RIDGWAY PLANNING COMMISSION

AGENDA

Tuesday, January 26th, 2021

Regular Meeting; 5:30 pm

ONLINE via Zoom

To join the meeting go to:

https://us02web.zoom.us/j/84381243027?pwd=V0Z4V0dFRm5rQXRYU3U3aGlEUzhVZz09

Meeting ID: 843 8124 3027

Passcode: 316348

To call in dial: 346.248.7799 or 669.900.6833 or 408.638.0968

Written comments can be submitted before the meeting to scoburn@town.ridgway.co.us or delivered to Town Hall Attn: Planning Commission

ROLL CALL: Chairperson: Doug Canright, Commissioners: Russ Meyer, John Clark, Thomas Emilson, Larry Falk, Bill Liske, and Jennifer Nelson

PUBLIC HEARINGS:

1. **Application:** Final Plat – Lena Street Commons PUD; **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:** TBD N Lena Street; **Zone:** General Commercial (GC) and Historic Business (HB); **Applicant:** Hines Designs; **Owner:** Lena Commons LLC

OTHER BUSINESS:

2. Landscaping Regulations Update, third discussion

APPROVAL OF MINUTES:

3. Minutes from the meeting of October 27, 2020
4. Minutes from the meeting of December 22, 2020

ADJOURN

STAFF REPORT

Subject:	Final Plat – Lena Street Commons PUD
Legal:	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:	TBD N Lena Street
Parcel #:	430516207004
Zone:	General Commercial (GC) and Historic Business (HB)
Applicant:	Hines Designs
Owners:	Lena Commons LLC
Initiated By:	Shay Coburn, Town Planner
Date:	January 26, 2021

BACKGROUND

This application is for a Final Plat for Lena Street Commons PUD. The Town Council approved this Preliminary Plat and Development Agreement on June 13, 2018, with a number of conditions to be met within 90 days of that approval. The Applicant requested an extension to meet the conditions which was granted by Council on September 6, 2018. Conditions were met and construction commenced in fall of 2020.

The subject property is on Lena Street between Charles and Otto, located just west of the library, Town property and pump track. The property is 1.64 acres.

This final plat includes 19 townhouse style units, a lot for 4 commercial condo units (to be platted as condo units later), and a lot that is to remain vacant on the south side. 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. A Rezoning application has been submitted to correlate the new property lines with zoning and will be considered by Council via an ordinance per code requirements.

For this hearing, the following documents were submitted to staff and are appended to this report:

Document	Document Date
Application	12/23/2020
Lena Street Common PUD Plat Map	2/21/2021
As-builts	1/12/2021
Confirmation letters from SMPA and Black Hills	12/18/2020

Document	Document Date
Commercial Decs	12/23/2020
Commercial Bylaws and Article of Incorporation	1/12/20
Townhome Decs	12/23/2020
Townhome Bylaws, Articles of Incorporation and Addendum to Articles	4/14/2017
Joint Maintenance Agreement	1/12/2021
Weed Management Letter	1/11/2021
Water and Sewer Tap Application	1/12/2021

CODE REQUIREMENTS AND ANALYSIS

RMC 7-4-5(C) Final Plat

(1) (a) No land shall be subdivided, no proposed lot may be sold or conveyed, and no occupancy permit for any building or unit on a pending subdivision or PUD shall be issued, until the final plat has been approved in accordance with this Subsection and recorded.

(b) No building permit shall be issued for a building which is intended to be on a lot to be created by a pending subdivision, until such subdivision is approved and recorded.

(c) No final plat may be scheduled for a Planning Commission hearing more than two years after approval of the preliminary plat, without resubmitting the preliminary plat for review pursuant to 7-4-5(B) unless;

(i) within two years of approval of a final plat of a previous filing, or

(ii) the Town Council authorizes an extension for good cause shown, such as adverse market conditions, in conjunction with substantial progress on infrastructure and approval of a final plat of previous filings in accordance with an approved phasing plan.

(d) The final plat shall be substantially consistent with the preliminary plat as approved. Alterations to lot lines, easements and rights of way which do not have consequential impact and which do not change the number of lots or density within the plat will be deemed substantially consistent.

Compliant. Three years granted to submit final plat per development agreement.

(2) The following shall be submitted at least 30 days prior to the Planning Commission meeting at which the subdivider wishes to have the plat considered:

(a) Application for hearing and fee as set by 7-4-12,

(b) Three 22x34 copies and one electronic copy of the final plat,

(c) One paper copy and one electronic copy of all supporting documents.

Compliant. Applicant needs to submit a paper copy of all supporting information to Town.

(3) The final plat shall comply with the requirements for the preliminary plat, except as modified by this Subsection, and shall include the following additional information:

(a) A legal description of the subdivision and sufficient data to determine easily and reproduce on the ground the location, bearing and length of every street line, boundary line, block line, lot line, and building line, whether curved or straight, including the radius, central angle and tangent distance for the center line of curved streets. Other curved lines shall show arc or chord distance and radius. All dimensions shall be to the nearest 100th of a foot and all angles to the nearest minute. The plat shall meet all statutory requirements.

- The Joint Maintenance and Cost Sharing Agreement will be recorded with this final plat.
- Easements added to Lot F are granted to the Townhome lots but appear to have utilities in them that are part of the network that serves the Commercial Units. Applicant feels it is correct. It does not affect the Town so it is fine.

- Staff received a summary email of all changes made from the approved Preliminary Plat to the Final Plat presented for this hearing. There is a general comment that the plat notes were revised per Tom Kennedy who confirmed only minor edits to items like dates and the changes noted on the plat notes related to easements.
- Per note below, as-built documents need to be edited, once final as-builts are received, Staff would like to review the easements against utility locations to ensure they correlate.

(b) Total acreage of public streets and alleys, designation of easements, streets, alleys and other property dedicated for public use.
Compliant.

(c) Lot and block numbers and lot areas.
Compliant.

(d) Plat Certificates in a format approved by the Town including:
(i) Certificates of approval for the Planning Commission and Town Council, and Town Attorney;
(ii) A certificate of ownership and dedication notarized and executed by all surface owners, and lien holders' certificates joining in the dedications, subdivision improvements agreement and subdivision;
(iii) The location of all monuments and a certificate of a registered land surveyor attesting to the accuracy of the survey, plat and placement of monuments in compliance with state law and these regulations;
(iv) A certificate of an attorney that the title to the property is in the name of those parties executing the certificate of ownership and dedication and that the property dedicated is free and clear of all liens and encumbrances;
(v) A certificate of a licensed professional engineer that the water, sewer, fire protection, drainage systems, and streets have been designed in accordance with all applicable requirements of Town specifications and standards, and constructed in accordance with plans approved by the Town;
(vi) A certificate of recording to be executed by the County Clerk and Recorder;
(vii) A certificate of completed improvements;
(viii) Other appropriate certificates.
Compliant.

(e) A vicinity sketch map;
Compliant.

(f) Plat notes requiring all outdoor lighting fixtures to comply with Town regulations;
Compliant.

(g) A plat note indicating the maximum number of residential units within the subdivision pursuant to subsection 3-4-1(D);
Compliant.

(h) Other required plat notes in a format provided by or approved by the Town.
Town staff and the Applicant are still working out some issues around easement language in plat notes 9, 10, and 11. The Final Plat document submitted to Town (and included in this packet) includes some plat note language that was added to the plat map but is shown in ~~strikeout~~. The Applicant would like to include this language in the Final Plat. Staff is okay with the language shown in strikeout remaining where the easement is not dedicated to the Town (i.e., 9a and 9b) but would like to remove the

language where the easement is dedicated to the Town (i.e., 9c, 10c, and 11b). This includes the 5' easement running the length of the property along Lena Street and the 4' easement along Otto Street. Staff discussed this with the Applicant on 1/22/21 and is waiting to hear back.

In summary, Town staff would recommend the language for these easements match our standard for utility easements, rather than restrict the easement to only allow utilities for this specific development. A few things to consider:

- It is best to keep easement language consistent so Town can effectively track and administer easement throughout town. Every time the Town allows for something custom it comes back to haunt us because it is just too hard to keep track of.
- It is unlikely that any other utilities would be installed in these easements as they will be mostly consumed with utilities for this project including water meters and irrigation lines.
- All lots within this development will already have all utilities needed so there will be less interest in installing anything new here.
- Utilities are networks of pipes, wires, etc. and typically continually run across developed areas as a larger network, not simply form the source directly to all developments. As an example, this property is right next to our Carrier Neutral Location (CNL) that serves as a major hub for fiber in our region and this area may be needed for fiber, although unlikely Staff would like to leave the option open.
- Town, and hopefully other utility providers, are as respectful as possible when working in utility easements. However, Town does not have the capacity to restore impacted areas if owners decide to make improvements within utility easements.

Staff sent the following request to the Applicant on 1/22/21 that needs to be made on the plat map:

- 9c specifically says 4' but page 4 also has the easement along Lena Street referencing this plat note and it is 5' wide. Edit to something like "non-exclusive 4' <u>to 5'</u> access and utility easement".

(4) The final plat and accompanying plans shall be drawn to a scale of not less than 1" equals 100 ft.
Compliant.

(5) The following, updated in accordance with requirements and conditions of preliminary plat approval, shall be submitted with the plat:

(a) As-built plans containing information as required by the Town specifications and regulations, for water, sewer, electricity, gas, telephone and drainage systems, along with any other available as built plans. "As-built" plans for any other required improvements not complete at the time the final plat is submitted shall be submitted, reviewed and approved by the Town prior to final acceptance of the improvements by the Town.

As-built plans were submitted to the Town with the application on 12/23/20. They were insufficient and rejected by Staff. As-built plans were resubmitted 1/12/21. Staff has the following comments on the plans:

- Add property lines.
- Add slopes on the storm sewer lines.
- Given that the storm sewer line serves as their detention system, the as-builts should show the orifice data (e.g., how much is released from the orifices at what elevations and how that detains the outfall flow).
- Either provide plan and profile for the storm sewer or show the as constructed slopes between each inlet/weir boxes.
- Engineer noticed that there was a difference between the grate elevation of the existing inlet at Otto on the design and as-builts which led her to compare the elevations on the pipe flow lines (comparison can be sent separately). Most of the elevations are close but the inverts in

on the main line differ from design quite a bit toward the south end. Applicant needs to address how that will impact the performance of the detention system.

- Why is there a difference in the elevation of the grate at Otto between design and as-builts? Does it impact the install of the storm sewer?
- The design shows the pipe coming into inlet 2 as 6" and the as-builts show it as 4". Which is correct? If the line size was reduced, why?
- Plans need to include DelMont's written assessment of the deviations from the stormwater plans and either state that the deviations will not adversely impact DelMont's design including capacity of the storm system, detention time, release time, etc. or if they have concerns to state what those are.
- On the equipment lists, the brand column for the water parts does not seem to include the brands.
- There is no sewer service shown to the A building. Was it installed? It needs to be installed and shown on the as-builts.
- There is a fifth sewer tap shown to the south of Building E's taps. Only 4 were on the approved plans and we believe to have only observed the installation of 4. There is a marking post onsite for the 5th line. Please confirm. The one furthest to the south appears to maybe serve Lot F.
- The plans do not show utility service lines for things like gas, electric, and storm drains. If any were installed, they need to be shown on the as-builts.
- Sewer depths for Building E need to be shown.
- Are all the ends of the sewer services marked with a post?
- Not finding any way to locate the gas and power. There are lines on the plans but no ties to them.
- The depth of the water and sewer services were not surveyed in, they were provided by the developer's representative. These should have been logged with elevations as the construction proceeded. We checked several of the depths from the top of the can to the lowest point we could reach on the service line and it was greater than 52". Please measure the depths at each meter cans from the lid to the actual service lines depth and properly note the measurements on the as-builts.
- The elevation for the meter can should reflect the rim elevation.

Additional as-builts may be needed in subsequent phases which will need to be addressed in the SIA.

(b) A draft subdivision improvements agreement on a form provided by the Town including all improvements required for the subdivision whether completed or not.

A draft SIA was received on 1/21/21 and a revised document was received 1/22/21. Staff will review the draft submitted and work with the Applicant to get it ready for Council's review. The items included in this agreement should mostly be noted in this report.

One such item is the installation of service lines per the Development Agreement Exhibit A-2 (snapshot below) that were to be completed before final plat. The Agreement noted that these items could be addressed through an SIA if not completed before final plat.

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 Irrigation tap and service line.
6. Install primary electric transformer & service.
7. Install secondary electric service lines as needed.
8. Install new gas main and service extensions as needed.

(c) A copy of any restrictive covenants, condominium declarations, and articles of incorporation and by-laws of any owners' association applicable to the subdivision or lots therein.
Received CCRs for the Townhome Association and the Commercial Association that were slightly edited from the documents approved at Preliminary Plat. The documents are compliant except that there appears to be one unfinished sentence regarding STRs in the Commercial CCRs.

Bylaws and Articles of Incorporation – Town received the Townhome Bylaws and Articles of Incorporation in 2017 and those remain unchanged. Town does not have record of receiving the Bylaws and Articles of Incorporation for the Commercial units before this submittal. They were submitted and all documents are compliant.

(d) 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).
Applicant submitted a letter August 27, 2017 that certified there are no mineral estate owners.

(e) Payments of all amounts billed by the Town and due to date pursuant to Section 7-4-12(B).
Applicant does not have any overdue balances as of January 20, 2021. Applicant should note that additional fees for engineering and legal review will be due for this final plat and then for recording the documents with the County.

(f) A list of proposed uses for each lot consistent with Town zoning regulations.
Not provided. Nineteen of the lots will be used for residential purposed and 4 will be used for commercial purposes, this is in compliance with the Development Agreement.

(g) Applications for water and sewer taps adequate to serve the proposed use for each lot on the final plat, provided however, this shall not apply to subdivisions for which tap prepayment agreements have been approved prior to September 15, 1992.
Received one water and sewer tap application. On May 8, 2019 Council offered to defer tap fee payments for the development based on main line work that needed to be completed with tap fees due upon the earlier of 3 years from the execution of the Lena Street Commons Development Agreement or upon the issuance of building permits, whichever came first. In addition, the SIA should include a reimbursement plan for tap install costs. As such, the Applicant will need to submit a water and sewer tap application with every building permit application for each unit.

(6) The Town staff shall apply the following procedures in the final plat submittal process:
(a) Once all amounts due pursuant to 7-4-12(B) have been received, the Town staff will review the plat and submittals and advise the subdivider of any material deficiencies.
Applicant does not have any overdue balances as of January 20, 2021.

(b) The Town staff will schedule it for a Planning Commission agenda once it is able to determine, at least 10 days in advance of a meeting, that the submittals, as supplemented pursuant to staff request for correction of deficiencies, are in substantial conformity with the requirements of this Subsection (C), all applicable conditions of preliminary plat approval have been met, and the street base, lights

and traffic control devices, and water, sewer, electricity, gas, telephone and drainage systems, have been completed, inspected, approved and accepted by the Town, and final approved as-builts for the water, sewer, electricity, gas and drainage systems, have been received and approved by the Town.
Much of the infrastructure work is private so Town did not inspect these private improvements in detail. The Applicant forwarded emails to staff from SMPA and Black Hills confirming that their utilities were installed. Town will keep an eye on the storm drain inlet at Otto to make sure the LSC system is not adversely impacting the Town system.

As noted above, as-builts are not yet approved.

Staff has concerns on the installation of the water pits and service lines. Staff will finish an assessment of issues and then work with the Applicant on a plan to address any issues. This will likely be an addition to the SIA.

(7) The Planning Commission may approve, conditionally approve or disapprove the final 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 plat and related documents 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 or proposed conditions of approval.

(8) The following Planning Commission outcomes shall apply:
(a) A Planning Commission recommendation of disapproval shall be submitted to the Town Council along with the plat for review at the next regular meeting.
(b) A Planning Commission recommendation of approval, with or without conditions, shall be submitted to the Town Council once the following are met:
(i) The Town has received a reproducible mylar properly executed by all parties except Town officials, the original subdivision improvements agreement properly executed by the Subdivider accompanied by required security, and copies of properly executed corporate documents and covenants;
(ii) Compliance with all Planning Commission conditions of approval except those subject to a good faith dispute;
(iii) Payment of all costs due to date pursuant to 7-4-12(B), recording fees, development excise taxes, tap fees and other amounts due the Town.
If the Commission recommends approval with or without conditions, the Applicant will need to submit two mylar copies of the plat and pay all fees per above. This includes invoices from the Town for Town Engineer and Attorney work, recording fees, and excise tax. Town Council approved deferred tap fee payments at the May 8, 2019 meeting. Tap fees are due upon the earlier of: three years from the execution of the Lena Street Commons Development Agreement or upon the issuance of a building permit, whichever is first.

Per the Development Agreement the developer was to install water and sewer taps and sewer service lines. Town completed many of these taps and service lines as part of the Lena Street water and sewer main replacement project for efficiency. As such, the developer shall reimburse the Town $100,936 for these install costs. The terms of this reimbursement will be included in the SIA.

(9) 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 plat until such time as any proposed requirements for approval, are met by the subdivider. Consideration of the matter may also be continued upon the subdividers request. Except as otherwise expressly provided by the Town Council, all other conditions of approval shall be met within 90 days of such approval or the plat shall be deemed disapproved. Unless expressly authorized by the Town Council, the final plat shall not be recorded until all conditions of approval have been met. Following approval by the Town Council and compliance with any conditions of approval, the final plat shall be executed by Town Officials and recorded with the County Clerk and Recorder by the Town Clerk the cost of which shall be advanced by the subdivider.

RMC 7-4-6(B) Subdivision Improvements Agreement

(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.

(3) The Subdivision Improvements Agreement shall contain or be accompanied by a security arrangement approved by the Town, which reasonably guarantees that all required improvements shall be completed, such as escrowed funds, clean irrevocable letter of credit, or lien agreement. Such security and agreement shall provide that the Town may cause the improvement to be completed if not completed pursuant to the Subdivision Improvements Agreement. The cost of completion may then be collected pursuant to the security and the agreement or in any lawful manner. The amount of the security shall be adequate taking inflation into account.

(4) The security shall not be released until the Town has inspected the improvements and approved them as completed in accordance with the final plat, other plans and applicable Town specifications.

(5) The subdivider shall be responsible for the costs to correct and repair any defect in any improvements due to materials or workmanship which appears for a period of 1 year from the date of approval of completion of any improvement, or such later date as provided in any Subdivision Improvements Agreement. As-built plans shall be submitted upon completion with the request for inspection and approval.

(6) No lot may be sold in any subdivision nor may any building, occupancy or other permit be issued if a breach of the improvements agreement occurs until such breach is remedied.

See note above on the draft Subdivision Improvements Agreements.

RMC 7-4-6(C)

(C) (1) Prior to or at the time of submitting any final plat for any subdivision or planned unit development (or an amendment or replat thereof), the subdivider or subdivider shall submit, for review and approval by Town of Ridgway Planning and Zoning Commission, a written statement from a recognized weed control expert certifying that the subject real property is then free of all "noxious plants" (as such term is defined by C.R.S. 35-5.5-103(16). Alternately, if any such noxious plants are

then determined to be present upon the subject property, the subdivider or subdivider shall submit for such review and approval a written plan for the abatement of such noxious plants. The approved plan shall be incorporated into an overall subdivision improvements agreement and the subdivider or subdivider shall remain individually responsible for the implementation thereof for a period of not less than two years unless a shorter period is expressly provided for in the subdivision improvements agreement.

(2) The foregoing requirements shall be in addition to ordinary weed control requirements imposed upon all landowners by the provisions of Chapter 12 of the Ridgway Town Code.

Applicant submitted a letter from the Ouray County Vegetation Manager that sates that a plan will be needed but is not possible to complete at this time with snow covering the ground. The Vegetation Manager stated that there are likely a few noxious weeds present and made the Applicant aware of these species. She also requested that all revegetation of the property be done with her approval. She plans to return to the site in the spring to prepare a plan. This will be included in the SIA.

Misc. Items:

- As the development team plans to complete subsequent phases of their phasing plan, they will need to coordinate an "Implementation Plan" for the build out of Lena Street with the Town as called for in the Development Agreement.

STAFF RECOMMENDATION

Staff recommends that the Commission recommend approval of this Final Plat to Town Council, with the following conditions to be met before this application is presented to Council:

1. Applicant to submit a paper copy of all supporting information to Town.
2. Staff review and approval of easements on the plat map in relation to utility locations on the final as-builts. Edits made to easements on the plat as needed.
3. Sort out language for plat notes 9, 10 and 11 regarding utility easements granted to Town.
4. Edit to plat note 9c in relation to width of easements.
5. Revisions to as-built plans per comments above.
6. Prepare a clean draft of the Subdivision Improvements Agreement in coordination with Staff.
7. Address unfinished sentence in commercial CCRs.
8. Plan to address water pit and service line installation issues in coordination with Staff.
9. Payment of all fees including Town Attorney and Town Engineer expenses, recording fees, excise tax and any other fees due.
10. Any other requested edits in the body of this staff report that were not repeated in this list.

EXHIBITS

A. Application
B. Lena Street Common PUD Plat Map
C. As-builts
D. Confirmation letters from SMPA and Black Hills
E. Commercial Decs
F. Commercial Bylaws and Article of Incorporation
G. Townhome Decs
H. Townhome Bylaws, Articles of Incorporation and Addendum to Articles
I. Joint Maintenance Agreement
J. Weed Management Letter
K. Water and Sewer Tap Application

Posted notice from Charles looking north.

Posted notice from N Lena looking east.

Posted notice from Otto looking south.

NOTICE OF
PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Ridgway Planning Commision will hold a **PUBLIC HEARING** online via Zoom*, on Tuesday, January 26th, 2021 at 5:30 p.m., to receive and consider all evidence and reports relative to the application described below:

Application for:	**Final Plat for Lena Street Commons PUD**
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:	**TBD N Lena St**
Zoned:	**General Commercial (GC) and Historic Business (HB)**
Applicant:	**Hines Designes**
Property Owner:	**Lena Commons 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 Coburn

DATED: January 15, 2021 Shay Coburn, Town Planner

*To To join the meeting go to:
https://us02web.zoom.us/j/84381243027?pwd=V0Z4V0dFRm5rQXRYU3U3aGlEUzhVZz09
Meeting ID: 843 8124 3027
Passcode: 316348
To call in dial: 346.248.7799 or 669.900.6833 or 408.638.0968

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

Official Use Only
Receipt # 1517
Date Received: 12-23-20
Initials: KD

Planning Commission Hearing Request

General Information

Applicant Name: Hines Designs
Application Date: 12/23/20
Mailing Address: 188 Marie Pt. Ridgway, CO 81432
Phone Number: 970-626-2300
Email: sundra@hines-designs.com
Owner Name: Lena Commons LLC, Arthur Travis Spitzer
Phone Number:
Email: travis@concordiacapital.net
Address of Property for Hearing: TBD Lena Street, Ridgway
Zoning District: General Commercial & Historic Business

Brief Description of Requested Action

Final Plat & Rezoning of Lena Street Commons PUD.
Adjust lot line within the property to increase Gen. Commercial and decrease Historic Business.

Action Requested and Required Fee Payable to the Town of Ridgway

☐ Temporary Use Permit per 7-3-18(C)	$150.00	**Subdivisions per 7-4 unless noted**	
☐ Conditional Use per 7-3-19	$250.00	☐ Sketch Plan	$300.00 (+ $10.00/lot or unit)
☐ Change in Nonconforming Use per 7-3-20	$150.00	☐ Preliminary Plat	$1,500.00 (+ $25.00/lot or unit)
☐ Variances & Appeals per 7-3-21	$250.00	☐ Preliminary Plat resubmittal	$750.00 (+ $25.00/lot or unit)
☒ Rezoning per 7-3-22	$250.00	☒ Final Plat	$600.00
☐ Other Reviews Pursuant to 7-3-23	$250.00	☐ Minor Subdivision	$450.00 (+ $25.00/lot or unit)
☐ Variance to Floodplain Reg. per 6-2	$150.00	☐ Lot Split	$450.00
☐ Master Sign Plan Pursuant to 7-3-117	$150.00	☐ Replat	$150.00 (+ $25.00/lot or unit)
☐ Deviations from Residential Design Standards per 6-6	$175.00	☐ Plat Amendment	$250.00
		☐ Planned Unit Dev. per 7-3-16	See Preliminary and Final Plat
☐ Other	$_____	☐ Statutory Vested Rights per 7-5	$1,500.00

***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. 7-3-25(B) and 7-4-12(B)). Water and sewer tap fees and development excise taxes are due at approval of final plats.**

Attachments Required

For All Applications

☐ Evidence of ownership or written notarized consent of legal owner(s).

☐ Information proving compliance with applicable criteria (see the Ridgway Municipal Code for criteria), this may include a narrative, site plans, and/or architectural drawings drawn to scale.

For Conditional Uses

☐ The site plan shall show the location of building(s), abutting streets, all dimensions, off-street parking requirements, and landscaping.

☐ Architectural drawings shall include elevations and details of building(s).

For Changes in Nonconforming Use

☐ Description of existing non-conformity.

For Variances

☐ *The site plan shall show the details of the variance request and existing uses within 100 ft. of property.*

For Rezonings

☒ Legal description, current zoning, and requested zoning of property.

For Subdivisions

☐ All requirements established by Municipal Code Section 7-4.

☐ Sketch plan submittals shall be submitted at least 21 days prior to the Planning Commission hearing at which the applicant wishes to have the application considered.

☐ *Preliminary plat submittals shall be submitted at least 30 days prior to the Planning Commission hearing at which the applicant wishes to have the application considered.*

☒ Final plat submittals shall be submitted at least 30 days prior to the Planning Commission hearing at which the applicant wishes to have the application considered.

Please note that incomplete applications will be rejected. Contact with a Planning Commission or Town Council member regarding your application constitutes ex parte communication and could disqualify that Commissioner or Councilor from participating in your hearing. Please contact staff with any questions.

Applicant Signature — Date: 12/23/20

Owner Signature — Date

LENA STREET COMMONS PLANNED UNIT DEVELOPMENT
FINAL PLAT

SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, N.M.P.M.
TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO

CERTIFICATE OF DEDICATION AND OWNERSHIP:

KNOW ALL MEN BY THESE PRESENTS that the undersigned, being the owner of certain lands in the Town of Ridgway, Colorado, to wit:

A TRACT OF LAND LYING EAST OF BLOCKS 31 AND 32, AND WEST OF THE WEST LINE OF THE RAILROAD RIGHT OF WAY BETWEEN OTTO STREET AND CHARLES STREET, TOWN OF RIDGWAY, 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 LINE TO THE NORTH LINE OF CHARLES STREET EXTENDED;

THENCE NORTH 88°26'12"W 138.77 FEET TO THE POINT OF BEGINNING, COUNTY OF OURAY, STATE OF COLORADO.

AND

A TRACT OF LAND SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, NEW MEXICO PRINCIPAL MERIDIAN, TOWN OF RIDGWAY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF OTTO STREET, BETWEEN LENA STREET AND RAILROAD AVENUE, A FOUND REBAR AND CAP LS 10738, FROM WHICH THE FOUND INTERSECTION MONUMENT OF LENA STREET AND OTTO STREET BEARS NORTH 66°15'16" WEST, 88.09 FEET;

THENCE SOUTH 88°26'12" EAST, 34.58 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF OTTO STREET;

THENCE SOUTH 03°48'17" EAST, 93.02 FEET TO A POINT ON THE WEST PROPERTY LINE OF THE TOWN OF RIDGWAY AND HISTORIC WEST RIGHT OF WAY LINE OF THE DENVER & RIO GRANDE WESTERN RAILROAD;

THENCE NORTH 23°29'17" WEST, 102.22 FEET ALONG SAID PROPERTY LINE 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 Planned Unit Development. The following easements are dedicated, granted and conveyed to the Town of Ridgway, Colorado as shown:

Town Access and Utility Easements, and Public Pedestrian/Non-Motorized Easements as shown and identified hereon;

Executed this _____ day of _____, A.D. 20____.

Lena Commons, LLC,
a Colorado limited liability company

By:_____ Date:_____

Printed Name:_____

Title: _____

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

LIENHOLDER'S AFFIDAVIT:

Before a Notary Public, duly qualified and acting in and for said town, county, and state, appeared _____ known by official government-issued photograph identification to be the affiant herein, who stated the following under oath:

The undersigned holder of a lien pursuant to an instrument recorded in the Ouray County records at Reception No. 227082, hereby joins in this subdivision, any applicable subdivision improvements agreement, and the declaration of easements, property and streets as shown hereon.

_____
_____ the _____of Citizens State Bank of Ouray

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Lienholder's Affidavit 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

ATTORNEY'S CERTIFICATE:

I,_____, an 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 OUC85006736 issued by Land Title Guarantee Company on October 6, 2020, 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:

Deed of Trust securing Loan from The Citizens State Bank of Ouray

Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DEVELOPMENT AGREEMENT RECORDED AUGUST 19, 2019 UNDER RECEPTION NO. 223540.

NON-EXCLUSIVE SANITARY SEWER EASEMENT RESERVED BY THE TOWN OF RIDGWAY IN BARGAIN AND SALE DEED RECORDED AUGUST 21, 2019 UNDER RECEPTION NO. 223568.

TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN ACCESS AND UTILITY EASEMENTS AGREEMENT RECORDED AUGUST 21, 2019 UNDER RECEPTION NO. 223569.

Dated this _____ day of _____, A.D., 20_____.

_____ Attorney at Law

CERTIFICATE OF IMPROVEMENTS COMPLETION:

The undersigned, Town Manager of the Town of Ridgway, does 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 delinquent 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_____.

_____ , Town Attorney

ENGINEER'S CERTIFICATE:

I,_____, 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:_____

_____ _____ _____
Engineer Registration Number

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:

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

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.

C.R.S. Section 38-51-106 Statement: this plat does not represent a title search by the Surveyor, nor by any professional corporation or business entity with which said Surveyor may be associated. Information regarding the title work performed for and used in producing this plat may be found in the title report issued by Land Title Guarantee Company, dated October 6, 2020, bearing order number OUC85006736.

_____
Nicholas Barrett
L.S. 38037

COLORADO LICENSED SURVEYS BARRETT PE 42106 PLS 38037 P.E. AND P.L.S.

RECORDER'S CERTIFICATE:

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

Reception No. _____.

_____, by _____
County Clerk & Recorder Deputy

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.

DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2395 ▼ (970) 239-2352 FAX
www.del-mont.com ▼ service@del-mont.com

FIELD BOOK: 881	DRAWN BY: PJI	DATE: 01-21-21
SHEET: 1 of 4	FILE: 17009V_FPLAT	JOB NO.: 17009

TITLE: LENA STREET COMMONS
CLIENT: LENA COMMONS, LLC
ADDRESS & PHONE: P.O. BOX 3601 TELLURIDE, CO 81435
TYPE: FINAL PLAT

LENA STREET COMMONS PLANNED UNIT DEVELOPMENT
FINAL PLAT

SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, N.M.P.M.
TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO

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"), the Declaration for the Lena Street Commons Commercial Condominiums was recorded in Reception No._____ in the Ouray County Records; 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") the Declaration for the Lena Street Commons Townhomes was recorded in Reception No._____ in the Ouray County Records.

   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 review and consideration when the improvements relating to the Commercial Condominiums have been constructed. The Commercial Units, including future improvements thereon, subsequent to their initial construction and development in accordance with the Development Agreement as defined on Plat Note 2, 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. The exterior of all Commercial Condominiums and landscaping shall be maintained by the Commercial Condominium Association as provided for in the Commercial Condominium 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 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.

   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, subsequent to their initial construction and development in accordance with the Development Agreement as defined on Plat Note 2, 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 and landscaping 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 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.

   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 may 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.

   f. A Joint Maintenance and Cost Share Agreement ("Joint Maintenance Agreement"), recorded on _____, 20____ in Reception No. _____ in the Ouray County records, shall be executed by the Townhome Association and the Commercial Condominium Association. The Joint Maintenance Agreement provides for the shared use, maintenance, repair and replacement of certain shared infrastructure and other facilities benefiting and serving both 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 August 19, 2019 in Reception No. 223540 in the Ouray County records.

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 1E, 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. Notwithstanding the Development Agreement, any changes to the affordable housing provisions will require a plat amendment.

5. SHORT-TERM RENTALS:

   The Development Agreement authorizes the use and operation of short-term rentals in those Townhome Residences included in the Lot C Building and the Lot 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 Lot B Building and the Lot E Building as well as the commercial condominium units included in the Lot A Building.

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 as provided for in the Joint Maintenance Agreement. 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 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 as provided for in the Joint Maintenance Agreement. In the event that said maintenance and snow removal in the public right-of-way is not properly performed, the Town of Ridgway 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 PUBLIC/NON-MOTORIZED EASEMENTS:

   The Public Pedestrian/Non-Motorized Easements depicted on this Plat are hereby subject to a non-exclusive, perpetual easement to the Town for use by the public. Any required maintenance and repair of the sidewalks shall be undertaken by the respective Townhome Association or the Commercial Condominium Association upon which the sidewalks are located.

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

   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, ~~provided that such easements are not intended to be dedicated for public use and not created for use by other property owners or the general public.~~ 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, ~~provided that such easements are not intended to be dedicated for public use and not created for use by other property owners or the general public.~~ The area of this easement is depicted on the Plat.

   c. An additional portion of the area attributable to the Lena Street Commercial Condominiums shall be subject to a perpetual, non-exclusive 4' access and utility 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, Lot F and the Town of Ridgway ~~to the extent that the Town is using these easements to provide utility services to Commercial Units, the Townhomes Lots and Lot F and not development occurring on other property.~~ The area of this easement is depicted on the Plat.

10. TOWNHOMES EASEMENT FOR UTILITIES, ACCESS AND DRAINAGE:

    a. Portions of the Townhome Common Area as depicted hereon 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 of the Townhomes Lots, ~~provided that such easements are not intended to be dedicated for public use and not created for use by other property owners or the general public.~~ The area of this easement is depicted on the Plat.

    b. The entire portion of the Townhome Common Area shall be subject to a blanket perpetual, non-exclusive easement for drainage and 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, ~~provided that such easements are not intended to be dedicated for public use and not created for use by other property owners or the general public.~~ The area of this easement is depicted on the Plat.

    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' access and utility 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, Lot F and the Town of Ridgway. The area of this easement is depicted on the Plat ~~to the extent that the Town is using these easements to provide utility services to Commercial Units, the Townhomes Lots and Lot F and not development occurring on other property.~~

    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 Townhomes Lots as designated hereon, ~~provided that such easements are not intended to be dedicated for public use and not created for use by other property owners or the general public.~~

11. LOT F EASEMENTS FOR ACCESS AND UTILITIES:

    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, ~~provided that such easements are not intended to be dedicated for public use and not created for use by other property owners or the general public.~~

    b. An additional portion of the area attributable to Lot F shall be subject to a perpetual, non-exclusive 5' access and utility 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, Townhomes Lots and the Town of Ridgway ~~provided that such easements are not intended to be dedicated for public use and not created for use by other property owners or the general public.~~

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 Town of Ridgway sanitary sewer easement and various easements granted herein to the Townhome Association) by 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 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 and Joint Maintenance Agreement. 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 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 as provided for in the Joint Maintenance Agreement. The Town is not responsible or liable in any manner for the maintenance, repair, or operation of the irrigation system. 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 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.

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 in compliance with all Town regulations.

19. GEOTECHNICAL STUDY:

    Pursuant to the recommendations in the Geotechnical 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.

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.

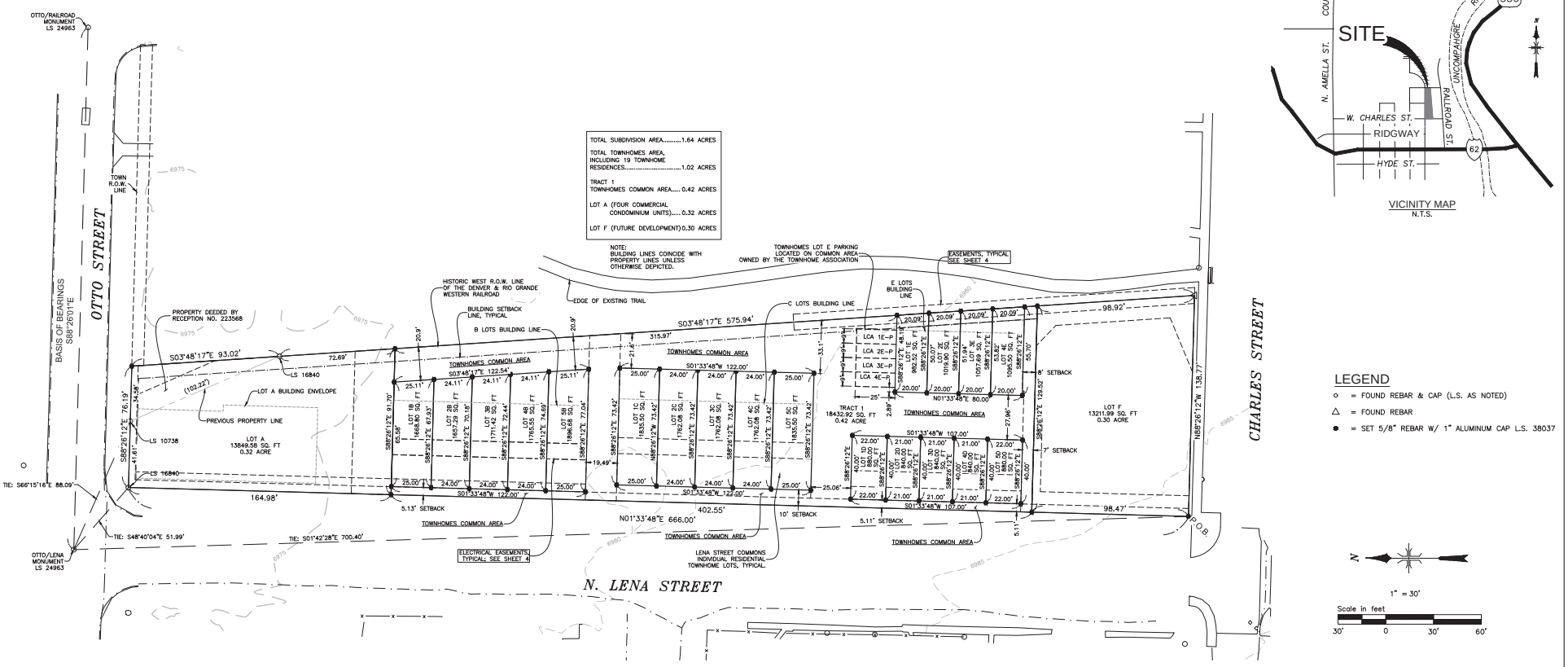
DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2395 ▼ (970) 249-2392 FAX
www.del-mont.com ▼ service@del-mont.com

FIELD BOOK:	DRAWN BY:	DATE:
881	PJI	01-21-21
SHEET: 2 of 4	FILE: 17009V_FPLAT	JOB NO.: 17009

TITLE: LENA STREET COMMONS
CLIENT: LENA COMMONS, LLC
ADDRESS & PHONE: P.O. BOX 3601 TELLURIDE, CO 81435
TYPE: FINAL PLAT

LENA STREET COMMONS PLANNED UNIT DEVELOPMENT
FINAL PLAT

SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, N.M.P.M.
TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO



VICINITY MAP
N.T.S.

LEGEND
- ○ = FOUND REBAR & CAP (L.S. AS NOTED)
- △ = FOUND REBAR
- ● = SET 5/8" REBAR W/ 1" ALUMINUM CAP L.S. 38037

N
1" = 30'
Scale in feet
30' 0 30' 60'

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.

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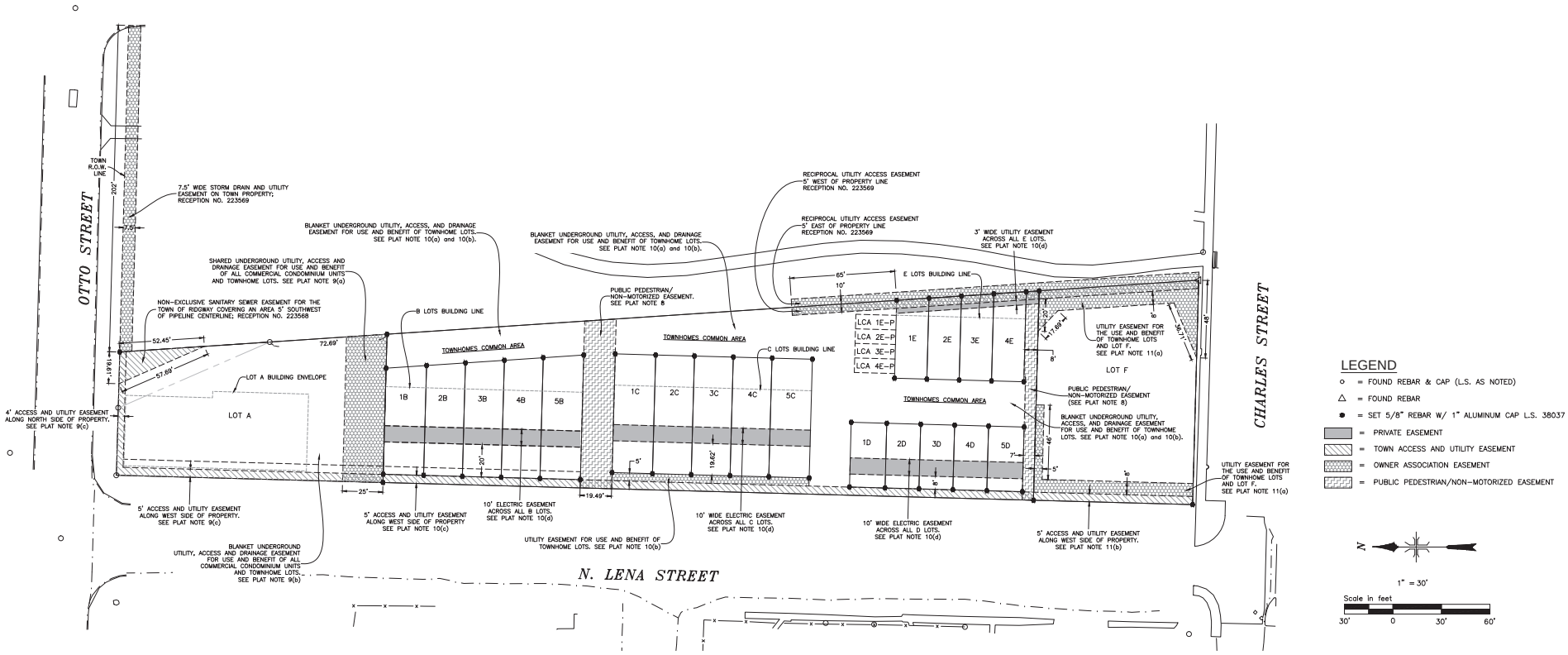
FIELD BOOK:	DRAWN BY:	DATE:
881	PJI	01-21-21
SHEET: 3 of 4	FILE: 17009V_FPLAT	JOB NO.: 17009

TITLE: LENA STREET COMMONS
CLIENT: LENA COMMONS, LLC
ADDRESS & PHONE: P.O. BOX 3601 TELLURIDE, CO 81435
TYPE: FINAL PLAT

LENA STREET COMMONS PLANNED UNIT DEVELOPMENT
FINAL PLAT

SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, N.M.P.M.
TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO



LEGEND

- ○ = FOUND REBAR & CAP (L.S. AS NOTED)
- △ = FOUND REBAR
- ● = SET 5/8" REBAR W/ 1" ALUMINUM CAP L.S. 38037
- = PRIVATE EASEMENT
- = TOWN ACCESS AND UTILITY EASEMENT
- = OWNER ASSOCIATION EASEMENT
- = PUBLIC PEDESTRIAN/NON-MOTORIZED EASEMENT

N

1" = 30'

Scale in feet

30' 0 30' 60'

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.

DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
126 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2295 ▼ (970) 239-2332 FAX
www.del-mont.com ▼ services@del-mont.com

FIELD BOOK: 881	DRAWN BY: PJI	DATE: 01-21-21	
SHEET: 4 of 4	FILE: 17009V_FPLAT	JOB NO.: 17009	

TITLE: LENA STREET COMMONS
CLIENT: LENA COMMONS, LLC
ADDRESS & PHONE: P.O. BOX 3601 TELLURIDE, CO 81435
TYPE: FINAL PLAT

Control Point Table				
Point #	Northing	Easting	Elevation	Description
25	549521.2279	1351447.8583	6981.012	SPK / CP-25 FREDRICK ST
500	549214.5085	1351612.6415	6982.125	RBR /CP-500
505	549418.0552	1351382.4329	6984.334	RNC 38135
506	549447.9843	1351383.2807	6983.966	RNC 12180 / SE15 NE16
507	549361.8611	1351380.8759	6986.336	RNC 12180
508	549223.2534	1351376.4669	6988.421	RNC / ILLEGIBLE INSIDE PIPE
1310	549217.3007	1351595.2963	6982.010	RBR
1311	549886.8408	1351474.6549	6973.574	RNC 16840
1312	549885.6442	1351516.3723	6972.601	RNC 10738
1314	549952.6226	1351488.5568	6973.540	RNC 24963
50519	549921.1020	1351435.6684	6973.601	RNC LS 24963
50520	549912.1371	1351763.5251	6970.075	RNC LS 24963

NOTES:

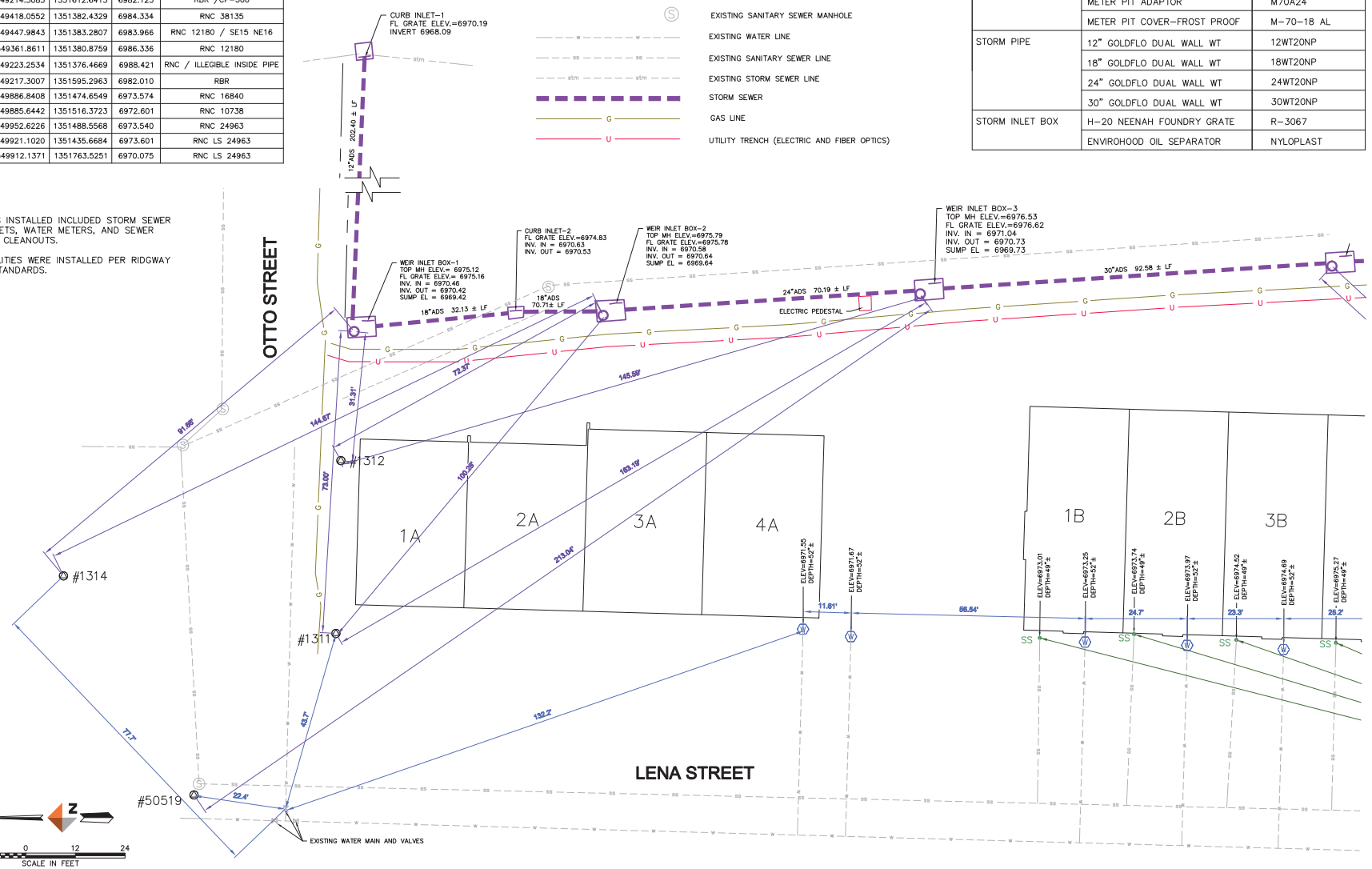
1. UTILITIES INSTALLED INCLUDED STORM SEWER AND INLETS, WATER METERS, AND SEWER SERVICE CLEANOUTS.
2. ALL UTILITIES WERE INSTALLED PER RIDGWAY TOWN STANDARDS.

LEGEND

- SURVEY CONTROL POINT
- WATER METER
- SEWER SERVICE CLEANOUT
- EXISTING WATER VALVE
- EXISTING SANITARY SEWER MANHOLE
- EXISTING WATER LINE
- EXISTING SANITARY SEWER LINE
- EXISTING STORM SEWER LINE
- STORM SEWER
- GAS LINE
- UTILITY TRENCH (ELECTRIC AND FIBER OPTICS)

EQUIPMENT LIST

PARTS	BRAND NAME	MODEL NUMBER
WATER METER	NL METER SETTER	731-2-WDQQ33
	HDPE ROUND METER PIT	24X48
	METER PIT ADAPTOR	M70A24
	METER PIT COVER-FROST PROOF	M-70-18 AL
STORM PIPE	12" GOLDFLO DUAL WALL WT	12WT20NP
	18" GOLDFLO DUAL WALL WT	18WT20NP
	24" GOLDFLO DUAL WALL WT	24WT20NP
	30" GOLDFLO DUAL WALL WT	30WT20NP
STORM INLET BOX	H-20 NEENAH FOUNDRY GRATE	R-3067
	ENVIROHOOD OIL SEPARATOR	NYLOPLAST



REVISIONS

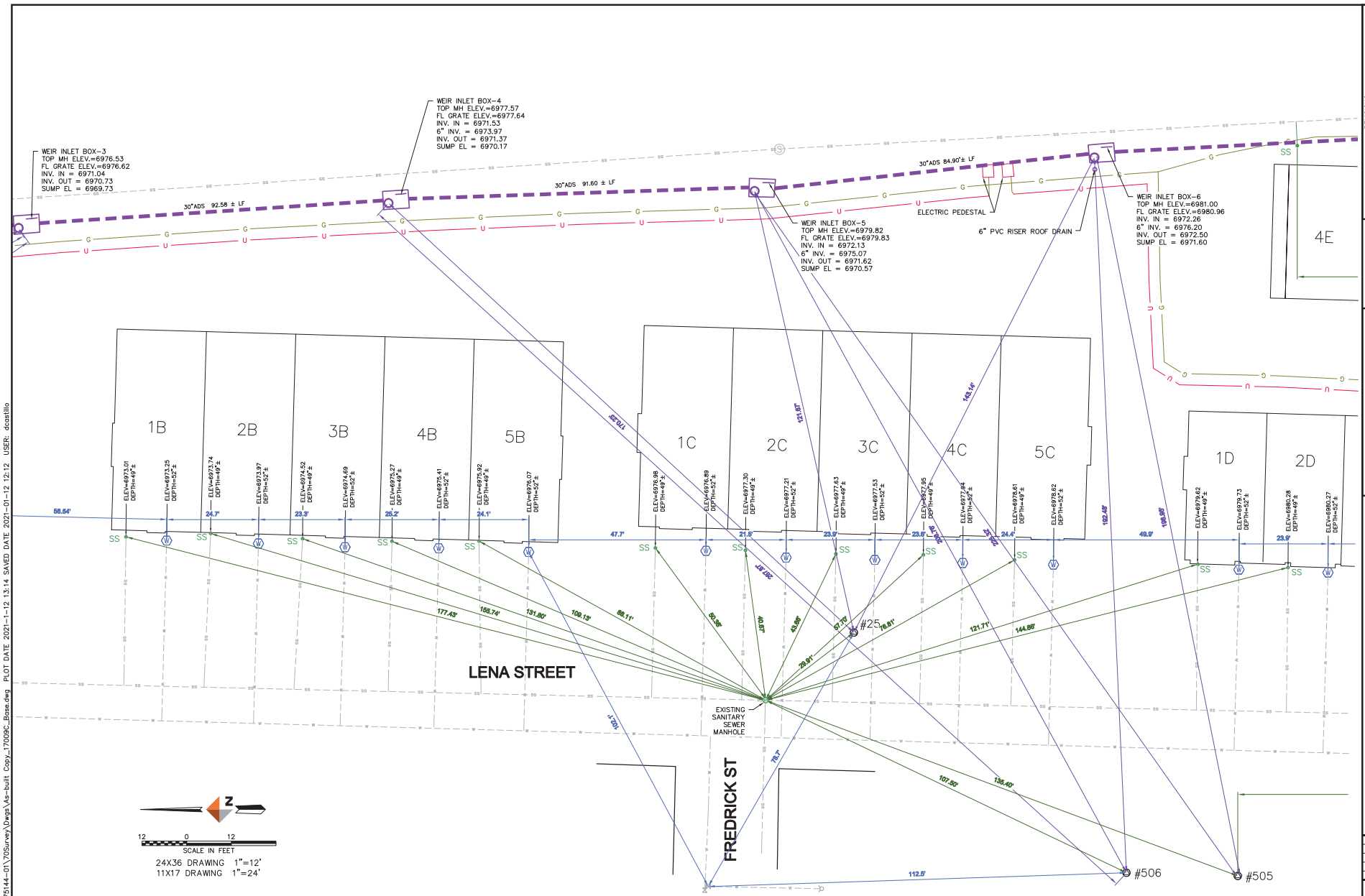
REV	DATE	DESCRIPTION	BY

DOWL
www.dowl.com
222 South Park Avenue
Montrose, Colorado 81401
970-249-6828

LENA STREET COMMONS
UTILITY AS-BUILTS

PROJECT 7127.75144.01
DATE 01/12/2021

SHEET
ASB-1
1 OF 3



REVISIONS

REV	DATE	DESCRIPTION	BY

DOWL
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222 South Park Avenue
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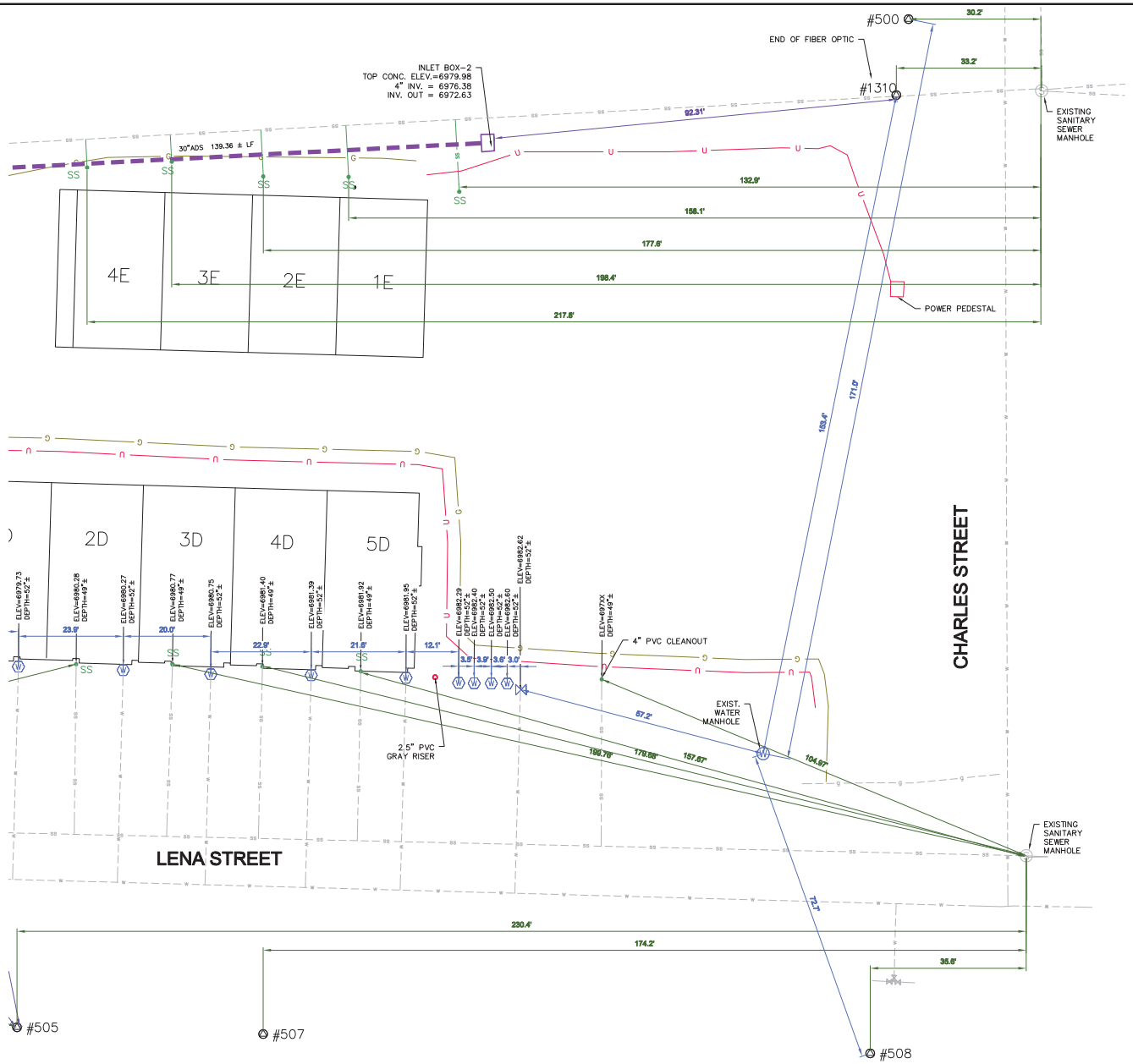
970-249-6828

LENA STREET COMMONS
UTILITY AS-BUILTS

PROJECT 7127.75144.01
DATE 01/12/2021

SHEET
ASB-2
2 OF 3

Q:\27\75144-01\70Survey\Dwgs\As-built Copy_17009C_Base.dwg PLOT DATE 2021-1-12 13:14 SAVED DATE 2021-01-12 12:12 USER: dcastillo



SCALE IN FEET
12 0 12
24X36 DRAWING 1"=12'
11X17 DRAWING 1"=24'

REV	DATE	DESCRIPTION	BY
		REVISIONS	

DOWL
www.dowl.com
222 South Park Avenue
Montrose, Colorado 81401
970-249-6828

LENA STREET COMMONS
UTILITY AS-BUILTS

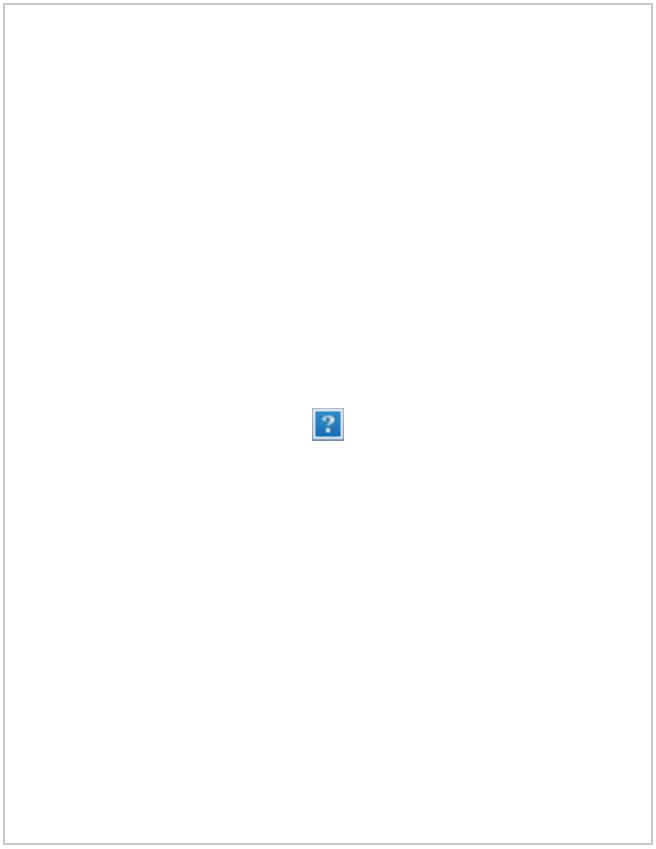
PROJECT 7127.75144.01
DATE 01/12/2021

SHEET
ASB-3
3 OF 3

From:	mark renninger
To:	Joanne Fagan
Cc:	Shay Coburn; Sundra; Thomas Kennedy
Subject:	Fwd: LENA STREET COMMONS
Date:	Friday, December 18, 2020 10:37:31 AM

All,
Acknowledgement from SMPA Below.

Best,
Mark



---------- Forwarded message ---------
From: **Duane DeVeny** <Duane@smpa.com>
Date: Fri, Dec 18, 2020 at 10:28 AM
Subject: LENA STREET COMMONS
To: mark renninger <19mdr70@gmail.com>

Town of Ridgway,

San Miguel Power has completed the install of the primary lines and 3 transformers for the project # 46108, known as Lena Street Commons. All work has been completed on the phase of the project.

Duane DeVeny

Service Planner

Mobile: (970) 209-5684

Office: (970) 626-5549 x214

Hrs: *MON.-THUR.* 7:00 a.m. - 5:30 p.m.

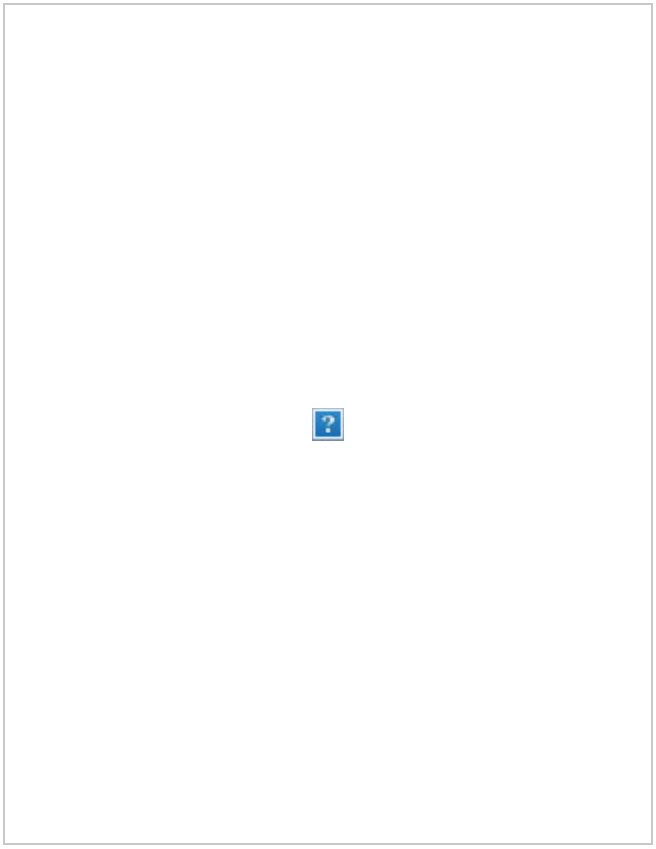
San Miguel Power is an equal opportunity provider and employer

SMPA is an equal opportunity provider and employer.

From:	mark renninger
To:	Joanne Fagan
Cc:	Shay Coburn; Thomas Kennedy; Sundra
Subject:	Fwd: Lena Street Commons
Date:	Friday, December 18, 2020 10:38:47 AM

All,
Acknowledgement from Black Hills Energy Below

Best,
Mark



---------- Forwarded message ---------
From: **Hunter, Scott** <Scott.Hunter@blackhillscorp.com>
Date: Thu, Dec 17, 2020 at 1:38 PM
Subject: Lena Street Commons
To: mark renninger <19mdr70@gmail.com>

To Whom IT May Concern

The natural gas main lines for the Lena Street Commons Project have been installed to Black

Hills Energy’s specifications.

Thank You

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 _____, 2021 ("**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 **Exhibit A**, together with the beneficial rights and subject to the 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 (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 Commons 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. **Submission of Real Estate**.

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 intended to be referred to in the Plat/Map for The Lena Street Commercial Condominiums which will be recorded in the Official Records ("**Condominium Map**" or "**Map**") upon the completion of the construction of the Improvements. By this reference, the Condominium Map, when executed and recorded, will be 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. **Covenants Running With the Land**. 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. **Subject to the Town of Ridgway Codes, Laws and Regulations and Town Approvals**. 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. **Town Laws**. 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. **Town Approvals.** 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 **Exhibit C**. Each LCE Parking Space is depicted on the Map and is allocated as a Limited Common Element to the Unit indicated on **Exhibit C**.

2.25. "**LCE Storage Space**" means each Storage Space identified as an "LCE Storage Space" on **Exhibit C**. Each LCE Storage Space is depicted on the Map and is allocated as a Limited Common Element to the Unit indicated on **Exhibit C**.

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. The uses of Units for Short-Term Rentals is currently not allowed by the Town Development Approvals and Requirements.

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 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. **Inseparability of a Unit**. 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. **Description of Units.** 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 recorded on _____, 201__ at Reception No. _____, all in the Office 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. **Separate Assessments and Taxation - Notice to Assessor**. 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 Unit shall be the sum of the undivided interests of the Units that were combined. Any previously 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.

3.7. **Mechanic's Liens**. If any Owner shall cause or permit any material to be furnished to 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. **Common Elements**. 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. **Common Elements**. 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;

(2) The landscaping, hardscaping, street and pathway lighting and Community signage;

(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. **Emergency Maintenance and Repair**. 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. **Compliance with Laws**. 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. **Changes to Rights of Unit Owners**. 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. **Leasing of Units**. 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. Currently the

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. **Annoying Light, Sound or Odor**. 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. **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.

3.19. **No Firearms**. 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. **Garbage and Trash.** 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. **Right of Entry**. 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. **Association Landscaping**. 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. **Signs and Advertising**. Any exterior signs, posters, billboards or advertising devices shall conform with the Town Development Approvals and Requirements and this Declaration.

3.24. **Flags or Displays**. Any exterior flags or other displays displayed in the Community shall conform with the Town Development Approvals and Requirements and the Act.

3.25. **Health, Safety and Welfare, Rules**. 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. **View Impairment**. 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, non-exclusive 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 Declaration or any other Declarant obligations relating to the Community.

4.3. **Association Administrative Easement over Common Elements**. 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. **Association Easement in Units for Maintenance, Repair and Emergencies.** 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.

4.5. **Support and Encroachment Easements.** Each Unit is subject to a blanket easement 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. **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 properties and areas within the Community, for use in the lawful performance of their duties.

4.7. **Other Easements.** 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. **Reservation of Uses.** 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. **Use and Enjoyment of Common Elements.** 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. **Association May Regulate Use of Common Elements**. 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. **Association; General Powers**. 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.

6.2. **Association Board.** The affairs of the Association shall be managed by the Board. 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. **Rules.** 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. **Membership Authority**. 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. **Notice** 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. **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.

6.3.5. **Conflicts**. In the event of a conflict between the Rules and any provision of this Declaration, this Declaration shall control.

6.3.6. **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 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. **Protection of Owners and Others**. 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. **Similar Treatment**. Similarly situated Units shall be treated similarly.

6.4.2. **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 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; 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.

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. **Abridging Existing Rights**. 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. **Reasonable Rights to Develop**. 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. **Interference with Easements**. 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. **Membership in Association.** 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. **Voting Rights of Members**. 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 **Exhibit C**, 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. **Liability Insurance**. 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. **Worker's Compensation**. The Association may, in its discretion, obtain a Worker's Compensation policy, if necessary, to meet the requirements of law.

7.1.4. **Directors and Officers Liability Insurance**. The Association may, in its discretion, carry directors and officers liability insurance in such amount as the Board may deem appropriate.

7.1.5. **Fidelity Insurance.** 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. **Other Insurance**. 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. **Annual Review**. 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. **General Provisions Respecting Insurance**.

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;

D. include an agreed amount endorsement, if the policy contains a co-insurance clause;

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;

B. a waiver of the insurer's right to repair and reconstruct instead of paying cash;

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. **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 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. **Insurance Claims**. 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.

7.8. **Damage to Community**. Any portion of the Community for which insurance is 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. **Statutory Lien**. 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. **Lien Superior to Unit and Other Exemptions**. 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. **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 Unit as a Reimbursement Assessment.

9.6. **Regular Assessments**.

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 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. **Allocation of Limited Common Expenses**.

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. **Special Assessments**.

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. **Reserve Accounts.** 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. **Misconduct**. 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. **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 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. **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.

9.17. **Audit**. 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. **Representation in Condemnation Proceedings of Common Elements.** 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. **Award for Common Elements**. 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 mortgagee of a Unit as to any such distribution shall be governed by the provisions of the mortgage encumbering the Unit.

10.4. **Taking of Units.** 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 remaining after part of a Unit is taken is thereafter a Common Element. 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:

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. **Miscellaneous.** 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.

ARTICLE ELEVEN
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. **Completion of Improvements**. 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. **Exercise of Reserved Rights**. 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. **Consolidation on Merger**. The right to merge or consolidate the Community with a reasonably similar common interest community as determined by Declarant.

11.1.4. **Amendment of Declaration**. 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. **Amendment of Community Map**. 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. **Create Additional Units**. 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. **Annex Additional Real Property or Units**. 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. **Withdraw Real Estate.** 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. **Master Associations and Subordinate Association**. 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. **Relocate Boundaries of Units**. 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. **Use Agreements**. 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. **Grant Easement.** 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. **Other Rights**. 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 **Exhibit C** 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. **Assignment of the Declarant Rights.** 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. **Amendment of the Declaration or Map**. 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 **Termination of Community.** 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.**

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 Owner.

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.

(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 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;

(c) Remove daily all debris caused by the inspection and remaining on the Subject Property; and

(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.

(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 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 **Rights of Mortgagees.**

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

(d) Any proposed action that requires the consent of a specified percentage of Mortgagees.

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 **Notice.** 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 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 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.

12.9 **Safety and Security.** Each Owner and Occupant of a Unit, 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 (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 **Conflict With Condominium Map.** 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 **Conflict With the Act.** 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 **Governing Law; Jurisdiction.** 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 **Costs and Attorneys' Fees**. 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 **Captions.** 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 **Singular Includes Plural.** 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)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, as the _____ of Arthur Travis Spitzer Revocable Trust.

Witness my hand and official seal.

_____ My commission expires: _____.
Notary Public

EXHIBIT A
(Legal Description of the Real Estate)

Lot A, Lena Street Commons Planned Unit Development, Town of Ridgway, Ouray County, Colorado, per the plat recorded on _____, 2021 in Reception No. _____ with the Clerk and Recorder for Ouray County, Colorado

EXHIBIT B

(**Allocated Interests**)

THIS EXHIBIT WILL BE COMPLETED AND APPENDED TO AN AMENDMENT TO THIS DECLARATION AT THE TIME OF THE COMPLETION OF THE IMPROVEMENTS AND THE RECORDATION OF THE CONDOMINIUM MAP

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.

Section 1.1 – Introduction. 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.

Section 1.3 - Persons Subject to Bylaws. 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.

(b) The Board shall elect the officers. The Board members and officers shall take office upon election.

Section 2.2 - Powers and Duties. 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;

(l) 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.

Section 2.3 - Association Manager. 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.

Section 2.4 - Removal of Board Member by Owners. 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.

Section 2.5 - Vacancies. 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.

Section 2.6 - Regular Meetings. 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 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.

Section 2.7 - Special Meetings. 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.

Section 2.8 - Location of Meetings. All meetings of the Board shall be held within Colorado, unless all Board members consent in writing to another location.

Section 2.9 - Waiver of Notice. 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.

Section 2.10 - Quorum of Board Members. 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.

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.

Section 2.14 – Disputes Among Board Members. 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.

Section 3.2 - Annual Meeting. 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.

Section 3.3 - Budget Meeting. 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.

Section 3.4 - Special Meetings. 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.

Section 3.5 - Place of Meetings. 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.

Section 3.6 - Notice of Meetings. 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.

Section 3.7 - Waiver of Notice. 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.

Section 3.8 - Adjournment of Meeting. 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.

(b) If title to a Unit is held by an entity, including, without limitation, a firm, corporation, 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.

Section 3.11 - Quorum. 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.

Section 3.12 - Majority Vote. 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.

Section 3.13 - Proxies. 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.

Section 3.15 - Election of Board Members. Cumulative voting for Board members shall not be permitted.

Section 3.16 - Chairman of Meetings. 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

Section 4.1 - Designation. 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.

Section 4.2 - Election of Officers. 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.

Section 4.3 - Removal of Officers. 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.

Section 4.4 - President. 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.

Section 4.5 – Vice President. 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.

Section 4.6 - Secretary. 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.

Section 4.7 - Treasurer. 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, and executed by two Board members, one of whom may be the Treasurer if the Treasurer is also a Board member.

Section 4.8 - Agreements, Contracts, Deeds, Checks, etc. 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.

Section 5.2 - Fines for Violation. 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

Section 7.1 - Records and Audits. 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.

Section 7.2 - Examination. 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

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.

Section 8.3 - Waiver. 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.

Section 8.4 - Office. The principal office of the Association shall be at such place as the Board may from time to time designate.

Section 8.5 - Working Capital. 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.

Section 8.6 - Reserves. 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 Element improvements.

ARTICLE 9
AMENDMENTS TO BYLAWS

Section 9.1 - Vote of Board. 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.

Section 9.2 - Restrictions on Amendments. 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:_____

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 www.sos.state.co.us.

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 COMMERCIAL CONDOMINIUMS OWNERS 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 (*City*) CO (*State*) 81432 (*ZIP/Postal Code*)
(*Province – if applicable*) United States (*Country*)

Mailing address
(**leave blank** if same as street address)
P.O. BOX 3601
(Street number and name or Post Office Box information)

TELLURIDE (*City*) CO (*State*) 81435-3601 (*ZIP/Postal Code*)
(*Province – if applicable*) United States (*Country*).

3. 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

(if an entity) THE LAW OFFICES OF THOMAS G. KENNEDY, P.C.
*(**Caution:** Do not provide both an individual and an entity name.)*

Street address
307 EAST COLORADO AVENUE
(Street number and name)
SUITE 203
TELLURIDE (*City*) CO (*State*) 81435-3081 (*ZIP Code*)

Mailing address
(**leave blank** if same as street address)

P.O. BOX 3081
(Street number and name or Post Office Box information)

TELLURIDE (*City*) CO (*State*) 81435-3081 (*ZIP Code*).

(The following statement is adopted by marking the box.)

☑ The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name
(if an individual)

_____ _____ _____ _____
(Last) *(First)* *(Middle)* *(Suffix)*

OR

(if an entity) THE LAW OFFICES OF THOMAS G. KENNEDY, P.C.

*(**Caution:** Do not provide both an individual and an entity name.)*

Mailing address

P.O. BOX 3081
(Street number and name or Post Office Box information)

TELLURIDE (*City*) CO (*State*) 81435-3081 (*ZIP/Postal Code*)

_____ (*Province – if applicable*) United States (*Country*).

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

☐ 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.)*

☑ The nonprofit corporation will have voting members.

6. Provisions regarding the distribution of assets on dissolution:

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 (*Last*) KIMBERLY (*First*) A. (*Middle*) ____ (*Suffix*)

P.O. BOX 3081
(Street number and name or Post Office Box information)

TELLURIDE (*City*) CO (*State*) 81435-3081 (*ZIP/Postal Code*)

_____ (*Province – if applicable*) United States (*Country*).

(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.

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.

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 _____, 2021 ("**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).

2. The Property is subject to the benefits and burdens arising in connection with those covenants, easements, agreements and other instruments 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).

3. 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.

4. 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

5. The Community has been approved for multifamily residential development pursuant to 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.

6. Lena Street Commons Townhomes Association, Inc., a Colorado non-profit corporation ("**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.

7. The Plat depicted Parcel A, which is being developed as a separate CIOA community. 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.

8. The Plat also depicted Parcel F. Parcel F is not being subjected to the Governing Documents is not part of the Community and is not subject to the jurisdiction of the Association.

9. 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.

10. 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.

11. 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

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. **Act**. "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. **Allocated Interests**. "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 **Exhibit "B"** attached hereto and made a part hereof by this reference, as said **Exhibit "B"** may be amended from time to time.

1.3. **Articles of Incorporation**. "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. **Assessment**. "Assessment" means a Regular Assessment, Special Assessment, or Reimbursement Assessment.

1.5. **Association.** "Association" means the Lena Street Commons Townhome Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

1.6. **Association Property**. "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. **Bylaws**. "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. **Common Area**. "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. **Common Expenses**. "Common Expenses" means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.11. **Community**. "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 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. **Community Standard**. "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. **Development Agreement**. "Development Agreement" means the agreement entered into by the Declarant and the Town, which was recorded in Reception No. 223540,

1.17. **Dwelling**. "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.

1.18. **Eligible First Mortgagee** "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.

1.19. **First Mortgagee** "First Mortgagee" means any Person named as a Mortgagee in any First Mortgage.

1.20. **Executive Board**. "Executive Board" or "Board" means the Executive Board of the Association.

1.21. **Governing Documents.** "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.

1.22. **Household Pets**. "Household Pets" means generally recognized household pets such as dogs, cats, fish, birds, rodents, and non-poisonous reptiles.

1.23. **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.

1.24. **Lease**. "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.

1.25. **Limited Common Area**. "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.

1.26. **Live-Work Lot.** "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.

1.27. **Lot**. "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.

1.28. **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.

1.29. **Rules and Regulations**. "Rules and Regulations" means rules and regulations adopted from time to time by the Executive Board, as provided for in of this Declaration.

1.30. **Member**. "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.

1.31. **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."

1.32. **Mortgagee**. "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.

1.33. **Mortgagor**. "Mortgagor" means the maker, obligor or grantor of a Mortgage. The term "Mortgagor" includes a trustor or grantor under a Deed of Trust.

1.34. **Notice and Hearing**. "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.

1.35. **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.

1.36. **Official Records** "Official Records" shall mean the Office of the Clerk and Recorder for Ouray County, Colorado.

1.37. **Owner**. "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.

1.38. **Party Walls**. "Party Walls" mean and refer to the dividing wall between each adjoining Dwelling.

1.39. **Permitted Exceptions**. "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.

1.40. **Person**. "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.

1.41. **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.

1.42. **Record or Recorded**. "Record" or "Recorded" means an instrument of record in, or the act of recording an instrument in the Official Records.

1.43. **Regular Assessment**. "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.

1.44. **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 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 for 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.

1.45. **Rules** "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.

1.46. **Security Interest** "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 include 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.

1.47. **Short Term Rentals** "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.

1.48. **Special Assessment**. "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.

1.49. **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.

1.50. **Supplemental Plat**. "Supplemental Plat" means an amendment to Plat for the purposes of annexing real property described therein to the Community.

1.51. **Subdivision Improvements Agreement** "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. **Violation of Law, Insurance, Etc**. 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 Deed Restricted (Affordable Housing) in accordance with the Restrictions contained in the Plat and the Development Agreement (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. **New Construction Required; No Temporary Buildings or Occupancy**. 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 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 Executive Board, 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 Executive Board. No modifications from the approvals granted by the Executive Board shall be made without the prior written approval of the Executive Board. 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 Executive Board 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, Executive Board 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 together with any mechanical, electrical, plumbing and other utilities constructed and installed within the area of the Party Walls and serving the adjoining Dwellings. The boundary between the two adjacent Dwellings shall be the vertical boundary running 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 and provide utility services.to the Dwellings.

(c) **Ownership of Party Walls**. 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 with the owner of the adjoining Lot upon which a portion of the Party Wall is located.

(d) **Maintenance of Party Walls**. 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.

(f) **Damage by Intentional or Negligent Act of Owner**. Should a Party 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) **Rights Granted to Association.** 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 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) **Colorado Law**. 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. **Design Guidelines**. 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. **Title to Lots.** 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. **Annoying Light, Sound or Odor**. 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 annoyance 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. **No Solid Fuel Burning Fireplaces. Outside Burning; Fire Hazards**. 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. **Leasing of Lots**. 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. Short-term rentals, as allowed, licensed and permitted under the provisions of the Town of Ridgway Municipal Code, are only allowed on those Lots included in the Building C Phase and the Building D Phase, which usage is 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 on those Lots included in the Building B Phase and the Building E Phase.

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 and the Association shall have the right to levy a Reimbursement Assessment upon the Owner and its Lot to recover the costs and expenses it incurs in such compliance efforts. 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. **Animals**. 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. **Restrictions on Mining or Drilling**. 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 approved by the Executive Board. 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. **No Interference with Waterways or Drainage or Irrigation Systems**. 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 owners of ditches and other water rights and the requirements of the Association. The Association shall have the authority to take such action as may be necessary to abate or enjoin any such damage or interference, and shall have the right to enter upon a Lot for purposes of correcting or removing the same, and any costs incurred by the Association in connection with such abatement, injunctive or corrective activities shall be assessed to the subject Lot Owner in the form of a Reimbursement Assessment.

2.25. **Association Landscaping**. 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).

2.26. **Use of Easement Areas; Utility Installation**. All easements shown on the 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 tv) 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. **Flags or Displays**. 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. **Right of Entry**. During reasonable hours and upon reasonable notice to the Owner or Occupant of a Lot, 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 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 Sharing**. 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 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. **Health, Safety and Welfare**. 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. **View Impairment**. 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 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. **General Maintenance of Community**. 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

4.1. Any material modifications to the exterior appearance of a Residence, including, without limitation, changes to the design of the Residence (size and location of windows, doors, building projections, decks, patios and the like) or the exterior appearance (colors or materials) shall require the prior review and approval of the Executive Board. The Board in the exercise of its reasonable judgment shall determine if the changes compatible with and consistent the design and appearance of other Residences in the Community. Any structural changes to a Residence, including changes to any Party Wall elements, shall require the approval of the Executive Board, which may be granted or withheld in the reasonable discretion of the Executive Board, taking into account impacts to other Improvements that could result from such changes.

4.2. All consulting fees and expenses incurred by the Executive Board 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 Executive Board and such expenses may be collected by the Association as a Reimbursable Assessment.

4.3. The requirements and provisions of this Article 4 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, 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. **No Partition of Association Property**. 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. **Condemnation of Association Property**. 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 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. **Title to Association Property Upon Dissolution of Association**. 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 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. **Amendment Deemed Included**. 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 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:

6.1. **Construction of Improvements**. The right, but not the obligation, to construct 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. Construct and use model residences on a Lot in connection with sales and marketing;

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. **Merger**. 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 Approvals and Requirements and Declarant's Reserved Rights**. 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 Declaration, 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 and are in addition to any other easements, including, without limitation, the Party Wall Easements, provided for and described herein. 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. **Utility and Drainage Easements**. 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 of drainage systems and facilities. Except as may otherwise be provided in any Subdivision Improvements Agreement 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 a Reimbursement Assessment. Construction of any structure shall be prohibited within these easements except as such structure shall be approved in writing by the 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. **Construction Access Easement.** 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. **Construction Shoring Easement.** 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.

7.11. **Restrictions on Owners in Easement Areas**. Owners of Lots that are subject to any 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. **Recorded Easements and Licenses**. 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. **Association**. 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. **Membership in Association**. 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 without protest being made promptly to the person presiding over the meeting by any of the other owners of the 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 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.

8.5. **Period of Declarant Control of Association**. 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 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. **Turnover**. 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

(l) 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. **Termination of Contracts and Leases of Declarant**. 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.

8.8.2. **Membership Authority**. 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. **Conflicts**. 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. **Protection of Owners and Others**. 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. **Similar Treatment**. 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 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.

8.9.6. **Abridging Existing Rights**. 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. **Reasonable Rights to Develop**. 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. **Interference with Easements**. 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. **Good Governance Policies**. The Association, through the Executive Board, shall adopt responsible governance policies consistent with the requirements of CIOA. The Executive Board may amend, supplement and restate some or all of the governance policies from time to time. 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.

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. **Power to Grant Easements**. 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. **Power to Acquire Property and Construct Improvements**. 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 Managers**. 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.

9.10. **Duty to Accept Property and Facilities Transferred by Declarant**. The Association 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. **Insurance**. 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) **Casualty Insurance**. 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.

(b) **Liability Insurance.** Comprehensive general liability insurance against claims 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) **Contractual Liability Insurance**. 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) **Worker's Compensation**. 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) **Other Insurance**. 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 co-insurance 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.

(9) A recognition of any insurance trust agreement entered into by the Association.

(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) **Insurance Claims**. 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.

(l) **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) **Other Insurance to be Carried by Lot Owners**. 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 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. 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

10.1. **Assessment Obligation and Lien**. Declarant, for each Lot, shall be deemed to covenant 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. **Lien Superior to Homestead and Other Exemptions**. 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. **Priority of Lien**. 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 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 semi-annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Executive Board, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Lot Owner acquiring a Lot between installment due dates shall pay a pro rata share of the immediately preceding installment.

(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. **Special Assessments**. 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 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 or to be reimbursed for costs and expenses incurred by the Association in reviewing applications and requests by an Owner provided for herein. 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 1/4th 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. **Reserve Accounts.** 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. **Misconduct**. 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 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 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 of the Association Property or by abandonment of the Lot against which the Assessments are made. 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 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. **Audit**. 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. **Definition of Taking**. 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 constitute sufficient notice to all Owners, and service of process on each individual Owner 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. **Miscellaneous**. 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 **Termination of Community.** 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 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.

B. The right to levy and collect a Reimbursement Assessment against any Owner.

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;

(b) Minimize any disruption or inconvenience to any Person who occupies the Subject Property;

(c) Remove daily all debris caused by the inspection and remaining on the Subject Property; and

(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.

(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 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 **Rights of First Mortgagees.** 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 **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 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 **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 **Conflict With Condominium Plat.** 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 **Conflict With the Act.** 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 **Governing Law; Jurisdiction.** 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 **Costs and Attorneys' Fees**. 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 **Severability.** 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 **Captions.** 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 **Singular Includes Plural.** 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)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, as the _____ of Arthur Travis Spitzer Revocable Trust.

Witness my hand and official seal.

_____ My commission expires: _____.
Notary Public

EXHIBIT "A"
(LEGAL DESCRIPTION)

Lots 1B, 2B, 3B, 4B, 5B, 1C, 2C, 3C, 4C, 5C, 1D, 2D, 3D, 4D, 5D, 1E, 2E, 3E and 4E, Lena Street Commons Planned Unit Development, Town of Ridgway, Ouray County, Colorado, per the plat recorded on _____, 2021 in Reception No. _____ with the Clerk and Recorder for Ouray County, Colorado

EXHIBIT "B"

Lot	Allocated Interest	Allowable Uses/Notes
Lot 1B	1/19TH	Short-Term Rentals Not Allowed (See Note #1) Deed Restricted Unit (See Note #2)
Lot 2B	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1)
Lot 3B	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1)
Lot 4B	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1)
Lot 5B	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1)
Lot 1C	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 2C	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 3C	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 4C	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 5C	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 1D	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 2D	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 3D	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 4D	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 5D	1/19TH	Residential; Short-Term Rentals Allowed (See Note #1)
Lot 1E	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1); Deed Restricted Unit (See Note #2)
Lot 2E	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1)
Lot 3E	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1)
Lot 4E	1/19TH	Residential; Short-Term Rentals Not Allowed (See Note #1); Deed Restricted Unit (See Note #2)

NOTE #1. Section 5 of the Development Agreement and the Platnotes on the Plat allowed for the Dwellings constructed on those Lots included in the Building C Phase and the Building D Phase to be used for Short-term rentals, as allowed, licensed and permitted under the provisions of the Municipal Code. 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 Dwelling included in the Building B Phase and the Building E Phase.

NOTE #2. Declarant agreed to restrict the ownership, use and occupancy of the Dwellings developed on Lot 1E, Lot 4E and Lot 1B ("**Deed Restricted Units**") to the terms, conditions, restrictions and requirements provided for in Section 6 of the Development Agreement and noted on the Plat, which shall run in perpetuity and not expire and shall survive any foreclosure on Lot 1E, Lot 4E and Lot 1B, unless the restrictions are otherwise released or modified with the written consent of the Town. The Development Agreement allows that the Lots to be deed restricted may be modified by the agreement of the Town and Declarant.

BYLAWS OF THE LENA STREET COMMONS TOWNHOMES CONDOMINIUMS OWNERS ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION

ARTICLE 1
INTRODUCTION AND PURPOSE

Effective Date: _____

These Bylaws ("**Bylaws**") of the Lena Street Commons Townhomes 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.

Section 1.1 – Introduction. These are the Bylaws of the Lena Street Commons Townhomes 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 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.

Section 1.3 - Persons Subject to Bylaws. 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.

(b) The Board shall elect the officers. The Board members and officers shall take office upon election.

Section 2.2 - Powers and Duties. 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;

(l) 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.

Section 2.3 - Association Manager. 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.

Section 2.4 - Removal of Board Member by Owners. 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.

Section 2.5 - Vacancies. 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.

Section 2.6 - Regular Meetings. 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

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.

Section 2.7 - Special Meetings. 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.

Section 2.8 - Location of Meetings. All meetings of the Board shall be held within Colorado, unless all Board members consent in writing to another location.

Section 2.9 - Waiver of Notice. 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.

Section 2.10 - Quorum of Board Members. 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.

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.

Section 2.14 – Disputes Among Board Members. 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 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.

Section 3.2 - Annual Meeting. 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.

Section 3.3 - Budget Meeting. 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.

Section 3.4 - Special Meetings. 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.

Section 3.5 - Place of Meetings. 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.

Section 3.6 - Notice of Meetings. 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.

Section 3.7 - Waiver of Notice. 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.

Section 3.8 - Adjournment of Meeting. 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 Lot in the Community shall have the voting rights as established in the Declaration.

(b) If title to a Lot is held by an entity, including, without limitation, a firm, corporation, 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.

Section 3.11 - Quorum. 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.

Section 3.12 - Majority Vote. 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.

Section 3.13 - Proxies. 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.

Section 3.15 - Election of Board Members. Cumulative voting for Board members shall not be permitted.

Section 3.16 - Chairman of Meetings. 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 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

Section 4.1 - Designation. 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.

Section 4.2 - Election of Officers. 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.

Section 4.3 - Removal of Officers. 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.

Section 4.4 - President. 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.

Section 4.5 – Vice President. 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.

Section 4.6 - Secretary. 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.

Section 4.7 - Treasurer. 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, and executed by two Board members, one of whom may be the Treasurer if the Treasurer is also a Board member.

Section 4.8 - Agreements, Contracts, Deeds, Checks, etc. 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 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.

Section 5.2 - Fines for Violation. 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

Section 7.1 - Records and Audits. 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.

Section 7.2 - Examination. 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 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.

Section 8.3 - Waiver. 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.

Section 8.4 - Office. The principal office of the Association shall be at such place as the Board may from time to time designate.

Section 8.5 - Working Capital. 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.

Section 8.6 - Reserves. 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

Section 9.1 - Vote of Board. 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.

Section 9.2 - Restrictions on Amendments. 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 Townhomes Owners Association, Inc.,
a Colorado Nonprofit Corporation

By:_____

Printed Name: _____
Title:_____

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 www.sos.state.co.us.

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 CONDOMINIUMS OWNERS 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 (City) CO (State) 81432 (ZIP/Postal Code)
(Province – if applicable) United States (Country)

Mailing address
(leave blank if same as street address)
P.O. BOX 3601
(Street number and name or Post Office Box information)

TELLURIDE (City) CO (State) 81435-3601 (ZIP/Postal Code)
(Province – if applicable) United States (Country).

3. 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

(if an entity) THE LAW OFFICES OF THOMAS G. KENNEDY, P.C.
*(**Caution:** Do not provide both an individual and an entity name.)*

Street address
307 EAST COLORADO AVENUE
(Street number and name)
SUITE 203
TELLURIDE (City) CO (State) 81435-3081 (ZIP Code)

Mailing address
(leave blank if same as street address)

P.O. BOX 3081
(Street number and name or Post Office Box information)

TELLURIDE *(City)* CO *(State)* 81435-3081 *(ZIP Code)*.

(The following statement is adopted by marking the box.)

☑ The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name
(if an individual)

(Last) *(First)* *(Middle)* *(Suffix)*

OR

(if an entity) THE LAW OFFICES OF THOMAS G. KENNEDY, P.C.
*(**Caution:** Do not provide both an individual and an entity name.)*

Mailing address

P.O. BOX 3081
(Street number and name or Post Office Box information)

TELLURIDE *(City)* CO *(State)* 81435-3081 *(ZIP/Postal Code)*

(Province – if applicable) United States *(Country)*.

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

☐ 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.)*

☑ The nonprofit corporation will have voting members.

6. Provisions regarding the distribution of assets on dissolution:

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 (*Last*) KIMBERLY (*First*) A. (*Middle*) _____ (*Suffix*)

P.O. BOX 3081
(Street number and name or Post Office Box information)

TELLURIDE (*City*) CO (*State*) 81435-3081 (*ZIP/Postal Code*)

_____ (*Province – if applicable*) United States. (*Country*)

(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 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 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.

JOINT MAINTENANCE AND COST SHARING AGREEMENT

THIS AGREEMENT ("**Agreement**") is entered into and made effective as of _____, 2021 ("**Effective Date**") by and between Lena Street Commons Townhome Association, Inc., a Colorado nonprofit corporation ("**Townhome Association**") and Lena Street Commons Commercial Condominium Owners Association, Inc., a Colorado nonprofit corporation ("**Commercial Condominium Association**"). Townhome Association and Commercial Condominium Association are sometimes each individually referred to as a "**Party**" and sometimes collectively as the "**Parties**".

RECITALS

A. Townhome Association is the duly formed homeowners association formed in connection with The Lena Street Commons Townhomes ("**Townhome Community**"). The Townhome Community includes certain Townhome Lots ("**Townhome Lots**"), which will be improved with residences. The Townhome Community exists pursuant to and in accordance with certain documents ("**Townhome Community Governing Documents**"), including the following:

(i) The Plat recorded on _____ in Reception No. _____ ("**Plat**") and

(ii) The Declaration recorded on _____ in Reception No. _____.

B. Commercial Condominium Association is the duly formed condominium owners association formed in connection with The Lena Street Commons Commercial Condominiums ("**Commercial Condominium Community**") being developed on Lot A per the Plat. The Commercial Condominium Community will include certain commercial condominium units ("**Commercial Units**") and other common elements. The Commercial Condominium Community exists pursuant to and in accordance with certain documents ("**Commercial Condominium Governing Documents**"), including the following:

(i) The Condominium Map to be recorded upon the completion of the construction of the buildings and improvements that accommodate the Commercial Unit and other common elements.

(ii) The Condominium Declaration recorded on _____ in Reception No. _____.

C. The Plat establishes certain easements for access, utilities, drainage, landscaping and irrigation and other infrastructure ("**Shared Facilities**") as described in the Plat, the Townhome Community Governing Documents and the Commercial Condominium Governing Documents which are granted and conveyed to the respective owners of the Townhome Lots and the Commercial Units for their mutual and shared use and benefit.

D. Townhome Association and Commercial Condominium Association wish to establish a mechanism for the shared use, operation, repair and maintenance of the Shared Facilities as well as the allocation of costs and expenses for such undertakings between the Parties.

AGREEMENTS.

NOW, THEREFORE, in consideration of the foregoing recitals are incorporated as the agreements of the Parties, and for such other good and valuable consideration, the receipt and sufficiency of which are

hereby acknowledged, the Parties further agree as follows:

-

1. **Use and Maintenance of the Shared Facilities.**

1.1. The Parties agree that their respective use, enjoyment, and operation of the Shared Facilities are subject to the following terms, conditions, restrictions, and understandings:

1.1.1. The use of the Shared Facilities will be restricted to their intended purposes.

1.1.2. The Parties shall not prohibit, limit, restrict, or otherwise interfere with or impede another Party's use of the Shared Facilities, including any driveway areas, for normal ingress and egress and use by any of the other Parties. Normal ingress and egress is meant to include use by family, guests, invitees, tradesmen, contractors, delivery persons and others bound to or returning from any of their respective lots, and by fire, police and other emergency personnel. Parking shall occur only in designated locations and shall not be allowed in any driving or maneuvering areas.

1.1.3. All maintenance, repair, replacement and operation of the Shared Facilities must be performed in a first-class condition and manner and must comply with all permits now or hereafter issued for the Shared Facilities and with all applicable governmental permits, approvals, laws, codes and requirements, including ordinances and regulations of the Town; and

1.1.4. In undertaking such work, the Associations must perform their obligations described herein in a manner to minimize damage, disruption, and inconvenience to the other properties and right-of-ways that may be disturbed or affected by such actions.

2. **Costs and Expenses for Maintenance of the Shared Facilities.**

2.1. The Associations are responsible for jointly maintaining, repairing, replacing, and operating the Shared Facilities ("**Maintenance Work**"). The Maintenance Work must be performed in a first-class condition and manner in accordance with an annual work plan ("**Maintenance Plan**"), mutually prepared, reviewed and approved by the Associations. In connection with the preparation of the Maintenance Plan, the Associations shall prepare a budget ("**Maintenance Budget**") for the estimated cost and expense of undertaking the Maintenance Work ("**Maintenance Work Costs**"). The Maintenance Plan shall provide for the timing and manner for the collection the Maintenance Work Costs. The Parties may elect to retain a third party to develop a Maintenance Plan and Maintenance Budget for the Maintenance Work,

2.2. The Maintenance Budget is not intended to be a guaranty of the Maintenance Work Costs and that the Parties must share in and promptly pay the Maintenance Work Costs actually incurred from time to time.

2.3. The Maintenance Work shall include the repair and maintenance of Utilities that have been installed by the Parties and serve their respective properties as reasonably required from time to time; provided, however, the Parties shall cooperate and assist each other in pursuing agreements with the Town of Ridgway by which the Town agrees to undertake maintenance and repair of the water and sewer utilities serving the properties and the pertinent utility providers with respect to the maintenance and repair of the respective utilities they operate, without cost to the Parties.

2.4. Maintenance Work for the shared driveway and walkways will consist of at least the following non-exclusive matters and performed in a first-class condition and commercially reasonable standard for similar styled roads in a mountain town environment.

2.4.1. Crack sealing and filling to prevent water penetrating the pavement section from the top.

2.4.2. Routine maintenance to prevent build-up of sediments, debris, and encroaching vegetation as well as to provide site specific inspections.

2.4.3. Prevention of water-related damage, maintenance of the capacities and capabilities of existing drainage facilities and structures by keeping them free of debris and by repairing minor erosion as soon as it is discovered.

2.4.4. Removal of snow and ice to provide safe access during winter months.

2.4.5. Routine maintenance of the road shoulder and retaining wall structures for retention of roadway strength and integrity.

2.4.6. Routine maintenance of the guard rails.

2.4.7. Repairing pavement edge failures, which are generally caused by traffic loading at the edge of the pavement in conjunction with water-related issues (poor subsurface drainage or inadequate surface drainage). Edge failures will usually migrate into the traveled way if not repaired in a timely manner.

2.4.8. Surface maintenance activities when the following are observed: (i) longitudinal or transverse cracking: when cracks show gap widths sufficient to accept application of sealant (approximately 1/8"), or when the cracks extend completely through the asphalt pavement section depth; (ii) alligator cracking: cracking that forms a network of small asphalt blocks with a pattern similar to alligator skin (alligator cracking is usually a sign of sub-grade failure and patching and filling is only a temporary measure for this distress); and (iii) potholing and shoulder un-raveling: where the asphalt appears to be decomposing into aggregate.

2.4.9. Crack sealing and filling of random open cracks in pavement surfaces with rubberized sealant to prevent further water intrusion. Crack types include: fatigue cracks, longitudinal cracks, transverse cracks, block cracks, reflective cracks, edge cracks, and slippage cracks.

2.4.10. Pothole Patching

2.5. The Parties shall share costs of utilities attributable to the use and operation of the Shared Facilities.

2.6. The Parties will share the costs of repairing and maintaining drainage facilities, landscaping, irrigation and other related facilities.

2.7. Maintenance Costs will not include any expenditures for which a Property Owner is reimbursed by insurance proceeds or third parties.

2.8. A Party shall be solely responsible for the cost and expense of repairing damage to the Shared Facilities caused by the particular Party or its guests, invitees, employees, agents, or designees, including its contractors and consultants and is obligated to promptly repair the Shared Facilities at the Party’s expense and hold the Owners of the other lots harmless from any liability in connection with such damage or repairs.

2.9. The respective shares of the Maintenance Work Costs are set forth below ("**Allocated Share**"):

Party	**Allocated Share**
Townhome Association	70%
Commercial Condominium Association	30%

2.10. Unless some other plan is mutually agreed upon by all of the Parties, the following provisions shall control the administration of the Maintenance Plan and the Maintenance Budget:

2.10.1. Within thirty (30) calendar days of the approval of the Maintenance Plan, each Party shall pay its portion of the Maintenance Budget in accordance with the Party's Allocated Share.

2.10.2. The payment of the Party's Allocated Share shall be paid to a person or party designated by the Parties to collect, manage and disburse funds for the implementation of the Maintenance Plan.

2.10.3. Should the cost of the Maintenance Work exceed the Maintenance Budget, each Party shall be responsible for paying the additional cost in accordance with their Allocated Share of the overage, which shall be paid within thirty (30) calendar days of the sending of a notice advising of the overage and requirement to pay additional shares of Maintenance Work Costs. Each statement shall be supported by reasonably adequate documentation and shall be due and payable within thirty (30) calendar days of the date that the statement is sent.

2.10.4. The Parties shall have the right to inspect, copy and audit documentation relating to the Maintenance Work Costs.

2.10.5. All requests for the payment of the Maintenance Work Costs shall be submitted in writing and sent to the address of the respective Owners as provided in Section 3.12, below.

2.10.6. Failure to pay a share of the Maintenance Work Costs when due shall constitute a default hereunder. One or more of the other Parties may elect (but are not obligated hereunder to do so) to cover the share of the Maintenance Work Costs allocated to another Party who has failed or refused to pay the share of the Maintenance Work Costs allocated to the that Party ("**Defaulting Party**"). Upon such election to cover the unpaid costs, the Defaulting Party is obligated to reimburse the Party or Parties (a "**Collecting Party**") who paid the share of the Maintenance Work Costs allocated to the Defaulting Party. A Collecting Party shall recover from the Defaulting Party a late fee in the amount of eight percent (8%) per annum of the amount due from the date of the default until the Maintenance Work Costs cost is paid in full, together with attorney fees and collection expenses incurred by the Collecting Party. By its execution hereof, each Party, for itself and its heir, successors, transferees and assigns, does hereby: **(a)** authorize and consent to the execution and recordation of a lien by a Collecting Party against the property owned by the Defaulting Party for the amount of the unpaid share of Maintenance Work Costs then due and payable for the unpaid share of Maintenance Work Costs, along with late fees, interest, collection fees, costs and expenses and such future unpaid Maintenance Work Costs that may become due and payable ("**Statement of Lien**"), **(b)** agrees that a Statement of Lien may be recorded against their property under the circumstances arising hereunder without the need of initiating a legal action, and **(c)** waives all claims or challenges to the right of a Collecting Party to place any such Statement of Lien against their property, other than a good faith challenge concerning the amount claimed to be due and payable under the Statement of Lien. The party placing the Statement of Lien on the property shall promptly release the lien when the amounts covered in the Statement of Lien have been

paid and satisfied in full. Notwithstanding the foregoing, the above-described lien will not have priority over a first mortgage lien on the respective property.

2.11. If a Party fails or refuses to cooperate in the discussion concerning the Maintenance Plan and/or Maintenance Budget, they are nevertheless responsible for paying its share of the Maintenance Work Costs. There shall be no grounds for non-payment of a Party's share of the Maintenance Work Costs for reasons such as the Party's non-use of the Galena ROW Driveway Improvements or dissatisfaction with the Maintenance Work, the Maintenance Plan and/or the Maintenance Budget.

2.12. In the event of any dispute in the interpretation of the matters addressed in this Agreement between Owners, the dispute shall first be referred to a mutually agreeable mediator to attempt resolution.

3. **Indemnification. Insurance. Liability of the Parties.**

3.1. In using the rights under the Easements granted herein, each Party shall for itself, its successors and assigns, and for each of the Authorized Users who are undertaking some or all of the Authorized Uses, indemnify, defend, release and save harmless the other Party and its affiliates, parent, subsidiaries, agents, employees, representatives, assignees, directors, officers, partners, shareholders, successors and assigns from and against any and all mechanics' lien(s), expenses, claims, actions, liabilities, losses, damages (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with the Authorized Uses. The Party's indemnifications shall also include any liability, litigation and/or claims for injury or death to persons or damage to property asserted against the other Party arising from an Authorized Use by an Authorized User as well as any claims based on alleged or actual negligence or breach of any express or implied warranty. The Party's indemnifications shall be allocated in a comparative manner between the Parties in situations where the claim, action any negligence asserted against a Party is attributable in whole or in part to the actions or inactions of that Party.

3.2. From and after the Effective Date, each Party shall keep and maintain, at the Party's sole cost and expense, general liability insurance coverage for itself and for each of its specifically designated designees, contractors and consulting who are undertaking some or all of the Authorized Uses at the direction of the Party, containing minimum limits per occurrence of $1,000,000 and $2,000,000 in the aggregate (for each Party, a "**Policy**"). Each Policy shall name the other Party as an additional insured, and the Policy shall include a provision requiring a minimum of 30 days' notice to the other Party for any change or cancellation. Said insurance coverage shall commence and continue for the full term of each Party's Easement(s). The amount of the coverage shall be reviewed as necessary and any changes mutually agreed upon, at least every five years, and shall be adjusted to keep pace with the market for similar coverages (provided, however, that in no event will the amount of the coverage be less than the amount stated above).

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4. **Miscellaneous**

4.1. **Runs with the Land, Successors and Assigns**. The Easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall run with the land and shall be a benefit of and burden upon HOC Property on the one hand, and Lot 152 on the other hand, as applicable, from and after the Effective Date and throughout the term of this Agreement. Further, the Easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to this Agreement from and after the Effective Date and throughout the term of this Agreement.

4.2. **Default. Notice and Cure.** In all instances under this Agreement, at such time as a Party ("**Claiming Party**") claims that any other Party ("**Responding Party**") has violated or breached any of the terms, conditions or provisions of this Agreement ("**Default**"), the Claiming Party shall promptly prepare and deliver to the Responding Party a written notice ("**Notice of Default**") claiming or asserting that the Claiming Party is in default under a term or provision of this Agreement, which Notice of Default shall clearly state and describe: (a) each section(s) of the Agreement which the Responding Party has allegedly violated, (b) a summary of the facts and circumstances being relied upon to establish the alleged violation, (c) the specific steps that must be undertaken to come into compliance with the Governing Documents, and (d) the reasonable timeframe (not less than 30 days) within which time the alleged violation should be cured ("**Cure Completion Date**").

4.3. **Governing Law. Remedies. Costs and Expenses**. This Agreement shall be construed under and governed by the laws of Colorado, with jurisdiction and venue restricted to a court of competent jurisdiction in Ouray, Colorado. All of the rights and remedies of the Parties under this Agreement including, without limitation, injunctive relief and specific performance, shall be cumulative. In any action to enforce or construe the terms of this Agreement, the substantially prevailing Party shall recover all legal and related court costs, including all reasonable attorneys' fees and expert witness fees. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law.

4.4. **Performances.** Time is of the essence of this Agreement and for the performance of each of the duties and obligations provided herein.

4.5. **Severability**. If any provision of this Agreement shall be found invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Agreement, and the remaining provisions shall remain in full force and effect.

4.6. **Authorization and Signatories**. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of their respective principals and that they have taken all actions necessary to obtain such authorization authorized to execute this Agreement.

4.7. **Recording.** This Agreement will be recorded in the Official Records.

4.8. **Entire Agreement**. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and no other representations, promises, agreements or understandings or obligations with respect to the payment of consideration or agreements to undertake other actions regarding the subject matter hereof shall be of any force or effect unless in writing, executed by all Parties hereto and dated after the date hereof.

4.9. **Modifications and Waiver**. No amendment, modification or termination of this Agreement or any portion thereof shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by each of the Parties hereto. No waiver of any breach, term or condition of this Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.

4.10. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Scanned/emailed or facsimile copies of any party's signature hereon shall be deemed an original for all purposes of this Agreement.

4.11. **Acknowledgment**. The Parties acknowledge that: (i) they have each had the opportunity to consult with independent counsel of their own choice concerning this Agreement and have

done so to the extent they deem necessary, and (ii) they each have read and understand the Agreement, are fully aware of its legal effect, and have entered into it freely based on their own judgment and not on any promises or representations other than those contained in the Agreement.

4.12. **Parties Representations**. In entering into this Agreement, the Parties acknowledge and agree that they will perform their duties and obligations in a commercially reasonable, good faith manner and that this commitment is being relied upon by each other Party. The Parties hereby each represent, warrant and covenant to and with each other that (i) each Party is duly authorized to execute and deliver this Agreement; (ii) each Party has taken all actions necessary to obtain such authorization; and (iii) that the terms and conditions of this Agreement constitute an enforceable agreement against such Party. The Parties hereby further warrant that each Party has obtained the written consent of any lender that has a lien on the Party's property, which consent expressly approves this Agreement and the Easements being granted hereunder.

4.13. **Notices**. Any notice provided or permitted to be given hereunder shall be made in writing and may be given by personal delivery or United States mail, postage prepaid, sent to the address of the Party on file with the Ouray Assessor's office.

AGREED TO AND MADE EFFECTIVE BY THE PARTIES AS OF THE EFFECTIVE DATE.

Lena Street Commons Townhome Association, Inc.,
a Colorado nonprofit corporation

By: _____ Date: _____

Printed Name: _____
Title: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

Subscribed to and acknowledged before me this ____ day of _____, 2021 by _____ as the _____ of Lena Street Commons Townhome Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

_____ My commission expires: _____
Notary Public

Lena Street Commons Commercial Condominium Owners Association, Inc.,
a Colorado nonprofit corporation

By: _____ Date: _____

Printed Name: _____
Title: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

Subscribed to and acknowledged before me this ____ day of _____, 2021 by _____ as the _____ of Lena Street Commons Commercial Condominium Owners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

_____ My commission expires: _____
Notary

OURAY COUNTY NOXIOUS WEED MANAGEMENT

111 Mall Road • P.O. Box 456 • Ridgway, Colorado 81432 • 970-626-9775 x7 • FAX: 970-626-9775

January 11, 2021

To the Planning Department of Ridgway,

Mark Renninger with Del Monte Consultants contacted me today about a weed management plan to support the construction of a residential and commercial structure on N.Lena St between Charles and Otto Streets (Lena St Commons). A weed management plan will need to be done, due to the presence of at least two noxious weeds in the surrounding area.

Mark and I discussed that the property had been graded, and fill material placed at the site. Mark stated that very little green space exists in the final plan. All this aside fill material is not weed free, nor does ground disturbance eliminate any weed germination. Infestations of Russian Knapweed, and Spotted Knapweed are known in the immediate vicinity. Leafy Spurge is also in the area, and could possibly be at the site. Leafy Spurge and Spotted Knapweed are on the Ouray County Priority List, and the Colorado Noxious Weed Act mandates elimination of these species. Russian Knapweed by the Colorado Noxious Weed Act must be controlled as a B list species. I advised Mark to be aware that these particular species will be an issue. At this time I made Mark aware that any revegetation of the property must be done with approval by the Ouray County Weed Manager.

Identification of any noxious weeds cannot be done, at this time due to weather conditions. I have agreed to visit at a later date between March and June of 2021 to assess the property for the presence of noxious weeds. At that time I will be able to advise Mark of the best management approach to the weeds likely present on the site.

Julie Kolb

Ouray County Vegetation Manager

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

Official Use Only
Date Received: 1/12/2021
Initials: SC

Water or Sewer Tap Application

General Information		Application for: ☒ Water ☒ Sewer
Property Owner: Lena Commons, LLC		Application Date: 12/24/20
Physical Address for Tap(s): 316 N. Lena St. Ridgway, CO 81432		
Subdivision: Lena St. Commons	Filing	Lot / Block
Phone: (310) 924-1440	Email: Travis@Concordiacapital.net	

The applicant understands that this permit when issued constitutes an agreement between the Town and the property owner under the following terms and conditions.

A. Excavation for the above-named tap may be authorized in the above described street or alley provided the grantee applies for and receives an approved Encroachment Permit for the work and pays applicable fees to the Town. All work shall be completed in accordance with the executed Encroachment Permit.
B. Inspection and approval of all taps and piping installations shall take place prior to backfill. Inspections will be made within 48 hours from the time of request after completion of the tap, except for Saturdays, Sundays, and holidays.
C. The grantee of this permit is responsible (at their expense) for complying with Manual of Uniform Traffic Control and for furnishing all lights, flares, barricades, walkways, covers and other safety devices that are required by Town and State law to properly protect the public during the progress of all work under this permit.
D. The minimum specification for materials to be used, the method of installation and all conditions of use for all enlargements or attachments to the Town owned utility systems shall be consistent with Chapter 9 of the Ridgway Municipal Code, the excavation and encroachment permit, and the Town's standards and typical drawings.
E. Applications for nonresidential sewer taps shall be accompanied by a Wastewater Questionnaire. Additional conditions of service may be applied to nonresidential sewer taps.
F. Absent prior Town approval, no excavation shall occur in Town streets, alley and other rights of way between November 15th and March 15th in any year. *(Resolution 09-11)*
G. Owner agrees to comply with Town regulations for utility service and payment of applicable fees.

Property Owner Signature — Date: 1/11/21

Official Use Only

Type of Service: ☐ Residential ☐ Business - **Type of Business:** _____ Prepaid Tap? ☐ Yes ☐ No	Service Status: ☐ New ☐ Existing

Size of Water Tap	☐ 3/4" ☐ Other: _____	Meter #	
Size of Sewer Tap	☐ 4" ☐ Other: _____	MXU #	

Tap Fee – Water	$
Tap Fee – Sewer	$
Installation / Meter / Can Fee	$
PRV Charge	$
Escalator Fee	$
Other	$

Total Fees Due:
$ _____

Date Paid:
_____ ☐ **Cash** ☐ **Check #** _____

Comments:

_____

_____

_____

Filed in Tap Books by Date

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

To: Planning Commission
From: Shay Coburn, Town Planner
Date: January 26, 2021
Re: Landscaping Regulations Update

BACKGROUND

This will be the third public meeting to discuss updating the Town's regulations regarding landscaping. The first discussion occurred at the Planning Commission meeting on October 27, 2020 and the second discussion occurred at the Planning Commission meeting on December 22, 2010 (see Attachment 1). The December meeting was cut short near the start of this discussion due to a power outage throughout town. As such, the below information is basically the same as prepared for the December meeting but with input received shown in *blue text*.

DISCUSSION

Below are the major topics that came up during the first meeting. Each topic includes proposed regulations, considerations as well as questions for discussion (in *italics)*. The *blue text* shows comments received after the December meeting for the Commissioners and public to consider and the provide direction on.

1. Plant Species

A. Proposal, applicable to all development:

i. Create list of drought tolerant/xeric/native species for trees, shrubs and ground cover. Many resources exist that could inform a list for the Town. The Town already has a Tree Brochure that is currently being updated.

- *Susan: best to us "water wise" rather than xeric scaping … some people confuse it with zero, meaning no landscaping which is not what we want.*

ii. Retain existing list of prohibited species, consider adding to this list (like those species that take a lot of water).

- *Susan: Cottonwoods are actually native, not seen another municipality prohibit a native tree. Promoting non bearing trees (females) is leading to an increase in allergies due to the pollen from male trees. The majority of elms that are a nuisance in Colorado is the Siberian elm. The Chinese is often confused with it. https://planttalk.colostate.edu/topics/trees-shrubs-vines/1746-elm-trees/*
- *Chase: Not vital but maybe add Tamarisk (Tamarix) to the list as well.*

iii. More clearly disallow all noxious weeds as identified by Ouray County: https://ouraycountyco.gov/155/Weed-Control

B. Questions:

i. *Encourage, require a certain percent, or require all species to be on the drought tolerant/xeric/native species lists?*

- *During the December meeting the conversation was going toward make short list of prohibited, rather than list all that are allowed.*

- *Russ: Making this a requirement seems to directly conflict with 4.B.iv Encourage or require rain gardens? I believe we should encourage, or potentially require a certain percentage of native/water-wise plantings, but not require drought tolerant plants. More education on the water conditions in our high-desert area should be provided to new residents and developers. This would also be good for several of our existing residents as well.*
- *Jennifer: I am torn between encouraging and requiring. I agree with Bill that encouraging and education is very important and might be the respectful way to let our community do the right thing. I really loved the tree brochure. It was extremely helpful, full of information and the pictures and colors brought it to life. I also love the Denver Water Handbook located here: https://www.denverwater.org/sites/default/files/2017-05/Water_Wise_Landscape_Handbook.pdf. Education is such a big part of this and is something I hope to help with in the future and is the goal of the Land And Water Committee. However, when I continue to read the information that I have received from Waverly Claw and the water conservation websites for our region, they really push for setting requirements instead of encouraging because we live in a desert and we are in extreme drought. I would like to see a plant drought tolerant list and push to prohibit high water use species. I would also like to see fire wise plant material included. We live in such an area that a main concern is wild land fires. The Water Savings Guidance Northwest Council of Governments recent publication for our part of Colorado highly recommends the following: Specify plant material, provide specific plant lists, limit turf to a certain percentage of total development or square feet. Include fire wise and water efficient, low growing, non resinous plants.*
- *John: As Susan suggests, replace "xeric" with "water-wise" everywhere. Allow for all these, but take site-specific conditions into account, where possible. Species list needs to be discussed in more detail.*
- *Thomas: I would lean towards encouraging large %s of lot area to be Xeriscaped and requiring maybe 50% or more of a lot's landscaping to be drought tolerant, Xeriscaped, native species.*

ii. *Allow exception for fruit/veggie garden?*
- *Russ: We have to continue to allow people to have fruit and vegetable gardens. This is extremely important for several people in our area who produce food in their gardens.*
- *Susan: Absolutely, though limited on fruit species.*
- *Jennifer: Of course, I encourage veggie/fruit gardens and allow a percentage for flowerbeds.*
- *Thomas: Yes, I think we should not deter such plantings.*

iii. *Allow percent or area for flower gardens?*
- *Russ: We need to continue to allow flower gardens. Again, extremely important for some people and brings joy to people, not just the owners of the gardens.*
- *Susan: Beautification, how about annual flower beds?*
- *Thomas: Yes, I think we should not deter such plantings as long as they are reasonable and in limited but appropriate locations.*

iv. *Prohibit or limit high water use species?*

- *Russ: Again, this conflicts with the proposed use of rain gardens/swales/drainages and directed downspout areas. I believe we should highly recommend the use of native/water-wise plants and possibly limit the quantity of high-water use plants. Site variability would have to be taken into account. If there were high water runoff areas that could accommodate rain gardens and high-water use plants.*
- *Susan: Unless the area is naturally wet.*
- *Thomas: Would love to restrict these, but if we are to allow for flower/veggie gardens, then we probably should allow for a small amount of such high water options in limited amounts.*

v. *Other considerations for plant species?*
- *Russ: I see it best to provide guidance on best plants for the area, but not be overly restrictive and prohibit diversity and healthy landscapes.*
- *Susan: thorns or spines?*

2. Trees and Shrubs, location and number required

A. Proposal, applicable to all development:

i. Remove requirement for front and street side yard placement for trees and shrubs. Encourage the right plants to go in the right place – water lovers where they will get water, sun lovers where they will get sun, spaced properly for root growth, where they will be most useful on the property, grouped according to water needs, outside of sight triangles, not to interfere with solar access for a neighbor, etc.

ii. Maintain minimum sizes of 1.5" caliper for deciduous, 5' tall for evergreen, and 5-gallon for shrubs.
- *John: Yes to everything in 'i' and 'ii'.*

iii. Require 1 tree OR 4 shrubs per 2000 square feet of lot area for all but HB District (which has no minimum). Larger lost will require more trees and shrubs. No extra requirements for corner lots. Rounding per current regulations would remain the same, "In the case of fractional requirements for the number of trees and shrubs, the number required shall be rounded to the nearest whole number."

iv. For lots with native vegetation (to be defined), set requirement for minimum number of trees and shrubs based on disturbed area (to be defined). This would be most applicable to lots in subdivisions like Vista Terrace and RiverSage. This encourages less disturbance of native vegetation and will likely result in a more reasonable number of trees and shrubs for larger more natural properties.
- *John: 'iv' needs some discussion too. It seems vital that we do everything possible to minimize disturbed areas. I think some educational brochure about this, done with Susan's help, would go a long way in helping with this.*

v. For non-residential uses, transition some of the Commercial Design Guidelines into requirements of the code:

a. Require trees throughout parking areas.
- *Susan: Avoid 4x4 tree pits, best to have in a long planting bed then little planters, 8' minimum width for adequate tree growth and to prevent root damage to hardscape and allowing trees to mature.*

b. Require landscaped and/or planted buffers to be utilized to mitigate the view of development, noise, heat, odor, pavement, parking areas, large utility boxes, storage areas, other unattractive views, higher intensity uses, and other potential negative effects of development from surrounding development and rights-of-way. However, placement should also consider underground utilities and potential maintenance needs.

B. Questions:

i. *Current regulations encourage maintaining established trees and shrubs. Is there any appetite for requiring this? Or perhaps incentivize by counting existing trees and shrubs of a certain size for more than one new plant?*

- *Russ: I don't see the need to require maintaining established trees and shrubs, as I believe most people will want to retain what's already there unless there is an allergy problem or something similar. I have several of the town's least preferred trees on my lot. If I did decide to remove them, I would replace them with something better suited to the environment and more agreeable to the town's guidelines.*
- *Susan: Trees take 7-12 years to pay off their carbon load from being produced and planted. Trees should be looked at for condition of health, are they worth saving, is there the space to protect their root system? Is there a plan to protect these existing plants during construction? I would recommend a minimum of the drip line for trees, more would be better with NO storage under the trees, construction fencing should be installed prior to construction to protect valuable plants.*
- *John: Susan's Comments on these questions are spot on. It's really important that valuable trees and shrubs are maintained, but not all that many are really valuable.*
- *Jennifer: Trees and plants are essential to the provision of ecosystem services and they found in studies that water spent on trees actually saves water through reductions in transpiration and lowering the urban heat island effect. I highly recommend that we encourage maintaining establish trees and shrubs. And replanting new trees and shrubs that were taken out for construction.*
- *Thomas: It is best to encourage owners to work with and/or maintain existing trees and shrubs whenever possible. Some may want to obliterate their lot and landscape afterwards in a different design. I feel that is also acceptable, but then we have to be more thorough about confirming that the final arrangement is equal to or exceeding what existed originally. All lots should adhere to our new landscaping regs. I do not think we should incentivize by counting existing trees and shrubs of a certain size for more than one new plant.*

ii. *Is 1 tree or 4 shrubs per 2000 square feet of lot area the right balance?*

- *Russ: That would seem about right to me.*
- *Chase: I could see changing to 3000sf. That's mean 2+ trees or 8 shrubs per Riverpark lot which is reasonable to me. However, with mortality rates and no one replanting after they get checked off it may result in lower numbers.*
- *John: I think we need to discuss numbers of plants per sq. ft. of lot area, because it really depends on what species of trees and shrubs are being used, right? And again, that minimum number of trees/shrubs per lot or 2000 sq. ft. seems really arbitrary. Not sure how else to do it though, unfortunately...*

- *Thomas: That is about 45' x 45' of area. Obviously, trees need some room to grow as they mature. So, what we see in the early years of a newly landscaped lot will feel somewhat bare. Or sparse. Some of this will depend on what type of tree or shrub is installed. Some grow quickly and spread out while others grow slowly and are more slender in appearance. Does this mean we get more specific and arrange spacing per the types/species of vegetation is specified? I think this balance is close, but I would like to see a tad more. Maybe 1 tree per 35' x 35'?*

iii. *Set min. of 1 tree and 4 shrubs for all lots? Then add 1 tree or 4 shrubs past the first 2000 sf of lot area?*

- *Russ: I'd like to see how this (1 tree or 4 shrubs/2000 sf) would affect most of the planned lots in town. I don't believe there are that many large lots that this would impact in terms of new build. I'm guessing this would apply more to locations like Alpenglow Co-housing or Vista Park Commons? For those larger PUD locations I would agree with the minimums recommended.*
- *Susan: Depends on how big the shrubs get, 5 is a good design number.*
- *Chase: I like having a minimum like this.*
- *Jennifer: The biggest tree can take up to 1600 square feet so 2000 square feet sounds like a good balance. Or anywhere in between. Yes please add past the first 2000.*
- *Thomas: 1 tree and 4 shrubs is way too little for any one lot. So, yes, I would like to see more. I am guessing that you are meaning 1 tree and 4 shrubs for every additional 2000 sq. ft. of lot which is not built on? If so, then yes, I would like to support a heavier application of trees and shrubs.*

iv. *Are there other items in the Commercial Design Guidelines that should be incorporated?*

- *Russ: Where large parking areas are required in PUDs like Co-housing, Vista Park Commons, and Lena Commons they should be required to have trees in parking areas. I'd also like to see additional plantings between sidewalk and buildings to help soften the buildings especially if setbacks have been reduced from standards.*
- *Thomas: Commercial is tougher since the lots are more likely to be maxed out on building footprint vs. open landscaped area. In most applications I can imagine, I suggest that our requirements are not too high and that at a minimum there is a tree along the street front/ sidewalk (which is more a responsibility of the Town than the lot owner).*

v. *Other considerations for the location and number of trees and shrubs?*

- *Jennifer: Other considerations would be trees along main streets for parking and to reduce storm Water runoff.*
- *Thomas: Just want to emphasize again that plants grow slowly here esp. trees. It takes them a long time to mature and come into their full expression. Thus, all need to understand that what is proposed and how long it takes for it to really be as desired is a long time requiring patience and long term vision.*

3. Ground Cover, location and amount required

A. Background

i. Artificial turf, inorganic mulches, and plastic weed barriers are not good for soil quality and water quality.

- *Susan: Does inorganic mulch include rocks or just plastic materials? I would argue there is a place (use) for artificial turf and would consider using in the right function. CSU Extension no longer recommends weed fabric as roots rise and girdle within 3 years, and about that same time soil starts to accumulate on top allowing for weeds to grow on top. Fabric is only recommended under materials where there will be no root systems.*

B. Proposal:
   i. Hard surfaces, paved areas and other artificial surfaces should be kept to a minimum and only used for patios, walkway, driveways, parking areas and other areas of high use. The Town's new stormwater regulations encourage less hard surfacing since the more that is added, more mitigation is required. By requiring a certain amount of the non-built area of a lot to be landscaped (see below), the amount of hard surface is inherently limited.
      - *Susan: What about permeable hardscape materials?*
   ii. Keep regulation that states "groundcover must be adequate to ensure that dust cannot blow from the property and that the soil is stabilized to ensure that erosion is kept to a minimum." Add additional detail:
      1. No more than 1,500 sf or 20% of non-built area can be high water use turf like Kentucky Bluegrass. Turf should only be used in areas that will be of high use.
         - *Susan: There are many new varieties of Bluegrass that are much more drought tolerant than bluegrass varieties of the past, but many people have not learned to properly water. Is there a watering maintenance piece?*
         - *John: I love Susan's comments here too. Permeable hardscape should be considered where something impermeable would usually be used. Minimize turf, but require the latest low-water use varieties when people want it.*
      2. Minimum landscape area. Landscaped areas could include native or no-mow grass, other grasses, wildflowers, planting beds, and mulched (i.e., wood chips and cobbles) areas. "Landscaped" does not include parking/driving areas, concrete walkways, patios and the like. Each tree shall count for 120 sf and each bush shall count for 20 sf toward the landscaped area requirement. The limit on the amount of river rock or cobbles would be removed.
         - *Susan: I would recommend that landscape designers and architects be required to draw plants at maturity, at least 5-10 years of age to help determine coverage.*
         - *Chase: An interesting thought on how to count trees and shrubs. I am wondering if instead of requiring X trees/shrubs per sf you utilize this to encourage planting and offer a space sensitive solution. Can still have minimum requirement but would prevent having two formulas you have to abide by (and check).*
         a. Residential uses: A minimum of 70% of all non-built area on a parcel shall be required to be landscaped per the description above.
         b. Non-residential uses: A minimum of 20% of the non-built and parking areas on a parcel shall be landscaped per the description above.
            - *Susan: is this at maturity or at planting?*
            - *Chase: Clarify term non-built to be sure that driveways, concrete, etc. doesn't count… we don't want to encourage larger homes to have less landscaping or people to pave more areas rather than do landscaping.*

3. Organic mulch (i.e., wood chips, hay) is encouraged as it is helps maintain moisture and temperatures, control weeds and dust, and improve soil quality.
    - *Susan: Wood mulch is highly recommended as it slowly improves soil and does not increase heat like rock mulch.*
    - *John: Allow mulch, but also allow for 'astroturf'-type treatments as well.*

iii. Questions:

1. *Is the area allowed for high-water use turf too much or to little?*
    - *Russ: I would see this being a site variable thing. If there are no drainages/swales, or sufficient directed downspout areas then this could be too much. If there were high occurrence of these high water areas then more might be acceptable.*
    - *Jennifer: Area allowed for turf seems to be too much at 20%. But I do like the exception for high use areas. I think it's a great idea to have turf for playing fields and areas that are used like for doggie walks. But to discourage residents from it that do not put them in use. That is the single most waste of water that does not go back into the ground for reuse. I think the percentage of water being used for lawns is a ridiculous 75% for Colorado. Not sure what it is for Ridgway.*
    - *Thomas: We have 2 small patches of grass for our kiddo to play on, but they are well placed and small, yet effective in their usefulness and aesthetics. I would encourage similar or smaller %s of landscaped areas.*
2. *Anything else that should be included in the definition of "landscaped"?*
    - *Thomas: Since we want to encourage well and thoroughly designed and installed landscaped areas, I would say anything that is not hardscape or built on would be viable landscaping areas which would be ideal to have some sort of ground cover.*
3. *Is area required to be landscaped for residential uses and non-residential uses too much or too little?*
    - *Russ: Residential seems fine, but I'm concerned the non-residential requirements may be too high.*
    - *Thomas: Each lot is unique and each owner has differing thoughts on investing and the aesthetics of their landscaped property . . . therefore, it might be difficult to ascertain what is the optimal % of landscaped area on such lots, but I would err on the stated amount or more, definitely not less.*
4. *Do you want to require a certain amount of live vegetation (maybe including organic mulch like bark, pine needles, chipped wood) to be used in the minimum landscape area? Or will the minimum tree/shrub requirement be enough?*
    - *Russ: If we used the 70 & 20% requirements and organic mulch was included in those percentages that should be fine.*
    - *Chase: I think whatever is decided on for tree/shrub req should satisfy the min live vegetation requirement.*
    - *Jennifer: As you already know I am a big fan for mulching and would like something put into our landscaping code that says the following: A minimum of 3 inches layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting ground covers or direct seeding application where mulch is contradicting. Mulch is inexpensive and is the best way to regenerate the soil. It*

also reduces weeds and dust. And minimizes watering. There is no reason why this shouldn't be part of our landscaping regulations.

- *Thomas: In order to maintain moisture, reduce dust and improve aesthetics, I would encourage any of such sorts of ground cover like mulches, wood chips, etc.*

5. *Other considerations for ground cover?*
   - *John: We need to make aesthetic allowances for people who want minimally planted yards, especially as drought is more likely.*
   - *Thomas: There is always the implementation of decorative rock work like lava rock or river stones or crushed granite or chunky rip-rap.*

4. Water Conservation

A. Background:

i. The Town has a Water Conservation and Management Plan that was last updated September 2018. This plan contains stages with trigger conditions, goals and actions to conserve and manage Ridgway's water.

ii. Per RMC 9-1-28 Water Wasting is always discouraged and prohibited during certain stages of the Water Conservation and Management Plan.

B. Proposal and Questions:

i. Use of grey water is encouraged where allowed by the state. It is the property owner's responsibility to research and verify up-to-date state regulations.
   - *Russ: The use of greywater (laundry to landscape) should be encouraged in order to reduce the use of purified water on landscape.*

ii. *Encourage or require efficient irrigations systems?* This could include drip systems, rain sensors, moisture sensors, efficient emitters, watering deeply and infrequently, and more. *Want to require for landscaped areas of a certain size, like larger areas or maybe just for those areas that are to be shared by residents?*
   - *Russ: Encourage. Requirement of efficient irrigations systems creates an added cost that is not necessarily in the reach of our constituents.*
   - *Jennifer: I would like to highly encourage or require drip systems, rain and moisture sensors and automatic systems that can be used in case of a fire. I am not familiar with what types of systems would be best for certain size landscaping and if or when we should have requirements. But I'm all for pushing it as much as possible.*
   - *Susan: Drip irrigation does not sufficiently sustain established trees unless there is a network of drip emitters. Trees should root out to a minimum of twice their height. I would recommend people have an irrigation maintenance plan to address the spread of root systems as plants mature. Drip only effectively waters trees their first 4 months after being planted. Once trees are established, depending on the soil, aspect and tree species, they may only need water every 10, 20 or 30 days.*
   - *Chase: Good thought to require for larger systems such as common areas serving greater than a duplex (or tri).*

iii. *Encourage or require soil amendments?* The right soil helps control moisture.
   - *Russ: Encourage, strongly.*
   - *Chase: Hard to enforce if required. I'd guess most people and all professionals do anyhow.*

iv. *Encourage or require rain gardens?* Per EPA, "A rain garden is a depressed area in the landscape that collects rain water from a roof, driveway or street and allows it to soak into the ground. Planted with grasses and flowering perennials, rain gardens can be a cost effective and beautiful way to reduce runoff from your property. Rain gardens can also help filter out pollutants in runoff and provide food and shelter for butterflies, song birds and other wildlife." These are great for dealing with parking areas runoff as they help filter the water before entering back into the system. The Town's Stormwater Master Plan and the Commercial Design Guidelines already encourage the use of rain gardens. *What about requiring a rain garden for increases of imperviousness over 0.05 acres?* This would align with and reinforce the stormwater regulations. *(last two sentence from Chase)*
   - *Russ: Strongly encourage. Especially in areas where the terrain or modified landscape is conducive to rain gardens. There are areas though where no matter how much money, time, and effort are thrown at it that a rain garden will not work in this area, especially in high drought conditions.*
   - *Jennifer: Again, to encourage or require rain gardens and rain water retention is a fine line. I would like to hear what the other commissioners have to say and their input. And if they would like to encourage and educate, are they willing to help with doing that throughout the community? It's so easy to say but to actually have it put into place is a different story and takes a lot of effort and time.*

v. *Encourage or require rain water retention?* This can be used for irrigation per CRS, see here: https://www.cityofaspen.com/DocumentCenter/View/142/Division-of-Water-Resources-Rainwater-Collection-Information-Table-PDF.
   - *Russ: Strongly encourage. Again, I think requiring something like this will only result in added costs that our constituents may not be able to readily afford.*

   - *John (per all items above): We need to be as cutting-edge here as possible too. Grey water – YES! Efficient irrigation – YES! Proper soil amendments – YES! All of the above, in general. Again, educational materials supporting these kinds of things will essential, and hopefully Susan (or others) can help with that.*

5. Miscellaneous

A. *Should the Town require the use of a certified landscape architect in certain situations? Maybe for residences larger than 5000 sf, lots of a certain size, subdivisions, multi-family, and/or commercial development?* This would ensure thoughtful and professional design for these larger areas likely resulting in better landscaping plans.
   - *Russ: Ahhhhh, this is a tough one. Again, I see requiring this as an added cost that is not easily afforded. There may be some place for this in larger developments, but again the cost will be passed on to the purchaser which at the end of the day will result in even higher costs and not making this town an affordable place to live.*
   - *John: This is a tough one, as it would be an expense many won't want to spend.*
   - *Thomas: Yes, I like this of course, but am worried that what usually happens is that people run out of money and time by the time they get to the landscaping phase and therefore it is one of the design elements which suffers the most in the completion and final presentation*

of the property. Thus, I want to encourage investing the time, energy and finances to be kept aside in order to be applied to landscaping so as to not get lost in additional foundation expenses therefore never coming to fruition around the property. On the other hand, I find most folks do not care, may not have the money or time or interest in hiring a professional designer. Certainly, this would ensure thoughtful and professional design for these larger areas likely resulting in better landscaping plans, but we also do not want to place an unreasonable burden on the owner too. A good example is the Greydanus property on Sabeta in Solar Ranch. Just completed, hired Ned Bosworth and exceeded the Town's requirements. Place looks great and is a complete and thorough design which spans from lot line to lot line.

B. *When should landscape plans be due and reviewed?* Considerations:
   i. *Will changing the timing be helpful to our goals for this update: promoting water conservation, aligning the two landscaping sections, costs of landscaping, etc.?*
      - *Russ: If we go forward with implementing at least some of these ideas then yes, we should have the landscaping plan provided with the building design to ensure owners/developers are using the default of modified site characteristics to allow the planting of a rain garden, rather than locating a house in the low spot on the lot.*
      - *Thomas: I think landscaping plans should be submitted at time of building application. That will allow for plenty of time to review. That written, I would also be ok with detailed landscaping plans to be submitted during the construction process. Like I mentioned above, many have grandiose intentions when they begin, which often get whittled down as the money goes to unexpected issues. Thus, what they may submit initially may never actually be installed if the budget gets blown apart. Therefore, it may be better to let owners submit during the construction process when they have a better idea of what they can afford near the end. On the other hand, having a detailed and thorough landscape plan at the inception will allow for better installation and implementation and sequencing with all of the other trades as the project evolves.*
   ii. *Would someone potentially build differently based on their landscaping (i.e., disturb less area, change site grading, etc.)?*
      - *Thomas: Yes, if they are thoughtful and prepared and integrated in the process.*
   iii. *If not required at building permit, when could plans be required? At frame inspection?*
      - *Chase: I could see not requiring a final at building permit but requiring them to illustrate they have space available to accommodate the minimum requirement.*
      - *John: Requiring landscaping plans early in the process should result in better outcomes.*
      - *Thomas: Maybe at time of the final framing inspection. By then the bulk of the structure will be in place and folks should have a decent idea of the remaining budget and timing…?*
   iv. *Will the benefits of accepting and reviewing landscape plans later in the building process outweigh the need for additional staff time?*
      - *Russ: Probably best answered by staff.*
      - *Thomas: Not sure.*

C. *Should the code allow for administrative approvals of landscaping plans that deviate within a certain amount?*

- *Russ: Yes. We don't want the plans to be overly restrictive and allow for diversity that Susan Carter supports.*
- *John: Yes!*
- *Thomas: Sure. I find that there will always be unique situations which might require the ability to be flexible with the requirements, but that should be presented so, maybe as a hardship so that most other typical or standard lots will still be able to adhere to the expressed regular requirements.*

D. *Would a Town promotion of sorts about Xeriscaping: How to Retrofit Your Yard be helpful in achieving the Town's goals toward landscaping updates?* The promotion efforts could help encourage existing landscaping throughout town to be converted into xeriscape.

- *Russ: I think this would be a great idea.*
- *John: Yes!*
- *Thomas: Yes. I like this. Maybe we have a list of low water species, examples of ground cover and vegetation options that fulfill our intentions. Additionally, if it were possible, I like the idea of financial incentives for current and future improved lots. Maybe the Town offsets some of the permit fees or otherwise to encourage better landscaping as long as the requirements are maintained? Obviously, we want as much of this in our Town as the residents can afford and are willing or inspired to commit to.*

ATTACHMENT

1. Meeting packet provided for December 22, 2020

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

To: Planning Commission
From: Shay Coburn, Town Planner
Date: December 22, 2020
Re: Landscaping Regulations Update

BACKGROUND

This will be the second public meeting to discuss updating the Town's regulations regarding landscaping. The first discussion occurred at the Planning Commission meeting on October 27, 2020 (see attachment 1 for the full meeting packet). Here is a quick summary of the feedback received from the meeting:

- Keep regulations flexible: allow for people's own style, allow for site specific design, consider existing site conditions, have regulations that adapt to historic business area vs. dense residential vs. rural residential.
- Keep regulations simple: don't make them too complicated with things like soil regulations, water budgets, or hydrozones.
- Ensure that landscaping requirements restrict weeds and dust.
- Current regulation for 50% min. grass/turf in front and street side yards is too much; noted that regulations use the term "live vegetation" which does not have to be grass.
- Current regulation for 10% max. of cobble/gravel in front and street side yards should be increased or removed.
- Make list of appropriate trees/shrubs/plants easily available; limit/encourage species to those that are more water-wise and regionally appropriate.
- Make it easier to use less water or require less water use.
- Consider encouraging us of turf/imitation materials.
- Better align the two landscaping regulation sections (6-1-11 with 6-6) and the commercial design guidelines.
- Consider costs of any new regs, be sure they are not more expensive.
- Limit paved/gravel drive areas in front yard so people don't build more driveway to avoid having to install landscaping; we need permeable surfaces to help with stormwater drainage.
- Incentivize efficient irrigation systems.
- Consider if landscape plans could be submitted for review later in building process.

EXISTING REGULATIONS

RMC 6-1 Building Regulations
6-1-11 Landscaping

(A) All applications for a building permit for new construction or exterior work on any existing structure shall submit a Landscape Plan for the premises meeting the following requirements:

(1) The Landscape Plan shall be drawn to scale of 1 inch = 40 feet, or larger, and may be included on the Site Plan.

(2) The Building footprint, driveways and vehicle circulation shall be shown and located to scale.

(3) Surface drainage characteristics and proposed structures must be shown.

(4) Existing and all proposed groundcover, including shrubs and lawns shall be shown.

(B) The plan must provide for the following minimum landscaping elements:

(1) Groundcover must be adequate to ensure that dust cannot blow from the property and that the soil is stabilized to ensure that erosion is kept to a minimum.

(2) A minimum of one (1) tree per 2,000 square feet of gross lot area in all zones except Historic Business shall be provided. Trees shall have a minimum caliper of 1-1/2" for deciduous trees and five foot minimum height for evergreens. Trees should be located in such a way that they will not infringe on solar access and views of the adjoining properties or block vehicular sight lines to public roadways.

(C) Landscaping Guidelines are as follows:

(1) Existing trees and groundcover on the property are encouraged to be retained and not destroyed during the construction process. These plants will be counted towards the minimum standards.

(2) Xeriscape landscaping and drip irrigation are encouraged. Large irrigated areas are discouraged.

(3) Siberian elm and Chinese elm (Ulmus); Cottonwoods that bear cotton (Populus); Purple Loosestrife (Lythrum slaicaria); Russian Olive (Elaeagnus angustifolia) are prohibited.

(4) The Town Manager is authorized to prohibit additional species with similar nuisance properties.

(D) The building permit shall not be issued until a conforming Landscape Plan is approved by the Town.

(E) A permanent Certificate of Occupancy will not be issued until the Town determines that the landscaping contemplated by the approved plan has been properly installed. A temporary Certificate of Occupancy may be issued if completion is delayed by winter weather.

(F) Following completion of the landscaping, the owner or occupant of the property shall maintain it in good condition thereafter. Failure to so maintain the landscaping is unlawful and is hereby declared to create a nuisance.

(G) Intent: Landscaping is an important element of the experience of the Town of Ridgway that is both functional and aesthetic. Priorities for Landscaping include: low-water use, regionally appropriate design for materials and vegetation. These landscaping regulations will endeavor to provide for an attractive, well-maintained landscape that preserves the overall quality and appeal of the community; provides visual buffers and screens; achieves pedestrian and vehicular separation; preserves and enhances the existing visual character of the community; mitigates adverse effects of drainage and weeds, and conserves water resources. A list of recommended species for use in Colorado is available from the Ouray Country Weed Manager and the Colorado State University Extension Service. The lists are not all inclusive but do recommend a variety of plants known to do well in our region of Colorado. In general, plants that are not recognized as hardy or suited to the local climate should be kept to a minimum. Xeriscaping and drought-tolerant and water-saving plants are to be used whenever possible and appropriate. Within the General Commercial District landscaping is important to the drainage, circulation and aesthetic of commercial developments. With larger sites and several buildings, there is

the opportunity to create cohesive, appealing and efficient landscape plans that elevate the site as a whole. Landscaping should be used to promote the visual aesthetic of the development from main travel corridors, as well as the pedestrian experience within, through shade trees, plantings, context-appropriate public art and seating. Buffers and medians facilitate drainage during storm events and also provide valuable areas for snow storage during the winter. Landscaping that is visually appealing, functional, and sustainable is desirable for all new development within the General Commercial District.

RMC 6-6 Residential Design Standards
6-6-4 Development Standards

(G) Landscaping[1]: In addition to the requirements of Subsection 6-1-11, the site shall be landscaped to meet the following minimum standards:

(1) Trees: A minimum of one tree per 2000 square feet of gross lot area shall be provided in all zones except Historic Business. Trees shall have a minimum caliper of 1 ½ inch for deciduous trees and a five-foot minimum height for evergreens.

(2) In residential zoning districts, trees and shrubs may be placed in any landscape configuration and arranged to compliment the structure. However, of the required trees, a minimum of one tree shall be located in the front yard for each 25 foot of street and on corner lots, one tree shall be located in the street side yard for each 50 foot of street side yard frontage. Landscape elements shall not be located where, at mature size, they will block vehicular sight lines at corners or to public roadways. Where possible, trees should be located in such a way, or be a type, that they will not infringe on solar access and view of the adjoining properties.

(3) Shrubs: The front and street side yard shall include a minimum of one shrub (5-gallon size) per 10 feet of front and side street frontage.

(4) In the case of fractional requirements for the number of trees and shrubs, the number required shall be rounded to the nearest whole number.

(5) Groundcover: Groundcover must be adequate to ensure that dust cannot blow from the property and that the soil is stabilized to ensure that erosion is kept to a minimum. A minimum of 50% of the front and street side yard shall be covered with live vegetation. The remaining area can be vegetative materials, organic or inorganic mulch, flowerbeds, or other acceptable landscape material. River rock, stone or cobbles, if used, shall not exceed 10% of the front or street side yard area. (Driveway area of minimum length and width to provide access and parking shall not be included in the 10% calculation of stone or rock covered area).

Commercial Design Guidelines
II. General Commercial District

b. Site Planning and Parking

8. Trees should be incorporated to provide parking lot shading.

[1] This cross reference is based on Ordinance 03-2020 that has not yet been codified.

9. Use of landscape/grassed catchment areas and similar designs should be used for managing, controlling and filtering parking lot/site drainage and is part of an overall site drainage plan.

e. Screening and Buffers

Screening and landscape buffers soften the negative impacts of development and can provide a certain element of safety in commercial areas where significant pedestrian interactions are more likely to occur.

Buffers should be constructed to mitigate the view, light pollution (including light trespass and glare), noise, heat, and odor impacts of vehicles, pavement, and higher intensity uses, and other potential negative effects of development.

Buffering may be achieved through a variety of means including but not limited to plantings, fences, walls, site planning, and berming with live vegetation.

Parking areas, outside trash receptacles, large utility boxes, open storage areas, conflicting land uses, mechanical systems and other unattractive views should be screened from the street and public right of way.

Screening of utility boxes, trash enclosures, and similar uses should be around all sides except for those required for access, which will be screened with a gate on the access side.

III. Historic Business District (Historic Town Core)

e. Screening and Buffers

Screening and landscape buffers soften the less desirable impacts of development and can provide a certain element of safety in commercial areas where significant pedestrian interactions are more likely to occur.

Buffers should be constructed to mitigate the view, light pollution (including light trespass and glare), noise, heat, and odor impacts of vehicles, pavement, and higher intensity uses, and other potential negative effects of development.

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DISCUSSION

Below are the major topics that came up during the first meeting. Each topic includes proposed regulations, considerations as well as questions for discussion (in *italics)*.

1. **Plant Species**
   A. Proposal, applicable to all development:
      i. Create list of drought tolerant/xeric/native species for trees, shrubs and ground cover. Many resources exist that could inform a list for the Town. The Town already has a Tree Brochure, see attachment 2.
      ii. Retain existing list of prohibited species, consider adding to this list (like those species that take a lot of water).
      iii. More clearly disallow all noxious weeds as identified by Ouray County: https://ouraycountyco.gov/155/Weed-Control
   B. Questions:
      i. *Encourage, require a certain percent, or require all species to be on the drought tolerant/xeric/native species lists?*
      ii. *Allow exception for fruit/veggie garden?*
      iii. *Allow percent or area for flower gardens?*
      iv. *Prohibit or limit high water use species?*
      v. *Other considerations for plant species?*

2. **Trees and Shrubs**, location and number required
   A. Proposal, applicable to all development:
      i. Remove requirement for front and street side yard placement for trees and shrubs. Encourage the right plants to go in the right place – water lovers where they will get water, sun lovers where they will get sun, spaced properly for root growth, where they will be most useful on the property, grouped according to water needs, outside of sight triangles, not to interfere with solar access for a neighbor, etc.
      ii. Maintain minimum sizes of 1.5” caliper for deciduous, 5’ tall for evergreen, and 5-gallon for shrubs.
      iii. Require 1 tree OR 4 shrubs per 2000 square feet of lot area for all but HB District (which has no minimum). Larger lost will require more trees and shrubs. No extra requirements for corner lots. Rounding per current regulations would remain the same, “In the case of fractional requirements for the number of trees and shrubs, the number required shall be rounded to the nearest whole number.”
      iv. For lots with native vegetation (to be defined), set requirement for minimum number of trees and shrubs based on disturbed area (to be defined). This would be most applicable to lots in subdivisions like Vista Terrace and RiverSage. This encourages less disturbance of native vegetation and will likely result in a more reasonable number of trees and shrubs for larger more natural properties.

v. For non-residential uses, transition some of the Commercial Design Guidelines into requirements of the code:
   a. Require trees throughout parking areas.
   b. Require landscaped and/or planted buffers to be utilized to mitigate the view of development, noise, heat, odor, pavement, parking areas, large utility boxes, storage areas, other unattractive views, higher intensity uses, and other potential negative effects of development from surrounding development and rights-of-way. However, placement should also consider underground utilities and potential maintenance needs.

B. Questions:
   i. *Current regulations encourage maintaining established trees and shrubs. Is there any appetite for requiring this? Or perhaps incentivize by counting existing trees and shrubs of a certain size for more than one new plant?*
   ii. *Is 1 tree or 4 shrubs per 2000 square feet of lot area the right balance?*
   iii. *Set min. of 1 tree and 4 shrubs for all lots? Then add 1 tree or 4 shrubs past the first 2000 sf of lot area?*
   iv. *Are there other items in the Commercial Design Guidelines that should be incorporated?*
   v. *Other considerations for the location and number of trees and shrubs?*

3. Ground Cover, location and amount required

A. Background
   i. Artificial turf, inorganic mulches, and plastic weed barriers are not good for soil quality and water quality.

B. Proposal:
   i. Hard surfaces, paved areas and other artificial surfaces should be kept to a minimum and only used for patios, walkway, driveways, parking areas and other areas of high use. The Town's new stormwater regulations encourage less hard surfacing since the more that is added, more mitigation is required. By requiring a certain amount of the non-built area of a lot to be landscaped (see below), the amount of hard surface is inherently limited.
   ii. Keep regulation that states "groundcover must be adequate to ensure that dust cannot blow from the property and that the soil is stabilized to ensure that erosion is kept to a minimum." Add additional detail:
      1. No more than 1,500 sf or 20% of non-built area can be high water use turf like Kentucky Bluegrass. Turf should only be used in areas that will be of high use.
      2. Minimum landscape area. Landscaped areas could include native or no-mow grass, other grasses, wildflowers, planting beds, and mulched (i.e., wood chips and cobbles) areas. "Landscaped" does not include parking/driving areas, concrete walkways, patios and the like. Each tree shall count for 120 sf and each bush shall count for 20 sf toward the landscaped area requirement. The limit on the amount of river rock or cobbles would be removed.
         a. Residential uses: A minimum of 70% of all non-built area on a parcel shall be required to be landscaped per the description above.
         b. Non-residential uses: A minimum of 20% of the non-built and parking areas on a parcel shall be landscaped per the description above.

3. Organic mulch (i.e., wood chips, hay) is encouraged as it is helps maintain moisture and temperatures, control weeds and dust, and improve soil quality.

iii. Questions:

1. *Is the area allowed for high-water use turf too much or to little?*
2. *Anything else that should be included in the definition of "landscaped"?*
3. *Is area required to be landscaped for residential uses and non-residential uses too much or too little?*
4. *Do you want to require a certain amount of live vegetation (maybe including organic mulch like bark, pine needles, chipped wood) to be used in the minimum landscape area? Or will the minimum tree/shrub requirement be enough?*
5. *Other considerations for ground cover?*

4. Water Conservation

A. Background:

i. The Town has a Water Conservation and Management Plan that was last updated September 2018 (see attachment 3). This plan contains stages with trigger conditions, goals and actions to conserve and manage Ridgway's water.

ii. Per RMC 9-1-28 Water Wasting is always discouraged and prohibited during certain stages of the Water Conservation and Management Plan. See code language in attachment 4 for more information.

B. Proposal and Questions:

i. Use of grey water is encouraged where allowed by the state. It is the property owner's responsibility to research and verify up-to-date state regulations.

ii. *Encourage or require efficient irrigations systems?* This could include drip systems, rain sensors, moisture sensors, efficient emitters, watering deeply and infrequently, and more. *Want to require for landscaped areas of a certain size, like larger areas or maybe just for those areas that are to be shared by residents?*

iii. *Encourage or require soil amendments?* The right soil helps control moisture.

iv. *Encourage or require rain gardens?* Per EPA, "A rain garden is a depressed area in the landscape that collects rain water from a roof, driveway or street and allows it to soak into the ground. Planted with grasses and flowering perennials, rain gardens can be a cost effective and beautiful way to reduce runoff from your property. Rain gardens can also help filter out pollutants in runoff and provide food and shelter for butterflies, song birds and other wildlife." These are great for dealing with parking areas runoff as they help filter the water before entering back into the system. The Town's Stormwater Master Plan and the Commercial Design Guidelines already encourage the use of rain gardens. *What about requiring a rain garden for increases of imperviousness over 0.05 acres?* This would align with and reinforce the stormwater regulations.

v. *Encourage or require rain water retention?* This can be used for irrigation per CRS, see here: https://www.cityofaspen.com/DocumentCenter/View/142/Division-of-Water-Resources-Rainwater-Collection-Information-Table-PDF.

5. Miscellaneous

A. *Should the Town require the use of a certified landscape architect in certain situations? Maybe for residences larger than 5000 sf, lots of a certain size, subdivisions, multi-family, and/or commercial development?* This would ensure thoughtful and professional design for these larger areas likely resulting in better landscaping plans.

B. *When should landscape plans be due and reviewed?* Considerations:
   i. *Will changing the timing be helpful to our goals for this update: promoting water conservation, aligning the two landscaping sections, costs of landscaping, etc.?*
   ii. *Would someone potentially build differently based on their landscaping (i.e., disturb less area, change site grading, etc.)?*
   iii. *If not required at building permit, when could plans be required? At frame inspection?*
   iv. *Will the benefits of accepting and reviewing landscape plans later in the building process outweigh the need for additional staff time?*

C. *Should the code allow for administrative approvals of landscaping plans that deviate within a certain amount?*

D. *Would a Town promotion of sorts about Xeriscaping: How to Retrofit Your Yard be helpful in achieving the Town's goals toward landscaping updates?* The promotion efforts could help encourage existing landscaping throughout town to be converted into xeriscape.

ATTACHMENTS

1. Meeting packet provided for October 27, 2020 with Planning Commission
2. Town of Ridgway Tree Brochure
3. Water Conservation and Management Plan, Resolution 18-08
4. RMC 9-1-28 Water Wasting

Attachment 1

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To: Planning Commission
From: Shay Coburn, Town Planner; Steve Zwick, volunteer; Lindsey Romaniello, 2019 Intern
Date: October 27, 2020
Re: Landscaping Regulations Update

BACKGROUND

This is the first public meeting to discuss updating the Town's regulations regarding landscaping. This is being introduced due various requests from the public as well from Town Council and the Planning Commission. The desire to update the landscaping regulations is also addressed in the following:

- 2019 Master Plan: Action item ENV-3c - Update the Town's landscaping regulations to require low water usage landscaping or xeriscaping.
- 2020 Strategic Plan: Healthy Natural Environment, #14 - Update Land Use code to encourage water conservation and management in line with the Town's Water Conservation and Management efforts.

EXISTING REGULATIONS

RMC 6-1 Building Regulations
6-1-11 Landscaping

(A) All applications for a building permit for new construction or exterior work on any existing structure shall submit a Landscape Plan for the premises meeting the following requirements:

(1) The Landscape Plan shall be drawn to scale of 1 inch = 40 feet, or larger, and may be included on the Site Plan.

(2) The Building footprint, driveways and vehicle circulation shall be shown and located to scale.

(3) Surface drainage characteristics and proposed structures must be shown.

(4) Existing and all proposed groundcover, including shrubs and lawns shall be shown.

(B) The plan must provide for the following minimum landscaping elements:

(1) Groundcover must be adequate to ensure that dust cannot blow from the property and that the soil is stabilized to ensure that erosion is kept to a minimum.

(2) A minimum of one (1) tree per 2,000 square feet of gross lot area in all zones except Historic Business shall be provided. Trees shall have a minimum caliper of 1-1/2" for deciduous trees and five foot minimum height for evergreens. Trees should be located in such a way that they will not infringe on solar access and views of the adjoining properties or block vehicular sight lines to public roadways.

(C) Landscaping Guidelines are as follows:

(1) Existing trees and groundcover on the property are encouraged to be retained and not destroyed during the construction process. These plants will be counted towards the minimum standards.

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(2) Xeriscape landscaping and drip irrigation are encouraged. Large irrigated areas are discouraged.

(3) Siberian elm and Chinese elm (Ulmus); Cottonwoods that bear cotton (Populus); Purple Loosestrife (Lythrum slaicaria); Russian Olive (Elaeagnus angustifolia) are prohibited.

(4) The Town Manager is authorized to prohibit additional species with similar nuisance properties.

(D) The building permit shall not be issued until a conforming Landscape Plan is approved by the Town.

(E) A permanent Certificate of Occupancy will not be issued until the Town determines that the landscaping contemplated by the approved plan has been properly installed. A temporary Certificate of Occupancy may be issued if completion is delayed by winter weather.

(F) Following completion of the landscaping, the owner or occupant of the property shall maintain it in good condition thereafter. Failure to so maintain the landscaping is unlawful and is hereby declared to create a nuisance.

(G) Intent: Landscaping is an important element of the experience of the Town of Ridgway that is both functional and aesthetic. Priorities for Landscaping include: low-water use, regionally appropriate design for materials and vegetation. These landscaping regulations will endeavor to provide for an attractive, well-maintained landscape that preserves the overall quality and appeal of the community; provides visual buffers and screens; achieves pedestrian and vehicular separation; preserves and enhances the existing visual character of the community; mitigates adverse effects of drainage and weeds, and conserves water resources. A list of recommended species for use in Colorado is available from the Ouray Country Weed Manager and the Colorado State University Extension Service. The lists are not all inclusive but do recommend a variety of plants known to do well in our region of Colorado. In general, plants that are not recognized as hardy or suited to the local climate should be kept to a minimum. Xeriscaping and drought-tolerant and water-saving plants are to be used whenever possible and appropriate. Within the General Commercial District landscaping is important to the drainage, circulation and aesthetic of commercial developments. With larger sites and several buildings, there is the opportunity to create cohesive, appealing and efficient landscape plans that elevate the site as a whole. Landscaping should be used to promote the visual aesthetic of the development from main travel corridors, as well as the pedestrian experience within, through shade trees, plantings, context-appropriate public art and seating. Buffers and medians facilitate drainage during storm events and also provide valuable areas for snow storage during the winter. Landscaping that is visually appealing, functional, and sustainable is desirable for all new development within the General Commercial District.

RMC 6-6 Residential Design Standards
6-6-4 Development Standards

(G) Landscaping[1]: In addition to the requirements of Subsection 6-1-11, the site shall be landscaped to meet the following minimum standards:

(1) Trees: A minimum of one tree per 2000 square feet of gross lot area shall be provided in all zones except Historic Business. Trees shall have a minimum caliper of 1 ½ inch for deciduous trees and a five-foot minimum height for evergreens.

[1] This cross reference is based on Ordinance 03-2020 that has not yet been codified.

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(2) In residential zoning districts, trees and shrubs may be placed in any landscape configuration and arranged to compliment the structure. However, of the required trees, a minimum of one tree shall be located in the front yard for each 25 foot of street and on corner lots, one tree shall be located in the street side yard for each 50 foot of street side yard frontage. Landscape elements shall not be located where, at mature size, they will block vehicular sight lines at corners or to public roadways. Where possible, trees should be located in such a way, or be a type, that they will not infringe on solar access and view of the adjoining properties.

(3) Shrubs: The front and street side yard shall include a minimum of one shrub (5-gallon size) per 10 feet of front and side street frontage.

(4) In the case of fractional requirements for the number of trees and shrubs, the number required shall be rounded to the nearest whole number.

(5) Groundcover: Groundcover must be adequate to ensure that dust cannot blow from the property and that the soil is stabilized to ensure that erosion is kept to a minimum. A minimum of 50% of the front and street side yard shall be covered with live vegetation. The remaining area can be vegetative materials, organic or inorganic mulch, flowerbeds, or other acceptable landscape material. River rock, stone or cobbles, if used, shall not exceed 10% of the front or street side yard area. (Driveway area of minimum length and width to provide access and parking shall not be included in the 10% calculation of stone or rock covered area).

Commercial Design Guidelines
II. General Commercial District

b. Site Planning and Parking

8. Trees should be incorporated to provide parking lot shading.

9. Use of landscape/grassed catchment areas and similar designs should be used for managing, controlling and filtering parking lot/site drainage and is part of an overall site drainage plan.

e. Screening and Buffers

Screening and landscape buffers soften the negative impacts of development and can provide a certain element of safety in commercial areas where significant pedestrian interactions are more likely to occur.

Buffers should be constructed to mitigate the view, light pollution (including light trespass and glare), noise, heat, and odor impacts of vehicles, pavement, and higher intensity uses, and other potential negative effects of development.

Buffering may be achieved through a variety of means including but not limited to plantings, fences, walls, site planning, and berming with live vegetation.

Parking areas, outside trash receptacles, large utility boxes, open storage areas, conflicting land uses, mechanical systems and other unattractive views should be screened from the street and public right of way.

Screening of utility boxes, trash enclosures, and similar uses should be around all sides except for those required for access, which will be screened with a gate on the access side.

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III. Historic Business District (Historic Town Core)

e. Screening and Buffers

Screening and landscape buffers soften the less desirable impacts of development and can provide a certain element of safety in commercial areas where significant pedestrian interactions are more likely to occur.

Buffers should be constructed to mitigate the view, light pollution (including light trespass and glare), noise, heat, and odor impacts of vehicles, pavement, and higher intensity uses, and other potential negative effects of development.

Buffering may be achieved through a variety of means including but not limited to plantings, fences, walls, site planning, and berming with live vegetation.

Parking areas, outside trash receptacles, large utility boxes, open storage areas, conflicting land uses, mechanical systems and other unattractive views should be screened from the street and public right of way.

Screening of utility boxes, trash enclosures, and similar uses should be around all sides except for those required for access, which will be screened with a gate on the access side.

DISCUSSION

The following questions are for discussion during the meeting. The responses (numbered items) under each question are simply included in this memo to help encourage conversation.

What are the goals and purpose for updating the landscaping regulations?

1. Promote water conservation
2. Better align the two landscaping regulation sections (6-1-11 with 6-6) and the commercial design guidelines
3. Ensure costs related to landscaping are not a barrier to workforce housing
4. Maintain community character
5. What else?

What do you NOT like about the existing landscaping regulations?

1. Many times, the required landscaping is installed to get a final certificate of occupancy and then it is neglected or left to die
2. What else?

What do you like about the existing landscaping regulations?

1. The regulations are fairly simple and do not require a professional to create the landscape plan
2. What else?

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What ideas do you have in regards to updating our landscaping regulations?

1. Create a list of allowed (regionally appropriate and water wise) and prohibited plants (those that require a lot of water)
2. Limit amount of turf grass allowed
3. What else?

ATTACHMENT

1. Example Landscaping Regulations from other Colorado Cities and Towns (note this information was compiled in 2019 and may be a bit out of date)

Attachment 1

Attachment 1: Example Landscape Regulations from other Colorado Cities and Towns

Community	Species Requirements	Ground Cover	Landscape Arrangement	Xeriscaping Requirements	Landscape and Water Use Plan Document	Irrigation Systems	Hydrozone Requirements	Water Budget	Low, moderate and extreme in water restriction	Soil
Aspen	Any plants can be used (unless they are considered noxious) and fit the water restriction requirements. Have a species list of recommended plants	Mulch is required for specific species to retain water efficiency	none	none	Has water efficient landscaping document that correlates to county and regional water efficiency plans	Very thorough, requires efficient systems, and encourages no irrigation when using native species in hydrozones	All hydrozones must be identified and shown how much water they will use. all hydrozones shall be planted with similar water use species	Requires a water budget of 12 inches per sift per season. If you incorporate special features, you get water incentive tap breaks	Extreme criteria which extensively addresses many water efficiency elements	Thorough. Addresses types of soil that can be used/added, soil depth for plants, requires soil analysis, stock piling indigenous soil, no herbicides or toxins
Carbondale	none	Any part of site not used for improvements to be landscaped. Control dust and erosion by use of vegetative cover or other means. 40% minimum landscaped area required for multifamily uses in res. districts.		Not specified, low water drought tolerant adaptive plans shall be used suitable for soil and climate	Landscape plan required and shall detail the site showing all natural and man-made features.					none
Castle Rock	Must use approved list. Promotes natural and indigenous. Also requires ample shading in paved areas.	All unpaved site needs to be landscaped.	requires diversity of plants in landscape design.	Highly encourages xeriscaping and the use of mulch and alternative, non-living materials	Has a Landscaping and irrigation regulations document	Need to be efficient and work at 75% efficiency.	Need to have designated hydrozones	No plant may require more than 15 inches of water per season	Extreme criteria which extensively addresses many water efficiency elements	Pretty thorough. Requires soil analysis, stock piling indigenous soil, and non toxic sol amendments
Crested Butte	Requires indigenous plants and has a plant species recommendation list. Commitment to preserve all existing trees and shrubs.	All exposed ground surfaces shall be revegetated.		none	none	none	none	none	Low. However, very concerned with trees	Only mentions soil, when talking about tree removal and tree protection.
Durango	Have an approved list. Very protective of trees and limits removal.	All exposed ground surfaces should be revegetated.	Plans need to be arranged and distributed according to proportioned aesthetic design listed in the plan.	Mulch encouraged	none	Vague- efficient irrigation system recommended	Plants need to be grouped into appropriate hydrozones	Low-water planting only required on steep sloped (>25% grade), no more than 50 of trees/shrubs can be considered high-water use	Moderate. Includes many of the wise water criteria but has vague or loose requirements	Vague- soil needs to be amended when necessary
Eagle	Recommended plant list for trees			not specified	Landscape plan required except for certain commercial projects in Central Business District	Underground sprinkler system required for all landscaped areas in non-residential zone districts				No artificial trees, shrubs, turf or plants may be used as landscape material
Fort Collins	All new developments need to provide a certain amount of tree canopy cover. Limit turf grass.	All unpaved site needs to be landscaped.	mulching required in hydrozones	Highly encourages xeriscaping and the use of mulch and alternative, non-living materials	none	Vague- efficient irrigation system required but no definition of efficient	Group landscaping into hydrozones	Requires a water budget - to be divided into hydrozones, and encourages low to very low hydrozones (0-3 gallons per sqft per season)	Moderate. Includes many of the wise water criteria but is somewhat vague on all of these things	Soil amendment required before construction

Attachment 1

Attachment 1: Example Landscape Regulations from other Colorado Cities and Towns

Community	Species Requirements	Ground Cover	Landscape Arrangement	Xeriscaping Requirements	Landscape and Water Use Plan Document	Irrigation Systems	Hydrozone Requirements	Water Budget	Low, moderate and extreme in water restriction	Soil
Grand Junction	Recommended to use native, low water use plants	Addresses trees and shrub size, but not specific on ground cover requirements	none	Recommended use of water wise xeriscaping	none	All landscaping must have permanent irrigation (even native grasses)	none	none	Low. Provides some guidelines but only in the form of recommendation. Does not mention water wise irrigation practices.	Vague - amended and planted with good horticultural practices
Montrose	none	At least 25% of linear footage of the site abutting public street r.o.w. unless alternative approved by city	Inclusive of street frontage requirement, landscaping is required for at least 15% of that part of the site not covered by buildings for sites in res. districts, at least 8% coverage in comm. districts, and 4% coverage in industrial districts	none	Landscape plan required and shall detail the site showing all natural and man-made features. Proposed landscaping to be shown on site development plan or separate landscape plan.	none	none	none	none	none
Ouray	Existing and proposed landscaping features to be identified as to location, common name, botanical name, and size.	Groundcover must be adequate to ensure that dust cannot blow from the property and the soil is stabilized to ensure erosion is kept to a minimum. Vegetative ground covers should be ID as to name and location	Requires diversity of plants in landscape design.	Xeriscape landscaping and drip irrigation encouraged	Landscape plan required and shall detail the site showing all natural and man-made features. Proposed landscaping to be shown on site development plan or separate landscape plan.	Xeriscape landscaping and drip irrigation are encouraged	none	none	none	none
Telluride	Vague- all landscaping must conserve water and be efficient	none	All Landscaping must be alive unless approved specifically. All landscaping needs to be approved by the Historic and Architectural Review Commission (H.A.R.C)	none	none	none	none	none	Low- Telluride does not list many criteria in their code, however there are design standards by the H.A.R.C to maintain the historic feel, which uses many native grasses in its landscaping.	none

Attachment 2

Plant it Right!

In addition to picking the right species, it is vital to know when and how to plant it. A *New Tree Planting Guide* is available from *TreesAreGood.org*; or scan the QR code for more information.

Also, consider the microclimate where you'd like to plant. You'll want to ***avoid***:

- Wind tunnels
- Locations too close to structures or utility lines (consider the expected size of the tree at maturity)
- Locations without a reliable water source
- Sites where you cannot protect the tree from animal browsing or rubbing

After You Plant

- Keep the soil moist, but not waterlogged. Continue until mid-fall, tapering off to an occasional watering in the winter if conditions are dry.
- If you staked your tree, you ***must*** remove all tree straps after the 1st year of growth to prevent strangling the tree.
- As the tree grows, ensure that any protective wire caging expands with it. The cage should be at least 6" away from branch tips to prevent damage from bruising or animal browsing.
- Ridgway deer will eat ANY tree—you must provide protection.

Need a Reason to Plant a Tree?

- Trees cool your home in the summer and block wind in the winter, thus saving energy.
- Trees strengthen the quality of place.
- Trees boost the local economy and property values.
- Trees create walkable communities.
- Trees improve air quality.

For More Information
Montrose District,
Colorado State
Forest Service
102 Par Place Suite 1
Montrose, CO 81401
(970) 249-9051
csfs.colostate.edu

Planting Trees in Ridgway

Species Recommendations

town.ridgway.co.us

Attachment 2

SMALL to MEDIUM

Hawthorn
(Crataegus spp.)

Ornamental plums
(Prunus spp.)

Ruby slippers
(Acer ginnala)

Spring snow crabapple
(Malus spp.)

Sucker punch *(Prunus virginiana "Sucker Punch")*

Boulevard linden
(Tilia americana)

MEDIUM to LARGE

Sensation boxelder
(Acer negundo)

Aspen
(Populous tremuloides)

Norway maple
(Acer platanoides)

Peachleaf willow
(Salix amygdaloides)

Narrowleaf cottonwood
(Populus angustifolia)

Lanceleaf cottonwood
(Populus x acuminata)

All cottonwoods must be cottonless varieties.

CONIFERS

Colorado blue spruce
(Picea pungens)

Rocky Mountain juniper
(Juniperous scopulorum Sarg.)

Austrian pine
(Pinus nigra)

Iseli fastigiate spruce
(Picea spp.)

Scotch pine
(Pinus sylvestris)

Southwestern white pine
(Pinus strobiformis)

If planting several trees, consider diversifying your species. Not only will your yard look more interesting, but you'll also be creating resiliency to insects and disease.

Other species to try: Ponderosa pine (Pinus ponderosa); Amur chokecherry (Prunus maackii); Hackberry (Celtis occidentalis); Tatarian maple (Acer tataricum); Kentucky coffee tree, male (Gymnocladus dioicus); and Corinthian linden (Tilia cordata).

Attachment 3

Resolution No. 18-08

Resolution of the Town Council of Ridgway, Colorado
Amending the Town of Ridgway Water Conservation and Management Plan

WHEREAS, the water supply for the Town of Ridgway is a precious, valuable and critical resource for the Ridgway community; and

WHEREAS, the Town of Ridgway, State of Colorado and the United States have seen periods of drought that significantly impact the local water supply, threatening the health, safety and welfare of our communities; and

WHEREAS, the Town Council desires to be proactive in communicating with the Ridgway community and water users of town-supplied water regarding the water conservation efforts that will be employed and the timing of such water restrictions; and

WHEREAS, the Town Council desires to conserve water in times of need to insure effective and safe delivery of water to the Ridgway community during all times, including in times of restricted or limited water supply and drought; and

WHEREAS, the Town Council adopted Resolution 2018-06 on April 11, 2018 establishing six stages of limited water supply and various, graduated mechanisms for curbing water demand during times of drought or water plant limitations; and

WHEREAS, persistent drought in 2018 realized the first time in the history of the Town that mandatory water restrictions were put into place and there is now a need to update and modify the Water Conservation and Management Plan.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO the Ridgway Water Conservation and Management Plan as defined herein is ratified.

Attachment 3

Water Conservation and Management Plan

Stage	Trigger Condition	Goals	Actions
Stage I	Voluntary Restrictions: Statewide Drought Status (Begin May 1)	Good management of limited water supply; Public education.	• Does not apply to drip systems and use of hand-watering containers. • No irrigating between the hours of 10:00 am - 7:00 pm, or when windy, in order to minimize evaporation, and anytime on Mondays. • Properties located on the SOUTH side of Hwy 62 & Hunter Parkway – irrigate only on Tuesdays, Thursdays and Saturdays. • Properties located on the NORTH side of Hwy 62 & Hunter Parkway – irrigate only on Wednesdays, Fridays and Sundays. • Outreach on water use and fixing leaks, limited gardening, etc.
Stage II	Mandatory Restrictions: Demand exceeds system capacity, or water from the town storage reservoir (Lake O) is needed to meet demand)	Effect change in water demand to lower town-wide water use; Significant public outreach on plant limitations and/or drought conditions and water supply outlook.	<u>Maintain all Stage I curtailments plus:</u> • Properties located on the SOUTH side of Hwy 62 & Hunter Parkway – irrigate only on Tuesdays and Saturdays. • Properties located on the NORTH side of Hwy 62 & Hunter Parkway – irrigate only on Wednesdays and Sundays. • Town Parks irrigation limited to the minimum needed to keep grass alive.
Stage III	Demand remains above system capacity and tank levels are not sustained after Stage I and Stage II actions or when Lake O water depth falls 2 feet below peak storage for the year, or Lake O depth falls below 6.5 feet.	Make a significant and real impact on real water use and water demand; Significant public education on serious limitations with plant capacity and/or water supply.	<u>Maintain all Stage II curtailments plus:</u> • Water Waste Ordinance activated, including emergency rate structure reducing base water use allocation and increasing cost of water (may require more frequent meter readings for use and leak detection). • Largest outdoor water users significantly curtailed. • Restaurants only serve water upon customer request. • Restrictions apply to all outdoor irrigation including drip systems, hoses, hand-watering. • Properties located on the SOUTH side of Hwy 62 & Hunter Parkway – irrigate only on Saturdays. Properties located on the NORTH side of Hwy 62 & Hunter Parkway –irrigate only on Sundays.

Stage	Trigger Condition	Goal	Actions
Stage IV	Demand remains above system capacity and tank levels are not sustained after Stage III actions, or when Lake O water depth falls 3 feet below peak storage for the year, or Lake O depth falls below 5 feet.	Significantly reduce water demand as much as possible Significant public outreach and enforcement	Maintain all Stage III curtailments plus: • No outdoor irrigation, except Town Parks may continue watering at minimum levels to keep grass alive and provide gathering and play space

Additional efforts and restrictions or limitations on water use and management of the Lake O water levels to be maintained may be considered by the Town Council as necessary and appropriate for the preservation of the public health, safety and welfare during times of limited water supply. The Council may also consider alternative approaches with parks irrigation

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Enforcement

Enforcement of this Water Conservation and Management Plan is per the Ridgway Municipal Code (RMC) and other enforcement provisions for the Town of Ridgway, including but not limited to **RMC Section 2-4: Administrative Enforcement of the Ridgway Municipal Code**:

Under the existing Code Section for Administrative Enforcement, the general process, in part, is as follows, and is only provided here to provide notice to the Ridgway Community:

First Violation – Optional Verbal or written notice, or written Notice of Violation
Second Violation – written Notice of Violation
Third Violation – Administrative Citation pursuant to RMC 2-4-13

RMC 2-4-13:

(B) If the responsible party fails to correct the violation cited, commits the same violations again, or fails to correct a violation as specified in accordance with an administrative enforcement order of the AHO, subsequent administrative citations may be issued for violations of the same code section. The penalties assessed for each administrative citation issued for violations of the same code section or sections shall not exceed the following amounts regardless of the number of violations per citation:

(1) First administrative citation: one hundred and fifty dollar ($150.00).

(2) Second administrative citation: five hundred dollars ($500.00).

(3) Third and each subsequent administrative citation: nine hundred and ninety-nine dollars ($999.00).

(C) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the Town.

In addition, other remedies may be pursued, including but not limited to: **RMC 9-1-3: Limitations on the Use of the Water and Sewer System**, as follows:

Attachment 3

RMC 9-1-3, in part:

(B) The Mayor may promulgate emergency regulations restricting the use of Town water for irrigation or other uses subject to confirmation or amendment by the Town Council.

(C) The Town Council may declare by resolution a moratorium on taps or line extensions for the entire water or sewer systems or any part of them at any time due to limitations on system capacity or other circumstances which require such action.

(D) The Town shall have the right to temporarily interrupt service without notice for the purpose of making repairs, taps, extensions or for other reasons as necessary for the proper operation and maintenance of the water and sewer systems. If practical, reasonable notice shall be given to the customer.

(E) No customer located outside of the corporate limits of the Town may significantly increase the amount or degree of his use of Town water or sewer service beyond the extent of his use at the effective date of this Section.

(F) The Town Council may set regulations governing the use of water for irrigation and sprinkling by resolution.

Other Ridgway Municipal Code provisions, as added or amended, may apply.

PASSED AND APPROVED this 12th day of September 2018.

ATTEST

Pam Kraft, MMC,
Town Clerk

TOWN OF RIDGWAY

John Clark,
Mayor

9-1-28 WATER WASTING (Enacted by Ord 5-2018)

(A) Water Wasting is always discouraged; however, during the enactment of Stage 3 or Stage 4 of Ridgway's Water Conservation and Management Plan, Water Wasting is prohibited. The Town or a representative code enforcer can determine an action to be Water Wasting at their discretion if the action matches the Water Wasting Definition found in Section 9-1-1. Water Wasting includes but is not limited to the following actions:

(1) Allowing water to spray or overflow onto sidewalks, driveways, streets, drainages or any hard surface.

(2) Washing outdoor impermeable surfaces (i.e. driveways, walks, patios, etc.) with a hose or spray nozzle.

(3) Washing of vehicles or recreational equipment.

(4) Failing to notify the Town of a known water leak or needed repair in the Town's distribution system or water supply system within 72 hours of discovery.

(5) Operating ornamental water features.

(6) Failure to fix a leak downstream of the customer's meter within 48 hours of notification by the Town.

(B) Exceptions to Section 9-1-28(A) or the Water Wasting definition include the following:

(1) In cases where public health or safety is a concern.

(2) The installation, repair or maintenance of a water supply system when the operator or maintenance personnel are present.

PLANNING COMMISSION

MINUTES OF THE REGULAR MEETING

OCTOBER 27, 2020

CALL TO ORDER

The Chairperson called the meeting to order at 5:30 p.m. with Commissioners, Liske, Nelson, Councilor Cheek, Mayor Clark and Chairperson Canright in attendance. Commissioner Falk entered the meeting at 5:40 p.m. and Commissioner Emilson was absent.

OTHER BUSINESS

1. Opening Discussion for Landscaping Regulations Update

   Memorandum dated October 27, 2020 providing background and analysis prepared by the Town Planner, Steve Zwick, Volunteer and Lindsey Romaniello, 2019 Intern.

   Town Planner Shay Coburn, the Ridgway Planning Commission, and community members Ned Bosworth, Nichole Moorman, Jennifer Cram, Terese Seal and Susan Chism participated in the first discussion to update the Town's Landscaping Regulations. She noted the goal for landscaping regulations is to promote water conservation and minimize dust and weeds. The update will also align the building code regulations with the Residential Design Standards and the Landscaping Regulations. Ms. Coburn explained the current water service base rate includes a large reduction in the number of gallons allowed per month which should be a consideration for the update. Addressing the Landscaping Regulations is an objective in the Master Plan, Strategic Plan and has been requested by the public Coburn concluded.

   The topics discussed included adapting regulations for drought conditions, adapting regulations to accommodate urban density and the Town's ability to maintain adequate water supply, modifying the 10% maximum gravel and 50% minimum live vegetative matter requirements, creating flexibility within the regulations, changing ground cover standards, revising the standard for a minimum number of trees and bushes as it relates to lot size and encouraging tree utility value; subduing requirements related to front and side yard curb appeal; reconciling site conditions along with site design, developing literature on plant species and trees suited for the local climate and soil conditions, promoting eclectic design, recognizing unique characteristics of individual parcels, incorporating existing native plants, encouraging a variety of plants for ground cover; considerations for disturbed and revegetated land, using grey water and positive water drainage from rain as a water source for yards, using artificial turf, encouraging xeriscaping, providing consumer education regarding tools and resources, requiring the Landscape Plan near the end of the building permit for new structures and considering how Fence Regulations could be combined with the Landscaping Regulations for simplification.

   Planner Coburn will reconcile the topics with the regulations and provide an update to the Commissioners for the next discussion at the November Regular Meeting to be held December 1.

APPROVALOF THE MINUTES

2. Approval of the Minutes from the Meeting of September 29, 2020

ACTION:

Councilor Liske moved to approve the Minutes from September 29, 2020. Mayor Clark seconded the motion and it carried unanimously.

ADJOURNMENT

The meeting adjourned at 7:00 p.m.

Respectfully submitted,

Karen Christian
Deputy Clerk

PLANNING COMMISSION

MINUTES OF THE REGULAR MEETING

DECEMBER 22, 2020

CALL TO ORDER

The Chairperson called the meeting to order at 5:35 p.m. The Planning Commission was present in its entirety with Commissioners Emilson, Falk, Liske, Nelson, Councilor Meyer, Mayor Clark and Chairperson Canright in attendance.

PUBLIC HEARING

1. Application for Rear Building Setback, Building Height and Parking; Location: Block 33, South 15 Ft. of West 50' of Lot 18, West 50' of Lots 19 and 20; Address: 521, 523, 525 Clinton Street; Zone: Historic Business (HB); Applicant: Sundra Hines for Gregory Young; Owner: Banco Building LLC.

   Staff Report dated December 22, 2020 presenting background, analysis and staff recommendation prepared by the Town Planner. Memorandum from Applicant Sundra Hines dated December 22, 2020 regarding *Bank Building Height Variance,* submitted as a late addition to the Agenda Packet.

   Town Planner Shay Coburn presented an application for 3 variances for the historic bank building. She explained the variances are requested in order to modify the building to provide for a proposed retail space, restaurant, hotel and roof top bar.

   Coburn reviewed the criteria that must be met in order to grant each variance pursuant to the Ridgway Municipal Code. She explained the applicant is proposing to build up to the rear lot line which would create a 0' setback. The 0' setback may be needed to provide a three-story stair and elevator. The Planner explained how the criteria of practical difficulty could be met with the American with Disabilities Act (ADA) requirements and preservation of the historic building. However, she also noted potential drainage impacts from the lot to neighboring properties as a result of a 0' lot line.

   Planner Coburn reviewed the diagrams in the Staff Report to show how building height is measured. She noted the variance request for building height is only for the small area pertaining to the proposed elevator and stairs, which would be constructed at the rear of the building. She further explained guard rails are included in the building height request, but they will not have a visible impact since they will nearly be hidden by the existing parapet. The Planner commented the elevator and stairs need to be added to meet current building code, but it is not clear why a roof top bar has been added to the project.

   Ms. Coburn reviewed the parking conditions explaining 6 parking spaces are required with the proposed use and the Applicant is requesting not provide any parking spaces. She noted an abutting egress issue and that 2 cars would barely fit into the historic building's unbuilt area of the parcel. Because of this Coburn advised that practical difficulty has been met to not provide the first 3 parking spaces on site and noted the applicant is willing to pay a $3,000 per space fee-in lieu of providing the additional 3 parking spaces.

The Commissioners discussed the application with the Town Planner and expressed concerns over the drainage issues.

Applicant Sundra Hines said the drainage would be routed to the northwest corner of the lot via compound slope to the alley, and the roof will be completely reconstructed. She commented on the construction requirements in order to secure grant monies to preserve a historic building. Hines further commented that any additions must be done in a way that would render the building in its original state prior to the project if the additions were removed. Ms. Hines further explained the elevator must meet ADA requirements so that disabled patrons would be able to access the roof top bar.

Gregory Young, owner of the historic building, shared his vision for the proposed uses. Mr. Young explained he does not plan to change the building from its original stated purpose which is important in maintaining the building's architecture. The Owner further explained he plans to provide roof top venues incorporated with art exhibits during warm weather and the roof top bar is needed to maintain the projects' viability.

The Planning Commission discussed the variance requests with the Applicant and Owner. Ms. Hines requested direction from the Commission suggesting a loading/unloading area for the patrons near the hotel entrance. She explained the patrons would then be directed to park their cars elsewhere in town.

The Chairperson opened the hearing for public comment.

County resident Richard Pinney spoke in favor of the application. He asked if the consultants who conducted the parking study in 2018 were aware of the Space to Create Project, the Firehouse Project, and if they were aware of the parking variances for the projects. He expressed concerns regarding where hotel patrons with luggage might park and felt an unloading area would qualify as a parking space. Mr. Pinney also asked what type of fund secures the money paid as a fee-in-lieu of parking.

Tammee Tuttle spoke in favor of the application. She asked what the Town would do with the money paid as a fee-in-lieu of required parking spaces and was concerned that additional parking lots would replace town amenities such as the BMX (Bicycle Motocross) Park.

The Chairperson closed the hearing for public comment.

The Commission explained that money paid in-lieu of parking fees is held as part of the Town budget. Once enough funds have accrued the money can then be used to develop, pave and stripe-paint a parking area. The land behind the Ridgway Library might be the town-owned land used for this purpose, though development is far out into the future due to costs. It was also noted that while reduced variances were granted for both the Firehouse and Space to Create Projects, one parking space per residential unit was provided with each project.

Parking concerns were discussed between the Applicant and Commissioners. They noted parking away from hotel establishments is not an uncommon practice for communities due to traffic and road maintenance. Hines commented that loading/unloading areas might need to be a consideration for businesses as the Town grows. She proposed the idea of a common unloading area for businesses in that vicinity. Hotel staff would direct patrons to the appropriate parking

areas, and the hotel is proposing only 6 rooms, so that should have little impact on parking she continued. The concern is about safely loading and unloading luggage Ms. Hines clarified. The Commission suggested providing a loading area in the northwest rear of the building. However, Ms. Hines explained it is not clear in this part of the development stage how much space may be required for the elevator and roof renovation.

Planner Coburn clarified the questions about the *2018 Downtown Parking Assessment Report* which is located on the Town's website. She explained the Space to Create project was contemplated when the report was prepared, though the Firehouse Project was not. However, projected maximum uses for HB District pre-developments were calculated based on current growth projections. The report concludes that the Town will have adequate parking through 2044 she concluded. Coburn further clarified that no fees in lieu of parking have been paid by previous applicants to date and the fees are paid when the building permit is issued. She commented that once enough money has been accrued strategic decisions will be made about the location, size, etc. of a public parking area.

The Planning Commission discussed if the Applicant met criteria for each variance request. They agreed criteria is met for a 0' rear setback and have confidence in the Applicant to engineer the drainage issue appropriately.

ACTION:

Mayor Clark moved to approve the Application for Variance for Rear Building Setback to be 0 ft. because criteria have been met. Commissioner Emilson seconded the motion, and it carried unanimously.

The variance for building height was discussed. The Planning Commission agreed they need more information from the Applicant regarding the northern aspect of the building and more specific details about how much height would be needed for the elevator shaft. Ms. Hines requested a continuance for this matter to be discussed at the February Regular Planning Commission Meeting.

ACTION: Mayor Clark moved to continue the Application for Variance to Building Height to the February Regular Planning Commission Meeting as requested by the Applicant. Councilor Meyer seconded the motion, and it carried unanimously.

The Planner clarified the request for Variance for Parking. The Ridgway Municipal code requires 6 parking spaces for the proposed use. Her recommendation would be to not require 3 parking spaces on site because the Applicant has met criteria, and then the Applicant would pay $3,000 per parking space for 3 off-site parking spaces. The Commission noted the Applicant should determine a plan to resolve the loading/unloading of cars in front of the hotel and how that traffic will be coordinated during street maintenance.

ACTION:

Councilor Meyer moved to approve the Application for Variance to Parking to provide no parking spaces on-site because the criteria have been met and the Applicant is required to pay a fee in lieu for all spaces required beyond the first three. Commissioner Liske seconded the motion, and it carried unanimously.

OTHER BUSINESS

2. Landscaping Regulation Update, Second Discussion

Memorandum dated December 22, 2020 regarding *Landscaping Regulation Update*, prepared by the Town Planner. Memorandum dated December 22, 2020 regarding the response to the *Ridgway Landscaping Regulation Update*, prepared by Susan Carter, Horticulture and Natural Resources Agent from the Colorado State University Extension, TRA, submitted as a late addition to the Agenda Packet.

Town Planner Coburn presented the *Landscaping Regulation Update* memorandum and noted it is a summary of the first discussion; the existing Landscaping Regulations, Residential Design Standards and Commercial Design Standards from the Municipal Code, and an outline for this meeting based on the topics discussed in depth at the first meeting.

The discussion opened with the question of allowing, prohibiting or recommending certain plant species to be cultivated in Town.

The Town of Ridgway experience a power outage at 6:55 p.m. and many of the Commissioners and audience members were not able to reconnect to the Zoom Meeting. The Planning Commission took a break to allow time for connectivity to the Zoom meeting.

The meeting resumed at 7:00 p.m., with Commissioner Nelson, Councilor Meyer, Mayor Clark and Chairperson Canright in attendance.

Meanwhile, Susan Carter advised that town residents should be educated about proper plant placement instead of discouraging native species that require frequent watering. She further commented that recent studies show an increase in allergies due to more pollen in the air resulting from planting more male fruitless and cotton-less tree species.

The power outage continued throughout town. The remaining Commissioners, as well as many audience members were still not able to gain access to the meeting via internet on Zoom. The Commissioners that were able to stay tuned to the meeting agreed it would be helpful for all commissioners to review the documents submitted for this agenda item and email comments to the Planner to prevent further delays. Planner Coburn agreed to summarize comments received from the Commissioners and present them at the January Regular Planning Commission Meeting.

ADJOURNMENT

The meeting adjourned at 7:05 p.m.

Respectfully submitted,

Karen Christian
Deputy Clerk