

Ridgway Town Council
Regular Meeting Agenda
Wednesday, February 10, 2021

Due to COVID-19, and pursuant to the Town's Electronic Participation Policy,
the meeting will be conducted via a virtual meeting portal

Join Zoom Meeting

<https://us02web.zoom.us/j/82079398790?pwd=UHVMM2xqZ3VDYVRRNWwzRktGYTNKUT09>

Meeting ID: 820 7939 8790
Passcode: 532674

Dial by your location
+1 346 248 7799 US
+1 253 215 8782 US
+1 312 626 6799 US

5:30 p.m.

ROLL CALL Councilors Angela Ferrelli, Kevin Grambley, Beth Lakin, Russ Meyer, Terry Schuyler, Mayor Pro Tem Eric Johnson and Mayor John Clark.

EXECUTIVE SESSION The Council will enter into a closed session pursuant to Colorado Revised Statutes 24-6-402(4)(b) for the purpose of receiving legal advice regarding the Ridgway Space to Create Project.

6:00 p.m.

ADDITIONS & DELETIONS TO THE AGENDA

ADOPTION OF CONSENT CALENDAR All matters listed under the consent calendar are considered to be routine by the Town Council and enacted by one motion. The Council has received and considered reports and recommendations prior to assigning consent calendar designations. Copies of the reports are on file in the Town Clerk's Office and are available to the public. There will be no separate discussion on these items. If discussion is requested, that item will be removed from the consent calendar and considered separately.

1. Minutes of the Regular Meeting of January 13, 2021.
2. Minutes of the Joint Workshop Meeting of January 21, 2021.
3. Minutes of Joint Workshop Meeting of February 4, 2021.
4. Register of Demands for February 2021.
5. Renew Brew Pub Liquor License for Colorado Boy Depot LLC.

PUBLIC COMMENTS Established time for the public to address the Council regarding any item not otherwise listed on the agenda. Comments will be limited to 5 minutes per person.

PUBLIC REQUESTS AND PRESENTATIONS Public comments will be limited to 5 minutes per person; discussion of each item may be limited to 20 minutes.

6. Workforce Housing Presentation - Paul Major, Telluride Foundation.

POLICY MATTERS Public comments will be limited to 5 minutes per person; overall discussion of each item may be limited to 20 minutes.

7. Subdivision Improvements and Lien Agreement for Lena Street Commons PUD - Town Planner.

PUBLIC HEARINGS Public comments will be limited to 5 minutes per person; hearings may be limited to 20 minutes.

8. Final Plat for Lena Street Commons PUD - Town Planner.

POLICY MATTERS Public comments will be limited to 5 minutes per person; overall discussion of each item may be limited to 20 minutes.

9. Introduction of Ordinance Amending the Official Zoning Map by Rezoning a portion of Track 1 and Lot 2E, Lots 4D, 5D, 3E, and 4E of the Lena Street Commons Planned Unit Development from Historic Business (HB) to General Commercial (GC) – Town Planner.

10. Review and action on Encroachment Permit Application related to 616-620 Clinton Street – Town Planner.

11. Review and action on Professional Services Agreement for Marketing Services between the Town of Ridgway and the Ridgway Area Chamber of Commerce - Town Manager.

12. Review and action on Ground Lease between the Town of Ridgway and Artspace Ridgway Limited Partnership concerning the Ridgway Space to Create Project - Town Manager.

13. Review and action on Development Agreement between the Town of Ridgway and Artspace Projects, Inc. concerning the Ridgway Space to Create Project - Town Manager

14. Review and action on Commercial Master Sublease Agreement between the Town of Ridgway and Artspace Projects, Inc. concerning the Ridgway Space to Create Project - Town Manager.

15. Review and action on Addendum to Lease Agreement with the Ridgway Community Garden - Town Manager.

16. Review and action on Letter of Support for Ridgway Community Apiary - Town Manager.

17. Discussion on letter from community member Robb Austin regarding Space to Create Project - Town Manager.

18. Review and action on Intergovernmental Agreement between the Town of Ridgway, City of Ouray and Ouray County for Shared Victim Advocate Services - Town Manager.

19. Discussion regarding water rates - Town Manager.

20. Discussion regarding Ouray County Economic Resiliency Plan - Town Manager.

21. Review and action on letter of support for Colorado West Land Trust's grant application to GOCO - Town Manager.

EXECUTIVE SESSION The Council will enter into a closed session pursuant to 1) Colorado Revised Statutes 24-6-402(4)(b) for the purpose of receiving legal advice regarding enforcement of the Town of Ridgway Municipal Code and uses within the Residential Zone District, and 2) Colorado Revised Statutes 24-6-402(4)(f) for discussion of a personnel matter concerning the Town Manager's annual performance evaluation.

WRITTEN REPORTS Written reports may be provided for informational purposes prior to the meeting updating Council on various matters that may or may not warrant discussion and action.

22. Town Manager's Report.

COUNCIL COMMITTEE REPORTS Informational verbal reports from Councilors pertaining to the following committees, commissions and organizations:

Committees & Commissions:

Ridgway Planning Commission - Councilor Meyer and Mayor Clark
Ridgway Parks, Trails & Open Space Committee - Mayor Pro Tem Johnson
Ridgway Creative District Creative Advocacy Team - Councilor Grambley
Ridgway Scholarship Committee - Mayor Pro Tem Johnson and Mayor Clark

Board Appointments:

Ouray County Weed Board - Councilor Lakin; alternate - Town Engineer
Ouray County Joint Planning Board - Councilor Meyer, citizens Rod Fitzhugh & Tom McKenney;
alternate - Mayor Pro Tem Johnson
Sneffels Energy Board - Councilor Lakin and Public Works Services Administrator; alternate -
Mayor Pro Tem Johnson
Region 10 Board - Mayor Clark
WestCO Dispatch Board - Town Marshal; alternate - Town Manager
Gunnison Valley Transportation Planning Region - Town Manager; alternate - Public Works
Services Administrator
Ouray County Transit Committee - Public Works Services Administrator; alternate - Town Manager
Ouray County Water Users Association - Councilor Meyer

Liaisons:

Chamber of Commerce - Councilmember Lakin
Communities That Care Coalition - Mayor Clark
Ouray County Fairgrounds - Councilor Schuyler

ADJOURNMENT

Deadline for agenda items for next regular meeting, Wednesday, March 3, 2021 at 4:00 p.m.,
Town Clerk's Office, 201 N. Railroad Street, Ridgway, Colorado.

Consent Agenda

RIDGWAY TOWN COUNCIL
MINUTES OF REGULAR MEETING
JANUARY 13, 2021

CALL TO ORDER

The Town Council convened via Zoom Meeting, a virtual meeting platform, pursuant to the Town's Electronic Participation Policy, due to the COVID-19 pandemic.

The Mayor called the meeting to order at 5:30 p.m. via Zoom Meeting. The Council was present in its entirety with Councilors Ferrelli, Grambley, Lakin, Meyer, Schuyler, Mayor Pro Tem Johnson and Mayor Clark in attendance.

EXECUTIVE SESSION

The Town Attorney suggested the Town Council enter into an executive session pursuant to Colorado Revised Statutes 24-6-402(4)(f) for discussion of a personnel matter concerning the Town Manager's annual performance evaluation.

ACTION:

It was moved by Mayor Pro Tem Johnson, seconded by Councilor Schuyler and unanimously carried on a roll call vote to enter into closed session.

The Council entered into executive session at 5:35 p.m. with the Town Attorney and Town Manager.

The Council reconvened to open session at 6:00 p.m.

CONSENT AGENDA

1. Minutes of the Regular Meeting of December 9, 2020.
2. Minutes of the Joint Workshop Meeting of December 10, 2020.
3. Minutes of the Joint Workshop Meeting of December 23, 2020.
4. Minutes of the Joint Workshop Meeting of January 7, 2020.
5. Pursuant to State statute designate the Town Hall bulletin board as the official posting place.
6. Register of Demands for January 2021.
7. Request for water leak adjustment for Account #2470.0/Martinez.
8. Renewal of liquor store license for San Juan Liquors.

ACTION:

It was moved by Councilmember Lakin, seconded by Mayor Pro Tem Johnson and unanimously carried by a roll call vote to approve the consent calendar.

OATH OF OFFICE

The Town Clerk administered the oath of office to newly appointed Councilmember Angela Ferrelli.

PUBLIC HEARINGS

9. Adoption of Ordinance Amending the Official Zoning Map by Rezoning a Portion of Replat of Blocks 2, 8 and Alley "A" of the River Park Ridgway Business Park Filing 1, Lot 4R, Block 2 from I-1 to I-2 and a Portion of Lot 2, Block 8 from I-2 to I-1

Staff Report dated 1-13-21 from the Town Planner presenting an ordinance to amend the official zoning map.

Planner Coburn presented an ordinance for second reading and adoption which would amend the zoning map to accommodate a replat of property in River Park Ridgway Park between N. Cora and Railroad Streets. The change in property line alignments created two remaining portions which require rezoning within the I-1 and I-2 Light Industrial zoning districts.

ACTION:

Councilor Meyer moved to adopt Ordinance No. 01-2021 Amending the Official Zoning Map by Rezoning a Portion of Replat of Blocks 2, 8 and Alley "A" of the River Park Ridgway Business Park Filing 1, Lot 4R, Block 2 from I-1 Light Industrial to I-2 Light Industrial 2 and a Portion of Lot 2, Block 8 from I-2 Light Industrial 2 to I-1 Light Industrial 1. Councilor Schuyler seconded the motion which carried unanimously on a roll call vote.

POLICY MATTERS

10. Release of Subdivision Improvements Agreement for Replat of Blocks 2, 8 and Alley "A" of the River Park Ridgway Business Park Filing 1

Staff Report dated 1-13-21 from the Planner presenting a request to release the subdivision improvement agreement for replat of Block 2, 8 and Alley A of the River Park Ridgway Business Park Filing 1.

Planner Coburn reported terms of the subdivision improvements agreement for River Park Ridgway Business Park Filing 1 have been met. The only outstanding items are Town Engineer approval of the as-built documents, and receipt of reimbursable services.

ACTION:

Moved by Councilor Meyer to release the Subdivision Improvements Agreement for replat of Block 2, 8 and Alley "A" of the River Park Ridgway Business Park Filing 1 recorded in Ouray County records at reception No. 226970 on November 12, 2020 as terms of the agreement have been met with the conditions that the final as-built documents are approved by the Town Engineer then submitted to Town Hall as required and final invoices are paid before the release is finalized. Mayor Pro Tem Johnson seconded the motion which carried unanimously on a roll call vote.

11. Application from Kevin and Cheryl O'Brien for revocable permit for use of Town property

Staff Report from the Town Manager dated 1-8-21 presenting an application for a revocable permit for use of a Town right of way.

Manager Neill reported an application for an encroachment permit has been submitted by Kevin and Cheryl O'Brien. The request is to use a portion of undeveloped N. Elizabeth Street for designated parking spaces associated with a home occupation at 1015 Clinton Street. He noted the municipal code states it is unlawful to use public property or rights of ways for private purposes except as permitted. He further noted the code states no business activity or storage of property involved in a business may take place outside of enclosed structures except for horticulture activities. Staff has taken the opinion that if designated parking on Town right of way is requested in order to operate a home occupation, it would no longer qualify as a home occupation, as activity would take place out of the enclosed structure. Based on this staff is recommending denial of the application recognizing it would be an exclusive use, and the business activity would be conducted outside of an enclosed structure.

There were questions from Council to staff, and discussion by the Council.

Applicant Kevin O'Brien addressed the Council and explained he has "historically used" the access for 39 years, as have "other adjacent neighbors". He noted "the Town for 131 years has never" enforced the code section, and this action is "due to one neighbors complaint". He questioned "selective enforcement of ordinances and codes", noting there are many other citizens in Town who are in violation of the same code section "because no one has complained", and asked the Council "why we are the only ones being held accountable".

The Town Manager noted that issuance of an encroachment permit creates an exclusive access to a public right of way. He explained the use of the right way for "coming and going" is permissible, but the permanent staging of equipment is not.

It was noted by Council that due to staff size, enforcement of code provisions must be done on a complaint basis.

There was discussion between Council and questions to staff. Based on a question from Council, applicant Cheryl O'Brien clarified the street is blocked from Clinton Street to the alley due to an abandoned irrigation ditch in the easement, and a "drop off".

There was discussion by the Council. There was consensus to direct staff to review the municipal code for potential amendments to allow property owners use of right of ways.

Mayor Clark left the meeting due to loss of access to the Zoom meeting, and Mayor Pro Tem Johnson facilitated the meeting.

ACTION:

Councilmember Lakin moved to deny the revocable encroachment permit for use of Town right of way to Cheryl and Kevin O'Brien, Councilor Grambley seconded, and the motion carried unanimously on a roll call vote.

12. Update on Granular Activated Carbon Water Treatment Upgrade Project

Staff Report from the Town Manager 1-5-21 presenting an update on the granular activated carbon project and grant award.

The Town Manager reported staff has been exploring benefits of transition from chlorine dioxide treatment at the water plant, to use of a granular activated carbon system. Staff applied and received, a grant of \$100,000 from the Department of Local Affairs (DOLA) towards purchase of a system. Recent conversations with suppliers have shown the original quoted cost of \$215,000 might now be \$280,000. He stated to ensure the project is fiscally viable, staff is proposing to continue sampling the water which is being produced using the chlorine treatment, and request an extension from DOLA on the time frame to expend the grant funds.

Public Works Coordinator, Chase Jones, presented the advantages and disadvantages to use of carbon water treatment.

Mayor Clark joined the Zoom meeting platform and resumed chairing the meeting.

There were questions to staff, and discussion by the Council.

The Council agreed and directed staff to request a six month extension on the grant with DOLA, continue monitoring and evaluating the water plant chlorine dioxide system for four to six months, review options and possibly solicit bids for a granular activated carbon water treatment system and use the grant funding.

13. Approval of contract for purchase of water truck as budgeted in the 2021 Fiscal Year Budget

Staff Report from the Town Clerk/Treasurer dated 1-7-21 presenting a request to purchase a used water truck.

The Town Clerk/Treasurer reported the fiscal year budget contains \$50,000 for purchase of a used water truck to replace a 1976 truck with a rusted water tank. The Town's procurement policy contains a provision to waive the formal request process if only one vendor exists that can successfully furnish the equipment. A used 2005 International truck with a rebuilt engine, and new tank and spray heads was found through Richie Trucking LLC for a cost of \$37,000. The company has agreed to deliver the equipment for \$2,000.

ACTION:

It was moved by Mayor Pro Tem Johnson, seconded by Councilor Grambley and approved by a unanimous roll call vote to approve the deviation from procurement procedures and waive the formal request process for acquisition of equipment, and approve the purchase of a 2005 International Water Truck from Richie Trucking LLC in the amount of \$37,000 and authorize staff to enter into a purchase agreement for said equipment, and expend \$2,000 for delivery.

14. Presentation of idea to merge the Main Street and Creative District programs

Staff Report from Community Initiatives Facilitator Diedra Silbert dated 1-7-21 presenting a proposal from the Creative District, Creative Advocacy Team, to merge with the Main Street committee.

Facilitator Silbert explained the Creative District, Creative Advocacy Team, is recommending merging with the Main Street committee, for efficiency and “manageability” and to include business representation on the committee.

There was discussion by the Council and it was agreed the committees should be merged.

15. Order extending the Declaration of Local Disaster related to the COVID-19 pandemic

Staff Report dated 1-7-21 from the Town Manager presenting an order to extend the declaration of a local disaster due to the COVID 19 pandemic.

Manager Neill noted the Town and County are continuing to navigate responses to the pandemic, and plan for economic recovery.

ACTION:

Councilmember Meyer moved to approve the Order Extending the Declaration of a Local Disaster in and for the Town of Ridgway. Councilor Ferrelli seconded the motion, and it carried unanimously on a roll call vote.

16. Emergency ordinance extending temporary amendments to allow temporary signage

Town Manager Staff Report dated 1-7-21 presenting an emergency ordinance to extend the use of temporary signage by businesses.

The Town Manager reported in May the Council adopted temporary amendments to the sign regulations to allow businesses to use portable signage within the Town right of way for a four month period. In September an emergency ordinance was adopted extending for another four months, and due to the ongoing nature of the COVID pandemic, he recommended extending the regulations until June 10, 2021.

There was discussion between Council and staff.

ACTION:

Councilor Lakin moved to adopt Emergency Ordinance No. 02-2021 an Emergency Ordinance of the Town of Ridgway, Colorado, Extending Temporary Amendments to the Sign Regulations, seconded by Councilor Meyer the motion carried unanimously on a roll call vote.

17. Resolution Supporting the 30x30 Campaign

Mayor Clark reported recently attending a webinar meeting regarding an environmental initiative called the thirty by thirty resolution to save nature, led by Senators and House Representatives. He suggested the Council adopt a resolution supporting the campaign to protect thirty percent of the land and ocean by 2030.

There was discussion by the Council.

ACTION:

Moved by Councilor Grambley to adopt Resolution No. 21-01 Supporting the 30x30 Campaign to Protect 30 Percent of Lands and Ocean by 2030, seconded by Councilor Ferrelli the motion carried unanimously on a roll call vote.

18. Support Mountain Pact's letter to the Biden Administration and 117th Congress

Mayor Clark reported the Town is a participant in Mountain Pact, a consortium of small mountain towns, and with the change in administration at the federal level, the organization is preparing a letter requesting a change in environmental actions regarding climate change. He suggested the Council sign the letter of support.

ACTION:

It was moved by Councilor Meyer, seconded by Councilor Grambley and unanimously carried on a roll call vote to sign on to the Mountain Pact letter to the Biden Administration and 117th Congress.

19 Letter of support for expanding the Impact Development Fund's Down Payment Assistance Program to Ouray County

Staff Report from the Town Manager dated 1-8-21 presenting a request for letter of support for expanding the Impact Development Fund Program.

Manager Neill explained the Town has been asked to sign a letter of support to expand the Colorado Division of Housing Down Payment Assistance Program to Ouray County.

ACTION:

Councilor Lakin moved to authorize Mayor Clark to sign the letter of support of Impact Development Funds application that requests an amendment to the Division of Housing for expanded geographic eligibility under their single family down payment assistance program. The motion was seconded by Mayor Pro Tem Johnson. On a call for the roll call vote, the motion carried unanimously.

STAFF REPORTS

The Town Manager presented a written monthly report and reviewed some of the items. He presented an update on the Space to Create project, and the newly formed Heritage Park subcommittee.

Councilor Meyer presented an update on the working group for the county wide economic resiliency plan.

The Town Clerk reported on a recently detected statewide unemployment fraud that has impacted the Town.

ADJOURNMENT

The meeting adjourned at 8:15 p.m.

Respectfully Submitted,

Pam Kraft, MMC
Town Clerk

MINUTES OF JOINT WORKSHOP
RIDGWAY TOWN COUNCIL,
OURAY COUNTY BOARD OF COMMISSIONERS,
OURAY CITY COUNCIL

JANUARY 21, 2021

The Town Council convened at 6:00 p.m. for a Joint Workshop with the Ouray County Commissioners and Ouray City Council via Zoom Meeting, a virtual meeting platform, pursuant to the Town's Electronic Participation Policy, due to COVID-19. In attendance from the Council Councilors Ferrelli, Grambley, Meyer and Schuyler. Councilor Lakin, Mayor Pro Tem Johnson and Mayor Clark were absent.

Town Clerk's Notice of Joint Workshop dated January 20, 2021.

The purpose of the meeting was to allow the policymakers an opportunity to discuss and strategize about planning, recovery and economic impacts due to the COVID-19 pandemic.

ADJOURNMENT

The meeting adjourned at 7:15 p.m.

Respectfully Submitted,

Pam Kraft, MMC
Town Clerk

MINUTES OF JOINT WORKSHOP
RIDGWAY TOWN COUNCIL,
OURAY COUNTY BOARD OF COMMISSIONERS,
OURAY CITY COUNCIL

FEBRUARY 4, 2021

The Town Council convened at 6:05 p.m. for a Joint Workshop with the Ouray County Commissioners and Ouray City Council via Zoom Meeting, a virtual meeting platform, pursuant to the Town's Electronic Participation Policy, due to COVID-19. In attendance from the Council Councilors Ferrelli, Grambley, Meyer and Mayor Clark. Councilors Lakin, Schuyler and Mayor Pro Tem Johnson were absent.

Town Clerk's Notice of Joint Workshop dated February 1, 2021.

The purpose of the meeting was to allow the policymakers an opportunity to discuss and strategize about planning, recovery and economic impacts due to the COVID-19 pandemic.

ADJOURNMENT

The meeting adjourned at 7:30 p.m.

Respectfully Submitted,

Pam Kraft, MMC
Town Clerk

Town of Ridgway
Register of Demands
February 2021

Name	Memo	Account	Paid Amount
Bo James Nerlin, PC		Alpine-Operating Account	
	Triangle Lot 1 PUD (to be reimb)	511GOO · Town Attorney	-754.00
	Lena St Commons (to be reimb)	511GOO · Town Attorney	-1,794.00
	Jan 2021	511GOO · Town Attorney	-758.50
	code enforcement	511GOO · Town Attorney	-832.50
	attorney client	511GOO · Town Attorney	-444.00
	Jan 2021 - PC	511GOO · Town Attorney	-148.00
	Space to Create	511GOO · Town Attorney	-1,683.50
	building dept	511GOO · Town Attorney	-148.00
TOTAL			-6,562.50
True Value		Alpine-Operating Account	
		632GO2 · Supplies & Materials	-6.71
		732POO · Supplies & Materials	-152.94
		732PO1 · Supplies - community center	-11.86
		932SOO · Supplies & Materials	-6.70
		932WOO · Supplies & Materials	-173.56
TOTAL			-351.77
Honnen Equipment Company		Alpine-Operating Account	
	seat assembly - skid steer loader	961WOO · Vehicle & Equip Maint & Repair	-51.95
	seat assembly - skid steer loader	661GO2 · Vehicle & Equip Maint & Repair	-51.94
	seat assembly - skid steer loader	761POO · Vehicle & Equip Maint & Repair	-51.94
	floodlamp - skid steer loader	961WOO · Vehicle & Equip Maint & Repair	-10.72
	floodlamp - skid steer loader	661GO2 · Vehicle & Equip Maint & Repair	-10.72
	floodlamp - skid steer loader	761POO · Vehicle & Equip Maint & Repair	-10.72
	tail & turn signal lamps - grader	661GO2 · Vehicle & Equip Maint & Repair	-107.30
	tail & turn signal lamps - grader	961WOO · Vehicle & Equip Maint & Repair	-35.77
	floodlamp - grader	661GO2 · Vehicle & Equip Maint & Repair	-119.68
	floodlamp - grader	961WOO · Vehicle & Equip Maint & Repair	-39.90
TOTAL			-490.64
Sunset Automotive		Alpine-Operating Account	
	vapor canister - Chevy pickup	661GO2 · Vehicle & Equip Maint & Repair	-310.42
TOTAL			-310.42
Valvoline Instant Oil Change		Alpine-Operating Account	
	oil - 2018 Explorer	860GO3 · Gas & Oil	-61.18
	oil - Durango	860GO3 · Gas & Oil	-67.12
TOTAL			-128.30
SGS Accutest Inc		Alpine-Operating Account	
		990WOO · Testing - water	-102.56
TOTAL			-102.56
City of Grand Junction		Alpine-Operating Account	
		918SOO · Testing & Permits - sewer	-189.00
TOTAL			-189.00

Town of Ridgway
Register of Demands
February 2021

Name	Memo	Account	Paid Amount
The Paper Clip LLC		Alpine-Operating Account	
	expanding folders	541GOO · Office Supplies	-29.93
	expanding folders	547GOO · Records Management	-37.16
	expanding folders	947SOO · Records Management	-37.15
	expanding folders	947WOO · Records Management	-37.15
TOTAL			-141.39
UNCC		Alpine-Operating Account	
		915WOO · Dues & memberships	-1.32
		915SOO · Dues & Memberships	-1.32
TOTAL			-2.64
Ouray County Road & Bridge		Alpine-Operating Account	
	Jan 2021	660GO2 · Gas & Oil	-247.43
	Jan 2021	760POO · Gas & Oil	-79.79
	Jan 2021	960WOO · Gas & Oil	-158.08
	Jan 2021	960SOO · Gas & Oil	-456.52
	Jan 2021	860GO3 · Gas & Oil	-638.25
TOTAL			-1,580.07
Hartman Brothers Inc		Alpine-Operating Account	
		661GO2 · Vehicle & Equip Maint & Repair	-2.28
		961SOO · Vehicle & Equip Maint & Repair	-2.27
		961WOO · Vehicle & Equip Maint & Repair	-2.27
TOTAL			-6.82
Colorado Communities for Cli...		Alpine-Operating Account	
	2021 CC4CA	522GOO · Dues & Memberships	-1,000.00
TOTAL			-1,000.00
Amerigas		Alpine-Operating Account	
	propane - wtr plant	942WOO · Utilities	-1,992.77
TOTAL			-1,992.77
Quill.com		Alpine-Operating Account	
		541GOO · Office Supplies	-18.49
TOTAL			-18.49
Caselle Inc		Alpine-Operating Account	
	Feb 2021	914SOO · Consulting & Engineering Servs	-159.50
	Feb 2021	914WOO · Consulting & Engineering Ser...	-159.50
TOTAL			-319.00

Town of Ridgway
Register of Demands
February 2021

Name	Memo	Account	Paid Amount
San Miguel Power Assoc, Inc.		Alpine-Operating Account	
	12/19/20-1/19/21	542GOO · Utilities	-93.25
	12/19/20-1/19/21	5075GO1 · Region 10	-114.31
	12/19/20-1/19/21	638GO2 · Street Lighting	-396.66
	12/19/20-1/19/21	642GO2 · Utilities	-336.89
	12/19/20-1/19/21	742POO · Utilities	-558.06
	12/19/20-1/19/21	742PO1 · Utilities - community center	-93.26
	12/19/20-1/19/21	842GO3 · Utilities	-93.25
	12/19/20-1/19/21	942SOO · Utilities	-3,451.07
	12/19/20-1/19/21	942WOO · Utilities	-877.30
TOTAL			-6,014.05
Region 10		Alpine-Operating Account	
	2020 EZ fees	781POO · Events & Festivals	-48.00
TOTAL			-48.00
Region 10		Alpine-Operating Account	
	annual dues	5075GO1 · Region 10	-1,328.00
TOTAL			-1,328.00
ProForce Law Enforcement		Alpine-Operating Account	
	patrol rifles	832GO3 · Equipment & Supplies	-2,518.94
TOTAL			-2,518.94
Rocky Mountain Supply Co LLC		Alpine-Operating Account	
	snow edge blades - single axle dump	661GO2 · Vehicle & Equip Maint & Repair	-318.58
TOTAL			-318.58
Kim's Housekeeping LLC		Alpine-Operating Account	
	Jan 2021	779POO · Janitorial Service - parks	-787.50
	Jan 2021	779PO1 · Janitorial Services - comm cntr	-262.50
	Jan 2021	545GOO · Janitorial Services	-262.50
TOTAL			-1,312.50
Black Hills Energy-Hartwell Park		Alpine-Operating Account	
		742POO · Utilities	-66.77
TOTAL			-66.77
Black Hills Energy-Town Hall		Alpine-Operating Account	
		742PO1 · Utilities - community center	-89.00
		842GO3 · Utilities	-89.00
		542GOO · Utilities	-89.01
TOTAL			-267.01

Town of Ridgway
Register of Demands
February 2021

Name	Memo	Account	Paid Amount
Black Hills Energy-Broadband		Alpine-Operating Account	
	broadband building	5075GO1 · Region 10	-13.34
TOTAL			-13.34
Black Hills Energy-PW Office		Alpine-Operating Account	
		642GO2 · Utilities	-25.09
		942SOO · Utilities	-25.08
		942WOO · Utilities	-25.08
TOTAL			-75.25
Black Hills Energy-Lift Station		Alpine-Operating Account	
		942SOO · Utilities	-23.63
TOTAL			-23.63
Black Hills Energy-PW Building		Alpine-Operating Account	
		742POO · Utilities	-94.67
		642GO2 · Utilities	-94.67
		942SOO · Utilities	-94.68
		942WOO · Utilities	-94.67
TOTAL			-378.69
Pureline Treatment Systems		Alpine-Operating Account	
	Jan 2021	989WOO · Plant Expenses - water	-1,650.00
	Feb 2021	989WOO · Plant Expenses - water	-1,650.00
TOTAL			-3,300.00

AGENDA ITEM #6



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

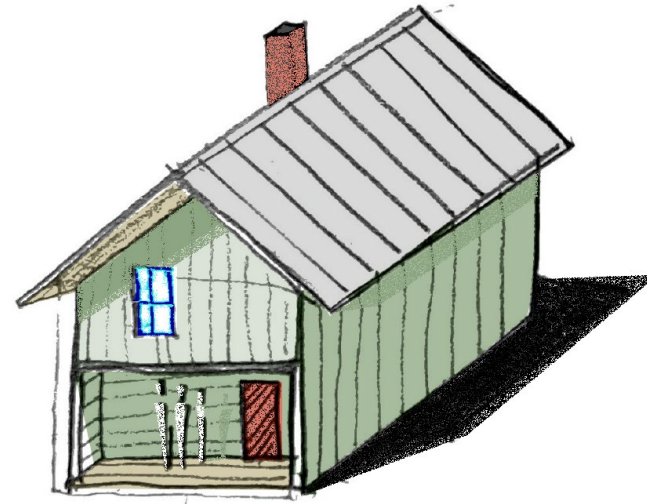
To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 3, 2021
Agenda Topic: **Workforce Housing Presentation**

SUMMARY:

Paul Major, President & CEO of the Telluride Foundation, will attend Wednesday's virtual meeting to give a presentation on workforce housing.

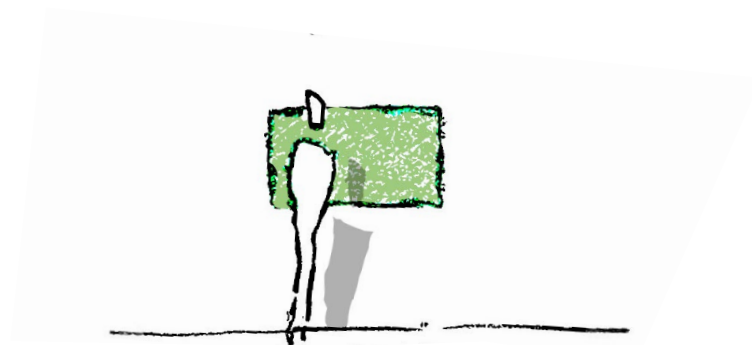
ATTACHMENT:

Rural Homes: for sale, for locals



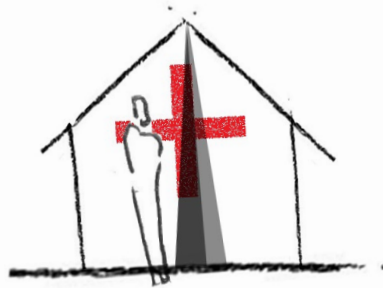
Rural Homes: for sale for locals

School superintendents: *“We have an inability to recruit and retain great teachers”*

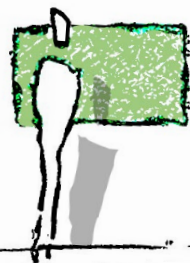


due to a lack of **quality housing**.

A problem that applies to **everybody** in the workforce :



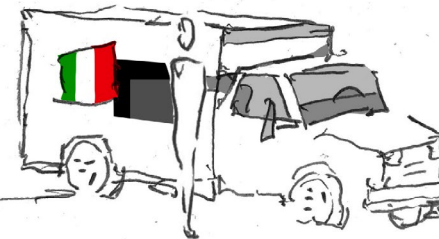
Healthcare Professionals



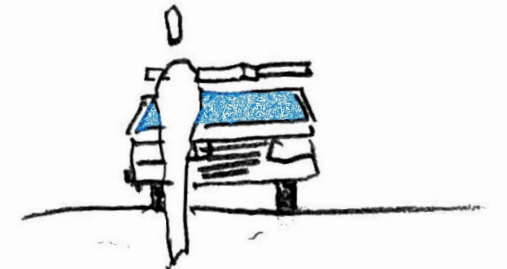
Teachers



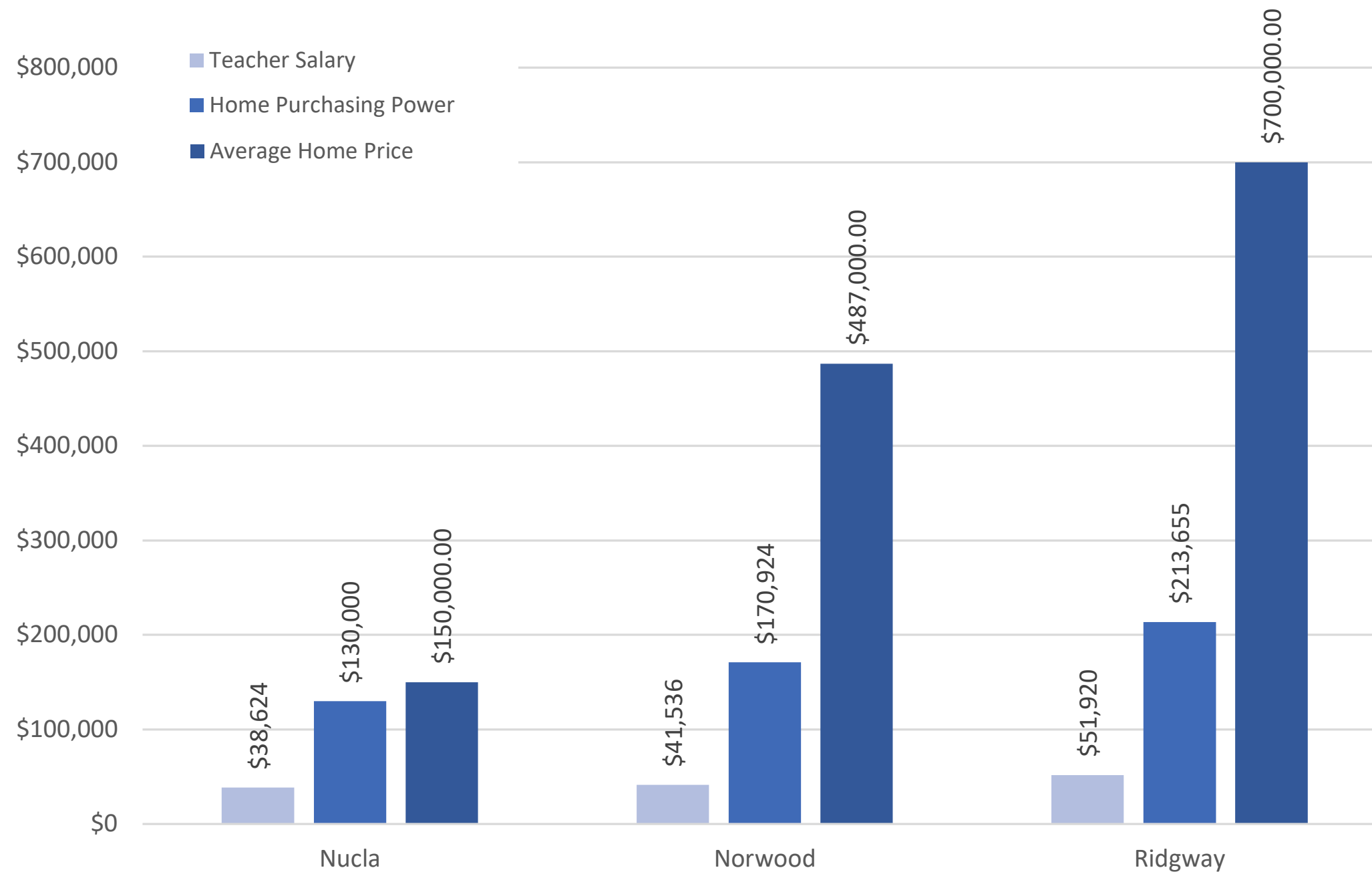
County Clerks



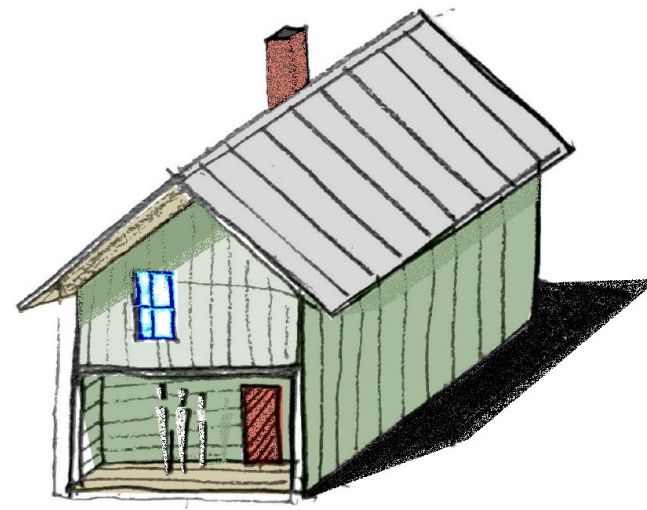
Immigrants



Sheriff's Deputies



our priority:



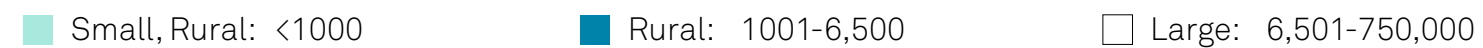
develop a toolkit to provide the communities we service with affordable housing



a key determinate of health, family stability, wealth building, happiness.

CDE: Rural district - size of district, distance from nearest large urban/urbanized area, enrollment of 6,500 or less January 2019

CDE Fall 2017 Student October Count



k-12 enrollment:

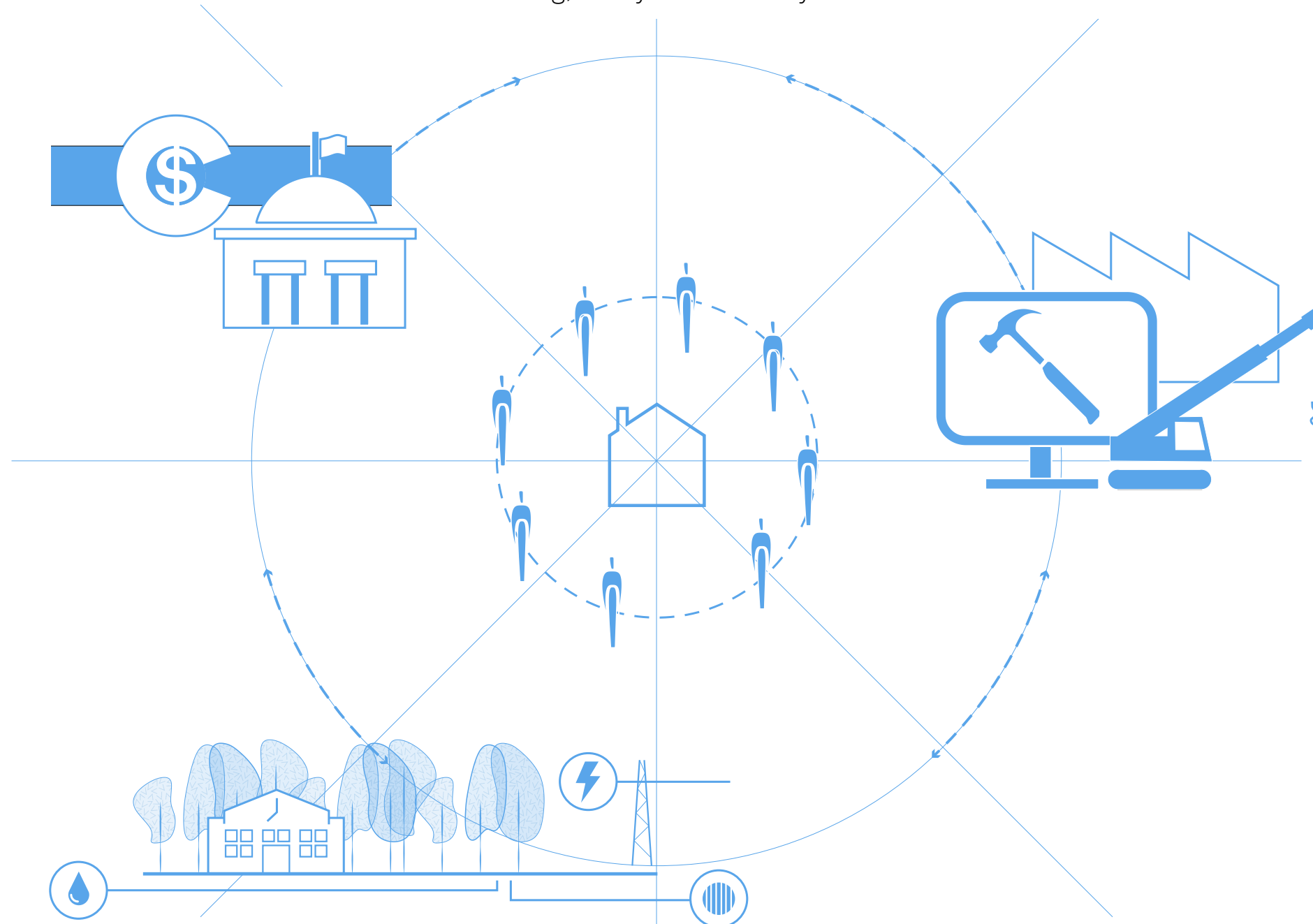
traditional development methods
do not apply in rural areas

LIHTC:	competitive statewide allocations
NMTC:	doesn't scale
Section 8:	different market
Developer:	not financially feasible

this requires a contextual approach

a focused toolkit:

low-cost financing, municipal partnerships, and optimized, pre-fab
home building, led by a community committee

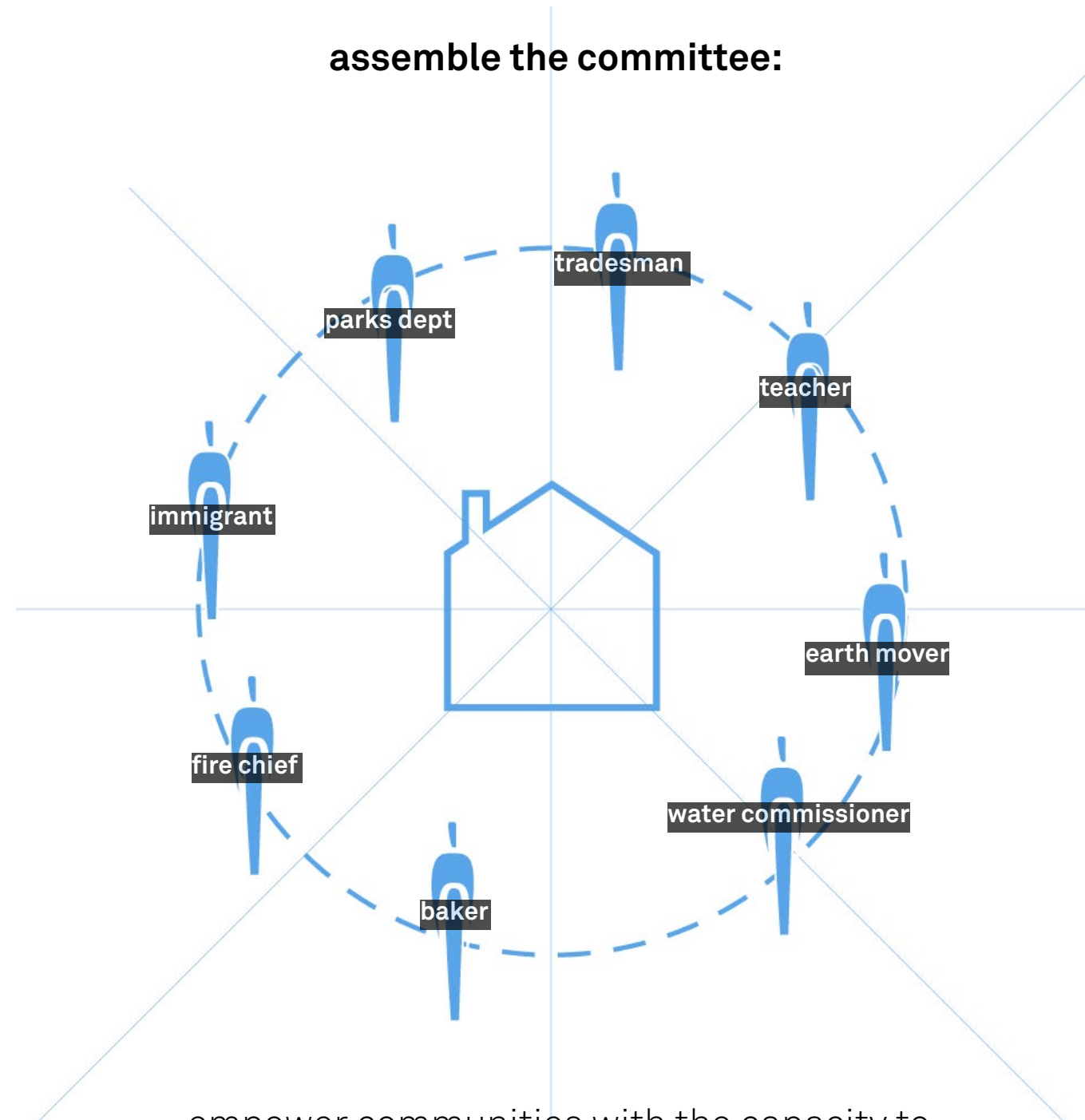


1. the toolkit - cost savings

2. the pilot sites

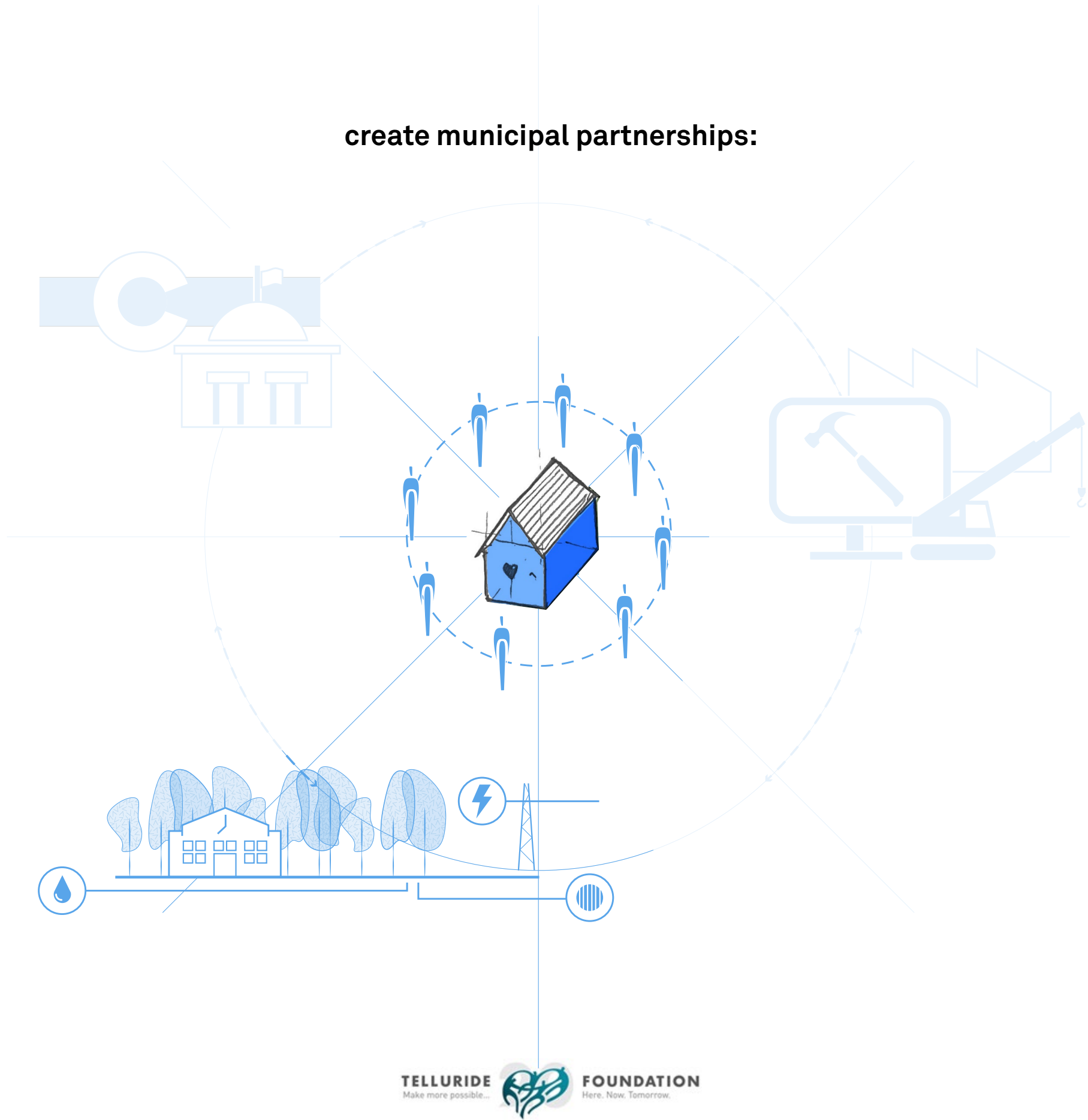
3. the pro forma

assemble the committee:



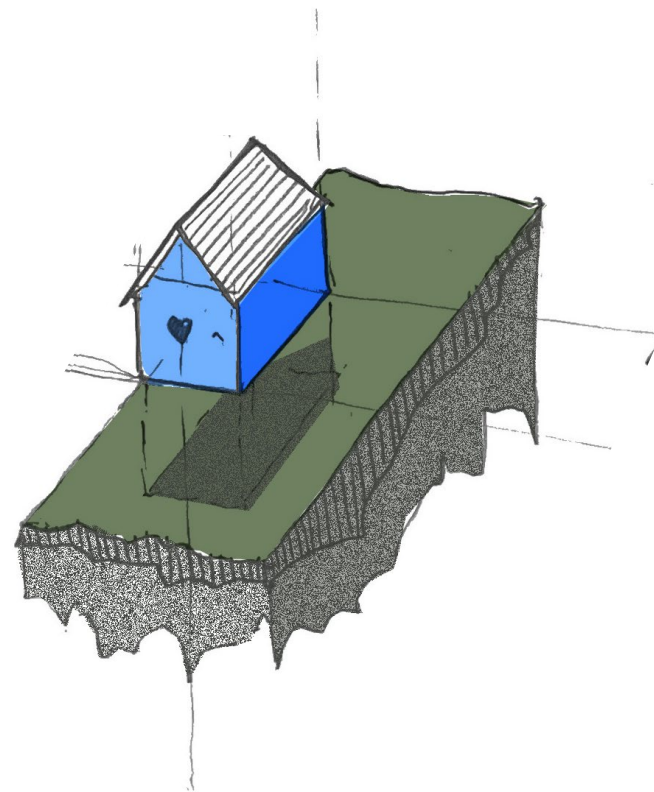
empower communities with the capacity to
envision, build, and finance homes

create municipal partnerships:



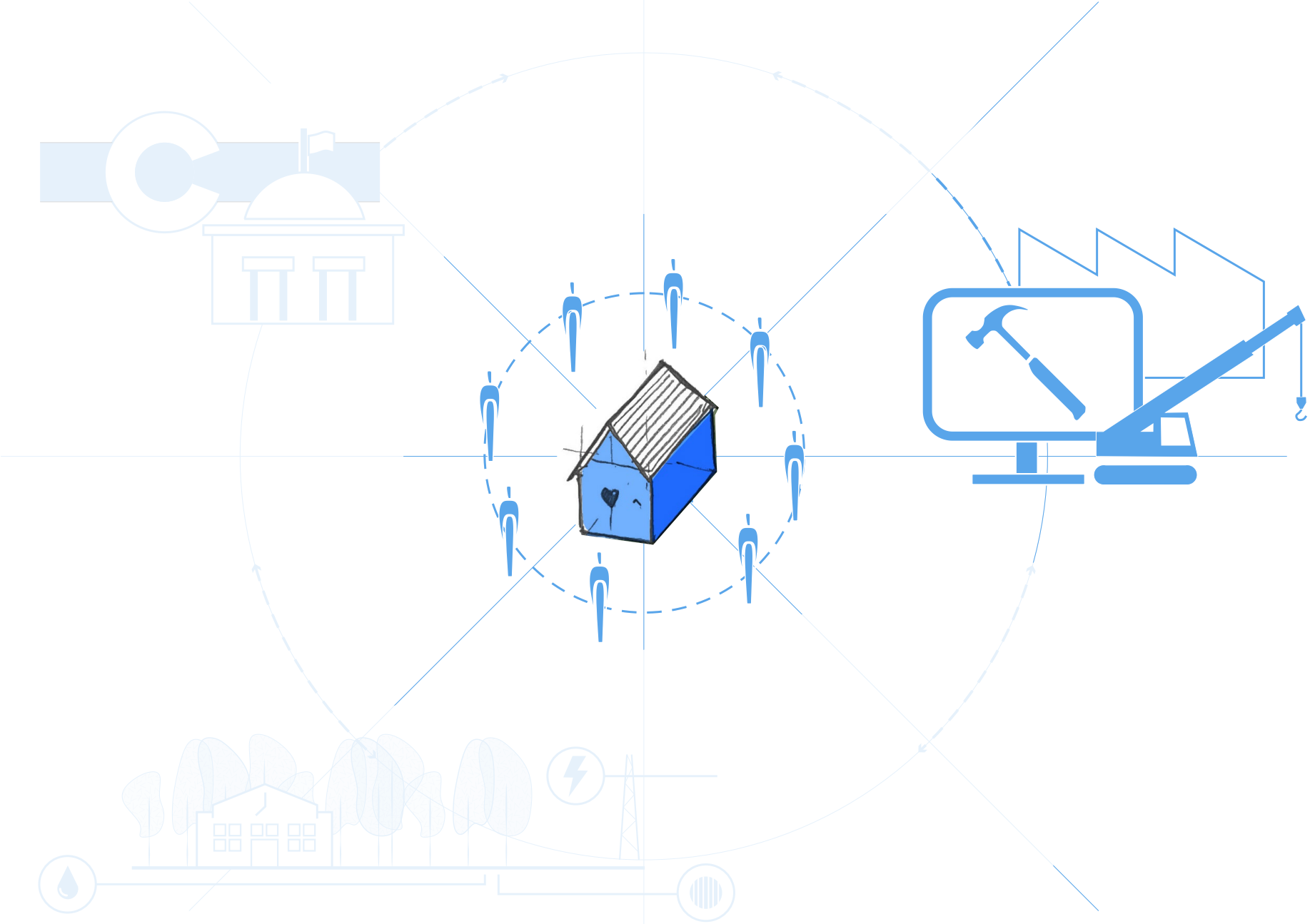
create municipal partnerships:

land donation: 10% discount



criteria: utility access, flat, central, donated.

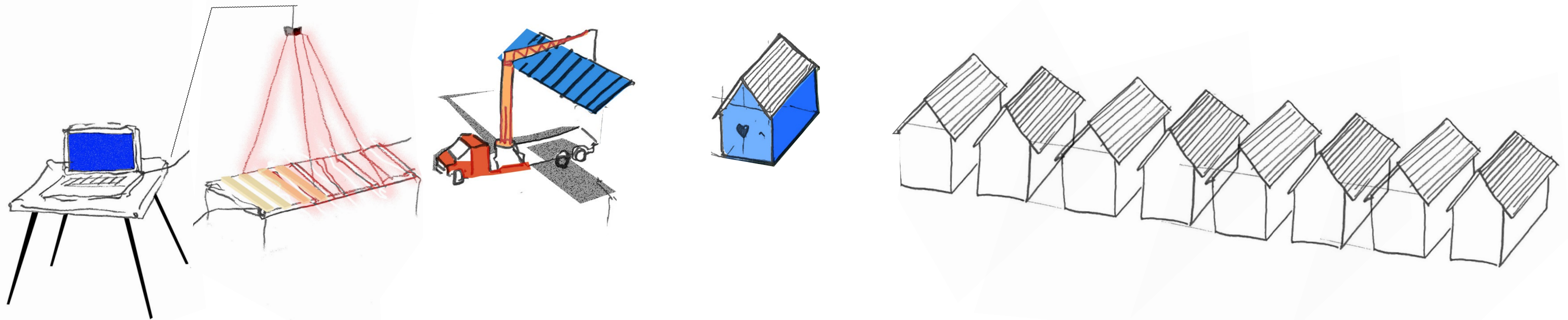
leverage optimized home building:



leverage optimized home building:

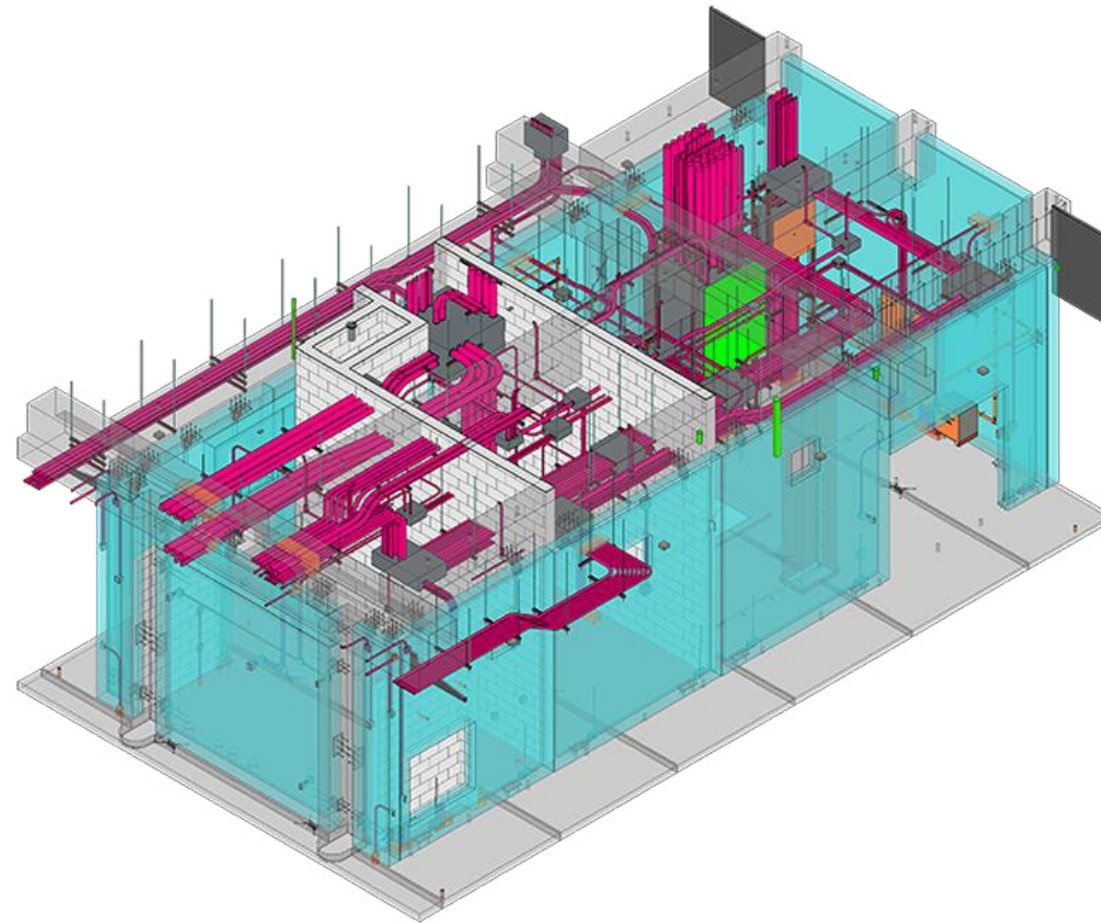
BIM modeling: 48% discount

\$109/sq. ft **vs** \$235/sq. ft

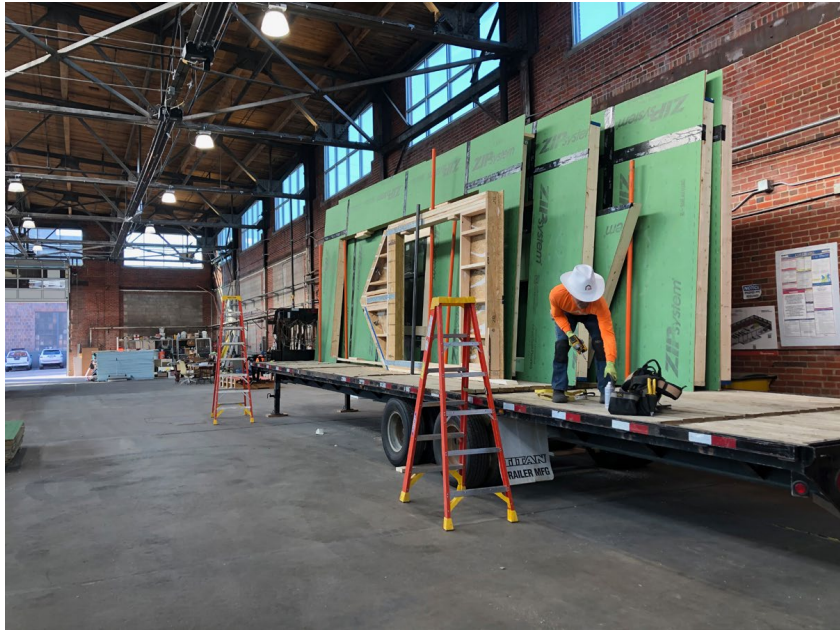


design through to production

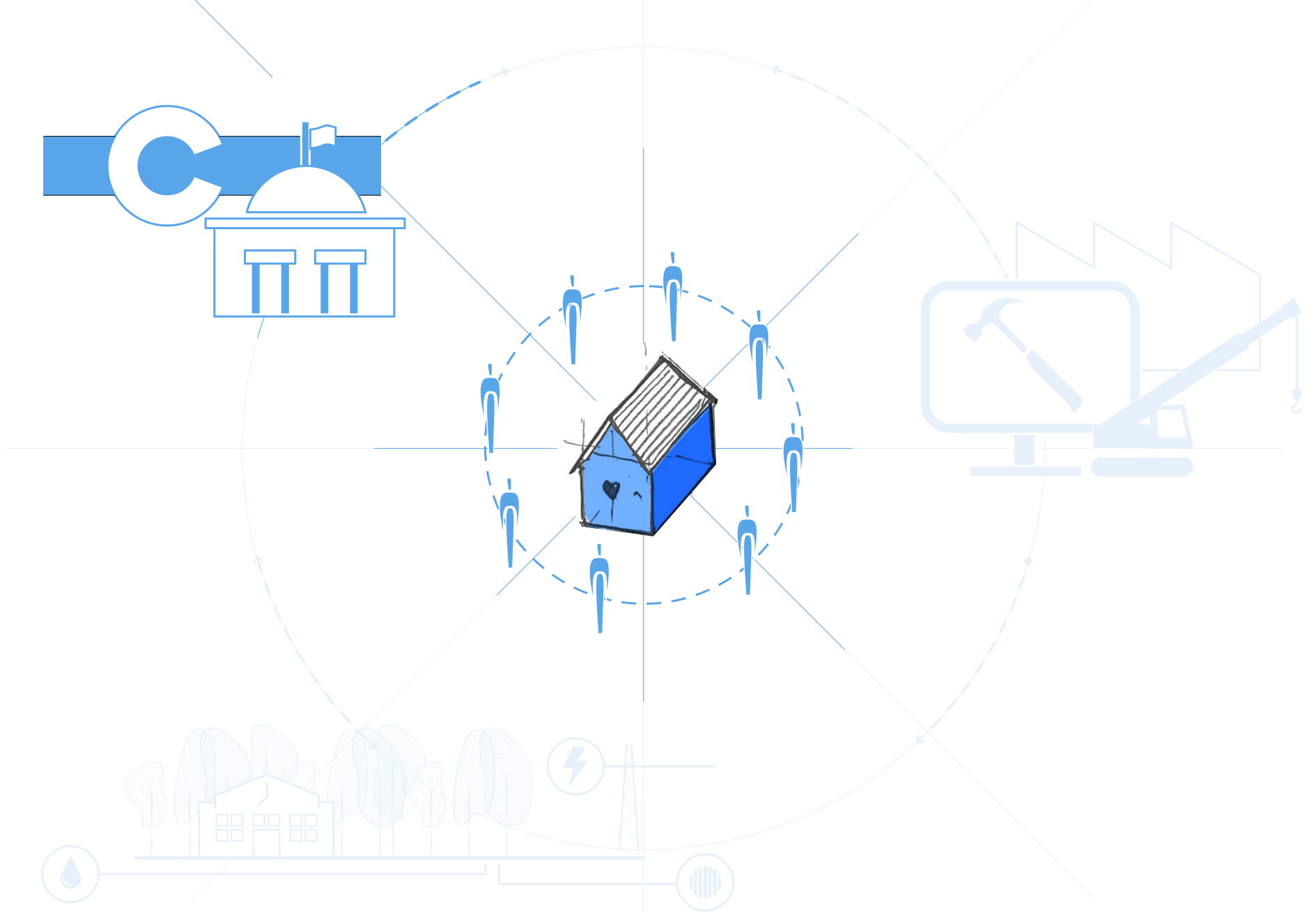
BIM: Building Information Modeling



advanced building technology: develops efficiencies in cost, speed, safety, energy, and waste

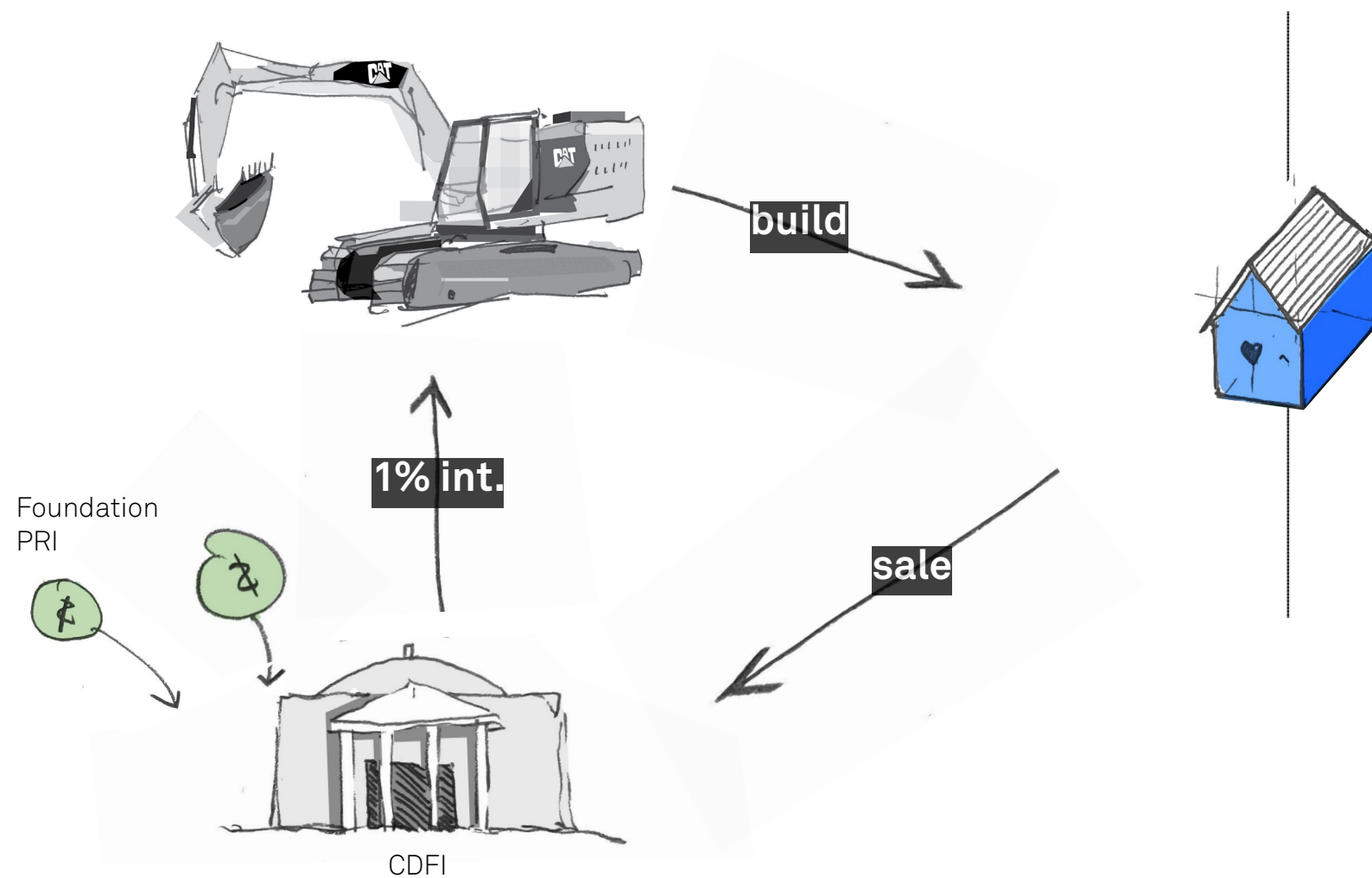


obtain low cost capital:

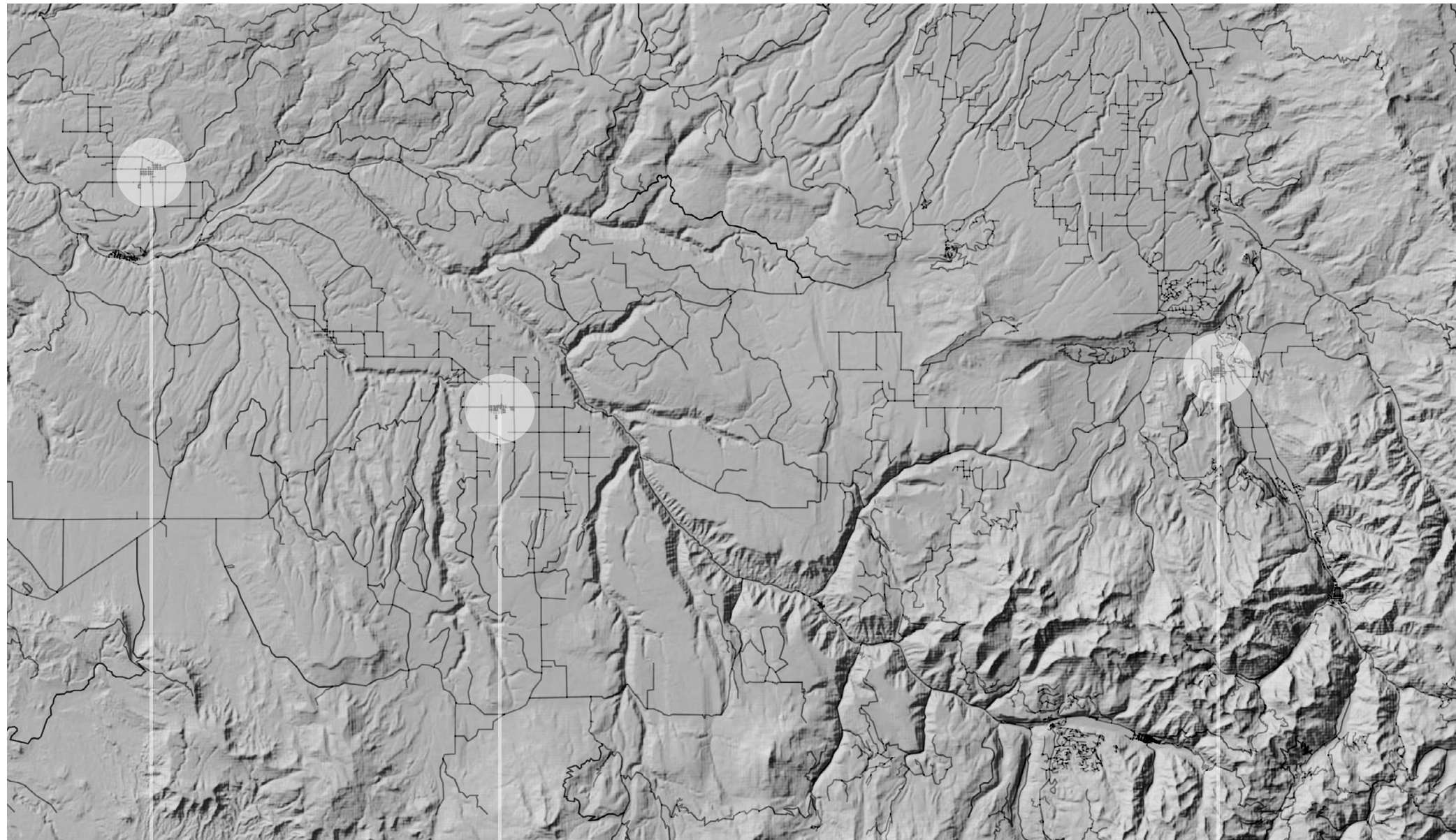


obtain low cost financing:

1% interest rates & recycling capital



pilot sites:

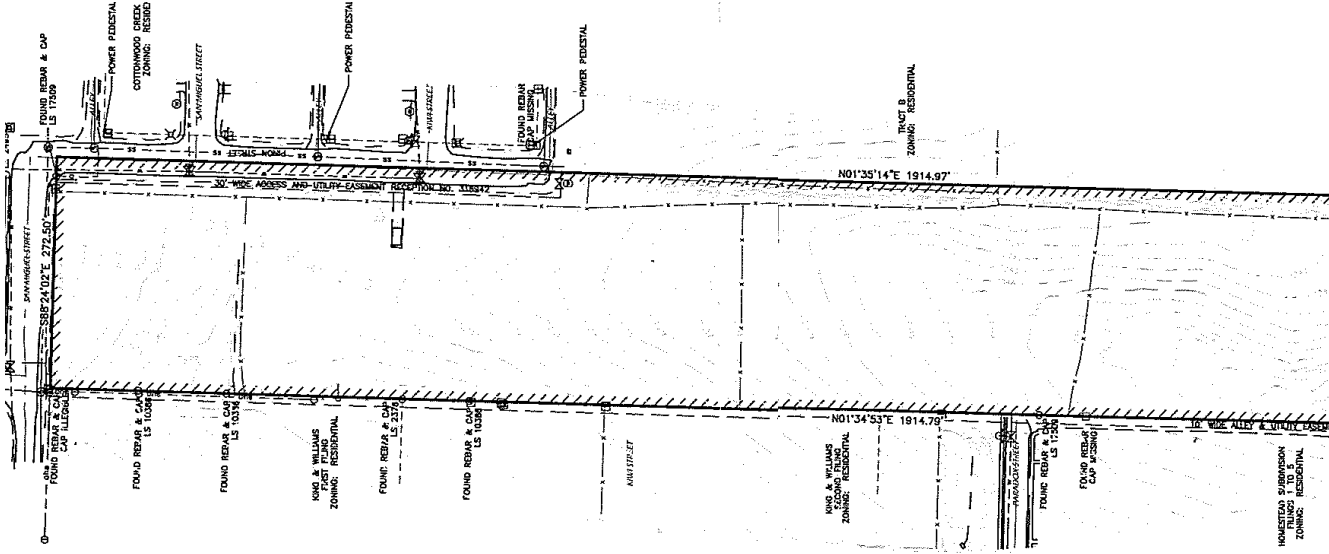
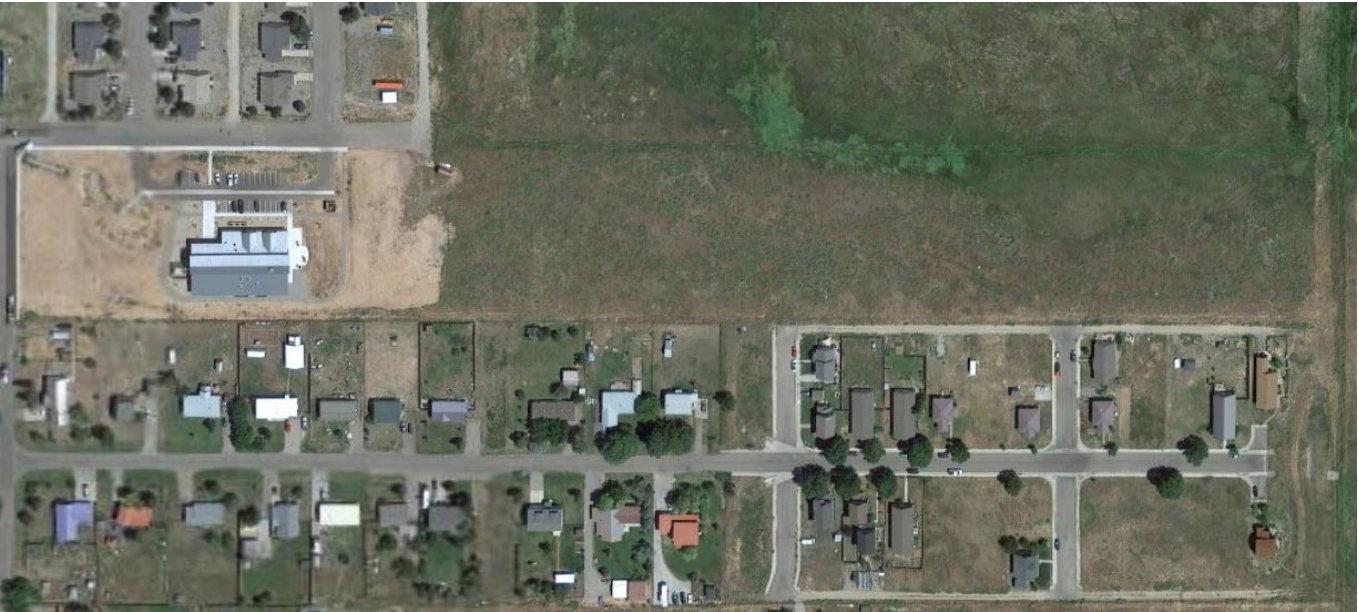


Nucla **15 homes**

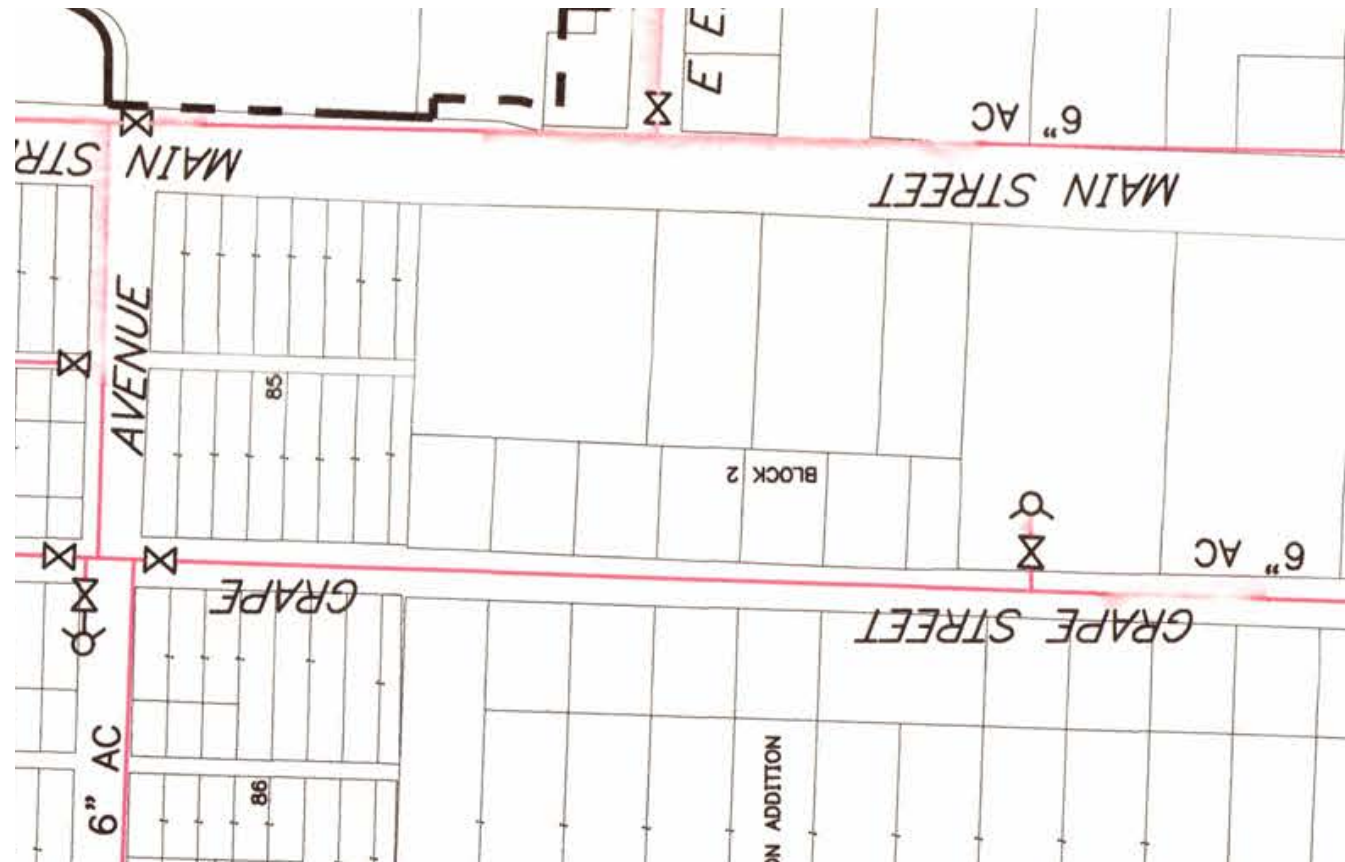
Norwood **20 homes**

Ridgway **20 homes**

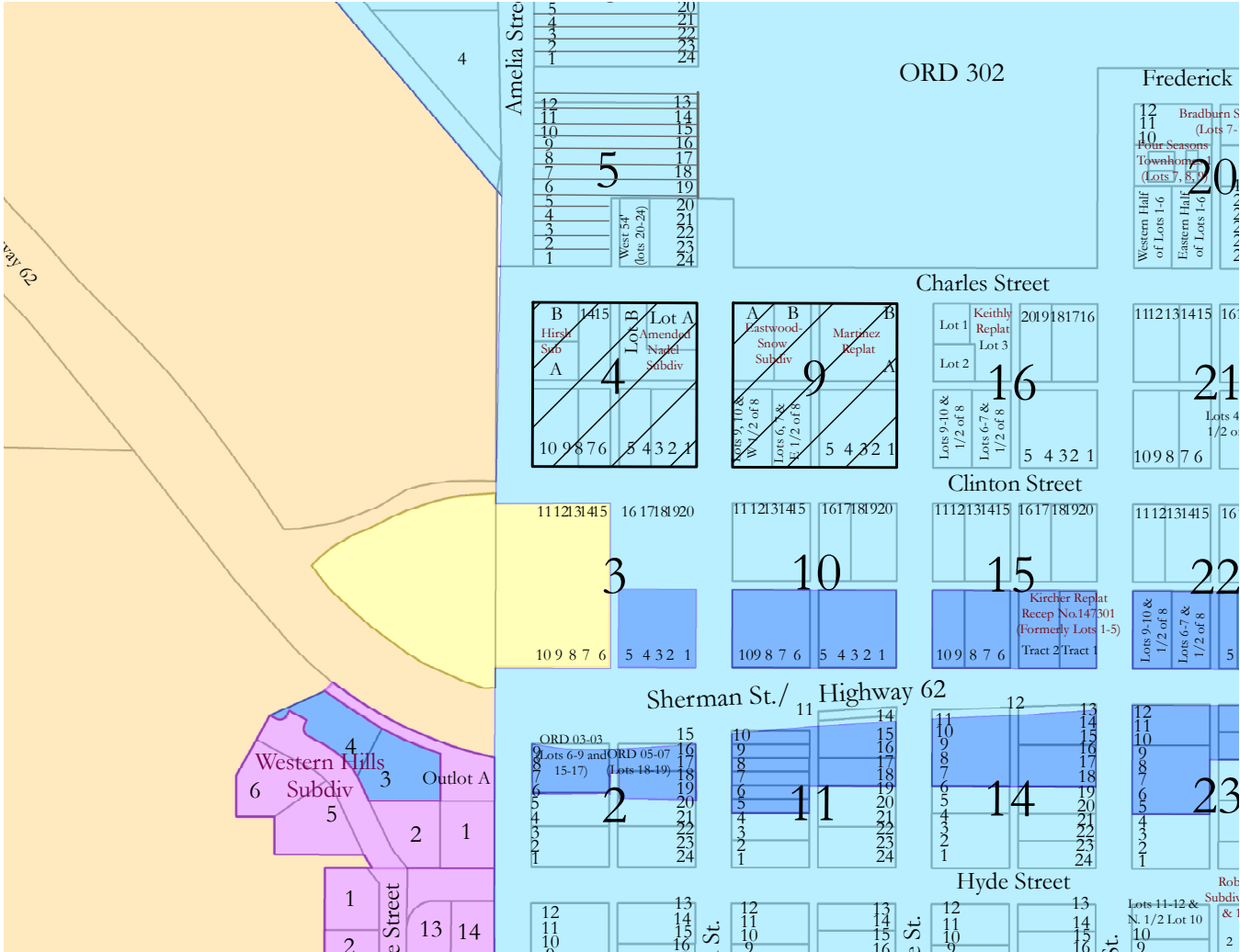
Norwood, CO: 20 homes



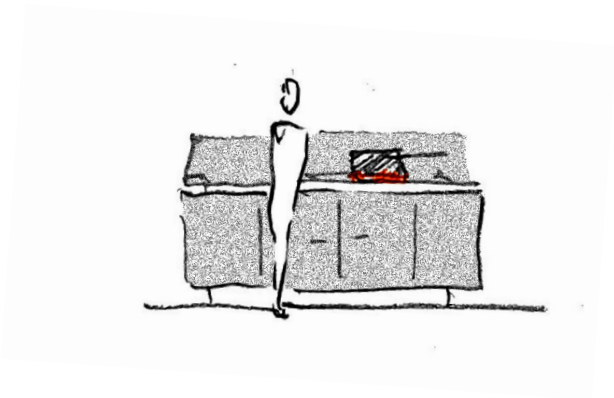
Nucla, CO: 15 homes



Ridgway, CO: 20 homes

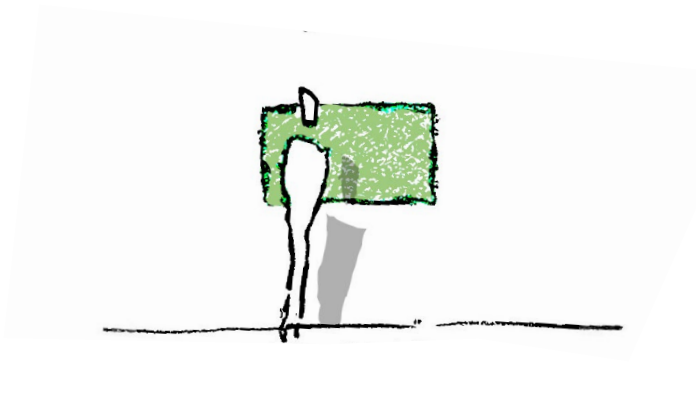


home value: **f(AMI)**
price related to salary



Cooks' & Service

\$28,968 salary
60% AMI, Nucla
\$119,206 home



Teacher

\$41,536
80% AMI, Norwood
\$170,924 home



Healthcare Professionals

\$51,920
80% AMI, Ridgway
\$213,655 home



Administrators

\$31,152
60% AMI, Norwood
\$128,193 home

home sales revenue: f(unit mix)

	AMI	Household Income (80% AMI)	Home Sale Price	# Homes	Total Revenue
Nucla	60	\$28,968.00	\$132,062.00	3	\$396,186
	80	\$38,624.00	\$176,082.00	5	\$880,410
	100	\$48,280.00	\$220,103.00	4	\$880,412
	120	\$57,936.00	\$264,123.00	3	\$792,369
					\$2,949,377
Norwood	60	\$31,152.00	\$151,646.00	8	\$1,213,168
	80	\$41,536.00	\$202,195.00	8	\$1,617,560
	100	\$51,920.00	\$252,744.00	4	\$1,010,976
	120	\$66,528.00	\$303,293.00	0	\$0
					\$3,841,704
Ridgway	60	\$38,940.00	\$177,523.00	15	\$2,662,845
	80	\$51,920.00	\$236,697.00	5	\$1,183,485
	100	\$64,900.00	\$295,871.00	0	\$0
	120	\$77,880.00	\$355,045.00	0	\$0
					\$3,846,330
Total				55	\$10,637,411

60% AMI	26
80% AMI	18
100% AMI	8
120% AMI	3
	55

project finances: **sources & uses**

USES		Total	Nucla	Norwood	Ridgway
Land		\$1,197,900	\$326,700	\$435,600	\$435,600
Hard Costs		\$6,630,530	\$1,808,326	\$2,411,102	\$2,411,102
Site Costs		\$2,750,000	\$750,000	\$1,000,000	\$1,000,000
Soft Costs		\$1,688,495	\$460,499	\$613,998	\$613,998
Developer Fee		\$885,522	\$241,506	\$322,008	\$322,008
Total		\$13,152,447	\$3,587,031	\$4,782,708	\$4,782,708

Sources		Total	Nucla	Norwood	Ridgway
Land		\$1,197,900	\$326,700	\$435,600	\$435,600
Construction Fund		\$9,176,695	\$1,956,199	\$3,477,686	\$3,742,810
Convention Loan		\$1,264,732	\$939,608	\$325,124	\$0
DOLA - home		\$660,000	\$120,000	\$240,000	\$300,000
DOLA - state		\$717,272	\$195,620	\$260,826	\$260,826
Telluride Foundation		\$135,847	\$48,905	\$43,471	\$43,471
Total		\$13,152,447	\$3,587,032	\$4,782,708	\$4,782,707

AGENDA ITEM #7

STAFF REPORT

Request: Subdivision Improvements and Lien Agreement for Lena Street Commons Planned Unit Development
Legal: Town of Ridgway Tract of Land Lying East of Blocks 31 & 32, West of the West Line of the Railroad Right of Way Between Otto St. and Charles St.
Address: TBD N Lena Street
Parcel #: 430516207004
Zone: General Commercial (GC) and Historic Business (HB)
Applicant: Hines Designs
Owner: Lena Commons LLC
Initiated By: Shay Coburn, Town Planner
Date: February 10, 2021

BACKGROUND

The Town Council approved the Preliminary Plat and Development Agreement for the Lena Street Commons PUD on June 13, 2018, with a number of conditions. Conditions were met and construction commenced in fall of 2020. The Applicant has submitted an application for a Final Plat which brought up the need for this Subdivision Improvements and Lien Agreement to be reviewed and approved by Council before the Final Plat can be approved as described in the Municipal Code.

CODE REQUIREMENTS

7-4-6 Required Improvements

(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.

ANALYSIS

The Development Agreement outlined a phasing plan in which the following improvements were to be completed before a Final Plat could be approved unless secured through a Subdivision Improvements Agreement (SIA):

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.

While most of these improvements have been completed, the few that were not completed are proposed to be included in the SIA. In addition, the Development Agreement provided a phasing plan in which the 5 buildings could be built with their adjacent improvements like sidewalks, drives, landscaping, etc. at the time of building permit. The Municipal Code allows for these types of improvements to be completed after the Final Plat is recorded if the Town enters into an SIA with the property owner.

The attached SIA is a draft from the development team with mark ups proposed by Town. Given timing, this staff report is being published at about the same time the mark up is being sent to the development team for their review. As such, there may be a few details that the development team wants to discuss during the meeting. In addition, it will be vital to determine if this will also be lien agreement or have a bond or security requirement.

STAFF RECOMMENDATION AND PROPOSED MOTION

While Town is mostly comfortable with the proposed SIA, a few additional details need to be sorted before staff would be comfortable making a recommendation.

ATTACHMENTS

1. Subdivision Improvements Agreement – markup

SUBDIVISION IMPROVEMENTS AGREEMENT

THIS AGREEMENT (“**Agreement**”), made effective as of _____, 2021 (“**Effective Date**”), is made by and between Lena Commons, LLC, a Colorado limited liability company (“**Subdivider**”) and the Town of Ridgway, a home rule municipality and political subdivision of the State of Colorado (“**Town**”). Property Owner and Town are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”. The Subdivider and the Town agree that in consideration of recording the Final Plat map for the Lena Street Commons PUD/Subdivision (“**Project**”) as follows:

1. Pursuant to a certain Development Agreement between the Town and the Subdivider recorded on August 19, 2019 in Reception No. 223540 (“**Development Agreement**”), the Subdivider agreed to install certain infrastructure work listed on Exhibit A-2 of the Development Agreement, which work for Phase 1 has been partially completed and installed prior to the recordation of the Final Plat for the Project, as required by the Development Agreement contemplated that work not completed in Phase 1 could be secured through this Subdivision Improvements Agreement. The Development Agreement further contemplated that certain additional site work and infrastructure work, in addition to the building improvements, would be completed as each phase of vertical development of the Project is being undertaken. The particular site and infrastructure work is respectively noted in Exhibit A-2 of the Development Agreement and designated as “**Phased Project Elements/Components**” and identified for Phase 2: “**Building B Phase**”, Phase 3: “**Building C Phase**”, Phase 4: “**Building D and Building E Phase**”, and Phase 5: “**Building A Phase**”. Subdivider agrees that each of its building permit applications for development in Phases 2-5 must include plans for (“**Remaining Work**”) per Exhibit “A”; ~~(a) the site work and infrastructure work as identified in the Development Agreement serving that phase, (b) the respective elements of additional respective phasing components for that phase, and (c) any such other utilities and infrastructure work not previously installed that is required to serve the units in the Phase.~~ The Remaining Work for each particular phase must be installed per approved Preliminary Plat civil plans or amendments thereto and before a certificate of occupancy for the respective units in the building in that Phase may be issued by the Town.

1-2. The Parties agree that ~~certain of the elements of the work contemplated for some of the Phases, such as the installation of sidewalks, landscaping, curb, and gutter, parking, drainage and other related facilities and related landscaping and improvements along the portion of Lena and Otto Streets that is adjacent to the Project, may be deferred and to be installed when the full road is built in coordination with the Town in accordance with the agreed upon Implementation Plan pursuant to Section 3 of the Development Agreement.~~ Such deferral shall allow for better coordination of construction and the avoidance of damage to such elements caused by ongoing development of the Project.

2-3. The Subdivider agrees to reimburse the Town for an allocated share of the costs for water ~~and~~ sewer taps installations incurred by the Town in the amount of \$100,936_____, which shall be payable ~~in prorata amounts upon the earlier of three years from the execution of the Lena Street Commons Development Agreement or upon at the issuance time of a building permit is issued for each Building in the Project, as such allocations as indicated on attached Exhibit “A”~~ per the following breakdown: \$37,203.25 due for the initial Building B Phase, \$28,659.38 due for the Building C Phase, \$28,659.38 plus \$3,460.00 due for the Building D and Building E Phase, and \$2,945.00 due for the Building A Phase.

3-4. The Subdivider agrees to prepare and implement a weed management plan, which shall be reviewed by the Ouray County Vegetation Manager. The plan will be presented to the Ouray County Vegetation Manager on or before the earlier of either: (a) the commencement of construction of a building in the Project; or (b) September 30, 2021; and will be ~~managed~~implemented by the Subdivider, for a period of

Commented [S1]: Edited to match what Council agreed upon for tap fees. We can share the spreadsheet that shows the breakdown of costs by phase if desired. Note that the total amount due to Town was reduced by \$1,400 from the initial invoice. The Town will pay for the replacement tap and first 6' of service line for the sewer line that was in place to serve the southern end of the property/HB lot.

two years following its approval, after which the responsibilities under the weed management plan shall shift to the property owner(s).

5. As security to guarantee the proper construction and acceptance of the above improvements by the completion date specified, Subdivider hereby has deposited a cash escrow with the Town in the amount of \$ _____ or a lien on the _____ property. Such escrow may be used by the Town to recover all its costs and reasonable attorney's fees if such improvements are not installed, constructed and accepted, as required. The Town may also enforce compliance by certifying the costs estimated to complete the improvements together with costs of collection including attorney's fees, to the County Treasurer, as a delinquent water, sewer or other charge to be collected against the above-described property similarly as delinquent taxes are collected.

4-6. This Agreement shall be binding upon the heirs, successors and assigns of the Subdivider or the Town, provided that Subdivider may not assign this Agreement without express written consent of the Town. This Agreement shall be a covenant running with the Project land as described above.

5-7. This Agreement may be enforced by the Town in any lawful manner, and the Town may compel the Subdivider to adhere to the agreement by an action for specific performance or an injunction in any court of competent jurisdiction. Subdivider understands that no water or sewer taps or building or occupancy permits shall be granted or issued and no sale of any lot may occur if Subdivider is in breach of any provision of this Agreement at any time.

Commented [SC2]: Town code requires a security/bond or a lien. See RMC 7-4-6(B)(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." See also 2.2.2 of the Development Agreement. This will need to be adjusted if you want to do a lien vs. cash escrow. Please adjust accordingly.

SUBDIVIDER:

Lena Commons, LLC,
a Colorado limited liability company

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 Commons, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public

My commission expires: _____

Town of Ridgway, Colorado,
a municipal corporation

Title: _____

Town Clerk

Bo Nerlin, Town Attorney

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, Town Manager, Town of Ridgway, Colorado.

Notary Public

My commission expires: _____.

Exhibit "A"

Remaining Work includes:

1. Installation of service lines for the storm drain system, irrigation system, electric, natural gas, fire suppression and any others not installed at time of Final Plat per the approved Preliminary Plat civil plans.
2. Completion of site work and infrastructure work as identified in the Development Agreement serving that phase such as onsite parking and drives, concrete paths, landscaping, and irrigation.
3. A plan for correcting meter can elevations and service lines depth that are not installed per the approved Preliminary Plat civil plans, Lena Street Improvements Plan and per Town standards. If the Implementation Plan as required in the Development Agreement is completed and construction is to begin on Lena Street before all meter cans and service lines are corrected, the Subdivider shall make the adjustments 30 days prior to starting the road project or Town will include necessary adjustments as part of the project and charge it to the Subdivider.

AGENDA ITEM #8

STAFF REPORT

Subject: Final Plat – Lena Street Commons PUD
Legal: Town of Ridgway Tract of Land Lying East of Blocks 31 & 32, West of the West Line of the Railroad Right of Way Between Otto St. and Charles St.
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: February 10, 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. Planning Commission recommended that Town Council consider approval of this application for Final Plat after the conditions listed in the staff report were met during the January 26, 2021 regular meeting.

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 zoned land area is simply being subdivided but not developed as part of this application. A Rezoning application was submitted to correlate the new property lines with zoning and will be considered by Council via an ordinance per code requirements.

The following documents were submitted for the Planning Commission hearing and those updated for this hearing are noted in red. The most up-to-date documents are appended to this report.

Document	Document Date
Application	12/23/2020
Lena Street Common PUD Plat Map	1/21/2021



Document	Document Date
As-builts	1/12/2021, updated 2/3/2021
Confirmation letters from SMPA and Black Hills	12/18/2020
Commercial Decs	12/23/2020, updated 2/4/2021
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

ANALYSIS

The conditions of approval from the Planning Commission are listed below with a status update in blue text. Given the quick turn around from Planning Commission to Town Council a number of items are still in progress but may be completed by the time this public hearing takes place. Staff will provide a verbal update on any changes during the hearing.

1. Applicant to submit a paper copy of all supporting information to Town. This is in progress as documents are finalized.
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. Once the as-builts are okayed, Staff will check this.
3. Sort out language for plat notes 9, 10 and 11 regarding utility easements granted to Town.

The development team would like the last part of plats notes 9c, 10c and 11b to read:

"...provided that a party using this easement shall minimize disturbance to the Lena Street Commons project and restore hardscaping (sidewalks or driveways) on the property to the general condition existing prior to the disturbance. The area of this easement is depicted on the Plat."

Town would prefer the easement language matches all other easements provide to the Town. It is much easier for Town to manage knowing all easements to the Town are the same. However, in attempting to reach a compromise, perhaps the last part of these plat notes could read:

"...provided that a party using this easement for the installation, repair and maintenance of utilities not serving the Lena Street Commons project, shall minimize disturbance to the Lena Street Commons project and restore hardscaping (sidewalks or driveways) on the property to the general condition existing prior to the disturbance. The area of this easement is depicted on the Plat."

4. Edit to plat note 9c in relation to width of easements. To be done on final plat once plat notes per above are sorted.
5. Revisions to as-built plans per comments above. A revised copy of the as-builts were received on February 3 and are being reviewed by the Town to ensure all edits were addressed.
6. Prepare a clean draft of the Subdivision Improvements Agreement in coordination with Staff. Staff plans to have this sorted with the development team before the Council meeting where the SIA will be considered as a separate agenda item.

7. Address unfinished sentence in commercial CCRs. [Done.](#)
8. Plan to address water pit and service line installation issues in coordination with Staff. [The requirement to address the water pits and service lines that were not installed to plans \(too tall or not enough cover\) have been included in the SIA.](#)
9. Payment of all fees including Town Attorney and Town Engineer expenses, recording fees, excise tax and any other fees due. [As of February 5, excise tax has not yet been paid, the development team is current on invoices from the Town for Attorney and Engineering services, and recording fees are not yet known but will be invoiced to the owner.](#)
10. Any other requested edits in the body of this staff report that were not repeated in this list. [No additional items identified.](#)

STAFF RECOMMENDATION AND PROPOSED MOTION

Staff recommends approval of this Final Plat as long as the conditions listed above are completed before the final plat is recorded.

"I move to approve the Final Plat for Lena Street Commons Planned Unit Development for Applicant Hines Designs, Owner Lena Commons LLC, as the requirements of the code have been met and based on the above conditions being met before the final plat is recorded."

EXHIBITS

- A. Application
- B. Lena Street Common PUD Plat Map
- C. As-builts (updated 2/3/2021)
- D. Confirmation letters from SMPA and Black Hills
- E. Commercial Decs (updated 2/4/2021)
- 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 Town Council will hold a **PUBLIC HEARING** online via **Zoom***, on Wednesday, February 10th, 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 Designs

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.



DATED: January 27, 2021

Shay Coburn, Town Planner

***See Town Council agenda for login information**



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

Planning Commission Hearing Request

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

General Information

Applicant Name Hines Design Application Date 12/23/20
Mailing Address 188 Marie St. 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

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

- ☒ 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

12/23/20
Date

Owner Signature

Date

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

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 Residence"), 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 Lot 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 hereon 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 _____ 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 16, 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, notwithstanding 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. All 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 Condominium Association shall have the obligation to maintain all gutters and downspouts in a working manner as provided for in the Commercial Condominium 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 service 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 service 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:

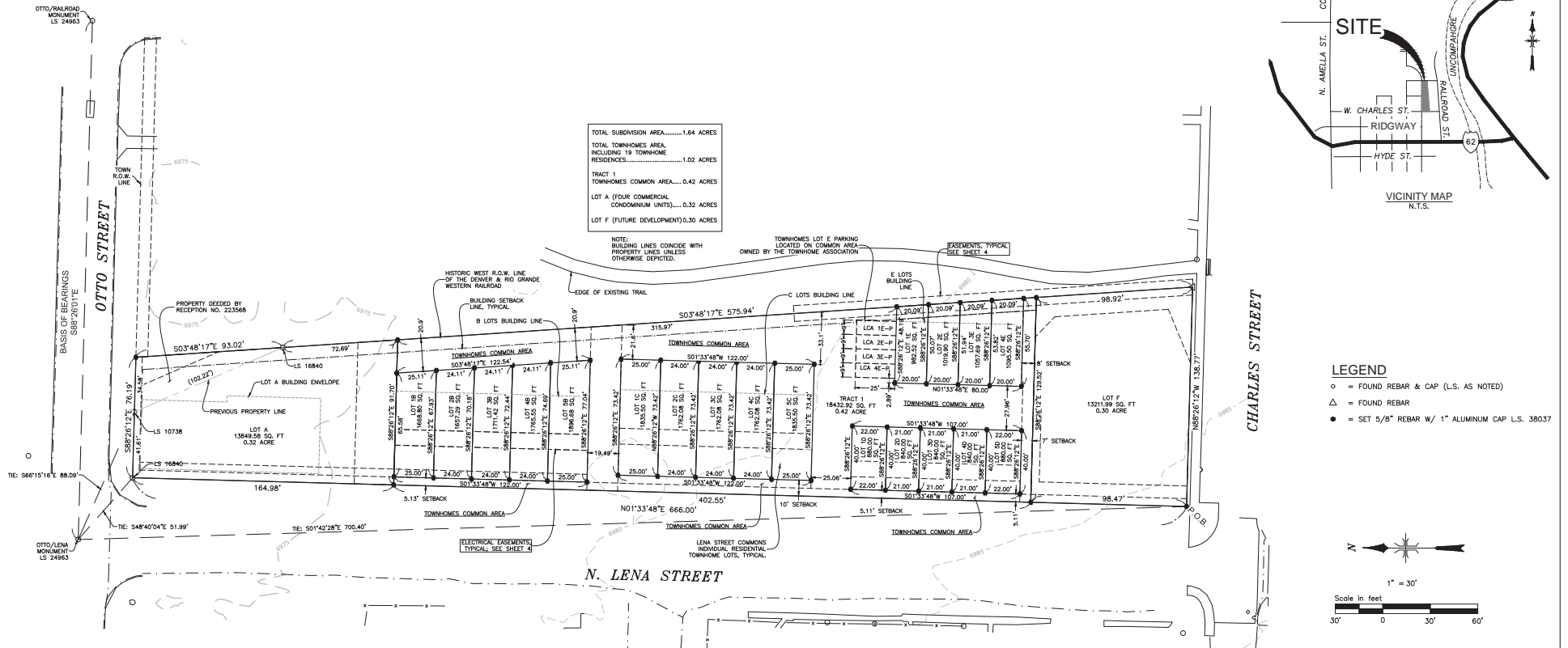
Pursuant to the recommendations in the Geotechnical Report by Lambert & Associates, Project Number M17001GE dated March 23, 2017, a site and structure specific geotechnical engineering study is required during the planning phase of each building to provide site and structure specific suggestions and 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 or 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.

LENA STREET COMMONS			
LENA COMMONS, LLC			
P.O. BOX 3601 TELLURIDE, CO 81435			
DEL-MONT CONSULTANTS, INC. ENGINEERING • SURVEYING 1000 N. 1ST AVE. SUITE 100 DENVER, CO 80202 303.733.1111			
DATE: 881	BY: PUJ	DATE: 01-21-21	
DATE: 2 of 4	FILE: 17009_PLAT1	DATE: 17009	FINAL PLAT

LENA STREET COMMONS PLANNED UNIT DEVELOPMENT FINAL PLAT

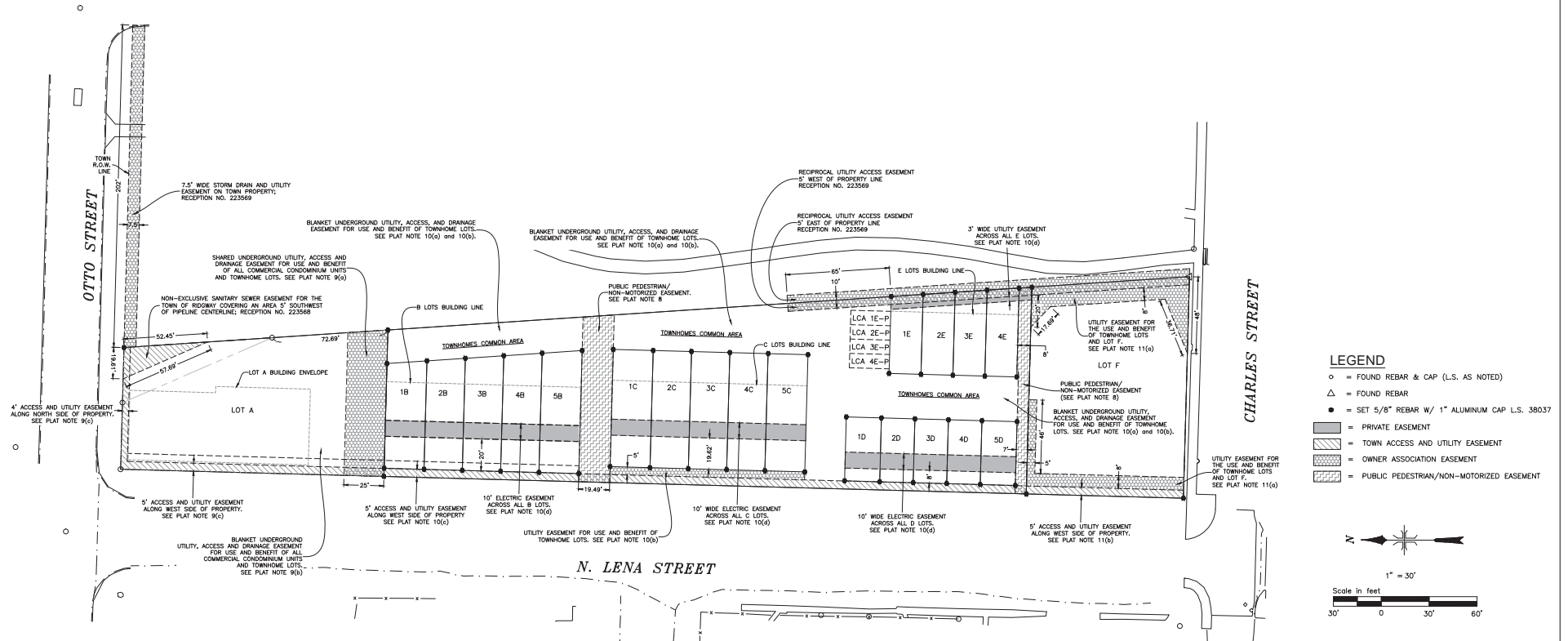
SITUATED IN SECTION 16, TOWNSHIP 45 NORTH, RANGE 8 WEST, N.M.P.M.
TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO



LENA STREET COMMONS			
DEVELOPER		LENA COMMONS, LLC	
DESIGNER		P.O. BOX 3601 TELLURIDE, CO 81435	
DRAWN BY		FINAL PLAT	
CHECKED BY			
DATE			
881		01-21-21	
3 of 4		17009	

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



DMC DEL-MONT CONSULTANTS, INC. ENGINEERING • SURVEYING 17009V_FPLAT				LENA STREET COMMONS	
PROJECT NO.	881	DRAWN BY	PJI	DATE	01-21-21
SHEET	4 of 4	FILE	17009V_FPLAT	DATE	17009
				LENA COMMONS, LLC P.O. BOX 3601 TELLURIDE, CO 81435 FINAL PLAT	

Control Point Table				
Point #	Northing	Easting	Elevation	Description
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 ROWWAY TOWN STANDARDS.

N. RAILROAD ST.

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

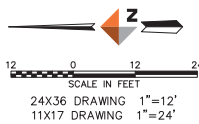
PARTS	BRAND NAME	MODEL NUMBER
WATER METER	NL METER SETTER	731-2-WDQQ33
	HDPE ROUND METER PIT	24X48
	METER PIT ADAPTOR	M70A24
	METER PIT COVER-FROST PROOF	M-70-18 AL
STORM PIPE	12" GOLDFLO DUAL WALL WT	12WT20NP
	18" GOLDFLO DUAL WALL WT	18WT20NP
	24" GOLDFLO DUAL WALL WT	24WT20NP
	30" GOLDFLO DUAL WALL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

REV	DATE	DESCRIPTION

DOWL
 222 South Park Avenue
 Montrose, Colorado 81401
 970-249-6828

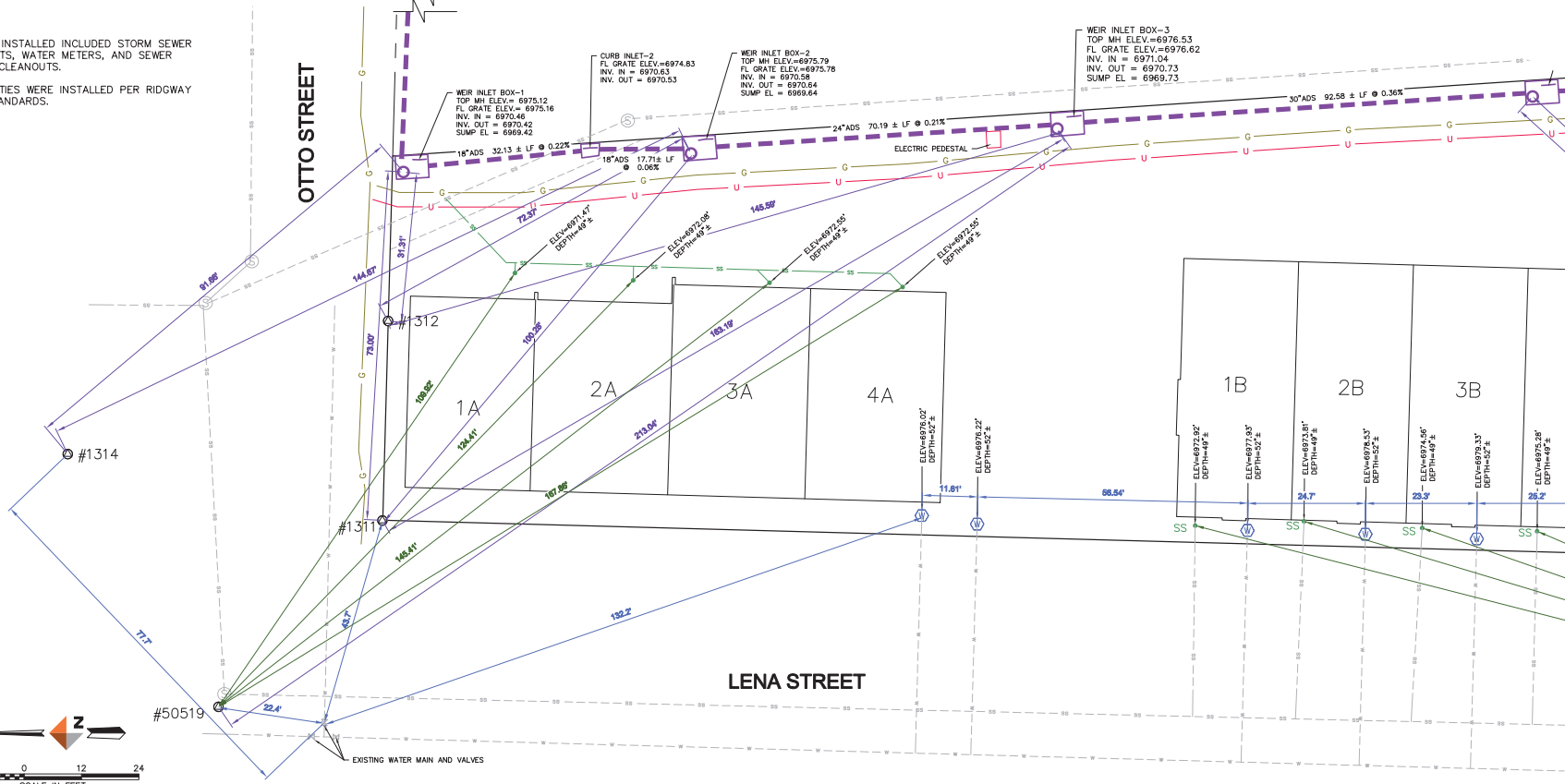
LENA STREET COMMONS
 UTILITY AS-BUILTS

PROJECT	7127.75144.01
DATE	02/02/2021
SHEET	
ASB-1	1 OF 4

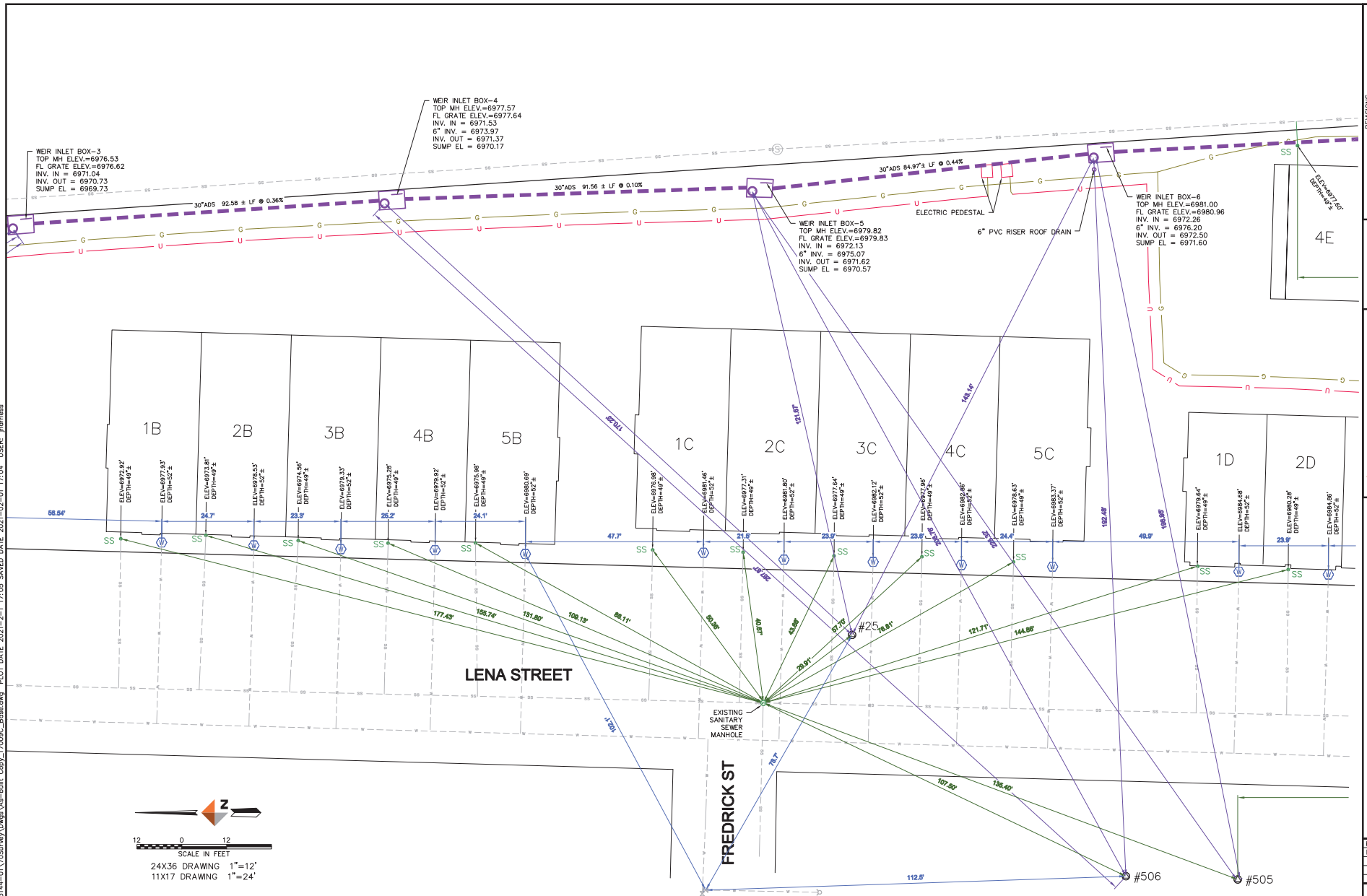


OTTO STREET

LENA STREET



G:\2716144-01\205survey\Drawings\as-built\Copy_17009C_Base.dwg PLOT DATE 2021-02-01 17:04 USER: jharness



REVISIONS		BY
REV	DATE	DESCRIPTION

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	02/02/2021
SHEET	
© DOWL 2020	
ASB-2	
2 OF 4	

CHARLES STREET

LENA STREET

MANHOLE ELEVATIONS:

- #505: ELEV=6984.68', DEPTH=52" ±
- #507: ELEV=6977.00', DEPTH=49" ±
- #508: ELEV=6977.00', DEPTH=49" ±

PIPE SEGMENTS:

- 2.5" PVC GRAY RISER
- 4" PVC CLEANOUT
- EXIST. WATER MANHOLE
- EXIST. SANITARY SEWER MANHOLE

INLET BOX - 2

TOP CONC. ELEV.=6979.98'
6" INV. = 6976.38'
INV. OUT = 6972.63'

RAIN CAPTURE

POWER PEDESTAL

EXISTING SANITARY SEWER MANHOLE

EXIST. WATER MANHOLE

EXIST. SANITARY SEWER MANHOLE

SECTION ELEVATIONS:

- 4E: ELEV=6977.60', DEPTH=49" ±
- 3E: ELEV=6977.36', DEPTH=49" ±
- 2E: ELEV=6977.47', DEPTH=49" ±
- 1E: ELEV=6977.50', DEPTH=49" ±
- 5D: ELEV=6986.30', DEPTH=52" ±
- 4D: ELEV=6985.97', DEPTH=52" ±
- 3D: ELEV=6985.97', DEPTH=52" ±
- 2D: ELEV=6985.97', DEPTH=52" ±
- 1D: ELEV=6985.97', DEPTH=52" ±

SECTION LENGTHS:

- 4E: 139.36' ±
- 3E: 139.36' ±
- 2E: 139.36' ±
- 1E: 139.36' ±
- 5D: 139.36' ±
- 4D: 139.36' ±
- 3D: 139.36' ±
- 2D: 139.36' ±
- 1D: 139.36' ±

SECTION SLOPES:

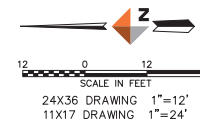
- 4E: 0.27%
- 3E: 0.27%
- 2E: 0.27%
- 1E: 0.27%
- 5D: 0.27%
- 4D: 0.27%
- 3D: 0.27%
- 2D: 0.27%
- 1D: 0.27%

SECTION SPACING:

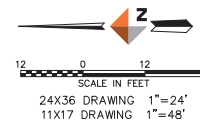
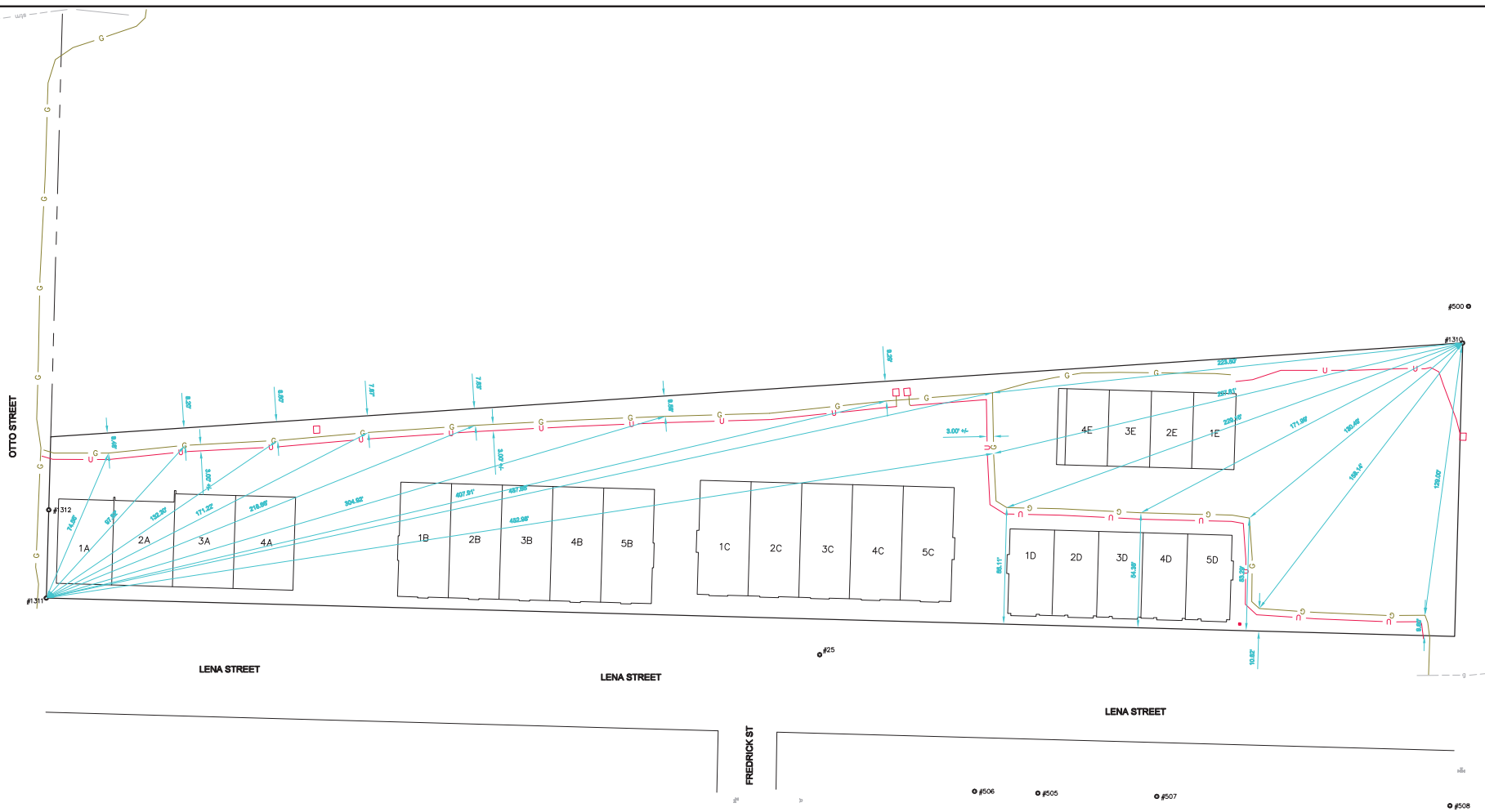
- 4E: 139.36' ±
- 3E: 139.36' ±
- 2E: 139.36' ±
- 1E: 139.36' ±
- 5D: 139.36' ±
- 4D: 139.36' ±
- 3D: 139.36' ±
- 2D: 139.36' ±
- 1D: 139.36' ±

SECTION TOTALS:

- 4E: 139.36' ±
- 3E: 139.36' ±
- 2E: 139.36' ±
- 1E: 139.36' ±
- 5D: 139.36' ±
- 4D: 139.36' ±
- 3D: 139.36' ±
- 2D: 139.36' ±
- 1D: 139.36' ±



PROJECT 7127.75144.0		BY	
DATE 02/02/2020		DESCRIPTION	
© DOWL 2020		REV	DATE
SHEET			
ASB-3			
3 OF 4			



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 DeVeney** <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 DeVeney

Service Planner

Mobile: (970) 209-5684

Office: (970) 626-5549 x214



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

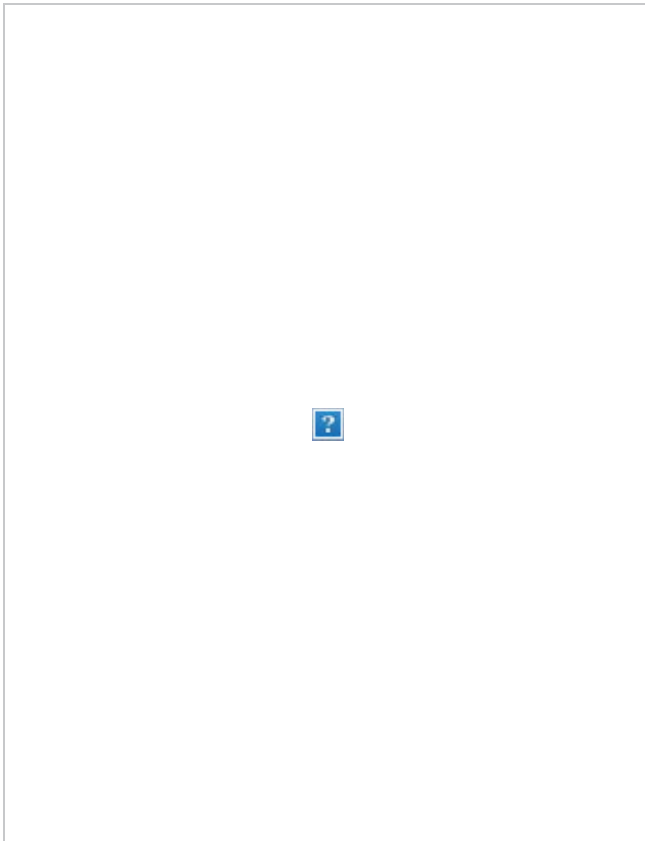
San Miguel Power is an equal opportunity provider and employer

[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

This electronic message transmission contains information from Black Hills Corporation, its affiliate or subsidiary, which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware the disclosure, copying, distribution or use of the contents of this information is prohibited. If you received this electronic transmission in error, please reply to sender immediately; then delete this message without copying it or further reading.

**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 Ouray County, 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, according to the Condominium Map for _____ Commercial Condominiums thereof recorded on _____, 201__ at Plat Book 1, Page _____, Reception No. _____ and the Declaration for _____ Commercial Condominiums recorded on _____, 201__ at Reception No. _____, all in the Office of the Clerk and Recorder of Ouray County, 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 Ouray County, 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 and Town Development Approvals and Requirements.

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 or 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 consent 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 not 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.

Notary Public

My commission expires: _____.

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 DePachter 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)

United States

(Country)

(Province – if applicable)

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)

United States

(Country)

(Province – if applicable)

3. The registered agent name and registered agent address of the nonprofit corporation's initial registered agent
are

Name

(if an individual)

OR

(if an entity)

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

THE LAW OFFICES OF THOMAS G. KENNEDY, P.C.

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)

United States

(Province – if applicable)

(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

<u>RISNER-TINDALL</u>	<u>KIMBERLY</u>	<u>A.</u>	
(Last)	(First)	(Middle)	(Suffix)
<u>P.O. BOX 3081</u>			
(Street number and name or Post Office Box information)			
<hr/>			
<u>TELLURIDE</u>	<u>CO</u>	<u>81435-3081</u>	
(City)	(State)	(ZIP/Postal Code)	
<u></u>	<u>United States</u>		
(Province – if applicable)	(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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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, Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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 into 19 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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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
Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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,

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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.

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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.

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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.

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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

Z:\Planner\Land Use and Public Hearings\General Commercial\Lena Street Commons (Choate-Rogers)\2021.01.29 Final Plat\Townhomes Decs.1d.doc

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.

DRAFT

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

United States

(Country)

(Province – if applicable)

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)

United States

(Country)

(Province – if applicable)

3. The registered agent name and registered agent address of the nonprofit corporation's initial registered agent are

Name

(if an individual)

OR

(if an entity)

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

THE LAW OFFICES OF THOMAS G. KENNEDY, P.C.

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)

OR

(if an entity)

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

THE LAW OFFICES OF THOMAS G. KENNEDY, P.C.

Mailing address

P.O. BOX 3081

(Street number and name or Post Office Box information)

TELLURIDE

(City)

CO

(State)

81435-3081

(ZIP/Postal Code)

United States

(Province – if applicable)

(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	KIMBERLY	A.	
(Last)	(First)	(Middle)	(Suffix)
P.O. BOX 3081			
(Street number and name or Post Office Box information)			
TELLURIDE	CO	81435-3081	
(City)	(State)	(ZIP/Postal Code)	
	United States		
(Province – if applicable)	(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).

-

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.

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.

Notary

My commission expires: _____



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



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.

- 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.
- 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.
- 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.
- 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.
- Applications for nonresidential sewer taps shall be accompanied by a Wastewater Questionnaire. Additional conditions of service may be applied to nonresidential sewer taps.
- 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)
- Owner agrees to comply with Town regulations for utility service and payment of applicable fees.


Property Owner Signature

1/11/21
Date



Official Use Only

Type of Service: ☐ Residential ☐ Business - **Type of Business:** _____

Service Status: ☐ New ☐ Existing

Prepaid Tap? ☐ Yes ☐ No

Size of Water Tap	<input type="checkbox"/> 3/4" <input type="checkbox"/> Other: _____	Meter #	
Size of Sewer Tap	<input type="checkbox"/> 4" <input type="checkbox"/> 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

AGENDA ITEM #9

STAFF REPORT

Request: Rezone
Legal: Town of Ridgway Tract of Land Lying East of Blocks 31 & 32, West of the West Line of the Railroad Right of Way Between Otto St. and Charles St. [Lena Street Commons PUD]
Address: TBD N Lena Street
Parcel #: 430516207004
Zone: General Commercial (GC) and Historic Business (HB)
Applicant: Hines Designs
Owner: Lena Commons LLC
Initiated By: Shay Coburn, Town Planner
Date: February 10, 2021

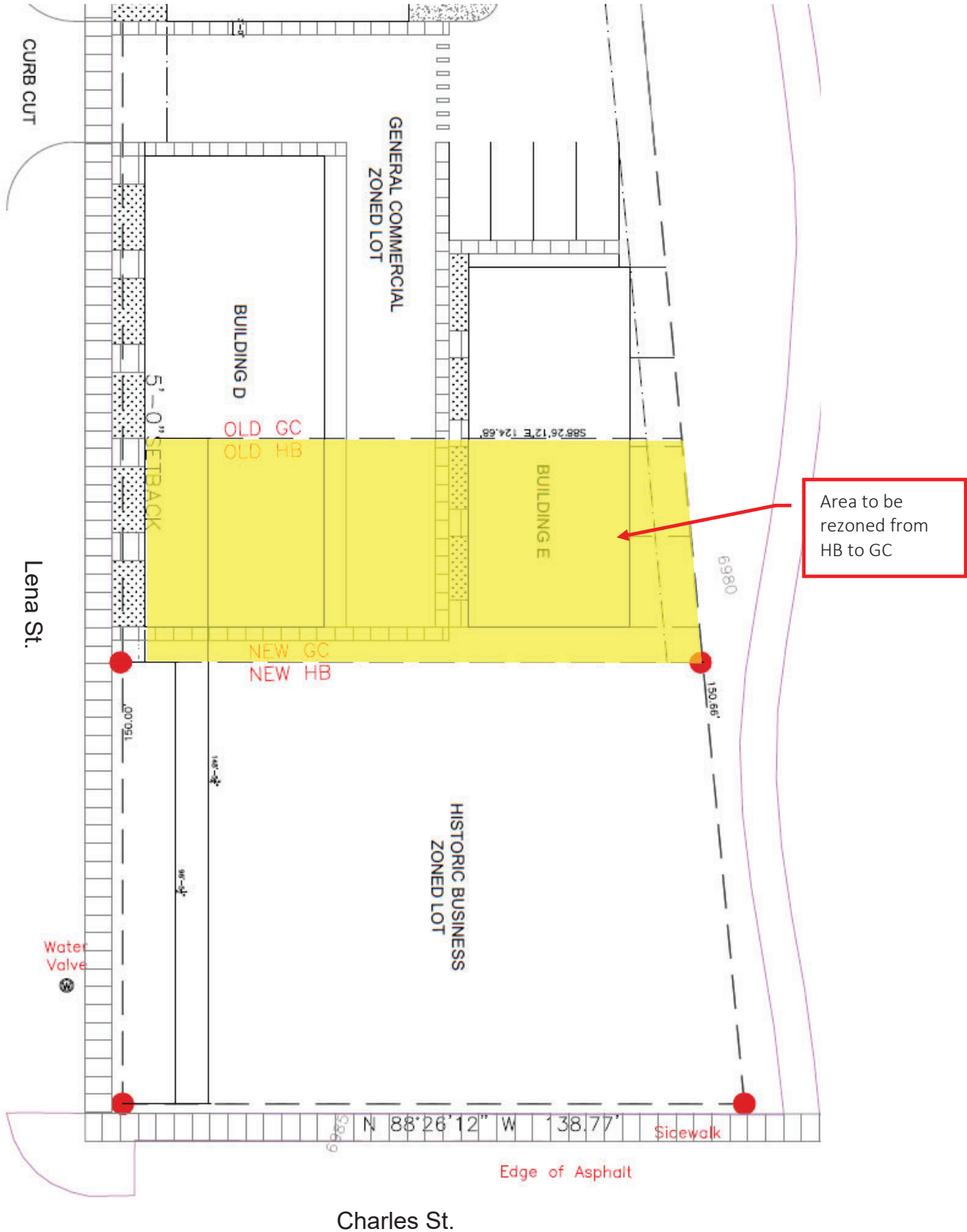
BACKGROUND

Applicant is requesting to rezone a small portion of the Lena Street Commons development property. Rezones require an ordinance and action by the Town Council per the Municipal Code, the ordinance attached.

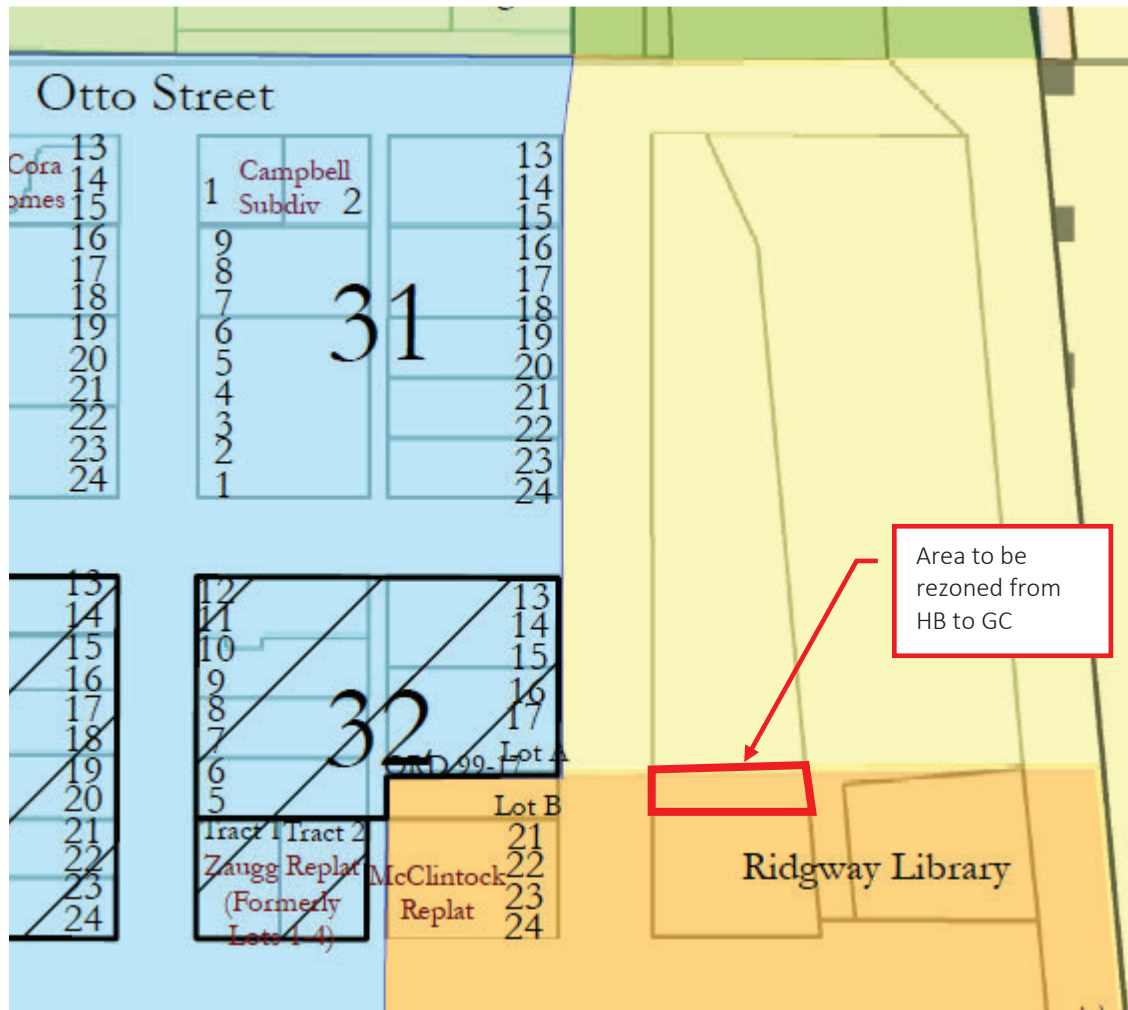
The Town and Subdivider agreed upon a Development Agreement which was recorded on August 19, 2019 at Reception No. 223540. Section 7 of the Agreement states "Property Owner recognizes, acknowledges and agrees that it will pursue appropriate applications to confirm that zoning for the Proposed Lots with the intent of maintaining General Commercial zoning for the Lena Street Commercial Condominiums and the Lena Street Commons Townhomes. Such zoning application may be coincident with the recordation of the initial final Plat ("Infrastructure Phase" – Phase 1) for the Project. In addition, to the extent necessary, the Property Owner would confirm that the zoning on the HB Lot would remain HB zone."



This rezone request is to align zoning designations with the new property lines. See diagram below that shows the area along N Lena St to be rezoned from HB to GC.



Below, the area proposed to be rezoned is shown on the zoning map:



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

CODE PROVISIONS

RMC 7-3-22 Amendments and Additions to the Official Zoning Map and Zoning Regulations

(A) Rezoning

(1) Amendments to the Official Zoning Map involving any change in the boundaries of an existing zoning district, or changing the designation of a district, shall be allowed only upon a determination following public hearing that the following criteria are met:

(a) The amendment is not adverse to the public health, safety and welfare, and

(b) Either:

(iii) The amendment is in substantial conformity with the Master Plan, or

(ii) The existing zoning is erroneous, or

(iii) Conditions in the area affected or adjacent areas have changed materially since the area was last zoned

(2) Rezoning may be requested or initiated by the Town, the Planning Commission, or the owner of any legal or equitable interest in the property or his representative. The area considered for rezoning may be

enlarged by the Planning Commission on its own motion over the area requested in the application as part of its recommendation ...The burden shall be on the applicant to show that the criteria of this Subsection have been met.

(D) Amendments to these regulations may be made only by ordinance.

(E) All proposals to amend the Official Zoning Map or these Zoning Regulations may be referred to the Planning Commission for recommendation.

(F) The Town Council shall review all proposals to amend the Official Zoning Map as the "Review Board" in substantial conformity with the review procedures set out in Subsection 7-3-23.

ANALYSIS

The above code criteria are addressed as follows:

(a) The amendment is not adverse to the public health, safety and welfare

It is not apparent how this rezone would be adverse to the public health, safety and welfare. The Preliminary Plat and Development Agreement for this property have been approved. This rezone is for a small amount of land to change from HB to GC which would be considered a down zoning where generally less density is allowed in the GC district. In addition, this will clean up the zoning to match the new parcel lines.

(b) (i) The amendment is in substantial conformity with the Master Plan, or

The future land use map identifies this parcel as Mixed Neighborhoods which calls for a range of higher density housing types like multi-family, townhomes and duplexes as well as a range of supporting non-residential uses. Changing this portion of land from HB to GC will not change the development plan and it will remain in conformity with the Master Plan.

(ii) The existing zoning is erroneous, or

As this is an "or" statement, and it appears that the criteria under (i) are more applicable, this is not addressed.

(iii) Conditions in the area affected or adjacent areas have changed materially since the area was last zoned.

As this is an "or" statement, and it appears that the criteria under (i) are more applicable, this is not addressed.

STAFF RECOMMENDATION

Staff supports introduction of the Ordinance Amending the official Zoning Map by Rezoning a Portion of Track 1 and Lot 2E, Lots 4D, 5D, 3E, and 4E of the Lena Street Commons Planned Unit Development from Historic Business (HB) to General Commercial (GC) based on the meeting the criteria of the code for rezoning. Please note that if the final plat for the Lena Street Commons PUD is not approved, the legal description in the Ordinance will need to be updated.

ATTACHMENTS

Ordinance __-2021



From Charles Street looking north



From N Lena Street looking east



From Otto Street looking south

ORDINANCE NO. __-2021

AN ORDINANCE OF THE TOWN OF RIDGWAY, COLORADO, AMENDING THE OFFICIAL ZONING MAP BY REZONING A PORTION OF TRACT 1 AND LOT 2E, LOTS 4D, 5D, 3E, AND 4E OF THE LENA STREET COMMONS PLANNED UNIT DEVELOPMENT FROM HISTORIC BUSINESS (HB) TO GENERAL COMMERCIAL (GC).

WHEREAS, The Town Council, following notice and hearing, pursuant to Section 7-3-22 of the Ridgway Municipal Code, hereby finds that rezoning a portion of Track 1 and Lot 2E, Lots 4D, 5D, 3E, and 4E of the Lena Street Commons Planned Unit Development located within the Town of Ridgway, as further described in Exhibit 1, from Historic Business (HB) to General Commercial (GC) is not adverse to the public health, safety and welfare, and is in substantial conformity with the Master Plan:

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO, AS FOLLOWS:

Section 1.

The Official Zoning Map is hereby amended to designate the above land as General Commercial (GC).

INTRODUCED AND REFERRED TO PUBLIC HEARING on _____, 2021 and setting such public hearing for _____, 2021 at Ridgway Town Hall, located at 201 N. Railroad Street, Ridgway, Colorado.

BY:

ATTEST:

John Clark, Mayor

Pam Kraft, MMC, Town Clerk

ADOPTED by the Ridgway Town Council on _____, 2021.

TOWN OF RIDGWAY, COLORADO

BY: _____
John Clark, Mayor

ATTEST:

Pam Kraft, MMC, Town Clerk

APPROVED AS TO FORM:

Bo James Nerlin, Town Attorney

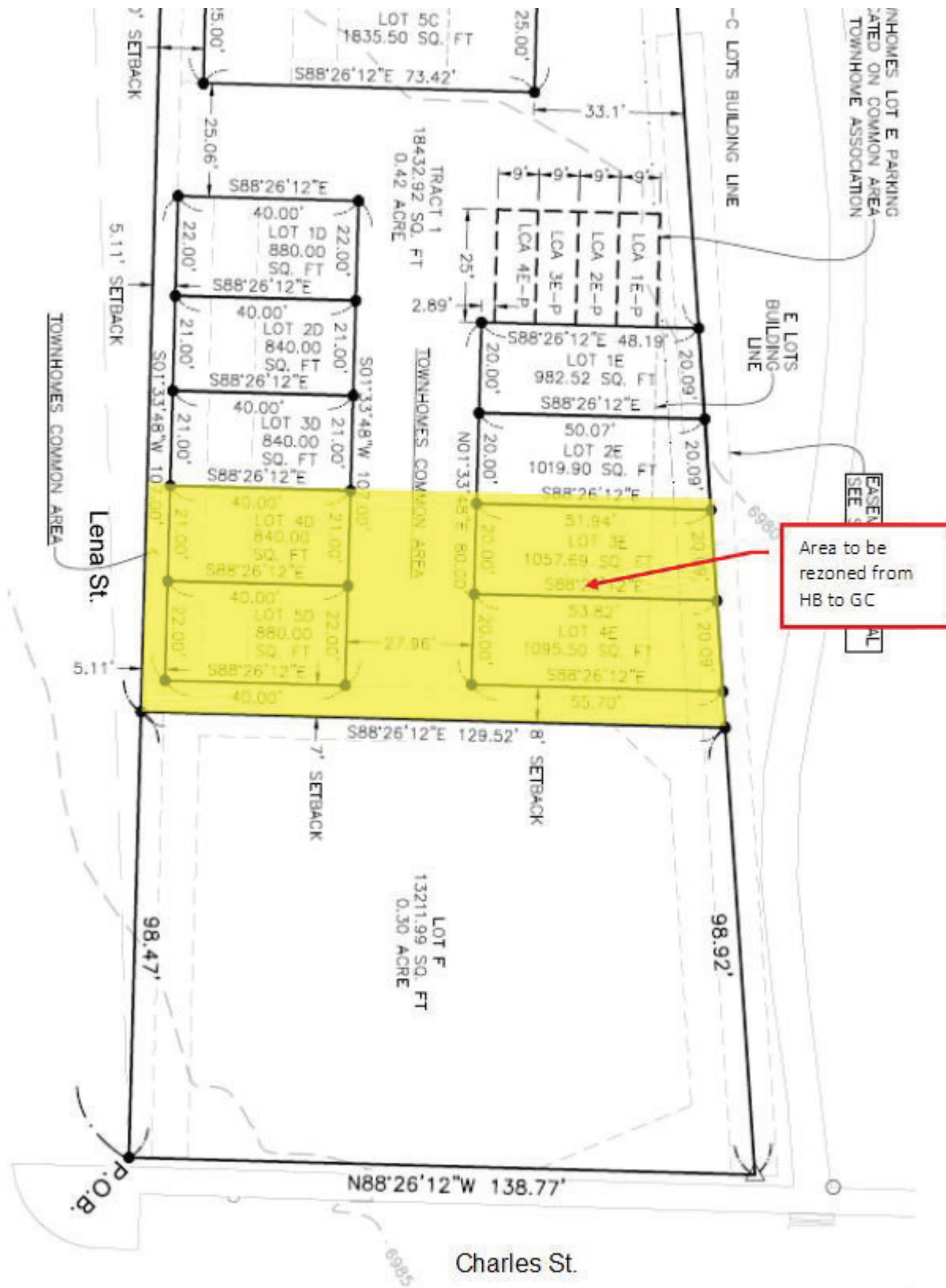
CERTIFICATE OF TOWN CLERK

The foregoing Ordinance was introduced at a meeting of the Ridgway Town Council on _____, 2021, published by title and posted thereafter, and adopted by the Town Council on _____, 2021.

(SEAL)

Pam Kraft, MMC, Town Clerk

Exhibit 1



NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Ridgway Town Council will hold a **PUBLIC HEARING** online via **Zoom***, on Wednesday, February 10th, 2021 at 5:30 p.m., to receive and consider all evidence and reports relative to the application described below:

Application for: Rezone

Location: Town of Ridgway Tract of Land Lying East of Blocks 31 & 32, West of the West Line of the Railroad Right of Way Between Otto St. and Charles St.

Address: TBD N Lena St

Zoned: General Commercial (GC) and Historic Business (HB)

Applicant: Hines Designs

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.



DATED: January 28, 2021

Shay Coburn, Town Planner

***See Town Council agenda for login information**



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

Planning Commission Hearing Request

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

General Information

Applicant Name Hines Design Application Date 12/23/20
Mailing Address 188 Marie St. 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

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



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

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 Rezoning

- ☒ 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

12/23/20
Date

Owner Signature

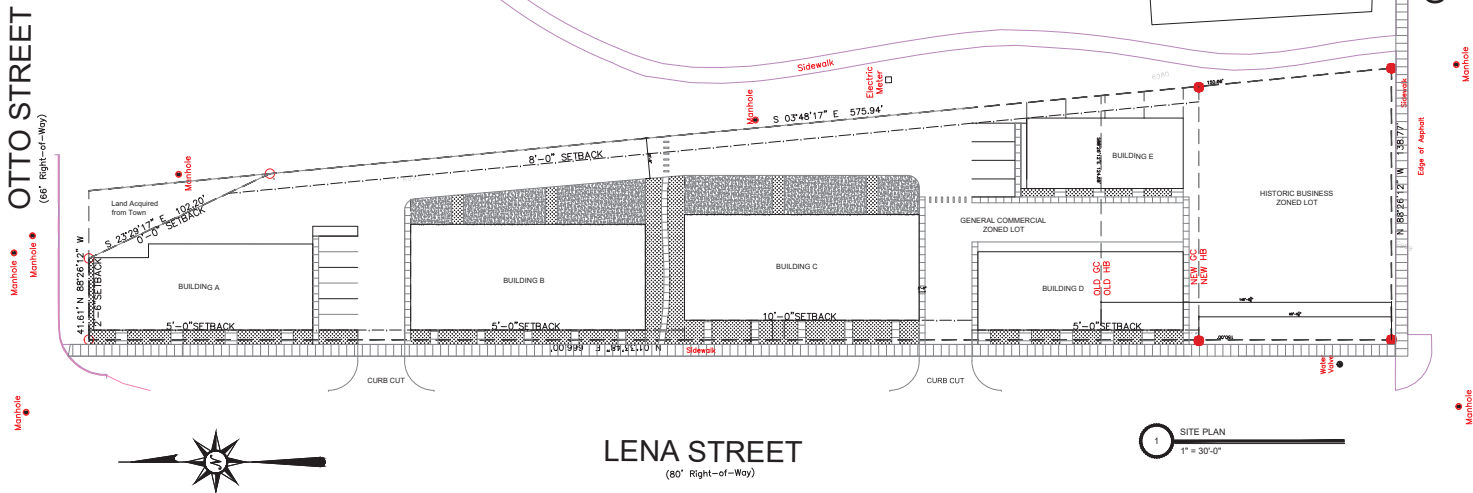
Date



01/06/21

Lena Street Commons
Rezoning Narrative

The property owner of Lena Street Commons would like to pursue application to confirm the zoning for the proposed lots with the intent of maintaining General Commercial zoning for the Lena Street Commons commercial condos and Lena Street Commons townhomes. The rezoning application will coincide with the Final Plat application of the General Commercial lot. The property owner would also like to confirm the zoning of the Historic Business lot to remain Historic Business. Please see attached rezoning site plan. We would like to move the internal property line separating the General Commercial to Historic Business zones. To keep all of the Lena Street Commons PUD within the same zoning type, we would like to move this lot line 50'-0" South towards Charles Street. All other property lines will remain as is.



AGENDA ITEM #10



To: Town Council
From: Shay Coburn, Town Planner
Date: February 10, 2021
Re: Review and action on revocable encroachment permit for use of Town property

BACKGROUND

Attached is an encroachment permit application submitted by the Law Office of Daniel T. Zemke, P.C. on behalf of J&J Clinton, LLC. This application is for the property containing the buildings 616, 618 and 620 Clinton Street. Revocable encroachment permits for use of Town property are to be reviewed and approved by Council.

ANALYSIS

The Town issued a revocable encroachment permit to the current building owner, Antonio Marra, and tenant, Amie Minnick d/b/a Provisions in 2016. This permit allows for the use of a portion of the Clinton Street right-of-way, approximately 51" wide and 48" deep directly abutting the property at 616 Clinton Street. Specifically, for the stair and landing that allow for entry into the space occupied by Provisions. The permit contains a number of conditions, most of which are standard to all revocable permits.

Marra is in the process of selling the building and the buyer, J&J Clinton, LLC, is requesting a revocable permit to be issued in their name. They hope to expand the encroachment area in order to install an ADA compliant access to the building. There are no known current or past issues with this permit.

The permit application also states that it is for the electric transformer serving the building that is partially in the alley. An encroachment permit is not needed for this as the Town works with utility providers to permit the provider to install utilities in right-of-way. In addition, the application explains the scope of the encroachment to include the west wall of the building that encroaches into the alley. While the improvement survey did not include a measurement of this encroachment into the alley, this is a historic building and this encroachment is lawfully non-conforming per RMC 7-3-20 and does not require an encroachment permit.

Before the permit can be signed and issued, the Town will need the insurance required and the \$75 application fee.

RECOMMENDED MOTION

"I move to approve the Revocable Encroachment Permit for the use of Town right-of-way for J&J Clinton, LLC as proposed upon acquiring ownership of the building."

ATTACHMENT

1. Encroachment Permit Application and attachments
2. Encroachment Permit



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

Official Use Only

Permit No.: EN-2021-002
Date Received: 2-5-21
Initials: [Signature]

Encroachment and Excavation Application

Applicant Information

Name **J&J Clinton, LLC. c/o Law Office of Daniel T. Zemke, P.C.** Application Date **02/04/2021**
Phone **970-708-0993** Email **daniel@dzemkelaw.com**

Project Information

Street Address for Encroachment Area **616-620 Clinton Street**
Subdivision **Fike Subdivision** Filing **Reception 174096** Lot **A and B** Block
Contractor
Phone Email
Estimated Start Date Estimated Completion Date

Type of Encroachment (check all that apply)

- | | | |
|---|--------------------------------------|---|
| <input checked="" type="checkbox"/> Parallel (along alley or street) | <input type="checkbox"/> Water | <input type="checkbox"/> Sewer |
| <input checked="" type="checkbox"/> Utility Installation (residential) | <input type="checkbox"/> Power | <input type="checkbox"/> Installation of Communications Utilities |
| <input type="checkbox"/> Utility Installation (commercial) | <input type="checkbox"/> Phone | <input type="checkbox"/> Natural Gas |
| <input type="checkbox"/> Driveway cut/curb cut (residential/commercial) | <input type="checkbox"/> Landscaping | <input type="checkbox"/> Other _____ |

Town Infrastructure Affected by Work (check all that apply)

- ☒ Street ☒ Alley ☐ Sidewalk ☐ Landscape Area ☐ Other _____

Description of encroachment, including estimated square footage of encroachments into Town property:

Encroachment of west-side wall of building into alley as well as electric transformer servicing the building

Encroachment of planned ADA ramp on north-side of the building for compliance with federal law.

The ADA Ramp will be handled under separate building permit.

Is traffic control or erosion protection required? ☐ Yes ☐ No

If yes, please explain: Not Applicable



Required Attachments for the Application

- ☒ Map of encroachment area showing the proposed location of the encroachment or excavation and location of work, depth of utilities & tie-ins
- ☐ Workman's Compensation for applicant and contractor (refer to RMC §14.5.8)
- ☐ Liability Insurance for applicant and contractor (refer to RMC §14.5.8)
- ☐ Plan showing protection of subject and adjacent property, if applicable
- ☐ Engineered drawings (CAD format), if applicable

Applicable Costs (to be calculated by Town staff and paid at the time of permit issuance)

- Permit Fee (Non-refundable \$100.00-minor or \$250.00-major)
- Administration Costs Deposit (Resolution 07-07 and 12-08/RMC 7-3-20)
- Administrative Costs – Final
- Performance Security – cash or irrevocable LOC (\$2 per sq. ft. non-road; \$5 per sq. ft. gravel; \$10 per sq. ft. for asphalt/hard surface)
- Rental fee per Resolution 19-06

D. J. Z. fe Agent for J&J, Clinton, LLC 02/04/2021
Applicant Signature* Date

Contractor Signature* Date

**Note that the Applicant and Contractor will also need to sign the permit once issued.*



REVOCABLE PERMIT

Parks, Facilities and Rights-of-Way

☒ Right of Way

☐ Park

☐ Facilities

The Town of Ridgway, Colorado hereby grants to J&J Clinton, LLC ("J&J Clinton"), and AMIE MINNICK d/b/a PROVISIONS ("Provisions"), ("Permittees") a permit to utilize the following public property:

A portion of the Clinton Street right-of way, approximately 3'2" by 10'8", directly abutting the property known as LOT B, FIKE SUBDIVISION, ACCORDING TO THE RECORDED PLAT FILED FEBRUARY 15, 2001 UNDER RECEPTION NO. 174096, A REPLAT OF LOTS 16, 17, and 18, BLOCK 27, TOWN OF RIDGWAY, COUNTY OF OURAY, STATE OF COLORADO, AS MODIFIED BY AND ACCORDING TO THE RECORDED BOUNDARY AGREEMENT FILED OCTOBER 19, 2007 UNDER RECEPTION ON 196406, IN THE RECORDS OF THE OURAY COUNTY CLERK AND RECORDER'S OFFICE.

Also known by street number: 616 Clinton Street, Ridgway, CO 81432 (the "Property")

subject to the conditions set forth herein, as follows:

1. Permittee agrees to indemnify and hold harmless the Town of Ridgway, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Permit, including the sale and consumption of alcoholic beverages, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Permittee, or any employee of the Permittee, or which arise out of any worker's compensation claim of any employee of the Permittee. The Permittee agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Permittee, or at the option of the Town, agrees to pay the Town or reimburse the Town for the defense costs incurred by the Town in connection with, any such liability, claims, or demands. The Permittee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.
2. J&J Clinton agree to indemnify and hold harmless the Town from any claim, action, liability, loss, damage or suit arising from or out of the Americans with Disabilities Act (the "ADA") based on any encroachment into the Town of Ridgway Right of Way, or access issues or the lack of



ADA compliant ramps or other improvements at the location of 616 Clinton Street and from any future litigation or claims resulting from the same.

3. Permittee hereby agrees to waive any claim against the Town, its officers or employees for damage to their persons or property arising out of this Permit, the exercise of rights granted under this Permit, or the use of the public property granted herein by the Town.
4. Permittee shall maintain and use the public property at all times in conformity with Town ordinances, regulations and other applicable law, keep it in a safe and clean condition and allow no nuisance to be created by virtue of the Permit, and not allow any traffic or safety hazard to exist. Permittee shall not construct any buildings or improvements upon the public property except as authorized by this permit.
5. To the extent the encroachments are reduced, removed or discontinued, the extent of this permit shall be deemed reduced. Permittee shall not restore a reduced encroachment or expand the existing encroachment(s) in any way.
6. The following conditions shall also apply:

The Permittee is responsible for installation, maintenance, and repair of the following: Stairs and access to the building, approved herein situated within the Town's right of way, and any damage or harm to other Town infrastructure associated with the installation, maintenance, and repair of the encroachment.

Any changes in the plan, from what is attached hereto, shall be submitted to the Town for review and approval prior to commencement of the plan. No further encroachment or expansion of the encroachment into the right of way is permitted without prior approval of the Town.

7. The Permittee will be using Town power: ☐ Yes ☒ No

Location of designated power source: _____

7. Insurance required: ☒ Yes ☐ No

8. Type and amount of coverage, if required: General liability: \$1,000,000 each occurrence; with the Town, its officers and employees as Additional Insured; General Aggregate: \$2,000,000 per insured club or insured individual; Damage to Premises \$100,000; Workers Compensation: \$150,000 for any one person, \$600,000 for any one accident, and public property damage insurance with a minimum limit of \$100,000 for any one accident (see RMC 14-5-8), or "to cover obligations imposed by applicable laws for any employee engaged in the performance of work for Permittee".



9. The Permittee shall be responsible to reimburse the Town for all out of pocket costs incurred by the Town in the issuance, administration and enforcement of this permit, including reasonable attorney's fees. Permittee shall reimburse the Town for any damage caused to Town property as a result of this permit and Permittee's activities hereunder. If such amounts are not paid when billed by the Town, the Town may collect such amounts as an assessment against Permittee's abutting property or other property to wit:

Fike Subdivision Lot B, also known by street number as 616 Clinton Street

and certify it to the County Treasurer to be collected similarly as taxes, or collect it in any other lawful manner.

10. This permit may be revoked all or in part by the Ridgway Town Council following reasonable notice and hearing if it finds the Permittee is in material violation of the terms hereof, and the encroachments shall thereafter be removed at Permittee's expense.

The undersigned hereby accepts this Permit and all conditions above, this ____ day of _____, 20____.

11. Total Fees are as follows:

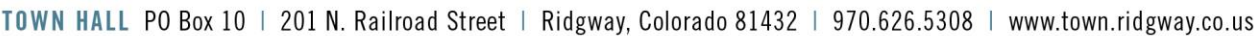
Permit Fee:	_____ \$75 _____
Electricity Use Fee:	_____ N/A _____
Outdoor Concert Cash Bond:	_____ N/A _____
Outdoor Concert License Fee:	_____ N/A _____
Law Enforcement Fee:	_____ N/A _____
Film/ Production Fee:	_____ N/A _____
Total Fees Due:	_____ N/A _____

TOWN OF RIDGWAY

PERMITTEE

By _____
_____, Mayor

By _____
J&J Clinton, LLC, Owner



Expansion of existing concrete landing and steps with a total encroachment of about 3'2" by 10'8", in the Clinton Street right-of-way to provide accessible access this building.

The image contains two diagrams illustrating a proposed ADA access project.

Top Diagram: Site Plan

- Proposed ADA Access:** Indicated by a blue arrow pointing to a yellow-shaded rectangular area.
- Existing Concrete Steps/Entry:** Indicated by a blue arrow pointing to a yellow-shaded rectangular area adjacent to the proposed access.
- Concrete Sidewalk:** Labeled with a blue arrow pointing to the area between the proposed access and the existing steps.
- Concrete Pavers:** Labeled for the area between the proposed access and the existing concrete sidewalk.
- Concrete:** Labeled for the area between the proposed access and the concrete pavers.
- Dimensions:**
 - Top: 16.2', 33.50', 58.20', 24.70', 16.2'
 - Left: 16.2', 33.50', 24.0'
 - Right: 16.2', 24.70', 17.8'
 - Bottom: 24.0'
- Other Labels:** "S 88°26'12" E (Basis of Bearings)", "5' Witness Corner" (two locations), "Box" (on the left).

Bottom Diagram: Cross-section

- Dimensions:**
 - Top: 8' - 8", 2' - 0"
 - Left: 3' - 0"
 - Bottom: 3' - 0" RAMP DOWN 8% MAX.
- Labels:**
 - "2" ALLOWANCE FOR HANDRAILS & EDGE PROTECTION"
 - "LANDING"
 - "STEPS UP"
 - "Approximate area of encroachment." (in a blue box)



AGENDA ITEM #11



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 3, 2021
Agenda Topic: **Review and action on Professional Services Agreement for marketing services between the Town of Ridgway and the Ridgway Area Chamber of Commerce**

SUMMARY:

Council is asked to review and take action on the 2021 Professional Services Agreement for Ridgway Marketing and Promotions with the Ridgway Area Chamber of Commerce (RACC), which is appended to this memo as Attachment 1. Tim Patterson, RACC President, and Hilary Lewkowitz, RACC Marketing Director, will attend Wednesday's meeting to 1) present their proposed 2021 Lodging Tax Budget (Attachment 2), 2) present their 2020 Year-End Financial Report (Attachment 3), 3) present their 2020 Annual Report (Attachment 4), and 4) answer any questions.

BACKGROUND:

In 1992, the Town's first Lodging Tax of \$1 per night per occupied room was adopted. In 2002, Ridgway voters approved changing the Lodging Tax to \$2 per night with half the revenues for tourism promotion and the other half for mitigating the effects of tourism and growth. In November 2015, the Ridgway electorate approved a ballot question changing the Town's Lodging Tax rate from \$2 per room per night to 3.5 percent per room per night. In addition, voters agreed that "up to 70% of the proceeds of the Lodging Tax be used for tourism promotion and economic development." For many years, the Town has partnered with RACC to spearhead tourism promotion, economic development, and general marketing efforts as they have the experience, expertise and mission that enable it to effectively conduct those activities.

PROPOSED MOTION:

"I move to approve [with or without modifications] the 2021 Professional Services Agreement for Ridgway Marketing and Promotions with the Ridgway Area Chamber of Commerce."

ATTACHMENTS:

Attachment 1 – Professional Services Agreement: Ridgway Marketing and Promotions
Attachment 2 – RACC Proposed 2021 Lodging Tax Budget
Attachment 3 – RACC 2020 Year-End Financial Report
Attachment 4 – RACC 2020 Annual Report



PROFESSIONAL SERVICES AGREEMENT: Ridgway Marketing and Promotions

THIS AGREEMENT is entered into as of this _____ day of February, 2021, by and between the Town of Ridgway, State of Colorado, hereinafter referred to as "Town" and the Ridgway Area Chamber of Commerce, hereinafter referred to as "Contractor".

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. **SCOPE OF SERVICES**

Contractor agrees to perform services in accordance with the Scope of Consulting Services attached hereto as Exhibit "A" and incorporated herein by this reference. Any material changes to Exhibit A and Budget shall be submitted to the Town Council in writing for approval prior to any change.

2. **TIME OF COMPLETION**

The services to be performed pursuant to this Agreement by Contractor shall be initiated upon execution of this Agreement, shall be pursued with due diligence thereafter, and shall be continued until December 31, 2023, unless terminated prior.

3. **PROFESSIONAL RESPONSIBILITY**

Contractor shall be responsible for the professional quality, timely completion and coordination of all services as outlined in Exhibit A and shall without additional compensation promptly remedy and correct any errors, omissions or other deficiencies. Contractor is solely responsible for the timing, means and methods of performing the work. Contractor shall meet or exceed industry standards applicable to the services and shall provide for all training and education needed and provide all tools necessary to perform the services. Contractor shall comply with all applicable laws.

4. **RELEASE AND INDEMNIFICATION**

Contractor hereby waives any claims for damage to Contractor's property or injury to Contractor's person against the Town, its officers, agents and employees arising out of the performance of the services under this Agreement. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Services, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys'



fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

5. **PAYMENT**

In consideration of the proper performance of the Contractor's services, Town agrees to pay the Contractor 70% of the lodging tax revenues received in fiscal year 2021, for services as described in Exhibit A. Payment shall be made on a monthly basis and upon collection and receipt of lodging tax funding by the Town. Contractor is not entitled to reimbursement for supplies, materials or expenses without the prior approval of the Town Manager.

6. **TOWN REPRESENTATIVE**

The Town hereby designates its Town Manager, or his designee, as its representative and authorizes her to make all necessary and proper decisions with reference to this Agreement.

7. **INDEPENDENT CONTRACTOR**

The services to be performed by the Contractor are those of an independent contractor and not as an employee of the Town. As an independent contractor, Contractor is not entitled to worker's compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits. The Contractor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement.

8. **ASSIGNMENT**

This Agreement may not be assigned nor subcontracted by either party without the written consent of the other party.

9. **INSURANCE**

The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

Contractor shall procure and maintain the minimum insurance coverages listed below, and provide proof to the Town. Such coverages shall be procured and maintained with forms and insurers acceptable to Town. All coverages shall be continuously maintained from the date of commencement of services hereunder.

- A. Worker's Compensation insurance as required by State Statute and Employer's Liability Insurance covering all of Contractor's and any subcontractor's employees acting within the course and scope of their employment. If Contractor is an individual and has no employees and claims an exemption, proof of such exemption shall be provided to the Town.



Contractor will maintain General Liability Insurance.

The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as from time to time amended.

10. **BREACH AND TERMINATION**

All terms and conditions of this Agreement are considered material and failure to perform any of said conditions on be considered a breach of this Agreement. In such event, either party may notify the other of the breach, in which case there shall be a thirty day opportunity to cure the breach, except for failure to provide service which must be corrected within 3 days. If the breach is not cured the non- breaching party may have recourse to any and all remedies provided by law, including damages, specific performance, and termination of the contract.

Either party may terminate this contract by giving 60 day written notice to the other. In the event of termination of this contract, Contractor shall immediately repay to the Town any amounts not committed or expended, which it has received from the Town and shall conduct no further activities pursuant to this contract. Likewise, the Town will still reimburse Contractor for any amounts committed or expended in accordance with Exhibit A.

11. **MISCELLANEOUS**

Contractor shall comply with all laws, ordinances, rules and regulations relating to the performance of this Agreement, use of premises and public places and safety of persons and property. This contract shall be construed subject to Colorado Law.

12. **DATE**

This Agreement is dated February _____, 2021.

13. **EMPLOYMENT OF "ILLEGAL ALIENS"**

The following provisions are required by Colorado Revised Statutes §8-17.5-102, as amended. The term "illegal alien" is used as it is referenced in the above Statutes and is not a term chosen or endorsed by the Town.

- A. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- B. Contractor shall not enter into a contract with a Subcontractor that fails to certify to the Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.



- C. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this agreement through participation in either (1) the e-verify program, (the electronic employment verification program created in Public Law 104-208 as amended and expanded in Public Law 108-156, as amended, and jointly administered by the US Department of Homeland Security and the Social Security Administration, or its successor program) or (2) the Department Program (the employment verification program established pursuant to CRS §8-17.5-102(5)(c)).
- D. Contractor is prohibited from using the e-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- E. If the Contractor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (a) notify the Subcontractor and the Town within three days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the Subcontractor if within three days of receiving the notice required pursuant to (a) of this paragraph (E), the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.
- F. Contractor shall comply with any reasonable request by the Department of Labor and Employment in the course of an investigation that the Department is undertaking pursuant to CRS §8-17.5-102(5).
- G. If Contractor violates these illegal alien provisions, the Town may terminate this Agreement for a breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town. The Town will notify the Office of the Secretary of State if Contractor violates these provisions and the Town terminates this Agreement for that reason.
- H. Contractor shall notify the Town of participation in the Department program and shall within 20 days after hiring an employee who is newly hired for employment to perform work under this Agreement affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 USC §1324a and not altered or falsified the identification documents for such employee. Contractor shall provide a written, notarized copy of the affirmation to the Town.



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

14. **APPROPRIATION REQUIRED**

This Agreement shall NOT be construed to constitute a debt of the Town beyond any current fiscal year and shall be subject to the availability of an annual appropriation therefore by the Town.

TOWN OF RIDGWAY

By _____
John Clark, Mayor

ATTEST:

Pam Kraft, Town Clerk

CONTRACTOR: *Ridgway Area Chamber of Commerce*

By _____
Tim Patterson, President

ATTACHMENT 1



EXHIBIT A: Scope of Services

WHEREAS, the Ridgway Town Council (“Town”) has levied a Lodging Tax upon the business of furnishing rooms or accommodations for consideration in a hotel, motel, apartment hotel, lodging house, motor hotel, guest house, or other similar lodging businesses in the amount of 3.5% of the entire amount charged for furnishing the room or accommodations, and

WHEREAS, Ordinance No. 01-2016 states that seventy percent of the net lodging tax revenues received by the Town shall be used for tourism promotion and economic development purposes, and

WHEREAS, the Town has determined that the Ridgway Area Chamber of Commerce (“Chamber”) has the experience, expertise and mission to enable it to effectively conduct activities related to the above referenced purposes pursuant to this Contract with the Town, and the Chamber has presented the Town Council with a summary of detailed expenditures for the prior year and planned budget and expenditures for the current year that are acceptable to the Town, and

WHEREAS, the Chamber intends to operate a Visitor Center within the Town of Ridgway for the purpose of welcoming visitors and tourists and providing information and resources to the public for the benefit of all local businesses, residents and the Ridgway area, and

WHEREAS, the Chamber agrees to submit quarterly written financial reports to the Town, describing its activities during the prior three (3) months, including itemized expenditures of Lodging Tax funds for the quarter. The reports are to be submitted by the 5th day of April, July and October each year. The Chamber also agrees to bi-annual presentations to the Town Council describing its activities during the prior six (6) months. The first presentation shall take place at the July 14, 2021 regular meeting of the Ridgway Town Council. At the end of 2021, prior to February 15, 2022, the Chamber will provide to the Town an itemized year-end financial report of all Lodging Tax expenditures, as well as a Lodging Tax Report listing the accomplishments of that year. In addition, prior to February 15, 2022, the Chamber will deliver a presentation to the Town Council describing its activities during the prior fiscal year. The same general timeline and reporting and presentation requirements shall apply for 2022 and 2023.

WHEREAS, the Town may request, at the expense of the Chamber, a formal financial review and an official audit, by an independent outside auditor, of all finances related to public dollars, and the Chamber shall provide any financial documentation requested by the Town pertaining to Lodging Tax funds, and

WHEREAS, the Town and Chamber agree that a designated Town Council/Chamber Board liaison will be important to ensure beneficial communication, feedback and support for both the Town and Chamber in the administration of this Contract and expenditure of public funds, and both entities will work together to support this liaison in their efforts, and



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

WHEREAS, the Town and Chamber desire to work cooperatively with each other, and other community entities and organizations, to develop economic development strategies that benefit the community and Ridgway area, and the Chamber is committed to supporting the Town's efforts in economic development, and

WHEREAS, the Chamber desires and agrees to market and promote the community and economic development initiatives of the Town in 2020, including but not limited to: Love Your Valley Festival and the Space to Create project, and

WHEREAS, the Town recently updated the Town's Master Plan and the Chamber was an active participant in that process in 2018 and 2019, and both parties desire to work together and commence implementation items related to marketing services as a result of the plan update, and

WHEREAS, the parties shall strive to provide each other with timely notification via email of all meetings, events, projects and collaborations on which the parties have mutually agreed to participate on, with notices sent to:

Ridgway Town Hall
PO Box 10
Ridgway, CO 81432
pneill@town.ridgway.co.us

Ridgway Area Chamber of Commerce
150 Racecourse Road
Ridgway, CO 81432
raccadmin@ridgwaycolorado.com

NOW THEREFORE, the Town and Chamber agree to the preceding Scope of Services for this contract.

To: Town of Ridgway
From: Ridgway Area Chamber of Commerce
Subject: 2021 Lodging Tax Budget Request
Date: Friday, February 5, 2021

Dear Ridgway Town Council,

The Ridgway Area Chamber of Commerce is pleased to present the following 2021 Lodging Tax Budget request. A year-end Lodging Tax P&L statement has been provided with this narrative, which reflects final 2020 Lodging Tax expenditures. The [2020 RACC Annual Report](#) provides the narrative of our 2020 activities.

We are sharing an overall 2021 Lodging Tax Budget of \$79,407. This reflects a flat Lodging Tax projection of \$64,811, combined with surplus funds of \$9,589 integrated into the budget and a reserve of \$5,007 (total 2020 surplus of \$14,586). Our projected 2021 budget is unprecedentedly high due to the large carryover of Lodging Tax funds from 2020. The pandemic made budgeting incredibly challenging. We made drastic budget cuts in the spring of 2020 when lodging was restricted. Summer Lodging Tax funds exceeded all previous years, although we do not see those numbers until September to November. Then, winter Lodging Tax funds became an unknown with the continuing pandemic. The importance and structural factors that lead to the typical annual surpluses were noted in all previous year-end reports. A conservative projection helps protect projected budgets for both marketing related staff/contractor needs.

The 2021 budget request will serve as the operating structure for RACC's marketing plan for the coming year. It is designed to ensure that our organizational and community goals are met and that Lodging Tax funds are leveraged to their maximum potential. The execution of this budget and marketing plan will be led by the Chamber Marketing Director, staff and consultants, with support and oversight from the RACC Board of Directors, as well as continued input from local business and partners, including the Town of Ridgway.

We are proud of the progress made in 2020, highlighted in our Annual Report, and look forward to 2021 being another major step forward. We thank you for your partnership in supporting the Ridgway Chamber and our local business community.

Sincerely,

Tim Patterson
Board of Directors President
Ridgway Area Chamber of Commerce

Ridgway Area Chamber of Commerce
150 Racecourse Road
PO BOX 544 Ridgway, CO 81432
1-800-220-4959 970-626-5181
info@RidgwayColorado.com RidgwayColorado.com

2021 Lodging Tax Budget

Projected 2021 Lodging Tax Budget = \$79,407 (\$64,811 projected 2021 Lodging Tax funds collected combined with surplus funds of \$9,589 integrated into the budget and a reserve of \$5,007 (total 2020 surplus carryover of \$14,586).

This is the summary of the budget request and categories. A more detailed narrative on each category can be found below:

Print Media and Advertising	\$	2,800
Online Media and Advertising, including Social Media	\$	6,100
Visitor Center Operations & Upgrades	\$	9,000
Website Upgrades and Operations	\$	7,000
Visitors Guide Fulfillment, Publishing and Content	\$	6,000
Marketing Collaboration and Networking	\$	1,000
Staff	\$	27,000
Colorado Creative Corridor*	\$	2,000
CTO off-season marketing match**	\$	0
Visitor Center Redesign	\$	5,000
Sustainable Tourism	\$	3,500
Administrative	\$	5,000
Reserve	\$	5,007
TOTAL	\$	\$ 79,407

**In addition to \$25,000 in funding from the CTO for the Colorado Creative Corridor (shared with 4 other communities).*

***The CTO \$10,000 Marketing Matching grant was not available for FY21 due to the impacts of COVID-19 on the state budget.*

2020 Lodging Tax Budget Narrative

Print Media and Advertising (\$2,760)

Over years, we have shifted focus away from traditional print advertising (other than the Visitor Guide), but we will continue some advertising with regional and/or state tourism outlets. Our limited budget requires us to be discerning with our advertising, however some of the publications we will consider:

- San Juan Skyway Magazine
- West of 105
- Colorado Life Magazine

Our goal is to continue to invest evenly across the Chamber's five marketing themes, which are meant to capture the various assets, activities and attractions that bring visitors to Ridgway.

We aim to increase regional awareness of Ridgway businesses through local news outlets. Budget will be used to continue to get articles placed in local news outlets, including: Ouray County Plaindealer and Montrose Mirror.

Online Media and Advertising, including social media (\$6,100)

RACC will continue to devote attention to online marketing and social media platforms that can enable us to more effectively reach a targeted audience. Due to the impacts of COVID-19 on the state budget, the CTO did not offer the \$10,000 Small Marketing Matching grant awards in 2020. In lieu of this loss of grant funding, the RACC is further supporting off-peak season marketing through investment in a new CTO Winter Marketing Co-op program. In 2020, the Chamber invested \$1,250 into a digital marketing campaign, along with receiving \$2,000 in matching funds from the CTO. The digital campaigns will run through February 2021. We hope to continue utilizing the co-op program in 2021 if grant funding opportunities are not available.

We continue to focus attention on growing our social media platforms, which include Instagram and Facebook. Instagram is positioned as a visitor-facing platform by using high quality images across all five marketing themes. Facebook is utilized to support local events, businesses and tourism-related opportunities.

Our quarterly visitor-focused e-newsletter will continue in 2021 with our leads from GoColorado.com plus email lead capturing features on the website. The e-newsletter allows us to better control content that goes to potential visitors, with an emphasis on our 5 marketing themes and off-peak season assets. We plan to integrate responsible travel messaging into the content in order to further support our low-impact travel messaging.

Visitor Center Operations (\$9,000)

We are expecting to re-open the Ridgway Visitor Center in May 2021. The RACC is now responsible for all operational costs. Previous to 2021, the Ridgway Railroad Museum paid for half utilities and all weekend staffing expenses. Due to these new financial responsibilities, the RACC has to significantly increase annual operational costs. This is the basic operations funding necessary to run the Visitor Center from May through October and support our volunteer staff. This includes operational expenses, such as: utilities, cleaning, weekend staffing and financial support for our Volunteer Coordinator.

Website Upgrades and Operations (\$7,000)

RidgwayColorado.com continues to perform well and has seen significant growth since 2017. Please see the 2020 Annual Report for detailed analytics of this improved performance and visitation. For 2021, we will dedicate budget to continue the improvement of content, functionality, business exposure

and the user experience. Website investments will include: new and revised content that aligns with high performing keywords and SEO, website reorganization to increase usability, increase visibility of local businesses, and increased access for members to edit their content. This budget category also includes our normal website and technology operations support, including site and email server support from our technology partner Peak Media.

Visitors Guide Fulfillment, Publishing and Content (\$6,000)

We successfully created a Ridgway-centric 2021 Visitor Guide this past year with our marketing agency partner, BCI Media. We will continue this partnership for the 2022 Ridgway Visitor Guide. This budget category includes content creation and editing, as well as fulfillment expenses. Cost includes distribution of approximately 35,000 guides across the Western Slope, and digital exposure to approximately 100,000 online readers.

Marketing Collaboration and Networking (\$1,000)

This budget category will be for select conferences and events that support improved regional collaboration as well as for staff professional development and training. For 2021, we want to send our Marketing Director to the Colorado Governor's Tourism Conference if the event takes place in-person.

Staff (\$27,000)

This reflects a similar amount for our 2020 budget request, which was \$26,800. Our Board is thrilled to have Hilary Lewkowitz in a lead staff role as our Marketing and Membership Director. Hilary will oversee the execution of our marketing plan, budget, contractors, partnerships, visitor center and related projects.

Our broader staffing strategy is focused on using as much local expertise as possible and the RACC has developed a wonderful group of staff and consultants to help advance our mission. Our exceptional group of local consulting partners and staff includes:

- *Marketing Director* – Hilary Lewkowitz
- *Visitor Services and Visitor Center Volunteer Coordinator* - Jeanne Robertson
- *Online Content and Storytelling Consultant* – Tanya Ishikawa
- *Accounting & Bookkeeping* – Middleton Accounting (Jane Pullium)
- *Website and Technology Partner* -- Peak Media (Josh Gowans)
- *Media and Design Partner* – Sprout Design Studio (Nicole Green)

All of the marketing projects and budget categories above will only be successful with sufficient professional time and attention. The board is in place to oversee the management of that staff and funding but not to execute on the implementation of the programming.

Colorado Creative Corridor (\$2,700)

Since 2018, Ridgway has partnered with four other Colorado communities in the establishment of the Colorado Creative Corridor. The partnering communities are Carbondale, Crested Butte, Paonia and Salida. This project is continuing in 2021, with another \$25,000 grant from the Colorado Tourism Office. RACC will provide \$1,250 in match funding for this effort, and the Town of Ridgway will provide \$2,500. Our match is lower for this year, because we had to make a decision on the 2021 match when COVID-19 impacts on budget were still unclear. In addition to the \$2,500 match, we are setting aside a nominal amount of funds to utilize local contractors for content creation and professional photography.

2021 grant funding will continue on the success of this past year, which will include a Colorado Creative Corridor microsite, e-newsletters to drive traffic to RidgwayColorado.com, and the launch of our promotional video that was created in 2020.

CTO Off-Peak Season Marketing Grant (\$0)

Due to the impacts of COVID-19 on the state budget, the CTO Marketing Matching grant was not available for this year. We hope the grant program is available for the winter of 2021-2022.

Visitor Center Redesign Project \$5,000

In January 2021, the RACC officially became the lease of the Ridgway Visitor Center building. We have several renovation projects to complete in order to make the space COVID-safe for visitor center staff and our visitors. Proposed projects include: a southside dutch door to allow volunteers to safely deliver visitor information without letting visitors into the building; a partition to the east of the restrooms, so restrooms are only accessed from the outside west entrance; interior/exterior paint; and other miscellaneous projects to improve the space that was historically occupied by the Railroad Museum. Renovations will help us to maintain a clean and professional looking building while we continue to work with the Town to implement the Heritage Park and Ridgway Visitor Center Strategic Master Plan.

Sustainable Tourism \$3,500

For several years, the Chamber has been on a path to educate visitors on how best to enjoy our local resources. The pandemic and related visitor trends reinforced the need for us to support the community by promoting awareness of responsible, sustainable tourism practices. Our communications and marketing strategies are increasingly incorporating messages about ways to visit the Ridgway area that reinforce low impact travel and provides benefit to our community. We want to take the next step in this process to ensure we are promoting a sustainable year-round economy. Proposed projects include: 1) a survey to local businesses and nonprofits to understand the impacts of COVID-19, perceptions of tourism and desire to shift towards sustainable/local products; and 2) a convening of a local public land agency focus group to understand priority impacts from recreation on public lands. We hope the Town will partner and support us on both initiatives. The goal of these projects is to better understand and inform our marketing and communication strategies.

Administrative \$5,000

In 2020, administrative fees that consist of accounting and bookkeeping, were factored into the Visitor Center Operations budget. However, we feel it is important to itemize the cost of the administrative work that is needed to implement our entire annual marketing plan. Our marketing work cannot be completed without the administrative support from Middleton Accounting.

2021 Reserve (\$5,007)

As has been discussed, the first six months of the calendar year bring limited Lodging Tax funding, while at the same time represent the largest months for expenditures. It is critical to aim for a healthy reserve for 2021. This target of \$5,007 is lower than what we would ultimately like to achieve. However, we have a large carryover budget from 2020 to spend and projects from the previous year to catch-up on.

We look forward to continuing to build upon the organizational progress that was achieved in 2020.

We thank the Town Council and staff for their partnership in this important work on behalf of our local business community.



2:58 PM

01/21/21

Accrual Basis

Ridgway Area Chamber of Commerce
Profit & Loss for Lodging Tax Class
January through December 2020

	Jan - Dec 20
Ordinary Income/Expense	
Income	
Lodging Tax Income	63,830.58
Total Income	63,830.58
Gross Profit	63,830.58
Expense	
Advertising and Promotion	
Creative District Corridor	2,807.00
Online Media and Advertising,	6,295.00
Print Media and Advertising	3,324.00
Visitor's Guide Fulfillment, P	5,833.50
Website Upgrades and Operations	6,113.91
Total Advertising and Promotion	24,373.41
Payroll Expenses	
Hourly Wages	45.00
Payroll Taxes	3.44
Staff	38.75
Workers Comp Insurance	244.00
Payroll Expenses - Other	0.27
Total Payroll Expenses	331.46
Postage	100.15
Professional Fees	
Accounting Fees	1,000.00
Total Professional Fees	1,000.00
Subcontractors	20,197.00
Visitor Center Operations	
Electric	327.37
Natural Gas	242.88
Sales Tax License	25.00
Telephone and Internet	1,323.23
Volunteer Expense	100.00
Visitor Center Operations - Other	190.00
Total Visitor Center Operations	2,208.48
Visitor Center Redesign	9.50
Visitor Center Upgrades/Merch	1,024.51
Total Expense	49,244.51
Net Ordinary Income	14,586.07
Net Income	14,586.07

2020 ANNUAL REPORT



Image: Kane Scheidegger

RIDGWAY, COLORADO

MISSION: Promote business and community growth and development in the Town of Ridgway and the surrounding area.



Image: Elizabeth Riley



Image: Kane Scheidegger



Image: Kane Scheidegger

FROM THE BOARD PRESIDENT

RIDGWAY AREA CHAMBER OF COMMERCE

The Ridgway Area Chamber of Commerce (RACC) Board of Directors is pleased to share this 2020 annual report. It was a challenging year for our entire community, but we are proud of our continued progress.

Starting in March of 2020, the COVID-19 pandemic drastically impacted the Chamber's budget, operations and events. For nearly two months, LOT tax funds were close to zero due to a statewide "Stay at Home" order. Once visitors began to return, LOT tax funds recovered, but all events and Visitor Center operations were postponed. Based on the unknowns of the pandemic in the spring, the Chamber made drastic budget cuts. All marketing efforts were put on hold and our minimal staffing time was redirected to communicating COVID-19 updates and business resources. Chamber projects came back online in July. With the unknowns of the pandemic, we focused our resources on projects that could be reevaluated monthly so we could be more adaptive to COVID-19 impacts.

Our major priority for 2020 was RidgwayColorado.com content creation, site optimization and improvements to the user experience. The site remains the #1 Google search result for "Ridgway, Colorado". New content and attention to Google Analytics has led to huge strides in website performance.

In 2020, the RACC was the lead on a \$10,000 Colorado Tourism Office (CTO) grant, as well as being awarded 50 hours of CTO technical assistance. We completed the grant work in partnership with the Ouray Tourism Office (OTO) to support our off-peak season marketing strategy. The OTO dissolved in April 2020, but most grant work was completed before this event occurred. In the fall, the Chamber was awarded CTO technical assistance hours to support COVID-19 recovery work. The additional hours led to the creation of off-peak season digital content.

We are furthering the support of off-peak season marketing through the support of a CTO Winter Marketing Co-op program. The Chamber invested \$1,250 into a digital marketing campaign, and received a CTO \$2,000 match.

The Colorado Creative Corridor initiative continued in 2020, in partnership with the Town of Ridgway, through a \$25,000 state grant shared with four other communities. The Creative Corridor continues to provide unique visibility, which includes the creation of a new promotional video filmed in September.

In 2020, the Ridgway and Ouray Visitor's Guide was distributed locally and across the state. After the dissolution of the OTO, the RACC created a Ridgway-centric guide for 2021. The new guide is now complete, and will be distributed locally and across the Western Slope.

The Chamber continues to be staffed by an exceptional group of local professionals. Meanwhile, all financial operations and reporting are managed locally by Middleton Accounting.

We look forward to continued progress and partnership in 2021, all in an effort to support our local businesses and the community as a whole.

- Jim Patterson

BOARD OF DIRECTORS



TIM PATTERSON, PRESIDENT

Tim Patterson has made Ridgway home since 1998. Owner and founder of RIGS Fly Shop & Guide Service, a Ridgway-based business since 2001, Tim has a firsthand perspective on the town's evolving business community. He holds a degree in recreation management from Prescott College, and previously served on Ridgway Town Council, Planning & Zoning Committee, as well as on prior tenures with the Ridgway Chamber.



JASON BOJAR, VICE PRESIDENT

Dr. Jason Bojar has been a resident and business owner in Ridgway for the last 13 years. He and his wife, Dr. Jessica Balbo, own and operate Balance Natural Medicine, an integrative medical clinic with offices in Ridgway and Telluride-Mountain Village. Jason appreciates the opportunity to serve as the Vice President on the Ridgway Area Chamber of Commerce board and his role in supporting local business vitality.



ASHLEY PERKINS, SECRETARY

Ashley Perkins grew up in upstate New York, and has lived in southwest Colorado for the past 12 years. She currently works as a customer service representative at Alpine Bank in Ridgway. Ashley joined the RACC Board in order to support and participate in the Ridgway community in a new way. She hopes that her involvement can have a positive impact for both the chamber and local business establishments as well.



DANIEL RICHARDS, AT-LARGE MEMBER

Daniel Richards is the owner of Colorado Boy Pub & Brewery and lives in Ridgway with his wife, Tracey, and kids, Tyler and Ashleigh. Daniel also owns a secondary brewery, the Colorado Boy Depot, in the industrial park in Ridgway, and along with his twin brother, Dennis, owns and operates the Colorado Boy Southwest Pub restaurant in Ouray. Daniel is an avid supporter of local events and collaborations that help the business community thrive.



KANE SCHEIDEGGER, AT-LARGE MEMBER

Born and raised in Ridgway, Kane Scheidegger graduated from art school in 2005. He shoots large-format, panoramic images of the San Juan Mountains and ski descents in the winter available at Kane Gallery. He loves the outdoors and everything that comes with it, and he hopes to bring nature into homes through his larger-than-life prints. Kane previously sat on Ridgway's streetscape planning committee, and feels he can offer some great creativity to the Chamber to help it reach its goals.



ADAM DUBROFF, AT-LARGE MEMBER

Adam Dubroff and his wife, Karen, have lived in Ridgway since 2000. They have enjoyed raising their son, Jacob, here, and he will graduate soon from Ridgway High School. Adam is the managing partner of the Ridgway Lodge and Star Saloon, and worked previously for the Telluride Ski Resort in diverse capacities over 10 years. He is president of the Ridgway Booster Club, and the Ridgway High School basketball team coach.

Thank you to Amanda Swain of Ridgway Adventure Sports for serving on the RACC Board from May 2018 to August 2020, including time as the Board Treasurer.

STAFF & CONSULTANT TEAM

Over the past four years, the Chamber has developed an exceptional team of staff and contract partners. This group of Ridgway-based professionals are now leading the Chamber's program implementation.



HILARY LEWKOWITZ, MARKETING & MEMBERSHIP DIRECTOR

Hilary brings nearly two decades of work in conservation and sustainable tourism development throughout Colorado, the western U.S. and around the world. She is the owner of Mountain Roots Consulting, which focuses on supporting sustainable communities through development strategy, marketing and program management. Hilary now leads the implementation of the Chamber's marketing strategy and activities, which includes new grant initiatives to boost economic activity in the off-peak tourism season.



TANYA ISHIKAWA, CONTENT & STORYTELLING CONSULTANT

Tanya has spent her career writing and editing through various platforms, starting as a public relations professional in Tokyo, Japan. Since 2014, she has been living and working in Ouray County, where she is enjoying a wide range of freelance assignments for magazines, specialty publications, books, websites, videos, and other media based in the area and across Colorado. Her Chamber projects include the Annual Report, Visitor's Guide, website content, and news releases.



JOSH GOWANS, WEBSITE & TECHNOLOGY PARTNER

Josh is founder of Peak Media Company, a marketing and technology consultancy based in Ridgway and specializing in open-source applications, website design, management and optimization, and CRM (Customer Relationship Management) solutions. Josh manages all aspects of the Ridgway Area Chamber of Commerce's website, from design to system administration and CRM development. He's particularly focused on optimizing the site's content and deploying a CRM for membership, event and contribution management.



NICOLE GREENE, MEDIA & DESIGN PARTNER

Nicole is a graphic and web designer who loves to work with clients in a collective and creative process to help them to grow and thrive. Her boutique design firm is Sprout Design Studio, founded in 2006 and working with entities in the San Juan Mountains, throughout the United States, as well as internationally. Sprout grows ideas into successful brand identities with brilliant strategies and stunning results by giving businesses an integrated look and feel as well as building platforms that connect brands to their target audiences.



JANE PULLIAM, ACCOUNTANT

Jane has worked for Middleton Accounting for 14 years as a client accountant for a variety of businesses in the Ridgway/Montrose area. She has been working for the Ridgway Area Chamber of Commerce for the last four years, helping provide financial statements and daily bookkeeping. Jane has lived in Ridgway for 22 years and owned Drakes Restaurant with her husband, Drake, for 13 years, which helps her understand the workings of a business and taking care of the bookkeeping.



JEANNE ROBERTSON, VISITOR SERVICES & VOLUNTEER COORDINATOR

Jeanne lived in Boulder in the '70s and '80s, when she would come to the San Juans to camp and hike. She fell in love with the area and decided to live here someday. In 2001, she and her husband bought land on Log Hill Mesa, and in 2005, built their house. Jeanne has worked at the Ridgway Visitor Center for three seasons, and just loves talking to guests and turning them on to our beautiful paradise. At the end of 2019, she agreed to add the role of Membership Coordinator to her duties. She will be reaching out to all business owners with the intent to listen to membership needs and requests, so please feel free to contact her any time.

RIDGWAYCOLORADO.COM



RidgwayColorado.com continues to be the #1 Google search result for keyword "Ridgway Colorado".

In partnership with Josh Gowans of Peak Media and RACC staff, we continue to improve the site navigation, search engine optimization, site content, and business promotion. In 2020, the primary focus areas for **RidgwayColorado.com** improvements include: content production, ongoing site optimization, and underlying systems improvements for the User Interface and User Experience.

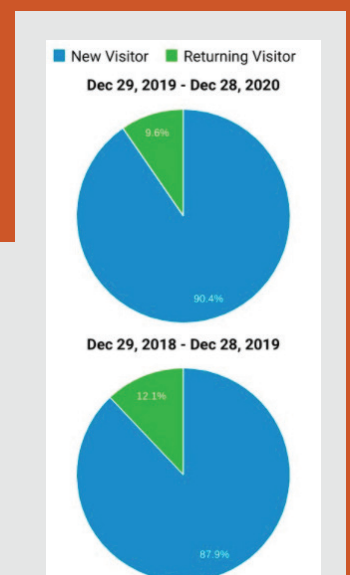
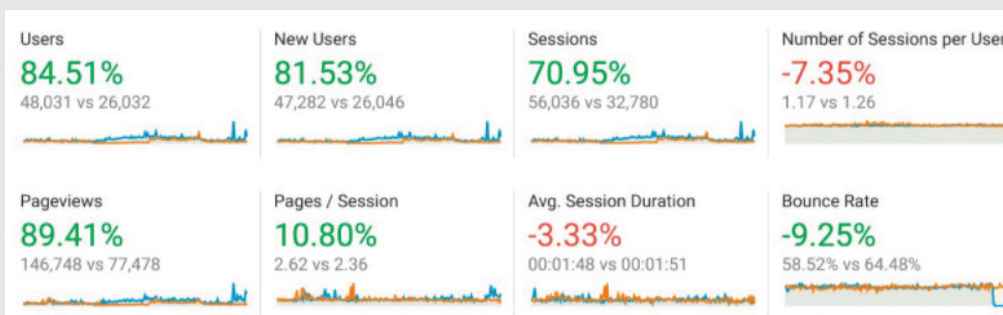
In general, performance metrics for RidgwayColorado.com are positive. Currently, the site ranks for 3,979 keywords, representing a 19% increase compared to 2019. Of the current keywords, the site gained 37 keywords that rank on the first page of SERPs (Search Engine Results Page) and 155 on the second page. Most of the recent gain in keywords occurred in the second half of 2020, which is consistent with our content production efforts. Compared to 2019, this year has seen an increase in traffic resulting from organic search and referral traffic. The increase from referral sources is likely due to increased participation with other content sources such as colorado.com.

The top 10 most active pages on the site, compared to the previous year, are listed in the table. The audience comparison to the right reinforces the point that the site is seeing growth in its first time visitor segment year over year.

Top 10 Most Active Web Pages	Unique Pageviews		
	2020	2019	% Change
Ridgwaycolorado.com (homepage)	20,557	12,951	58.73%
/movies/true-grit	6,971	0	
/businesses/accommodations	3,562	2,303	54.67%
/covid-19-general-response	4,092	0	
/things-to-do	3,773	2,120	77.97%
/businesses/dining	2,724	1,967	38.49%
/things-to-do/outdoor-adventure	2,533	1,311	93.21%
/things-to-do/health-wellness/hot-springs	2,213	230	862.17%
/things-to-do/history-heritage/true-grit	2,505	544	360.48%
/plan-your-trip	1,919	1,057	81.55%

+ AUDIENCE METRICS

The metrics reflect the total traffic to the site for 2020. Of particular interest are the increases in "New Users" and in "Sessions". While the number of sessions per user has declined, both the number of pages viewed per session and the "New Users" has increased. We can interpret this to mean that the site is attracting more first-time visitors that are reviewing more content on the site.





RIDGWAYCOLORADO.COM

RidgwayColorado.com remains a critical and powerful asset to promote our business and nonprofit community.

SUMMARY OF WEBSITE IMPROVEMENTS



CONTENT PRODUCTION & ONGOING OPTIMIZATION

Chamber staff undertook periodic reviews of keyword rankings to identify target topics on which to focus. In addition to general improvements to content and design on various pages, we focused on developing new content and website sections:

New itinerary section and pages

Enhancing the individual pages related to movies

Revising and enhancing pages associated with hot springs

New Colorado Creative Corridor page

Integration of new Chamber themes into business categorization and promotion

To accommodate an increase in content production, we consolidated and better organized the site's overall navigation while maintaining a focus on "things to do" and "business listings". In addition, we've worked to better cross reference related content by increasing the number of in-content links to key pages, by exposing all businesses online while still prioritizing member pages, and by leveraging new capabilities associated with dynamic content display. The latter is well developed but is continuing to be applied to various pages on the site as we phase out an older, deprecated module that provides related content functionality.

The five marketing themes developed in 2017 (Outdoor Adventure, Arts & Entertainment, Health & Wellness, History & Heritage, Culinary Experiences) continue to be useful for visitor searches. In 2020, RACC staff created four **new marketing themes** with logos and promotional text: Shopping, Accommodations, Travel Services, and Professional Services. These new themes not only help visitors find information on more business categories on the website and across all marketing platforms, but also increase visibility for Chamber members with less tourism-based products and services.



SYSTEM IMPROVEMENTS FOR USER INTERFACE AND USER EXPERIENCE

From a User Interface (UI) standpoint, our objective has been to streamline the overall design and display of content, focusing on: driving traffic to the site via targeted content optimization; presenting related members and businesses on key content; and providing ancillary information to retain users on the site and optimize for longer-tail keywords.

In 2020, the site underwent full adoption of a modern, lightweight "page builder" that affords staff more efficient and powerful content production and page design. Likewise, the newer platform includes a powerful way to manage and display dynamic content, resulting in more efficient development and easier content cross referencing.

Regarding overall User Experience (UX), the new page builder provides a mobile first design approach and provides overall better performance. While the system is lightweight and fast, and the underlying infrastructure has been upgraded, there are opportunities to improve site speed. With the increased content development, which includes additional media, some improved caching or adoption of Content Delivery Network (CDN) may be warranted. This will be further investigated in 2021.

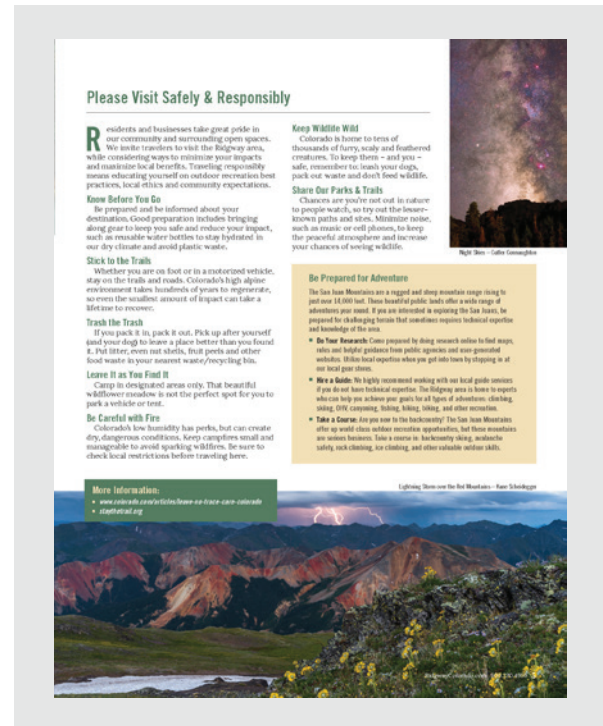
Finally, in the fall of 2020, the site adopted the latest Google Analytics platform (GA4), as well as developed custom events via Google Tag Manager that allow for more targeted tracking, such as email and phone clicks, outbound click tracking, etc. These will provide a richer picture of how users interact with the site in next year's report.



RESPONSIBLE TRAVEL



For several years, the Chamber has been on a path to educate visitors on how best to enjoy our local resources. The pandemic and related visitor trends reinforced the need for us to support the community by promoting awareness of responsible, sustainable tourism practices. Our communications and marketing strategies are increasingly incorporating messages about ways to visit the Ridgway area that reinforce low impact travel that provides benefit to our community. From hiring knowledgeable, local guides to Leave No Trace principles, we provide several useful tips alongside information about our local businesses and attractions. The 2021 Ridgway Visitor's Guide had an introductory page on responsible travel, and the website also has a [page devoted to responsible travel recommendations](#).

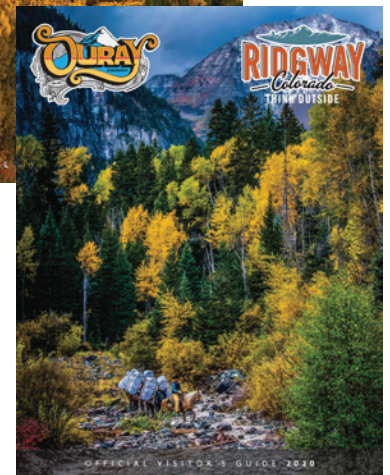


RIDGWAY VISITOR'S GUIDE

Print and digital copies of the 2020 Ridgway Visitor's Guide began distribution in January 2020. Under the editorial leadership of our Communications Consultant Tanya Ishikawa, the Ridgway Chamber refreshed guide content under the Ouray County-wide narrative, organized by Ridgway's five marketing themes. An estimated 100,000 copies of the Visitor's Guide were distributed in 2020. Plus, the digital version became a gateway on RidgwayColorado.com for website visitors to sign up for visitor e-newsletters, increasing the RACC's direct marketing opportunities for our members.

The City of Ouray decided to take over operation of its tourism activities, and neither the city nor the reorganized Ouray Chamber Resort Association planned to continue collaboration with Ridgway on a combined Visitor's Guide. As a result, RACC staff was able to focus the **2021 Visitor's Guide** solely on Ridgway area businesses and attractions while highlighting Chamber members. Business listings blended into main content pages, including new sections based on our four new marketing themes: shopping, accommodations, travel services, and professional services.

The welcome letter in the 2021 Guide was written by Ridgway Town Manager Preston Neill. As noted above, page 5 of the Guide offered safe and responsible travel tips and similar messages are woven throughout the guide. Photos in the guide were the best yet with many contributions from three talented local photographers: RACC Board Member Kane Scheidegger, Colorado Creative Corridor project photographer Elizabeth Riley, and Ridgway High School student Cutler Connaughton.



VISITOR CENTER

AND HERITAGE PARK RE-DESIGN PROJECT



In partnership with the Town of Ridgway, the Chamber is excited to kick-off the Heritage Park and Ridgway Visitor Center Redesign Subcommittee in 2021.

Due to the impacts of COVID-19, both the Chamber and Town of Ridgway had to postpone planned redesign projects. However, the RACC supported the Town's successful implementation of two Colorado Main Street mini grants and an AARP grant that totaled \$15,000. Grant projects include: Heritage Park picnic tables, landscape leveling and gravel, a new irrigation system, and a new outdoor visitor guide dispenser. Additionally, the Chamber donated a shed to the Ouray County Ranch History Museum that needed to be moved in order to finish the graveled area.

The Chamber was planning on creating promotional signage for the southside exterior of the Ridgway Visitor Center. After we made drastic budget cuts, our staff was able to utilize limited funds to create temporary signage that hangs in the Ridgway Visitor Center southside windows. The signage featured the five Chamber themes along with four new themes: shopping, accommodations, travel services, and professional services. Sign content included a QR code and website url to RidgwayColorado.com/plan-your-trip.

In partnership with the Town of Ridgway, we are excited to kick-off the Heritage Park and Ridgway Visitor Center Redesign Subcommittee. The subcommittee is being formed in response to a November 2020 Town Council meeting that identified the need to take further concrete steps towards revamping Heritage Park and the Ridgway Visitor Center. Subcommittee members will include: Town Council, RACC staff and Board Members, businesses, nonprofits, and community members. The purpose of the subcommittee is to prioritize next steps for this space, provide budget recommendations, and give direction towards the vision of the visitor center building. Meetings will be held from February to April of 2021.

RIDGWAY VISITOR CENTER OPERATIONS

The Ridgway Visitor Center was closed in 2020, due to impacts from the COVID-19 pandemic. The center is staffed by volunteers, and the majority of volunteers did not feel comfortable with the potential COVID-19 exposure from visitors. The safety of volunteers and visitors to Ridgway is the number-one priority of the RACC Board of Directors, who unanimously voted at their May 18, 2020 meeting to close the Visitor Center for the year.

In November 2020, the RACC successfully negotiated with the Town of Ridgway on a new lease agreement for the Ridgway Visitor Center. The new lease agreement came as a response to the planned exit of the Railroad Museum at the end of the year. We are excited for the new responsibility of being the primary lessee of the Ridgway Visitor Center.

In a typical year, more than 800 monthly visitors come into the Ridgway Visitor Center from May to October. We are deeply grateful to the wonderful volunteers who generously give their time to provide valuable information and a warm welcome to our visitors. The Board and staff look forward to finding innovative ways to reopen for summer 2021, while keeping the safety of our volunteers as the primary focus.

ONLINE + PRINT MEDIA

ONLINE AND PRINT PROMOTION AND MARKETING



The number of Ridgway's Instagram followers grew by 33% in 2020.

The Chamber coordinated co-op ads with local businesses in the **2020 San Juan Skyway magazine**, distributed throughout Colorado.

The **weekly community e-blast** continues to be sent out to 1,920 contacts. The visitor e-newsletter was sent out two times this year, and delivered to 6,610 contacts across Colorado and the U.S.

The Chamber is continuing to develop its online presence on **Facebook and Instagram**. Since January 2020, our Instagram followers increased from 1,460 to 2,179 (up 33%). In 2020, our Facebook followers increased from 1,939 to 2,158 (up 11%).

The RACC is working in partnership with the City of Ouray and Visit Montrose on a **new digital marketing campaign to support regional tourism** efforts and emphasize responsible travel. Deliverables include: new landing with regional travel opportunities, winter itineraries, and social media campaigns.

RACC staff updated and converted the **True Grit Walking Tour** brochure into a digital copy available on the **website**. The history of the iconic movie's filming in Ridgway continues to be a major tourist draw, and the walking tour offers a self-guided option for visitors.

The Chamber joined a statewide **Shop Local campaign**, providing strong online exposure for local businesses and nonprofits from December 2020 through March 2021. Winter shop local information and deals are accessible through RidgwayColorado.com and **SBDC website**, as well as weekly social media posts and a new section in the community e-blast.

The Chamber continued to garner newspaper articles in 2020, including The Watch, Montrose Mirror, and Ouray County Plaindealer. Coverage ranged from off-peak season marketing and related grants, responsible travel initiatives, the visitor center closure, and new Board Member Adam Dubroff.

PROMOTION AND MARKETING

- + CHAMBER VISITOR E-NEWSLETTER
- + REGIONAL TOURISM CAMPAIGN
- + DIGITAL TRUE GRIT WALKING TOUR BROCHURE
- + SHOP LOCAL CAMPAIGN
- + NEW CONTENT ON COLORADO.COM
- + CTO WINTER CO-OP MARKETING PROGRAM



STATEWIDE PROMOTION & OFF-SEASON MARKETING STRATEGY

In 2020, the Chamber was directly involved with \$35,000 in CTO grant funding and 50 hours of CTO technical assistance. These funds continue to support a more sustainable year-round visitation model.

In 2020, the Chamber was directly involved with \$35,000 of Colorado Tourism Office (CTO) grant funding and matching funds for the Colorado Creative Corridor and off-peak season marketing. Additionally, the Chamber was awarded 50 hours of CTO technical assistance towards winter marketing efforts.

Due to the impacts of COVID-19 on the state budget, the CTO did not offer small marketing matching grant awards in 2020. In lieu of this loss of grant funding, the RACC is further supporting off-peak season marketing through investment in a new CTO Winter Marketing Co-op program. The Chamber invested \$1,250 into a digital marketing campaign, along with receiving \$2,000 in matching funds from the CTO. The digital campaigns will run through the winter of 2021. These marketing initiatives are important for promoting a more sustainable model of year-round visitation and consistent economic opportunities for our local businesses.

OFF-PEAK SEASON MARKETING GRANT

We completed \$10,000 of CTO grant work in partnership with the Ouray Tourism Office to support our off-peak season marketing strategy. The grant also includes a 25% match (\$2,500), split equally by the RACC and OTO, so total funding for the project was \$12,500. The grant was awarded in the fall of 2019, with work beginning in December 2019. The Ouray Tourism Office dissolved in April 2020, but most grant work was completed before then.

CTO TECHNICAL ASSISTANCE AWARD

In the fall, the Chamber was awarded 50 hours of CTO technical assistance to support COVID-19 recovery work. The additional hours led to the creation of off-peak season digital content that was added to the website, social media and email campaigns. Content focused on promoting Ridgway as a winter destination. Five articles were created in total, representing all five of the Chamber's marketing themes. An example of the winter marketing content can be found [here](#).

HIGHLIGHTS FROM 2019 GRANT IMPLEMENTATION

Grant implementation began in December 2019, and included:

- Sponsored article on Colorado.com, "7 Must-dos for Your Winter Getaway in Ouray & Ridgway".
- Advertisements on Colorado.com that showcase Ridgway as a year-round destination and are based on the five marketing themes. Advertisements will run until they receive 100K impressions. Clicking on the advertisement (and links in the article mentioned above) takes readers to RidgwayColorado.com/plan-your-trip to enter their contact information to receive a digital copy of the Visitor's Guide.
- Instagram Takeover on Visit Colorado's (157K followers) account from 12/20/19 to 12/26/19: 15 posts, 23,301 total engagement, 23,189 total likes, 112 comments.
- Colorado.com January and March custom in-state emails to approximately 15,000 contacts.
- Featured section in December 2020 custom in-state email.
- Winter [Colo-Road Trip 3-day itinerary](#) featuring Ridgway, Ouray and Montrose.
- [Responsible Travel](#) landing page on RidgwayColorado.com.

COLORADO CREATIVE CORRIDOR

ITINERARY DEVELOPMENT & STATEWIDE PROMOTION



For the third consecutive year, the Ridgway Chamber teamed up with the Town of Ridgway and Ridgway Creative District to support the Colorado Creative Corridor project. Over the past three years, a majority of this work has been funded through a Colorado Tourism Office \$25,000 Marketing Matching Grant. The Colorado Creative Corridor is a 331-mile route that links the mountain towns of Carbondale, Crested Butte, Paonia, Ridgway, and Salida. Ridgway works with the four partner communities to promote visitor experiences, which include event programming and activities.

In January 2020, the Chamber provided \$2,500 (Town supported \$2,500) in matching funds in order for Ridgway to be included in this important project. For 2021, we reduced our matching funds to \$1,250 due to the unknown impacts of COVID-19 on winter LOT funds, while the Town continued to support at a \$2,500 match. One of the primary goals for marketing the Creative Corridor is to leverage this platform to market all Ridgway area businesses and nonprofits, especially during the off-peak season. We are excited for this project to continue to bring value to the business and creative economy for years to come, and look forward to this continuing to be an important example of the positive impact of Chamber/Town collaboration.

CTO GRANT

For the fourth consecutive year we have a \$25,000 CTO grant confirmed to support the Creative Corridor. This important initiative will continue to support year-round tourism and economic opportunities in Ridgway.

MARKETING SUCCESSES RELATED TO THE COLORADO CREATIVE CORRIDOR PROMOTION OF RIDGWAY IN 2020:

Brand Channel Website: [click here to view](#)

13,643 pageviews, 1,284 clicks to partner websites.

Colorado.com advertising: 824,887 impressions, 2,820 total clicks.

In-state email campaign to 17,000 in-state subscribers: 2,240 opens, 146 clicks, click-through rate of 6.52%. Successful production of a 90-second video highlighting creative businesses in Ridgway. The video will launch in the spring of 2021.

Instagram sponsored posts: 174K reach and more than 360K impressions.



In addition to the grant work amongst the five communities, the RACC invested its own staff time and funding to further invest in the Creative Corridor. In 2020, we completed:

- Colorado Creative Corridor featured section on RidgwayColorado.com homepage.
- Colorado Creative Corridor [featured article](#) and [itinerary](#) pages.
- The RACC and Creative District invested in a photographer during the video shoot. The Chamber now has 300+ high-quality images of downtown Ridgway and local artists.



MEMBERSHIP SERVICES

The Chamber Board and staff are excited to serve the business and nonprofit members of the Ridgway Area Chamber of Commerce.

CHAMBER MEMBERSHIP SERVICES

The Chamber Board and staff are excited to serve the business and nonprofit members of the Ridgway Area Chamber of Commerce. The Chamber is dedicated to providing value to our local business and nonprofit community by continuing to invest in marketing assets, as well as state and regional partnerships. Our core marketing assets include: the RidgwayColorado.com website, Ridgway Visitor's Guide, social media, Ridgway Visitor Center, print/digital advertising, along with key partners that amplify our marketing efforts.

We continue to strive to bring additional visibility and credibility to our community's businesses and nonprofits. We believe that being a Chamber member increases positive perceptions about the business among consumers and other business owners. We also assist in boosting our members' visibility in the community, increasing their networking opportunities, acquiring more potential customer referrals, having a voice in local government, and providing a way to advertise member promotions and events through our digital assets and local print media.

SHOP LOCAL CAMPAIGN & COVID-19 SUPPORT

When the pandemic hit in early spring, the Chamber made drastic budget cuts. We dedicated our minimal staffing time towards communicating COVID-19 updates and resources to our business and nonprofit community. In anticipation of a slow winter due to COVID-19, the Chamber launched a Shop Local campaign to drive economic opportunities from December 2020 to March 2021. So far, we have accomplished the following: a new banner in Hartwell Park encouraging drive-thru traffic to stop and spend money; weekly social media and e-blasts featuring member specials; shop local landing page on chamber's website; and inclusion in the **SBDC statewide shop local campaign**.

COLORADO TOURISM OFFICE PROMOTIONAL OPPORTUNITIES

The RACC continues to seek out state grant funded opportunities to help promote Ridgway as a year-round destination. In 2020, the RACC directly received \$12,000 in CTO funding, plus 50 hours of technical assistance support. CTO funding was used to support our off-peak season marketing strategy, with the goal of driving more economic opportunities during our slower seasons of October to May. Our partnership with the CTO allows the RACC to market Ridgway and our businesses on CTO-owned platforms, and vastly increase our digital marketing efforts. Projects supported by CTO funding in 2020:

- **RidgwayColorado.com Responsible Travel landing page**
- **Colo-Road Trips winter itinerary**
- **Colorado.com sponsored article on winter travel to Ouray County**
- **Visit Colorado Instagram Takeover**

MEMBER OF THE MONTH

In 2020, we continued the Member of the Month program to highlight chamber members across several marketing channels. Each month, one business or nonprofit is selected and promoted through:

- A news post on the chamber's website
- A news release sent to the chamber's media list
- Announcements in weekly e-blasts during the month
- A social media post on Facebook

At the end of each month, we provide members with a report of statistics on audience reached and links or attachments with all the coverage. Over the past year, the Member of the Month program was viewed in Chamber e-blasts more than 30,000 times, reached roughly 8,484 Facebook users, was picked up monthly by local news publications, and had 1,606 page views on RidgwayColorado.com.

MEMBERSHIP BENEFITS



Membership Benefits

		BRONZE	SILVER	GOLD
	ANNUAL MEMBERSHIP INVESTMENT *	\$125	\$195	\$250
WEBSITE	Unique business listing page with custom images, unlimited hyperlinks, including to website, Facebook, as well as unlimited text and tagging to site content related to your business.	✓	✓	✓
	Priority order appearance in website articles in which your business is tagged. May be listed in up to two business categories on website, when applicable.		✓	✓
	Featured business (large primary image) in your business category (Ex. Accommodations or Dining).			✓
VISITORS GUIDE	Business listing within the annual Ridgway Visitor Guide, with 35,000 print copies distributed and 100,000 print/online readers expected.	✓	✓	✓
	Ability to list your business or organization in up to two categories in business grid, when applicable			✓
	Discounted pricing on print ads in the annual Ridgway Visitor Guide, and digital targeted advertisement — a value of between \$185-\$1,200		✓	✓
VISITORS CENTER	Brochure rack space for business materials	✓	✓	✓
	Logo or image display during large screen TV video loop		✓	✓
	Video content displayed during large screen TV video loop			✓
E-BLASTS	Priority in business promotion in the Chamber's quarterly visitor e-newsletter to 6,000+ inboxes	✓	✓	✓
	Two weekly newsletter ads per year	✓		
	Unlimited newsletter ads per year		✓	✓
FACEBOOK	Two ad requests per year on RACC page with 2,100+ followers (non-boosted)	✓	✓	✓
	One boosted ad request per year on RACC page with 2,100+ followers (\$10 Value)		✓	
	Two boosted ad requests per year on RACC and One Ridgway pages with 1,900+ followers (\$20 Value)			✓
MARKETING	Special event marketing including ribbon-cutting ceremonies		✓	✓
	Discounted co-op advertising opportunities in publications such as Colorado Life, San Juan Skyways, The Montrose Press (as available)	✓	✓	✓
	Priority in business promotion on Visit Colorado social media campaigns (150K followers) and Colorado.com (1.5 million unique visits per year), the #1 google search listing for "Colorado Vacations".	✓	✓	✓
FRIENDS OF THE CHAMBER MEMBERSHIP - \$75: A membership for our individual, non-business RACC backers. All funds from this level of membership go to projects such as beautification and gardening at the Ridgway Visitors Center and the Ridgway Youth Apprenticeship program.				

NOTES:

* A Bronze level 501(c)3 nonprofit receives Silver level benefits and Silver level nonprofits receive Gold level benefits.

Thank you for your support!

150 RACECOURSE ROAD / PO BOX 544 RIDGWAY, CO 81432 • 970-626-5181 • RIDGWAYCOLORADO.COM

Also, find Member Benefits at <https://ridgwaycolorado.com/about/member-benefits> and online, easy-and-secure enrollment at <https://ridgwaycolorado.com/about/become-a-member>

FINANCIAL MANAGEMENT

HOW WE MANAGE OUR RESOURCES



The Lodging Tax receipts from 2019 to 2020 remained flat due to the impacts of COVID-19.

The Chamber managed a 2020 Lodging Tax budget of \$63,516. This Town-approved budget was based on projections from 2019 Lodging Tax receipts. The 2020 budget was difficult to predict due to the impacts of COVID-19 on travel. For nearly two months, LOT tax funds were close to zero due to a statewide “Stay at Home” order. Based on the unknowns of the pandemic in the spring, the Chamber made drastic budget cuts. All marketing efforts were put on hold from mid-March until the end of June. With the unknowns of the pandemic, we were very conservative with our budget, which left us with a larger reserve at the end of the year.

We will be carrying over \$14,673 from 2020, which will be reflected in the 2021 budget request to the Town of Ridgway in February. Carrying over a healthy fund balance each calendar year is critical for the Chamber's financial sustainability. The vast majority of Lodging Tax receipts are not received until the latter half of each year so this funding is necessary to make it through the January-June period.

Lodging Tax receipts are used exclusively for Ridgway marketing and promotion activities.

Since 2018, we have outsourced all of our accounting and financial reporting to Ridgway-based Middleton Accounting. We have received exceptional service from Middleton Accounting, and their partnership continues to support the organization's financial management and reporting structures.

The accompanying financial report comes directly from QuickBooks, and reflects a detailed P&L statement for the Lodging Tax (i.e. marketing) budget for 2020.

Ridgway Area Chamber of Commerce Profit & Loss for Lodging Tax Class January through December 2020	
3:49 PM 01/25/21 Accrual Basis	
	Jan - Dec 20
Ordinary Income/Expense	
Income	
Lodging Tax Income	63,830.58
Total Income	63,830.58
Gross Profit	63,830.58
Expense	
Advertising and Promotion	
Creative District Corridor	2,807.00
Online Media and Advertising	6,295.00
Print Media and Advertising	3,480.66
Visitor's Guide Fulfillment, P	5,833.50
Website Upgrades and Operations	6,113.91
Total Advertising and Promotion	24,530.07
Payroll Expenses	
Hourly Wages	45.00
Payroll Taxes	3.44
Staff	38.75
Payroll Expenses - Other	0.27
Total Payroll Expenses	87.46
Postage	100.15
Professional Fees	
Accounting Fees	1,000.00
Total Professional Fees	1,000.00
Subcontractors	20,197.00
Visitor Center Operations	
Electric	327.37
Natural Gas	242.88
Sales Tax License	25.00
Telephone and Internet	1,323.23
Volunteer Expense	100.00
Visitor Center Operations - Other	190.00
Total Visitor Center Operations	2,208.48
Visitor Center Redesign	9.50
Visitor Center Upgrades/Merch	1,024.51
Total Expense	49,157.17
Net Ordinary Income	14,673.41
Net Income	14,673.41



2021 PLANS

The Ridgway Area Chamber of Commerce will continue to build upon the successes of the past four years. For 2021, we have a number of exciting projects on the horizon, as we hope to begin recovery from the COVID-19 pandemic.

For several years, the Chamber has been on a path to educate visitors on how best to enjoy our local resources. The pandemic and related visitor trends reinforced the need for us to support the community by promoting awareness of responsible, sustainable tourism practices. For 2021, we will increase these communications and marketing strategies to reinforce low-impact travel that provides benefit to our community. Part of this strategy includes the continuation of strategically marketing Ridgway as a year-round destination. The goal of this strategy is to foster tourism-driven economic opportunities in the slower months, and lessen outdoor recreation impacts in the summer. We will continue to engage with the Colorado Tourism Office and regional partners to further amplify and support these efforts.

The annual Visitor's Guide will be updated at the end of the year, keeping a similar layout, activity themes and Ridgway-centric focus, while adding new business and event information. Responsible travel messaging will be further developed and weaved into the narrative.

In partnership with the Town of Ridgway, we are excited to kick-off the Heritage Park and Ridgway Visitor Center Redesign Subcommittee. We look forward to identifying next steps for this space and the vision of the visitor center building. With our new lease of the Ridgway Visitor Center, we are excited to improve this space in a way that aligns with the subcommittee, and provides an enjoyable space for our volunteers and visitors.

We thank all of our members, the Town of Ridgway, our staff, contractors, volunteers, partners, and the local business community at large for your continued support and partnership. We look forward to a fruitful and productive 2021.



Image: Kane Scheidegger

AGENDA ITEM #12



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 4, 2021
Agenda Topic: **Review and action on documents related to Ridgway Space to Create Project**

SUMMARY:

Council is asked to review and take action on a series of documents associated with the Ridgway Space to Create Project. The documents include:

- Ground Lease
- Development Agreement Artspace Ridgway Lofts
- Commercial Master Sublease Agreement

With financial closings on the Ridgway Space to Create Project anticipated at the end of this month, Town staff, including the Town Attorney, have worked with Artspace reps to prepare the documents listed above, which are required for the financial close process. The building permit application that has been submitted for the Project is nearing the final stages of the plan review process and a formal building permit is expected to be issued soon.

Andrew Michaelson with Artspace will attend Wednesday's meeting to provide updates on the Project and to help answer any questions about the attached documents and the financial close process.

PROPOSED MOTION – GROUND LEASE:

"I move to approve the Ground Lease between Artspace Ridgway Limited Partnership and the Town of Ridgway."

PROPOSED MOTION – DEVELOPMENT AGREEMENT ARTSPACE RIDGWAY LOFTS:

"I move to approve the Development Agreement Artspace Ridgway Lofts between Artspace Projects, Inc. and the Town of Ridgway."

PROPOSED MOTION - COMMERCIAL MASTER SUBLEASE AGREEMENT:

"I move to approve the Commercial Master Sublease Agreement between Artspace Projects, Inc. and the Town of Ridgway."

ATTACHMENTS:

Ground Lease
Development Agreement Artspace Ridgway Lofts
Commercial Master Sublease Agreement

GROUND LEASE

THIS GROUND LEASE (“this Lease” or “the Lease”) made and entered into as of the ____ day of February, 2021, by and between **TOWN OF RIDGWAY, COLORADO** (“Lessor”) and **ARTSPACE RIDGWAY LIMITED PARTNERSHIP** (“Lessee”).

WHEREAS, Lessor owns certain parcels of land located at 675 Clinton Street (Block 28, Lots 6, 7, 8, 9 and 10) in the Town of Ridgway, County of Ouray, State of Colorado, all as more fully described on **Exhibit 1**, annexed hereto (the “Land”). Lessor desires to lease the Land to Lessee for the purpose of developing, constructing, renovating, owning and operating a mixed-use affordable live/work project for individuals and their families, consisting of, but not necessarily limited to, approximately 30 apartments, commercial uses and related uses (the “Project”).

WHEREAS, the Lessee enters into this Lease to lease the Premises ;

NOW, THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE 1: Demise of Leased Premises

1.1 **LEASED PREMISES**: Lessor leases to Lessee and Lessee leases from Lessor, the Land and any improvements now or hereafter located thereon (collectively referred to in this Lease as the “Leased Premises”) described in the attached **Exhibit 1**. Lessor represents and warrants that as of the date of this Lease, the Leased Premises are free and clear of all lien or encumbrances other than those consented to by Lessee as of the date hereof (the “Permitted Encumbrances”). Lessee takes the Leased Premises upon the terms and conditions set forth herein, subject only to the Permitted Encumbrances.

ARTICLE 2: Duration of Lease

2.1 **TERM**: The term of this Lease will be ninety-nine (99) years commencing on February ___, 2021 (the “Effective Date”), and terminating on February ___, 2120, unless terminated sooner as hereinafter set forth.

ARTICLE 3: Use of Leased Premises

3.1 **USE**: Pursuant to a Development Agreement between the Lessor and Artspace Projects, Inc., a Minnesota nonprofit corporation, (“Artspace”), dated February ___, 2021, the Project shall be developed on the Land by Artspace. Lessee and any person occupying the Leased Premises will use the Leased Premises only for the Project. The Leased Premises shall not be used by Lessee for any unrelated purpose without the prior written consent of the Lessor.

3.2 **RESPONSIBLE USE AND COMPLIANCE WITH LAW**: Lessee will maintain the Leased Premises or cause the Leased Premises to be maintained in good, safe and habitable condition in all respects, except for normal wear and tear, in full compliance with all applicable laws and regulations.

3.3 **RESPONSIBLE FOR OTHERS:** Lessee will be responsible for the use of the Leased Premises by all tenants, invitees, guests, visitors, members of the public, and anyone else using the Leased Premises.

3.4 **INSPECTION:** Subject to the rights of any tenants, Lessor may inspect the Leased Premises at any reasonable time and in a reasonable manner upon at least twelve (12) hours written notice to Lessee.

3.5 **LESSEE'S RIGHT TO PEACEFUL ENJOYMENT:** So long as Lessee fulfills its obligations under this Lease, it will have the peaceful and undisturbed enjoyment of the Leased Premises.

ARTICLE 4: Ground Lease Fee

4.1 **GROUND LEASE FEE:** On the Effective Date or at such other time as Lessor and Lessee may mutually agree, Lessee agrees to pay to the Lessor rent in advance in the amount of One Dollar (\$1.00) per annum (the "Ground Lease Fee").

4.2 **NET LEASE:** Lessor shall not be required to furnish Lessee any facilities or services of any kind whatsoever. Lessee shall pay or cause to be paid, as additional rent, all expenses of every kind and nature, relating to or arising from the Leased Premises, including expenses arising from the leasing, insuring, management, operation, maintenance, repair, use or occupancy of the Leased Premises and payment of all real estate taxes, special assessments, and governmental assessments and impositions of any kind that relate to the Leased Premises, if any.

ARTICLE 5: Nature of Lease

5.1 **ANNUAL APPROPRIATION.** No provision of this Lease shall be construed or interpreted as creating a general obligation, multiple fiscal year financial obligation, or other indebtedness of the Lessor within the meaning of any constitutional, home rule charter or statutory debt limitation. No provision of this Lease shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Lessor within the meaning of Article XI, Sections 1 or 2 of the Colorado constitution. This Lease nor the execution and delivery of any documents related to the construction and maintenance of the Leased Premises shall directly or indirectly obligate the Lessor to make any payments beyond those duly budgeted and appropriated for the Lessor's then current fiscal year. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of Lessor's moneys, nor shall any provision of this Lease restrict the future issuance of any Town of Ridgway Bonds, or obligations payable from any class or source of Lessor's moneys.

ARTICLE 6: Ownership Rights

6.1 **EXCLUSIVE RIGHTS TO LEASED PREMISES:** Lessee will have the "Ownership Interest" in the Leased Premises, including the buildings and all improvements, defined as the ownership of the improvements on the Land, and the exclusive right during the term of this Lease to occupy and possess the Leased Premises and any improvements existing at the time of the execution of this Lease or hereinafter constructed by Lessee during the term of this lease. Lessee shall be deemed the owner of the Leased Premises strictly for tax purposes and shall

be entitled to claim all tax benefits in connection with the Leased Premises including any depreciation, deductions or federal and state tax credits.

6.2 **ATTORNEY IN FACT:** Lessor hereby irrevocably and unconditionally agrees, promptly upon the request of Lessee, in each instance, and at the Lessee's expense, (i) to execute and deliver all agreements, documents and instruments necessary or advisable to effect any benefits arising in connection with and issued by the Lenders pursuant to the applicable provisions under Title 39 of the Colorado Revised Statutes or other applicable law in connection with the Project, and (ii) any other government agency which may confer benefits to the Project or Property, as applicable. Lessor hereby unconditionally and unequivocally constitutes and appoints Lessee to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution to execute and/or record any such documents or instruments. The parties agree that Lessor's failure to comply with the provisions of this Article 6 shall cause irreparable harm to Lessee for which no adequate remedy at law will be available and, in addition to any other available remedies, Lessee shall be entitled to the right of specific performance in the event of a breach by the Lessor of the provisions of this Section 6.2.

6.3 **CONSTRUCTION AND ALTERATION:** Any construction in connection with an existing or new improvement is subject to the following conditions:

- (a) Lessee will bear all costs of construction;
- (b) All construction will be performed in a work-like manner in compliance with all applicable laws and regulations; and
- (c) All construction will be consistent with the permitted uses set forth in Article 3.

6.4 **PROHIBITION OF LIENS:** Lessee will procure the record discharge of any mechanic's or materialman's claim of lien which might be filed against the Leased Premises within forty-five (45) days of its filing. If Lessee fails to procure the record discharge of a claim of lien within the time allowed, Lessor may, but is not obligated to, discharge the same by paying the amount in question. Lessee may contest the validity of any lien asserted so long as Lessee furnishes a bond in an amount sufficient to release the Leased Premises from the lien. Any amounts paid by Lessor hereunder in respect of the liens will be deemed an additional Ground Lease Fee payable by Lessee upon demand.

6.5 **MAINTENANCE AND SERVICES:** Lessee will, at Lessee's sole expense, maintain the Leased Premises as required by Section 3.2 above. Lessor will not be required to furnish any services or facilities, including but not limited to heat, electricity, air conditioning, or water, or to make any repairs to the Leased Premises, and Lessee hereby assumes the sole responsibility for furnishing and paying for all fees, charges, costs, expenses or services.

6.6 **DISPOSITION OF LEASED PREMISES UPON EXPIRATION OF LEASE TERM:** Upon the expiration of the Term of this Lease as such Term may be terminated in accordance with this Lease, Lessee will surrender the Leased Premises to the Lessor without liens or encumbrances of any kind, except for Permitted Encumbrances. Any and all improvements constructed during the Term shall be in good condition, reasonable wear and tear excepted and

shall, at the end of the Term, become the property of the Lessor. The exclusive right to possess the Leased Premises will thereupon revert to Lessor.

6.7 **TRANSFER OF TITLE TO IMPROVEMENTS:** Upon expiration of the Term, Lessee, at Lessor's election, shall execute and deliver to Lessor such deed, bill of sale or other instruments reasonably required to evidence the vesting of title to the Leased Premises and the improvements thereon to the Lessor.

6.8 **HOLDING OVER:** If Lessee shall hold the Leased Premises after the expiration of the term, such holding over, in the absence of written agreement to the contrary, shall be deemed to have created a month-to-month tenancy terminable on thirty (30) days notice by either party to the other.

ARTICLE 7: Encumbrances

7.1 LESSEE MORTGAGE:

(a) Lessee may mortgage or otherwise encumber its interest in the Leased Premises with the prior written consent of the Lessor. Lessor hereby consents to the mortgages and encumbrances set forth in the leasehold owners policy issued to Lessee at construction loan closing, as may be updated at permanent loan closing.

(b) Lessor may consent to the granting by Lessee of leasehold mortgage liens on, and security interests in, Lessee's interests in the Leased Premises, including any improvements thereon, Lessee's personal property and/or trade fixtures located thereon, and this Lease. Lessor does hereby certify to Lenders that: (i) Lessor is the current owner of the fee interest in the Leased Premises; (ii) Lessor is the current owner of: (A) the interests demised under the Lease, and (B) all of the rights and benefits of "lessor" under the Lease; and (C) the Lease is the only instrument governing Lessor's and Lessee's rights and obligations with respect to the Leased Premises.

(c) Lessor may, upon review, execute any and all documents necessary to grant to the financial institution or institutions making Loans to Lessee a mortgage or mortgages and any similar security interests on the Property and the Project, as well as any documents reasonably required by the Lessee to be executed by the Lessor in connection with the development of the Property and the operation and management of the Project, provided that the Lessor shall execute such documents for the sole purpose of encumbering its interest in the Property and the Project, and provided further that all such mortgages and notes secured by such mortgages shall be non-recourse to the Lessor and the only recourse for satisfaction of any obligations of the Lessor thereunder shall be to the Lessee's interest in the Property.

7.2 **LESSOR MORTGAGES:** Except for the Permitted Encumbrances, Lessor may not encumber, lien, mortgage, and/or create or grant any rights and/or interests in or to its fee interest in the Leased Premises or the Project or otherwise encumber its interest in the Leased Premises or Project and/or any part or parts thereof, and any encumbrance, lien, mortgage, right and/or interest purported to be created, granted, permitted and/or resulting from any action of the Lessor in connection with the Leased Premises and the Project and/or any part or parts thereof shall be void, unenforceable and of no effect whatsoever and shall not be binding in any manner

upon Lessee. In addition, this Lease shall be superior to any mortgage on the fee interest in the Leased Premises, which may now or hereafter affect such fee interest and to all renewals, modifications, consolidations, replacements and extensions of any such mortgages. Lessor represents and warrants that there is currently no mortgage on the fee interest in the Leased Premises.

7.3 **LAND USE RESTRICTION AGREEMENT:** Lessor hereby authorizes and agrees at the direction of Lessee to execute and record, as applicable, any and all documents required by Colorado Housing Finance Authority, Inc. in connection with placing restrictive covenants on the fee and/or leasehold interest(s) in the Leased Premises, including, without limitation, a certain land use restriction agreement.

ARTICLE 8: Liability, Insurance, Damage and Destruction, Eminent Domain

8.1 **LESSEE'S LIABILITY:** Lessee assumes sole responsibility and liability to all persons and authorities related to the possession, occupancy, and use of the Leased Premises and will defend, indemnify, and hold Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises unless it occurred prior to the date of this Lease or is caused by Lessor's gross negligence or intentional wrongdoing by Lessor in its capacity as lessor of the Premises. Lessee waives all claims against Lessor for injury or damage arising from the Leased Premises except for claims arising prior to the commencement of this Lease or out of Lessor's gross negligence or intentional wrongdoing.

8.2 **LESSOR'S LIABILITY:** Lessor shall defend, indemnify and hold harmless Lessee against any and all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises that occurred solely prior to the commencement of this lease.

8.3 **PAYMENT BY LESSOR:** If Lessor is required to pay any sum that is the Lessee's responsibility or liability, the Lessee will reimburse the Lessor for the payment and for reasonable expenses caused thereby.

8.4 **INSURANCE:** Lessee will keep or cause to be kept all improvements continuously insured against loss or damage by fire and other hazards and will maintain premises liability insurance with excess coverage limits of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate covering the Land and improvements insuring Lessee against all liability assumed under this Lease, as well as all liability imposed by law. The property and liability insurance policies will name both Lessee and Lessor as "named insureds" so as to create the same liability on the part of insurer as though separate policies had been written for Lessee and Lessor. [CONFIRM \$ amounts] [ALL INSURANCE TERMS AND REQUIREMENTS ARE SUBJECT TO REVIEW BY API'S INSURANCE BROKER]

8.5 **DAMAGE OR DESTRUCTION:** If any improvements are damaged or destroyed by fire or other casualty, Lessee shall have the right to receive any insurance proceeds available from such casualty and may use such proceeds (with any costs in excess of the insurance proceeds paid for by the Lessee) to replace the improvements or demolish such improvements and remove all debris if permitted by law. In no event shall the Lease terminate, however.

8.6 ***EMINENT DOMAIN AND PUBLIC DEDICATION:***

(a) If the entire Leased Premises are taken by eminent domain, this Lease will terminate as of the date the Lessee is required to surrender possession of the Leased Premises.

(b) If this Lease is terminated by reason of any such taking, then subject to Section 8.6(d), Lessor shall be entitled to receive 100% of any award ("Condemnation Proceeds") for the value of the Land as encumbered by this Lease and exclusive of the value of any improvements, and Lessee shall be entitled to the balance of any award.

(c) If the Lessee reasonably determines that the Leased Premises cannot be restored to a use consistent with this Lease, Lessee may, with Lender's consent, as applicable, terminate this Lease on sixty (60) days written notice to Lessor.

(d) If Lessee shall assign to any Lender any Condemnation Proceeds to which it shall be entitled under the provisions of Section 8.6(b), Lessor shall recognize such assignment and agrees that the Condemnation Proceeds shall be paid to such assignee as its interest may appear.

(e) Lessee and the Lenders shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights under this Lease, and in this connection, specifically and without limitation to introduce evidence independently of Lessor to establish the value of or damage to the improvements.

ARTICLE 9: Transfer, Sale, or Disposition of Leasehold

9.1 ***LESSOR'S RIGHT TO SELL:*** Subject to the provision of this Article 9, Lessor may, only upon the consent of Lessee and Lenders, sell or transfer the Leased Premises provided, however, that Lessor shall require any purchaser to assume each and every obligation under the Lease and to agree not to disturb Lessee's possession under this Lease except to the extent permitted by this Lease.

ARTICLE 10: Assignment and Sublease

10.1 Lessee shall not assign, sublease, sell, or otherwise convey any of Lessee's rights under this Lease without the prior written consent of the Lessor, provided that (i) no such transfer shall relieve Lessee of its obligations hereunder, and (ii) any assignee or subtenant shall be bound by the use restrictions set forth in Section 3.1. Lessor hereby agrees that Lessee shall be able to sublease the Project's units in the normal course of business without such prior written consent.

ARTICLE 11: Default

11.1 ***EVENTS OF DEFAULT:*** The following events are referred to collectively as "Events of Default," or individually as an "Event of Default":

(a) Lessee defaults in the due and punctual payment of the Ground Lease Fee or any other amounts due to Lessor pursuant to this Lease and such default continues for one hundred eighty (180) days after written notice of the failure is given to Lessee and any Lender;

(b) This Lease or the Leased Premises or any part of the Leased Premises is taken upon execution or by other process of law directed against Lessee, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Lessee and the attachment is not discharged or disposed of within ninety (90) days after its levy;

(c) Lessee files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;

(d) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Lessee are instituted against Lessee, or a receiver or trustee is appointed for all or substantially all of the property of Lessee, and such proceeding is not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment; or

(e) Lessee breaches any of the other material agreements, terms, covenants or conditions which this Lease requires Lessee to perform, and such breach continues for a period of ninety (90) days after notice from Lessor to Lessee; or if such breach cannot reasonably be cured within such ninety (90) day period, Lessee fails promptly within said ninety (90) day period to commence and proceed diligently and in good faith to cure such breach and fails to complete such cure within a reasonable time.

Notwithstanding the foregoing, Lessee's limited partners or any of the limited partners' members or partners, shall have the right, but not the obligation, to cure a default under this Lease within the same time period as Lessee.

11.2 TERMINATION: In the case of any of the Events of Default described above, Lessor may terminate this Lease and initiate summary ejectment proceedings allowing Lessor to enter and repossess the entire Leased Premises. If this Lease is terminated by Lessor, or if Lessor reenters the Leased Premises after an Event of Default, the Lessee agrees to pay and be liable for any due and any unpaid Ground Lease Fee, damages which may be due or sustained prior to or in connection with the termination or reentry, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lessor in pursuit of its remedies in law or in equity that may be available to Lessor under this Lease.

11.3 FORBEARANCE: Notwithstanding anything to the contrary in this Lease, so long as any leasehold mortgage remains outstanding on the Leased Premises (the "Forbearance Period"), the Lessor agrees that it shall not bring any action to terminate the Lease, to transfer Lessee's interest under the Lease or otherwise to disturb or affect the Lessee's rights and enjoyment of possession of the Leased Premises or result in the termination of the Lease (a "Lease Enforcement Action"), nor name Lessee, and/or any subtenant as a party defendant to any Lease Enforcement Action, nor shall the Lease be terminated by Lessor in connection with, or by reason of, any Lease Enforcement Action, unless the Lease Enforcement Action will not result in a direct or indirect termination, cancellation or other cessation of the Lease.

11.4 **DEFAULT BY LESSOR:** Lessor will in no event be in default in the performance of any of its obligations under the Lease unless and until Lessor has failed to perform the obligations within one hundred eighty (180) days, or within the additional time as is reasonably required to correct any default, after notice by Lessee to Lessor properly specifying Lessor's failure to perform any obligation.

ARTICLE 12: General Provisions

12.1 **NOTICES:** Whenever this Lease requires either party to give notice to the other, the notice will be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or the other address designated by like written notice

If to Lessor: Town of Ridgway, Colorado
201 N. Railroad Street
P.O. Box 10
Ridgway, Colorado 81432
Attention: Town Manager

With a copy to: Bo James Nerlin
Devor & Plumhoff, LLC
130 N. Park Ave,
Montrose, CO 81401

If to Lessee: Artspace Ridgway Limited Partnership
c/o Artspace Projects, Inc.
250 Third Avenue North, Suite 400
Minneapolis, Minnesota 55401
Attention: Andrew Michaelson

With a copy to: Cannon Heyman & Weiss, LLP
726 Exchange Street, Suite 500
Buffalo, New York 14210
Attention: Steven J. Weiss, Esq.

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

12.2 **RIGHTS OF LENDERS:** Lessor shall concurrently with the giving of any notice of Event of Default under the Lease, provide a duplicate copy thereof to any Lender of which Lessor has been notified (the "Lenders").

(a) If Lessee or any Lender shall have delivered to Lessor prior written notice of the address of any Lender, Lessor will mail to such Lender a copy of any notice or other communication from Lessor to Lessee under this Lease at the time of giving such notice or communication to Lessee, and will give to such Lender notice of any rejection of the Lease by the trustee in bankruptcy of the Lessee or by Lessee as debtor in possession, and no termination of this

lease or termination of Lessee's right of possession of the Leased Premises or reletting of the Leased Premises by Lessor predicated on the giving of any notice shall be effective unless Lessor gives to such Lender written notice or a copy of its notice to Lessee of such default or termination, as the case may be.

(b) In the event of any default by Lessee under the provisions of this Lease, any Lender will have the same periods as are given Lessee for remedying such default or causing it to be remedied, plus, in each case, an additional period of (i) with respect to any monetary default, thirty (30) days after the expiration of the initial period or after Lessor has served a notice or a copy of a notice of such default upon the Lender, whichever is later and (ii) with respect to any non-monetary default, (A) ninety (90) days after the date such default is required to be cured by Lessee under the terms of this Lease, and (B) ninety (90) days after the date Lender is given notice of Lessee's default, whichever is later; provided that no such Lender shall be obligated to cure any default hereunder. Any Lender's failure to exercise its cure right under this subparagraph does not waive such Lender's right to a new lease under subparagraph (e) below.

(c) In the event that Lessee shall default under any of the provisions of this Lease, any Lender, without prejudice to its rights against Lessee, shall have the right to cure such default within the applicable grace periods provided for in the preceding Subsection 12.2(b), above, whether the same consists of the failure to pay rent or the failure to perform any other matter or thing that Lessee is hereby required to do or perform, and Lessor shall accept such performance on the part of such Lender as though the same had been done or performed by Lessee. For such purpose, Lessor and Lessee hereby authorize such Lender to enter upon the Leased Premises and to exercise any of its rights and powers under this Lease and subject to the provisions of this Lease.

(d) In the event of any default by Lessee, and if prior to the expiration of the applicable grace period specified in Subsection 12.2(b), above, a Lender shall give Lessor written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Lessee by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, whether by performance on behalf of Lessee of its obligations under this Lease, or by entry on the Leased Premises and/or the improvements by foreclosure or otherwise, then Lessor will not terminate or take any action to effect a termination of the Lease or re-enter, take possession of or relet the Leased Premises or the improvements or similarly enforce performance of this Lease in a mode provided by law so long as such Lender is with all due diligence and in good faith engaged in the curing of such default, or effecting such foreclosure; provided, however, that the Lender shall not be required to continue such possession or continue such foreclosure proceedings if such default shall be cured.

(e) If this Lease is terminated for any reason or if this Lease is rejected or disaffirmed by Lessee pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, Lessor shall give prompt notice thereof to each Lender which has an unsatisfied mortgage at the time in question (which notice shall set forth in reasonable detail a description of all outstanding defaults) and shall, upon written request of any such Lender (or if more than one Lender makes such request, the Lender whose mortgage has the most senior lien), made any time within thirty (30) days after the giving of such notice by Lessor, shall promptly execute and deliver to such Lender or its designee a new lease of the Premises. Such new lease shall be for a term equal to the remainder of the Term before giving effect to such termination and shall contain the same covenants,

agreements, terms, provisions and limitations as this Lease, and shall be subject only to the encumbrances and other matters recited in this Lease and acts done or suffered by Lessee. The new lease shall continue to maintain the same priority as this Lease with regard to any fee mortgage or any lien, charge or encumbrance upon this Lease. Lessor's agreement to enter into a new lease with any Lender shall be unaffected by the rejection of this Lease in any bankruptcy or insolvency proceeding by either Lessor or Lessee. Upon the execution and delivery of such new lease, the new Lessee, in its own name or in the name of Lessor, may take all appropriate steps as shall be necessary to remove Lessee from the Leased Premises and the improvements, but Lessor shall not be subject to any liability for the payments of fees, including reasonable attorneys' fees, costs or expenses in connection with such removal; and such new tenant shall pay all such fees, including attorneys' fees, costs and expenses or, on demand make reimbursements therefor to Lessor.

(f) In the event a default under a mortgage (such term defined as any note, loan, or loan agreement, together with any related mortgage, or other lien upon this Lease and the estate created thereby, as may be incurred from time to time by Lessee) shall have occurred, such Lender may exercise with respect to the Leased Premises and the improvements any right, power or remedy under such mortgage.

(g) This Lease shall not be assigned, without the prior consent of Lessor, to or by any Lender or its nominee, or pursuant to foreclosure or similar proceedings, or the sale, assignment or other transfer of this Lease in lieu thereof, or the exercise of any other right, power or remedy of the Lender, and any Lender shall be liable to perform the obligations imposed on Lessee in this Lease only for and during the period it is in possession or ownership of the leasehold estate created by this Lease.

(h) There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created by this Lease with the fee estate in the Leased Premises, by reason of the fact that this Lease or such interest in this Lease or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Leased Premises, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created by this Lease may be conveyed or mortgaged in a mortgage to a Lender who shall hold the fee estate in the Leased Premises or any interest of the Lessor under this Lease.

(i) No surrender (except a surrender upon the expiration of the Term or upon termination by Lessor pursuant and subject to the provisions of this Lease) by Lessee to Lessor of this Lease, or of the Leased Premises, or any part thereof, or of any interest therein, and no termination of this Lease by Lessee shall be valid or effective, and neither this Lease nor any of the terms of this Lease may be amended, modified, changed or canceled and no consents of Lessee under this Lease shall be valid or effective without the prior written consent of any Lender who shall have previously given Lessor written notice of the existence of its mortgage.

(j) Lessor consents to a provision in mortgages or otherwise for an assignment of rents from subleases of the Leased Premises to the holder of any such mortgage, effective upon any default under such mortgage.

(k) If at any time there shall be more than one mortgage constituting a lien on this Lease and the estate created by this Lease and Lessee's interest in the improvements, and the holder of the mortgage prior in lien to any other mortgage shall fail or refuse to exercise the rights set forth in this Article 12.2, each holder of a mortgage in the order of the priority of their respective liens shall have the right to exercise such rights and provided further, however, that with respect to the right of the holder of a mortgage under Section 12.2(e), above, to request a new lease, such right may, notwithstanding the limitation of time set forth in Section 12.2(e), be exercised by the holder of any junior mortgage, in the event the holder of prior mortgage shall not have exercised such right, more than sixty (60) days but not more than seventy-five (75) days after the giving of notice by Lessor of termination of this Lease as provided in that Section.

(l) Lenders shall not be liable to Lessor unless they expressly assumed such liability in writing. In the event a Lender or its designees becomes lessee under this Lease, Lenders or their designees shall not be personally liable for the obligations of Lessee under this Lease that do not accrue during the period of time that the Lenders or such designees, as the case may be, remains actual lessee under this Lease. In no event shall Lenders or their successors be: (i) liable for any condition of the Leased Premises which existed prior to the date of its acquisition of Lessee's interest in the Leased Premises, or for any damage caused by such pre-existing condition, or for the correction thereof or the compliance with any law related thereto; (ii) bound by any amendment of this Lease made without the prior written consent of Lenders (for which no such amendment is allowed); or (iii) liable for any act or omission of any prior lessee of any portion of the Leased Premises (including Lessee). Any agreement of Lessee to indemnify Lessor under this Lease shall apply to Lenders only to the extent of any actual damage suffered by Lessor as a result of Lenders' failure to perform any obligation of Lessee under this Lease after the date it acquired Lessee's interest in the Leased Premises, and before the date they assign this Lease to any third party as provided herein. Lenders, or their designees or successors, also shall be entitled to any protections from liability afforded to Lessee hereunder.

(m) Lessor may enter into Lease amendments reasonably requested by a prospective Lender, as long as such requests do not change the rent to be received by the Lessor and do not materially or adversely affect the Lessor's rights or interests in the Leased Premises or the Lessee's obligations to develop the Project.

12.3 **NO BROKERAGE:** Lessee warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made against Lessor relative to dealings with brokers, Lessee will defend the claim against Lessor with counsel of Lessee's selection, reasonably acceptable to Lessor, and save harmless and indemnify Lessor on account of loss, cost or damage which may arise by reason of any such claim. Lessor warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made against Lessee relative to dealings with brokers, Lessor will defend the claim against Lessee with counsel of Lessor's selection, reasonably acceptable to Lessee, and save harmless and indemnify Lessee on account of loss, cost or damage which may arise by reason of any such claim.

12.4 **RECORDING.** At the request of either Lessor or Lessee, a memorandum of lease shall be executed by Lessor and Lessee and recorded in the Office of the County Recorder of Ouray County, State of Colorado. In no event shall this Lease be recorded.

12.5 **SEVERABILITY AND DURATION:** If any part of this Lease is declared unenforceable or invalid, the applicable provision shall be deemed removed from this Lease and will not affect the validity of any other part of this Lease or give rise to any cause of action of Lessee or Lessor against the other, and the remainder of this Lease will be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that all rights under this Lease will continue in effect for the full term of this Lease and any renewal thereof, and the rights will be considered to be coupled with an interest.

12.6 **WAIVER:** The waiver by Lessor at any given time of any term or condition of this Lease, or the failure of Lessor to take action with respect to any breach of any the term or condition, will not be deemed to be a waiver of the term or condition with regard to any subsequent breach of the term or condition, or of any other term or condition of the Lease. Lessor may grant waivers in the terms of this Lease, but the waivers must be in writing and signed by Lessor before being effective.

The subsequent acceptance of Ground Lease Fee payments by Lessor will not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of the Lessee to pay the particular Ground Lease Fee so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of the Ground Lease Fee payment.

12.7 **LESSOR'S RIGHT TO PROSECUTE OR DEFEND:** Lessor will have the right, but will be under no obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate to the protection of its title to, and Lessee's interest in, the Leased Premises. Whenever requested by Lessor, Lessee will give Lessor all reasonable aid in any the action or proceeding.

12.8 **CONSTRUCTION:** Whenever in this Lease a pronoun is used it will be construed to represent either the singular or the plural, masculine or feminine, as the case will demand.

12.9 **CAPTIONS:** The captions appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

12.10 **PARTIES BOUND:** This Lease sets forth the entire agreement between Lessor and Lessee with respect to the leasing of the Leased Premises. It is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by Lessor and Lessee or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

12.11 **GOVERNING LAW:** This Lease will be interpreted in accordance with and governed by the laws of Colorado. The language in all parts of this Lease will be, in all cases, construed according to its fair meaning and not strictly for or against Lessor or Lessee.

12.12 **HAZARDOUS SUBSTANCES.** Except for customary materials necessary for construction, operation, cleaning and maintenance of the Leased Premises, Lessee shall not cause or permit any Hazardous Substance to be brought upon, generated at, stored or kept or used in or about the Leased Premises without prior written notice to the Lessor and all Hazardous Substances, including, customary materials necessary for construction, operation, cleaning and maintenance of the Leased Premises, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept in or about the Leased Premises.

12.13 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** No provision of this Lease shall act or be deemed to be a waiver by the Lessor of the Colorado governmental Immunity Act, CRS 24-10-101, et seq.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have executed this lease at on the day and year first above written.

LESSEE:

**ARTSPACE RIDGWAY LIMITED
PARTNERSHIP**

By: Artspace Ridgway GP LLC,
its general partner

By: Artspace Projects, Inc.
its sole member

By: _____
Name: William Law
Title: Authorized Signatory

LESSOR:

TOWN OF RIDGWAY, COLORADO

By: _____
Name: John I. Clark
Title: Mayor

EXHIBIT 1

Property Description

AGENDA ITEM #13

DEVELOPMENT AGREEMENT

ARTSPACE RIDGWAY LOFTS

This Development Agreement (this “Agreement”), dated as of February ___, 2021 (the “Effective Date”) is made between TOWN OF RIDGWAY, COLORADO, a home-rule municipality under the laws of the State of Colorado having an address at 201 N. Railroad Street, P.O. Box 10, Ridgway, Colorado 81432 (the “Town”), and ARTSPACE PROJECTS, INC., a Minnesota nonprofit corporation having an address at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401 (“Artspace”). The Town and Artspace shall individually be referred to herein as a “Party” or collectively as the “Parties.”

WHEREAS the Town owns certain parcels of land located at 675 Clinton Street (Block 28, Lots 6, 7, 8, 9 and 10) in the Town of Ridgway, County of Ouray, State of Colorado, as more particularly described on Exhibit A (the “Property”); and

WHEREAS, Artspace Ridgway Limited Partnership (the “LP”) has or will enter into a ground lease with the Town to ground lease the Property from the Town pursuant to that certain Option to Ground Lease between the Town and Artspace dated April 22, 2019 and attached hereto as Exhibit B (the “Option”) to develop the Project (as defined hereinbelow); and

WHEREAS, Artspace intends to undertake the development and construction of a mixed-use affordable residential and commercial facility on the Property. The residential portion of the facility will include approximately thirty (30) units of housing affordable to households earning at or below 30%, 40%, 50%, 60% and 80% of area median income. The collective residential space will be referred to herein as the “Artspace Ridgway Lofts”. The commercial facility is projected to include approximately 2,000 square feet of street-level commercial space at the site, which the Town will rent from Artspace. The construction of the community space will utilize multiple sources including private grants. The community space will be referred to herein as the “Community Space”. The Artspace Ridgway Lofts together with the Community Space shall be collectively referred to herein as the “Project”; and

WHEREAS, the Town has determined that it is in the best interests of the Town and its inhabitants to assist in the development of the Project, by, among other things, providing financial incentives to the Project, in order to enhance the economic and cultural vitality of the downtown Ridgway area and to provide affordable housing opportunities in support of the Ridgway community in the manner set forth herein, and as this Agreement may be supplemented and amended.

NOW THEREFORE, in consideration of the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. Description of the Project

Section 1.1 Selection and Engagement.

The Town hereby acknowledges the selection and designation of Artspace as the developer of the Property and the Project, and engagement of Artspace to develop and construct the Project.

Section 1.2 Description of the Project.

The Project will consist of (i) approximately 2,000 square feet of first floor commercial space and (ii) approximately 30 rental affordable residential units for residents participating in the Project. The Project will be managed in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, and all requirements contained in any documents executed in connection with the acquisition, financing and ownership of the Project.

Section 1.3 Scope of Services - Construction of the Project Improvements.

Artspace commits to the timely construction of the improvements for the Project. The Parties agree to regularly consult regarding opportunities to accelerate the development of the Project. Artspace shall provide the following development services, as further outlined in Exhibit C attached hereto and incorporated herein (the “Services”).

SECTION 2. Ground Lease

The Town will ground lease the Property to the LP, and the LP shall lease from the Town the Property subject to the conditions and requirements of the Option (the “Ground Lease”).

SECTION 3. Commercial Space Lease

The LP shall master lease the Community Space to Artspace who will sublease to the Town pursuant to the terms of a sublease that shall be entered into by Artspace and the Town (the “Town Lease”). The Town Lease shall provide that for a period of up to [] years the Community Space shall be leased by the Town for an amount of rent equal to (a) \$1.00 per year in base rent plus (b) an amount of additional rent equal to the annual operating expenses attributable to the Community Space.

SECTION 4. Financing

Section 4.1 Town Development Assistance Funds.

The Town has appropriated \$650,000.00 for the pre-development of the Project. These funds have been provided to Artspace as payment for the Services and are not subject to repayment by Artspace, provided Artspace performs the Services.

Section 4.2 Financing Requirements.

The Town acknowledges that the Project and the Town will be subject to the requirements of the Project's lenders and investors, including, but not limited to, execution of estoppel certificates, notice provisions and other terms and conditions typically required for lending and investing in low income housing tax credit transactions (collectively, "Financing Requirements"). The Town hereby agrees that it will reasonably consent to Financing Requirements needing the Town's consent or participation, including Financing Requirements regarding the Ground Lease, which in each case such consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding the Town's desire to consent to the Financing Requirements, both the Town consent and approval are subject to the Town of Ridgway Municipal Code, State and Federal Law.

Section 4.3 Restrictive Covenants.

The Parties acknowledge and agree that Artspace will record restrictive covenants (as contained in a certain land use restriction agreement required by Colorado Housing and Finance Authority (the "LURA")) on the land and all improvements on the Property.

SECTION 5. Fee Waiver

The Project would ordinarily be required to submit fees in connection with the following: building permits, sewer and water connections, zoning, utility impact and plan review, among others. The Town shall review and consider all reasonable requests for the waiver of fees ordinarily required for such a project.

SECTION 6. Representations and Warranties

Section 6.1 Town's Representations and Warranties.

The Town represents and warrants that:

- (a) Organization and Authority. The Town has the full right and has obtained any and all consents required to authorize the Town to enter into this Agreement, consummate the transactions contemplated in this Agreement, and perform its other obligations under this Agreement.
- (b) Authorization and Execution. This Agreement has been authorized and properly executed and constitutes the legal, valid and binding obligations of the Town, enforceable against the Town in accordance with its terms.

Section 6.2 Artspace Representations and Warranties.

Artspace represents and warrants that:

- (a) Organization and Authority. Artspace has the full right and authority and has obtained any and all consents required to authorize Artspace to enter into this Agreement, consummate the transactions contemplated in this Agreement, and perform its other obligations under this Agreement.

- (b) Authorization and Execution. This Agreement has been authorized and properly executed and constitutes the legal, valid and binding obligations of Artspace, enforceable against Artspace in accordance with its terms.

Section 6.3 Survival of Representations and Warranties.

The representations and warranties set forth in this Section 6 are made as of the date of this Agreement and are remade as of the date of the closing of the construction financing for the Project (the “Closing”) and will not be deemed to be merged into or waived by the instruments of the Closing but will survive the Closing. Each party will defend and indemnify, to the extent permitted by law, the other against any claim, liability, damage or expense asserted against or suffered by such other party arising out of the breach or inaccuracy of any such representation or warranty.

Section 7. Termination.

In the event Artspace defaults in any material respect in the due performance or observance of any term, covenant or agreement contained in this Agreement or any terms, covenants or agreements of the loan documents that Artspace has entered into that are related to the Services and such default shall continue for a period of thirty (30) days after written notice thereof shall have been given by Town to Artspace or if such default cannot reasonably be cured within thirty (30) days, for such longer period of time not exceeding ninety (90) days as may be necessary to cure such default with the exercise of due diligence so long as Artspace or the LP is diligently proceeding to cure such default, or such longer notice and cure period as may be provided in such applicable document. Upon an event of default under any of the loan documents that Artspace has entered that are related to the Services, Artspace shall provide the Town written notice of such event of default in accordance with Section 8.3 below. If Artspace is unable to cure such event of default beyond any applicable notice and cure period contained herein or, the Town may terminate this Agreement.

SECTION 8. Miscellaneous

Section 8.1 Amendment of Agreement.

Except as otherwise set forth in this Agreement, this Agreement may not be amended except by mutual consent in writing of Artspace and the Town.

Section 8.2 No Implied Waiver.

No provision of this Agreement will be construed as an implied waiver by Artspace of its right to any payment, reimbursement, tax or fee waiver, or reimbursement to which it is otherwise entitled by law or as an implied waiver or acquiescence in the impairment of any of its substantive or procedural rights under the Local Government Land Use Control Enabling Act of 1974, sections 29-20-104.5 and 29-20-201 through 204, CR.S., as amended, or as an implied agreement by Artspace to be responsible for more than its proportionate share of any regional public infrastructure improvements.

Section 8.3 Notices.

All notices, certificates or other written communications hereunder will be sufficiently given and will be deemed given when given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, or dispatched by telegram or telecopy (if confirmed promptly telephonically), addressed to the following addresses or at such other address or addresses as any party thereto designates in writing to the other parties hereto:

If to Town: Town of Ridgway
 201 N. Railroad Street
 P.O. Box 10
 Ridgway, Colorado 81432

With a copy to: Bo James Nerlin
 Devor & Plumhoff, LLC
 130 N. Park Ave.
 Montrose, CO 81401

If to Artspace: Artspace Projects, Inc.
 250 Third Avenue North, Suite 400
 Minneapolis, Minnesota 55401
 Attn: Andrew Michaelson

With a copy to: Cannon Heyman & Weiss, LLP
 726 Exchange Street, Suite 500
 Buffalo, New York 14210
 Attn: Steven J. Weiss, Esq.

Section 8.4 Waiver.

No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, will constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any Party by giving notice to the other Parties may, but will not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver will affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

Section 8.5 Attorneys' Fees.

In any proceeding brought to enforce the provisions of this Agreement, the court shall award the prevailing Party reasonable attorneys' fees, actual court costs and other expenses incurred.

Section 8.6 Conflicts of Interest.

The Town will not allow, and except as disclosed in writing to the Town, Artspace will not knowingly permit, any of the following persons to have any interest, direct or indirect, in this

Agreement: A member of the governing body of the Town; an employee of the Town who exercises responsibility concerning the Project; or an individual or firm retained by the Town who has performed consulting or other professional services in connection with the Project. The Town will not allow and Artspace will not knowingly permit any of the above persons or entities to participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

Section 8.7 Titles of Sections.

Any titles of the several parts and Sections of this Agreement are inserted for convenience and reference only and will be disregarded in construing or interpreting any of its provisions.

Section 8.8 Town Not a Partner; Artspace Not Town's Agent.

Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the Town will not be deemed or construed to be a partner or joint venture of Artspace, Artspace will not be deemed or construed to be the agent of the Town, and the Town will not be responsible for any debt or liability of Artspace.

Section 8.9 Applicable Law; Venue.

The laws of the State of Colorado will govern the interpretation and enforcement of this Agreement. Venue for any action arising under this Agreement or any amendment or renewal hereof shall be in the District Court of Ouray County, Colorado.

Section 8.10 Binding Effect and Assignment.

This Agreement will be binding on and inure to the benefit of the Parties, and their successors and assigns. This Agreement shall not be assigned without the prior written consent of the Parties.

Section 8.11 Further Assurances.

The Parties agree to execute such documents, and take such actions, as will be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

Section 8.12 Time of Essence.

Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 8.13 Severability.

If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity will not affect the application or validity

of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements and portions of this Agreement and declared to be severable.

Section 8.14 Good Faith; Consent or Approval.

In performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold or delay any approval required by this Agreement. Except as otherwise provided in this Agreement, whenever consent or approval of any party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed.

Section 8.15 Counterparts.

This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 8.16 Ground Lease.

Town acknowledges that the LP is acquiring a ground lease interest in the Property from the Town pursuant to the terms of the Option, and that Artspace's performance hereunder is conditioned upon the acquisition of such ground lease interest by the LP.

Section 8.17 Ownership.

The Project will be owned under the ownership and control of the LP.

Section 8.18 Term.

The term of this Agreement will commence on the Effective Date and, unless otherwise sooner terminated in accordance with its terms, will automatically terminate on the date that the Town and Artspace have fulfilled (or obtained a waiver of) their respective obligations hereunder to completion, finalizing the Services. At the request of a party to this Agreement, the Parties shall execute documentation memorializing the termination of this Agreement upon confirmation by the Parties that the obligations hereunder have been fulfilled or waived.

Section 8.19 No Waiver of Governmental Immunity.

No provision of this Agreement shall act or be deemed to be a waiver by the Town or the Town of any provision of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties each have caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Artspace has caused these presents to be executed by its duly authorized officer, as of the date first above written.

TOWN:

TOWN OF RIDGWAY, COLORADO,
a Colorado home-rule municipality

ARTSPACE:

ARTSPACE PROJECTS, INC.,
a Minnesota nonprofit corporation

By:

Name: John Clark
Title: Mayor

By:

Name: William Law
Title: Authorized Signatory

EXHIBIT A

Legal Description

EXHIBIT B

Option to Ground Lease

EXHIBIT C

Services

AGENDA ITEM #14

COMMERCIAL MASTER SUBLEASE AGREEMENT

THIS COMMERCIAL MASTER SUBLEASE AGREEMENT (this “Lease”), made as of _____, 2021, by and between ARTSPACE PROJECTS, INC., a Minnesota nonprofit corporation (“Sublessor”), and [TOWN OF RIDGWAY, COLORADO] (“Subtenant”).

WITNESSETH:

WHEREAS, the Sublessor has entered into that certain Commercial Master Lease Agreement dated as of [DAY] day of [MONTH], [YEAR] between by Artspace Ridgway Limited Partnership, a Minnesota limited partnership (“LP”) and the Sublessor, as tenant (the “Master Lease”) for the lease of the Premises (as defined therein) consisting of approximately 2,000 square feet of usable area of that certain building to be commonly known as “Ridgway Space to Create” (the “Building”) located at and situated on the real property described on the attached Exhibit A;

WHEREAS, pursuant to the terms of the Master Lease the Sublessor has the right to sublease the Premises to third parties on the terms and conditions set forth therein; and

WHEREAS, Sublessor desires to lease to Subtenant, and Subtenant desires to lease from Sublessor, the Premises (as defined in Section 1);

NOW THEREFORE, in consideration of the mutual promises contained in this Lease, Sublessor and Subtenant hereby agree as follows:

1. **PREMISES:** Upon and subject to the conditions and limitations herein contained, Sublessor does hereby lease to Subtenant, and Subtenant does hereby lease and rent from Sublessor, those certain premises containing approximately 2,000 square feet of usable area (as approximately outlined on the attached Exhibit B) (the “Premises”) and that will be located in the Building, which Building is situated on the real property described on the attached Exhibit A. In addition to the Premises, Subtenant shall have (a) the nonexclusive right, together with other owners, tenants and occupants of the Building, to use the common areas of the Building shared between the residential space and the commercial space, as shown on Exhibit B, including a lobby and bathroom facilities (the “Common Elements”). Subtenant shall not have the right to use or occupy any portion of the noncommercial space in the Building.
2. **TERM:**
 - A. **Term:** The Term of this Lease shall be for a period of [nineteen] ([19]) years commencing on the later of (i) issuance of a certificate of occupancy which allows for occupancy of the Premises by Subtenant and (ii) Sublessor’s delivery of the Premises to Subtenant (the “Commencement Date”) and continuing through and ending on the [nineteenth] ([19th]) anniversary thereafter (the “Term”), unless earlier terminated as hereinafter provided.

3. RENT: THIS LEASE IS A **NET** LEASE

- A. Minimum Rent for Term: Subtenant shall pay to Sublessor during the Term, commencing on the first day of the month immediately following the Commencement Date (the “Rent Commencement Date”) and on the first day of each calendar month thereafter during the Term, a monthly minimum rent equal to [One Dollar] (\$[1].00) (the “Minimum Rent”).
- B. Additional Rent: Beginning on the Rent Commencement Date and on the first day of each calendar month thereafter during the Term, Subtenant shall pay to Sublessor, as Additional Rent, without any set-off or deduction therefrom, the sum of (i) Subtenant’s Tax Liability (as hereinafter defined) and (ii) all Operating Costs (as hereinafter defined) for the Premises and the Common Elements, to the extent not otherwise provided to be paid directly, or to be reimbursed, by Subtenant pursuant to any provision of this Lease.
- (1) Subtenant’s Tax Liability: “Subtenant’s Tax Liability” shall be defined as the real estate taxes and special assessments attributable to the Premises and the Common Elements, as applicable.
- (2) Subtenant will promptly pay to Sublessor as Additional Rent, all dues and assessments, including but not limited to general and special assessments, for the Premises. Sublessor and Subtenant intend that Subtenant be obligated for any costs properly assessed against Sublessor as owner of the Premises.
- (3) Operating Costs: “Operating Costs” are defined as all expenses incurred by Sublessor in connection with the ownership, operation, and maintenance of the Premises, the Common Elements and the underlying land, except Subtenant’s Tax Liability, calculated on an accrual basis, and, with respect to any calendar year, shall include, but not be limited to, the following costs incurred by Sublessor in such calendar year with respect to the Premises and the Common Elements (as applicable) and the underlying land:
- (i) all other governmental or quasi-governmental impositions, including but not limited to gross receipts taxes and taxes on rentals (other than income taxes) relating to the Building and the underlying land;
 - (ii) all reasonable management fees;
 - (iii) the cost of insurance (including, but not limited to, liability and casualty insurance with a rental abatement endorsement) required to be maintained by Sublessor;
 - (iv) the cost of security, landscaping, snow removal, janitorial and cleaning services for Common Elements;

- (v) subject to the provisions of Section 21, the costs of heat, cooling and other utilities supplied;
- (vi) all employment costs, including salaries, wages and fringe benefits for employees to the extent that they provide services to the Common Elements;
- (vii) charges under maintenance and service contracts for Common Elements;
- (viii) the cost of supplies purchased for use in the Common Elements;
- (ix) all maintenance and repair costs for Common Elements;
- (x) any equipment rental for Common Elements;
- (xi) the cost, including interest, of any minor capital improvements (under \$10,000) made to (i) reduce Operating Costs or limit increases therein, or (ii) required by Sublessor's insurance carrier(s), or (iii) required by any law, rules, regulations or orders of any governmental or quasi-governmental authority having jurisdiction; and
- (xii) all other costs of operation, whether ordinary or extraordinary;

provided, however, that Operating Costs shall not include leasing commissions, payments of principal and interest on any mortgages, deeds of trust or other encumbrances upon the Building or the underlying land, or depreciation of the capital cost of the Building, except as provided above.

- C. Additional Rent / Operating Costs Quarterly Adjustment. As soon as reasonably practicable after the end of each calendar quarter during the Term, other than a calendar quarter ending on December 31, Sublessor shall evaluate the actual amount of Subtenant's Tax Liability and Subtenant's share of the Operating Costs for the immediately preceding quarter. If the actual amount of Subtenant's Tax Liability and Subtenant's share of Operating Costs for the preceding quarter was more than ten percent (10%) greater than or less than the estimated payments made by the Subtenant during the preceding quarter, Sublessor shall furnish to Subtenant a certified statement of the actual amount of Subtenant's Tax Liability and such Operating Costs, including Subtenant's share of such amount, for the immediately preceding quarter, and within thirty (30) days of the date of such quarterly certified statement, Subtenant shall pay to Sublessor, or Sublessor shall pay to Subtenant, as the case may be, the difference between such actual amount and estimated amounts paid by Subtenant (the "Additional Rent Quarterly Adjustment").

- D. Additional Rent / Operating Costs Annual Adjustment. As soon as reasonably practicable after the end of each calendar year during the Term, Sublessor shall furnish to Subtenant a certified statement of the actual amount of Subtenant's Tax Liability and such Operating Costs, including Subtenant's share of such amount, for the immediately preceding calendar year, and within thirty (30) days after the date of such annual certified statement, Subtenant shall pay to Sublessor, or Sublessor shall pay to Subtenant, as the case may be, the difference between the actual amount and the sum of the estimated payments and Additional Rent Quarterly Adjustments paid by Subtenant during the calendar year.

All Operating Costs, Subtenant's Tax Liability, and all other costs and expenses which Subtenant assumes or agrees to pay to Sublessor pursuant to this Lease, shall be deemed "Additional Rent" and, in the event of nonpayment thereof, Sublessor shall have all the rights and remedies herein provided for in the case of nonpayment of Minimum Rent.

- E. Payment of Rent. The monthly Minimum Rent and, except as otherwise specifically provided herein, the monthly Additional Rent (the Minimum Rent together with the Additional Rent are collectively referred to herein as the "Rent") payable hereunder shall be paid in advance without demand on the first (1st) day of each month during the Term in lawful money of the United States to Sublessor, 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401, or at such other place or places and to such other party or parties as Sublessor may hereafter designate. Any Rent received more than three (3) days after it is due shall be subject to a late fee equal to five percent (5%) of the total Rent then payable by Subtenant. In addition, any installment of Rent due under the provisions of this Lease which remains unpaid on the thirtieth (30th) day after it is due, together with any unpaid late fees, shall accrue interest from the due date of the installment, until paid, at the annual rate of twelve percent (12%) or the maximum rate allowed by law, whichever is less.

No payment by Subtenant or receipt by Sublessor of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Sublessor may accept such check or payment without prejudice to Sublessor's right to recover the balance of such Rent or pursue any remedy provided in this Lease.

- F. Review and Conferral. Notwithstanding the foregoing provisions regarding the payment of Tax Liability, Operating Costs, Rent and Additional Rent, the parties shall meet and confer annually review, evaluate and discuss Tenant's Tax Liability, Operating Costs, Rent and Additional Rent to determine areas where cost cutting and or cost savings may be appropriate.

4. **USE OF PREMISES:** The Premises shall be used as community facility space for the Town of Ridgway. No other use shall be permitted without the express written consent of the Sublessor which may be withheld at its sole discretion. Subtenant shall abide by all town and/or state codes and zoning ordinances. No part of the Premises, including the Common Elements and grounds for the Building, shall be used for any purpose which constitutes a nuisance, or which is illegal, termed extra hazardous by insurance companies or which may make void or voidable any insurance on the Premises or Building or which may increase the premiums therefor, or which will interfere with the general safety, comfort and convenience of the Sublessor and other tenants of the Building. Notwithstanding the preceding general language, no part of the Premises may be used for any use that is identified on the attached Exhibit C.

5. **TENANT IMPROVEMENTS AND BENEFITS:** Subtenant shall be solely responsible for any and all tenant improvements and all costs associated with the improvements. All tenant improvements shall comply with Section 14.

The Subtenant expressly waives and relinquishes in favor of the LP any rights to claim the benefit of or to use any depreciation benefits that are currently or may become available during the Term as a result of the improvements to the Premises, or any equipment, furniture or fixtures installed by the Sublessor or LP on the Premises whether or not such items become a part of the realty, and the Subtenant agrees to execute and deliver to the Sublessor any election form required to evidence the Sublessor or LP's right to claim investment tax credits or depreciation benefits on improvements made or property installed by the Sublessor or LP.

6. **RULES AND REGULATIONS:** Subtenant shall use the Premises and the Common Elements and grounds for the Building in accordance with such rules and regulations as may from time-to-time be made by Sublessor for the general safety, comfort, and convenience of the owner and tenants of the Building, their customers, agents, employees and invitees and shall cause Subtenant's customers, agents, employees and invitees to abide by such rules and regulations. A copy of the rules and regulations in effect as of the date of this Lease is attached hereto as Exhibit D, but such rules and regulations are subject to change from time-to-time.

7. **WASTE:** Subtenant shall conserve heat, air conditioning, water, and electricity, shall not permit waste to occur on the Premises, the Common Elements or the grounds for the Building, shall use due care in the use of the Premises, the Common Elements and the grounds for the Building, and shall not neglect or misuse water fixtures, electric lights, and heating and air conditioning apparatus. Subtenant shall pay promptly to Sublessor forthwith, upon demand, as Additional Rent, an amount equal to any cost incurred by Sublessor in repairing the Premises or the Building where such repair was made necessary by the negligence of, or misuse by, Subtenant or an employee, agent, customer, or invitee of the Subtenant.

8. **ACCEPTANCE OF PREMISES:** Sublessor will provide Subtenant the Premises as a constructed shell that will comply, in its unimproved state, with all applicable building

code requirements, that will be stubbed in with electrical and plumbing to the extent that Sublessor and Subtenant mutually agree, but that otherwise will contain no tenant improvements. Sublessor otherwise makes no representations or warranties of any nature in connection with the condition of the Premises, compliance with applicable statutes, ordinances, codes, rules or regulations of any governmental unit, or that the Premises are fit for Subtenant's intended use thereof. Any additional tenant improvements that are not Sublessor's responsibility pursuant to the first sentence of this Section 8 ("Additional Subtenant Improvements") will be the responsibility of Subtenant to complete, at its sole cost and expense, and Sublessor has no obligation to complete, or to pay for, any Additional Subtenant Improvements. All Additional Subtenant Improvements will be completed on a lien-free basis.

9. **RIGHT TO ASSIGN OR SUBLET:** Subtenant may not assign this Lease. Subject to any terms contained in that certain Ground Lease entered into by and between the LP and Town of Ridgway, Colorado as of [_____] (the "Ground Lease"), Subtenant may sublease all or any portion of the Premises to third parties with the prior written consent of the Sublessor and the LP (the "Consenting Parties"), which approval shall be in its sole and absolute discretion. Consenting Parties' consent to a sublease shall not be deemed a consent to any further sublease, and no further sublease shall be permitted without each of the Consenting Parties' prior written consent. Any purported sublease without each of the Consenting Parties' prior written consent shall be void ab initio and of no force or effect and shall confer no rights on the purported sublessee. Sublessor's consent to any sublease shall not release Subtenant from any covenant or obligation of this Lease, including the obligation to pay Rent. Neither this Lease nor any interest herein, nor any estate created by this Lease, shall pass to any trustee or receiver in bankruptcy, or any assignee for the benefit of creditors, or by operation of law.

As a condition to any sublease, Subtenant shall assign, transfer, convey, pledge and grant to the Sublessor a security interest in and to such sublease(s), together with any and all rent, monthly additional rent amounts, security deposits and all other amounts due to Subtenant, as sublessor, under such sublease(s), as a security for the payment of Rent by the Subtenant under this Lease. Subtenant agrees to execute any and all documents and instruments as the Sublessor may request from time-to-time to perfect the security interest granted herein. Sublessor may, but shall not be required to, exercise any and all rights and remedies available to the Sublessor under this Lease or otherwise available to a secured party under applicable law. Without limiting the generality of the foregoing, Sublessor may, but shall not be required to, collect any and all amounts due under such sublease(s) directly from such subtenants of the Premises, and enforce the terms thereof, and the rights and remedies of the Subtenant, as sublessor, under such sublease(s).

Subtenant shall include language in each of the subleases it enters into with any commercial tenant requiring such commercial tenant (i) to attorn to Sublessor, its successors and assigns (including any successor by foreclosure of a mortgage or transfer by deed in lieu thereof) as a tenant under this Lease, in the event Subtenant is removed as tenant under this Lease and (ii) to execute such instruments as may be necessary or appropriate in Sublessor's sole

discretion to evidence such attornment and no lease shall give the sub-tenant the right to a nondisturbance in the event the identity of the Sublessor changes.

10. **SIGNS:** Subtenant shall not place any signs, nor permit any signs to be placed, on the Building, the underlying land, or the Premises without Sublessor's prior written consent.
11. **RIGHT TO ENTER:** Sublessor and its agents and representatives, at reasonable times and with twenty-four (24) hours advance notice to Subtenant (except, in cases of emergency, advance notice shall not be required), may enter to view and to inspect the Premises, to make repairs, or to make such improvements or changes in the Premises or the Building as Sublessor may deem proper. The right of entry reserved in the immediately preceding sentence shall not be deemed to impose any greater obligation on Sublessor to maintain, repair or change the Premises than is specifically provided in this Lease. The Sublessor and its agents or representatives, at any time in case of emergency, may enter the Premises and do such acts as Sublessor may deem proper to protect the Premises, the Building, or occupants of the Building. There shall be no diminution of Rent or liability on the part of Sublessor by reason of inconvenience, annoyance or injury to business on account of any such entry or acts by Sublessor or its agents or representatives. Sublessor shall have the right to show the Premises for leasing at all reasonable times during the last sixty (60) days of the Term.
12. **INSURANCE:** Sublessor shall not be liable to Subtenant or those claiming through or under Subtenant, for injury, death, or property damage occurring in, on, or about the Building or the underlying land. Sublessor shall maintain liability insurance for the Building and the underlying land. Subtenant shall indemnify Sublessor and hold it harmless from any claim or damage arising out of any injury, death, or property damage occurring in, on, or about the Premises to Subtenant or any employee, customer, or invitee of Subtenant, except for the gross negligence or willful misconduct of Sublessor. [ALL INSURANCE TERMS AND REQUIREMENTS ARE SUBJECT TO REVIEW BY API'S INSURANCE BROKER]
 - A. Liability Insurance: Without limiting Subtenant's liability hereunder, Subtenant agrees, at its own cost and expense, to carry public liability insurance protecting Sublessor and Subtenant in the amounts of Five Hundred Thousand Dollars (\$500,000.00) for personal injuries sustained by any one person, One Million Dollars (\$1,000,000.00) for injuries sustained in any one accident, and One Hundred Thousand Dollars (\$100,000.00). All policies of general liability insurance shall name both Sublessor and Subtenant as insured thereunder and shall protect the interests of Sublessor. Certificates of said insurance shall provide for not less than thirty (30) days' prior written notice to Sublessor prior to cancellation thereof and shall be furnished to Sublessor prior to Subtenant's taking possession of the Premises.
 - B. All Risk Property Coverage: Subtenant, at its own costs and expense, shall maintain all risk coverage of direct physical damage, excluding flood and earthquake, for the benefit of Subtenant on all improvements erected within the

Premises. As often as such policy or policies shall expire or terminate, renewal or additional policies shall be procured by Subtenant in a like manner and to like extent.

- C. Sublessor's Insurance: Sublessor, at all times during the Term of this Lease, shall maintain in full force and effect a policy or policies of insurance covering the Premises and the Building and the underlying land in the greater of (i) an amount equal to one hundred percent (100%) of the insurable value thereof, or (ii) those amount required to be carried by Subtenant pursuant to the terms of the Ground Lease, providing protection against any peril included under the applicable state's insurance industry practices within the classification "fire and extended coverage," together with insurance against vandalism and malicious mischief.
- D. Assignment: Subtenant hereby assigns to Sublessor its right to receive all proceeds from all casualty insurance policies maintained with respect to the Premises. Sublessor is hereby authorized and empowered, at its option, to adjust or compromise any loss under such policies, and to collect and receive the proceeds from any such policies. Each insurance company is hereby authorized and directed to make payment directly to the Sublessor alone, and not to the Subtenant and the Sublessor jointly.
13. **WAIVER OF SUBROGATION**: Notwithstanding anything in this Lease to the contrary, whenever any loss, cost, damage or expense resulting from fire, explosion, or other casualty is incurred in connection with the Premises or the Building and the underlying land and Subtenant and Sublessor are then covered or indemnified by insurance (regardless of whether insurance is payable to or protects Sublessor, Subtenant, or both), then Subtenant and Sublessor shall release the other from any liability the other may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and Subtenant and Sublessor each hereby waive any right of subrogation that otherwise might exist in, or accrue to, any person on account thereof (provided that the insurance policies for each of Sublessor and Subtenant do not prohibit such release or waiver). In no event shall any such release be applicable if such release would work in contravention of any requirement in an applicable policy of insurance to the effect that if the insured waives subrogation, coverage is, or may be, void.
14. **ALTERATIONS**: Subtenant will not make any alterations of or additions to the Premises, including Additional Subtenant Improvements, without the prior, written approval of Sublessor. Subtenant shall warrant to Sublessor that all such alterations, additions, or improvements shall be in strict compliance with all relevant laws, ordinances, governmental regulations, permits, and insurance requirements affecting the Building. Subtenant, at its option and its expense, may remove all alterations, additions, or changes which may be made by either of the parties hereto upon the Premises, including moveable office furnishings, and return the Premises to their condition at the commencement of this Lease, normal wear and tear excepted. If Subtenant chooses not to remove all alterations, additions, or changes, Subtenant still will remove all moveable office furnishings and will return the Premises to its condition at the commencement of this Lease, normal wear and

tear excepted and excepting the remaining alterations, additions, and changes. The remaining alterations, additions, and changes shall be the property of Sublessor and shall remain upon, and be surrendered with, the Premises, as a part thereof, at the termination of this Lease or any extension hereof.

In connection with any alterations, additions, improvements, or changes, Sublessor reserves the right to require that, prior to the commencement of such alterations, Subtenant shall furnish Sublessor with assurances, including such bonds as Sublessor deems necessary, that the contemplated alterations, additions, improvements, or changes will be completed according to plan and will be paid for by Subtenant. Subtenant will not permit any mechanics', laborers', or materialmen's lien to stand against the Premises or the Building for any labor or material furnished to, or for the account of, Subtenant or claimed to have been so furnished in connection with any work performed or claimed to have been performed in, on, or about the Premises. Sublessor, at its option, may discharge any such lien, and the amount of the lien, together with costs and reasonable attorneys' fees, shall become Additional Rent due immediately hereunder. Sublessor reserves the right to prescribe the form, size, character, and location of any and all awnings affixed to, and all signs which may be placed or painted upon, any part of the Premises, and the Subtenant agrees not to place any awning or sign on any part of the Premises without the prior written consent of the Sublessor, or to bore or to cut into any column, beam, or any part of the Premises without the prior written consent of Sublessor.

15. **LIGHT AND AIR:** Subtenant has no right to light and air over any other premises in the Building or any other adjacent property.
16. **ESTOPPEL CERTIFICATE:** Subtenant agrees, within ten (10) days after request therefor by Sublessor, to execute and to deliver to Sublessor a written statement in recordable form, certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the date of commencement of the Term of this Lease, (c) that Rent is paid currently without any set-off or defense thereto, (d) the amount of Rent, if any, paid in advance, and (e) that there are no uncured defaults by Sublessor or stating those claimed by Subtenant. If the Subtenant fails to do so, the Sublessor shall have the right, as attorney-in-fact for the Subtenant, to make such a statement, certificate or both. The Sublessor, the LP, their lenders, and/or purchasers shall be entitled to rely upon any document executed pursuant to this Section 16.
17. **SUBORDINATION:** This Lease shall be subordinate to all mortgages and other security interests that may now exist or that may hereafter be placed upon the Premises, to any and all advances made thereunder, to all interest and other charges relating to the indebtedness evidenced by such mortgages, and to all renewals, replacements, and extensions thereof. If Sublessor executes after the date of this Lease any such mortgage, security interest, renewal, replacement, or extension, Subtenant agrees to execute a subordination agreement and/or any other appropriate related documents with the holder thereof. Subtenant agrees, that, upon the request of Sublessor, any mortgagee, or any trustee, it shall execute whatever instruments may be required to carry out the intent of this Section. If Subtenant fails to

provide the documentation required in this Section 17, Sublessor shall have the right, as attorney-in-fact for Subtenant, to make such a statement, certificate or both. Sublessor, the LP, their lenders, and/or purchasers, shall be entitled to rely upon any such documentation executed pursuant to this Section 17.

18. **TENANT TO SURRENDER PREMISES:** Upon the expiration or the earlier termination of the Term of this Lease, Subtenant, at its expense, shall (i) remove Subtenant's goods and effects and those of all persons claiming under Subtenant and repair any damage to the Premises caused by such removal, (ii) quit and deliver up the Premises to Sublessor, peaceably and quietly, in as good order and condition as the same were in on the date the Term of this Lease commenced or were thereafter placed in by Sublessor or Subtenant, reasonable wear and tear excepted, and (iii) comply with the requirements of Section 14 hereof. If any property is left in the Premises after the expiration or the earlier termination of the Term of this Lease which is not permitted to be left pursuant to Section 14 hereof, then, at Sublessor's option, said property shall be deemed to have been abandoned and the property of Sublessor to dispose of as Sublessor deems expedient, or Sublessor may require Subtenant, at Subtenant's expense, to remove the same and to repair any damage to the Premises caused by such removal.
19. **NO WAIVER:** Failure of Sublessor to insist, in any one or more instances, upon strict performance of any term, covenant, or condition of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition, or option, but the same shall continue and remain in full force and effect. The receipt by Sublessor of Rent with knowledge of a breach in any terms, covenants, or conditions of this Lease to be kept or performed by Subtenant shall not be deemed a waiver of such breach, and Sublessor shall not be deemed to have waived any provision of this Lease unless such waiver is expressed in writing and signed by Sublessor.
20. **CLEAN CONDITION; GOOD REPAIR:** Subtenant, at Subtenant's expense, will keep the Premises in a neat, clean, and orderly condition and in good repair, including heating equipment, air conditioning equipment, lighting fixtures, plumbing fixtures and window glass, and shall not set the thermostat below sixty-two degrees Fahrenheit (62°F) during the heating season. Subtenant shall not permit rubbish of any kind to accumulate in the Building or the underlying land and shall remove the same without cost to Sublessor. Without limiting the foregoing requirements, all plate and other glass, if broken, shall be promptly replaced by, and at the expense of, Subtenant. Subtenant shall cause all garbage, recyclables, and other debris emanating from the Premises to be removed to such reasonable locations and spaces as may be specified by Sublessor from time-to-time during hours, and subject to such reasonable controls, as are established by Sublessor from time-to-time.
21. **UTILITIES:** All utilities, other than natural gas, electricity (both of which will be separately metered) and telecommunications are included in the Operating Costs. In addition to natural gas and electricity, Sublessor reserves the right to separately meter water to the Premises. As to the separately metered electricity, natural gas, and water (if applicable), Subtenant shall pay monthly as Additional Rent the electric, natural gas, and

water (if applicable) expense that is billed directly to Sublessor or its agent, and Subtenant will pay directly to the provider the electric, natural gas, and water (if applicable) that is billed directly to Subtenant. Subtenant shall be responsible for the payment and procurement of all installation and use of any telecommunications services for the Premises, including but not limited to any telephone, internet, cable TV and/or satellite dish service.

22. **BUSINESS HOURS:** Subtenant shall remain open for business during business hours that are normal for the type of business that Subtenant conducts but not to exceed the hours that are set forth in Exhibit D. Subtenant shall have access to the Premises twenty-four (24) hours daily.
23. **TEMPORARY INTERRUPTION OF SERVICES:** Sublessor shall not be liable to Subtenant, its agents, employees, representatives, customers, or invitees for any inconvenience, loss, or damage or for any injury to any person or property caused by or resulting from any casualties, riots, strikes, picketing, accidents, breakdowns, or any cause beyond Sublessor's reasonable control, or from any temporary failure or lack of utilities or services that are not the result of the gross negligence or willful misconduct of Sublessor or its agents. No variation, interruption, or failure of such services incident to the making of repairs, alterations, or improvements or due to casualties, riots, strikes, picketing, accidents, breakdowns, or any cause beyond Sublessor's reasonable control or temporary failure or lack of such services shall be deemed an eviction of Subtenant or relieve Subtenant from any of Subtenant's obligations.
24. **LESSOR'S MAINTENANCE OBLIGATIONS:** Sublessor shall maintain and repair the structural parts of the Building, including exterior walls, door, and roofs and shall maintain, repair, and clean the Common Elements and the grounds, including maintaining, plowing and shoveling parking areas, common outdoor terraces or patios, and sidewalks; provided, however, maintenance of any systems or equipment serving only the Premises and no other portion of the Building shall be performed by, and paid for by, Subtenant.
25. **NOTICES:** A bill, statement, notice, or communication which Sublessor desires or is required to give to Subtenant, including any notice of termination, shall be deemed sufficiently given if in writing, delivered to Subtenant personally, or sent by registered or certified mail, addressed to Subtenant at [_____] and said notice shall be deemed to have been duly given when the same is delivered to Subtenant, or deposited in U.S. Mails or left at the Premises as herein provided. Any notice by Subtenant to Sublessor must be served by registered or certified mail addressed to Sublessor at the address where the last previous Rent hereunder was payable, or upon notice given to Subtenant, at such other place as Sublessor designates, and said notice shall be deemed to have been duly given when said notice is delivered to Sublessor or deposited in U.S. Mails. Subtenant shall provide a copy of any such notices provided by Subtenant pursuant to this Section 25 to: [LP NOTICE ADDRESS AND LP INVESTOR NOTICE ADDRESS].
26. **REPAIRS:** Subtenant shall pay promptly to Sublessor, upon request, as Additional Rent, an amount equal to any cost incurred by Sublessor in repairing the Premises, the Common

Elements or grounds for the Building where such repairs were made necessary by the negligence of, or misuse by, Subtenant, its agents, its customers, its employees, or its invitees.

27. **EMINENT DOMAIN:** If the entire Premises or Building is taken by eminent domain, this Lease shall automatically terminate as of the date possession shall be taken in such proceeding, and all Rent shall be paid up to that date. If a portion of the Premises or Building is taken by eminent domain in a manner which materially affects the Premises so as to render the Premises reasonably unsuitable for the business of Subtenant, then this Lease shall terminate as of the date possession shall be taken by the condemning authority and Rent shall be paid to the date of such termination. If a portion of the Premises is taken by eminent domain and this Lease is not thereby terminated, Sublessor, at its expense but subject to available condemnation proceeds and other available funds and Sublessor's obtaining all required consents and approvals, shall restore the Premises, exclusive of any improvements or other changes made to the Premises by Subtenant, to as near the condition which existed immediately prior to the date of taking as reasonably possible, and Rent shall abate during such period of time as the Premises are untenable, in the proportion that the untenable portion of the Premises bears to the entire Premises. Notwithstanding the foregoing, if the portion of the Premises taken by eminent domain exceeds twenty-five percent (25%) of the Premises, Subtenant shall have the right to terminate this Lease by giving written notice thereof within thirty (30) days after the date possession shall be taken by the condemning authority. All damages awarded for a taking under the power of eminent domain, whether for the whole or a part of the Premises, shall belong to, and be the property of, Sublessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold estate hereby created or to the fee of the Premises, provided, however, that Sublessor shall not be entitled to any award made to Subtenant for loss of business, fair value of, and cost of removal of stock and fixtures. The term "eminent domain" shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation.
28. **FIRE OR OTHER CASUALTY:** In the event of a partial or total damage or destruction of the Premises during the Term hereof from any cause, Sublessor shall repair the same, provided, however, that, in the event Sublessor, in its sole and absolute discretion, determines it to be impractical to repair the Premises, it may terminate this Lease. In the event Sublessor shall elect to repair the Premises, this Lease shall not terminate, but Subtenant shall be entitled to an abatement of Rent during any period of time that any portion of the Premises are untenable. In the event it is reasonably determined that Sublessor will take longer than twenty-four (24) months from casualty to repair damage to the Premises, Subtenant shall have the right to cancel this Lease. Sublessor shall not be responsible to Subtenant for damage to, or destruction of, any furniture, equipment, improvements, or other changes made by Subtenant in, on, or about the Premises, regardless of the cause of the damage or destruction, except for gross negligence or willful misconduct of Sublessor.
29. **HOLDING OVER:** If, after Sublessor gives notice to vacate upon the expiration or the earlier termination of the Term of this Lease, Subtenant continues to occupy the Premises

or any part thereof, after the expiration or the earlier termination of the Term of this Lease, such tenancy shall be from month-to-month, at the sole option of Sublessor, and at a Minimum Rent of one hundred fifty percent (150%) of the amount of the Minimum Rent payable in the immediately preceding twelve (12) month period, subject to all of the conditions, provisions and obligations of this Lease, including, without limitation, the obligation to pay Additional Rent.

30. LESSOR'S RIGHT TO CURE: If Subtenant shall fail to make any payment or perform any act required to be made or performed by it hereunder, Sublessor, without waiving or releasing any obligation or default, may make such payment or perform such act for the account and at the expense of Subtenant, may enter upon the Premises for such purpose, and may take all such action thereon as, in the opinion of Sublessor, may be necessary or appropriate therefor. No such entry shall constitute an eviction of Subtenant. All payments made by Sublessor and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) incurred in connection therewith or in connection with the performance by Sublessor of any such act shall constitute Additional Rent hereunder, and Subtenant shall pay the same forthwith to Sublessor upon demand. In the event the same shall not be paid to Sublessor within ten (10) days from the date of billing, the same shall bear interest at the rate of twelve percent (12%) per annum, or the maximum rate allowed by law, whichever is less.
31. EXPENSES AND ATTORNEYS' FEES: If suit shall be brought by either Sublessor or Subtenant arising out of the terms and provisions of this Lease, or because of the breach of any covenant herein contained on the part of Sublessor or Subtenant, the prevailing party shall recover all expenses incurred therefor, including all reasonable attorneys' fees, unless prohibited by law.
32. ENVIRONMENTAL ISSUES: Subtenant shall not cause or permit the escape, disposal, or release of any biologically or chemically active or other hazardous substance or materials from, on, in, under, or about the Premises, the Building or the underlying land. Subtenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Premises any such materials or substances except to use in the ordinary course of Subtenant's business. At Sublessor's request, Subtenant shall execute affidavits, representations and the like concerning Subtenant's knowledge and belief regarding the presence of any hazardous materials that Subtenant or any person acting on its behalf has brought onto or released at, onto, or from the Premises. Without limitation, hazardous substances and materials means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Federal Water Pollution Control Act of 1972 (commonly known as the Clean Water Act), or any other Federal, state or local environmental law, ordinance, rule, or regulation, whether existing as of the date hereof, previously in force, or subsequently adopted. For purposes of this paragraph, to "release" hazardous material means to (a) release, spill, emit, pump, inject, deposit, dump, dispose of, discharge, or

disperse hazardous material in or into the indoor or outdoor environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata) or (b) cause the leaking, leaching, escape, migration, or movement of hazardous material into or through such environment. If any lender or governmental agency shall require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Subtenant to Sublessor upon demand as Additional Rent. If Subtenant is found to be in violation of any law, regulation, or guideline, by act, practice, negligence, omission, or otherwise, Subtenant will indemnify Sublessor against any and all resulting claims that may be brought against Sublessor.

33. **DEFAULT:** If Subtenant (i) causes any default under the Ground Lease, or (ii) fails to pay any installment of Rent or any portion thereof for a period of five (5) days after the same shall be due and payable, or (iii) fails to comply with any other provision of this Lease and shall not cure such failure within thirty (30) days after Sublessor, by written notice, has informed Subtenant of such failure, or in the case of any such failure that is susceptible of being cured but that cannot with diligence be cured within such thirty- (30-) day period, such longer period of time, not to exceed thirty (30) additional days, as is necessary with diligence to cure the same pursuant to a plan approved by Sublessor in advance of such extension, or (iv) ceases to conduct its normal business operations in the Premises or vacates or abandons the Premises and leaves the same vacated or abandoned for a period of ten (10) days after Sublessor has given written notice to Subtenant of such vacation or abandonment, excepting vacation or abandonment due to fire or other casualty or repairs or improvements by Sublessor which necessitate such vacation or abandonment, or (v) falsifies any report required to be furnished to Sublessor pursuant to the terms of this Lease, or (vi) becomes insolvent (however defined) or is generally not paying its debts as they become due, or makes an assignment for the benefit of creditors, or a receiver or trustee is appointed for Subtenant or its property, or Subtenant commences or has commenced against it proceedings under any bankruptcy, reorganization, arrangement, insolvency, or readjustment of debt, dissolution, or liquidation laws, either of the United States or any state thereof, then, in any such event, Sublessor may either (x) cancel and terminate this Lease and this Lease shall not be treated as an asset of Subtenant's estate, or (y) terminate Subtenant's right to possession only without canceling and terminating this Lease. Notwithstanding the fact that initially Sublessor elects under (y) above to terminate Subtenant's right to possession only, the Sublessor shall have the continuing right to cancel and terminate this Lease and shall have the right to pursue any remedy at law or in equity that may be available.

If Sublessor elects to terminate Subtenant's right to possession only, Sublessor, at Sublessor's option, may enter into the Premises and take and hold possession thereof without such entry terminating this Lease or releasing Subtenant in whole or in part from Subtenant's obligation to pay all of the charges herein provided to be paid by Subtenant for the full Term. Such reentry shall be conducted without resort to judicial process or notice of any kind where Subtenant has abandoned or voluntarily surrendered possession of the Premises or otherwise by resort to judicial process. Sublessor may remove all persons and property from the Premises and such property may be removed and stored at the cost of and for the account of Subtenant all without service of notice or resort to legal

process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. Upon and after entry into possession without termination of this Lease, Sublessor shall be entitled to lease or to sublet the Premises, or any part thereof, on such terms and conditions as Sublessor may elect and, after crediting the Rent actually collected by Sublessor from such reletting to the Rent and other amounts stipulated to be paid under this Lease by Subtenant, to collect from Subtenant any balance remaining due together with such reasonable expenses, including commissions, attorneys' fees, costs of alterations, repairs and redecorating, which Sublessor may incur in connection with such reletting or Subtenant's default hereunder. No such reentry or taking possession of or alteration, repair, or redecoration of the Premises by Sublessor shall be construed to be an election to terminate this Lease, which shall occur only if written notice of termination be given to Subtenant or the termination thereof be decreed by a court of competent jurisdiction.

Notwithstanding Sublessor's election to terminate Subtenant's right to possession only, and notwithstanding any reletting without termination, Sublessor, at any time thereafter, may elect to terminate this Lease and may recover as damages for loss of the bargain and not as a penalty an aggregate sum equal to the amount by which the rental value of the portion of the Term unexpired at the time of such election is less than the entire amount of Rent and all additional charges which would have been payable by Subtenant hereunder for the unexpired portion of the Term, which deficiency and all expenses incident thereto, including commissions, attorneys' fees, expenses of alterations, repairs, and redecorating, shall be due to Sublessor as of the time Sublessor exercises said election, notwithstanding that the full Term has not expired; and if Sublessor, after such reentry, leases said Premises, then the Rent payable under such new lease shall be conclusive evidence of the rental value of said unexpired portion of said Term. Failure of Sublessor to notify Subtenant in writing of its election hereof at the time it reenters and takes possession of the Premises shall indicate an election to reenter and take possession without terminating this Lease.

Sublessor shall not be deemed to be in default under this Lease until Subtenant has given Sublessor written notice specifying the nature of the default and Sublessor does not cure such default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default if such default is of such character as to reasonably require more than thirty (30) days to cure.

34. QUIET ENJOYMENT: If and so long as Subtenant pays Rent and keeps and performs each and every covenant and condition herein contained or to be kept and performed, on part of Subtenant, subject to the rights of holders of mortgages with respect to the Premises and the underlying land and all other restrictions of record with respect to the Premises, the Building or the underlying land, Subtenant shall quietly enjoy the Premises without hindrance by Sublessor.
35. INTENTIONALLY OMITTED
36. MISCELLANEOUS: There are no understandings or agreements between Sublessor and Subtenant regarding the Premises that are not incorporated in this Lease, except as may be

provided in a written addendum signed and accepted by both parties. This Lease may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought. This is a Colorado contract and shall be construed according to the laws of Colorado. The captions in this Lease are for convenience only and are not a part of this Lease. If any provision in the Lease should for any reason be judged invalid or illegal, that provision shall be deemed omitted herefrom and shall not invalidate any other provision of this Lease, and the remainder hereof shall remain in full force and effect. This Lease shall inure to the benefit of and be binding upon the parties hereto and their heirs, personal representatives, successors, and assigns. This Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Sublessor and Subtenant, the sole relationship between Sublessor and Subtenant being that of lessor and lessee. All rights and remedies of Sublessor under this Lease shall be cumulative, and none shall exclude any other rights or remedies allowed by law. Subtenant shall not record this lease, and this Lease shall not be accepted for recording. Sublessor, at its option and without the necessity of any consent thereto by Subtenant, may record this Lease or a Notice of Lease. The rider(s) and/or exhibit(s) attached to this Lease is (are) hereby declared to be a part of this Lease to the same extent and in the same manner as if the provisions thereof were actually embodied in this Lease.

37. **OFAC REPRESENTATION AND WARRANTY.** Subtenant is neither a Prohibited Person (as defined in this Section 37) nor owned or Controlled (as defined in this Section 37) by a Prohibited Person. Subtenant neither is engaged, or will engage, in transactions, or has, or will have, dealings, knowingly with a Prohibited Person or a Sanctioned Country (as defined in this Section 37) in violation of any Requirements of Law (as defined in this Section 37), and Subtenant is not violating, and will not violate, any Requirements of Law relating to money laundering, terrorism, embargoes, or sanctions. After commercially reasonable inquiry, to the best of its knowledge, Subtenant will not knowingly sublease any portion of the Premises to any sublessee that cannot make the same representations and warranties that are contained in this Section 37.

For purposes of this Section 37, the following terms will have the following meanings:

“Control” means the possession, directly or indirectly, of the power to direct, or to cause the direction of, the management and policies of a Person whether through ownership of voting securities, beneficial interests, by contract or otherwise. The definition applies equally to variations of the word “Control,” including “Controlled,” “Controlling,” or “Controlled by.”

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government.

“OFAC List” means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the Office of Foreign

Assets Control pursuant to any Requirements of Law, including, without limitation, embargo, sanctions, or other prohibitions of United States law, regulation or Executive Order of the President of the United States. The OFAC List is accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

“Person” means an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

“Prohibited Person” means any Person identified on the OFAC List or with whom a United States citizen or entity organized under the laws of a state in the United States may not engage in transactions or have dealings with by any Requirements of Law, including, without limitation, embargo, sanctions or other prohibitions of United States law, regulation, or Executive Order of the President of the United States.

“Requirements of Law” means (a) the organizational documents of an entity, and (b) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of the Person’s properties, or the conduct of the Person’s business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy, and subdivision of real property.

“Sanctioned Country” means any country or government thereof subject to embargoes or sanctions under the Requirements of Law.

38. LESSOR EXCULPATION. Notwithstanding anything in this Lease to the contrary, Sublessor shall have no obligation, nor incur any liability, beyond Sublessor’s interest in the Premises, and Subtenant shall look exclusively to such interest of Sublessor in the Premises for the payment and discharge of obligations imposed upon Sublessor with respect to this Lease.
39. ANNUAL APPROPRIATION. No provision of this Lease shall be construed or interpreted as creating a general obligation, multiple fiscal year financial obligation, or other indebtedness of the Subtenant within the meaning of any constitutional, home rule charter or statutory debt limitation. No provision of this Lease shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Lessor within the meaning of Article XI, Sections 1 or 2 of the Colorado constitution. This Lease shall not directly or indirectly obligate the Subtenant to make any payments beyond those duly budgeted and appropriated for the Subtenant’s then current fiscal year. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of Subtenant’s moneys, nor shall any provision of this Lease restrict the future issuance of any Town of Ridgway Bonds, or obligations payable from any class or source of Subtenant’s moneys.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, SUBLESSOR AND SUBTENANT have executed this Lease as of the date first above written.

SUBLESSOR:

ARTSPACE PROJECTS, INC.,
a Minnesota nonprofit corporation

By: _____

Name:

Title:

SUBTENANT:

[TOWN OF RIDGWAY, COLORADO]

By: _____

Name:

Title:

EXHIBITS:

For additional terms and conditions see attached:

- EXHIBIT A: Legal Description
- EXHIBIT B: Floor Plan
- EXHIBIT C: Prohibited Uses
- EXHIBIT D: Rules and Regulations

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
FLOOR PLAN

EXHIBIT C
PROHIBITED USES

The Premises may not be used or leased for any of the following prohibited uses: (1) vehicle repair services; (2) adult book/film store; (3) on-premises dry cleaners (but drop-off facilities for dry cleaners is permitted); (4) sports bar; (5) liquor store; (6) all-night convenience store; (7) night club, bar or restaurant where the sale of liquor shall constitute more than thirty-percent (30%) of gross sales; (8) pawn shop; (9) unsupervised amusement arcade or game room; (10) facility involving sale or distribution of drug paraphernalia, including headshops; (11) facility involving sale or distribution of pornographic or sexually explicit materials, or sex paraphernalia; (12) massage parlor (but not including day spas); (13) drug or alcohol treatment facilities or clinics; (14) adult motion picture arcade, adult motion picture show, strip show or sale of nudity or sexual services; (15) escort service or dating bureau; (16) a check cashing or payday loan business (provided; however, a bank, credit union, savings and loan or similar financial institution shall be permitted); (17) bail bonds business; (18) any use not permitted under the zoning laws in effect in Ridgway, Colorado governing the Property; (19) any use that is illegal or otherwise violates any applicable law; (20) industrial or manufacturing uses (other than individual artists production of individual artwork or other production activities on a comparable scale); (21) casino, off-track betting parlor, gambling or lottery establishments; (22) any use which produces environmental hazards regulated under applicable environmental laws (other than those used in small quantities and in compliance with all applicable laws and regulations in the ordinary course of permitted office, art studio or retail uses); (23) any use which increases the insurance costs of the Building or would constitute a health or safety hazard to residential owners; (24) any use providing abortion information or services; (25) parole, juvenile detention or similar services; (26) 24-hour establishments; (27) tattoo and piercing parlors; (28) uses producing noise pollution or which are otherwise incompatible with residential uses; (29) food establishments open before 6:00 a.m. or after 10:00 p.m.; (30) gun shop; (31) mortuary or funeral parlor; (32) bowling alley; (33) laundromat; (34) warehouse (other than storage incidental to a retail operation conducted on the same premises); and (35) more than two hair and/or nail salons. Prohibited uses shall also include any use that will have an adverse impact on the residential tenants' peaceful enjoyment of their residences, including but not limited to any use which generates excessive noise, excessive light, noxious or offensive fumes or smells, excessive trash or grime, both within and immediately outside the Premises or Building, excessive loitering or adverse sidewalk activities related to a business in the Premises or Building. Business hours of operation shall be restricted to the hours between 6:00 a.m. and 10:00 p.m.

Subtenant will not do anything in or to the Premises or bring anything into the Premises or permit anything to be done or brought into or kept in the Premises that will in any way increase the rate of casualty insurance on said Premises, nor use the Premises or any part thereof, nor allow or permit its use for any business or purpose that would cause an increase in the rate of casualty insurance on the Premises.

Subtenant covenants and agrees that, subject to compliance with any legal requirement regarding the inclusion of registered service animals, no animals that are not pets shall be permitted or kept on the Premises.

EXHIBIT D
LEASE AGREEMENT ADDENDUM
RULES AND REGULATIONS FOR USE OF PREMISES

These Rules and Regulations are for the mutual benefit of all tenants and residents of the Building. Subtenant agrees to be bound by and comply with the Rules and Regulations as follows:

TRASH: Subtenant agrees to deposit trash in designated dumpsters and agrees not to leave or to store any materials, litter, or trash in the Common Elements, on the grounds or in the parking areas. Subtenant agrees to pay for the removal of any trash that was not properly disposed of by Subtenant and is removed from the Building or the grounds by Sublessor or its assignee. Subtenant further agrees, in the event a larger amount of trash must be removed, to contact Sublessor in a timely manner for purposes of making arrangements for the pick-up or disposal of such larger amount of trash at Subtenant's sole expense.

DISTURBANCE: Subtenant agrees that no noise, odor, vibration or conduct shall be permitted at any time that will disturb or annoy others or interfere with other tenants' use and enjoyment of the Building or on the Building grounds.

ANIMALS (OTHER THAN PETS): Subject to compliance with any legal requirement regarding the inclusion of registered service animals, Subtenant shall not keep or permit any animals that are not pets on the Premises, in the Common Elements, or public spaces of the Building or on the Building grounds.

SOLICITATION: No in-person solicitation of other tenants or residents shall be permitted.

SECURITY: Building hours will be posted in designated areas or otherwise will be provided to Subtenant. All doors are to be kept closed and locked after hours. At no time shall doors be propped open.

DELIVERIES: Subtenant shall ensure that any locked door is properly locked and secured immediately after any such delivery is made to Subtenant.

PARKING: The use of parking facilities shall be limited to residential tenants unless Sublessor, in Sublessor's sole discretion, expressly agrees in writing to the use by one or more commercial subtenants on an at-will basis and for a then-to-be-determined amount of monthly rent, which will be added to the amount of Minimum Rent for each month that Sublessor, in Sublessor's sole discretion, permits the use of parking facilities by one or more commercial subtenants.

SIGN: No sign, advertisement or other lettering shall be painted, affixed, or exposed on the windows or doors or any part of the outside of the Building or the Building grounds without the prior written consent of Sublessor. All signage shall be consistent with Building standards.

FIXTURE MOVEMENT: Subtenant agrees that any and all furniture, fixtures and goods shall be moved by Subtenant at its expense if such moving is necessary for purposes of construction,

repair and/or maintenance to the Building; provided that Subtenant shall be notified reasonably in advance, except in the case of an emergency where advance notification is not possible.

LOCKS: No additional locks will be placed on any of the doors in the Building, or lock changes made, without Sublessor's prior written approval. All locks must meet the master key standards for the Building.

STORAGE: Storage and installation of any machinery, parts, materials, shelving, or furniture of any type whatsoever constitutes occupancy, and requires payment of rent for each day the space is so used. Storage and installation of any of the above items prior to the Rent Commencement Date of the Lease is specifically disallowed unless approved in writing by the Sublessor.

PREMISES: THE PREMISES SHALL NOT BE OCCUPIED AS A PLACE OF RESIDENCE.

PARTIES: SUBTENANT WILL NOT HOLD, AND WILL NOT PERMIT, PARTIES INVOLVING PERSONS IN A GIVEN SPACE WITHIN THE PREMISES, OR IN THE PREMISES AS A WHOLE, IN EXCESS OF THE NUMBER OF PERSONS THAT ARE PERMITTED BY APPLICABLE FIRE AND/OR BUILDING CODES IN SUCH SPACE OR IN THE PREMISES AS A WHOLE, AS APPLICABLE. In addition, if the party or event will not end by 10:00 p.m., or if it potentially will disturb other commercial tenants or residential residents (e.g., loud music or over 100 people), Subtenant will obtain Sublessor preapproval and will coordinate with the Management Agent. In any such case, advance notice of at least three (3) weeks will be given to Sublessor by Subtenant with any additional points to be discussed at that time.

- Subtenant must provide security personnel.
- Subtenant may not charge for alcohol unless a DRAM SHOP insurance policy naming Sublessor as an additional insured has been obtained by Subtenant and evidence of such insurance has been delivered to Sublessor.
- Subtenant assumes all responsibility for the Building during the gathering hours.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.]

These Rules and Regulations may be added to or amended from time-to-time by Sublessor for the benefit of all tenants and residents, and such amendments shall become effective immediately upon notification. Subtenant has read and agrees to abide by all of the Rules and Regulations set forth herein and acknowledges that violation of any provision herein, or any subsequently added or amended provision, shall constitute a breach of the Lease.

SUBLESSOR:

ARTSPACE PROJECTS, INC.,
a Minnesota nonprofit corporation

By: _____
Name:
Title:

SUBTENANT:

[TOWN OF RIDGWAY, COLORADO]

By: _____
Name:
Title:

AGENDA ITEM #15



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 3, 2021
Agenda Topic: **Review and action on Addendum to Lease Agreement with Ridgway Community Garden**

ACTION BEFORE COUNCIL:

Council is asked to review and take action on an Addendum to Lease Agreement with the Ridgway Community Garden, which is appended to this memo as Attachment 1.

SUMMARY:

The Town entered into a Lease Agreement with the Southwest Institute for Resilience, an incorporated 501(c)(3) Non-Profit Corporation, doing business as the Ridgway Community Garden, on February 17, 2016. That Lease Agreement is appended to this memo as Attachment 2. Pursuant to Section 2 of the Agreement, the lease term was extended on March 5, 2019 to February 17, 2022 by way of a document titled "Extension of Lease Agreement: Ridgway Community Garden", which is appended to this memo as Attachment 3.

At the November 11, 2020 Council meeting, Vicki Hawse expressed a desire to place an apiary at the Ridgway Community Garden. After discussion, the majority of Council was supportive of the idea and asked Vicki to reach out to the Ridgway Community Garden to understand their appetite for having an apiary housed somewhere on the area they currently lease from the Town. It appears that the Ridgway Community Garden is generally supportive of the idea. In order for the Ridgway Community Apiary to become a reality, the next step is for the Town to amend the Lease Agreement with the Ridgway Community Garden to allow for sublease.

PROPOSED MOTION:

"I move to approve the Addendum to Lease Agreement with the Ridgway Community Garden."

ATTACHMENTS:

Attachment 1 – Addendum to Lease Agreement with the Ridgway Community Garden

Attachment 2 – Lease Agreement dated February 17, 2016

Attachment 3 – Extension of Lease Agreement: Ridgway Community Garden dated March 5, 2019

ADDENDUM TO LEASE AGREEMENT

This Addendum To Lease Agreement (the "Agreement") is made and entered into on February ____, 2021 by and between the Town of Ridgway ("Landlord") and Southwest Institute for Resilience, an incorporated 501(c)(3) Non-Profit Corporation, doing business as the Ridgway Community Garden ("Tenant"). Landlord and Tenant shall hereinafter collectively be referred to as the "parties" and generically as a "party."

1. This Agreement amends and modifies that certain Lease Agreement dated February 17, 2016 made and entered into by the parties hereto as follows:
 - a. Section 12 is amended to read as follows: "Tenant may neither sublease nor assign its interest hereunder, except they may sublease a portion of the area they currently lease to the Ridgway Community Apiary, or other agency approved by the Landlord. This Lease shall be binding upon the successors and assigns of the Parties hereto. It will be binding on any sub-Tenants."
2. All other terms, conditions and provisions of the Lease Agreement remain in full force and effect as if restated herein verbatim.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

TOWN OF RIDGWAY

SOUTHWEST INSTITUTE FOR RESILIENCE

FEIN 84-1550594; CO Identification No. 20001121265

By: _____
John Clark, Mayor

By: _____
Kris Holstrom, Executive Director

By: _____
Kurt Jacobsen, Ridgway Community Garden

LEASE AGREEMENT

THIS LEASE is entered into effective the 17th day of February, 2016 between the Southwest Institute for Resilience, an incorporated (501(c)(3)) Non-Profit Corporation, doing business as the Ridgway Community Garden ("Tenant") and the TOWN OF RIDGWAY, ("Landlord"), as follows:

WHEREAS, the Landlord owns property referred to as the "Green Street Park" as dedicated to the Town in the Agreement and Declaration of Covenants recorded in the Ouray County Records at Reception Number 180716 on April 17, 2003 and as shown on the Plat of Boundary Agreement and Dedication recorded at Reception Number 187041 on January 21, 2005, and

WHEREAS, the Parties mutually desire to enter into an agreement to lease a portion of the Green Street Park to the Tenant for a Community Garden, and

WHEREAS, the Landlord desires to cooperate with the Tenant to establish and operate a community garden for recreational, food production and other benefits to the inhabitants of Ridgway and Ouray County, and

WHEREAS, the Landlord intends to cooperate with Tenant, albeit without any legal obligation to do so, in the following respects;

- Development of a master plan and management plan for the garden;
- Provision of either treated, untreated or ditch water to the garden;
- Coordination on utility extensions and access to existing utilities, including cost estimating;
- Seeking grants to offset garden costs.

NOW, THEREFORE, the Parties hereby enter into the following Lease:

1. Description of Premises:

The Landlord hereby agrees to lease to the Tenant, subject to the terms and conditions of this Agreement, that portion of Green Street Park, which is shown on Exhibit A hereto, which shall henceforth be referred to in this Agreement as "the premises". Tenant accepts the premises in its existing condition. Landlord makes no representations or warranty about the suitability of the premises for a garden, or the Landlord's title or authority to enter into this lease.

2. Term of Lease:

The term of this Lease shall be for a period of 3 years from the effective date first above written, subject to renewal or termination of the Lease in accordance with the provisions of this Lease.

3. Consideration:

In consideration for this lease Tenant will establish and operate a community garden on the premises in accordance with the terms and conditions of this lease and develop a Master Plan and

Management Plan mutually agreeable to the Landlord and Tenant.

4. Miscellaneous Provisions:

A. Tenant agrees also to maintain all improvements upon the premises in good repair and Landlord shall have no monetary obligation whatsoever to maintain the premises or to maintain any access there to, all of which shall be maintained solely at Tenant's expense. Tenant shall maintain the premises reasonably free from unsightly debris or accumulations of trash, and the like, and in compliance with the standards set by Landlord of Ridgway junk, weed, litter and nuisance ordinances.

B. The premises shall be used only as a community garden. Tenant's use of the premises shall conform to all applicable laws, ordinances, and regulations of the United States of America, the State of Colorado, the County of Ouray, and Town of Ridgway.

C. The Parties state and agree that any improvements currently located on the premises have always been, and shall remain, the sole property of the Landlord throughout the term of this Lease.

D. No additional improvements shall be constructed on the premises without the express written permission of Landlord.

5. Termination of Lease:

This Lease may be terminated upon any of the following events:

A. Dissolution, insolvency or bankruptcy of the Tenant or Tenant's vacancy of the premises;

B. The foreclosure and sale of the leasehold interest resulting from any lien that is not satisfied and paid by Tenant;

C. A material breach of any of the obligations of Tenant under this Lease, including the Master Plan or Management Plan, unless the said breach is cured within the time provided in Paragraph 5(F) below;

D. Any unauthorized use of the premises, if the said breach is not cured within the time provided in Paragraph 5(F) below;

E. In the event the Landlord wishes to terminate this Lease pursuant to the provisions of Paragraphs 5(C), (D) or (E), written notice of the intent to terminate shall first be given to the Tenant by certified mail, return receipt requested, at the address of the Tenant stated below, or at any other subsequent address given to the Landlord in writing. Said notice shall provide a clear statement of the reasons for termination.

The Tenant shall then have a period of 30 days from the date or receipt of said notice within which to cure the default which forms the basis of the notice of termination, and in the event such cure is timely made by Tenant, the Lease shall remain in full force and effect.

The Landlord shall have the right, at its option, to either temporarily suspend or permanently

terminate this Lease Agreement, if there is a dispute as to the legal authority of either Landlord or Tenant or the persons signing the Lease Agreement to enter into this Lease Agreement. The Landlord shall not be obligated for any performance of the provisions of this Lease Agreement after the Landlord has suspended or terminated this Lease Agreement as provided in this paragraph.

6. Disclaimer of Landlord of any Liability for Liens:

Nothing in the terms of this Lease shall be construed as the Landlord authorizing the Tenant to make any improvements on the real premises that would subject the property to a mechanic's lien. To the extent that the Tenant may make improvements upon the premises and fail to pay for the same, such that a mechanic's lien is placed upon the premises, said liens shall attach only to the leasehold interest of Tenant to the premises, and shall subject to all the terms of this Lease (including the provisions for termination of the Lease upon the filing of a mechanic's lien). Tenant shall not create or allow any liens upon said property and liens shall attach only to Tenant's leasehold interest.

7. Access to and use of the Property:

A. The Landlord shall have the right to enter upon or across the leased premises or to cross such premises at any and all times and may authorize any of its officers, agents or employees to do so also.

B. The Landlord shall also have the right to inspect the inside of any of the buildings or improvements on the premises at any reasonable time by making prior arrangements with Tenant.

C. Landlord reserves easements for existing Landlord owned and public utility facilities on the Leased premises. Landlord shall have the right to install additional utility facilities on the leased premises or authorize other utility providers to do so, provided that such new facilities will not unreasonably interfere with Tenant's use of the premises.

8. Taxes and Utilities:

A. Landlord is tax exempt. In the event any ad valorem, real or personal property taxes or payments in lieu thereof, or any other taxes, are due or assessed upon the leased property or any improvements thereon, the payment of such taxes shall be the sole obligation of the Tenant. In the event the Landlord receives any tax notices, it shall deliver them to the Tenant for payment as due.

B. Tenant shall promptly pay as due all bills for utilities to serve the premises except the Landlord will not bill the Tenant for water which it may elect to supply at Landlord's option.

9. Insurance and Indemnification:

9.1 Indemnification:

The Tenant agrees to indemnify and hold harmless Landlord, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness,

disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Lease, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Tenant, any contractor of the Tenant, or any officer, employee, representative, or agent of the Tenant or of any employee or volunteer of the Tenant, or which arise out of any workers' compensation claim of any employee of the Tenant or of any employee of any contractor of the Tenant. The Tenant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Tenant, or at the option of Landlord, agrees to pay Landlord or reimburse Landlord for the defense costs incurred by Landlord in connection with, any such liability, claims, or demands. The TENANT also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the Landlord, its officers, or its employees, the Landlord shall reimburse the Tenant for the portion of the judgment attributable to such act, omission, or other fault of the Landlord, its officers, or employees. The Tenant waives all claims for any damages against the Landlord and its officers and employees, which arise under this lease.

9.2. Insurance:

A. The Tenant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Tenant pursuant to Paragraph 9.1. Such insurance shall be in addition to any other insurance requirements imposed by this Lease Agreement or by law. The Tenant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Paragraph 9.1 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

B. Tenant shall procure and maintain, and shall cause any contractor of the Tenant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Landlord. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Tenant pursuant to Paragraph 9.1. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work for Tenant.

2. Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision,

C. The policy required by paragraphs (B)(2) above shall be endorsed to include Landlord and Landlord's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by Landlord, its officers, or its employees, or carried by or provided through any insurance pool of Landlord, shall be excess and not contributory insurance to that provided by Tenant. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Tenant shall be solely responsible for any deductible losses under any policy required above,

D. A certificate of insurance shall be completed by the Tenant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Landlord prior to commencement of the Lease. The certificate shall identify this Lease and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to Landlord. The completed certificate of insurance shall be sent to Landlord.

E. Failure on the part of the Tenant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Landlord may immediately terminate this contract, or at its discretion Landlord may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant to Landlord upon demand, or Landlord may offset the cost of the premiums against any monies due to Tenant from Landlord.

F. Landlord reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

G. The parties hereto understand and agree that Landlord is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado, Governmental Immunity Act, {2440401 et seq., 10 C.R.S., as from time to time amended, or otherwise available to Landlord, its officers, or its employees.

H. Property Insurance.

Tenant shall have the premises including all structures and improvements on the premises covered by Tenant's fire and casualty insurance policies including Landlord as an additional insured therein and provide Landlord with a certificate of such insurance. Tenant shall be responsible for all losses to Tenant's property including losses not covered due to said policy's deductible, or for losses outside the scope of such policy's coverage and hereby waives any claim against Landlord for such losses.

10. Waiver:

No waiver of any breach of all or one or more of the conditions and covenants of this Lease by the Tenant or Landlord shall be deemed and constitute a waiver of any succeeding or other breach under this Lease.

11. All notices required to be given to the Landlord or the Tenant herein shall be mailed to them to the following addresses:

Town of Ridgway

P.O. Box 10

Ridgway, CO 81432

Southwest Institute for Resilience

PO Box 1541

Telluride, CO 81435

Ridgway Community Garden

PO Box 635

Ridgway, CO 81432

Notice shall be effective when deposited in the U.S. Mail, certified return receipt requested, addressed to the above address or any address notice of which address change has been given in writing to the other party,

12. Tenant may neither sublease nor assign its interest hereunder. This Lease shall be binding upon the successors and assigns of the Parties hereto. It will be binding on any sub-lessees.

13. Nothing herein shall be construed to create a financial obligation of the Landlord beyond any current fiscal year. Landlord may not make any expenditures or provide water under this lease unless an annual appropriation therefore has been adopted by the Ridgway Town Council.

14. This lease may be extended for additional terms upon the written agreement of the parties. Tenant shall submit to Landlord by October 31, an annual report describing operations and other matters for the garden season containing such information as may be outlined in the Management Plan. Landlord shall review such report and other information to determine if the Community Garden is meeting goals and objectives of the Landlord, in making its decision as to renewal.

15. Tenant shall obtain a waiver and release from each garden member or guest who elects to participate in gardening and related activities on the Premises on a form approved by Landlord. Said waiver and release shall include the Landlord and Landlord's officers, employees, and agents as entities and persons against whom claims by the participating members of the public are being waived and released.

16. Improvements, alterations, and installations of a permanent nature on the Premises shall not be removed by Tenant at the termination of this Lease Agreement. Equipment and property placed by Tenant at its expense in, on, or about the Premises, including fixtures temporarily affixed to the Premises but which may be removed without damage, shall remain the property of TENANT, and TENANT shall have the right to remove all such equipment, property, and temporary fixtures and shall so promptly remove at the termination of this Lease.

17. Tenant shall enforce weed management and chemical application protocols outlined in Ridgway Comprehensive Plan: Integrated Weed Management and Native Plant Restoration 2011.

18. Any water conservation restrictions or requirements imposed by the Landlord shall be strictly applied and enforced by Tenant on the Premises.

19. NO THIRD PARTY BENEFICIARIES: It is expressly understood and agreed that enforcement of the terms and conditions of this Lease Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Landlord and TENANT, and nothing contained in this Lease Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Landlord and TENANT that any person other than the Landlord or TENANT receiving services or benefits under this Lease Agreement shall be deemed to be an incidental beneficiary only.

20. AMENDMENTS: No amendments to this Lease Agreement may be made except in writing, agreed to by all parties to this Lease Agreement, and approved and executed in the same manner as this Lease Agreement.

21. VENUE AND GOVERNING LAW: This Lease Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado. Venue for any and all legal actions arising hereunder shall lie in Ouray County, Colorado.

22. INTEGRATION: This Lease Agreement is intended as the complete integration of all understandings between the Landlord and Tenant. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in this Lease Agreement in writing. Any oral representation by any officer or employee of the Landlord at variance with terms and conditions of this Lease Agreement or any written amendment to this Lease Agreement shall not have any force or effect nor bind the Landlord.

23. SEVERABILITY: The Landlord and Tenant agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law of the State of Colorado or the federal government, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the liability of the Landlord, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

24. CLAIMS: In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against Tenant related in any way to this Lease Agreement, Tenant shall give written notice thereof to the Landlord within five (5) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action

received by Tenant. Such written notice shall be delivered either personally or by mail to the address of the Landlord specified in the notice provision of this Lease Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the day and year first above written.

LANDLORD: TOWN OF RIDGWAY

BY 
Mayor

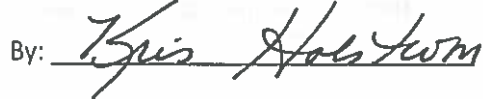
ATTEST:



Town Clerk

TENANT: SOUTHWEST INSTITUTE FOR RESILIENCE

FEIN 84-1550594; CO Identification No. 20001121265

By: 

Kris Holstrom

Title: Executive Director

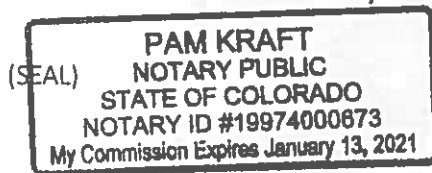
By: 

Chris Lance, Ridgway Community Garden

STATE OF COLORADO)
) ss.
 COUNTY OF)

2018 - 2016 The foregoing instrument was acknowledged before me this 3rd day of July,
 by Kris Holstrom, Executive Director of the Southwest Institute for Resilience and Chris Lance
 of Ridgway Community Garden

Witness my hand and official seal.
 My commission expires: 1/13/2021

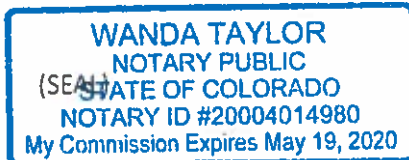


Notary Pam Kraft
 Address 750 Sabeta
Ridgway

STATE OF COLORADO)
) ss.
 COUNTY OF Ouray)

2018 - 2016 The foregoing instrument was acknowledged before me this 3rd day of July,
 by John C. Clark, Mayor, and Pam Kraft, Clerk, of the Town of Ridgway, Colorado.

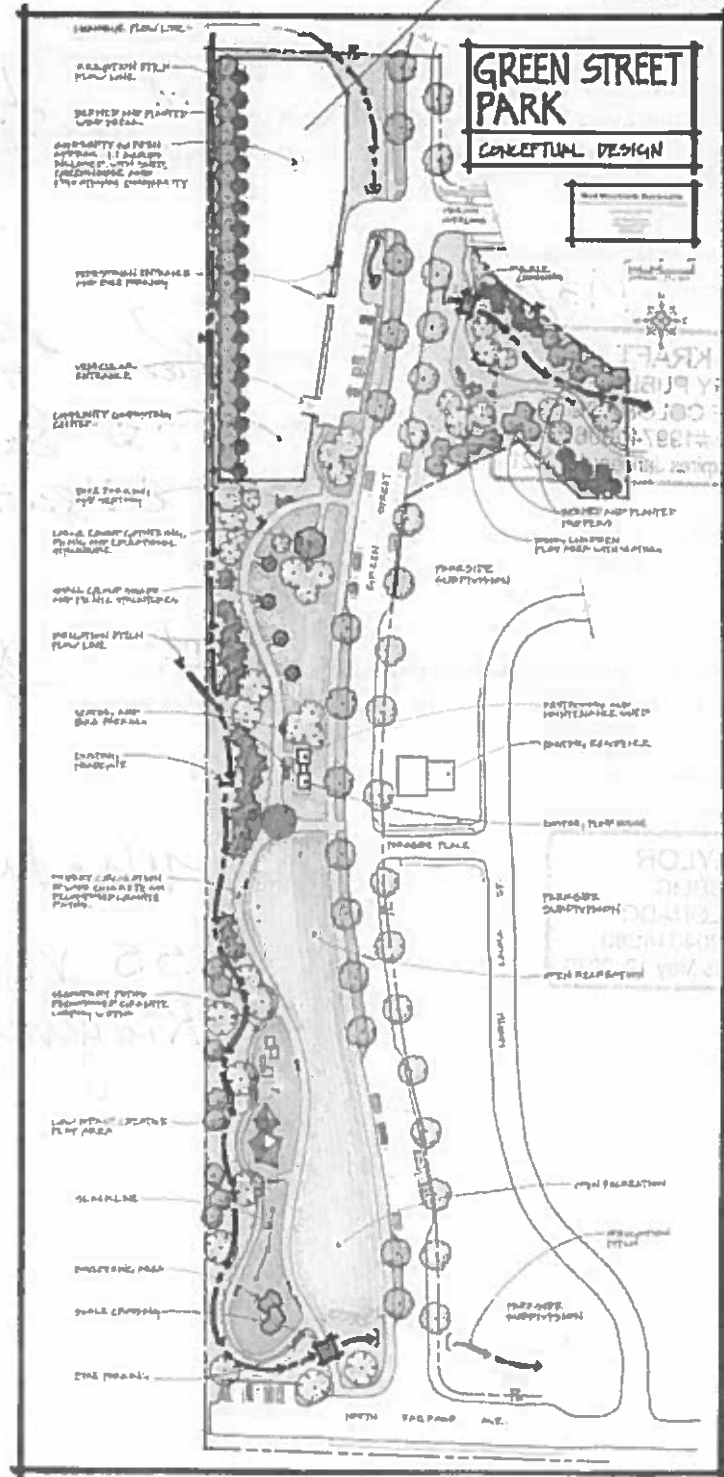
Witness my hand and official seal.
 My commission expires:



Notary Wanda Taylor
 Address 55 Valley View Rd
Ridgway, CO 81432

Exhibit A

Community
Garden Lease
Area



ATTACHMENT 3

EXTENSION OF LEASE AGREEMENT: Ridgway Community Garden

THIS LEASE AGREEMENT EXTENSION is entered into effective the 5th day of March, 2019 between the Southwest Institute for Resilience, an incorporated (501(c)(3) Non-Profit Corporation, doing business as the Ridgway Community Garden ("Tenant") and the TOWN OF RIDGWAY, ("Landlord"), as follows:

WHEREAS, the Landlord owns property referred to as the "Green Street Park" as dedicated to the Town in the Agreement and Declaration of Covenants recorded in the Ouray County Records at Reception Number 180716 on April 17, 2003 and as shown on the Plat of Boundary Agreement and Dedication recorded at Reception Number 187041 on January 21, 2005, and

WHEREAS, the Parties initially entered into a Lease Agreement on February 17, 2016 for the use of a portion of the Town's Green Street Park for the purpose of establishing and operating a community garden and

WHEREAS, the Parties mutually desire to extend this Lease Agreement pursuant to Section 14 of the Lease Agreement, and

WHEREAS, the Town Council, as Landlord for the property, approved the extension of the Lease Agreement on February 13, 2019 pursuant to Section 14 of the Agreement, which provides for extension of the Lease Agreement for additional terms, and

NOW, THEREFORE, the Parties hereby agree to a 3-year extension of the Lease Agreement to February 17, 2022 with all other terms and requirements of the February 17, 2016 Lease Agreement in full force and effect.

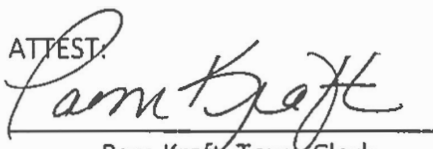
IN WITNESS WHEREOF, the Parties have entered into this Lease as of the day and year first above written.

LANDLORD: TOWN OF RIDGWAY

BY


John Clark, Mayor

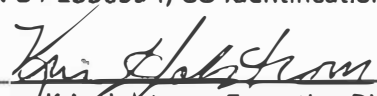
ATTEST:


Pam Kraft, Town Clerk

TENANT: SOUTHWEST INSTITUTE FOR RESILIENCE

FEIN 84-1550594; CO Identification No. 20001121265

By:


Kris Holstrom, Executive Director

By


Kurt Jacobsen, Ridgway Community Garden

STATE OF COLORADO)
) ss.
COUNTY OF)

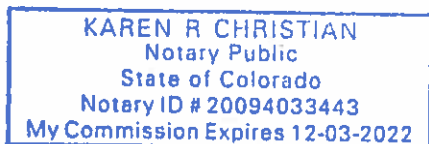
The foregoing instrument was acknowledged before me this 5th day of March, 2019, by Kris Holstrom, Executive Director of the Southwest Institute for Resilience and Kurt Jacobsen of Ridgway Community Garden

Witness my hand and official seal.
My commission expires:

Notary Karen R. Christian
PO Box 523
Ridgway, CO. 81432

Address

(SEAL)



STATE OF COLORADO)
) ss.
COUNTY OF Ouray)

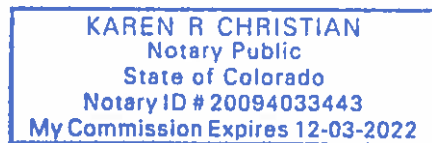
The foregoing instrument was acknowledged before me this 14th day of February, 2019, by John C. Clark, Mayor, and Pam Kraft, Clerk, of the Town of Ridgway, Colorado.

Witness my hand and official seal.
My commission expires: 12-3-22

Notary Karen R. Christian
PO Box 523
Ridgway, Co. 81432

Address

(SEAL)



AGENDA ITEM #16



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 4, 2021
Agenda Topic: Review and action on letter of support for Ridgway Community Apiary

SUMMARY:

A letter has been requested from Council to the Southwest Institute for Resilience stating that the Town supports the creation of the Ridgway Community Apiary at the Ridgway Community Garden. A letter of support has been drafted and is appended to this memo for Council's review and consideration.

PROPOSED MOTION:

"I move to authorize Mayor Clark to sign the letter of support for the Ridgway Community Apiary."

ATTACHMENT:

Support Letter



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

February 10, 2021

Kris Holstrom
Southwest Institute for Resilience
Telluride, CO 81435

Dear Ms. Holstrom,

This purpose of this letter is to express our support for the creation of the Ridgway Community Apiary at the Ridgway Community Garden. As apiaries continue to pop up all over the country in public spaces, we feel a community apiary here in Ridgway would have a positive impact on bee health as well as the agricultural community.

Thank you for your consideration and please feel welcome to reach out to Preston Neill, Town Manager, at pneill@town.ridgway.co.us if you have any questions or concerns.

Sincerely,

John I. Clark
Mayor
On behalf of the Ridgway Town Council

AGENDA ITEM #17

Robert Austin
555 Sabeta Drive
Ridgway, CO 81432

970.689.8358
robbaustin@gmail.com

February 1, 2021

Town Council
Ridgway, Colorado 81432

Dear Council:

As the Town moves forward with the Space To Create project, I would like to remind the Town Council, and update the new Council members, of the Town's intent 2 years ago as we were planning this project, of our desire to recognize former Town Manager Jen Coates.

If I remember correctly, we discussed naming the proposed bike rack in her honor, naming the Community Space in S2C as the Jen Coates Room or some other appropriate space as recognition of the effort and achievement Jen put into securing this major project for the town of Ridgway.

If you have the opportunity to discuss this in the future, I encourage you to give thoughtful consideration to this approach and the importance of recognizing her accomplishments on this and all Town projects. This request in no way takes away from the excellent job Preston has done in the year since he came to Ridgway as the current Town Manager.

Thank you very much for your consideration.

Sincerely,

Robert Austin

AGENDA ITEM #18



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 3, 2021
Agenda Topic: **Review and action on Intergovernmental Agreement between the Town of Ridgway, City of Ouray and Ouray County for Shared Victim Advocate Services**

SUMMARY:

Council is asked to review and take action on a revised Intergovernmental Agreement (IGA) between the Town of Ridgway, the City of Ouray and Ouray County for the hiring and use of an employee of the Town of Ridgway to provide victim advocacy services to the three jurisdictions in Ouray County. The attached IGA for calendar year 2021 remains the same as the IGA for calendar year 2020, except that the term has been updated to reflect the current year and each jurisdiction's financial contribution amount is lower than last year based on the additional grant funding we received.

PROPOSED MOTION:

"I move to approve the IGA between the Town of Ridgway, the City of Ouray, and Ouray County for Shared Victim Advocate Services."

ATTACHMENT:

IGA for Shared Victim Advocate Services

INTERGOVERNMENTAL AGREEMENT
TOWN OF RIDGWAY, CITY OF OURAY, and OURAY COUNTY
SHARED VICTIM ADVOCATE(S) SERVICES

THIS AGREEMENT is entered into effective ____ day of _____, 2021, by and between: the Town of Ridgway, Colorado (Ridgway); and the City of Ouray, Colorado (Ouray), both of which are home rule municipalities within Ouray County, Colorado and Ouray County, Colorado (County), a statutory county in the State of Colorado, (collectively the Parties or individually the Party).

Purpose of Agreement

- A. Section 29-20-101 C.R.S., et seq. enables the Parties to enter into Intergovernmental Agreements (IGA) and authorizes each of the Parties to perform the functions described herein, as provided in Section 29-20-105 C.R.S.; and
- B. Intergovernmental agreements to provide functions or services, including the sharing of costs of such services or functions, by political subdivisions of the State of Colorado, are specifically authorized by C.R.S. 29-1-203 and encouraged in order that the inhabitants of such political subdivisions may thereby secure high quality governmental services; and
- C. Ridgway, Ouray and Ouray County each recognize the need to employ an individual to act as Victim Advocate(s), to perform victim advocacy services for all of Ouray County; and
- D. The Parties recognize the fiscal and administrative benefits of utilizing one person to conduct victim advocacy services; and
- E. The Parties wish to memorialize their understandings regarding their agreement to share the financial and administrative responsibilities and services through employing the Victim Advocate(s); and
- F. The Parties entered into similar Intergovernmental Agreements in 2018, 2019 and 2020 for the same purpose.

In consideration of the covenants and conditions contained herein, the Parties agree as follows.

1. **Designation of the Victim Advocate(s).** The Parties must agree to the designation of any particular person to be employed as the shared the Victim Advocate(s).
2. **Financial Responsibilities.** The financial responsibilities for the employment of the shared Victim Advocate(s) shall be as follows:

- a. The shared Victim Advocate(s) shall be an employee of the Town of Ridgway and not the City of Ouray or Ouray County, and shall be compensated by the Town of Ridgway partially through a grant provided by the Victim Assistance Law Enforcement Board and a grant provided by the Colorado Department of Public Safety, Division of Criminal Justice, for such services. The Parties recognize and understand that for Fiscal Year 2021 the Victim Assistance Law Enforcement Board awarded \$12,000 and the Colorado Department of Public Safety, Division of Criminal Justice, awarded \$27,884 for program services in Ouray County, and the cost of the program is estimated at \$47,166.76, creating a funding gap of \$7,282.76.
 - b. The Town shall be responsible for all employment related expenses mandated by state and federal law, including any required worker's compensation and unemployment insurance, any federal or state taxes or required withholdings, and any other employer expenses related to the Victim Advocates employment with the Town.
 - c. The Parties agree to work together to budget the gap funding at \$2,427.59 from each Party and/or identify supplemental sources in order to fund the \$7,282.76 gap for Victim Advocate services in 2021, pursuant to subsection e below.
 - d. The shared Victim Advocate(s), as a part time temporary employee of the Town of Ridgway, shall be compensated for any time in excess of forty (40) hours per week as provided in the Town of Ridgway's Personnel Regulations.
 - e. The shared Victim Advocate(s) shall be subject to the Town of Ridgway's Personnel Regulations, as may be amended, except the Victim Advocate(s) shall have no benefits with the Town of Ridgway, City of Ouray or Ouray County.
 - f. The Town of Ridgway has been awarded grant funding for 84.56% of the cost of the Victim Advocate(s) in 2021. In the event the Town of Ridgway anticipates expenses may exceed the grant award, the Town shall consult with the City and/or County to consider any additional expenditures. The City and/ or County shall only be responsible for an equal share after the Town has consulted with the City and/or County, and the financially impacted Party or Parties have agreed on the expenses to be reimbursed to the Town.
 - g. In the event of a worker's compensation claim related to work performed within the City or the County, the Town's insurance shall be responsible for the claim and the City or County shall cover the Town's reasonable expenses for that claim in the respective jurisdiction, upon notice and approval of the same.
3. **Accountability.** The accountability requirements of the shared Victim Advocate(s) to the Parties shall be as follows:

- a. The Victim Advocate(s) shall provide a monthly written report to all Parties.
- b. The Victim Advocate(s) shall meet with the Ridgway Town Marshal, Ouray Police Chief, or Ouray County Sheriff upon request by any of the Parties.
- c. The Victim Advocate(s) shall submit comprehensive daily time sheets to Ridgway by 8:00 a.m. Monday morning, following the end of each bi-weekly pay period, or whatever the policy of the Town of Ridgway may be, if amended.
- d. To protect the Parties from false claims, the Victim Advocate(s) shall keep a daily log of services conducted, on a form approved by the Parties (Exhibit A).
- e. Notwithstanding the fact that the Victim Advocate(s) is an employee of the Town of Ridgway, the Town of Ridgway shall not be responsible for supervision and oversight of the Victim Advocate(s) in performing his or her responsibilities for the City of Ouray or Ouray County as further defined in ¶ 6 herein, and within the Victim Advocate(s) Contract of Employment. Such supervision and oversight shall be the responsibility of the Ridgway Marshal, Ouray City Police Chief or Ouray County Sheriff, for services rendered within the respective jurisdiction.

4. **Performance Issues.** Any performance issues shall be handled as follows:

- a. For purposes of this Agreement, Supervising Parties are assigned as follows:

<u>Jurisdiction:</u>	<u>Supervising Party:</u>
Town of Ridgway	Town Marshal
City of Ouray	Police Chief
Ouray County	Sheriff

- b. Minor issues, those issues warranting nothing more than an oral or written reprimand, should be brought to the attention of the Victim Advocate(s) first, by the Supervising Party (Ridgway Marshal, Ouray Police Chief, Ouray County Sheriff) in the jurisdiction where the minor issue occurred. In the event said minor issues cannot be resolved, the Ridgway Town Marshal shall be contacted. Issues deemed to be minor issues according to either of the Parties shall be addressed as soon as is practical, by the designated supervisor for the Victim Advocate(s) within each municipality or County.
- c. Issues deemed to be major issues, those issues warranting more than an oral or written reprimand, by either municipality or county, and possibly requiring disciplinary action shall be subject to the Town of Ridgway's Personnel Regulations. The Supervising Party (Ridgway Town Marshal, Ouray Police Chief, Ouray County Sheriff) shall submit any information on such issues, in writing, to the Ridgway Town Marshal (if outside of the Ridgway jurisdiction), and the Ridgway Town Marshal

shall contact the Primary Administrator (Ridgway Town Manager, Ouray City Administrator, and /or Ouray County Administrator) of the participating jurisdiction for review.

5. **Fiscal Reporting.** Fiscal reporting responsibilities of the shared Victim Advocate(s) shall be as follows:
 - a. None.
6. **Job Responsibilities and Oversight.** Job responsibilities and oversight for the shared Victim Advocate(s) shall be as follows:
 - a. Pursuant to grants awarded to the Town of Ridgway by the Victim Assistance Law Enforcement Board and the Colorado Department of Public Safety, Division of Criminal Justice, Victim Advocate(s) shall provide victim advocate services for the months of January through December 2021 for all Parties. Victim Advocate(s) shall provide 24/7 on-call coverage during the 2021 calendar year. The duties shall be rendered in Ouray County, Colorado, or at such other place or places and at such times as the needs of the Parties may from time-to-time dictate.
 - b. On behalf of all Parties, all applicable duties as assigned by the Supervising Party shall be timely performed.
 - c. The Supervising Parties shall be responsible for victim advocacy solely within their own boundaries and jurisdiction. Nothing contained in this Agreement shall place a burden or responsibility on any Party to provide services within the jurisdiction or boundaries of any other Party.
7. **Insurance.** The Parties shall, without waiving any governmental immunity protections to which they and their officials or employees are entitled under C.R.S. 24-10-101, et seq., to obtain adequate insurance to cover the liability and other risks to which they may be exposed as a result of the services to be provided pursuant to this agreement, if either of the Parties does not already have such insurance, and to maintain such insurance throughout the term of this agreement.
8. **Term-Withdrawal.** The term and withdrawal provisions applicable to this agreement are as follows:
 - a. This Agreement shall be for a period of one (1) year commencing January 1, 2021 and ending December 31, 2021.
 - b. Subject to annual appropriation by each municipality and county to meet its obligations herein, this agreement shall be automatically renewed on an annual

basis without the need to execute a new agreement unless amendments are required by either of the Parties.

- c. Either municipality may withdraw from participation in this agreement at any time by providing written notice to the other municipality, at least thirty (30) days prior to the desired date of withdrawal.
9. **Amendments.** This agreement shall not be modified or amended in any manner except by written instrument executed by the Parties.
10. **Waiver.** The waiver of any breach of any of the provisions of this agreement, by either Party, shall not constitute a continuing waiver of any subsequent breach by that Party, either of the same, or of another provision of this agreement.
11. **Severability.** Invalidation of any of the provisions of this agreement, or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof, in any given circumstance, shall not affect the validity of the remainder of this Agreement.
12. **No Third-Party Beneficiaries.** Nothing expressed or implied in this agreement is intended or shall be construed to confer upon, or to give any person other than the Parties hereto, any right, remedy or claim, under or by reason of this agreement.
13. **Entire Agreement.** This agreement contains the entire and only agreement between the Parties, regarding the employment of the shared Victim Advocate(s) and no oral statements or representations regarding this matter that are not contained in this agreement shall be of any force or effect between the Parties.
14. **Governing Law.** This agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes arising out of this agreement and venue shall be in Ouray County, Colorado.
15. **Dispute Resolution.** In the event a disagreement or dispute arises between the Parties, the matter shall be submitted to mediation. The mediation shall be conducted by one mediator selected by the Parties who will share the costs equally.
16. **Assignment.** No Party shall assign any responsibilities nor delegate any duties arising under this agreement without the prior written consent of all the Parties.

IN WITNESS WHEREOF, the Parties have executed this agreement in duplicate effective the date first above written.

TOWN OF RIDGWAY

John Clark, Mayor

Attest:

Pam Kraft, Town Clerk

CITY OF OURAY

Greg Nelson, Mayor

Attest:

Melissa Drake, City Clerk

OURAY COUNTY

Chair, Board of County Commissioners

Attest:

Hannah Hollenbeck, Deputy Clerk

AGENDA ITEM #19



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 4, 2021
Agenda Topic: **Discussion regarding water rates**

SUMMARY:

In 2018 and 2019, Council held a number of work sessions and discussions on water rates in a concerted effort to ensure fiscal solvency in the Water Enterprise Fund. A desire was consistently expressed by Council to balance costs across all water system users in an equitable way, considering the needs of commercial and residential customers. The purpose of this memo is to recap the discussions and actions of the Town Council during that time period in order to inform the discussion scheduled for Wednesday's Council meeting.

BACKGROUND:

Ordinance No. 2018-06 (Exhibit 1), which was adopted in October of 2018 and went into effect in December of 2018, updated water service rates and water base allocations. Not too soon before that ordinance was adopted, Council adopted Emergency Ordinance No. 2018-05 (Exhibit 2), which created water wasting regulations associated with mandatory water restrictions during times of limited water supply.

Following robust community conversation and numerous sentiments expressed to Council members and Town staff about water service rates, in June of 2019 Council adopted Ordinance No. 2019-04 (Exhibit 3), which temporarily amended water rates. The temporary rate adjustment was in place for the months of June, July, August, September and October 2019.

Prior to the expiration of the temporary rate adjustment, Council met several times during the fall of 2019 to discuss and provide further direction on water rates. Council considered a series of rate scenarios shown below:

SCENARIO 1 – *This is the rate schedule adopted in October 2018 via Ordinance No. 2018-06.*

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 6,000	7,000-10,000	10,000-15,000	>15,000	Base gallons: 4,000	4,000-10,000	10,000-15,000	>15,000	
\$42.00	\$10.50	\$15.00	\$20.00	\$42.00	\$10.50	\$15.00	\$20.00	\$638,949.00

SCENARIO 2

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 4,000	4,000-10,000	10,000-18,000	>18,000	Base gallons: 4,000	4,000-17,000	17,000-38,000	>38,000	
\$42.00	\$10.50	\$12.00	\$14.00	\$42.00	\$10.50	\$12.00	\$14.00	\$599,094.00

SCENARIO 3

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
-------------	---------	--	--	-----------------	---------	--	--	--------------------



Base gallons: 4,000	4,000- 10,000	10,000- 18,000	>18,000	Base gallons: 4,000	4,000- 17,000	17,000- 38,000	>38,000	
\$42.00	\$10.50	\$13.00	\$15.00	\$42.00	\$10.50	\$13.00	\$15.00	\$609,335.00

SCENARIO 4

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 4,000	4,000- 10,000	10,000- 18,000	>18,000	Base gallons: 4,000	4,000- 17,000	17,000- 38,000	>38,000	
\$42.00	\$10.50	\$14.00	\$16.00	\$42.00	\$10.50	\$14.00	\$16.00	\$619,575.00

SCENARIO 5

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 4,000	4,000- 10,000	10,000- 18,000	>18,000	Base gallons: 4,000	4,000- 17,000	17,000- 38,000	>38,000	
\$62.00	\$10.50	\$15.00	\$20.00	\$62.00	\$10.50	\$15.00	\$20.00	\$780,242.00

SCENARIO 6

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 4,000	4,000- 10,000	10,000- 18,000	>18,000	Base gallons: 4,000	4,000- 17,000	17,000- 38,000	>38,000	
\$62.00	\$11.00	\$13.00	\$15.00	\$62.00	\$11.00	\$13.00	\$15.00	\$737,613.00

SCENARIO 7

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 4,000	4,000- 10,000	10,000- 18,000	>18,000	Base gallons: 4,000	4,000- 17,000	17,000- 38,000	>38,000	
\$47.00	\$10.50	\$13.00	\$15.00	\$47.00	\$10.50	\$13.00	\$15.00	\$651,011.00

SCENARIO 8 - Flat \$10.50 /1000. No conservation rate. Vacancy rate \$35.50. Schools \$35.50 base/ \$10.50.

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 0	0-10,000	10,000- 15,000	>15,000	Base gallons: 0	0-10,000	10,000- 15,000	>15,000	
\$35.50	\$10.50	\$10.50	\$10.50	\$35.50	\$10.50	\$10.50	\$10.50	\$722,597.00

SCENARIO 9 - Keeps old allocations, rate increase by 15%. Vacancy \$26.16. Schools \$111.55/ \$2.30.

RESIDENTIAL	Gallons			NON-RESIDENTIAL	Gallons			Projected Revenues
Base gallons: 9,000	9,000- 18,000	18,000- 26,000	>26,000	Base gallons: 4,000	4,000- 10,000	10,000- 15,000	>15,000	
\$48.30	\$1.15	\$2.88	\$6.90	\$42.26	\$3.45	\$4.60	\$4.60	\$453,583.00



After reviewing and discussing the scenarios above, Council honed in on ranges for base allocation (5,000-6,000), base rate (\$47.00-52.00), overage water allocations (up to 10,000 gallons, 10,000-18,000, over 18,000 for residential and up to 17,000, 17,000-38,000, and over 38,000 for non-residential users), and overage costs (\$11.00, \$13.00, \$15.00). Council agreed that the total annual revenue goal for the Water Fund is approximately \$766,000 per year. An assumption was worked in that approximately \$50,000 of that total revenue is estimated to come from other revenue sources (i.e., tap fees, material costs, etc.). The funds needed from user fees alone to meet the total revenue goal of \$766,000, is \$716,000.

At a Council meeting in October 2019, Town staff presented some additional scenarios based on Council's direction above. Those scenarios are depicted below:

Rate Option	Vacancy Rate	Base Allotment	Base Cost	10K Residential / 17K Non-residential	18K Residential / 38K Non-residential	Over 18K Residential / 38K Non-residential	Projected Revenue
1	\$30.00	5,000	\$50.00	\$11.00	\$13.00	\$15.00	\$656,351.00
2	\$30.00	6,000	\$50.00	\$11.00	\$13.00	\$15.00	\$638,195.00
3	\$30.00	5,000	\$52.00	\$11.00	\$13.00	\$15.00	\$672,446.00
4	\$30.00	6,000	\$52.00	\$11.00	\$13.00	\$15.00	\$654,291.00

With the direction provided by Council, staff developed an ordinance based on rate option 3 above, which has a base allocation of 5,000 gallons, a base rate of \$52.00 for all user types, and water overage amounts of \$11.00, \$13.00 and \$15.00 for the overages indicated for user type. This rate schedule has a vacancy rate of \$30 per month and the School District at a base rate of \$105.00 for 10,000 gallons with overage costs of \$11.00 per 1,000 gallons. Please note that water conservation is not assumed with any revenue figures provided above. This is because much of the usage data utilized to calculate this projection was already under raised water rates.

Ordinance No. 2019-08 (Exhibit 4), which updated water service rates and water allocations based on the amounts described in the paragraph above, was adopted by Council in October 2019 and remains in effect today.

FINANCIAL ANALYSIS:

In FY2019, revenue from Water Service Charges ended up at \$595,396 and Total Water Fund Revenues ended up at \$650,215. The year-end figure for Water Service Charges in our Caselle software for FY2020 is \$718,788 and the estimated year-end figure for Total Water Fund Revenues in FY2020 is \$864,501. Please note that Total Water Fund Revenues includes revenue from grants, tap fees and other fees. The stated total revenue goal for the Water Enterprise Fund back in the fall of 2019 was \$766,000 with \$716,000 of that coming from user fees. The Town has exceeded the service revenue goal in the first full fiscal year since the current water rate structure was implemented by an estimated \$2,788 or 0.39%.

It's worth noting that with the COVID-19 pandemic dominating the year 2020, it should be viewed as a usage variable. With people having been urged to stay home and some not having to leave home for work, it is very likely that home consumption was higher for 2020 than it would have been had there not been a pandemic. During 2019, the Town sold approximately 42 million gallons of water while in 2020 the Town sold



approximately 48.4 million gallons. Commercial accounts had a small usage increase in 2020 from 2019 but remained relatively flat compared to residential usage. The table below compares the median and average single-family home usage for 2019 and 2020.

	2019	2020
Median Monthly Usage (gallons)	3,000	3,500
Average Monthly Usage (gallons)	4,580	5,435

Under our current rate structure, if water usage returned to 2019 levels the projected yearly revenue from user fees would amount to \$670,000. If water usage remains at 2020 levels, the projected yearly revenue from user fees would be an estimated \$720,000.

DIRECTION REQUESTED:

Council is asked to provide direction to staff related to water rate structure.

ATTACHMENTS:

Exhibit 1 – Ordinance No. 2018-06

Exhibit 2 – Emergency Ordinance No. 2018-05

Exhibit 3 – Ordinance No. 2019-04

Exhibit 4 – Ordinance No. 2019-08

AGENDA ITEM #20



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

To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 4, 2021
Agenda Topic: **Discussion regarding Ouray County Economic Resiliency Plan**

SUMMARY:

Attached to this memo is a draft version of the Ouray County Economic Resiliency Plan that has been developed by Economic & Planning Systems, Inc. (EPS). This version was presented by Andrew Knudtsen and Carson Bryant with EPS during the February 4th Policy Group Work Session. At that meeting, the policy makers agreed to discuss the document with their respective boards and to formulate any feedback for submittal to EPS by February 18th.

ATTACHMENT:

Draft Ouray County Economic Resiliency Plan

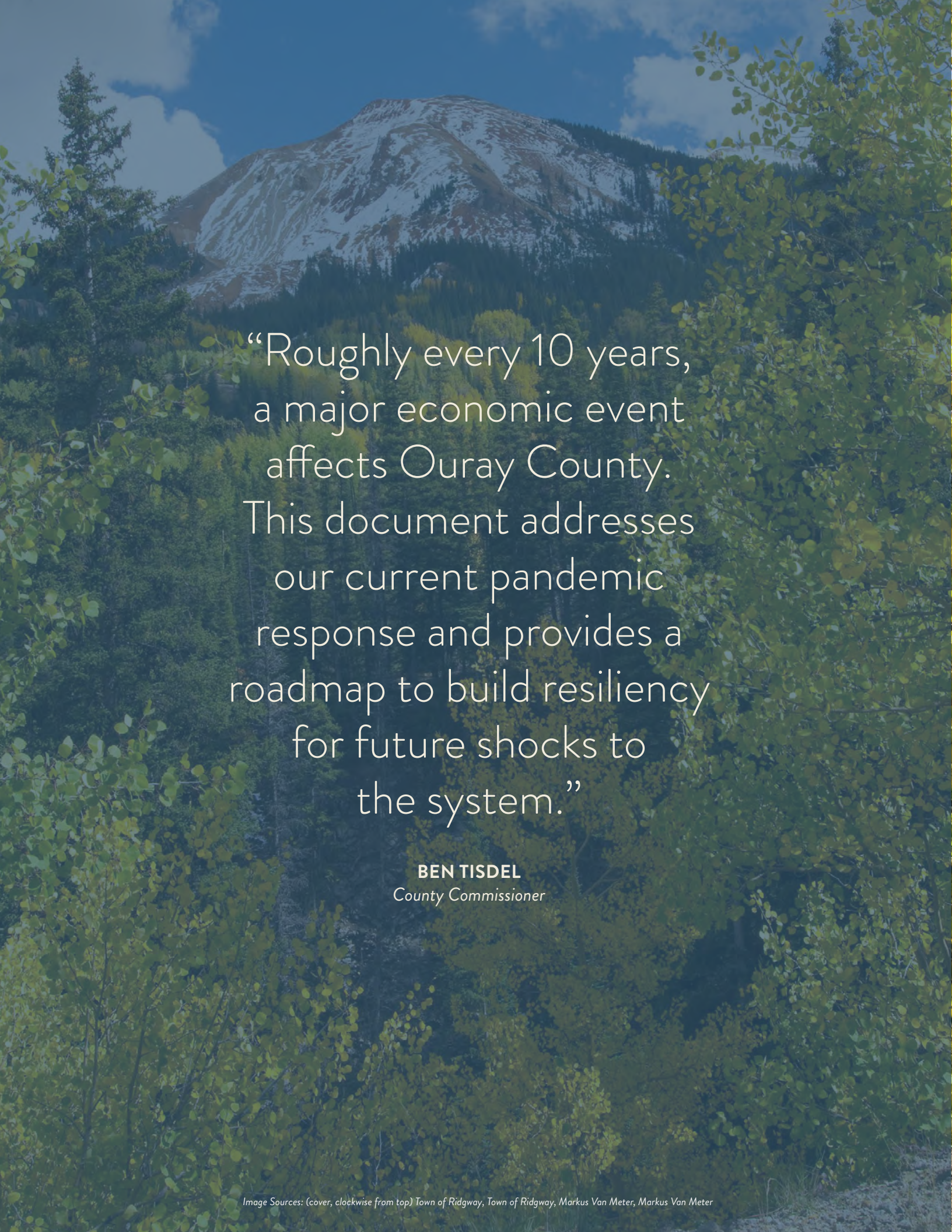
OURAY COUNTY

ECONOMIC RESILIENCY PLAN

DRAFT | FEBRUARY 3, 2021



In association
with MIG, Inc.



“Roughly every 10 years,
a major economic event
affects Ouray County.
This document addresses
our current pandemic
response and provides a
roadmap to build resiliency
for future shocks to
the system.”

BEN TISDEL
County Commissioner

CONTENTS

OVERVIEW

1	PURPOSE OF THE REPORT	4
----------	--------------------------------	---

PUBLIC HEALTH

2	COLORADO PUBLIC HEALTH SYSTEM	8
----------	--	---

3	LOCAL PUBLIC HEALTH DIRECTIVES	12
----------	---	----

ECONOMY

4	STRUCTURE OF THE OURAY COUNTY ECONOMY	18
----------	--	----

5	RESULTS OF THE BUSINESS SURVEY	22
----------	---	----

6	ECONOMIC AND DEMOGRAPHIC TRENDS	30
----------	--	----

7	MOBILITY ANALYSIS	36
----------	----------------------------	----

RESOURCES

8	RESOURCE MANUAL	40
----------	--------------------------	----

9	BUSINESS TACTICS AND STRATEGIES	50
----------	--	----

10	FINDINGS AND CONCLUSIONS	56
-----------	-----------------------------------	----

1

PURPOSE OF THE REPORT

Project Goal: “Provide the communities of Ouray County with an understanding of fiscal and economic challenges and opportunities, benchmarked to the COVID County health data set.”

In the spring of 2020, Ouray County learned it would face an unprecedented public health challenge. Along with other communities around the world, the COVID 19 virus migrated from continent to continent and had eventually made its way to Ouray County. Similar to the experience in other communities, the challenge has been daunting. Based on the tireless efforts of local staff members and the collective efforts across all jurisdictions and organizations, the community’s response has been effective, regarding both economic health and public health.

The purpose of this document is to provide an evaluation of the County’s economic and fiscal conditions and to provide clarity about the impacts attributed to COVID in 2020. The document also includes information related to resources, which can be used as a guide for ways the community can position itself for future challenges to the system, which might be generated by another wave or mutation of the current virus or something entirely different. The overarching intent has been to help local residents business owners become:

- Informed about how to measure impact,
- Equipped to tap resources, and
- Proactive in terms of thinking about the challenge as an opportunity for resiliency.

These overarching goals have been captured in the project goal formed early in the effort to frame the project (also shown in quotes above on this page): “Provide the communities of Ouray County with an understanding of fiscal and economic challenges and opportunities, benchmarked to the COVID County health data set.”

Another theme that can be found in several of the chapters in this document addresses communication. The systems that have been used are described and illustrated in detail for both the State of Colorado has used as well as the structure used by jurisdictions within the County. The goal is to create clarity among residents, businesses, and guests about how decisions are made and how the information is disseminated. The document also includes some recommendations regarding the flow of information.



Image Source: Markus Van Meter

The methodology used to evaluate economic and fiscal conditions includes a combination of primary and secondary data sources. Secondary data sets include the Bureau of Labor Statistics, the Department of Local Affairs (DOLA), and the Colorado Department of Revenue. Primary sources include a business survey, interviews with business representatives, and many discussions with elected officials and local staff. The methodology used for the analysis relies on an array of economic and fiscal data, coupled with listening to individuals who have been on the front line of the challenge. The goal is to generate data-driven report that has been calibrated based on local understanding.

As a point of clarity, the term county in some cases refers to the collective area that includes the City of Ouray, the Town of Ridgway, and the unincorporated areas surrounding these jurisdictions. In other cases, it refers specifically to the governance structure of Ouray County, led by the Board of County Commissioners. Because there is a need to refer to both concepts of the county, the specific application of the term has been clarified within each of the following chapters.

When capitalized, the reference is to the organization. When used with small case, it refers to the broader geography and community as a whole.

Finally, due to the unknown nature of the virus, particularly in the early stages, the saying that the community was ‘driving the car as it was building the car’ is aptly applied. During the process of writing this plan, there were many conversations with local residents. A theme that was expressed consistently among conversations with the business community and representatives from each of the three jurisdictions was the deep respect and admiration for the effort put forth by local staff. If nothing else, the pandemic has tested local systems and local personnel, and proven new levels of commitment and resiliency.

TRAJECTORY OF COVID

As of February 2nd, 2021, the United States recorded 26.2 million cases of COVID-19. The pandemic has affected the country in waves. The first cases appeared in late January 2020, but overall cases began to rise in March. Daily new cases reached an initial peak of 42,600 on April 6th, after which the rate of new cases gradually declined over the following months. The rate of new cases started to rise again in June, reaching a second peak of 75,100 new cases on July 24th. The rate of new cases fell again through August and September, creating the impression that the pandemic had stabilized. In October 2020, cases began to rise dramatically, reaching unprecedented levels in November and December. Most days in December recorded over 200,000 new cases, and by January 8th, 2021, the country reached a daily peak of 314,093 new cases. Based on this information, the COVID-19 pandemic has shown little sign of slowing down nationwide, although new daily cases have decreased in recent weeks.

The COVID-19 pandemic has followed a generally similar trajectory in Colorado. After initial waves in April and July, new cases in Colorado appeared to stabilize in August, reaching a 3-month low of 192 cases on August 30th. Starting in September, the number of new cases began to rise dramatically, reaching a high of 6,439 daily cases on November 13th. Daily new cases remained over 4,000 until mid-December, when the case rate began to fall. Colorado recorded a 2-month low of 1,400 new cases on December 27th, and after a brief uptick in early January, the case rate has continued to decline. As of February 3rd, 2021, Colorado recored a total of 397,998 cases

Ouray County recorded 211 COVID-19 cases and 3 COVID-19 related deaths as of February 3rd, 2021. For the first several months of the pandemic, Ouray County had few cases, recording 10 total cases by June 29th and 40 total cases by October 31st, 2020. As occurred statewide and nationwide, Ouray County experienced an uptick in cases in November, recording 12 daily cases and surpassing 100 total cases on November 16th. Since November, Ouray County has had between 1 and 2 new cases per day, indicating that the pandemic is continuing but that overall spread has stabilized.

In comparison to Colorado and to the United States as a whole, Ouray County has experienced a relatively low rate of COVID-19 infection. The county has had 43 cases per 1,000 residents, compared to 69 cases per 1,000 residents in Colorado and 80 cases per 1,000 residents nationwide.

While the reasons behind a relatively low COVID-19 infection rate are varied, Ouray County's proactive public health measures and adherence to state guidelines have played a role in containing the spread of the virus. While the virus continued to surge at the national and state levels, Ouray County saw a reduction in new cases.

COVID-19 CASES

In comparison to Colorado and to the United States as a whole, Ouray County has experienced a relatively low rate of COVID-19 infection.

OURAY COUNTY

43

CASES PER 1,000 RESIDENTS

COLORADO

69

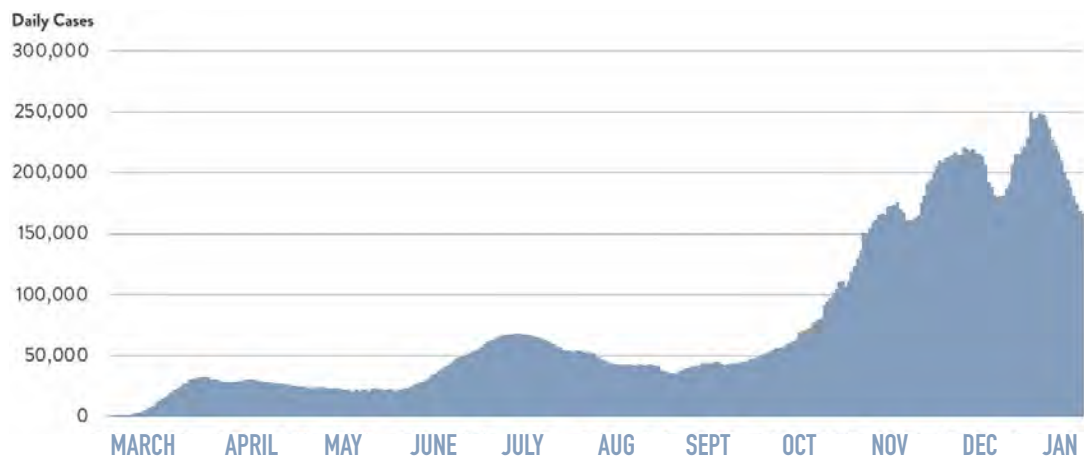
CASES PER 1,000 RESIDENTS

UNITED STATES

80

CASES PER 1,000 RESIDENTS

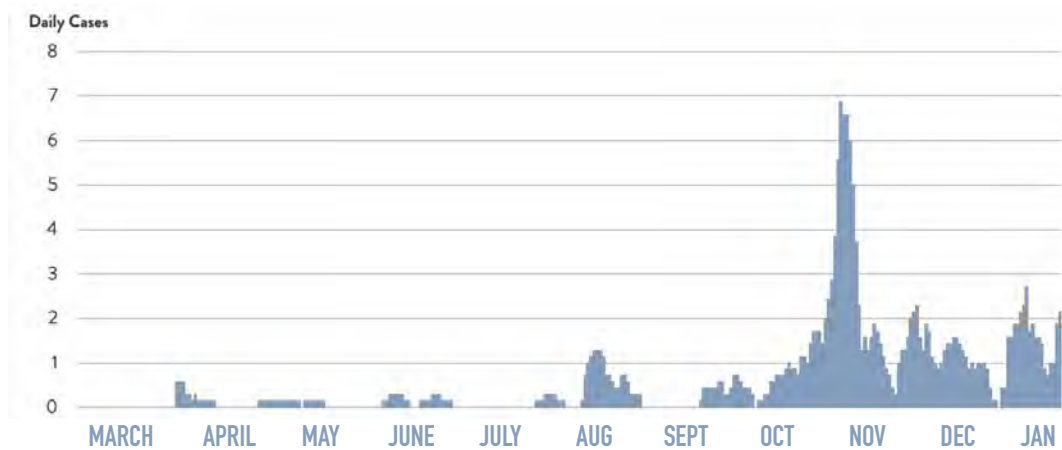
DAILY COVID-19 CASES, 7-DAY MOVING AVERAGE, **U.S.**



DAILY COVID-19 CASES, 7-DAY MOVING AVERAGE, **COLORADO**



DAILY CASES, 7-DAY MOVING AVERAGE, **OURAY COUNTY**



2

COLORADO PUBLIC HEALTH SYSTEM

As of September 2020, Ouray County has followed the public health orders associated with the State dial system.

SYSTEM STRUCTURE

Colorado has a decentralized public health system in which counties are required to operate a local public health agency or participate in a district agency. Ouray County has its own public health agency, the Ouray County Public Health Agency, while other areas share an agency with multiple counties, such as San Juan Basin Public Health (La Plata and Archuleta counties) and Tri-County Health (Arapahoe, Adams, and Douglas Counties).

Local agencies are ultimately responsible to the Colorado Department of Public Health and the Environment (CDPHE), a State agency that is responsible for both health and environmental protection statewide. CDPHE establishes a set of core public health capabilities and

services that local agencies are expected to provide. The scope of core public health services may be limited by the amount of state and local funding available. Public health agencies may opt to share resources with neighboring health agencies to assure that core services are accessible. These capabilities and services are summarized on the following page.

Most relevant to the COVID-19 pandemic is the service of Communicable Disease Prevention & Control. The CDPHE defines this responsibility as locally and state coordinated investigation, testing, and prevention/control efforts to reduce the incidence and transmission of infectious diseases. This aligns with the efforts that the State has undertaken to control the COVID-19 pandemic, namely the COVID dial and its corresponding measures.

CORE PUBLIC HEALTH CAPABILITIES AND SERVICES

COLORADO'S CORE PUBLIC HEALTH SERVICES

- ✓ Assessment and Planning
- ✓ Emergency Preparedness and Response
- ✓ Communications
- ✓ Organizational Competencies
- ✓ Health Equity and Social Determinants of Health
- ✓ Policy Development and Support
- ✓ Partnerships



Based on graphic from CDPHE.

DIAL SYSTEM

On September 15th, 2020, the State of Colorado implemented a dial framework to guide policy on the COVID-19 pandemic. The dial consists of six levels, indicated by colors, that correspond to a particular level of COVID-19 risk. As shown in the graphic on this page, the colors range from Green (lowest level, relatively low risk) to Purple (highest level, extreme risk). This system is intended to provide clear and predictable guidance to counties in their response to the pandemic, ideally balancing county-specific circumstances with a strong state response to an urgent issue.

The CDPHE is responsible for assigning a dial level to each county. Once assigned, counties can move back and forth between levels. Levels are determined by the following criteria:

- **Percent of positive tests:** the percentage of tests that come back positive out of the total number of tests performed.
- **Number of new cases:** the cumulative number of cases over a two-week period, per 100,000 people. This measures community circulation.
- **Hospitalizations:** the trend of new hospitalizations. It examines the extent to which hospitalizations are increasing, declining, or stable.

Each level is determined by a particular combination of these criteria, which is summarized in the table on the following page. To move to a lower, less restrictive level (i.e. orange to yellow), counties must meet and sustain all three metrics for two weeks and consult CDPHE.

Although the dial system is supposed to adhere to these requirements in a consistent manner, it is sometimes the case that the State will move counties along the dial without those counties meeting all of the requirements. The State will consider other factors such as statewide hospital capacity and a statewide changes in case rates, along with broader concerns about economic activity.

Each level is associated with a particular set of restrictions that health departments must enforce. The restrictions allow for various amounts of social and economic activity, governing things such as gathering sizes, restaurant capacity, and office capacity. Restrictions at each level are summarized in the table on the following page.

COLORADO COVID-19 DIAL



STATE AND LOCAL RESPONSIBILITIES

With the implementation of the dial system, the State has taken on responsibility for creating policy around COVID-19 and communicating it to local public health agencies. Compliance with and enforcement of state public health directives is the responsibility of each public health agency. For example, as Ouray County is currently at Level Orange (as of January 2021), the Ouray County Public Health Agency is tasked with enforcing the capacity restrictions associated with Level Orange. Within the dial framework, Ouray County does not designate itself as Level Orange, but enforces its associated mandates.

Before the implementation of the dial system, the Ouray County Public Health Agency passed public health orders related to capacity restrictions, and masks. Since the dial system was established and once its public health orders expired, Ouray County has been following State directives. The structure of the public health system requires Ouray County to follow these directives. At the same time, Ouray County is permitted to implement public health orders that are stricter than those of the State, but is not permitted to implement public health orders less strict than those of the State. A proactive response to pandemic-related issues can benefit counties, however. When CDPHE determines Ouray County's dial level, it considers the extent to which the county has been proactive with mask enforcement, testing, and capacity restrictions. If the county has been proactive, the CDPHE is less likely to move it into a more severe category (i.e. from orange to red). This encourages counties to be proactive and thorough in their response to the pandemic.

DIAL LEVEL DETERMINANTS & BUSINESS-RELATED RESTRICTIONS

LEVEL DETERMINANTS	CATEGORY	LEVEL GREEN Protect our Neighbors	LEVEL BLUE Caution	LEVEL YELLOW Concern	LEVEL ORANGE High Risk	LEVEL RED Severe Risk	LEVEL PURPLE Extreme Risk
	NEW CASES	Must achieve all 8 Protect our Neighbors metrics and complete the certification process	0–75 / 100,000 2-week incidence	> 75–175 / 100,000 2-week incidence	> 175–350 / 100,000 2-week incidence	> 350 / 100,000 2-week incidence	Hospital capacity risks being breached, which may be indicated by: approaching the need for medical crisis standards of care Utilizing alternative care sites Critical shortage of PPE or staff hospitals approaching 90% of their reported surge capacity
	PERCENT POSITIVITY		No greater than 5%	No greater than 10%	No greater than 15%	No Limit	
	HOSPITALIZATIONS		Increasing, stable, or declining?				

BUSINESS-RELATED RESTRICTIONS	OFFICES	50%* capacity		50% capacity, remote work is strongly encouraged	25% capacity, remote work is strongly encouraged	10% capacity, remote work is strongly encouraged	Remote work or Closed
	RESTAURANTS - INDOORS	50%* capacity or 500 people [†]	50% capacity or 175 people indoors [†]	50% capacity or 50 people (or up to 100 with calculator) [†]	25% capacity or 50 people [†]	Indoor dining closed. Take out, curbside, delivery, or to go	Indoor dining closed. Take out, delivery, or to go is open
	RESTAURANTS - OUTDOORS	6ft between parties outdoors, per local zoning				Open air with only groups of own household is open	Outdoor dining closed. Take out, delivery, or to go is open
	BARS	50%* capacity or 500 people [†]	Closed				
	NON-CRITICAL MANUFACTURING		50% capacity or 175 people indoors [†]	50% capacity or 50 people (or up to 100 with calculator) [†]	25% capacity or 50 people [†]		10% capacity or 25 people [†]
	GYMS/FITNESS		25% capacity or 75 people [†]	25% capacity or 50 people [†]	25% capacity, 25 people indoors [†] , or outdoors in groups less than 10	10% capacity, 10 people indoors per room [†] , or outdoors in groups less than 10. Reservations required	Virtual, or outdoors in groups less than 10
	CRITICAL AND NON-CRITICAL RETAIL		50%* capacity		50% capacity with increased curbside pick up, and delivery. Dedicated senior and at-risk hours encouraged		Non-critical retail closed. Curbside pick-up and delivery OK. Critical may operate at 50% capacity but should make significant efforts to reduce the number of people in-store as much as possible
	PERSONAL SERVICES	50%* capacity or 500 people [†]	50% capacity or 50 people [†]		25% capacity or 25 people [†]		Closed
	OUTDOOR GUIDED SERVICES		50% capacity or 25 people [†]	50% capacity or 10 people [†]	25% capacity or 10 people [†]		25% capacity or up to 10 only in your own household [†]

*Counties that enter Protect Our Neighbors are eligible to increase the percentage caps by 5% every month they continually sustain those metrics.

[†] When capacity limits are expressed as both a percentage of posted capacity and a total number of people, use whichever number is fewer.

**Educational institutions including museums, aquariums and zoos may operate indoors at 25% of the posted occupancy limit not to exceed 25 people using the Distancing Space Calculator per room.

3

LOCAL PUBLIC HEALTH DIRECTIVES

The County's structure to address emergency events is presented in this chapter, with an emphasis on current and potential communication flows.

As noted in the previous chapter, the standards for how the County operates has been based on requirements issued by the State of Colorado, disseminated to each of the respective County Health Departments across the state. The purpose of this chapter is to document the local organizational structure as it relates to implementing the state mandates. Each County has latitude based on size, staffing, and unique attributes in terms of implementation. The diagrams and descriptions that follow are intended to summarize the approach that has been used in Ouray County with the purpose of:

1. Clarifying the information flow from the state (top down, bottom up and across the matrix);
2. Identifying ways to capture feedback from local organizations and individuals (bottom up and top down); and
3. Seeking ways to improve the processes, based on the real-time experience of the past nine months.

ORGANIZATIONAL RESPONSE

There is an existing system for addressing emergency conditions within the County contained in the *Ouray County Emergency Operations Plan (EOP)*. "The purpose of the EOP is to provide general guidelines and to designate specific principles and resources for managing and coordinating overall response and recovery activities before, during and after major emergencies and disaster event. The Emergency Operations Plan has been developed in accordance with the requirements for local emergency planning established under the State of Colorado Emergency Act of 1992, and also meets the requirements of other state and federal guidelines for local emergency management plans and programs. The EOP will be updated annually through the Ouray County Multi-Agency Coordination Group, and as needed after any incident, to ensure that it remains an effective and accurate emergency management tool for officials, responders, and citizens of Ouray County." The last update was December 8, 2015. Updates and changes to the appendices have occurred after 2015 and may occur as needed.



Image Source: Town of Ridgway

The EOP has a general direction geared to natural disasters as well as backcountry rescue, which are logical points of focus given the natural setting of Ouray County. Pandemics are listed, but specific activities tailored to this type of emergency are limited.

There is a second plan known as the Multijurisdictional Multihazard Mitigation Plan (MMMP). The MMMP was last updated in 2019. “Ouray County, including the participating jurisdictions of the City of Ouray, the Town of Ridgway, and Log Hill Mesa Fire Protection District, has prepared this local hazard mitigation plan to guide hazard mitigation planning to better protect the people and property of the County from the effects of hazard events. This plan demonstrates the community’s commitment to reducing risks from hazards and serves as a tool to help decision makers direct mitigation activities and resources. The plan is intended to be a living document through ongoing implementation and regular updates every five years. The original plan was developed in 2008 and updated in 2013 and 2019. This plan was also developed to make Ouray County and participating jurisdictions eligible for

certain federal disaster assistance, specifically, the Federal Emergency Management Agency’s (FEMA) Hazard Mitigation Assistance (HMA) grant programs, as well as to make the County more disaster resistant”.

The Multijurisdictional, Multihazard Mitigation Plan has a section regarding Public Health Emergencies. It references public health pandemics that have been previously experienced, but it does not address a “worldwide pandemic” that we are experiencing today, COVID-19. We have learned from this pandemic and we recognize that this pandemic should be looked upon differently and may require a “long-term” pandemic or disaster classification. Furthermore, it may require a different command/management structure in order to be effective and sustainable. The following summary and set of recommendations are based on the experience of 2020 and are set forth to address needs of extended emergencies.

Under an emergency incident or declared disaster, there is a benefit of communicating the basic structure that the County uses for addressing a public health emergency.

As listed below, the County takes the following steps to ensure the public health conditions are being protected and addressed.

STEP 1

INCIDENT COMMAND

The initial step related to a public health concern is to recognize the event and establish an Incident Command. This step involves County staff, specifically the Emergency Manager and the Public Health Director. Depending on the findings from the staff conducting a review of the incident, they may determine that the occurrence will pass without potential for broader impact. In that case, no further effort is required of the County. Alternatively, they may find that the issue is significant, and warrants the activation of the County Board of Health.

STEP 2

COUNTY BOARD OF HEALTH

In Ouray County, the Board of County Commissioners (BOCC) serves as the Board of Health and meets on a quarterly basis, or more frequently. Based on the findings from staff related to the Incident Command, they can be called to order as needed. The focus of the Board of Health when convened is to review the findings from the incident and compare local conditions to the statewide context. Findings from the Colorado Department of Public Health and the Environment (CDPHE) will be presented, and based on the degree of severity of conditions within the state and/or within the County, the Board of Health may determine to activate greater local resources in the form of Unified Command. Alternatively, they could suspend action at that time until greater need is determined to exist.

It should be recognized that much of the purview for action is vested at the state level of governance. As described in the previous chapter, much of the time, the County staff are implementors of state directives. Actions at the local level often pertain to communications and resources.

STEP 3

UNIFIED COMMAND

The Unified Command is formed with membership determined based on expertise and authority related to the specific emergency that exists. Each situation is unique, and thus the composition of Unified Command may differ from any previous time a Unified Command has been formed. It usually will involve county staff, municipal staff, as well as elected officials. Often there is just a single representative from each of the local jurisdictions. Based on their assessment of need and determination of action, they may request that the BOCC declare an official State of Emergency. With this designation, the County is eligible to tap into FEMA funding, and do so in an accelerated manner. Purchases can be made, within the federal protocol for reimbursement once the declaration is official. These resources enable County staff to move quickly and become operational at a speed that protects resident health in the face of an evolving threat.

STEP 4

POLICY GROUP

The first time the Policy Group has been convened has been part of the COVID 19 response, due to the complex, extensive, and ongoing nature of the challenge. In the future, as needed, the County may choose to reactivate the Policy Group, with the purpose of forming a broader coalition to address needs, to evaluate policy decisions, and to ensure the collective leadership within the region are engaged. The Policy Group involves all members of all elected boards, all senior staff, and mid-level staff as needed. Board involvement includes the City of Ouray, the Town of Ridgway, Ouray County, and can involve other boards, such as the local School Board, as needed.

The purpose of the Policy Group is to inform all decision makers in real time. Given that each board has, in effect, a quorum when the Policy Group convenes, all meetings are noticed and open to the public. Because it consists of a multiple set of different public bodies, no formal actions are taken during these meetings. Information is provided with the goal of keeping all entities fully aware of the nature of the challenge, the resources available, and potential actions that can be taken once each board returns to their standard scheduled meetings.

STEP 5

LOCAL CITY, TOWN, AND COUNTY ACTION

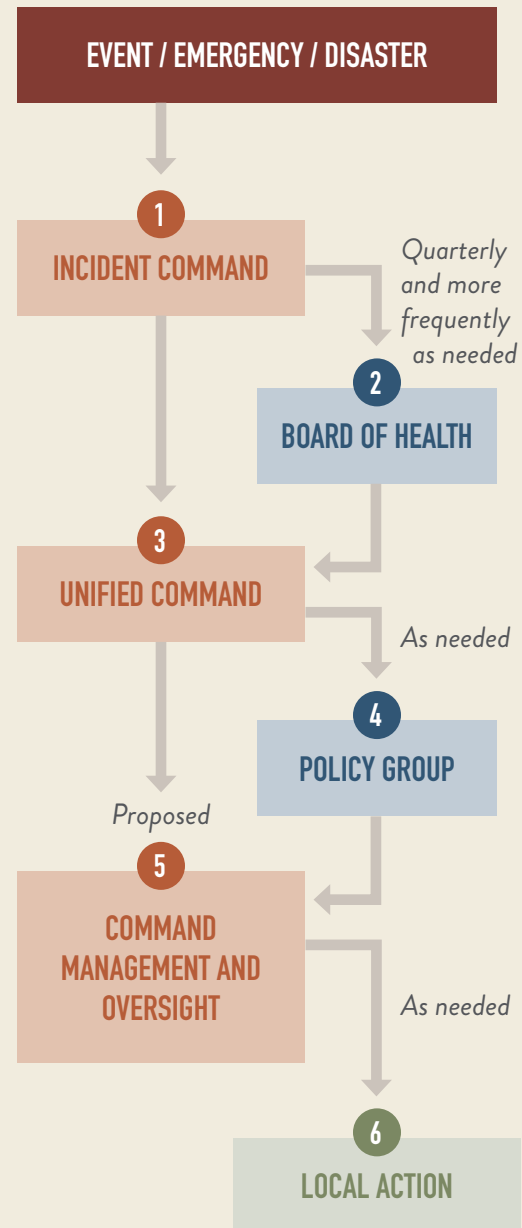
As needed and appropriate, the local governments can adopt resolutions, appropriate funds, and provide additional locally calibrated regulations, as needed or desired. It is within these forums of the individual meetings that they can take action, ideally in sync with those of the other regulating bodies, based on information shared within the Policy Group.

STEP 6

UNIFIED COMMAND MANAGEMENT AND OVERSIGHT

Most emergency conditions are resolved in a span of days or weeks, with a few extending into months. For those that are extended, it is recommended to form a Unified Command Management and Oversight group. The composition would reflect the location, type of event, and duration and would likely include senior staff and elected official(s) from the relevant jurisdictions. As most emergency events occur in the unincorporated area of the county, it is recommended that a County appointed or elected official (i.e. County Administrator, or Commissioner) chair the group and help identify the size and representation of members. A group such as this will be particularly relevant for long-term situations (like a pandemic) in which greater support to front line staff is needed, particularly in light of the need for long-term strategies related to community need, staff resources, sustainability and communications.

LEADERSHIP STRUCTURE FOR EMERGENCIES & DISASTERS





OURAY COUNTY
COURT HOUSE
1888

541

CONSIDERATIONS RELATED TO THE EXISTING STRUCTURE

During the course of developing this COVID Recovery Plan, many individuals from the public and private sector were interviewed. All were directly involved in the response that began in March 2020. All expressed respect and gratitude for the County staff, specifically citing the Public Health Director and the Emergency Manager as examples of ideal public servants professionally and personally committed to addressing the COVID challenge and improving the public health of the region. If there was one theme that emerged from the interviews about the existing structure, it related to the dissemination of information. Suggestions from a range of stakeholders as well as the consultant team are provided below:

1. Improve communications with all residents, guests, and businesses with better electronic forms of messaging. Examples included creating a downloadable app specific to Ouray County, that all individuals could easily tap for the latest regulations and resources. Another suggestion included creating a Facebook page, given the frequency and ease of accessing information by local community members on Facebook.
2. In addition, use written forms of messaging to improve communications with residents and businesses, especially those who do not have access to or actively use digital forms of communication. An example is distributing a printed mailer with information and with a phone number to call.
3. Improve two-way communications with businesses with direct email to owners and managers. There would be significant benefit with a two-way communication path with businesses that provides a channel for business to communicate to local officials. Examples include unique messaging that is more relevant to this group, as opposed to the general public. Also, fielding surveys and questionnaires provides real-time information about the economic landscape. Because sales tax collections and employment data are released by the state with significant lag, there is a need for up-to-date monitoring. For example, succinct monthly surveys that collect insights on employment cuts, changes in business activity, and perceptions about the overall economic conditions will provide elected officials with real-time data to help inform their policy decisions.
4. Because the database of email contacts is quite dated, it is recommended to activate a business license requirement with, among other data requirements, a current set of email contacts for every business within each jurisdiction. The purpose is to create better ways of listening and should not be interpreted as anything more.
5. Improve the flow of communication to the general public. It would be beneficial for the public to receive notifications from the County government on certain matters. Examples include vaccine information, public health orders, COVID-19 testing, and existing social/economic resources. This would essentially be a 'Reverse 911' and would help ensure that Ouray residents are informed of current situations and available resources.
6. Consider adding a Command Management Group, consisting of some combination of senior staff and elected official(s) based on the nature, location, and severity of the challenge. This is recommended for long-term situations, like COVID, which requires a sustained effort. This contrasts with current structure, which is geared to immediate action, and is typically in place over a shorter duration. The purpose would be to provide senior administration oversight to address community need, staff resources, sustainability and communications.
7. Recognize the need for a permanent Public Information Officer and assign tasks related outgoing messaging as well as incoming communications to this individual. (Note that the BOCC has funded this position and the County is underway with hiring this individual.)
8. Ensure that every voice is heard at the Policy Group by providing time on each agenda for the PIO to summarize all in-coming email (grouped by topic) and ensure that the themes expressed by Ouray County residents, business owners, and guests are heard by elected officials concurrently.
9. Update the *Ouray County Emergency Operations Plan* (EOP) and the *Multijurisdictional Multihazard Mitigation Plan* (MMMP) in a timely manner in 2021, following the conclusion of the current pandemic. As staff regains capacity, consider the concepts included in this document and incorporate into the adopted plans as appropriate.

4

STRUCTURE OF THE OURAY COUNTY ECONOMY

Public health is the portal through which economic vitality can occur. The Ouray County economy is interconnected and all sectors perform best when these relationships are strengthened.

RELATIONSHIPS BETWEEN ECONOMIC COHORTS

The economy of Ouray County is primarily driven by visitation. Countywide, 32 percent of all jobs are in the Accommodation and Food Services sector. This share is higher in the City of Ouray, which has half of all jobs in the Accommodation and Food Services sector, compared to 22 percent of all jobs in Ridgway. The mix of employment in Ridgway is comparatively diverse, with significant shares of employment in Construction, Retail Trade, Manufacturing, Agriculture, and Professional Services. Countywide, Public Administration is also a significant sector, comprising 10 percent of all jobs, most of which are in the City of Ouray.

Within the Accommodation and Food Services Sector, approximately 60 percent of the jobs are food service-related and 40 percent of the jobs are Accommodation-related.

Within Ouray County, approximately 50 percent of all jobs are located in Ridgway, 40 percent are located in the City of Ouray, and 10 percent are located elsewhere in the county. While the share of mining employment is currently

small, the Ouray Silver Mine is growing quickly and is expected to employ 160 people by mid-2021, which will represent approximately seven percent of countywide employment.

SHARE OF EMPLOYMENT BY SECTOR

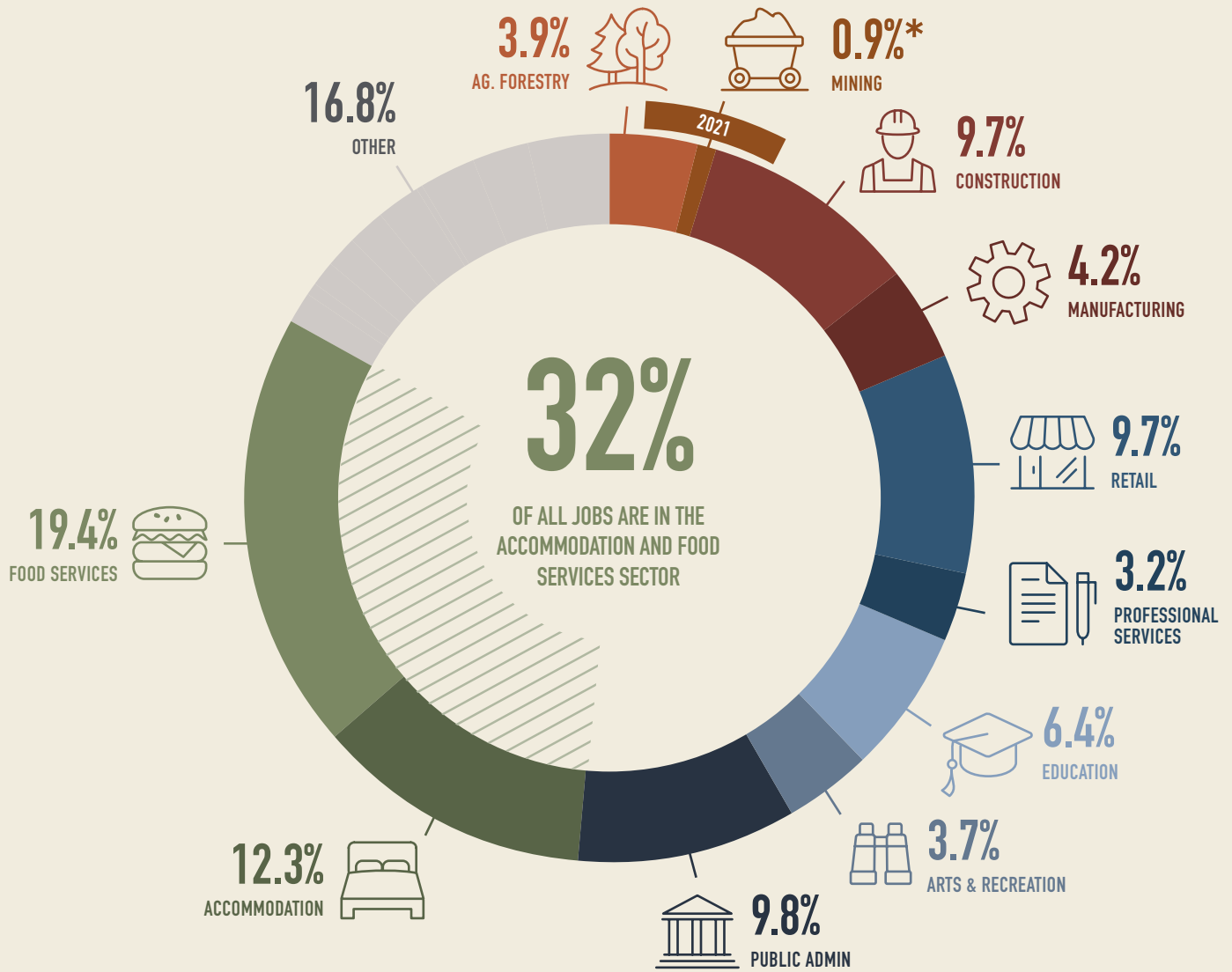
SECTOR	TOTAL	OURAY COUNTY
FOOD SERVICES	428	19.4%
ACCOMMODATION	271	12.3%
82 PUBLIC ADMINISTRATION*	216	9.8%
23 CONSTRUCTION	214	9.7%
44-45 RETAIL TRADE	213	9.7%
61 EDUCATIONAL SERVICES	142	6.4%
31-33 MANUFACTURING	94	4.2%
11 AG FORESTRY	87	3.9%
71 ARTS & RECREATION	82	3.7%
54 PROFESSIONAL SERVICES	71	3.2%
21 MINING*	20	0.9%
OTHER	368	16.7%
TOTAL	2,205	100%

Source: BLS; Economic & Planning System

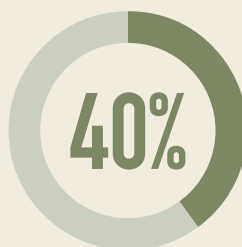
*"Public Administration" refers to people employed at local, state, and federal levels of government.

*Mining is expected to grow by 160 jobs by mid-2021, which will represent approximately 7% of countywide employment

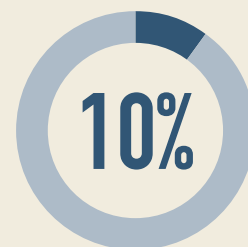
SHARE OF EMPLOYMENT BY SECTOR IN OURAY COUNTY (2019)



OF ALL JOBS ARE
IN RIDGWAY



OF ALL JOBS ARE IN
CITY OF OURAY



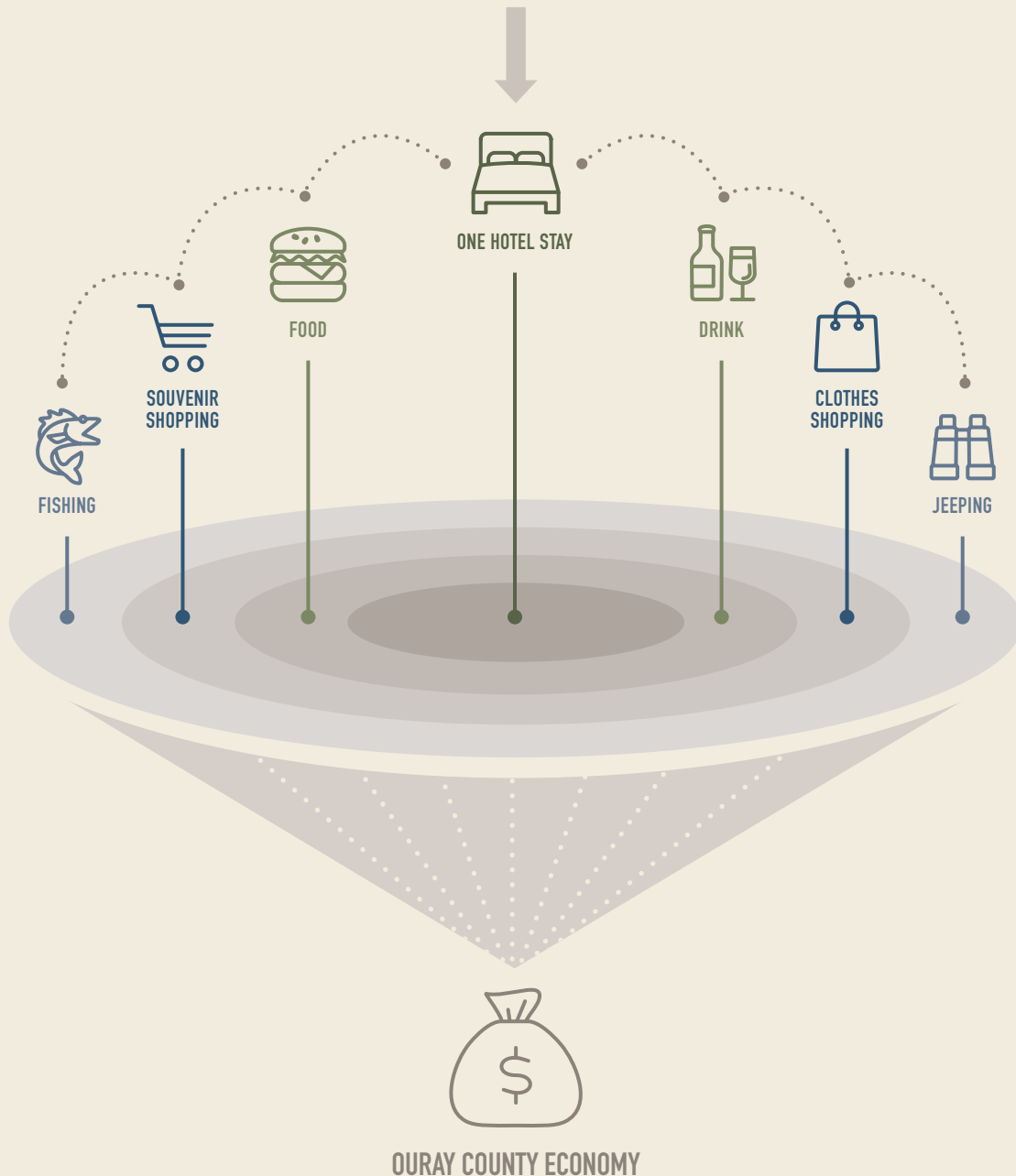
OF ALL JOBS ARE
ELSEWHERE IN COUNTY

*Mining is expected to grow to approximately 7% by mid-2021.

RIPPLE EFFECT



One purchase (a hotel room) leads to other purchases, increasing the amount of money flowing through the local economy.



RIPPLE EFFECT

The economy of Ouray County is interconnected. Spending in one sector will cause changes to other sectors, creating a ‘ripple effect’. For example, if a person purchases a hotel room for a night, it is likely that the person will also spend money on items such as food, coffee, and clothing in the area, putting money into the hands of local business. Additionally, guests will often engage in some form of backcountry excursion (jeeping, fishing, etc.) that will generate additional visitor spending. One purchase (a hotel room) leads to other purchases, increasing the amount of money flowing through the local economy. This dynamic is central to the economy of Ouray County, which is driven by hospitality-related businesses.

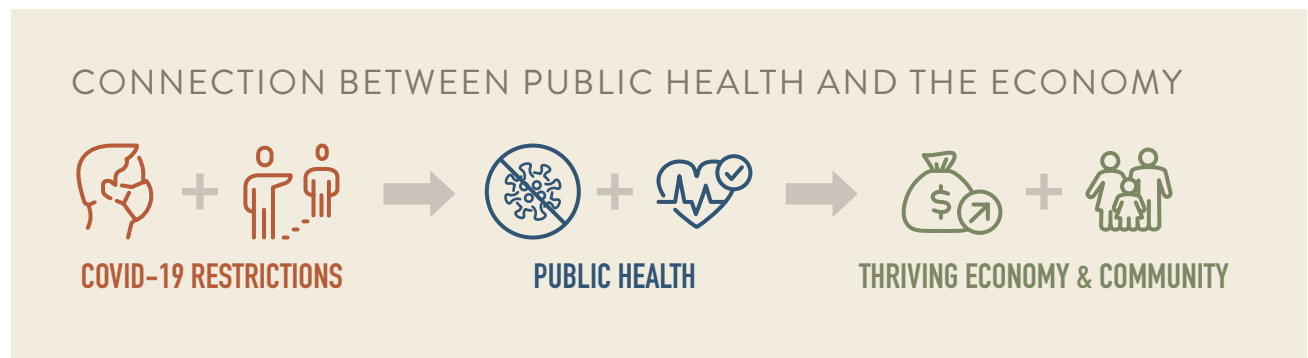
When economic connections are active, such as during a strong tourism season, the benefits are self-reinforcing; one dollar of spending generates several additional dollars of economic activity. At the same time, this dynamic makes Ouray County vulnerable to consumption-related shocks. When the connections are broken, the economy falls into a downward cycle. One dollar not spent means that several additional dollars will not flow through the economy, affecting a wide range of businesses and employees. If someone chooses to not book a hotel room, the hotel not only forgoes that revenue, but so do other local businesses like restaurants, boutiques, and breweries that the hotel guest would have likely patronized. It is essential to Ouray County’s economic health that these connections are sustained. All sectors do best, when these relationships are strong.

CONNECTION BETWEEN PUBLIC HEALTH AND THE ECONOMY

These economic connections are central to the success of the Ouray County economy. As the COVID-19 pandemic has created an impetus for social distancing and minimizing person-to-person contact, sustaining these connections has become more difficult. Restrictions on business capacity and gathering size have limited the ability of most businesses to operate at a normal scale. While this has negatively affected business activity, the restrictions are necessary to fostering public health.

As long as the risk of COVID-19 remains a reality, the economy will be unable to thrive and the community will be unable to function as it normally does. Key to a healthy economy is resident and business confidence – if people do not feel safe going to large gatherings or to indoor businesses, then economic and social activity will be hampered, whereas if residents are confident that going to gatherings and business does not put them at risk of catching COVID-19, then economic and social activity will be able to carry on as normal.

Many Ouray County businesses shared this sentiment. Nearly 60 percent of businesses that responded to the survey indicated that ‘Health/COVID-19 Infection is their greatest concern with business continuity. Additionally, a common sentiment was that the ongoing risks of COVID-19 have made employee retention challenging, as the risk of exposure to COVID-19 while working is a source of stress for employees in the county. Considering the toll that COVID-19 has had on residents and businesses, safety is a necessary step in putting the economy back on track. Public health is a precondition to a thriving economy and community.



5

RESULTS OF THE BUSINESS SURVEY

The COVID-19 pandemic has created challenges for businesses in Ouray County, as described in detailed survey results. The business community reflects the resolve for resiliency and recovery.

The COVID-19 pandemic has posed significant challenges to businesses in Ouray County. Capacity restrictions, social distancing, health risks, and closures have jeopardized the viability of many businesses. The survival and prosperity of businesses in Ouray County is essential to economic resiliency, as local businesses provide economic opportunity, local character, and vibrancy. This section examines the current sentiment of Ouray County businesses with an interest in determining that primary issues that businesses are facing, how they have responded to the pandemic, and how the County can best assist businesses moving forward. Ideally, this section provides insight into the ways that Ouray County businesses can move forward from the pandemic.

It is important to understand the competing economic trends that Ouray County has recently experienced. Certain metrics, such as job growth and increasing sales tax collections over the past decade, indicate a thriving local economy. Traffic data shows a significant uptick in visitor traffic in 2020, resulting from shifting travel patterns and desire to access outdoor recreation during a pandemic. While these factors bode well for Ouray County businesses, many businesses face considerable challenges, and the gains of strong economic activity have not been evenly distributed. Survey results present a mix of

sentiments – many businesses have struggled, while others have had normal, if not successful, years. Importantly, the survey indicates that COVID-19 has been accelerating trends that existed previously - particularly increasing housing prices and the ongoing expansion and necessity of E-Commerce. These issues create an imperative for businesses and policymakers to adapt to a changing reality.

DETAILS OF THE SURVEY

The business survey consisted of 20 questions on topics related to the impacts of COVID-19, responses to COVID-19, business continuity, relief programs sought out by businesses, and ideas that businesses have for policymakers in Ouray County. In total, 62 businesses responded to the survey through an online form, representing a 25 percent return of the 240 surveys fielded. A response rate over 20 percent is considered successful. As this survey is a snapshot in time with a relatively small sample size, it does not fully represent the long-term trends that Ouray County businesses have experienced. With this in mind, it would be beneficial for the county to conduct this type of business survey on a quarterly or yearly basis from a well-established distribution list to better assess the status of county businesses.

OVERVIEW OF RESULTS

CHARACTERISTICS OF RESPONDENTS

Several different types of businesses responded to the survey. The most common business types were as follows:



The remaining responses were distributed between 7 other types of businesses, including Manufacturing, Professional Services, Construction, and Health Care.

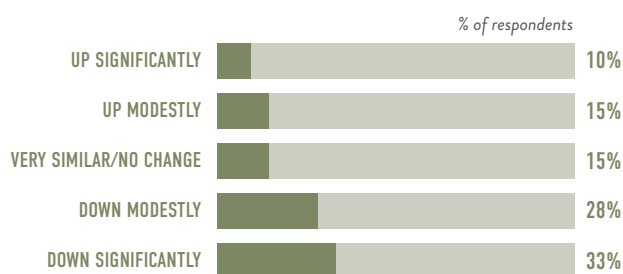
The majority of respondents—62 percent of total—were very small businesses, with 1-4 employees. In addition, 13 percent had 5-10 employees, 16 percent had 11-20 employees, and 8 percent had 21-40 employees.

PERFORMANCE IN 2020

To gauge the performance of businesses in 2020, the survey asked “How has the revenue of your business changed in 2020 versus?”. Approximately one-third of respondents indicated that their revenue is ‘down significantly’, while 28 percent of respondents indicated that their revenue is down modestly. In total, over 60 percent of businesses have seen lower revenues in 2020 than in 2019. By comparison, approximately one-quarter of respondents indicated that their revenues are either up modestly or up significantly, while fifteen percent of businesses indicated no change.

At the same time, approximately two-thirds of respondents indicated that no employees have been laid off in 2020, suggesting that businesses have not had to significantly cut staff.

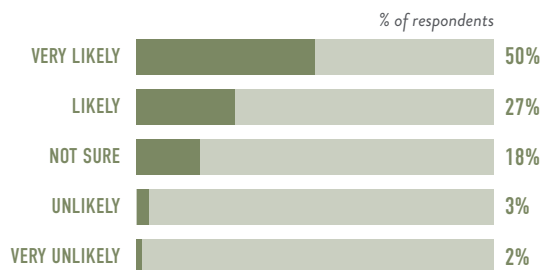
HOW HAS YOUR REVENUE CHANGED IN 2020 OVER 2019?



BUSINESS CONFIDENCE

The survey also asked businesses their expectations on how likely it is that they will be able to operate through 2021. While not a perfect measure of business performance, it illustrates business confidence in Ouray County. Overall, one-half of businesses indicated that it is ‘very likely’ that they will be able to operate through 2021, while over one-quarter said it is ‘likely’.

HOW LIKELY IS IT THAT YOUR BUSINESS WILL OPERATE THROUGH 2021?



BUSINESS SURVEY RESULTS

OF RESPONDENTS



62
BUSINESSES
RESPONDED

RESPONSES TO COVID



OPERATING AT
LIMITED CAPACITY



SHIFTING BUSINESS
TO ONLINE PLATFORMS



BUSINESS AS NORMAL

MAIN CONCERNS



HEALTH/COVID-19



EMPLOYEE RETENTION



HOUSING ACCESSIBILITY
FOR EMPLOYEES



CASH FLOW

INVESTMENTS NEEDED



48%
OF RESPONDENTS
NEED INVESTMENTS
FOR PPE



29%
OF RESPONDENTS NEED
INVESTMENTS FOR
ONLINE PLATFORMS

MAJOR THEMES

RESPONSES TO COVID-19

One of the main motivations of the business survey was to hear how businesses in Ouray County have responded to the COVID-19 pandemic. The question of “How has your business responded to COVID-19?” led to the following insights:

- Half of respondents indicated that they are still operating, but at limited capacity
- 43 percent of respondents indicated that they are still operating, but with changed hours
- Only 11 percent of respondents indicated that they are temporarily closed. No respondents indicated that they are permanently closed
- Several businesses indicated that they have moved much of their activity online
- Some businesses indicated that ‘business as normal’ has carried on and that they have stayed busy

CHALLENGES AND IMPACTS

The COVID-19 pandemic has presented businesses across the country with challenges – some of which are new, some of which are challenges that businesses have always faced, but amplified. Between the necessity of social distancing and an economic recession, businesses have not been able to operate as is ‘normal.’ A crucial part of this survey is to see how businesses in Ouray County have been affected by the pandemic, which not only helps residents and other business owners better understand the current business climate, but also informs policymakers in Ouray County on how they should assist businesses both now and in the future, ideally helping policymakers foster economic resiliency in Ouray County.

The survey asked businesses “What are your primary concerns with the continuity of your business?” Responses to this question are summarized in the bar graph on this page. Over half of businesses indicated that Health/COVID-19 is a primary concern. This reinforces the notion that good public health is essential to business success. Cash flow was also cited as a concern by 46 percent of respondents, highlighting the potential importance of loan or grant programs to small businesses.

WHAT ARE YOUR PRIMARY CONCERNS WITH THE CONTINUITY OF YOUR BUSINESS?

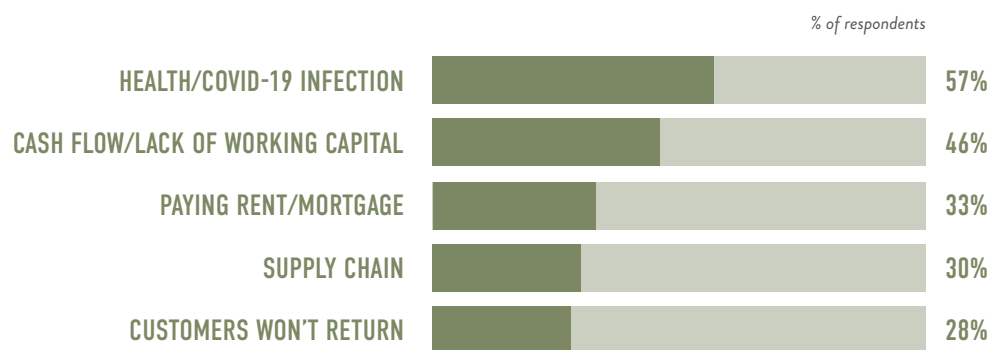




Image Source: Town of Ridgway

Throughout the survey, businesses provided input on how the COVID-19 pandemic has affected their operations in addition to what is described above. Based on these responses, the following themes emerged as the main challenges faced by business in Ouray County:

Employee Retention and Hiring

A common theme among respondents is that the pandemic has made staffing and employee retention especially challenging. While businesses in Ouray County have long had to deal with staffing issues, the pandemic has exacerbated them. The main reason behind this is that the pandemic has made for stressful work environments in which employees face significant health risks, which not only jeopardizes their physical health, but causes anxiety and a loss of morale. According to survey responses, this is especially true in the service sector, where restaurants and retail stores have continued to have in-person contact, putting employees at the frontline. Employee burnout was commonly cited as a barrier to employee retention, which stems not only from the stress of the pandemic, but also from the high volume of traffic that several Ouray businesses experienced over the summer. Several businesses struggled to find staff to meet this demand while ensuring employee and customer safety. Along

these lines, businesses have been dealing with this labor market reality that Ouray County has a thin applicant pool for available jobs, an issue that has only grown during the pandemic. Moving forward, staffing issues pose a challenge to businesses in Ouray County.

Challenges with Affordable Housing

Several businesses indicated that it is increasingly difficult for employees to find affordable housing in the area, causing employees in Ouray and Ridgway to move farther and farther out of the county. This poses a significant challenge to employee retention, as employees are discouraged from working at Ouray County businesses when they either have to spend a high portion of their income on housing, or have to commute from a long distance to work. It also makes employee retention difficult on the employer's end, as expensive housing means higher wages are required to retain employees and to keep them happy. While housing affordability is a longstanding problem in Ouray County, the pandemic has exacerbated the problem due to the 'Zoom Town' phenomenon in which remote working and other effects of the pandemic have enabled and encouraged an unprecedented number of people to move to rural areas, such as Ouray County, that have long



Image Source: Town of Ridgway

lacked the employment base to sustain a large base of mid- to high-income residents. As a result, housing prices continue to be pushed up, straining availability of affordable housing for employees in the region.

Building an Online Footprint

As the pandemic has created a business environment in which person-to-person contact is risky and limited, online commerce is increasingly crucial to business success. Several businesses expressed that they have transferred much of their business to or are working to expand their business to online platforms. In particular, one-third of respondents indicated that they need to invest in an online platform in order to adapt to the pandemic, most of which were Retail, Outdoor Recreation, or Food and Beverage businesses. On the other hand, one online-based manufacturing business in Ouray County has been performing very well during the pandemic as its model was well-suited to persist in the face of COVID-related restrictions and changes in behavior. A robust online presence will be essential to the success of many businesses in Ouray, both through the duration of the pandemic and post-pandemic.

Arts Organizations

One type of business that has been decimated by the pandemic in Ouray County are arts-based organizations. Due to the necessity of social distancing and the limited options for adaptation, arts events have practically come to a halt since March. To make matters worse, these businesses expressed that fundraising, which is a typical driver of arts organization success, has largely dried up. Until large events are safe again and resident confidence in public health recovers, this trend will continue. Arts organizations indicated that some form of support is imperative to their survival.

Positive Impacts

Several businesses indicated that they have done well during the pandemic and that they have not faced any major challenges. As Ouray County saw a marked uptick in visitation in 2020, some businesses were able to thrive despite the constraints of the pandemic.

Keep the WEST SLOPE STRONG

Take the Pledge: The Five Commitments of Containment



1
Wear
a mask



2
Maintain 6 feet of
physical distance



3
Minimize
group size



4
Wash your
hands
frequently



5
Stay home
when sick
and get tested

It's up to us to keep
Colorado healthy.

DO YOUR PART



Image Source: Town of Ridgway



Image Source: Town of Ridgway



Image Source: RidgwayColorado.com

Keep the WEST SLOPE STRONG

Shop Locally!

SUPPORT LOCAL BUSINESS

Invest in
our local
economy



It's up to us to keep
Colorado healthy.

DO YOUR PART



Image Source: Markus van Meter



Image Source: Town of Ridgway



Image Source: City of Ouray

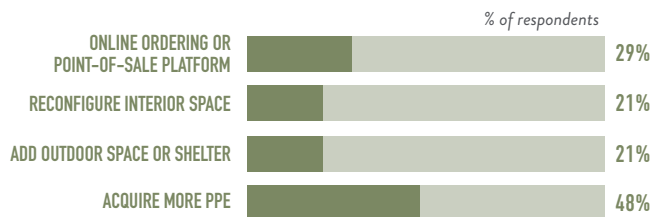
INVESTMENTS NEEDED

The businesses survey was interested in determining how businesses can adapt to the pandemic. When asked ‘Do you need to make any investments in your business to adapt to the pandemic?’, approximately 48 percent of respondents indicated that ‘Acquiring more Personal Protective Equipment (PPE)’ is an investment needed to adapt to the pandemic, while over a quarter indicated that they need to improve or invest in online ordering platforms.

These findings align with the sentiments related to the challenges that businesses have faced during the pandemic, especially those related to employee retention. Investments in PPE are seen both as a way to preserve the flow of business and to keep employees safe and healthy. Several businesses indicated that they have incurred significant expenses for PPE, air purifiers sanitizing, and mask enforcement, which is particularly taxing considering the revenue losses that many businesses have faced. In addition, several businesses expressed the need for rapid testing and vaccines. While these are obvious needs that are ultimately limited by nationwide availability, it shows the importance of communicating with businesses on when and how they can expect to access these things.

These findings also align with the common sentiment that many businesses need to build their online presence in order to stay strong moving forward.

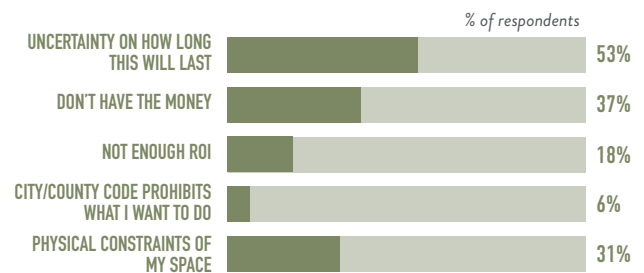
DO YOU NEED TO MAKE ANY INVESTMENTS IN YOUR BUSINESS TO ADAPT TO THE PANDEMIC?



INVESTMENTS BARRIERS TO MAKING NECESSARY INVESTMENTS

Also important to consider are the barriers that prevent businesses from making the investments discussed above. According to survey results, over half of respondents say that ‘uncertainty on how long this (pandemic) will last’ has prevented them from making these investments, while over one-third indicated that they do not have the money, 31 percent indicated that their space has physical constraint, and 18 percent indicated that the cost of the investments exceed the necessary return needed to justify the effort. In short, that the cost does not provide the needed Return on Investment (ROI).

IF YOU NEED TO MAKE INVESTMENTS IN YOUR BUSINESS TO ADAPT TO THE PANDEMIC, WHAT HAS PREVENTED YOU FROM MAKING THESE CHANGES?



6

ECONOMIC & DEMOGRAPHIC TRENDS

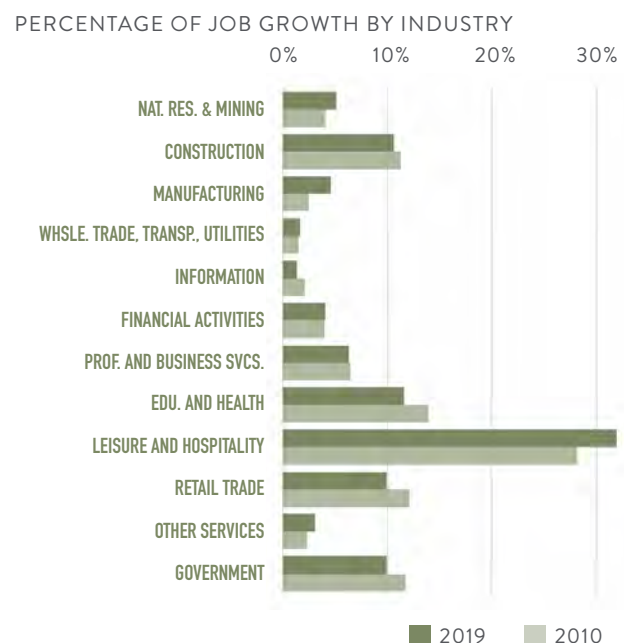
Over the past decade, the Ouray County economy has shown signs of vitality—job growth, population growth, and an expanding tax base. The past year has generated a mix of economic and fiscal conditions, with negative trends for unemployment claims and positive trends for fiscal revenues.

ECONOMY

Ouray County's economy has grown from 2010 through 2019, which was a period of strong economic growth in Colorado. Ouray County added approximately 525 jobs during this time period, a 21 percent increase and an annual growth rate of 2.1 percent.

The mix of jobs in Ouray County has remained relatively constant, however there are some changes that point to the potential to create more economic diversity. Natural resources and mining jobs grew by about 40 jobs to 5.1 percent of the total. Manufacturing industries, which includes brewing and distilling, more than doubled in size to nearly 100 jobs and 4.6 percent of the total. Professional and business services add 30 jobs; these types of jobs can be done remotely. At the same time, tourism jobs (leisure and hospitality) grew by nearly 200 jobs and is 32 percent of all jobs; with retail trade tourism and retail sectors comprise 42 percent of all jobs.

Nearly half of the jobs in Ouray County are held by self-employed people (proprietors), indicating the importance of entrepreneurship and small businesses.



ECONOMIC STORY IN OURAY COUNTY

JOB GROWTH



525

APPROX. NUMBER
OF JOBS ADDED

TOTAL JOBS



COUNTYWIDE SALES TAX



SINCE 2014

13.9%

SALES TAX GROWTH
PER YEAR

SALES TAX GROWTH RATE



UNEMPLOYMENT RATE

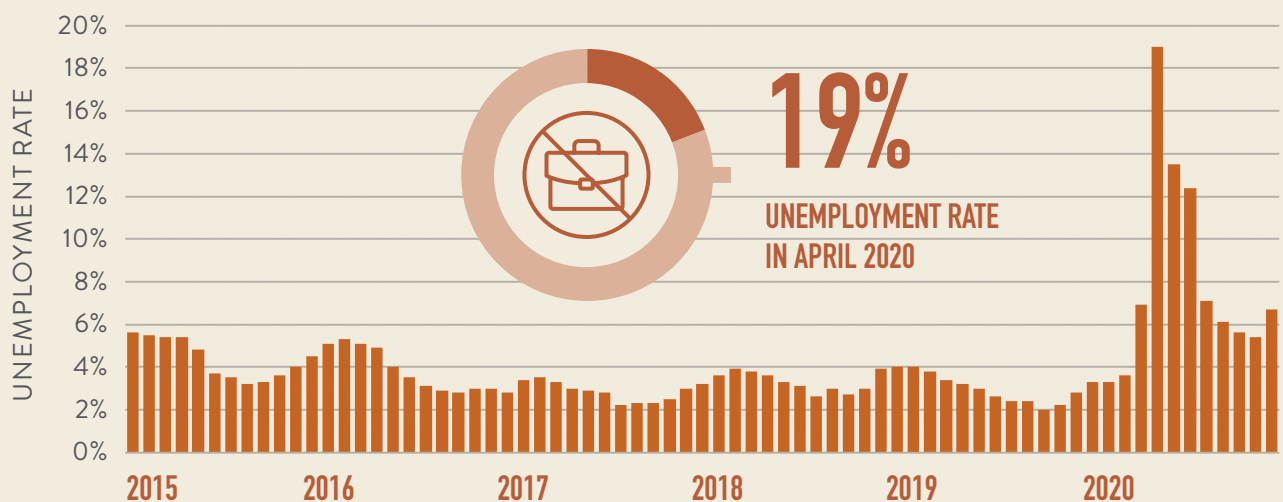




Image Source: Shutterstock

ECONOMIC INDICATORS

The unemployment rate in Ouray County was 6.7 percent in November 2020, the most recent available at this writing. Five percent is considered by many economists to be a stable or “natural” unemployment rate. Statewide unemployment is lower at 6.2 percent. Ouray and surrounding counties have similar levels of unemployment. San Miguel County however has been harder hit due to the shutdown of construction and the Telluride ski area in Spring 2020.

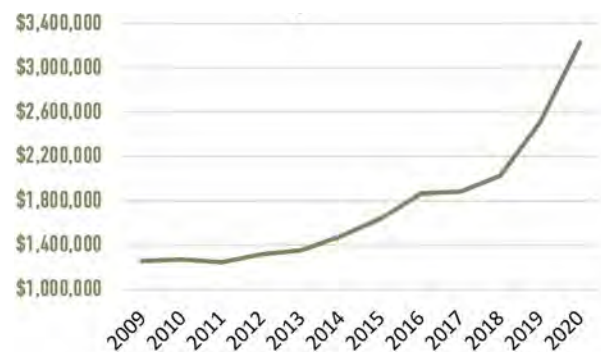
In 2020, unemployment rates were especially high in Ouray County. During a normal year, unemployment in Ouray County reaches a high of between 4 and 5 percent during the winter months due to seasonal changes in economic activity. In April of 2020, the unemployment rate reached 19 percent, considerably higher than the highest unemployment level reached during the Great Recession of 12 percent. The unemployment rate remained over 10 percent through June and has steadily fallen since then.

The number of unemployment insurance claims is an indicator of how many people are newly out of work on a weekly basis. This number was notably high in Ouray County in 2020. Ouray County recorded 690 claims in 2020, with new claims reaching a peak of 123 during the week of March 28th. This represents an average of 13 claims per week, which is significantly higher than the 2019 average of 3 claims per week.

The County collects a 2.55 percent sales tax countywide, making it an excellent indicator for economic activity for the entire County. Ouray County has experienced strong sales tax growth. Since 2014, sales tax has grown by 13.9 percent per year. From 2018 through 2019, it grew by 23.8 percent and by 28.9 percent from 2019 through 2020. Some of the recent increase is due to the collection of sales tax from online purchases. In 2020, much of the increase is also due to one of the busiest summer drive-to travel and outdoor recreation seasons on record, resulting from a change in vacation patterns during the pandemic.

Sales tax for Summer and Fall months in 2020 are up 15 to 30 percent over 2019. The data shown reflect the month the County receives the revenue, about six weeks after the actual sales occur (e.g., November sales tax is from mid-September sales).

COUNTYWIDE SALES TAX BY YEAR



UNEMPLOYMENT RATES, 2020, SELECT COUNTIES

MONTH	COLORADO	OURAY	MONTROSE	MESA	SAN MIGUEL
JANUARY	2.8%	3.3%	3.4%	4.1%	1.8%
FEBRUARY	2.9%	3.6%	3.6%	4.1%	1.7%
MARCH	5.4%	6.9%	7.5%	7.0%	3.5%
APRIL	12.2%	19.0%	12.3%	12.6%	22.9%
MAY	10.0%	13.5%	9.3%	9.1%	22.2%
JUNE	10.7%	12.4%	10.4%	10.1%	17.2%
JULY	7.4%	7.1%	6.5%	7.0%	9.4%
AUGUST	6.6%	6.1%	5.5%	6.2%	8.3%
SEPTEMBER	6.2%	5.6%	5.3%	5.7%	6.9%
OCTOBER	6.1%	5.4%	5.1%	5.7%	8.0%
NOVEMBER	6.2%	6.7%	5.5%	6.0%	11.2%
CHANGE	3.4%	3.4%	2.1%	1.9%	9.4%

Source: BLS; Economic & Planning Systems

COUNTYWIDE SALES TAX BY MONTH

MONTH	2019	2020	% CHANGE
JANUARY	\$109,681	\$200,328	83%
FEBRUARY	\$155,481	\$233,448	50%
MARCH	\$146,011	\$194,803	33%
APRIL	\$129,376	\$169,125	31%
MAY	\$145,176	\$160,701	11%
JUNE	\$129,164	\$151,215	17%
JULY	\$162,633	\$186,826	15%
AUGUST	\$276,831	\$309,002	12%
SEPTEMBER	\$365,567	\$439,351	20%
OCTOBER	\$330,235	\$403,565	22%
NOVEMBER	\$327,608	\$439,610	34%
DECEMBER	\$227,588	\$339,617	49%
TOTAL THROUGH DECEMBER	\$2,505,350	\$3,227,590	29%

Source: Ouray County; Economic & Planning Systems

*The amounts above are countywide amounts, which include both the municipalities and county.



Image Source: Town of Ridgway

HOUSING AND DEMOGRAPHICS

Ouray County's full-time population is growing, with just under 500 new residents since 2010. From 2010 through 2019, 320 new homes were built and there was an increase of 297 new households indicating that most new housing is being occupied by full time residents. The percentage of second homes has declined by 2.6 percent according to the latest estimates from the State Demography office.

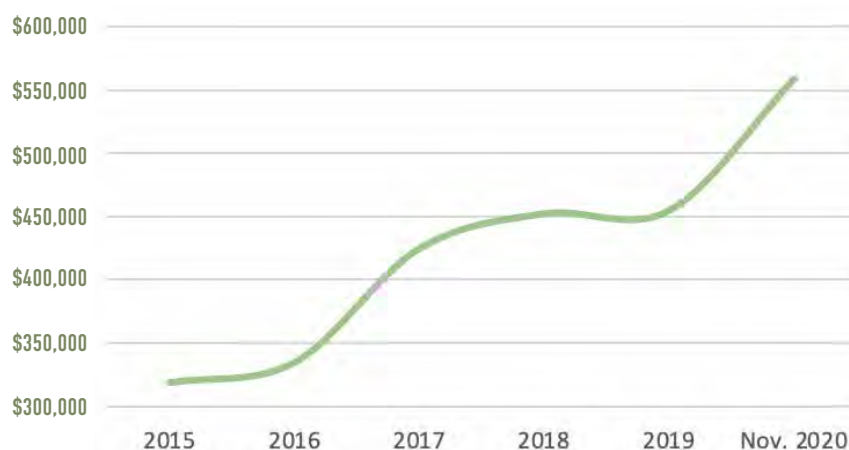
The mountain real estate market has appreciated significantly in 2020 driven by a desire to work remotely, and to have open spaces and recreation opportunities more distant from large cities. This "Zoom Town" trend has been driving up prices, accelerating trends that were already happening in Colorado. As of November 2020, the median single family home price in Ouray County was \$559,000. This is up from \$319,000 in 2015, which is 12.1 percent annual appreciation. These trends suggest an increase in people moving to Ouray County, and/or an increase in second home purchases which will continue to put pressure on the housing availability for local residents.

VACANCY RATES

DESCRIPTION	2010	2019	CHANGE
POPULATION	4,446	4,934	488
HOUSEHOLDS (OCCUPIED HOMES)	2,026	2,323	297
TOTAL HOUSING UNITS	3,088	3,408	320
VACANT HOUSING UNITS (SECOND HOMES)	1,062	1,085	23
VACANCY RATE	34.3%	31.8%	-2.6%

Source: BLS; Economic & Planning Systems

MEDIAN SALES PRICE



7

MOBILITY ANALYSIS

Ouray County saw an exceptionally high volume of visitors in 2020. While this brought economic benefits, it raised awareness regarding the need to balance these benefits with the preservation of natural and infrastructural assets going forward.

The COVID-19 pandemic has significantly affected how people move and travel. Capacity restrictions, risks of large gatherings, and the necessity of social distancing have shifted people away from traditional gathering places like restaurants, movie theaters, concert halls, stadiums, and stores. Travel patterns have also changed, with more people opting for road trips and outdoor recreation than flying and international travel. These trends have manifested themselves in Ouray County. During the summer and fall of 2020, Ouray County saw an influx of visitors beyond what it normally experiences despite the risks of the pandemic. This chapter examines data on mobility trends in Ouray County, relying on data from the state on device activity and on traffic data on Ouray County roads.

TRAVEL PATTERN CHANGES



**MORE ROAD
TRIPS**



**MORE OUTDOOR
RECREATION**

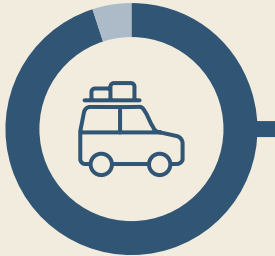
VISITOR ACTIVITY

The summer of 2020 was marked by a widespread desire for road trips and a desire to access areas with an abundance of open space, enabling people to avoid the risks of flying and crowds. Ouray, as a hub of outdoor recreation and natural beauty, was a common destination for road trippers. This is evident in the amount of out of county visitor activity that the county experienced through the summer season. As shown on the graph on the next page, the volume of activity from people outside of Ouray County rose significantly in May and June, peaking in July at a level seven to eight times higher than March and April levels.

Out-of-county activity decreased in August, but remained high until late October, when it stabilized to similar levels as in March and April. A high share of traffic in Ouray County is usually from outside of the county. In 2020, 83 percent of all activity was from outside of the county, compared to 79 percent in 2019. At the peak of the tourism season in July, 95 percent of all traffic was from outside of Ouray County. While Ouray has historically been a destination for visitors, it is notable that, even during a pandemic that created an imperative for people to stay at home, summer visitation remained strong.

VISITOR & TRAFFIC ACTIVITY

ACTIVITY FROM OUTSIDE OURAY COUNTY



IN JULY 2020,

95%

of all traffic was from outside of Ouray County.

VISITOR ACTIVITY AS PERCENT OF TOTAL ACTIVITY

2019

79%

2020

83%

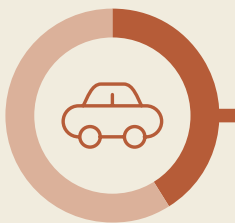
ACTIVITY FROM OUTSIDE OF OURAY COUNTY, MARCH-DECEMBER 2020

**7-8
TIMES**

the volume of activity from people outside of Ouray County in July compared to March and April levels



TRAFFIC ON OURAY COUNTY ROADS



IN 2020

41%

increase in daily traffic on County Road 361

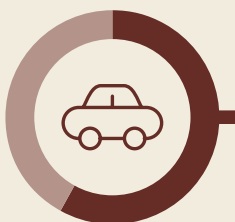
DAILY TRAFFIC ON COUNTY ROAD 361

2019

486

2020

688



IN 2020

58%

increase in daily traffic on CR-7

DAILY TRAFFIC ON CR-7

2019

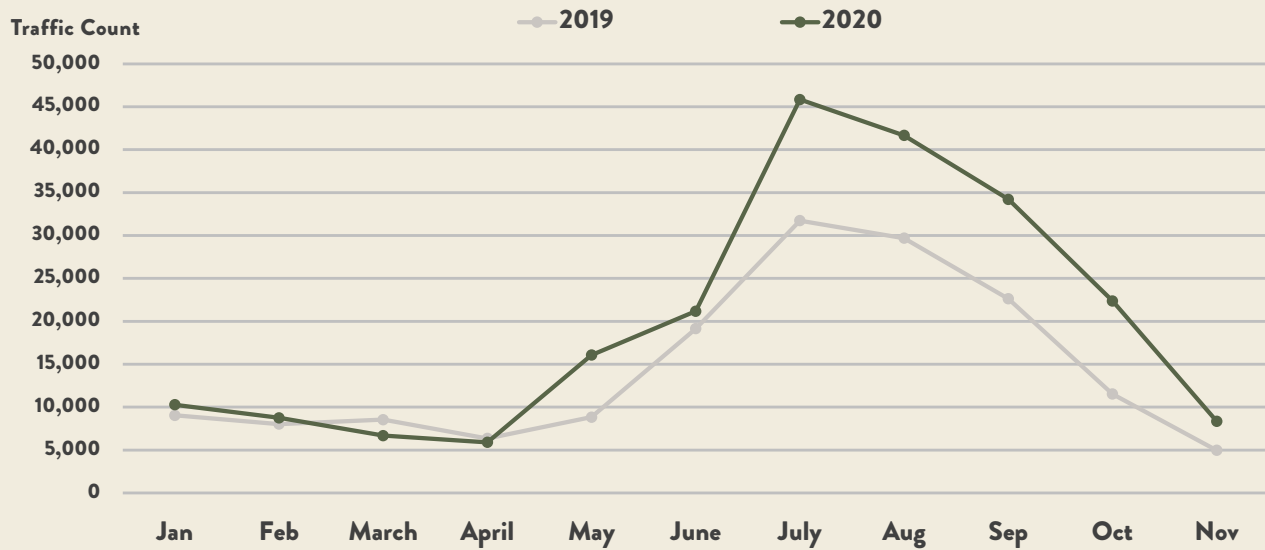
279

2020

441

TRAFFIC COUNTS

TRAFFIC COUNT BY MONTH, COUNTY ROAD 361 AT ICE PARK BRIDGE, 2019 VS. 2020



TRAFFIC COUNT BY MONTH, COUNTY ROAD 7, 2019 VS. 2020

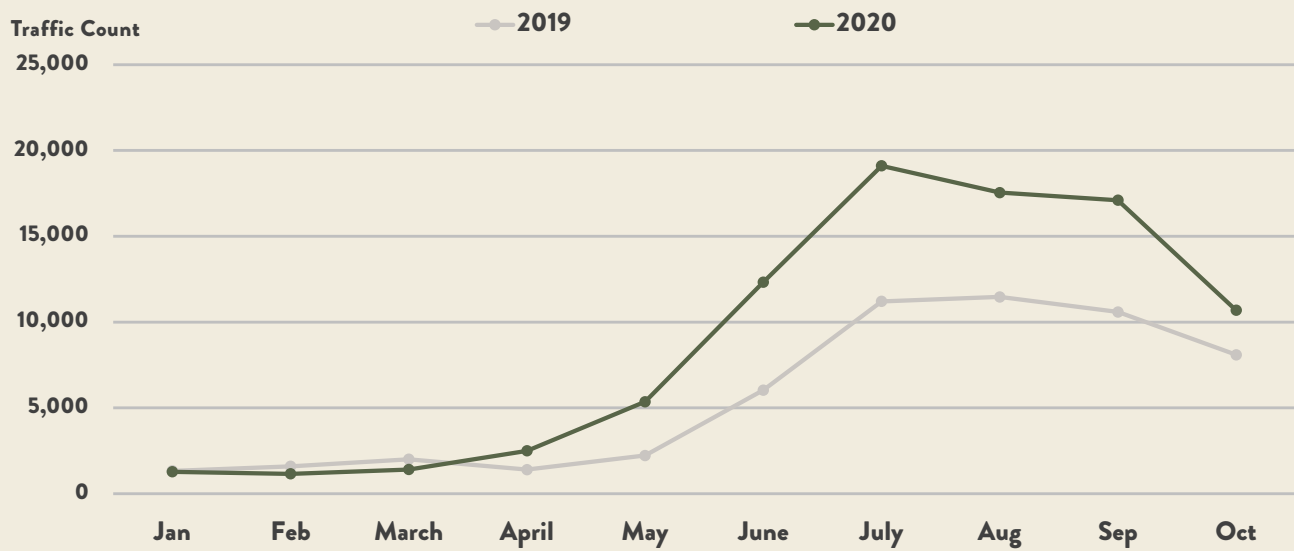




Image Source: RidgwayColorado.com

TRAFFIC ON OURAY COUNTY ROADS

Ouray County officials expressed that the summer of 2020 attracted a remarkably high volume of tourism and traffic compared to previous years, for many of the reasons previously described. This point not only emerged through stories and observations, but also through an examination of traffic data on several Ouray County roads.

County Road 361, which runs from U.S. Highway 550 on the south side of Ouray to Camp Bird, is commonly used for recreational purposes, as it offers beautiful scenery and National Forest access. In 2020, County Road 361 at the Ice Park Bridge saw an especially high volume of traffic, recording an average of 688 vehicles a day compared to 486 vehicles per day in 2019, representing a 41 percent increase. The difference in traffic volume was most pronounced in between June and September, the height of tourism season, when this section of the road recorded 143,000 vehicles compared to 103,000 vehicles in 2019. The difference between the years is shown in the top graph on the previous page.

County Road 7, which runs from State Highway 62 to the Blue Lakes Trailhead in the western part of Ouray County, is also a commonly used road for recreational purposes, as it leads to National Forest access. In 2020, County Road 7 recorded 441 vehicles per day, compared to 279 vehicles

per day in 2019, representing a 58 percent increase. The summer season brought a notably high volume of traffic; between June and September, County Road 7 recorded 66,000 vehicles, compared to 39,000 vehicles in 2019, as shown in the bottom graph on the previous page.

The traffic counts on these Ouray County roads illustrate a few important points. They demonstrate the surge in visitation and tourism that Ouray County experienced in the summer and fall of 2020, owing largely to the desire for road trips and outdoor recreation during a pandemic year. While Ouray County typically has a high volume of visitors seeking outdoor recreation in the summertime, 2020 brought exceptionally high volumes. This represents an economic bright spot during the pandemic in Ouray County – despite broader economic hardships, Ouray County’s economy benefited from strong tourism.

At the same time, increasing volumes of traffic and outdoor recreation have implications for Ouray County’s ability to manage its roads and natural resources. Higher traffic volumes on county roads mean that the county incurs greater expenses for maintenance and upkeep, which can negatively affect county finances. In addition, greater usage of natural assets, such as hiking areas, expand the need for active management and protection. To foster long-term economic health, it is important that Ouray County considers the impacts of tourism and recreation.

8

RESOURCE MANUAL

There is a broad range of resources available to residents and businesses in Ouray County. This chapter informs and equips residents and businesses to address current issues as well as to prepare for future challenges.

RESOURCES FOR BUSINESSES

PAYCHECK PROTECTION PROGRAM

What is it?

The paycheck protection program (PPP) is a low-interest loan program to support small businesses. Loan payments are automatically deferred for six months, but businesses can apply to have the loan forgiven if it is used for eligible payroll costs, rent, mortgage payments, or utility payments. In order to receive full forgiveness, a business must spend 60% of the loan proceeds on payroll expenses.

The second round of PPP loans offers loans of up to \$2 million. The exact amount of the loan depends on the size of the business; it is equal to 250 percent of a business's average monthly payroll cost between February 15th, 2019 and June 30th, 2019. If a business was not operating during that period, it is equal to 250 percent of a business's average

monthly payroll cost between January 1st, 2020 and February 29th, 2020. For businesses in the hospitality and food service industries (e.g. restaurants, hotels), this amount increases to up to 350 percent.

Businesses can apply to have the loan forgiven under the following conditions:

- All employees are kept on the payroll for eight weeks
- At least 60% of funds are spent on payroll over a covered period between 8 and 24 weeks
- Funding is used for expenses related to payroll, rent, mortgage, or utilities.
- Eligible expenses have been expanded to include certain operations expenditures, property damage costs, certain supplier costs, and expenses related to worker protection (ex. sanitizing, ventilation, PPE)
- Loan forgiveness process has been simplified to a one-page self-certification

How can it be used and benefit my business?

This program provides an infusion of cash to keep businesses afloat and to keep employees on payrolls. Since loan forgiveness is tied to keeping employees on the payroll for at least eight weeks, the program targets assisting existing employees.

Who is eligible?

- Any small business with fewer than 300 employees can apply.
- Business demonstrates that it had gross receipts in Q1, Q2, Q3, or Q4 of 2020 that were at least 25% below gross receipts in the same quarter in 2019; because of this requirement, it is imperative that businesses organize their financial records
- Businesses that have previously received a PPP loan, and have used the full amount of the first loan for eligible purposes

Application Process/Distribution

To access the second draw of PPP loans, businesses must fill out an application form and apply through a participating lender. The Small Business Administration (SBA) has network of SBA-approved lenders that participate in the program. Once matched with a lender, a business works with the lender to complete the application.

Because of the importance of having a strong relationship with an eligible lender, it is beneficial for businesses to reach out to and establish a relationship with small, community banks. These banks provide guidance on what is needed for a successful application, simplifying the process and increasing the likelihood of receiving PPP aid.

How effective has the program been?

The PPP, due to its scale, has been heavily subscribed among small businesses. According to survey results, 30 businesses out of 62 total respondents applied to the PPP in Ouray County. Out of these applicants, approximately 75 percent had their full loan request granted. Approximately one-third of loans were between \$10,000 and \$24,999, one-quarter were between \$100,000 and \$499,999, 20 percent were between \$50,000 and \$99,999, and 17 percent were for less than \$10,000.

RESOURCES FOR BUSINESSES



PAYCHECK PROTECTION PROGRAM



EIDL PROGRAM



REGION 10 LOAN PROGRAM



ENERGIZE COLORADO GAP FUND

In general, businesses in Ouray County regarded the PPP program as effective. Approximately 63 percent of recipients who responded gave the program a score of 5 out of 5, indicating that the program was very effective, while 13 percent gave it a score of 3 out of 5, and 13 percent gave it a score of 1 out of 5.

ON A SCALE OF 1-5, HOW EFFECTIVE WAS THE PROGRAM YOU APPLIED TO? 1 BEING NOT EFFECTIVE AND 5 BEING VERY EFFECTIVE





Image Source: Markus Van Meter

ECONOMIC INJURY DISASTER LOAN PROGRAM (EIDL)

What is it?

The EIDL program is an emergency loan program for small businesses impacted by the pandemic. Loans are up to \$150,000 and are long-term loans with a 3.75% interest rate and a maturity of up to 30 years.

The amount of the loan is based on the amount of economic injury that a business has incurred and by a business's financial needs. This is determined on a case-by-case basis by the Small Business Administration (SBA).

How can it be used and benefit my business?

Funds are intended to be used to fund working capital, including fixed debts, payroll, accounts payable, and other bills that have not been paid had the pandemic not occurred. The loan cannot be used to fund long-term debts or business expansion.

Who is eligible?

Businesses with less than 500 employees that have faced substantial economic injury are eligible. 'Substantial economic injury' means that a business has been unable to meet its obligations and pay its ordinary operating expenses. It also requires that businesses prove that they have been unable to access credit elsewhere.

Businesses can apply for both the PPP and the EIDL programs. However, funds cannot be used for the same purpose. Businesses are expected to document their uses of the funds.

Application Process/Distribution

Businesses must fill out an EIDL application, which is available through the SBA website. After an application is submitted, the SBA will send an inspector to determine the amount of economic damage the business has incurred. The applicant must provide a transcript of their tax return, as well as credit history, a balance sheet, and show an ability to repay the loan. The applicant is also supposed to provide collateral for loans over \$25,000; the SBA won't decline a loan for lack of collateral, but will require the borrower to pledge whatever is available. Real estate qualifies as collateral.

REGION 10 LOAN PROGRAM

What is it?

This program provides loans of up to \$10,000 at 4% interest to businesses that have experienced distress. The loans have flexible terms and offer a 90-day initial deferral period.

How can it be used and benefit my business?

The loan can be used to fund working capital or gap financing. It helps businesses stay operational through the period of economic distress caused by the pandemic.

Who is eligible?

Sole proprietorships, [partnerships, corporations, LLCs, and nonprofits are all eligible for the program. The program requires that business are experiencing some amount of distress and evaluates eligibility on a case-by-case basis. It asks questions such as:

- Do you have the cash flow to operate your business for a month with limited or no sales?
- Do you have a line of credit with your bank?
- Can you operate your business remotely? Are you a sole proprietor or do you have someone who can take over key management roles?
-

Application Process/Distribution

Business apply directly to the Region 10 League for Economic Assistance and Planning, which is an organization that supports businesses in six counties in southwestern Colorado. Interested businesses are to contact Dan Scinto at 970-765-3126.

ENERGIZE COLORADO GAP FUND

What is it?

The GAP fund is a program that utilizes public and private resources to provide loans and grants to small businesses in Colorado. This program provides grants of up to \$15,000 and loans of up to \$25,000.

How can it be used and benefit my business?

The program does not specify eligible uses. Ideally, it will help small businesses stay open and recover from the economic damage caused by COVID-19.

Who is eligible?

Sole proprietors, LLCs, partnerships, and other registered small businesses in Colorado are eligible. Nonprofits are also eligible. Applicants must meet the following additional criteria:

- Business has fewer than 25 employees
- Business is able to demonstrate the economic hardship it has faced due to the COVID-19 pandemic

The program gives priority to applicants with the following characteristics:

- Women, BIPOC, or veteran-owned
- In a rural area with a population of under 50,000
- In the tourism sector
- Limited access to capital and state/local grants/loans

Application Process/Distribution

The application is completed online through the Energize Colorado GAP Fund website. To demonstrate COVID-related hardship, it asks applicants to provide documentation, which can include bank records, profit and loss statements, point of sale receipts, tax filings, and expense receipts.

Energize Colorado offers mentoring to assist in filling out the application, including translation.



Image Source: RidgwayColorado.com

RESOURCES FOR RESIDENTS

The COVID-19 pandemic has put great pressure on the ability of individuals and households to pay bills, access health care, care for children, and simply engage in necessary day-to-day activities, among other things. It is critical that Ouray County residents are able to access the necessary resources to address these challenges. The following information gives residents a clear idea of where and how to access the resources they need. It seeks to answer the question: Where do I go for help?

2-1-1 SERVICES

2-1-1 is a confidential and multilingual service connecting people to vital resources across Colorado. 2-1-1 streamlines services and provides one central location where people can get connected to the resources they need. With a database that is updated daily, 2-1-1 Colorado connects people to critical resources simply by dialing a three-digit number.

2-1-1 Colorado helps connect people with the following services:

- Housing & Shelter/Rent Payment Assistance
- Utility Assistance

- Food Assistance
- Legal Assistance
- Health Services/Healthcare
- Employment
- Childcare and Education
- Mental Health & Addiction
- Pregnant and New Parents
- Basic Needs & Financial Assistance
- Youth with Special Needs
- Aging and Disability
- Immigrants & Refugees

In Colorado, over a quarter of all 2-1-1 calls during the pandemic have been related to rent payment assistance, while 17 percent have been related to utility assistance, highlighting the prevalence of these issues during the pandemic. In Ouray County, approximately one-third of 2-1-1 calls between April and October were housing-related, a quarter were healthcare-related, and a quarter were information services-related.

Within Ouray County, residents have access to several resources related to financial assistance, health care, food assistance, social services, childcare, and utility assistance.

FINANCIAL ASSISTANCE

Good Neighbor Fund

The Telluride Foundation has operated the “Good Neighbor Fund (GNF)” for 15 years. GNF is a one-time emergency hardship funding program available for the workforce in San Miguel, Ouray, and west Montrose counties to cover emergency financial needs due to illness, health care costs, lack of work or having to care for children of family. The maximum grant per application is \$1,500 and applicants may apply every 3 years.

In order to be eligible for consideration, applicants must: currently live/work in Rico, San Miguel County, West Montrose County, or Ouray County and have done so for the past 1 year; have not (nor their spouse/partner) received a Good Neighbor Fund grant award in the past 3 years; demonstrate that they have exhausted all other resources; and show that they can maintain financial stability outside this non-recurring and unexpected crisis to remain living and working in the defined region.

It is important to review the following criteria before completing an application. Applicants must be able to provide proof of:

1. Residency in Rico, San Miguel County, West Montrose County, and/or Ouray County (e.g. copy of lease agreement)
2. Employment (current or former) in Rico, San Miguel County, West Montrose County, and/or Ouray County (e.g. copy of pay stub)
3. Statements demonstrating current financial need (e.g. copies of bills, balances forwarded)
4. All regular monthly financial commitments (e.g. electric bill, mortgage/rent due, car insurance, medical bill, phone, health insurance)

Good Neighbor Fund: ngnf@tchnetwork.org, 970-708-7096, <https://telluridefoundation.org/ouray-county-response-fund/>

RESOURCES FOR RESIDENTS



**2-1-1
SERVICES**



**FINANCIAL
ASSISTANCE**



**HEALTH CARE/
MENTAL HEALTH**



**SOCIAL SERVICES/
ASSISTANCE**



**FOOD
ASSISTANCE**



**UTILITY
ASSISTANCE**



**CHILDCARE/
YOUTH**



SENIORS

FOR ADDITIONAL INFORMATION
AND RESOURCES PLEASE VISIT:

WWW.OURAYCOUNTYRESOURCES.COM

Ouray County Response Fund

Through the generosity of the residents of Ouray County, the Telluride Foundation has created the Ouray County Response Fund which has been set up specifically to support individuals residing in Ouray County. Residents of Ouray County may apply for financial support through this fund by completing a Good Neighbor Fund Application. Prior to filling out the application, residents are encouraged to read the Good Neighbor Fund Qualifications and Criteria. Residents of Ouray County are eligible for an award up to \$500 above the standard Good Neighbor Fund limit. Visit the Foundation's COVID-19 Community Resource page to learn about other resources available to residents of Ouray County.

Ouray County Response Fund gfn@tchnetwork.org, 970-708-7096, <https://telluridefoundation.org/ouray-county-response-fund/>

Church of The San Juans

In addition to being mindful to continue our congregation support, we are aware of the financial impact our community's preventative measures might have on hourly



Image Source: Town of Ridgway

workers and others that depend on weekly paychecks to make ends meet. If you are aware of anyone who is struggling because of the impact of social distancing, please have them contact Pastor Pam. Our discretionary fund is available to provide emergency support to people in need. If you have any questions during our period of suspension, please call Chuck Anderson at 970-626-2270.

HEALTH CARE/MENTAL HEALTH

Mountain Medical Center

Mountain Medical Center has been serving the medical needs of local residents and seasonal visitors alike since January 2000. We are a full service family practice medical center. Please call ahead (970) 626-5123. Also, if you are an established patient at MMC, we also have an integrated behavioral health therapist on site (Nathan Wagner, PsyD) and he offers TeleHealth services as well.

Center for Mental Health

Crisis: 970-252-6220

Appointment: 970-252-3200

The Center is still open for business. Ridgway and Montrose offices still have someone at the front desk. Offering video and telehealth options. Expanding crisis support (Crisis Walk-In center is open). Currently taking new clients. Center therapists are continually working with youth clients in the schools.

SOCIAL SERVICES/ASSISTANCE

Woman's Club of Ouray County

970-787-0510

If you are a resident of Ouray County, we have volunteers that are willing to help you if you are home sick, elderly or have a medical issue and you cannot go out into the community at this time! If you need groceries or a prescription delivered (these items must be purchased at a Ouray County business (Duckett's, Mountain Market or Stacie's Apothecary Shoppe in Ridgway. Volunteers will not be going to Montrose).

Hilltop Latimer House

1 (844) 990-5500

If you, or someone you know, is in an abusive relationship or has been sexually assaulted, call our 24-hour crisis line now.

Praise Him Ministries

970-626-5243

Providing four rolls of toilet paper free to any family or community member in need. Call or email and let them know that you're coming. Pick up at the site or contact them if you need delivery.

Bright Futures

Mary: 970-729-1578

Liza Cooney: (207) 632-8169

Bright Futures is offering phone assistance to navigate these resources and assist in any way they can.

Mutual Aid Forum

<https://www.pandemicoflove.com/>

Where citizens will be connected with patrons who are able to give to those who have immediate needs and are requesting help

Hispanic Affairs Project

Ricardo Peréz: 970.249.4115, www.hapgj.org

Visit us at: 1010 S. Cascade Ave Suite A1
Montrose, CO 81401

Ouray County Public Health

970-626-5484 - Ouray County COVID-19 Hotline

FOOD ASSISTANCE

Ouray County Food Pantry:

970-626-4273 or 970-626-5872

Open every Thursday from 12:30 p.m. to 3:30 p.m. Food donations can be dropped off during those hours. Anyone wanting to donate money can do so on our website or send a check to PO Box 903, Ridgway



Image Source: Town of Ridgway

Ouray Student Lunches

Starting Monday, April 20, student lunches will be provided at the Ouray School, Monday to Friday, 11 am to 12 pm.

To order, please call 970-318-6993.

Ridgway Schools

stephlyons@ridgway.k12.co.us

jdonovan@ridgway.k12.co.us

The school is working to provide lunches for Ridgway students.

Taco Del Gnar

970-626-9715

Open Tuesday-Saturday
12:00-7:00 pm.

Free bean & cheese burrito with carrots to kids, and 15% service industry discount to works in food & bev, police, fire, military, teacher, and medical facility staff.

Virtual Canned Food Drive

<https://wc-cf.org/donate-covid-relief/>

There is an option to select Ouray County so contributed funds will go directly to the Ouray County Food Pantry. Donations may be made either online or check mailed in.



UTILITY ASSISTANCE

LEAP

LEAP is a federally funded program that helps eligible hard-working Colorado families, seniors and individuals pay a portion of their winter home heating costs. Our goal is to help bring warmth, comfort and safety to your home and family by assisting with heating costs. Call HEAT HELP at 1-866-432-8435 for more information.

San Miguel Power Association

This program encourages any member experiencing financial hardship due to the coronavirus outbreak to call us during regular business hours. We will work with you individually to create a plan that works for you. In general, SMPA will not shut off power to people in this circumstance, however, the power still has a cost associated with it and it must be covered. Please call if you need help.

Black Hills Energy Assistance Program

Black Hills Cares helps eligible customers in need pay their Black Hills Energy bills or emergency energy-related expenses.

CHILDCARE/YOUTH

Voyager Youth Program

970-318-1218

We have a list of babysitters who are available to provide childcare for free or for very little cost.

Weehawken Dance Y

970-318-0150

Weehawken is offering free online dance classes to youth.

Pinyon Song

admin@pinyonsong.org

Pinyon Song is a non-profit licensed preschool that is willing to provide childcare to essential workers

Ouray Public Library

970-325-4616

OurayPL@gmail.com

The library currently is closed to the public. Patrons may request resources for home delivery. Residents who need to apply for federal or state benefits, but who lack home internet access or a computer, may make an appointment at the library. Library cards can be issued over the phone so that people can access all of the free digital resources (ebooks, digital audio, and databases)

SENIORS

Neighbor to Neighbor

<http://ourayneighbor.com/>

The County is home to a fiercely independent population of Senior, homebound and disabled individuals who want very much to stay in their homes, but cannot do so without help. Neighbor to Neighbor is an effort of neighbors helping neighbors by being fresh eyes and ears, providing companionship, transportation, a hot meal, monthly social events, handyman services, bookkeeping help and access to other resources that may be beyond their reach. Each Thursday we provide transportation to and from medical appointments and shopping in Montrose. It also has volunteers who are happy to pick up ordered food or prescriptions

9

BUSINESS STRATEGIES & TACTICS

Within the broader focus of this report, examples of tactical solutions can elevate economic conditions and help various sectors adapt to the impacts of the pandemic.

CREATIVE DISTRICT

The Town of Ridgway is certified by the State of Colorado as a Colorado Creative District. Growing creative industries is an important part of an economic diversity strategy to grow jobs in non-tourism (retail, food & beverage, and lodging) industries. The Creative District program is overseen by Colorado Creative Industries within the State's Office of Economic Development and International Trade. This is a competitive program in which communities can apply to be certified and recognized by the State as a community that contributes to the State economy through creativity, culture, and the arts. The formal benefits of the program are summarized below:

- A \$10,000 technical and professional assistance cash grant (with a local match);
- Two signs on state highways near the district; and
- Access to economic data on the impact of Creative Districts from the State and the Western States Arts Federation.

To be eligible for this competitive designation, a community needs to demonstrate that it has distinguishing physical,

artistic, and cultural resources and be a concentrated area of artistic and cultural activity. Other requirements include:

- A paid staff person (can be shared as a percentage of time with other functions)
- An advisory or governing board
- A strategic plan
- A minimum of \$10,000 in operating funds.

In addition, certification is another tool for organizing and building momentum around creativity and the arts in the local economy. The program provides another reason to focus energy in an organized way to grow an economic cluster around creativity culture.

Ridgway was awarded Creative District status in 2013. It was the outcome of a process that began during the State-led Bottom Up Economic Development Plan. Goal 3 of that plan was to participate in statewide efforts to grow creative industries, and the County and municipalities formed a Goal 3 Committee that recommended to Ridgway Town Council support and help lead this certification. The program is staffed by one staff person who splits time between the creative district and the Main Street Program.



Image Source: Markus Van Meter



Image Source: Town of Ridgway



Image Source: City of Ouray



Image Source: RidgwayCreativeDistrict.com



Image Source: RidgwayCreativeDistrict.com

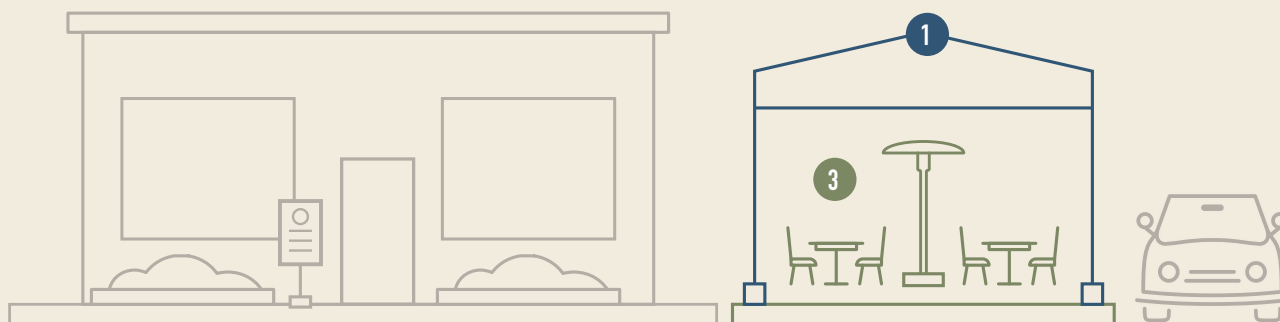


Image Source: RidgwayColorado.com



Image Source: Markus Van Meter

BUSINESS SOLUTIONS & TACTICS

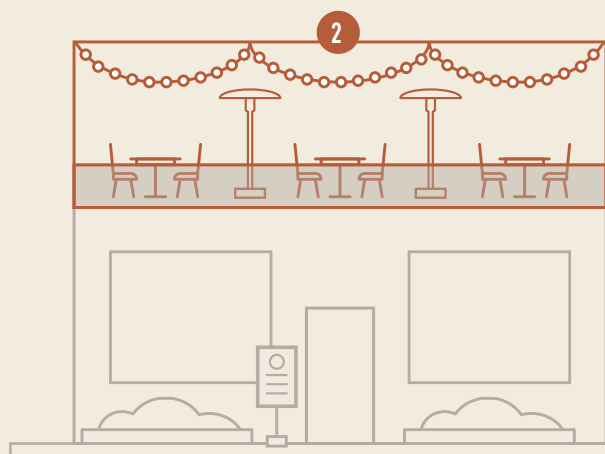


1 TEMPORARY SHELTERS

Temporary shelters such as tents can be used to expand space for customers for dining, merchandise display, fitting areas, or waiting areas. Local fire and electrical code needs to be followed for safety, and in particular tents should meet the NFPA 701 standard for flame propagation. Electrical heat and light may be allowed; gas heaters however cannot be placed inside the structure. Temporary shelters could also be used to offer an exclusive private guest experience at a higher price.

2 PERMANENT IMPROVEMENTS

The pandemic has motivated some business owners to make permanent investments they have been considering prior. Adding a roof and space heaters to patios or constructing covered outdoor decks are examples.

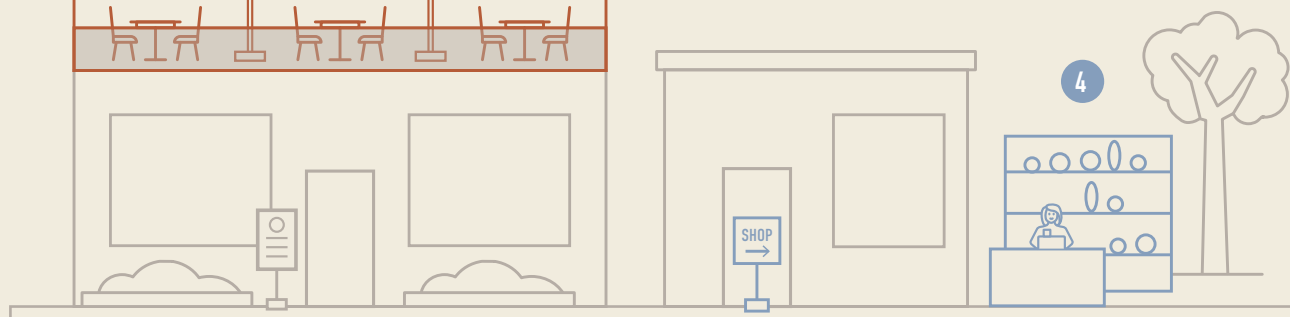


3 PUBLIC RIGHT-OF-WAY

Allowing targeted use of sidewalks, alleys, and selected street closures or lane closures creates more possibilities for dining and merchandise display. This tactic can also create a livelier street environment that can draw more customers and pass-by-traffic attracted to the increased level of visible activity. Warm weather of course expands the possibilities and appeal for outdoor space, but this can also be a long-term tactic used to enhance the business and social environment for locals and guests.

4 REPURPOSING SPACE

Business and property owners can work together to put vacant space into productive use, as it would be unlikely to be leased/sold during these uncertain economic times. Using adjacent spaces can again create more space for dining, merchandise display, or activities like outdoor equipment rentals and fitting. Hotel conference space can also be easily converted to dining space.



BUSINESS TACTICS

The occupancy restrictions needed to slow the spread of COVID-19 and protect life and health can have a negative impact on businesses. With fewer customers allowed and even closures, business revenues are vulnerable. There are however measures that entrepreneurial business owners can take to reduce the impacts of COVID-19 on revenues, protect their employees and customers, and even open the door for innovation that can be used going forward in more normal times.

There are three main types of tactics outlined in this Chapter: physical, operational, and organizational. Individual business owners and managers will be able to gauge their applicability to their own circumstances and needs. Local governments should be flexible on working with business and property owners to address any code or permitting changes that may be needed to allow use of public right of way or temporary shelters, for example.

PHYSICAL

By expanding the area available for customers, businesses may be able to comply with occupancy restrictions (e.g. 50 percent occupancy) and social distancing requirements while remaining open. Several examples that are in use throughout Colorado are given on the page to the left. Some of these are temporary investments; others can be permanent.

In considering these options, the definitions of indoor and outdoor space need to be clear. If indoor dining is prohibited for example, then not all of these tactics could be employed.

An indoor space is:

- Four walls with a ceiling
- Three walls closed and one open
- Two adjacent walls closed and two adjacent sides open

An outdoor space has:

- Two non-adjacent sides open with a roof
- Two adjacent walls closed and two adjacent sides open without a roof
- Ceilings, roofs, umbrellas, or canopies with no walls



Parklets use the public right-of-way to expand functional space for a business. Image source: ColoradoParklets.com



Winterized outdoor restaurant seating can take a variety of forms. Image Source: Denver Post



Sidewalk sales and curbside pickup have become more prominent during the pandemic. Image Source: BoulderDowntown.com



OPERATIONS AND ORGANIZATION

The COVID-19 pandemic is highlighting the need for retail and food and beverage establishments to respond and adapt to the growth in online sales, ordering, and delivery platforms. For local businesses, this means having a strategy for touchless or low-touch ordering and delivery or pickup. In addition, there are broader tactics that can be taken on by business organizations and the larger community. The main tactics in this area are outlined below.



ONLINE POINT OF SALE

Having an intuitive online ordering platform is important during the pandemic. More broadly, it is also highly important when marketing to guests from more urban areas accustomed to the latest technology and convenience. In competing against online retail, it is essential.



CURBSIDE PICKUP

Businesses with convenient curbside pickup operations combined with a modern online point of sale platform will be better equipped to endure this pandemic, as well as to offer options to customers in the future.



CONSISTENT OPERATIONS

Businesses and economic development organizations can coordinate to develop consistent standards and signage for curbside pickup such as branded signage and dedicated short-term parking spaces. Consistent hours of operation are also important for any downtown or neighborhood business district regardless of the status of the pandemic.



RECURRING EVENTS

Rather than one-off or annual events that require a lot of advanced preparation and investment, developing low-cost recurring events creates “stickiness”. People return to these and they become a way to connect socially with the community. Parks, targeted street closures, or other unique facilities like Lee’s Ski Hill in Ouray can be used for informal events. Social distancing and other health and safety protocols are paramount during the pandemic.



COMMON CONSUMPTION AREAS

Colorado law allows local jurisdictions to license areas of their community for consumption of alcohol in common indoor spaces served by licensed businesses. This can be expanded into outdoor spaces through the establishment of an entertainment district. Many communities throughout Colorado are taking this approach regardless of the pandemic to offer more opportunities for social engagement and a new experience for locals and visitors.

10

FINDINGS AND CONCLUSIONS

The Ouray County economy has withstood a high degree of pressure in 2020. This chapter bridges past economic strategies to the current effort, recognizes much progress has been made, and points to actions the community should consider to improve economic conditions as we move past the pandemic.

This chapter presents the main findings and conclusions of this report. It offers recommendations on ways that Ouray County can foster economic resiliency. The information can be used as guidance for ways that Ouray County can position itself for future challenges, which could take the form of additional waves of the current virus, a future economic shock, or other emergency that strains the Ouray County economy and community. The findings are organized into four major categories: communications, readiness to access sources of aid, regional economic resiliency, and tactical recommendations. These findings all draw on information and analysis from previous chapters. Lastly, this chapter cites the findings from the 2011 bottom-up economic development strategy report, which is a valuable source of information to guide the county's efforts in building a resilient economy.

THE FINDINGS ARE ORGANIZED INTO FOUR MAJOR CATEGORIES



COMMUNICATIONS



READINESS TO ACCESS SOURCES OF AID



REGIONAL ECONOMIC RESILIENCY



TACTICAL RECOMMENDATIONS

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION	PAGE
 COMMUNICATIONS	
1. Improve electronic communications with all residents, guests, and businesses	58
2. Improve written communications with all residents, guests, and businesses	58
3. Improve two-way communications with businesses	58
4. Update business email database	58
5. Improve the flow of communication to the general public	59
6. Permanent Public Information Officer	59
7. Public comment at policy meetings	59
8. Review of outgoing messaging	59
 READINESS TO ACCESS SOURCES OF AID	
1. Informing residents and businesses	59
2. Organizing financial records	59
3. Establishing relationships with local lenders	59
 REGIONAL ECONOMIC RESILIENCY	
1. 2011 Bottom-up economic development report goals	62
2. Regional cooperation	60
3. Countywide Economic Development Organization (EDO)	60
4. Marketing angles	60
5. Balancing economic growth and economic sustainability	60
 TACTICAL RECOMMENDATIONS	
1. Online point of sale	61
2. Curbside pickup	61
3. Consistent operations	61
4. Recurring events	61
5. Common consumption areas	61



Image Source: Markus Van Meter

COMMUNICATIONS

1. IMPROVE ELECTRONIC COMMUNICATIONS WITH ALL RESIDENTS, GUESTS, AND BUSINESSES

Improve communications with all residents, guests, and businesses with better electronic forms of messaging. Examples included creating a downloadable app specific to Ouray County, that all individuals could easily tap for the latest regulations and resources. Another suggestion included creating a Facebook page, given the frequency and ease of accessing information by local community members on Facebook.

2. IMPROVE WRITTEN COMMUNICATIONS WITH ALL RESIDENTS, GUESTS, AND BUSINESSES

In addition, use written communications to improve communications with residents and businesses, especially those who do not have access to or actively use digital forms of communication. An example is distributing a printed mailer with information and with a phone number to call.

3. IMPROVE TWO-WAY COMMUNICATIONS WITH BUSINESSES

Improve two-way communications with businesses with direct email to owners and managers. There would be significant benefit with a two-way communication path with businesses that provides a channel for business to communicate to local officials. Examples include unique messaging that is more relevant to this group, as opposed to the general public. Also, fielding surveys and questionnaires provides real-time information about the economic landscape. Because sales tax collections and employment data are released by the state with significant lag, there is a need for up-to-date monitoring. For example, succinct monthly surveys that collect insights on employment cuts, changes in business activity, and perceptions about the overall economic conditions will provide elected officials with real-time data to help inform their policy decisions.

4. UPDATE BUSINESS EMAIL DATABASE

Because the database of email contacts is quite dated, it is recommended to activate a business license requirement with, among other data requirements, a current set of email contacts for every business within each jurisdiction. The purpose is to create better ways of listening and should not be interpreted as anything more

5. IMPROVE THE FLOW OF COMMUNICATION TO THE GENERAL PUBLIC

It would be beneficial for the public to receive notifications from the County government on certain matters. Examples include vaccine information, public health orders, COVID-19 testing, and existing social/economic resources. This would essentially be a ‘Reverse 911’ and would help ensure that Ouray residents are informed of current situations and available resources.

6. PERMANENT PUBLIC INFORMATION OFFICER

Recognize the need for a permanent Public Information Officer and assign tasks related to out-going messaging as well as in-coming communications to this individual. (Note that the BOCC has funded this position and the County is underway with hiring this individual.)

7. PUBLIC COMMENT AT POLICY MEETINGS

Ensure that every voice is heard at the Policy Group by providing time on each agenda for the PIO to summarize all in-coming email (grouped by topic) and ensure that the themes expressed by Ouray County residents, business owners, and guests are heard by elected officials concurrently.

8. REVIEW OF OUTGOING MESSAGING

Ensure that outgoing messaging has the benefit of review by seasoned local government staff. Consider creating a parallel group to Unified Command, such as Unified Command Communications, that will provide direction (and nuance) for outgoing communications to the region.

READINESS TO ACCESS SOURCES OF AID

1. INFORMING RESIDENTS AND BUSINESSES

A barrier to accessing available resources and aid has been that residents and business have been unaware of their options. It is recommended to centralize and promote information on available resources for residents and businesses, ensuring that these groups are informed. This applies to local, regional, state, and federal sources of aid, as

outlined in Chapter 8. With the recent expansion of federal and state aid packages, readiness to access aid when it comes is important to the health of the local economy.

2. ORGANIZING FINANCIAL RECORDS

A common requirement for business relief programs is that businesses are able to demonstrate financial loss as a result of COVID-19. This means that businesses need to have organized financial records that can readily be shown on an application for aid. Assisting small businesses with organizing their financial records would enhance their ability to access sources of aid.

3. ESTABLISHING RELATIONSHIPS WITH LOCAL LENDERS

Applying to the largest of the businesses relief programs, the Paycheck Protection Program (PPP), involves working with a certified Small Business Administration (SBA) lender. To increase the likelihood of a successful PPP application, it is recommended that small businesses establish a relationship with local lenders. These lenders will often provide educational materials on how to create a successful PPP application and will guide businesses through the process, helping businesses access the aid they need.

REGIONAL ECONOMIC RESILIENCY

1. 2011 BOTTOM-UP ECONOMIC DEVELOPMENT REPORT GOALS

The 2011 bottom-up economic development report detailed a set goals that seek to foster economic resiliency. These goals, which include economic diversification, leveraging and expanding recreational assets, branding Ouray County, and obtaining broadband bandwidth, continue to be relevant. As the economy of Ouray County grows, it is imperative that economic opportunities are sustained for residents. Moreover, Ouray County’s economic health will depend on its ability to adapt to a shifting economic landscape and its ability to effectively deal with the next major disruption. Following these goals will bolster the county’s ability to sustain its economic health.

2. REGIONAL COOPERATION

Ouray County stands to benefit from cooperation between the City of Ouray and the Town of Ridgway. The economic activity the county might have been seen as autonomous historically; however, each sector is highly dependent on the others. For example, insufficient backcountry and in-town activity options will diminish interest in visitation, which will reduce demand for lodging, which in turn diminishes demand for the full spectrum of uses within the county. Any link within the economy is critical and has, essentially, similar degrees of importance for making the system flourish. Using these granular relationships as an example, the interdependency of all sectors with the county can be recognized.

In addition, it is recommended that Ouray County looks to leverage regional resources in its economic development efforts. There exist powerful linkages within Region 10-- the ICELab in Gunnison County and Westend Economic Development Corporation in Montrose County are examples of regional organizations that have successfully supported small business development. Looking to these organizations as models could bolster the prospects of success and economic diversification for businesses in Ouray County. Connecting with existing resources not only expands economic possibilities, but also spares the business community in Ouray County from having to 'reinvent the wheel', or to create an ecosystem of business support from the ground up.

3. COUNTYWIDE ECONOMIC DEVELOPMENT ORGANIZATION (EDO)

Accordingly, economic vibrancy can be best achieved with a countywide economic development organization (EDO). This EDO is recommended as a way to bridge interests and promote the county in a unified manner. Developing an organizational structure would be an initial step, and requires a local set of champions. Leadership for an entity with this focus could be found within the elected officials of all three jurisdictions, working in sync and ensuring consistent representation among the three entities. Reaching this goal will also require establishing a respectful civic dialog around regional cooperation that reconciles differing viewpoints.

4. MARKETING ANGLES

It also presents an opportunity to reconsider the marketing angles used to attract visitation. As shown by the 2020 summer season, the Ouray County brand is very strong and has national recognition. A newly formed EDO may be tasked with reviewing traditional marketing investments based on the information learned in the past year. A shift in emphasis with a focus on enhancing the quality of the experience and quality over quantity, may generate greater margins of return to local business with an alienation on a range of systems, including infrastructure capacity, backcountry demand, and work force availability.

5. BALANCING ECONOMIC GROWTH AND ECONOMIC SUSTAINABILITY

Over the past decade, Ouray County has shown signs of a prosperous economy – job growth, low unemployment, population growth, and a growing volume of visitors. And while the COVID-19 pandemic has had negative effects on the county economy, the economy was bolstered by a strong tourism year in 2020. It is conceivable that these trends will continue over the next several years. At the same time, it is important that Ouray County balances a growing economy with economic sustainability. This is especially critical with infrastructure and housing. On the infrastructure side, higher volumes of visitors and greater usage of outdoor recreation assets augments the need for road maintenance. On the housing side, housing prices in Ouray have been rising for several years. With the prospect of in-migration by professionals who work remotely, Ouray County could very well see housing prices continue to rise – the 'Zoom town' phenomenon. This has consequences for housing attainability for residents, especially those who work in service industry jobs, many of whom currently struggle to find affordable housing in Ouray County. This is an issue that is central to economic resiliency and one that the county should further examine.



Image Source: RidgwayColorado.com

TACTICAL RECOMMENDATIONS

1. ONLINE POINT OF SALE

Having an intuitive online ordering platform is important during the pandemic. More broadly, it is also highly important when marketing to guests from more urban areas accustomed to the latest technology and convenience. In competing against online retail, it is essential.

2. CURBSIDE PICKUP

Businesses with convenient curbside pickup operations combined with a modern online point of sale platform will be better equipped to endure this pandemic, as well as to offer options to customers in the future.

3. CONSISTENT OPERATIONS

Businesses and economic development organizations can coordinate to develop consistent standards and signage for curbside pickup such as branded signage and dedicated short-term parking spaces. Consistent hours of operation are also important for any downtown or neighborhood business district regardless of the status of the pandemic.

4. RECURRING EVENTS

Rather than one-off or annual events that require a lot of advanced preparation and investment, developing low-cost recurring events creates “stickiness”. People return to these and they become a way to connect socially with the community. Parks, targeted street closures, or other unique facilities like Lee’s Ski Hill in Ouray can be used for informal events. Social distancing and other health and safety protocols are paramount during the pandemic.

5. COMMON CONSUMPTION AREAS

Colorado law allows local jurisdictions to license areas of their community for consumption of alcohol in common indoor spaces served by licensed businesses. This can be expanded into outdoor spaces through the establishment of an entertainment district. Many communities throughout Colorado are taking this approach regardless of the pandemic to offer more opportunities for social engagement and a new experience for locals and visitors.

2011 BOTTOM-UP OURAY COUNTY ECONOMIC DEVELOPMENT GOALS AND STRATEGY

In 2011, the Hickenlooper Administration issued an executive order to direct a statewide economic development strategy based on local and regional collaboration. The approach, known as a “Bottom-up” approach, sought to leverage local strengths and assets as the way to achieve economic prosperity.

Ouray County published a report in 2011 that presented the five goals. The report serves a basis for the goal of economic resiliency and provides insight into how Ouray County can foster it.

1. DIVERSIFY OUR OURAY COUNTY ECONOMY (BUSINESS RETENTION/ EXPANSION/ DEVELOPMENT) TO ACHIEVE SUSTAINABLE ECONOMIC DEVELOPMENT THAT IS HARMONIOUS WITH OUR OURAY COUNTY COMMUNITY VALUES, RURAL CHARACTER, MASTER PLANS, AND ENVIRONMENTAL VALUES

Past recommendation: To achieve long-term economic resiliency and economic development that aligns with the county’s values and rural character, it is important that Ouray County work to diversify its economy. This goal encourages the development of industries related to renewable energy, agriculture, mining, creative industries, and ‘multi-faceted’ tourism.

Current observation: Pursuing this economic growth and diversification strategy is a common theme within economic development strategies. One of the best examples of an accomplishment of this goal is the diversification found with the newly reopened mine. While it is never a bad idea to continue to diversify the local economy, a more effective and realistic approach would be to reposition, rebrand, and refresh the local economy, and drive greater economic activity with an approach that delivers higher margins. Given the evolution the tourism market and the recognition of a limited number of places with the intrinsic beauty of Ouray County, the opportunity exists for this approach. A component of this goal is to establish a countywide

Economic Development Organization (EDO). Aligning the economic goals of Ouray and Ridgway would serve to facilitate economic cooperation and the coordination of resources, supporting the effort of economic diversification.

2. BRAND OURAY COUNTY

Past recommendation: The second goal of the 2011 plan was to brand Ouray County. This meant forming a marketing strategy to actively promote Ouray’s scenic beauty, unique natural assets and heritage, its friendly business climate, its arts, and its high quality of life.

Current observation: As of 2021, Ouray County has created a website, visit Ouray, that showcases Ouray’s assets and provides detailed information on travel to Ouray. Based on strong visitation trends over the past several years and especially in 2020, Ouray’s brand has demonstrated its appeal and success. In the coming years, Ouray County will likely continue to serve as a desirable destination. With outdoor recreation having a strong year due to the circumstances of the pandemic, its appeal will remain strong. The question going forward is how Ouray County can best manage its natural assets and infrastructure with high volumes of visitors.



3. CREATIVE DISTRICTS

Past recommendation: In response to the state passing HB 11-1031, which established the Creative Districts program, the 2011 plan called for Ouray County to define a Creative District within Ouray County. To achieve this goal, the plan recommended that Ouray County form a subcommittee to explore how the state would implement the program and to formulate an application to the program. The main goal of this effort was to use the Creative District program as impetus to promote creative industries and artists throughout Ouray County, aligning with a broader vision of diversifying the Ouray County economy.

Current observation: Ridgway was awarded Creative District status in 2013. It was the outcome of the aforementioned effort that began during the State-led Bottom-Up Economic Development Plan. The Town of Ridgway is certified by the State of Colorado as a Colorado Creative District. Growing creative industries is an important part of an economic diversity strategy to grow jobs in non-tourism (retail, food & beverage, and lodging) industries. In addition, certification is another tool for organizing and building momentum around creativity and the arts in the local economy. The program provides another reason to focus energy in an organized way to grow an economic cluster around creativity culture.

As part of the Creative District program, Ridgway is part of the ‘Colorado Creative Corridor’, a 331-mile trail that links Carbondale, Crested Butte, Paonia, Ridgway, and Salida. The corridor is intended to promote these towns as small, mountain communities that provide a common experience of a vibrant local art scene, and appears to have had a significant impact on the local community, its cultural composition, and economic activity.

4. EXPAND RECREATIONAL TOURISM ASSETS AND OVERALL INDUSTRY PROFITABILITY

Past recommendation: Ouray County should leverage and market its existing natural assets and to determine how it can develop new natural assets. This goal is aligned with the goal of enhancing the county’s brand, benefiting Ouray County by increasing visitation and supporting local businesses. While developing new assets is central to this goal, preserving existing natural assets and working within the bounds of existing infrastructure are similarly important.

Current observation: As visitation numbers in 2020 indicated, Ouray County has been a popular destination for visitors, especially those looking to access outdoor recreation. The growing volume of visitation and outdoor recreation has been economically beneficial, but going forward it will be important to examine the ways in which Ouray County’s physical infrastructure and natural assets (e.g., trails, campgrounds) have been affected by higher volumes and the ways in which the county can seek to preserve these assets for years to come.

5. MAKE OURAY COUNTY MORE VIABLE FOR BUSINESS AND TOURISTS - OBTAIN BROADBAND BANDWIDTH & REDUNDANCY

Past recommendation: The purpose of this goal was to work with Operation Link-Up from Silverton and utilities to achieve wired broadband from Ouray to Durango and over Ophir Pass to provide badly needed reliable high-speed internet to San Juan County and redundancy from having multiple closed loops on the western slope between Grand Junction and Cortez/Durango. Data had no direct pathway from Ouray to Durango, or New Mexico, etc. Promoting this type of reliable internet/data infrastructure will support businesses, residents, educational opportunities, and tourism.

Current observation: Local leadership has made significant strides in accomplishing this goal. As of the beginning of 2021, Ouray County is in Phase 2 of a \$5 million middle-mile fiber build for public health and telehealth, in partnership with Federal and State funding partners, and with the Region 10 regional buildout. This project is already supporting much-needed bandwidth for telecommuting and last-mile connections for homes and business throughout the County. The project began in 2019, completion is expected in summer 2021. This is an especially crucial economic resiliency strategy with the growing prevalence of remote work and necessity of internet-based applications. Remote work has been a defining feature of work life during the pandemic, and will likely continue to be both a standard and expectation for a significant portion of jobs.



AGENDA ITEM #21



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: February 4, 2021
Agenda Topic: Review and action on letter of support for Colorado West Land Trust's application to GOCO

SUMMARY:

The Colorado West Land Trust has requested a letter from the Town supporting their funding application to Great Outdoors Colorado's Resilient Communities Program to expand their work across the region to achieve conservation, stewardship, and outdoor recreation projects. A letter of support has been drafted and is appended to this memo for Council's review and consideration.

PROPOSED MOTION:

"I move to authorize Mayor Clark to sign the letter of support for Colorado West Land Trust's application to GOCO's Resilient Communities Program."

ATTACHMENT:

Letter of Support



February 10, 2021

Great Outdoors Colorado
1900 Grant St., Unit 725
Denver, CO 80203

Dear Board of Directors,

On behalf of the Ridgway Town Council, I am writing to you in support of the Colorado West Land Trust's application to the Resilient Communities Program to partner with the Town of Ridgway to achieve conservation, stewardship, and outdoor recreation projects to assist our local community in combating the continuing pandemic-induced challenges.

Ouray County, and the Town of Ridgway in particular, are dependent upon spectacular scenery, extensive agricultural pastureland, and access to premier outdoor recreation, to fuel our local economy. Local outdoor recreation and adventure businesses, in fact, thrive on visitors and locals wanting to get out and enjoy nature in the surrounding landscapes.

At risk, during this pandemic, as more and more residents move to western Colorado and locals need to get outside for their wellbeing, are our region's wilderness trail experiences, wildlife habitat, pristine views, and remaining ranch and farmlands. Greater demand for primary and second homes threaten to fragment wildlife habitat. Significant increases in trail use by visitors and new residents drive the need for new trail construction. In Ouray County we are experiencing a specific need to balance trail use and outdoor recreation with wildlife needs. The pandemic has both increased the need for trails as well as generated the need to specifically address conservation for wildlife, stewardship to prevent over or misuse of trails, and land acquisition for expanding trails and trail access.

The Town of Ridgway is ecstatic that local businesses are thriving as a result of increases in visitors and residents. We look to Colorado West Land Trust is an important partner to help moderate and mitigate impacts on our strategic natural resources that will help continue to build resilience throughout our region. We hope that the Land Trust will assist Ridgway to protect the strategically located McCullough property, where today, wildlife roam, cattle graze, and locals enjoy the open space views.

We urgently suggest that GOCO support Colorado West Land Trust's application to become an active partner in the Ridgway area to create projects with greatest community benefit.

Thank you for your consideration.

Sincerely,

John Clark
Mayor
Town of Ridgway

AGENDA ITEM #22