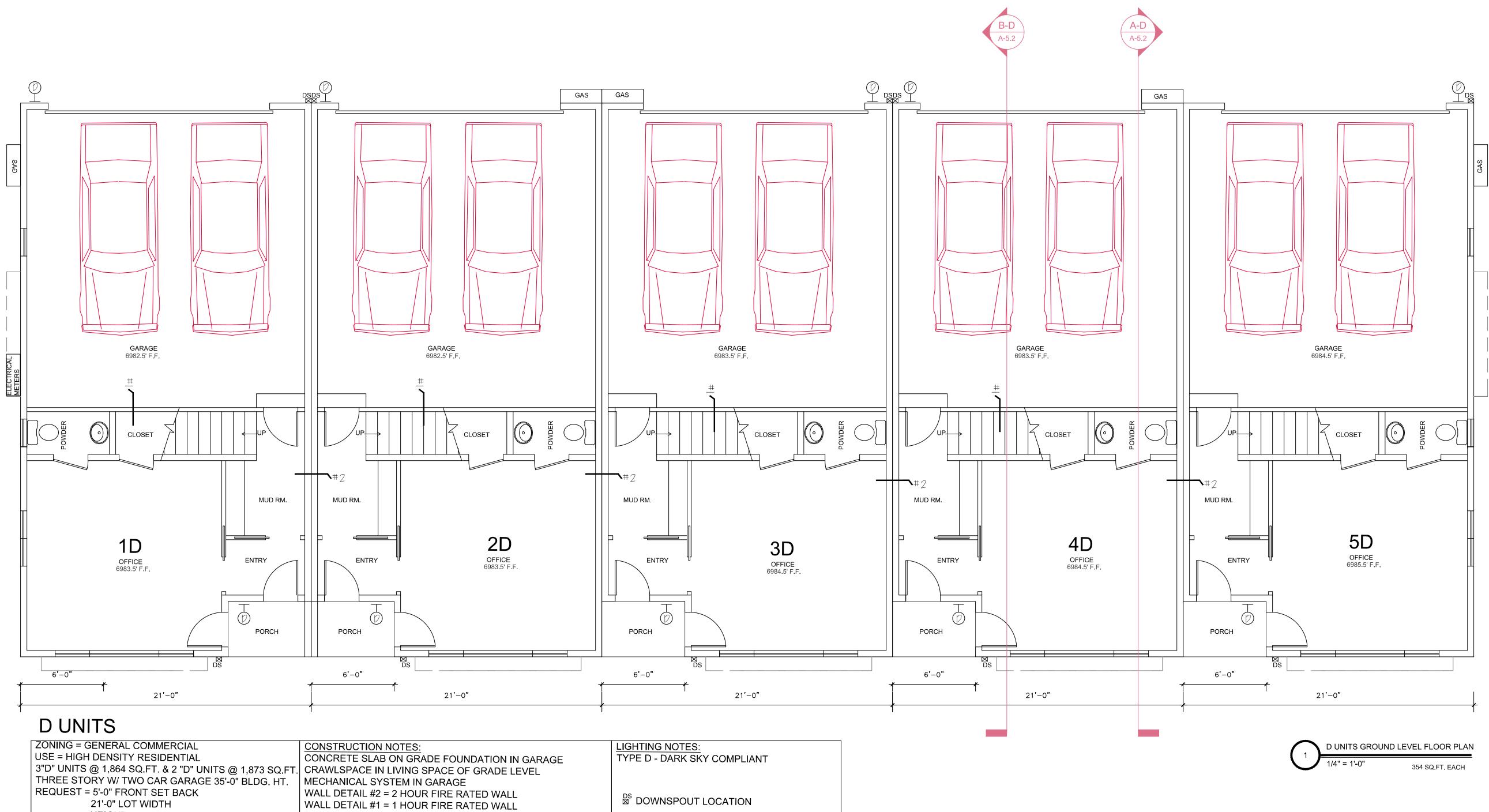
USE = HIGH DENSITY RESIDENTIAL 3"C" UNITS @ 1,662 SQ.FT. & 2 "C" UNITS @ 1,669 SQ.FT. TWO STORY w/TWO CAR GARAGE=25'-7" BLDG. HT. REQUEST: 24'-0" LOT WIDTH 10'-0" FRONT SETBACK

CONCRETE SLAB ON GRADE FOUNDATION IN GARAGE CRAWLSPACE IN LIVING SPACE OF GRADE LEVEL MECHANICAL SYSTEM IN GARAGE WALL DETAIL #2 = 2 HOUR FIRE RATED WALL WALL DETAIL #1 = 1 HOUR FIRE RATED WALL

TYPE C - DARK SKY COMPLIANT

A 2.4





HEIGHT VARIANCE TO 35'-0" BLDG. HT.

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vay, CO 81432 PHONE : (970) 626.2300 188 Marie Street Ridgwa

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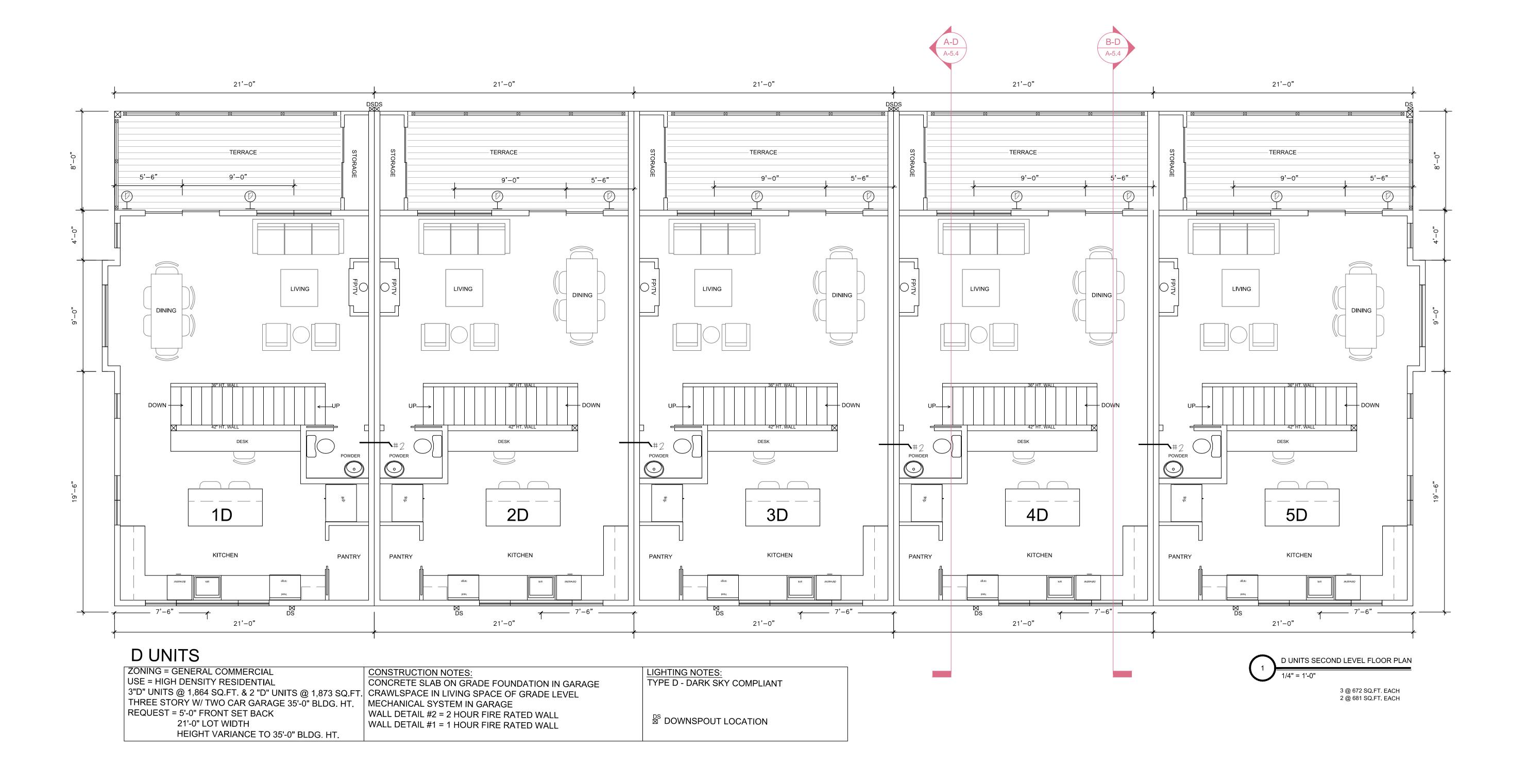
All contents of these drawings are the sole property and copyright of Hines Designs and are protected from use by others on any other work without written permission. Written dimensions take precedence over scaled dimensions. Any discrepencies regarding dimensions are to be brought to the Architect before commencing work.

PRELIMINARY PLAT

DATE:8.25.17

D UNITS GROUND LEVEL FLOOR PLAN

A2.6

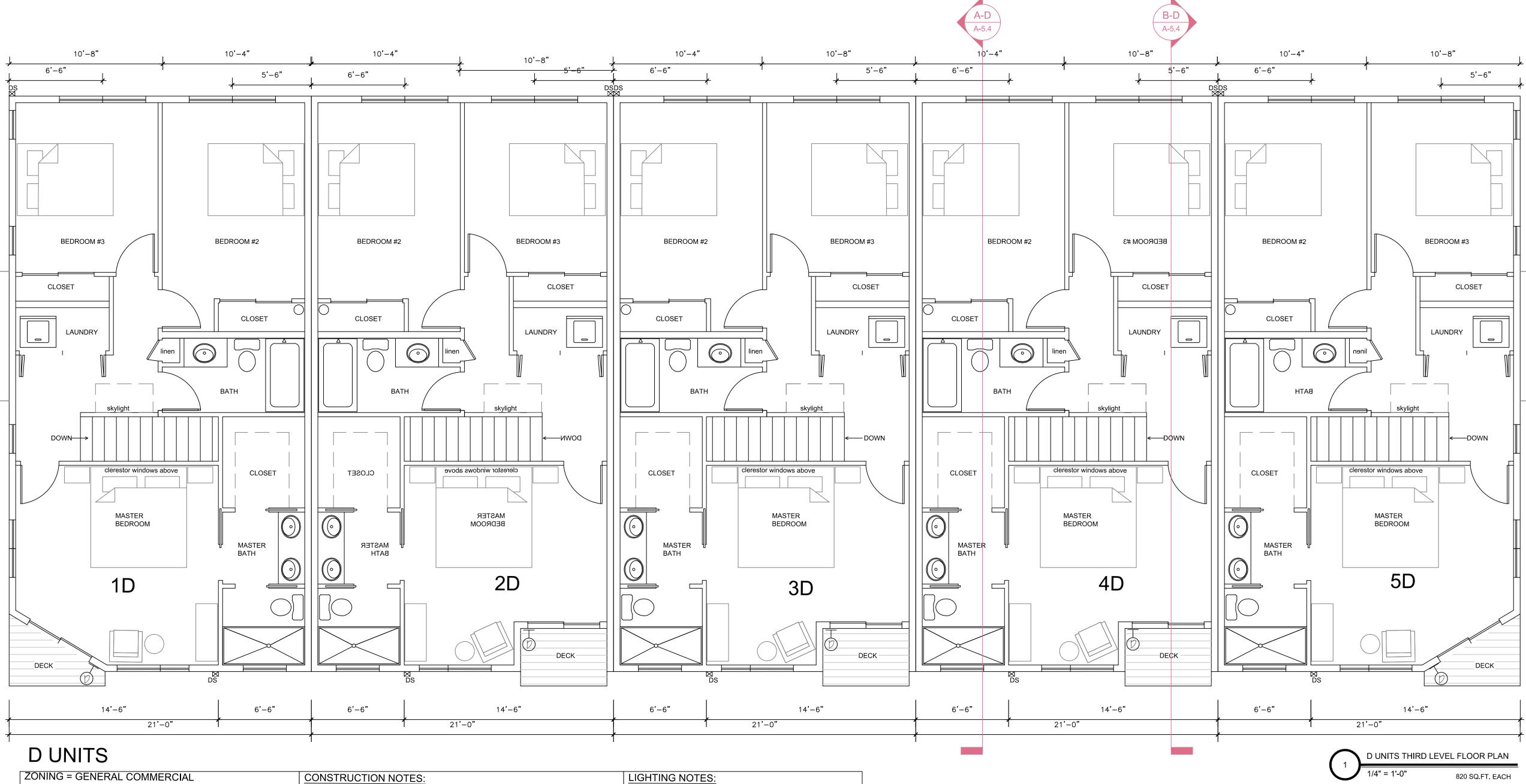


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DATE:11.14.17 D UNITS

D UNITS SECOND LEVEL FLOOR PLAN

A2.7



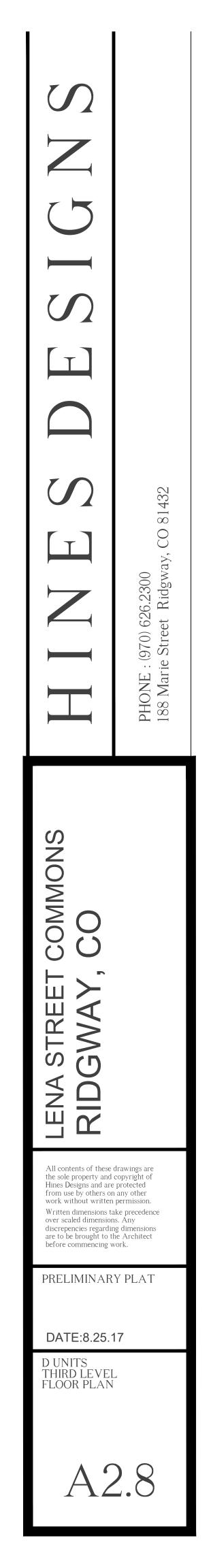
USE = HIGH DENSITY RESIDENTIAL 3"D" UNITS @ 1,864 SQ.FT. & 2 "D" UNITS @ 1,873 SQ.FT. CRAWLSPACE IN LIVING SPACE OF GRADE LEVEL THREE STORY W/ TWO CAR GARAGE 35'-0" BLDG. HT. | MECHANICAL SYSTEM IN GARAGE REQUEST = 5'-0" FRONT SET BACK 21'-0" LOT WIDTH

CONCRETE SLAB ON GRADE FOUNDATION IN GARAGE WALL DETAIL #2 = 2 HOUR FIRE RATED WALL WALL DETAIL #1 = 1 HOUR FIRE RATED WALL

HEIGHT VARIANCE TO 35'-0" BLDG. HT.

<sup>DS</sup> DOWNSPOUT LOCATION

TYPE D - DARK SKY COMPLIANT



ZONING = GENERAL COMMERCIAL CONSTRUCTION NOTES: LIGHTING NOTES: USE = HIGH DENSITY RESIDENTIAL CONCRETE SLAB ON GRADE FOUNDATION IN GARAGE TYPE E - DARK SKY COMPLIANT 4 "E" UNITS @ 720 EA. @ 21'-3" BUILDING HEIGHT REQUEST: ADJUSTMENT OF REAR SETBACK @ POST CRAWLSPACE IN LIVING SPACE OF GRADE LEVEL MECHANICAL SYSTEM IN GARAGE CONDITIONAL USE: 20'-0" LOT WIDTH WALL DETAIL #2 = 2 HOUR FIRE RATED WALL <sup>DS</sup> DOWNSPOUT LOCATION ONE NON-ATTACHED PARKING SPACE

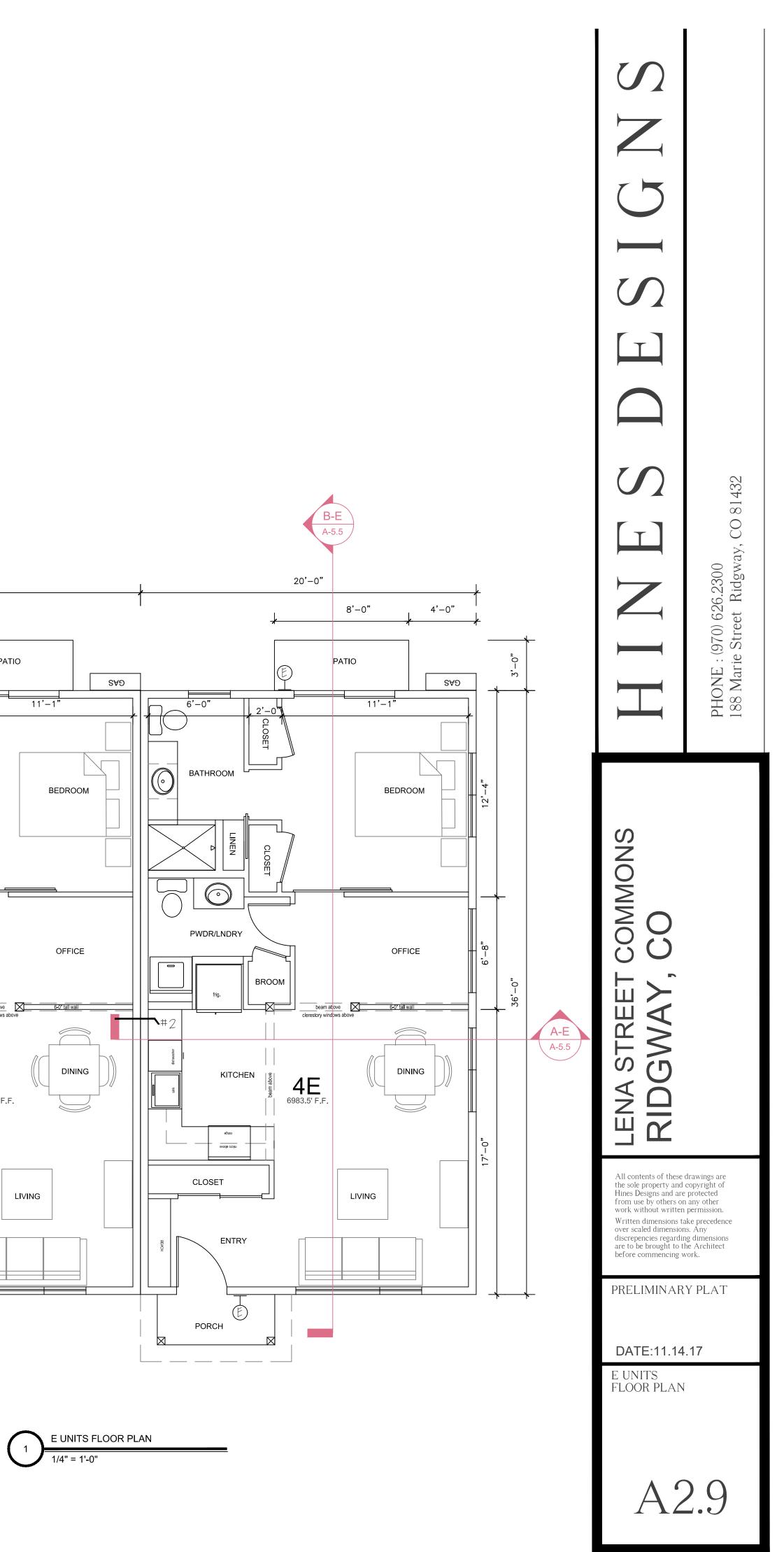
## E UNITS

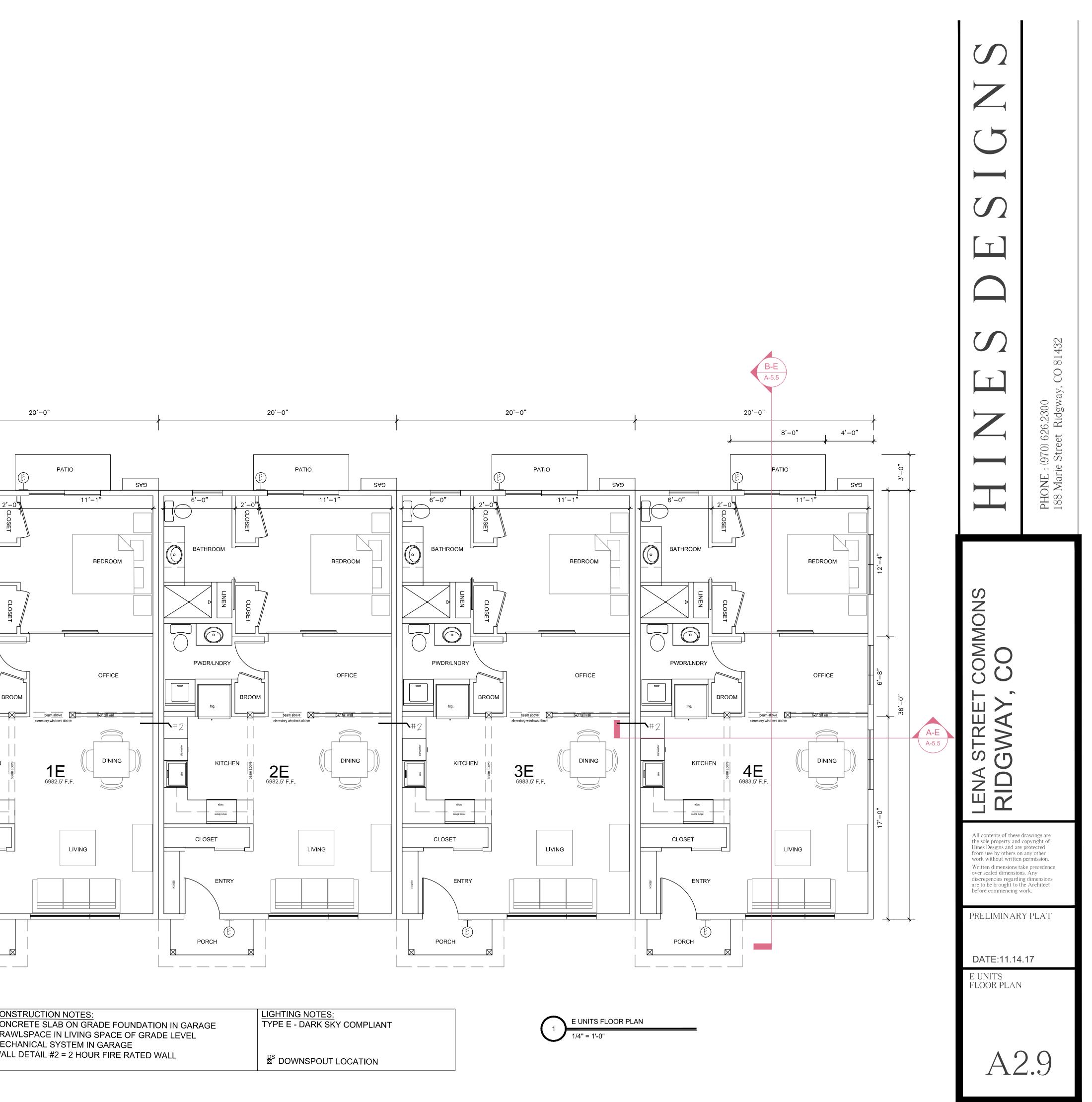
EXTERIOR STORAGE 4E  $\bigcirc$ BATHROOM  $\bigcirc$ EXTERIOR STORAGE 3E PWDR/LNDRY BROOM EXTERIOR STORAGE 2E KITCHEN абиел evode orbim CLOSET EXTERIOR STORAGE 1E ENTRY \_\_\_ M\_ 4'-0" 20'-0" E) PORCH

 $\boxtimes$ 

6'-0'

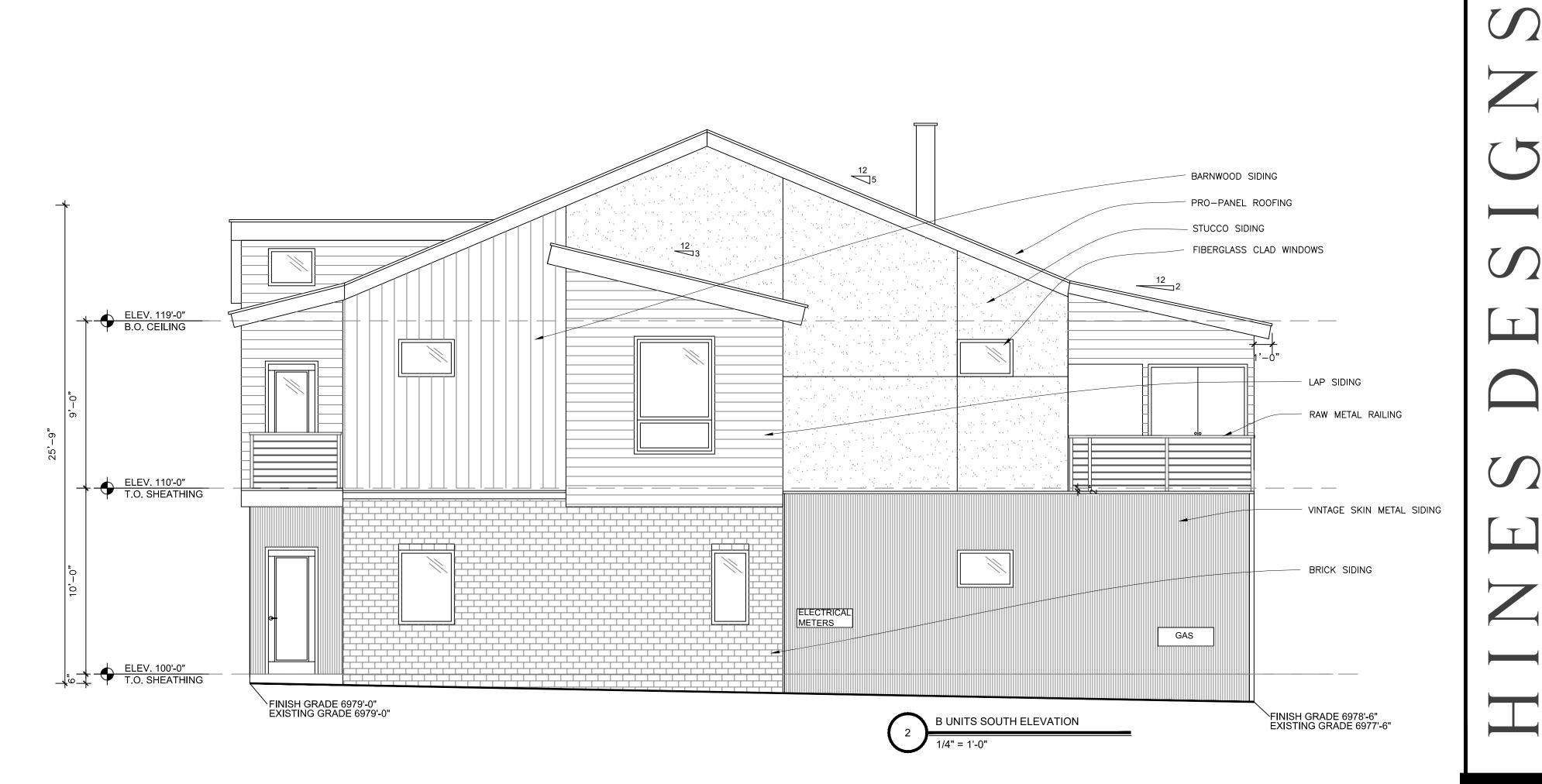
ELECTRICAL METERS

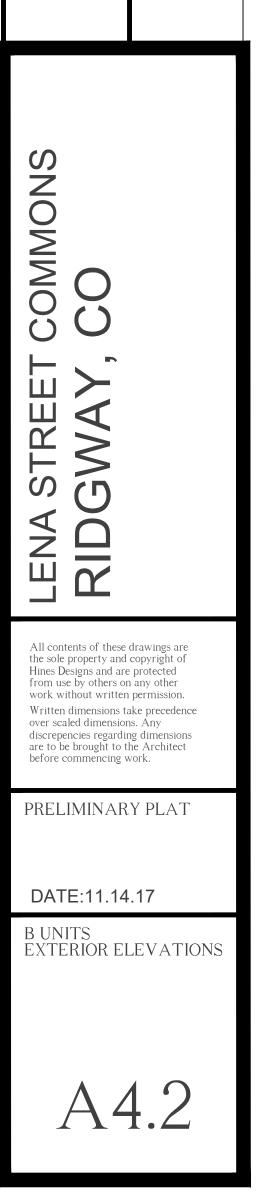












S

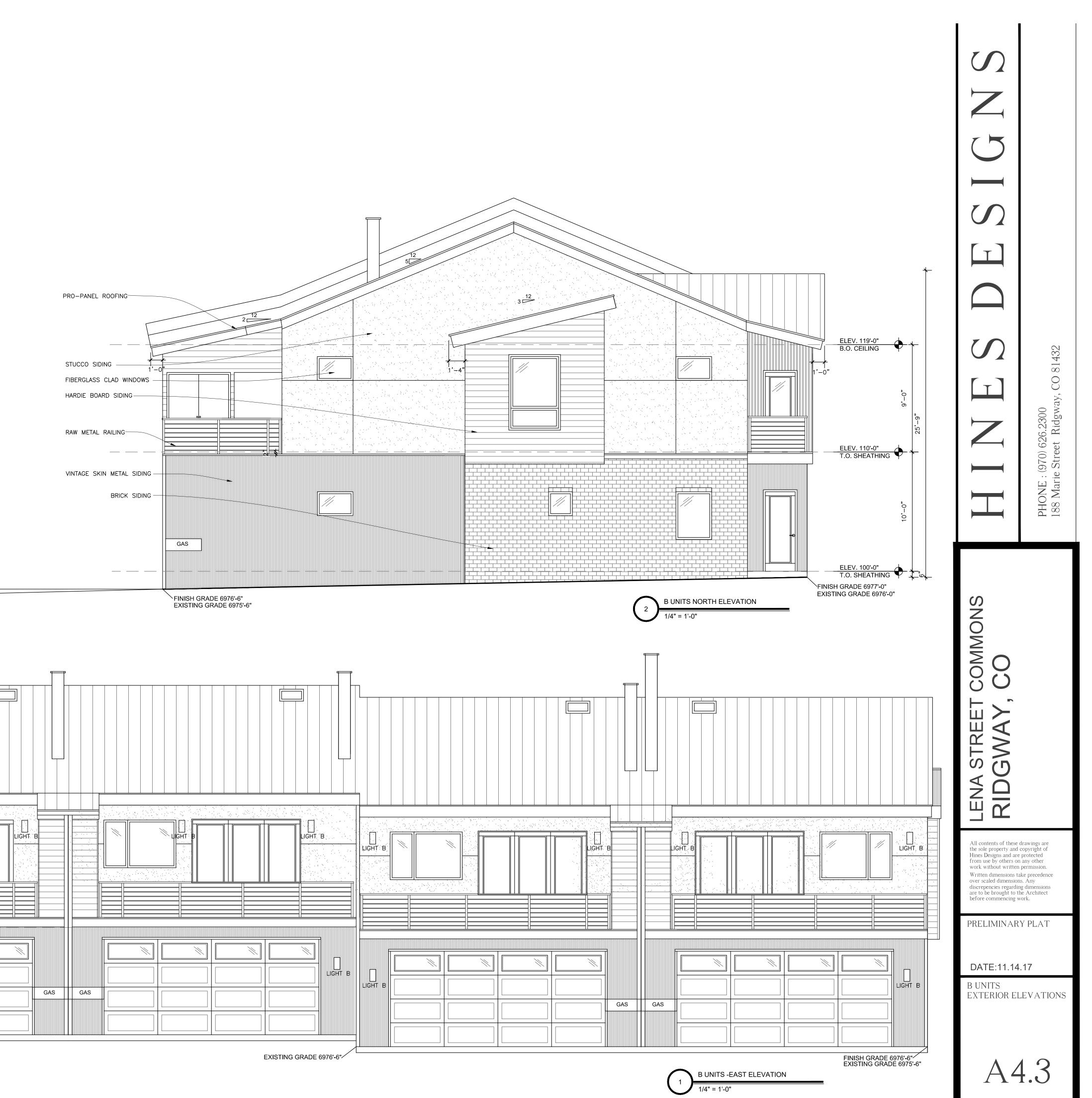
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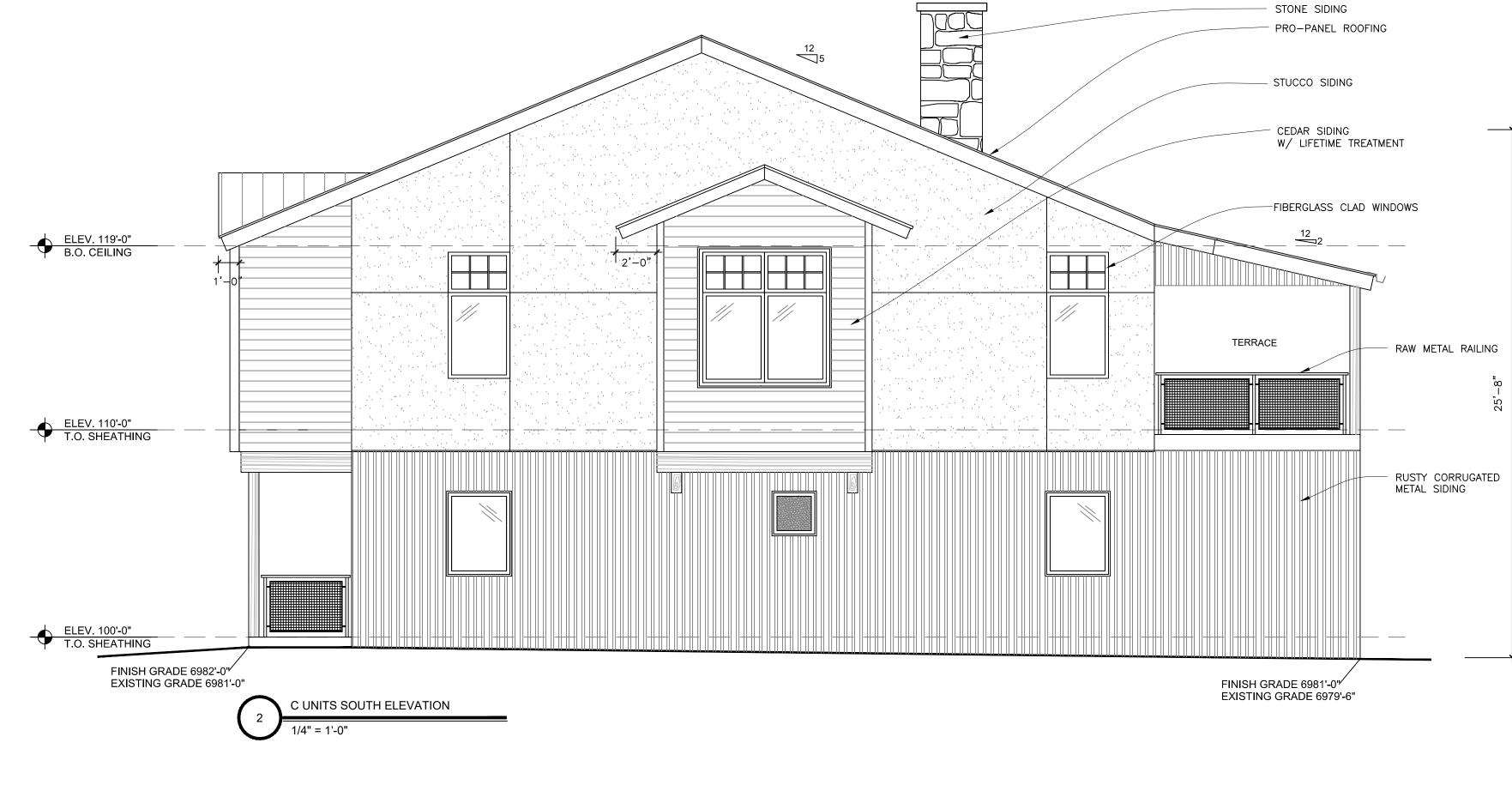
T

ay, CO 81432

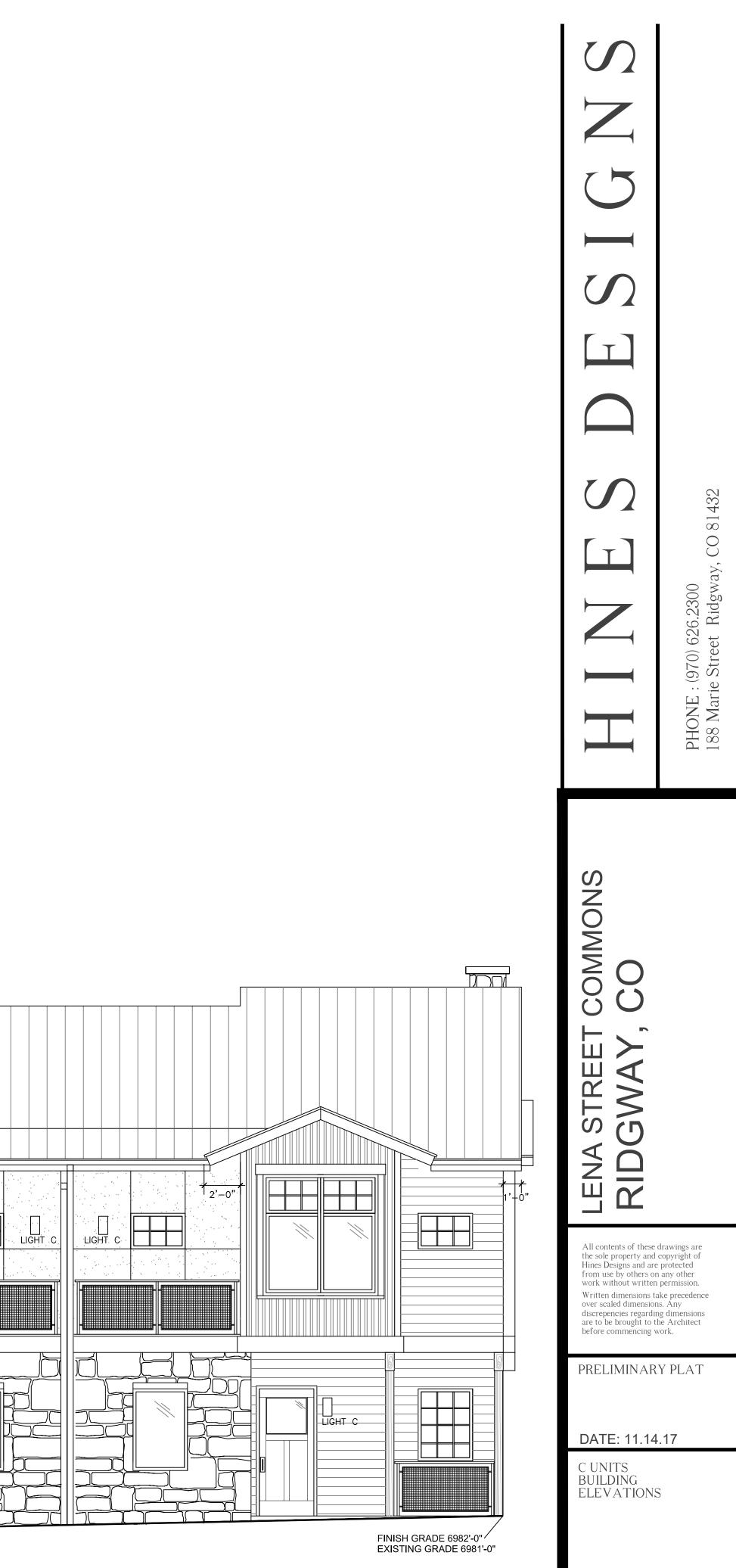
PHONE : (970) 626.2300 188 Marie Street Ridgw

FINISH GRADE 6978'-6"	
	EXISTING GRADE 6977'-6"

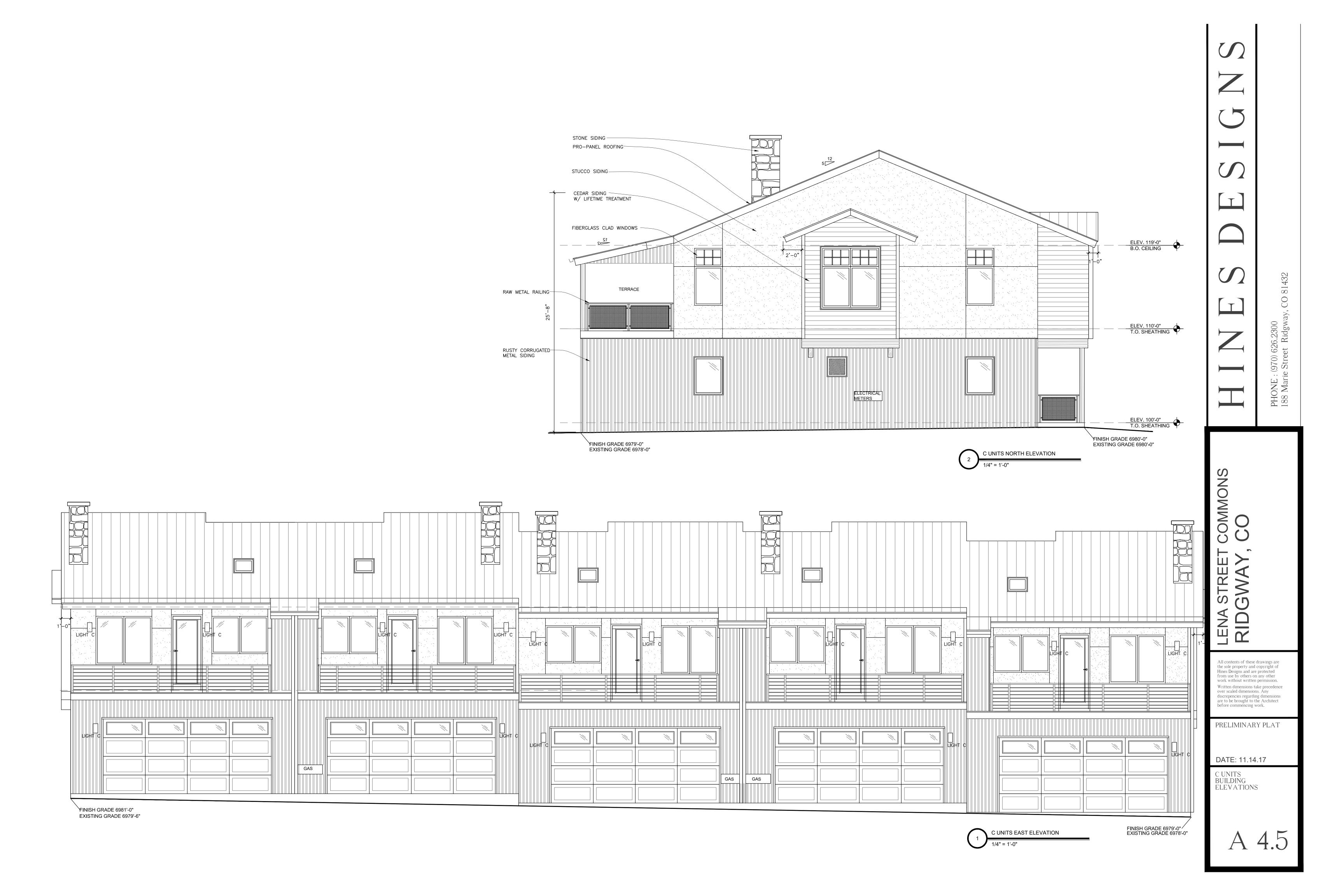








A 4.4

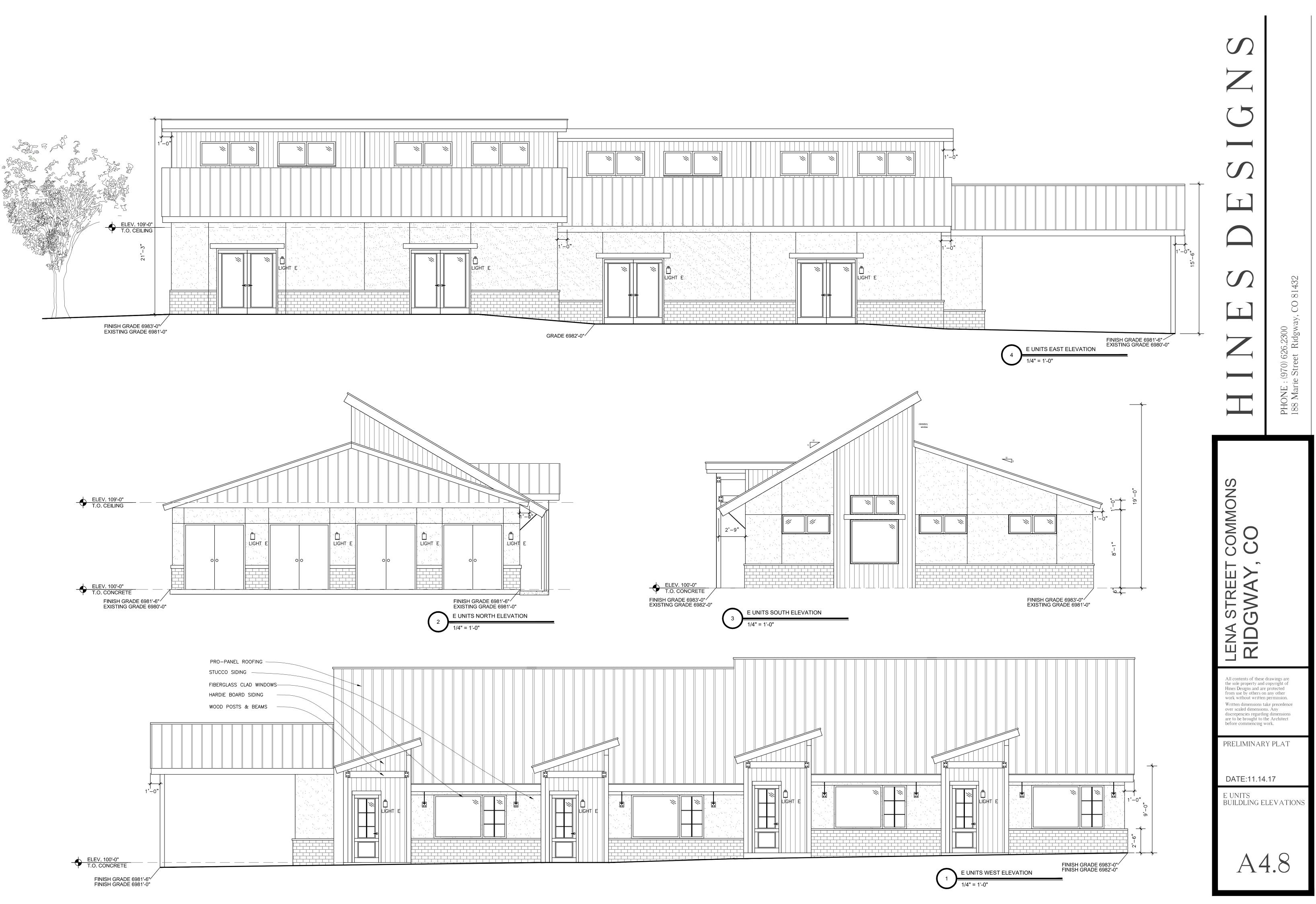


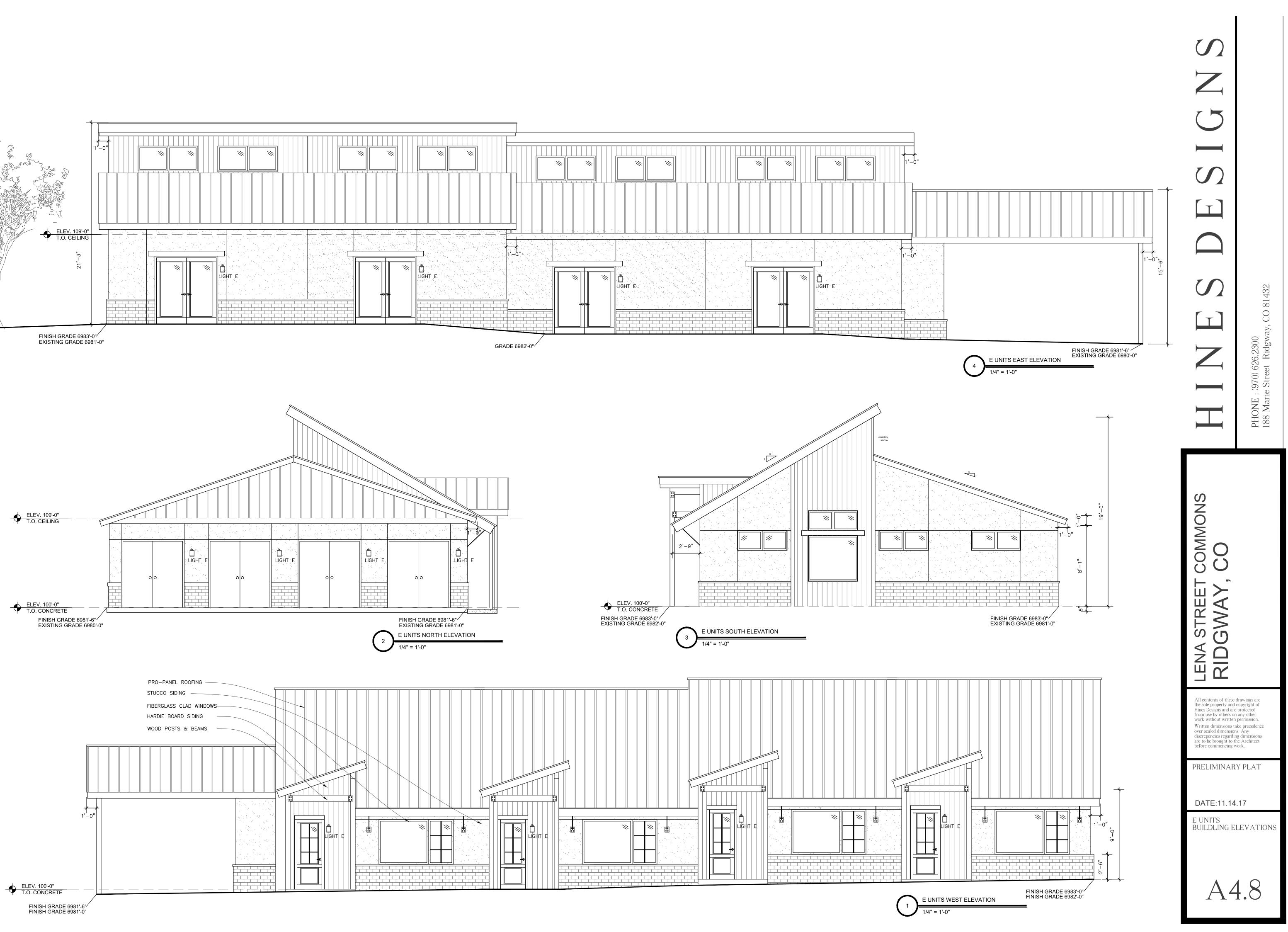
FINISH GRADE 6983'-0"	
EXISTING GRADE 6982'-0"	

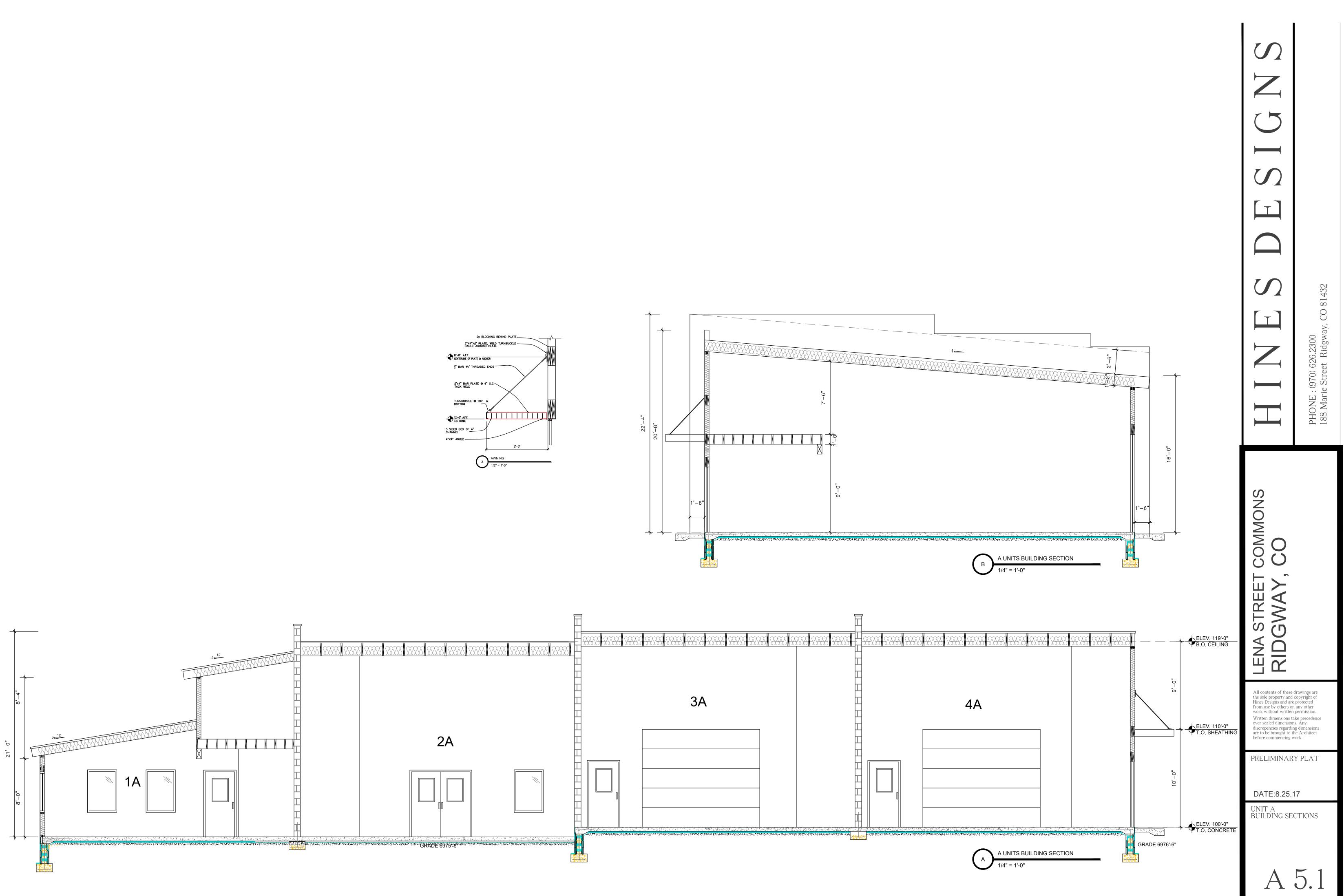


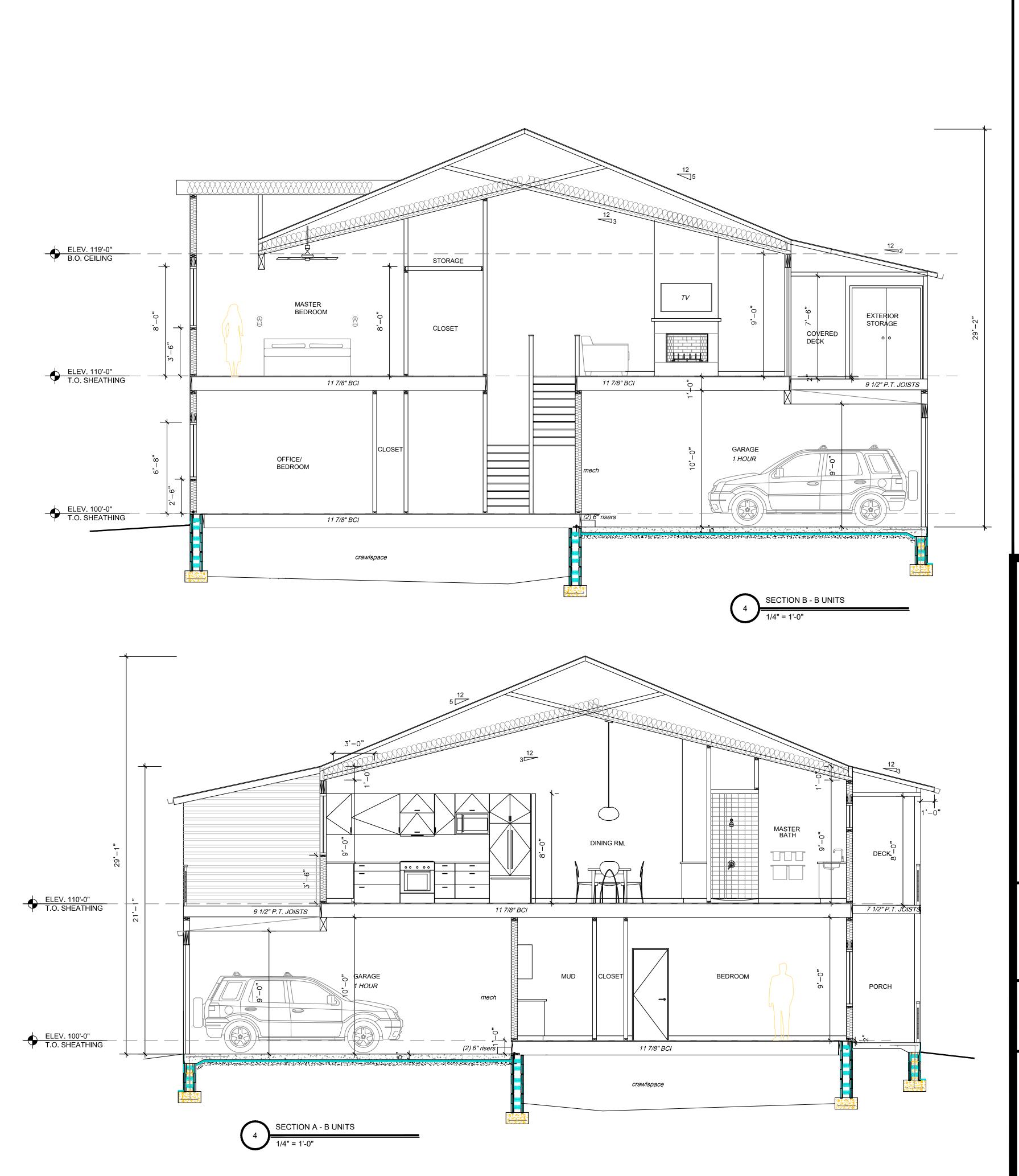
1'-0		
		GAS
FINISH GRADE 6984'-0"/ EXISTING GRADE 6983'-	0"	

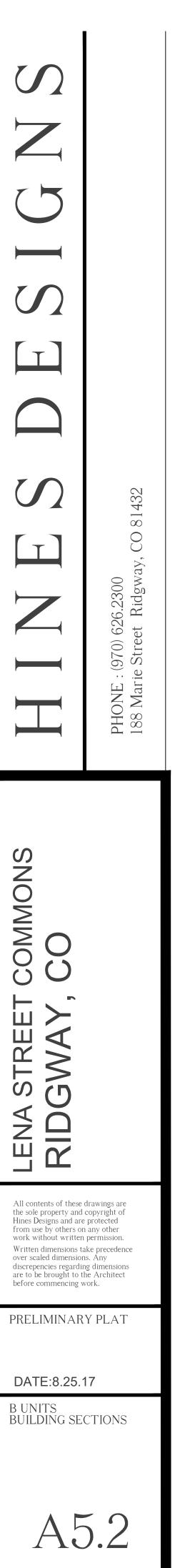


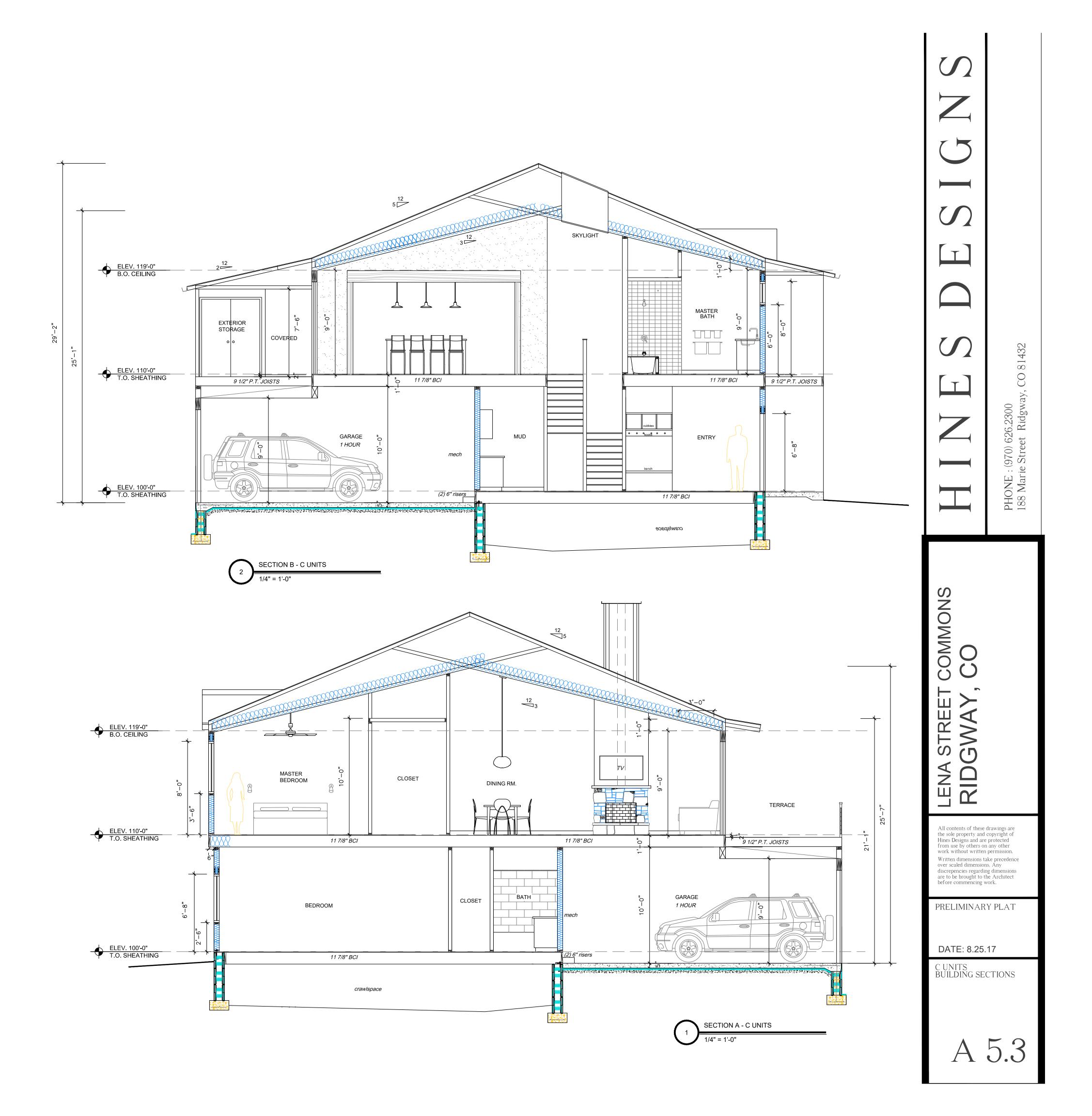


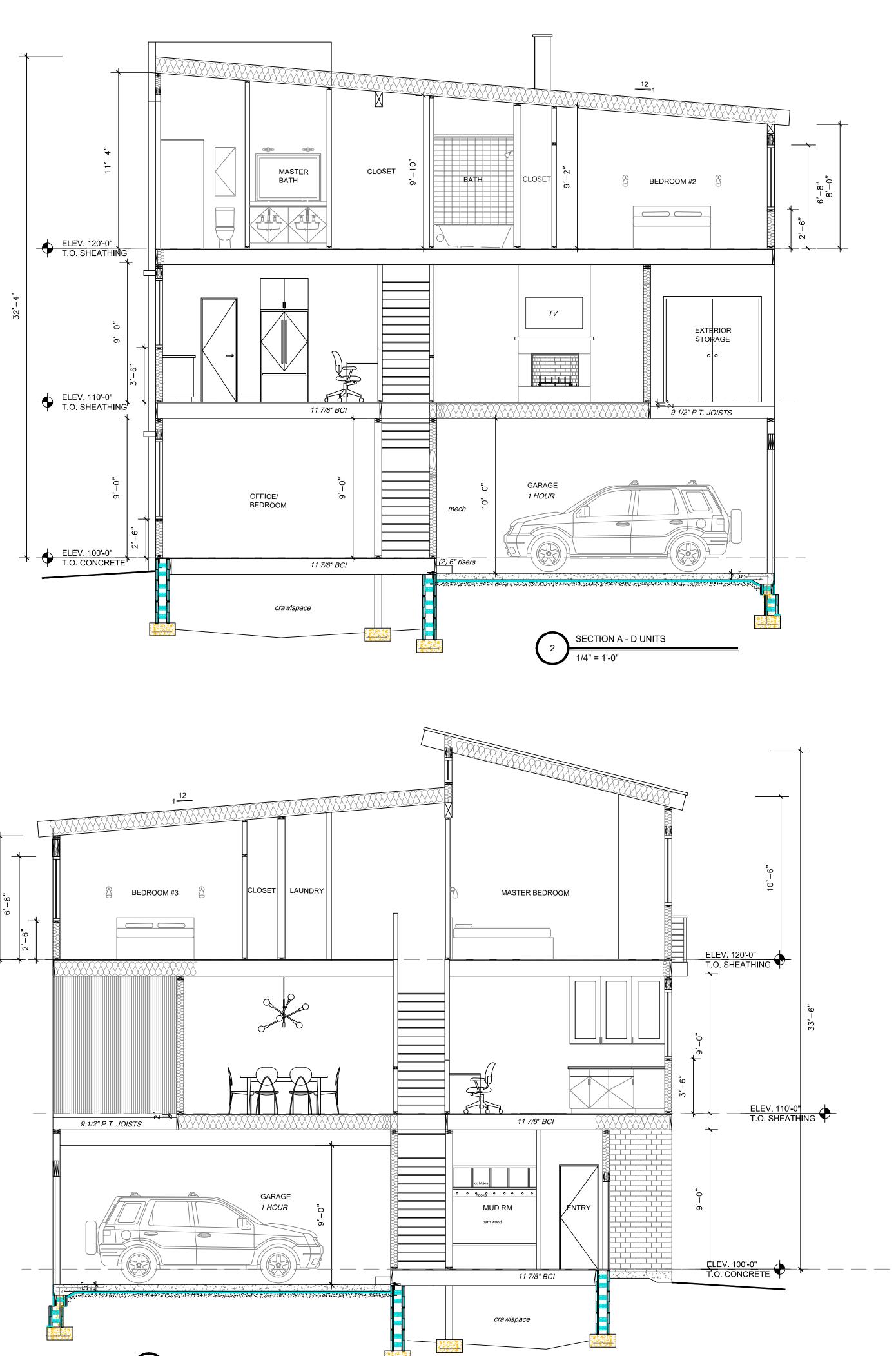


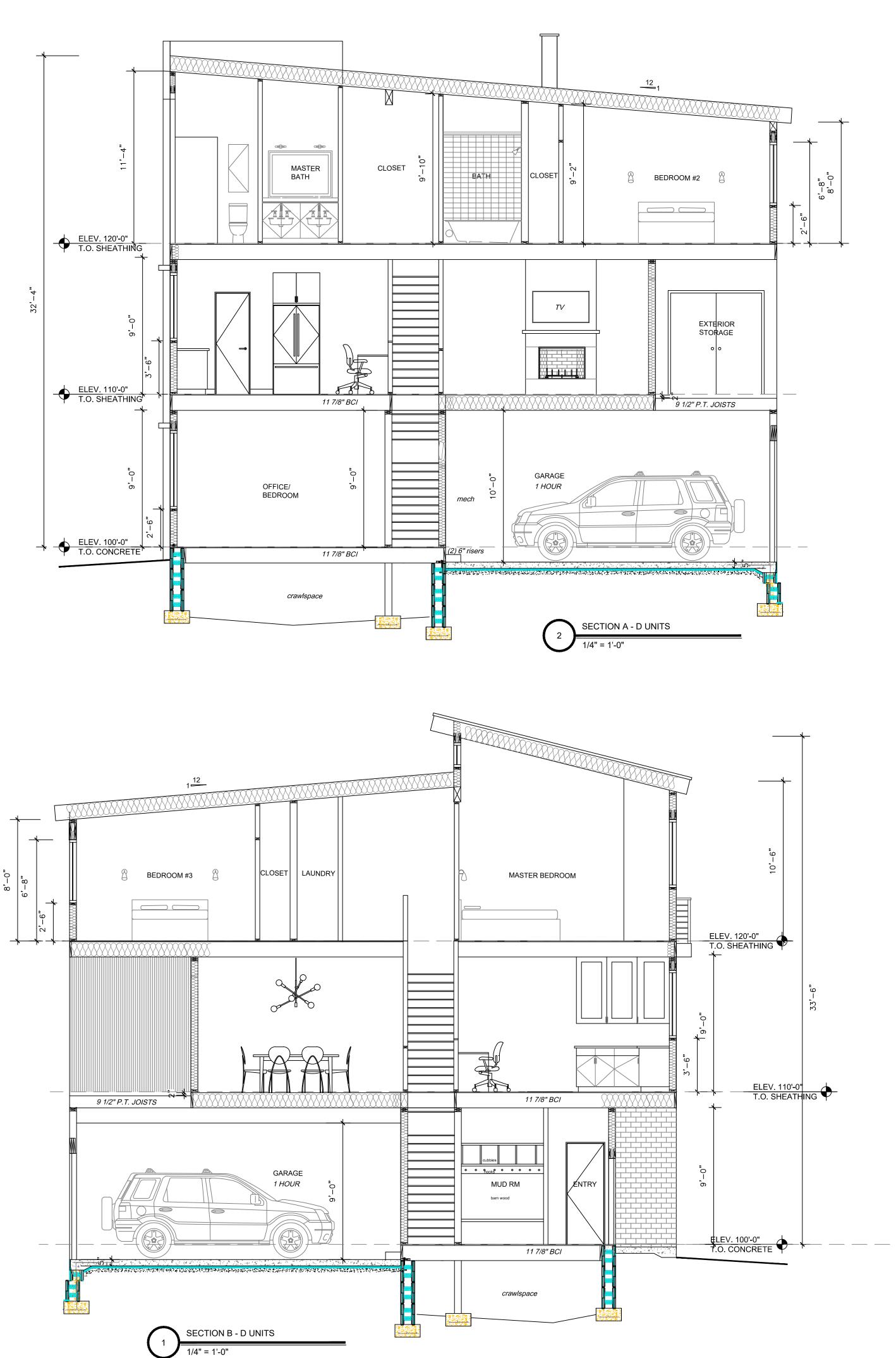


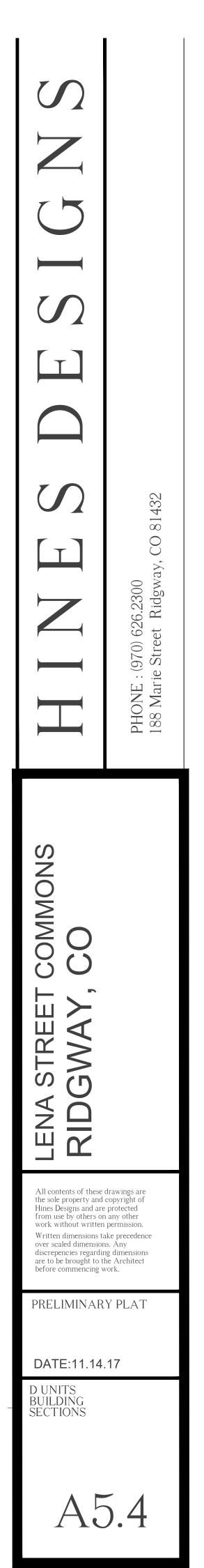


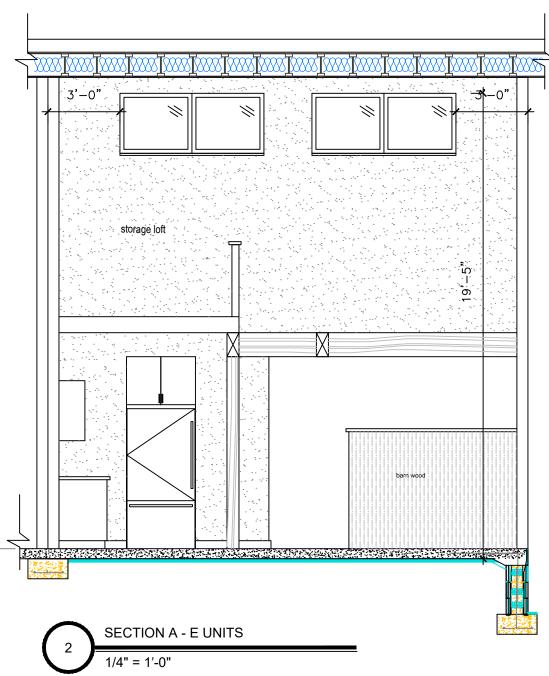




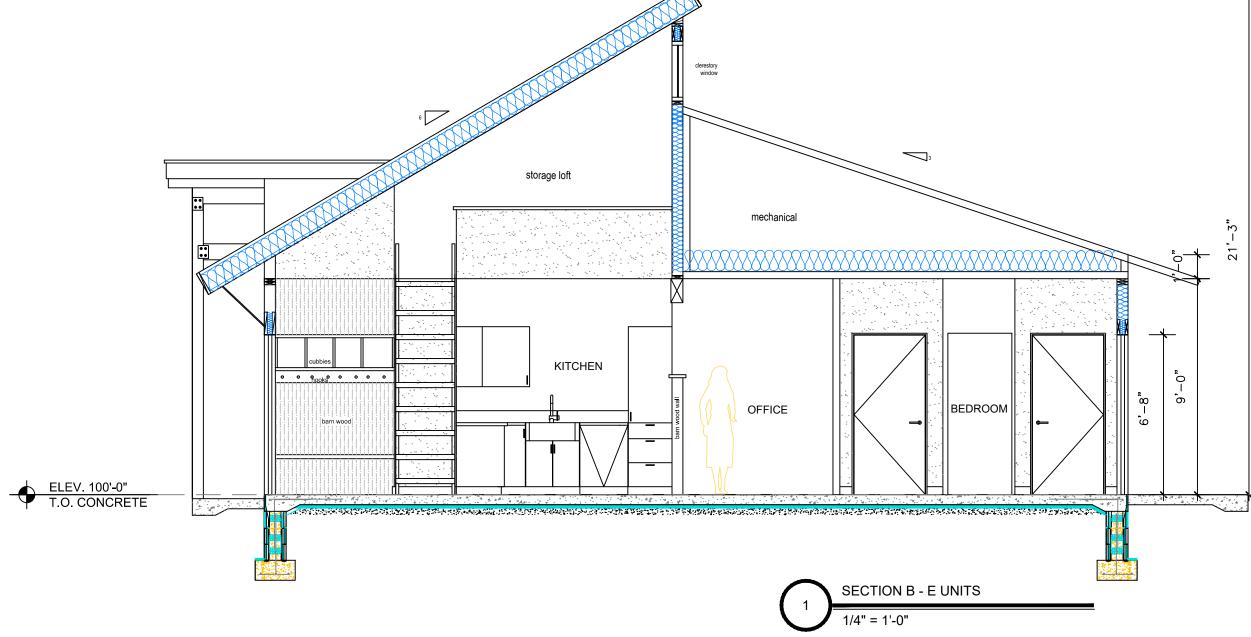


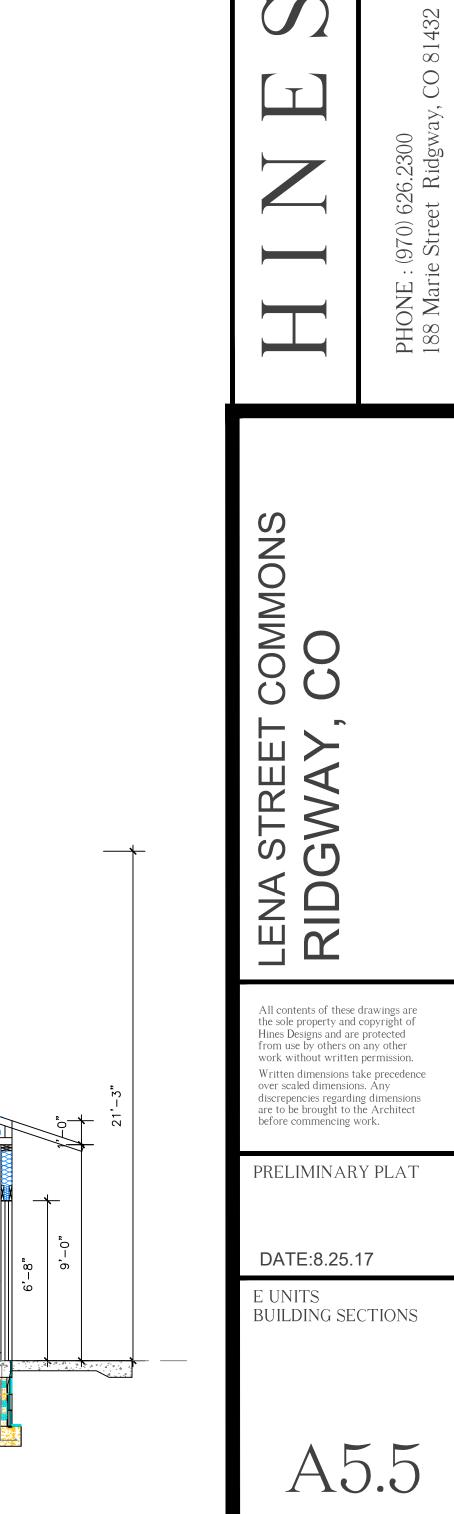






ELEV. 100'-0" T.O. CONCRETE





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**S** 

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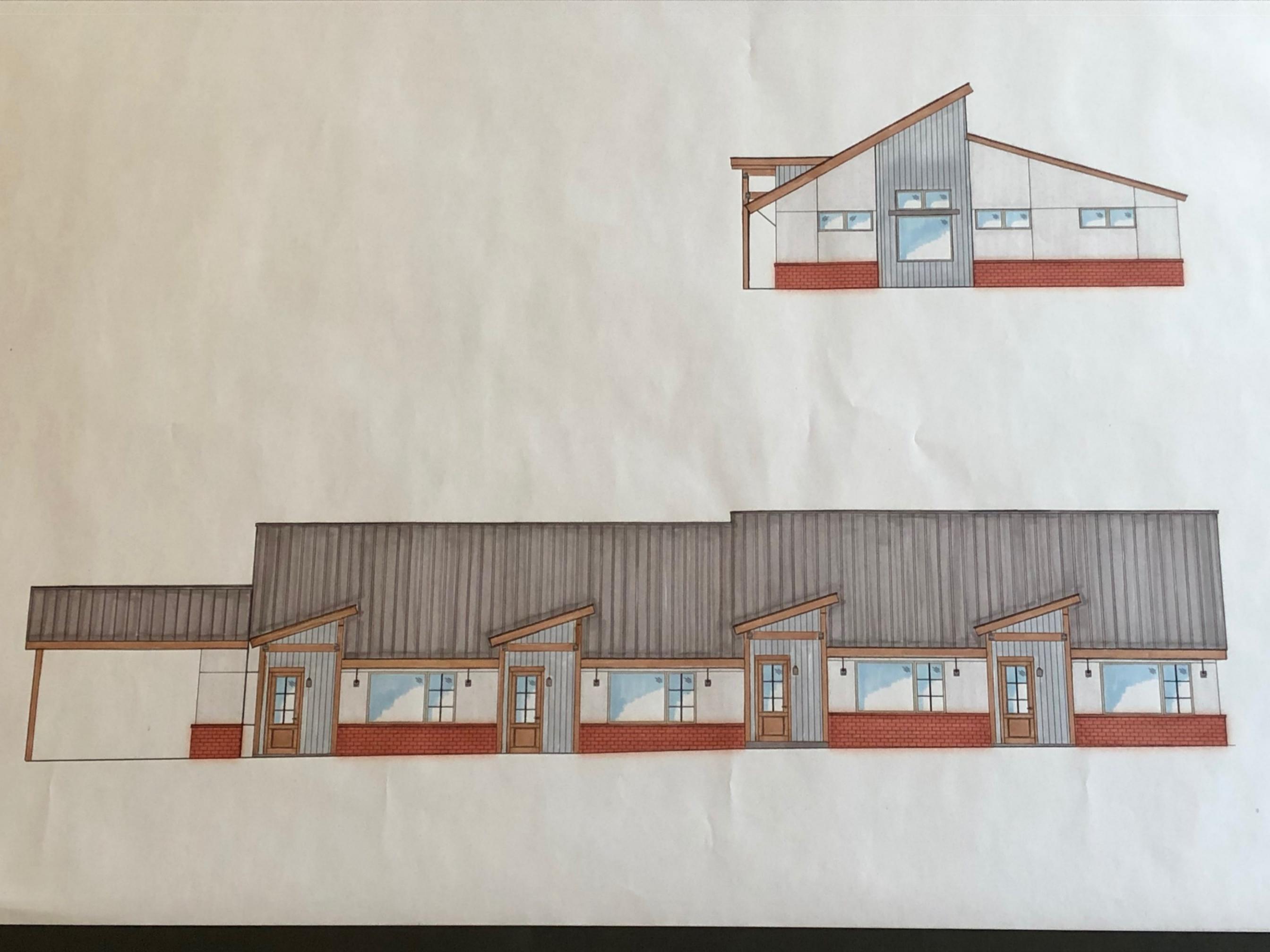


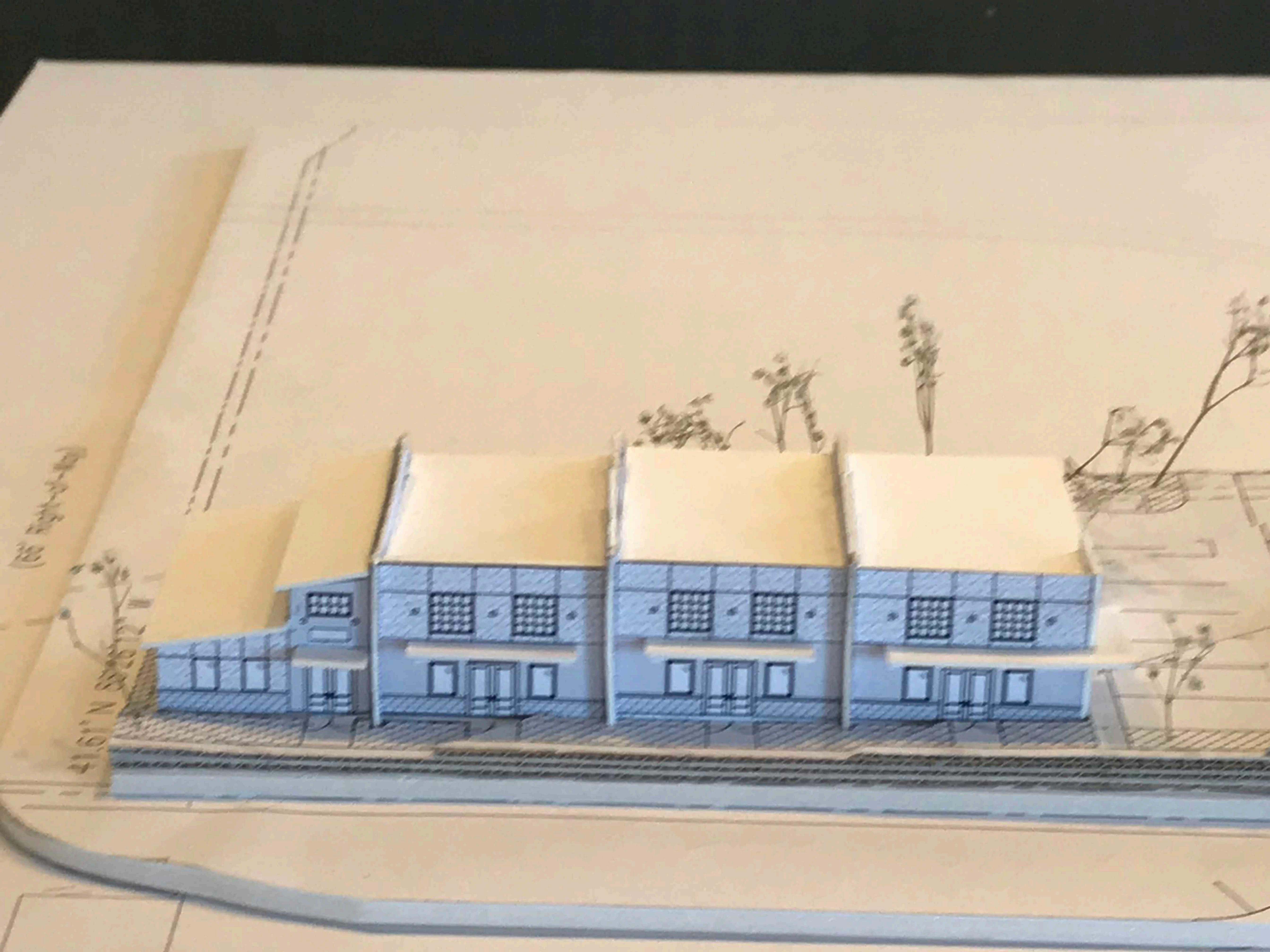




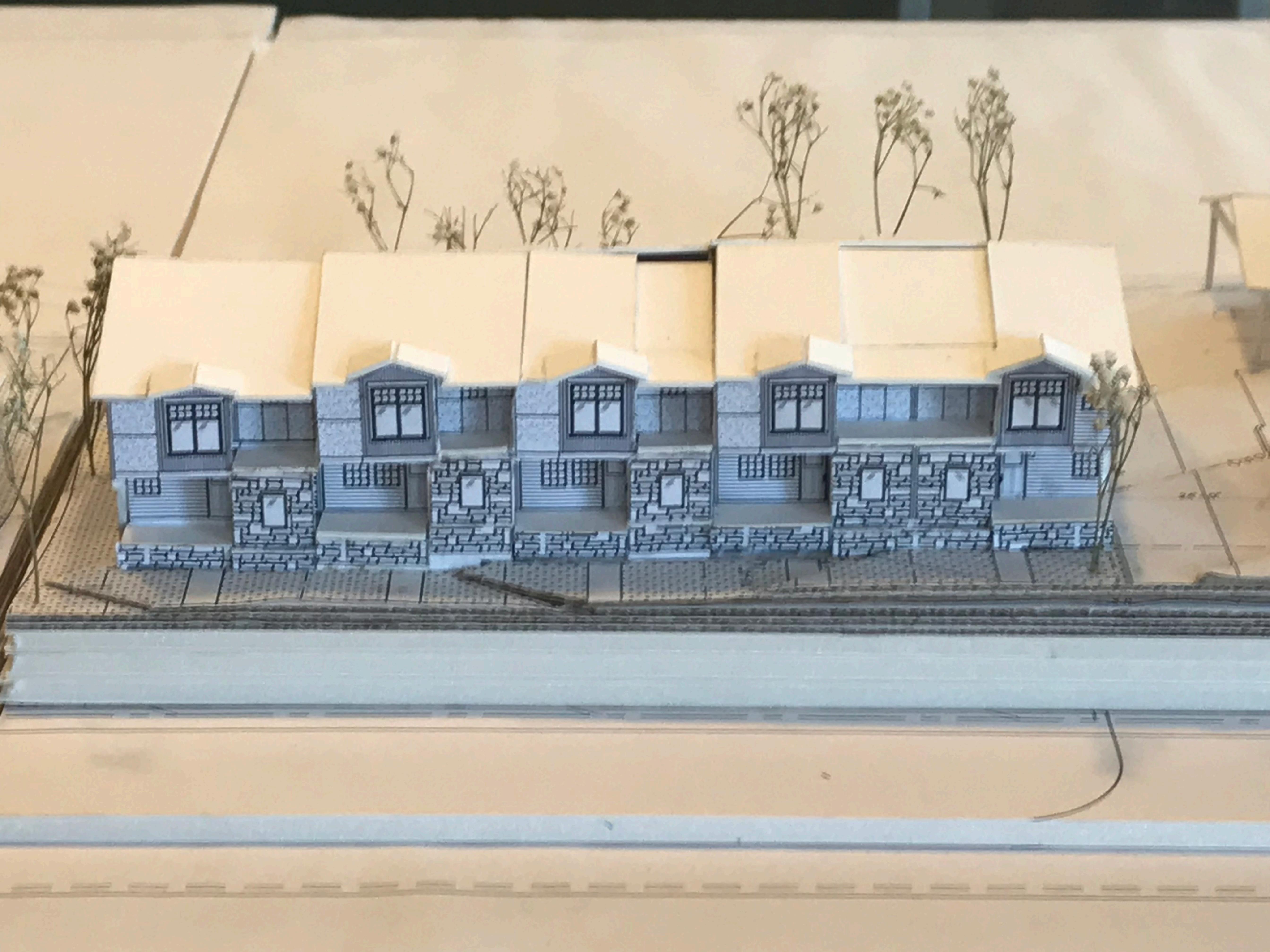
















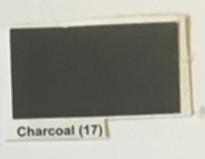


## MATERIALS LEGEND - A UNITS

ROOFING : CHARCOAL PRO PANEL 26 GAUGE METAL SIDING : COR 4 RUSTY METAL \* WINDOWS : BLACK STORE FRONT STUCCO : SPECTRUM BROWN #142 SP-MID FINISH



METAL SIDING



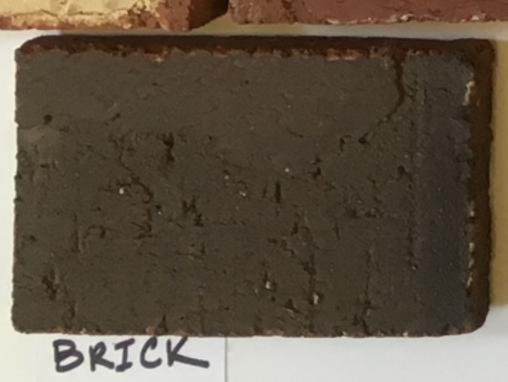




# MATERIALS LEGEND - B UNITS

ROOFING : BURNISHED SLATE PRO LOC PROFILE 26 GAUGE METAL SIDING : VINTAGE SKIN CORRUGATED ½" PROFILE WINDOWS: BRONZE FIBERGLASS STUCCO : STONE GRAY #454A SP MID FINISH WOOD SIDING: RECLAIMED BARNWOOD GREY HARDIE BOARD CEMENT SIDING : TRADITIONAL RED LAP BOARDS BRICK : LAKEWOOD BRICK COMPANY, ANTIQUE





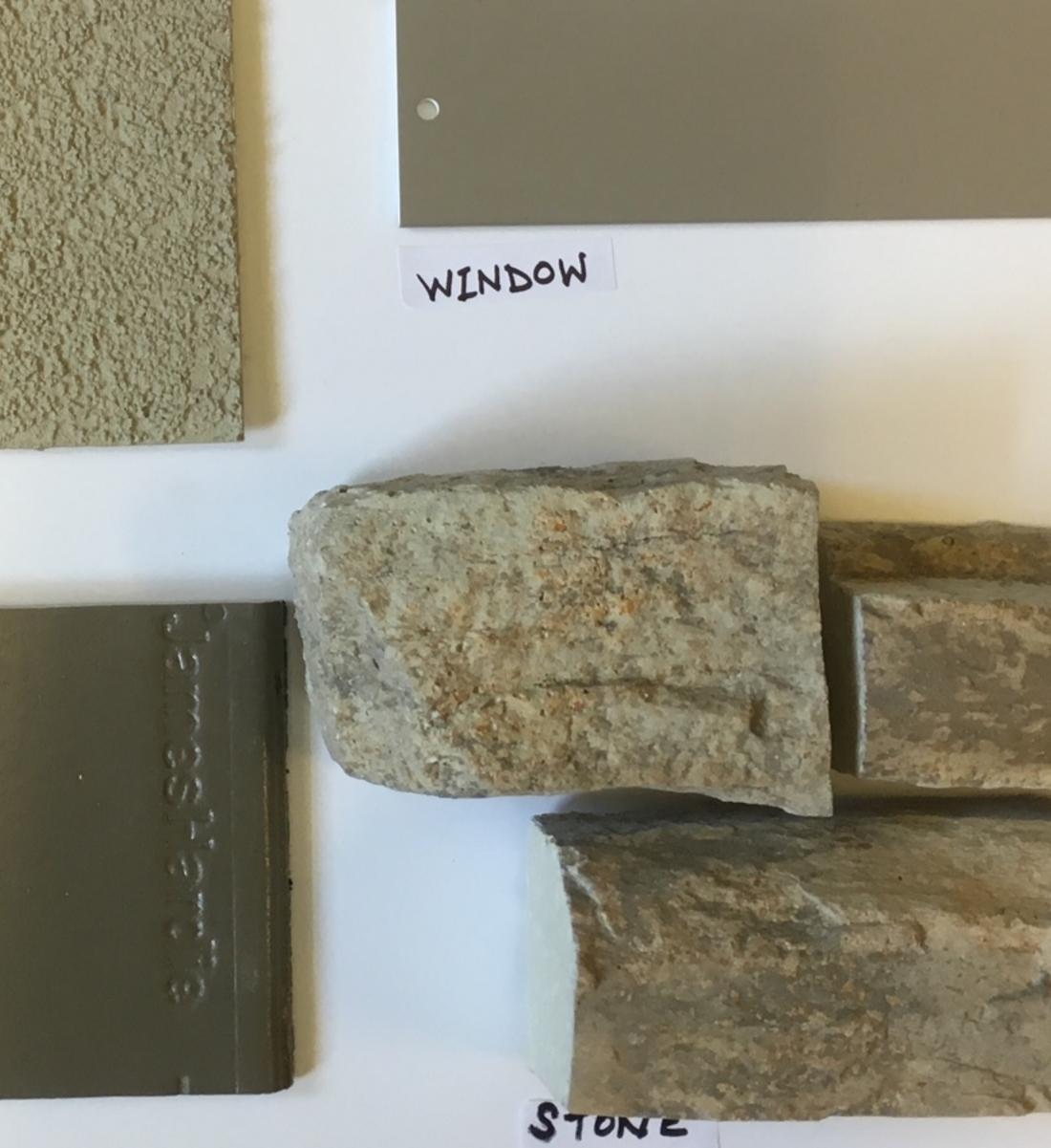


### MATERIALS LEGEND - C UNITS

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ROOFING : FAUX RUSTED METAL PRO LOC PROFILE 26 GAUGE METAL SIDING : COR 4 RUSTY METAL WINDOWS : CASHMERE FIBERGLASS STUCCO : PEARL ASH #106 SP MID FINISH WOOD SIDING : 1X6 T&G W/ LIFETIME TREATMENT HARDIE BOARD CEMENT SIDING : TIMBER BARK LAP BOARDS STONE : CREATIVE MINES CRAFT PEAK LODGE GREEN TEA

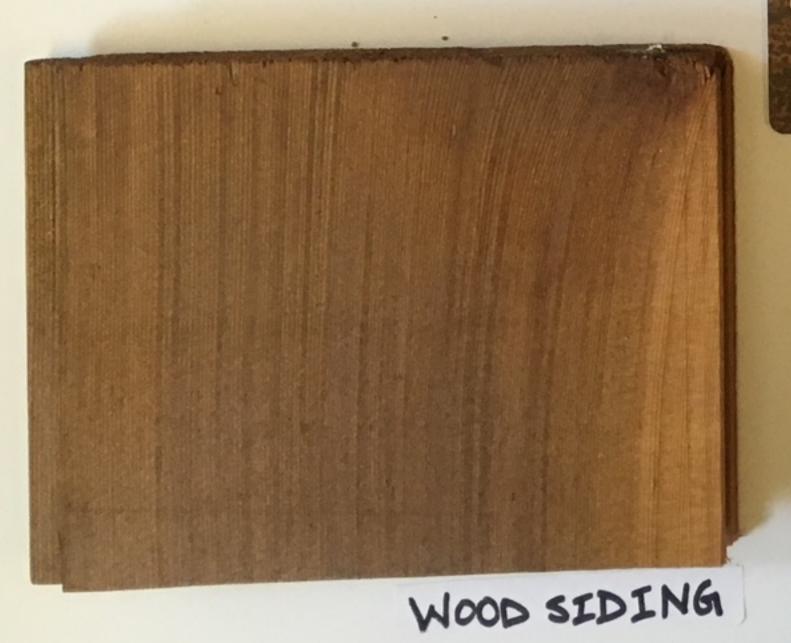






## MATERIALS LEGEND - UNITS D

ROOFING : BONDERIZED RCM 50 PROFILE METAL SIDING : RUSTY METAL 12"X24" HEMMED PANELS WINDOWS: BLACK FIBERGLASS WOOD SIDING: 1"X6" T&G CLEAR CEDAR W/ TUNG OIL HARDIE BOARD CEMENT SIDING : NAVAJO BEIGE LAP BOARDS BRICK : LAKEWOOD BRICK COMPANY, BASALT





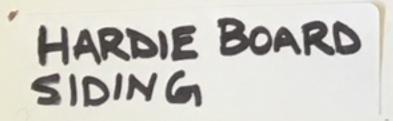




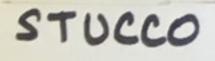
# MATERIALS LEGEND - UNITS E

**ROOFING : VINTAGE SKIN CORRUGATED** WINDOWS: CASHMERE FIBERGLASS STUCCO: PEARL ASH #106 SP MID FINISH WOOD POST & BEAM : DOUG FIR GLU LAM W/ CLEAR FINISH HARDIE BOARD CEMENT SIDING : GRAY SLATE VERTICAL BOARDS BRICK : LAKEWOOD BRICK COMPANY, CHESNUT BROWN









# ROOFING

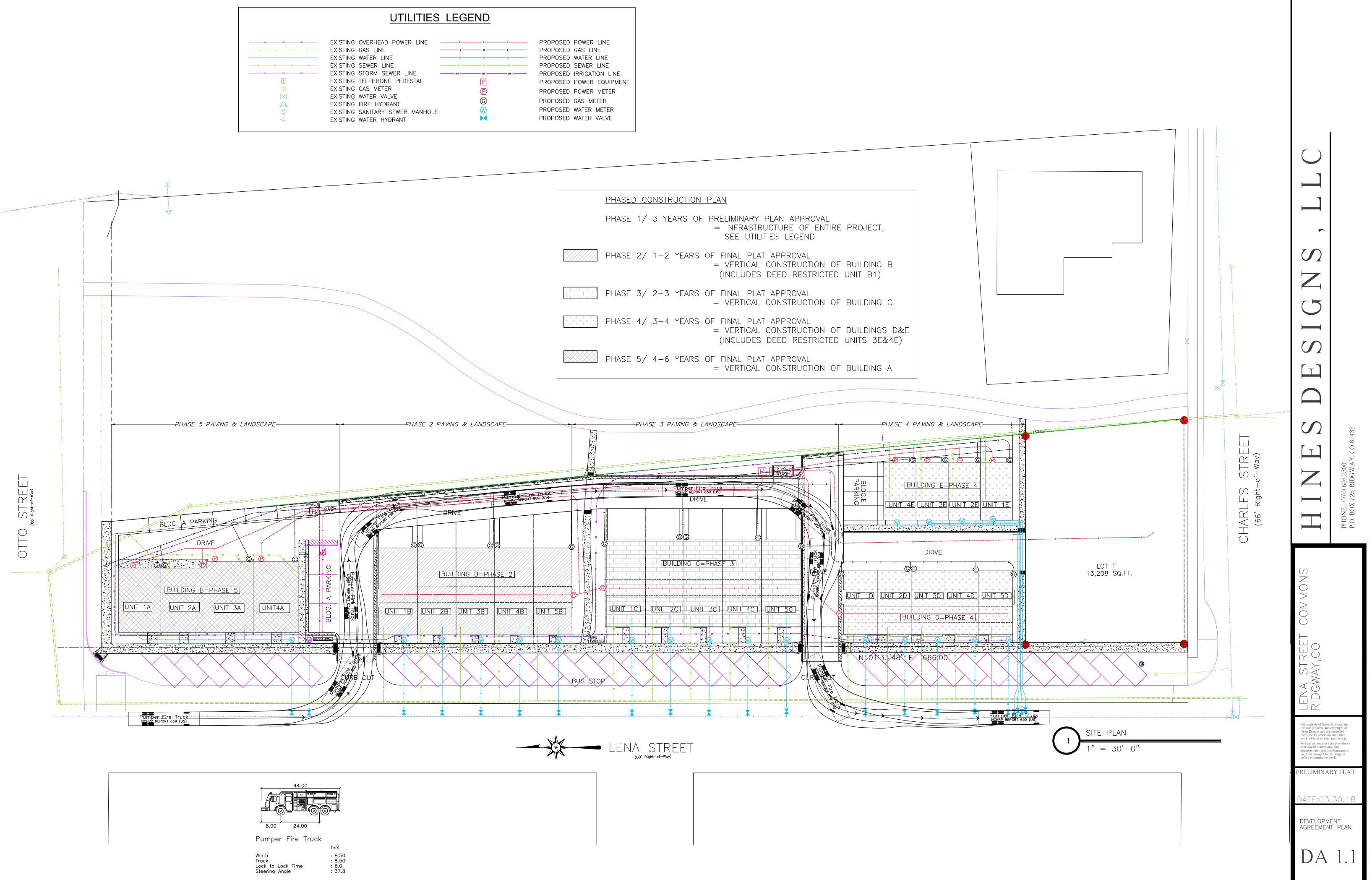
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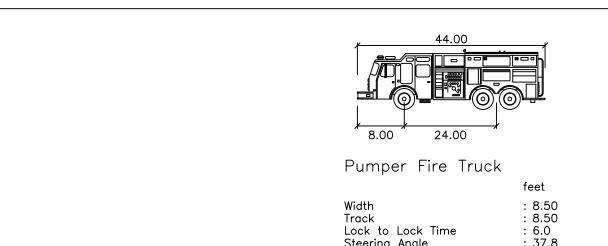
WINDOW











GEND	
E E E G C C W W W SS SS SS RR IRR IRR P C C C C C C C C C C C C C	PROPOSED POWER LINE PROPOSED GAS LINE PROPOSED WATER LINE PROPOSED SEWER LINE PROPOSED IRRIGATION LINE PROPOSED POWER EQUIPMENT PROPOSED POWER METER PROPOSED GAS METER PROPOSED WATER METER PROPOSED WATER VALVE
	PHASED CONSTRUCTION PLAN
	PHASE 1/ 3 YEARS OF PRELIMINARY PLAN APPROVAL = INFRASTRUCTURE OF ENTIRE PROJECT, SEE UTILITIES LEGEND
	PHASE 2/ 1-2 YEARS OF FINAL PLAT APPROVAL = VERTICAL CONSTRUCTION OF BUILDING B (INCLUDES DEED RESTRICTED UNIT B1)
	PHASE 3/ 2–3 YEARS OF FINAL PLAT APPROVAL = VERTICAL CONSTRUCTION OF BUILDING C
	Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years of final plat approval         Image: Phase 4/ 3-4 years 6/ years         Image: Phase 4/ 3-4 years         Image: Phase



#### THE LENA STREET COMMONS TOWNHOMES AND THE LENA STREET COMMERCIAL CONDOMINIUMS

#### CONCEPTUAL INFRASTRUCTURE PHASING PLAN

#### Conceptual Overall Site Infrastructure Phasing Plan Site Utilities & Storm drainage

This Phase includes the development of the following described infrastructure elements which are to be completed and installed at or before the time of the initial recordation of any Phase in The Lena St Commons Townhomes and The Lena Street Commercial Condominiums

- 1. Mobilize, survey, storm water management.
- 2. Install storm drain system.
- 3. Install Sewer Tie ins & lateral service extensions as necessary.
- 4. Install Water taps & service lines as necessary.
- 5. Install primary electric transformer & service.
- 6. Install secondary electric service lines as needed.
- 7. Install new gas main and service extensions as needed.

#### CONCEPTUAL BUILDING B PHASING PLAN

Lots 1-B, 2-B, 3-B, 4-B and 5-B are each being developed and improved with a separate Townhome under the name of The Lena Street Commons Townhomes. The Townhomes are being separately developed respectively on Lots 1-B, 2-B, 3-B, 4-B and 5-B and are sometimes referred to as Building B for reference purposes. As provided for in the declaration for The Lena Street Commons Townhomes, certain "party wall" provisions have been established to address the presence of shared walls, roofing, structural elements and other components by and among the Townhomes. The Townhomes included as part of Building B are being developed and will be operated as The Lena Street Commons Townhomes along with other Townhomes being developed on separate buildings and lots designated as the C Building, D Building and E Building. Certain Common Areas are being platted to accommodate access, utilities, parking, landscaping, drainage and other infrastructure serving development within The Lena Street Commons Townhomes

The elements and components of the Townhomes being developed as part of the Building B Phasing Plan includes the following, which will be undertaken following the platting of Lots 1-B, 2-B, 3-B,4-B and 5-B

- 1. Excavate building foundation
- 2. Structural Framing
- 3. Fire wall construction
- 4. Site Structural fill
- 5. Adjacent Curb, Gutter & Sidewalk
- 6. Dry in vertical construction
- 7. Metered utility connections
- 8. Onsite parking & Drives
- 9. Landscaping & Irrigation
- 10. Dedicate Public Improvements
- 11. Complete vertical construction.

#### CONCEPTUAL BUILDING C PHASING PLAN

Lots 1-C, 2-C, 3-C, 4-C and 5-C are each being developed and improved with a separate Townhome under the name of The Lena Street Commons Townhomes. The Townhomes are being separately developed respectively on Lots 1-C, 2-C, 3-C, 4-C and 5-C and are sometimes referred to as Building B for reference purposes. As provided for in the declaration for The Lena Street Commons Townhomes, certain "party wall" provisions have been established to address the presence of shared walls, roofing, structural elements and other components by and among the Townhomes. The Townhomes included as part of Building C are being developed and will be operated as The Lena Street Commons Townhomes along with other Townhomes being developed on separate buildings and lots designated as the B Building, D Building and E Building. Certain Common Areas are being platted to accommodate access, utilities, parking, landscaping, drainage and other infrastructure serving development within The Lena Street Commons Townhomes

The elements and components of the Townhomes being developed as part of the Building C Phasing Plan includes the following, which will be undertaken following the platting of Lots 1-C, 2-C, 3-C, 4-C and 5-C

- 1. Excavate building foundation
- 2. Structural Framing
- 3. Fire wall construction
- 4. Site Structural fill
- 5. Adjacent Curb, Gutter & Sidewalk
- 6. Dry in vertical construction
- 7. Metered utility connections
- 8. Onsite parking & Drives
- 9. Landscaping & Irrigation
- 10. Dedicate Public Improvements (if any)
- 11. Complete vertical construction.

#### **CONCEPTUAL BUILDING D PHASING PLAN**

Lots 1-D, 2-D, 3-D, 4-D and 5-D are each being developed and improved with a separate Townhome under the name of The Lena Street Commons Townhomes. The Townhomes are being separately developed respectively on Lots 1-D, 2-D, 3-D, 4-D and 5-D and are sometimes referred to as Building B for reference purposes. As provided for in the declaration for The Lena Street Commons Townhomes, certain "party wall" provisions have been established to address the presence of shared walls, roofing, structural elements and other components by and among the Townhomes. The Townhomes included as part of Building D are being developed and will be operated as The Lena Street Commons Townhomes along with other Townhomes being developed on separate buildings and lots designated as the B Building, C Building and E Building. Certain Common Areas are being platted to accommodate access, utilities, parking, landscaping, drainage and other infrastructure serving development within The Lena Street Commons Townhomes

The elements and components of the Townhomes being developed as part of the Building D Phasing Plan includes the following, which will be undertaken following the platting of Lots 1-D, 2-D, 3-D, 4-D and 5-D

- 1. Excavate building foundation
- 2. Structural Framing
- 3. Fire wall construction
- 4. Site Structural fill
- 5. Adjacent Curb, Gutter & Sidewalk
- 6. Dry in vertical construction
- 7. Metered utility connections
- 8. Onsite parking & Drives
- 9. Landscaping & Irrigation
- 10. Dedicate Public Improvements (if any)
- 11. Complete vertical construction.

#### **CONCEPTUAL BUILDING E PHASING PLAN**

Lots 1-E, 2-E, 3-E, and 4-E are each being developed and improved with a separate Townhome under the name of The Lena Street Commons Townhomes. The Townhomes are being separately developed respectively on Lots 1-E, 2-E, 3-E, and 4-E and are sometimes referred to as Building E for reference purposes. As provided for in the declaration for The Lena Street Commons Townhomes, certain "party wall" provisions have been established to address the presence of shared walls, roofing, structural elements and other components by and among the Townhomes. The Townhomes included as part of Building E are being developed and will be operated as The Lena Street Commons Townhomes along with other Townhomes being developed on separate buildings and lots designated as the B Building, C Building and D Building. Certain Common Areas are being platted to accommodate access, utilities, parking, landscaping, drainage and other infrastructure serving development within The Lena Street Commons Townhomes

The elements and components of the Townhomes being developed as part of the Building E Phasing Plan includes the following, which will be undertaken following the platting of Lots 1-E, 2-E, 3-E, and 4-E

- 1. Excavate building foundation
- 2. Structural Framing
- 3. Fire wall construction
- 4. Site Structural fill
- 5. Adjacent Curb, Gutter & Sidewalk
- 6. Dry in vertical construction
- 7. Metered utility connections
- 8. Onsite parking & Drives
- 9. Landscaping & Irrigation
- 10. Dedicate Public Improvements (if any)
- 11. Complete vertical construction.

#### THE LENA STREET COMMERCIAL CONDOMINIUMS

#### CONCEPTUAL BUILDING A PHASING PLAN

Building A will contain four separately created commercial condominium units under the name of The Lena Street Commercial Condominiums, which will be located on Lot A as depicted and described in the Preliminary Plan. In addition to the four commercial units, various infrastructure will be developed and designated as common elements as part of The Lena Street Commercial Condominiums, pursuant to certain a condominium declaration and map to be executed and recorded upon the construction of these improvements.

The elements and components of the Conceptual Building A Phasing Plan includes the following, which will be undertaken following the platting of Lot A.

- 1. Excavate building foundation
- 2. Structural Framing
- 3. Masonry Wall construction
- 4. Site Structural fill
- 5. Adjacent Curb, Gutter & Sidewalk
- 6. Dry in vertical construction
- 7. Metered utility connections
- 8. Onsite parking & Drives
- 9. Landscaping & Irrigation
- 10. Dedicate Public Improvements
- 11. Complete vertical construction.

# Ptc. 3/30/18

#### APPLICANT'S LENA STREET COMMONS PAVING SUMMARY

#### Dated: March 28, 2018

#### Design of Project; Coordination with Existing Lena Street.

The Lena Street Commons (LSC) project is designed to the set paving elevations of Otto and Charles Streets and existing grade of its parcel of land. This approach gives the least amount of impact to adjacent sites, meets ADA standards, and complies with the town standard detail labeled "Typical Gravel Street" dated 2/01. Furthermore, Delmont's Exhibit 1-3 dated 12/4/17 shows that the designed street profile will work for a future paved street from the centerline to the sidewalk/curb and gutter going east to LSC's parcel of land. LSC team understands that this Flow Line Profile will result in a custom sidewalk/curb and gutter that LSC acknowledges it will design and construct at its cost and expense.

#### Lena Street Existing Conditions. (info from soils testing by Lambert Associates)

The existing improved driving surface on Lena street has been well constructed and maintained. The existing roadway profile provides adequate drainage to a shallow flowline alongside the road as per town standards. The existing driving lanes have a varying thickness of engineered road base materials, generally 12". The existing driving surface will provide a good base for asphalt paving and requires little to no work.

There is no engineered fill along the East edge of Lena Street. DelMont's design shows an addition of 12" of compacted engineered fill for the parking surface. This could accommodate asphalt paving in the future.

#### Lena Street Improvements.

The Town has indicated that it would like Lena Street to be paved at some point following the development of the construction of the LSC Project. Based upon our understanding of the status and conditions of Lena Street noted above, it appears that the following preliminary preparation work will need to occur in order for Lena Street to be paved:

1. Survey horizontal/vertical control points

2. Excavate native materials to subgrade on the easterly portion of Lena (adjacent to the LSC Project) and, if elected by the Town, along the westerly portion of Lena (not associated with the LSC Project). As currently designed the subgrade materials situated within the center portion of Lena Street will not require excavation or replacement.

- 3. Install Compacted Engineered fill as required by design.
- 4. Fine grade for asphalt paving.

At such time that the preliminary preparation work has been completed, Lena Street could be paved.

#### Allocation of Costs for the Lena Street Improvements.

The Applicant agrees to perform the preliminary preparation work associated for easterly portion of Lena Street which is adjacent to its property in connection with its work on the subdivision

infrastructure improvements it will be required to complete as part of its final platting. The Applicant would not be responsible for work or costs required along the westerly portion of Lena Street.

The Applicant agrees to share in the cost of the paving on an equitable, prorata manner based upon all other current and future parties using Lena Street. The Applicant will pay its prorata share at such time as it secures building permits for construction of units on its lots. The Applicant believes that it would be fair to establish a reasonable outside date for the Town to draw on the funds and spend the money on the Lena Street paving and provide that if the funds are not spent by that date, they would be refunded to the Applicant.

It is our understanding you are interested in asphalt paving portions of Lena Street, adjacent to the Lena Street Commons project in Ridgway.

Four samples were delivered to our lab and tested for grain size distribution and Atterberg Limit values.

The grain size distribution and Atterberg Limits determined from the laboratory tests were similar to those of soil materials with a CBR value of approximately 5.

The suitable traffic load, ESALs, for the theoretical pavement thickness sections below are based on the Design Nomograph for Flexible Pavements as recommended in the Colorado Department of Transportation 2004 pavement Design Manual.

The following values were used in our analysis:

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CBR value of 5 Reliability of 85% Overall Standard Deviation of 0.44 (CDOT default value) Design Serviceability Loss of 2.5 (typical for ADT less than 750)

Pavement Sections over approximately 12 inches of Granular Fill Material (Class 6 type material)

Thickness of	Estimated ESAL
<u>Asphalt Pavement</u>	Applications
2-1/2 inches	50k
3 inches	75k
3-1/2 inches	150k
4 inches	260k

Pavement Sections over approximately 6 inches of Granular Fill Material (Class 6 type material)

Thickness of	Estimated ESAL
Asphalt Pavement	Applications
2-1/2 inches	10k
3 inches	20k
3-1/2 inches	35k
4 inches	55k

We recommend following the general guidelines outlined in the CDOT Pavment Design Manual.

#### STAFF REPORT

Subject: Zone: Property:	Preliminary Plat Submittal General Commercial (GC) and Historic Business (HB) East of Blocks 31 and 32, north of Hartwell Park/Charles Street, east of Lena Street, south of Otto Street, and west of the Library District property and Town of Ridgway property at North Railroad Street
Address:	316 North Lena
Parcel #:	430516207004
Applicant:	Tate Rogers
Owners:	Arthur Travis Spitzer Revocable Trust
Initiated By: Date:	Shay Coburn, Planner; Jen Coates, Manager April 24, 2018

#### BACKGROUND

Applicant seeks to continue their preliminary plat review of a proposed subdivision, Lena Street Commons. This development will be located at and near 316 N Lena, on the property adjacent to the library and Town property running north and south. The property is 1.63 acres or 69,957 sf.

The proposed development plan includes 19 single-family Townhouse style units and 4 commercial units. This property is zoned mostly General Commercial with Historic Business on the south portion of the property. The majority of the Historic Business land area is simply being subdivided but not developed as part of this application. The applicant presented a concept plan on August 30, 2016 as an informal discussion with the Planning Commission. The applicant then presented a Sketch plan on October 25, 2016 which was continued to the hearing on November 29, 2016 after input from Town Council on November 9, 2016 regarding the use of Town property. There was also a joint work session held on January 3, 2017 to discuss shortterm rentals and affordable housing deed



restrictions. The first preliminary plat hearing for this development was on December 5, 2017 and was continued.

Present with this submittal are the following documents:

- 1. Planning & Zoning hearing application
- 2. Narrative
- 3. Power of Attorney

- 4. Acknowledgement of Fees and Costs
- 5. Proof of ownership deed and title policy
- 6. Mineral rights certification
- 7. Preliminary plat map (updated)
- 8. Drainage report (updated)
- 9. Civil construction plans (updated)
- 10. Fire protection
- 11. Articles of Incorporation: Townhomes
- 12. Townhome Association Bylaws
- 13. Declaration of Covenants for the Residential Townhomes
- 14. Articles of Incorporation: Commercial
- 15. Commercial Association Bylaws
- 16. Declaration of Covenants for the Commercial Condominiums
- 17. Geotechnical Engineering Study
- 18. Water consumption report
- 19. Geologic Hazards and Cursory Level Geotechnical Engineering Study
- 20. Letter addressing building codes
- 21. Building square footage calculations
- 22. Architectural drawings (updated)
- 23. Renderings, Models, Materials (added digital copies)
- 24. Phasing plan (new)
- 25. Lena Street Paving Summary (new)

After the December 5, 2017 Planning Commission hearing, the applicant submitted some updated documents to staff. While there are many outstanding questions and details to sort out for this preliminary plat, staff determined the submittal to be substantially conforming with the requirements of a preliminary plat hearing under RMC 7-4-5(B). This hearing will provide the Planning Commission a review of the submitted materials and direction for the Applicant.

This public hearing has been noticed and the property posted.

#### CODE REQUIREMENTS AND ANALYSIS

#### RMC 7-4-5(B) Preliminary Plat

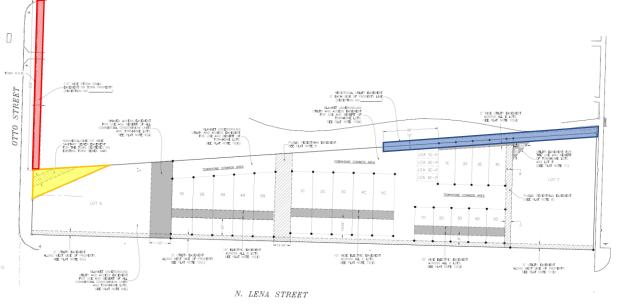
- (1) (4) Submittal Requirements Substantially conforming.
- (5) The preliminary plat shall contain at a minimum the following:

 (a) The name of the subdivision, date of the preparation of the map, name and address of the engineer or surveyor preparing the plat, and total area of the subdivision.
 Substantially conforming.

(b) The scale used and direction of true north. Substantially conforming.

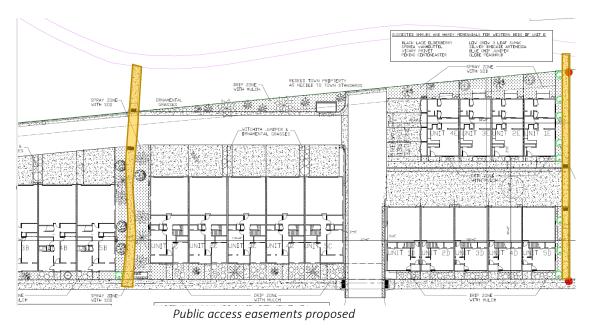
(c) The location and dimensions of all existing and proposed streets, alleys and easements, street lights, street signs and other improvements.

- At the December 5, 2017 Planning Commission meeting, the commissioners recommended that the Applicant purchase a portion of property from the Town since the proposed easements would place a lot of restrictions on the property. All development plans have been reflected to incorporate this portion of property, shown in yellow below. The purchase of the property from the Town will be negotiated as part of the development agreement to be discussed with Town Council. In general, there are a number of requests for the use of Town property that will benefit only this private development, and not another public purpose. These requests are a result of a development plan that requires more property than the owner holds. At a minimum, if the Planning Commission and Town Council are supportive of the use and/or acquisition of Town-owned property, Staff strongly recommends compensation for at least fair market value for all Town property purchased or encumbered.
- As a result of the December 5, 2017 meeting the triangle portion of property was included in the development plans resulting in slight easement changes from the last request:
  - Applicant is requesting a permanent easement from the Town (along the north side of the Town property, shown in red below) to accommodate the private storm drain system for the development. This easement is 7.5' wide and no longer contains an additional diagonal portion due to the incorporation of the small triangle of Town property into the development. Town Council is the authority to make any final decision on all matters related to any use of Town property. While the applicant has shifted the storm drain as far north as possible (considering other utilities, etc.) to minimize the encroachment, Town staff recommends that the applicant provides compensation to the Town for this easement.
  - Town staff worked with applicant to establish a 5' reciprocal utility easement (near the south end of the property on the east side, shown in blue below) that will benefit both parties to ensure access for maintenance of utilities. Town staff supports this reciprocal easement. This easement is unchanged from the last review.
  - Town staff requests that the Applicant edits the "5' utility easement along west side of property" to say "5' access and utility easement along west side of property". This will allow the Town to access the water meter and sidewalk for maintenance. This request was included in the last staff report but this change was not made.



Easements Highlighted

- (d) The location of water courses, including lakes, swamps, ditches, flood prone areas; the location of existing utility lines, pipes, poles, towers, culverts, drains, and drainage ways. Good.
- (e) The location, size and dimension of all lots and blocks, and the location of properties and easements to be reserved for particular uses or to be dedicated to the Town.
  - A number of discrepancies have been found between the DelMont site plan and grading plans and the Hines landscaping and sight and lighting plans. Staff has tried to call out all inconsistencies; however, if any discrepancies are found they will be resolved in the field only with the approval of Town.
  - Development team is providing two public access easements near the middle of the development and south of all of the Townhouse units (highlighted in yellow below). This will provide access to and from the RiverWay trail to the neighborhood. The plan also includes building a connection between the RiverWay trail, the internal sidewalks for the development and the new sidewalk planned for Lena Street.



- *(f) Five foot elevation contours at a minimum.* **Received.**
- (g) Any building setback lines, height restrictions, or other building or use restrictions.

Staff requested that the building lines that run east to west on the preliminary plat map be removed. All building lines were removed for this submittal. The building lines running north-south should remain with appropriate labelling. Add a note to the building line label that building lines go to the lot lines unless otherwise depicted. Lot A also needs a building envelope.

(h) A vicinity sketch map.

Received.

(i) An indication of the total area of streets and alleys, area of lots and area of any property dedicated to public or other uses.

- No property is proposed to be dedicated to the Town other than the public access easements and reciprocal easement discussed above.
- The Townhome area is a total of 1.02 acres with 19 dwelling units. This yields a residential density of almost 19 units per acre.
- The Commercial area is 0.28 acres with a total of 4 units.
- Lot F is 0.3 acres and is not proposed to be developed, just subdivided, and remain zoned as Historic Business.
- (6) Accompanying the preliminary plat or included upon it shall be plans, drawings or information for the following:
  - (a) Plans for any proposed sanitary sewer system showing location, grade, pipe sizes and invert elevations.

The Applicant is proposing to use the sanitary sewer mains located in Lena Street and on Town property to the east.

- (b) Plans for the water system and fire protection system showing locations, pipe sizes, valves, storage tanks and fire hydrants.
  - The 1" water tap may not be sufficient to support a variety of uses in the A units. It will be very expensive to add water capacity to the building once the water tap is installed and after the street is paved. The Town wants to be sure the Applicant understands this.
  - A 1" meter does not seem large enough for four  $\frac{3}{4}$ " service lines to the E units. Town needs to see calculations provided by the Applicant to verify adequacy of meter.
  - Town water meters are 5/8'' by  $\frac{3}{4}''$ . Please edit the label on the C units to  $\frac{3}{4}''$
  - Where there is less than 18" between the new water service and the existing sewer main, the water service should be encased. Mostly B building. Applicant needs to show/note on plans.
  - Staff is working on clarifying hydrant pressure test and work out the details with the Applicant.
- (c) Plans for the storm drainage system showing location, pipe sizes, drains, surface drainage ways and discharge points.

The development and association will own and maintain this private stormwater system.

Town received an updated drainage report. We need to know what was updated in the report and why it was updated.

- (d) Plans for proposed streets, alleys, sidewalks, curbs and gutters, lighting, bikepaths and walkways showing the grade and cross section, and plans for any other proposed public improvements. (Ord 12-2008)
  - Applicant needs to submit an example of the pedestal lights that are planned to be installed to be sure they are compliant with town standards.
  - Applicant needs to clarify how vehicles will back out of the garage at unit 5D due to space and the steep grade. Applicant also needs to clarify how a vehicle will navigate the eastern most carport spot. If these spaces are not usable, they should not be counted toward off-street parking requirements.
  - The development team and Town are working on the design of the full Lena Street right-of-way. See Lena Street Paving section below.

- ADA parking spot at SW corner of unit 4A will ramp be steeper than 8% from the SE corner to the NW corner? May need to adjust some detail here with the design and paving of Lena Street.
- ADA parking space at SE corner of 4A the striping area does not seem to cover all of the area that one would need to use to get on the sidewalk. For example, if one got out of the passenger side of the car, and headed straight north, they would run into a curb. May need some adjustments here.
- The ADA ramp at Lena and Otto will need to be considered with the design and paving of Lena Street to ensure it is ADA compliant
- Detectable warnings need to be full width.
- The development team is including sidewalks along all of their property along Lena and Otto Streets.
- (e) The subdivider shall send a notice, at least 30 days prior to the Planning Commission's hearing or consideration, to mineral estate owners, by certified mail, return receipt requested, or a nationally recognized overnight courier, in accordance with the requirements of CRS 24-65.5-103(1). A copy of the notice shall be given to the Town along with the subdividers certification of compliance with said notification requirements. Provided this notice is not required if notice was previously sent and such certification previously provided with respect to the same surface development, or the application is only for platting an additional single lot, unless a mineral estate owner has requested notice pursuant to CRS 24-6-402(7). (Ord 4-2009) Substantially met.
- (f) Any proposed covenants, condominium declaration or articles of incorporation and by-laws for any homeowners' association, or contracts for maintenance of improvements.

Two associations will be established with a final plat. One for the Commercial Condominium Association and one for the Townhome Association. The two associations are incorporated individually but will coordinate certain maintenance responsibilities.

Having two condominium associations sharing land, utilities, access and other improvements is almost certain to create real challenges for the Developer, the Town, the property owners and the associations. This needs to be carefully considered and crafted to minimize future conflict and absolve the Town of any unnecessary responsibility or ownership. The Town Attorney will review these documents prior to any preliminary plat hearing with Town Council.

- (g) A soils report prepared by a geologist or licensed qualified engineer which addresses building foundation design requirements shall be submitted where geologic hazards and considerations dictate the need for such analysis.
  - The Geotech Study plat note 19 should be changed to read "Pursuant to the recommendations in the Geotech Report by Lambert & Associates, Project Number M17001GE dated March 23, 2017, a site and structure specific geotechnical engineering study is required during the planning phase of each building to provide site and structure specific suggestions and recommendations."
  - Future builder(s) and the Town Staff will need to consider the soils report with any future building permit applications.

(h) Written approval or access permit from the State Department of Highways for any access to highways under its jurisdiction, directly from any lot and for any new street serving the subdivision which intersects with a State highway.

Town Staff consulted with CDOT and were informed that a CDOT access permit will not be required for this development.

- (i) Estimated water consumption and sewage generation. Staff is working with the Applicant to better understand this demand.
- (j) Description of any geologic hazards. Substantially complete.
- (k) Landscape plans and, as appropriate, irrigation plans. (Ord 12-2008)
  - Landscaping and irrigation appear to comply with requirements.
  - Irrigation plan needs to be refined: What is the tap/meter size for the irrigation system? What will be the water demand? What size and type of backflow preventer is intended? How will service be protected from freezing? The irrigation line does not appear to go to the south of D and E buildings, to east of the D building, in landscape strips in parking area to the east of B and C buildings. Will these areas be irrigated differently? On the civil set, is the gate valve labeled IV southwest of unit 4A for the irrigation tap?
- (I) A list of proposed uses for each lot consistent with Town Zoning Regulations. (Ord 12-2008)

See Zoning Regulations section below as the applicant is requesting a Conditional Use Permit for the residential uses in the General Commercial district. There will also be 4 commercial units that are permitted by right in the GC district. The proposed uses are specific to the proposed development plan and will need to be specifically linked to this plan.

#### (7) Repealed by Ord 4-2009

- (8) The Planning Commission may approve, conditionally approve or disapprove the preliminary plat. It may continue its consideration of the plat to another meeting when additional time is needed, or to allow the subdivider time to revise or supplement the plan to bring it into compliance with these regulations or proposed conditions of approval. The reason for continuance, disapproval, or any conditions of approval, shall be included in the minutes of the Planning Commission's proceedings and provided to the subdivider in writing upon request. Consideration of the matter may also be continued upon the subdividers request. The plat may be disapproved if it or the proposed improvements and required submittals are inadequate or do not comply with the requirements of these Regulations. (Ord 12-2008)
- (9) The Planning Commission's decision shall be submitted to the Town Council as a recommendation along with the plat for review at its next regular meeting. The Town Council shall issue its decision approving, conditionally approving or disapproving the plat, based upon compliance with the provisions of these regulations. The Town Council may continue its consideration of the preliminary plat until such time as proposed conditions for approval, are met by the subdivider. (Ord 12-2008)
- (10) Except as otherwise expressly provided by the Town Council, all conditions of approval shall be met within 90 days of such approval or the plat shall be deemed disapproved.

#### **RMC 7-4-6 Required Improvements**

There are a number of improvements that are required with subdivision in this section. Staff is highlighting only a portion of these requirements here:

Subsection (A)(6) Streets within and adjacent to the subdivision as necessary to provide access to each lot. Existing streets maintained by the Town for public use shall be improved by the subdivider to the extent necessary to provide access to abutting lots and to provide proper drainage, grade and sidewalk grade. Streets shall be paved in circumstances where required by Town street specifications. Streets shall be dedicated to the Town.

#### Lena Street Paving

At this time, Otto, Charles and Lena Streets are all paved. Combined with the significant addition of traffic associated with this development, this section of Lena will need hard-surfaced in the near future.

A solution has not yet been reached and must be agreed upon to incorporate in the Development Agreement. The Applicant submitted a Lena Street Phasing Summary that the Town is currently reviewing. Staff is working with the Applicant to identify a solution that works for both parties. The Commission should weigh in on this requirement to help make a few suggestions or recommendations.

# Subsection (B) Subdivision Improvements Agreement (SIA)

In part, this section reads as follows in Sections (1) and (2):

(1) No final plat shall be approved or recorded until the subdivider has properly completed, and the Town has approved, the street base, lights and traffic control devices, and water, sewer, electricity, gas, telephone, and drainage system as adequate to serve each lot, and has submitted, and the Town Council has approved, a Subdivision Improvements Agreement guaranteeing construction of all other required improvements and as-builts therefore, which have not previously been completed and approved by the Town. The Subdivision Improvements Agreement shall list the improvements to be made and as builts required, estimated costs, and completion dates.

(2) All improvements shall be completed and accepted within 2 years following approval of the final plat by the Town, unless a longer interval is provided for in the Subdivision Improvements Agreement.

It is the position of Town staff that applicant should adhere to the provisions of Code Section 7-4-6(B)(1) regarding the instillation of required improvements between preliminary and final plat. While some improvements are allowed to be secured through a SIA in this section of the Town Code, there are a number of improvements that are required and not subject to security or future construction.

The Development Team has requested a Development Agreement or Development Plan. Phasing of this project will be discussed as part of that plan and finally approved by Town Council. A phasing plan was submitted by the Applicant and better reflects the requirements of RMC 7-4-6(B)(1) than the past proposal to secure all improvements. The details of this phasing plan are yet to be finalized; however, some additional considerations include:

- 1. How will owners' associations function as the property is developed?
- 2. When will sidewalk and parking area on Lena and Otto be developed?
- 3. When will improvements around Lot F be developed?
- 4. Will the proposed storm drain system work without hard surfacing or full site grading?

#### RMC 7-4-7 Design Standards

There are a number of standards required in this section. Staff is highlighting only a portion of these Standards here:

<u>RMC 7-4-7(J) Plat Notes</u>: This section addresses plat notes required by the Town (pages 1 and 2 of plat). Additional edits to the Plat Map are included in this section.

- 1. Applicant needs to review and insure all note titles, descriptions, labels, etc. match across all pages. Staff listed many inconsistencies below but may have missed some.
- 2. Certificate of Dedication: Town does not want the storm drain that is on private property or in the easement. That needs removed from town dedication and retained by the owners' associations jointly. The "private easements are reserved...." Needs removed from the stuff dedicated to the town and to stand alone and so that they can also reserve their storm drain.
- 3. May need to add a Lienholders Certificate unless the property is paid for in full without any lien(s). Town will share standard language if needed. Applicant needs to confirm weather this is needed or not.
- 4. Page 1: Will need to update legal description in Cert of Dedication to add the town parcel once final.
- 5. Page 1: Cert of Improvements Completion, "do" should be "does".
- 6. Page 2: format sub list under note 1 the same as notes 9, 10, etc. (use "a." not "(A)").
- 7. Page 2: note 1, add a line to fill in the reception number for declarations for each HOA.
- 8. Page 2: note 1b This note needs to be edited. Town will "review and consider" not "review, approve and record." Any approval will result in a recordation of a condominium plat map pursuant to town regulations and procedures. We are not circumventing regular town process. Also this same sentence says "…recordation at such as…" seems to need the word "time" inserted.
- 9. Note 1b needs to have the same language that is at the end of Note 1c starting with "The exterior of all Townhome residences (change to commercial condos) shall be maintained...collected similarly to taxes or in any lawful manner".
- 10. Plat notes 1b and 1c need further clarification with staff regarding process and recording of final plats.
- 11. Page 2: note 1e needs to read "... may be developed as ..." not "can be developed as...".
- 12. Page 2: note 2, add "in Ouray County records".
- 13. Page 2: note 4, remove "3E" unless you are proposing to place a deed restriction on an additional unit.
- 14. Page 2, note 4, add "notwithstanding the development agreement, any changes to the affordable housing provisions will require a plat amendment."
- 15. Page 2: note 5, replace "phase" with "lot" this document does not show the phases, that is specific to the development agreement.
- 16. Page 2: note 8, edit "pedestrian walkway" to "Public Pedestrian/Non-Motorized Easement", same on page 4.
- 17. Page 2: note 8, if the applicant wants to impose "reasonable regulations" on this easement, that needs to be discussed at this point. The town is not okay with the Townhome reserving the right to impose regulations at a later time without Town consent.
- 18. Page 2: note 9, commercial condo easement for access, utilities, drainage and other uses should also be labeled as such on page 4, where it looks to be called out only as an access easement. The same may be true for note 10.

- 19. Page 2: note 9c Edit the "5' utility easement along west side of property" to say "5' access and utility easement along west side of property" The Town may need to use a little bit of this area to repair sidewalks in the future. (this was also noted above)
- 20. Page 2: what is the purpose of note 9d?
- 21. Page 2: note 10a, not depicted on map.
- 22. Page 2: note 12 -the parenthetical in the second line should also be subject to the Town's easement for the sewer.
- 23. Page 2: note 15, add here the same language in notes 12 and 13 that the "Town is not responsible or liable for the irrigation in any manner...".
- 24. Page 2: note 16 outdoor lighting remove the equitable share and put that in the CCRs. The Town does not want to enforce cost sharing. Please remove all cost sharing references on this plat and incorporate in CCRs.
- 25. Page 2: note 18, add "in compliance with all Town regulations".
- 26. Page 3: need to dimension all lines around the addition of the town property and easements. Easements need dimensioned on page 4. These will need to match the Development Agreement or deed/transfer depending on how they are conveyed. If finally conveyed, the town triangle property will just be deleted on the final plat as it will then be owned by LSC commercial condo group. The easement of course will remain on the plat.
- 27. Page 3: add a dimension behind building C to the east property line, perhaps at the north or south end of the building.
- 28. Page 3: 9' setback label from E unit carports is confusing. Right at that point the setback for the carport is 9' but there is also a building setback line, typical, that the carport encroaches on. Perhaps remove the 9' setback label.
- 29. Page 4: on Lot F, note regarding triangle shaped easement, should reference note "11a" not just note "11" for consistency with other notes.
- 30. Page 4: easement for town sewer main must be at least 20', or the easement can extend to the east to include the small triangle portion so that the Town can access the sewer line easily from that east side of the property. This easement reference will need a reception number and maybe a description on page 2.
- 31. Page 4: the private vs public easement hatching and shading is a bit confusing. There seems to be 3 things going on here. easements to town; easements for each unit series (electrical); and easements for OAs. I would say maybe the north shaded access easement needs to be not shaded but dotted or something else as that is shared by both OAs?

# RMC 7-3-11 Planned Unit Developments

#### Zoning Regulations

# Per RMC 7-3-11(D) below, the development may deviate from the required dimensional standards as part of a PUD.

- (D) Dimensional Requirements and Densities:
  - (1) The dimensional requirements, which would otherwise be required by Town Zoning Regulations, or other Town regulations for the district affected, may be deviated from in accordance with the Plan as approved, if the Town determines that such deviations will promote the public health, safety and welfare. (Ord 3-2008)
  - (2) The number of units allowed in a residential PUD shall be generally the same as would have been allowed without clustering, taking into account minimum lot sizes and areas which would have to be dedicated for streets and other public uses, if the property had been developed or subdivided without clustering. Provided, however, the Town may allow additional residential units if it determines that

by so doing, significant public benefits will be provided which might not otherwise be available, such as significant affordable housing, public open space, public recreational amenities or off site public infrastructure improvements. (Ord 3-2008)

The following is a list of conditional uses and variances requested with this preliminary plat:

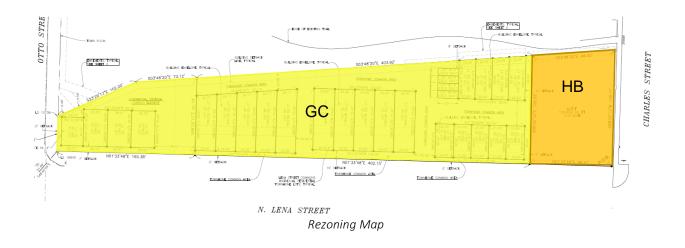
- 1. Requesting CUP for residential use in GC zone.
- 2. Requesting variance for to 7-3-9(D)(6)(d) E Units are only 20' wide (not 21'), roof pitch is less than 3:12 on main roof of D units, and 12" required eave overhangs are in most locations but not every last one. Roofs will overhang property lines in many instances applicant needs to ensure that the ownership and maintenance responsibility for the roof area beyond the individual property line is clear in the CCRs or plat.
- 3. Requesting a CUP for D units to be up to 35'. No building may exceed 27' except the D building if the CUP is approved, in which case can be up to 35'.
- 4. Requesting variance, all proposed lot are less than the required 30' (A units = 26'-28' wide, B units = 24' 24.6', C units = 24'-25' wide, D = 21'-22' and E = 20')
- 5. Requesting variance to minimum lot size of 5,000 sq. ft. lots range from 840 to 1835.5 sq. ft.
- 6. Requesting variance to 50% max lot coverage: Commercial area overall lot coverage = 34% (reduced from 38% with addition of Town property); Townhome overall lot coverage = 44.5%; B, C and E lot coverage is around 70% and D lot coverage is 100%
- 7. Setbacks (all approved as presented at the November 29, 2016 Sketch Plan hearing with the Planning Commission except 0" rear setback for A units should be 2.5' progressing to 8' when able).
  - Front setbacks approved for A, B, D units to be 5', C to be 10', and E units are about 75' from the front property line on Lena.
  - Unit A1 has a 4'6" side setback
  - Parking for E units extends about 1' into 8' rear setback (this was **NOT** presented at the sketch plan hearing and needs approval as part of this review)
  - Side setbacks between units within one building approved at 0'
- 8. Requesting variance for 1 parking space for each of the four 720 sq. ft. E units required to have 2 each.
- 9. Requesting variance for a total of 3 parking spots for building A required to have 13 total. The addition of the Town parcel added additional parking spaces for the A units. The previous request was for a variance for 6 spaces.

Per the sketch plan hearings and subsequent joint work session, due to an increase in density the Town negotiated for 3 affordable housing deed restricted units. The applicant has provided for those.

#### RMC 7-3-17 Amendments and Additions to the Official Zoning Map and Zoning Regulations

Rezoning has specific requirements to be met, including public hearing, fees, criteria to be met for rezoning, etc. Rezoning also requires an ordinance amending the Town's Official Zoning Map.

The zoning designation between the General Commercial and Historic Business districts will need to be moved to be congruent with the property line between the current Townhome property and Lot F as shown in the image below. A rezoning can occur after preliminary plat but will be required to be completed before or coincident with the final plat. If the Applicant would like to sell the HB zoned portion of this property, referred to as Lot F, the rezoning will need to be completed before the sale. This will be included as part of the Development Agreement to be negotiated with Town Council.



#### RMC 7-5 Statutory Vested Property Rights

#### **Development Plan and Vested Rights**

The Town Code provides for vested rights in Section 7-5 Statutory Vested Property Rights. RMC 7-5-2(D) provides for a contemporaneous review of such development agreement with other land use applications. It has been agreed that a Development agreement will be drafted and reviewed by Town Council along with the Preliminary Plat recommendation from the Planning Commission.

The Development Agreement may cover topics such as Lena Street improvements, phasing, easements, affordable housing deed restricts, land acquisition, off-site improvements, architectural drawings or a reference to them, vested rights, and all conditional uses, variances, deviations, etc. granted for this project.

#### Misc. Comments and Edits

The fire truck path shown on the phasing plan can barely make the turns indicated on the plans if executed perfectly, and some curbs are still compromised. Most units will have access from Lena Street. However, A units do not have great access. Access to these units can come in from the south along the town path which is not ideal but at least provides some access. Drawing is also on an outdated utility plan and should be updated.

How will snow be removed from drive between units D and E, and at the end of the drive by the A unit carports? Seems like snow may be piled at the end of those drives or a plow will have to pick it all up to more it off site. Or a little machine will have to be used that can get in there and move around easily.

Small edits to be completed:

- Add a scale to page A1.1, reconcile the two scales on page A1.0, update the scale eon page A1.2,
- Remove large red dots on sheet A1.2,
- DelMont sheet 2 label all of the easements,
- DelMont utility plan is not scaling right this may be a printing error,
- Change title of sheet 8 to "Grading Plan Lot F",

- Add radii for those missing on the curves and curb in paving areas,
- Contour lines on civil set are jagged seems like this needs to be straightened out, and
- Location of bus stop should be changed as it cannot be within on-street parking spots.

#### STAFF RECOMMENDATION

Based on the 2011 Land Use Plan and recent community conversations, this development seems to be well suited for the community in this location, although the requested uses of Town property suggest the size of the development may just be too large for the property, and there are a significant number of outstanding items that need resolved. Inclusive in this proposed development plan are mixed uses, higher densities, location in the core of Town, access to utilities, and walkability. The mixed-use concept could serve as a good transition between residential and commercial surrounding zones. In addition, the Applicant has done a good job of addressing the lagoon setback at the north end of the property by including commercial units.

Given the complexity of a larger and more urban project like this, it is extremely important to discuss the details of this plan and address a number of unresolved questions prior to any approval of a preliminary plat. Staff recommends that this hearing be continued to allow the Applicant time to revise their plans to meet the following conditions, including any items identified in this staff report, which are not repeated here:

- 1. Bills from Town for services to be paid before Town Council hearing.
- 2. Add building envelopes on the plat map.
- 3. Address questions and concerns listed under 7-4-5(B)(6)(b) above.
- 4. Plat map edits per 7-4-7(J) above.
- 5. Consider input received from the Planning Commission for the Development Plan to be discussed and finalized with Town Council.
- 6. Misc. comments and edits listed above.

This is a significant development review for which a number of modifications and decisions are needed. While we have done our best to insure a complete and accurate report, this is complex and there may be some omissions or oversights here that will need addressed in future reviews.



Property posted from Charles Street



Property posted from Lena Street



Property posted from Otto Street

# PLANNING COMMISSION

# MINUTES OF THE REGULAR MEETING

# March 27, 2018

# CALL TO ORDER

The Chairperson called the meeting to order at 5:30 p.m. with Commissioners Emilson, Falk, Councilor Hunter, Mayor Clark, and Chairperson Canright in attendance. Commissioners Liske and Nelson were absent.

#### PUBLIC HEARINGS

<u>Application for Sketch Plan; Location: property at southeast corner of Sherman/Hwy 62 and South Railroad, legal address: S: 16 T: 45 R: 8 N1/2SW1/4; Address: To be determined Railroad/Hwy 23; Zone: Historic Business; Applicant: Ridgway Cohousing, LLC: Owners: Ridgway Cohousing LLC.</u>

Staff Report dated March 27, 2018 presenting background, analysis and staff recommendation prepared by the Town Planner.

Town Planner Shay Coburn presented an application for sketch plan review for a proposed residential subdivision that includes 24 residential units in 12 duplex buildings, a common house, workshop, and parking facilities. She noted the Planning Commission approved the originally proposed sketch plan on September 26, 2017, and it has expired. Ms. Coburn pointed out the northern aspect of the property is not part of the request because it will be used for future commercial development and in conjunction with the re-alignment of the Railroad Street right of way. She explained a new sketch plan narrative, letter of request and new proof of ownership with articles of incorporation are submitted with this application because the property's ownership has change since the last hearing. The Planner commented the following notes were removed from the original narrative: landscaping would be designed to promote native flora and fauna, and the community would be designed to promote efficient, sustainability and environmental health in-line with national LEED standards, so the applicant should clarify the omission. Additional changes with the revised sketch plan include the unit mix is slightly modified, the parking plan is modified so that 6 units do not have the required two parking spaces, project costs have changed, and water system requirements have changed slightly due to structure modifications. In addition, consideration of short term rentals should occur before preliminary plat and confirmation is needed for granting the Town a 10 ft. easement along the southern aspect of the property.

Architect Kit Meckel, member of the consulting team for the project said they are currently working on the preliminary plat. The complexity of the lot, weather and working with various consultants has prevented the completion of the process within the required 6 months.

John Baskfield, developer for the applicant stated the primary purpose for the requesting the hearing is to keep the project moving along since the initial approval just expired. He stated there are no intended changes to storm drainage, health, safety and welfare of the community, or in landscaping.

The Commission discussed the application with Mr. Meckel and Mr. Baskfield.

Mr. Baskfield explained the jurisdictional wetlands on the property have been delineated by a consultant and approved by the Army Corps of Engineers. The wetlands will experience some disruption so a required mitigation plan will accompany the preliminary plat. He confirmed that there will in fact be 48 parking spaces for 24 residential units on the property.

Chairperson Canright opened the hearing for public comment and there was none.

The Commission <u>asked the applicant to consider some affordable housing in the subdivision</u> as a concession for visitor parking, consider using Cottonwood Creek as an asset to the proposed subdivision, and expressed concerns that allowing short term rentals would conflict with the concept of co-housing.

John Baskfield explained that the terms for the re-alignment of Railroad Street needs to be determined to ensure the project will move forward.

Planner Coburn explained staff has submitted a formal application to the Colorado Department of Transportation (CDOT) for right-in/right-out access to Highway 62 at the existing South Railroad right of way and a new full access right of way directly south of North Railroad. Once CDOT completes their study and approves the application, the Town will be ready to discuss the re-alignment of Railroad Street with the applicant.

# ACTION:

Commissioner Emilson moved to <u>approve the Application for Sketch Plan for the property located</u> <u>at southeast corner of Sherman/Hwy 62 and S. Railroad; Applicant: Ridgway Cohousing, LLC</u> <u>with the 13 considerations and clarifications listed in the staff report dated March 27, 2018 which</u> <u>must be met.</u> Mayor Clark seconded the motion, and it carried unanimously.

 Application for Variance to parking regulations; Location: Willow Creek Trading Subdivision including Drashan Condominiums; Address: 167, 171 and 189 N. Cora Street; 602, 604, and 610 Clinton Street; Zone: Historic Business (HB); Applicant: Willow Creek Trading Subdivision Parking Maintenance Association, Inc.; Owners: Arapaho Partners LLC, 171 N. Cora LLC, Christopher Senior, Eka Pada LLC and Ridgway Chautaugua Society Inc.

Staff Report dated March 27, 2018 presenting background, analysis and staff recommendation prepared by the Town Planner.

Mayor Clark recused himself from the hearing due to his affiliation with the Sherbino Theater (Ridgway Chautauqua Society Inc.).

The Town Planner presented an application for parking variance for two parking spaces to serve future residential uses for Lots 2 and 3 of the Willow Creek Trading Subdivision. She explained the two buildings on the lots would like to convert the second floors into residential units which changes the parking requirements. The initial request, while slightly different than this request, was denied at the October 31, 2017 Planning Commission hearing because of the inability of the applicant to prove the criteria for a variance. The applicant collaborated with neighboring building owners as encouraged by the Planning Commission. This application is a result of the collaboration she continued.

Ms. Coburn explained two off-street parking spaces are required for all residences over 600 square feet and the applicant is requesting one parking space for each of the dwelling units because of the small square footage (787.5 - 867.5 sq. ft.). She further explained the intended use for both units is for short-term rentals, only one parking space is required for accessory dwelling units up to 800 sq. ft., the mixed uses of residential and commercial in the subdivision demand parking at different times of the day, and the units are centrally located in the heart of the Historic Business District.

Planner Coburn gave a brief history on the previous parking arrangement for the subdivision, which included a non-functioning Shared Parking Agreement and noted the variance request is the first step in cleaning up the parking arrangement. She explained that under the current code nine parking spaces are required with the change of desired use in the buildings, and the parking arrangement map submitted by the applicants only provides for seven spaces. The applicants plan to resolve this with a parking permit system that would encourage tenants to park off-street, in the improved lot, first.

The Commission discussed the application with one of the applicants, Seth Cagin. He stated the parking situation is an inherited historic problem that doesn't have an optimal solution for all properties in the subdivision to be in full compliance of the current land use code. He noted that a future plat amendment is contingent on the Commission approving the application.

Chairperson Canright opened the hearing for public comment.

Patrick O' Leary, Board member for the Sherbino said the tenants in the subdivision are trying to fully utilize the back parking area by taking as many cars off the street as possible. He feels the parking arrangement will assist in analyzing the parking needs in that area, which has never been done. As a result the needs can further be addressed. He emphasized that the spirit of cooperation between the tenants in the subdivision is real and would like to do the best job possible under the current circumstance.

Chairperson Canright closed the hearing for public comment.

The Commission discussed the application with Mr. Cagin. He added that the formation of the parking agreement will not require consensus from the tenants to make changes or improvements for parking and issues will be resolved more efficiently.

# ACTION:

Councilor Hunter moved to <u>approve the Application for Variance to Parking Regulations; Location:</u> <u>Willow Creek Trading Subdivision, including the Drashan Condominiums; Addresses: 167,171,</u> <u>189 North Cora Street; 602,604, and 610 Clinton Street; Zoned (HB); Applicant: Willow Creek</u> <u>Trading Subdivision Parking Maintenance Association Inc. The variance is based in the smaller</u> <u>size of the units and the fact that the parking is being reduced by 2 residential units that could be</u> <u>designated as 600 sq. ft. or less, which would be the original parking designation. The Applicant</u> <u>has made a huge effort to be cooperative and come up with a solution to keep prompt plan, and</u> <u>the approval also includes the 2 staff recommendations in the Staff Report dated March 27, 2018,</u> <u>which are: 1. Approval of the recording of the plat amendment and 2. Completed improvements</u> to the shared parking area as described in the letter and map provided by the applicant to be <u>included.</u> Commissioner Emilson seconded the motion, and it carried unanimously.

Mayor Clark re-entered the public hearing.

# **OTHER BUSINESS**

#### 3. Informal Discussion-Multi-Site Planned Unit Development

Letter dated March 27, 218, Site Plan, and aerial photographs of proposed property from Julie Wesseling.

Julie Wesseling presented a proposed concept for two public storage facilities in the Eastside Subdivision, Lots 10 and 11. She explained the first phase of the project will included five 13ft. - 20ft. tall, completely enclosed storage buildings, an office with a second floor apartment and 10 parking spaces. A professional office with another second floor apartment will be constructed in the second phase of the project. Short term rentals are the intended use for both apartments, and the appearance of the buildings will be compatible to the 4-H Center located across the highway.

The Commission discussed architectural details, screening along the gateway, landscaping, short term rentals, building placement, and traffic flow in and out of the lots with Ms. and Mr. Wesseling.

Chairperson Canright opened the discussion for public comment.

Guthrie Castle said there will be the opportunity for approximately 400 new residents to move into the community given the current projects under advanced planning stages. This may change what the best land use is for gateway lots and other lots that have been vacant for many years.

Chairperson Canright closed the discussion for public comment.

#### 4. Update-Master Plan Process

The Town Planner reported six consultant proposals have been received, and three should be interviewed soon.

5. Update-Downtown Parking Assessment

Planner Coburn reported a consultant has been selected and will be going under contract soon. That process should be done by June 30.

#### APPROVAL OF THE MINUTES

6. Approval of the Minutes from the meeting of February 27, 2018

#### ACTION:

Councilor Hunter moved to <u>approve the minutes from February 27, 2018.</u> Mayor Clark seconded the motion and it carried unanimously.

Planning Commission March 27, 2018

# **ADJOURNMENT**

The meeting adjourned at 7:50 p.m.

Respectfully Submitted,

Karen Christian Deputy Clerk