AGENDA
OURAY COUNTY PLANNING COMMISSION
PUBLIC HEARING/REGULAR MEETING

June 21, 2022 4:00 – 6:00 pm
Meeting to be held at the Ouray County Land Use Office
111 Mall Road, Ridgway, Colorado

Please Note: If an agenda item ends early, the Planning Commission may choose to move on to the next item on the agenda as long as there is no objection by the Applicant.

Zoom Log In Info:
On the web: https://us02web.zoom.us/j/86124340956
Via telephone: 1 253 215 8782
Meeting ID: 861 2434 0956

A. 4:00 - Public Hearing: Divide Ranch & Club, Filing #7, Final Development Plan
   a. Open Public Hearing
   b. The Planning Commission will review a proposal by Barry Zane, authorized agent, for approval of a Final Development Plan for the Divide Ranch, Filing No. 7.
   c. Close Public Hearing

B. 5:00 – Public Hearing: Citizen-Initiated Code Amendment
   a. Open Public Hearing
   b. The Planning Commission will review a proposed citizen initiated amendment to the Land Use Code to allow ‘Mineral Extraction/Processing’ as a use-by-right in the Valley Zone.
   c. Close Public Hearing

C. 0:00 - Regular Meeting Open:
   a. Approve Minutes (items A and B above)
   b. Old Business
   c. New Business
   d. Approve Minutes

D. Adjourn
Application: Citizen-Initiated Code Amendment
Land Use Code: Section 14.5A
Project Name: Anderson Land Use Code Amendment
Applicant / Operator: Thomas C. Anderson, P.E.
Property Owner: Not Applicable
Parcel Name/Acres: Not Applicable
Property Address: Not Applicable
Zoning District: Valley Zone (All)
Case Manager: Mark Castrodale

Request/History:
The Ouray County Land Code allows what are referred to as ‘citizen-initiated code amendments’ per Section 14.5. Per that provision, the applicant is proposing:

- Add ‘Mineral Extraction/Processing’ as a use by right in the Valley Zone by adding this use/language to Section 3.8.H.2. (see attached)

Staff notes the following:

- The definition of ‘Mineral Extraction/Processing’ in Section 2 of the Land Use Code is:

  Any site development and/or exploration that results in surface disturbance of one (1) acre or more, and extraction or processing of minerals.

- ‘Mineral Extraction/Processing’ is currently a use allowed by Special Use Permit in the Alpine Zone only and not a use-by-right in any zoning district.

- Any use-by-right in the Land Use Code requires no approvals or oversight by the County.
The subject application was referred to the following departments or agencies for review/comment:

**COUNTY ATTORNEY**

The County Attorney expressed no concerns regarding the subject application.

**COUNTY ADMINISTRATOR**

The County Administrator expressed no concerns regarding the subject application.

**ROAD & BRIDGE DEPARTMENT**

The Road & Bridge Superintendent expressed no concerns regarding the subject application.

**Notification/Posting Requirements:**

As required by the Land Use Code, the hearing before the Planning Commission was noticed in the Plaindealer at least 15-days prior to the date of the hearing.

**Requirements – Land Use Code Section 4.5**

Staff notes that the Planning Commission must send a ‘report and recommendation’ on the proposed amendment to the BOCC.

**Staff Conclusions and Recommendations:**

As stated previously, if approved, the proposed amendment to the Land Use Code would allow ‘Mineral Extraction/Processing’ as a use-by-right (ie. no county approval or oversight) in the Valley Zone. Currently in the Land Use Code, this use is only allowed in the **Alpine Zone** and only with an approved Special Use Permit.
3.1 PURPOSE AND INTENT:

A. The zoning provisions that follow have been adopted to achieve the purposes set forth in Section 1.

B. To allow gradual, long-term population and economic growth in Ouray County in a manner that does not harm the County’s irreplaceable scenic beauty, wildlife, air and water resources, and other environmental qualities and that does not unduly burden the County’s residents or its governments.

C. The intent of the County zones is to achieve across the zones, the overall goal of the Master Plan. This goal includes, in alphabetical order, specific goals for agricultural lands, county/municipal relationships, economic development, housing, natural resources, rural character, tourism, transportation, utilities, visually significant areas, and wildlife and plant habitats.

D. The specific intent of each of the zones that follow shall be read in conjunction with the combination of the Master Plan’s overall and specific goals, and provide general guidance with regard to specific uses within each zone.

3.2 ZONING DISTRICTS, MAPS AND BOUNDARIES:

A. The zones established by the Code are identified on the basis of the physical character of the County combined with the pertinent information about existing land use and ownership patterns and the needs of a stable and growing economy.

B. All Zones shall be designated on the “Official Zoning Map of Ouray County” which is on file in the records of the County Clerk and Recorder. A copy of the map is attached to this Code and, in the event of any conflict between the copy and the map on file in the County records, the latter shall be conclusively deemed to prevail.

3.3 USES BY RIGHT AND SPECIAL USES:

A. In each zone there are uses permitted by right and special uses which may be allowed on a site specific basis though a permitting process. These uses have been determined in each zone according to the unique characteristics of the zone.

B. Uses allowed by right are allowed automatically, although construction of new structures may require a Site Development Permit or High Alpine Site Development Permit and a building permit pursuant to Sections 13 and 24 of this Code.
C. Permits for special uses may be requested according to the procedures in Section 5. The criteria for approval of a special use are more specifically explained in Section 5.2.

D. Marijuana-related business uses are regulated by Ordinance No. 2017-001 (i.e. Marijuana Ordinance) as may be updated or revised by the BOCC. As such, uses permitted and licensed through the Marijuana Ordinance do not require a Special Use Permit.

3.4 USES NOT LISTED:

A. Upon application, or by its own initiative, the BOCC may, in accordance with Section 14.5, by resolution add to either the uses by right or by special permit listed for a zoning district based on these criteria:

(1) Such use is appropriate to the physiographic and general environmental character of the zone to which the use is added.

(2) Such use is compatible with other permitted uses in the zone and does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influences, or more traffic, hazards, or alterations to the zone than the minimum amount normally resulting from the other uses permitted in the zone.

3.5 ESTABLISHMENT OF ZONES:

A. The County is hereby divided into eight (8) zones, as follows:

(1) Alpine
(2) Colona
(3) High Mesa
(4) North Mesa
(5) Public Lands
(6) South Mesa
(7) South Slope
(8) Valley

3.6 RESIDENTIAL DENSITY:

A. Maximum residential densities for each Zone shall be as follows:

(1) Alpine Zone 1 Dwelling Unit per 35 Acres*
(2) Colona Zone 7 Dwelling Units per Acre
(3) High Mesa Zone 1 Dwelling Unit per 35 Acres
(4) North Mesa Zone 1 Dwelling Unit per 6 Acres
(5) South Mesa Zone 1 Dwelling Unit per 6 Acres
(6) South Slope Zone 1 Dwelling Unit per 6 Acres
(7) Valley Zone 1 Dwelling Unit per 35 Acres
* Subject to additional restrictions of Section 24 – High Alpine Development Regulations

3.7 CONSTRUCTION, MAXIMUM BUILDING AND STRUCTURE HEIGHT:
In all zones, the maximum height of a building or other structure shall not exceed thirty-five (35) feet, unless a height of less than thirty-five (35) feet is required within the High Alpine Development Regulations (See Section 24 of this Code), an approved PUD, or as otherwise provided in a special use permit. (See Definitions – Section 2 for more information)

Construction of structures in all zones may have additional requirements, including setbacks, as provided elsewhere in this Code. Property owners should consult with Land Use staff concerning applicability of other requirements before commencing design or construction.

3.8 ZONES:
A. Alpine Zone:
B. Colona Zone:
C. High Mesa Zone:
D. North Mesa Zone:
E. Public Lands Zone:
F. South Slope Zone:
G. Valley Zone:
The intent of the Valley Zone is to protect and preserve visually significant and sensitive areas of the County, maintain its overall rural character, and/or encourage the continued use of the lands for agricultural productivity.
(1) Uses Allowed by Right:
(a) Farming/ranching
(b) Single-family dwelling units (maximum density of one unit per 35 acres)
(c) Accessory uses and structures that are accessory to any other use by right and permitted use
(d) Home Occupation
(e) Non-commercial camping

(f) Mineral Extraction/Processing

(2) Uses Allowed by Special Use Permit:

(a) Bed and breakfast
(b) Cemetery
(c) Church
(d) Commercial equestrian activity
(e) Commercial outdoor recreation – day use
(f) Governmental facility
(g) Guest ranch
(h) Home business
(i) Livery or horse rental operation
(j) Oil and gas exploration and facilities pursuant to Section 21 of this Code
(k) Public service facility
(l) Public utility
(m) Sand and gravel operation
(n) School
(o) Temporary use
(p) Wildlife rehabilitation facility
(q) Historical museum

(3) Minimum Lot Size:

(a) Regular PUD – as established by Section 6 of this Code
(b) All uses except as otherwise provided for in this Code – thirty-five (35 acres)
(c) Special uses – as established by Section 5 of this Code

(4) Required Setbacks: All structures shall be located at least fifty (50) feet from any property lines unless otherwise approved in a PUD. For lots and parcels that have an area of two (2) acres or less, the minimum setbacks for structures shall be ten (10) feet from the side and back property lines and twenty-five (25) feet from the front property line. No structure may be closer than one hundred (100) feet from the centerline of U.S. Highway 550 or Colorado Highway 62.
3.9 OVERLAY DISTRICTS:
SECTION 2
DEFINITIONS

Words and terms used in this Code shall be interpreted in accordance with the following definitions:

MINERAL EXTRACTION/PROCESSING. Any site development and/or exploration that results in surface disturbance of one (1) acre or more, and extraction or processing of minerals.
14.1 **GENERAL PROCEDURE:**
Amendments to this Code, rezoning and any zone district amendment shall be in accordance with the statutes of the State of Colorado, with report and recommendations from the Planning Commission to the BOCC required prior to the adoption of any such amendment.

*NON-RELATED SECTIONS DELETED!

14.5 **CODE AMENDMENTS OTHER THAN TO CHANGE ZONING:**

A. **Any amendment to this Code may be initiated by the County,** by private citizens or by a private or public entity. A written request for amendment shall be submitted to the Planning Commission through the Land Use Administrator, along with any required processing fee as may be set by the BOCC. Any proposed Land Use Code amendments shall be drafted in a form consistent with the organizational format and style of this Code.

B. After receipt of a properly drafted written request for amendment to this Code, the Planning Commission shall set a public hearing date and shall publish notice of said hearing at the expense of the petitioner in a newspaper of general circulation at least fifteen (15) days prior to the hearing date.

C. After the public hearing, the Planning Commission shall, as soon as reasonable and practicable, submit a report and recommendation on the proposed amendment to the BOCC.

D. The BOCC shall set a public hearing date on the proposed Code amendment and shall publish notice of the hearing at the expense of the applicant in a newspaper of general circulation at least fifteen (15) days prior to the hearing date. After the public hearing before the BOCC, the Board shall, as soon as reasonable and practicable, make its decision on the proposed amendment as prescribed by law for the consideration of passage of any resolution of the County.
February 14, 2022

Mr. Mark Castrodale, Ouray County Planning Director
Land Use, Planning, and Building Department
Physical Address: 111 Mall Road, Ridgway, CO 81432
Mailing Address: PO Box 28, Ridgway CO 81432

Telephone: 970-626-9775
E-mail: mcastrodale@ouraycountyco.gov

Re: Request for an Amendment to The Ouray County Land Use Code

Dear Mr. Castrodale:

I respectfully request “Mineral Extraction/Processing” be added to Section 3 Zoning: Section 3.8 Zones, H. Valley Zone (1) Uses Allowed by Right. Please find attached Supporting Documentation.

Please telephone or email me at your convenience with comments and questions. Thank you for your time and assistance.

Sincerely,
Thomas C. Anderson, P.E.
Supporting Documentation for an Amendment to the Ouray County Land Use Code

Objective: Convince the Board of Ouray County Commissioners to return the mineral rights to owners in the “Valley Zone.”

Opening Statement

Private property is the foundation not only of prosperity but of freedom itself. Private Property Rights taken through regulation is the same as private property taken through physical seizure. Ouray County action has violated the constitutional rights of private property owners under the Fifth Amendment’s Takings Clause.

The current Ouray County Land Use Code denies a basic private property right, the mineral rights, to all private property owners within the “Valley Zone.” For one-hundred years, from the 1870’s to the 1970’s, the right to minerals and the right to mine were part of the bundle of rights in basic private property rights. In the last fifty years, Ouray County has taken the right to minerals and the right to mine without compensation to the private property owners.

When Ouray County was created in 1877, prospectors and miners were busy working claims on the public land, and farmers, ranchers, and store owners were busy supplying the prospectors and miners. The General Mining Act of 1872 recognized the right to prospect and mine for minerals and provided a procedure to transfer public property rights to private property rights. Other Acts of Congress, such as the Homestead Act of 1862, similarly transferred public property rights to private property rights. Claims were indeed transferred to private property through the patent process and are the basis of all private land ownership in Ouray County.
A request for an Amendment to the Ouray County Land Use Code has been made to add three words to Section 3 Zoning: Section 3.8 Zones, H. Valley Zone: (1) Uses Allowed by Right: (f) “Mineral Extraction/Processing.” The correction will relieve Ouray County of taking the right to minerals and the right to mine without compensation to the private property owners.

The decision choice before the Board of Ouray County Commissioners is:

1. Deny the request for an amendment.
   a. Benefit:
      i. Preserve the existing conditions.
      ii. Satisfy a vocal segment of the population.
   b. Cost:
      i. Uncertain future conditions.
      ii. Unintended consequences and costs.
      iii. Dissatisfy a segment of the population.
      iv. Open possibility of claims for compensation.

2. Approve the request for an amendment.
   a. Benefit:
      i. Return property rights to owners.
      ii. Relieve possibility of claims for compensation.
      iii. Satisfy a segment of the population.
   b. Cost:
      i. Uncertain future conditions.
      ii. Unintended consequences and costs.
      iii. Dissatisfy a vocal segment of the population.
January 31, 2022

Mr. Mark Castrodale, Ouray County Planning Director
Land Use, Planning, and Building Department
Physical Address:  111 Mall Road, Ridgway, CO 81432
Mailing Address:  PO Box 28, Ridgway CO 81432

Telephone: 970-626-9775
E-mail: mcastrodale@ouraycountyco.gov

Re: Draft Colorado Division of Reclamation, Mining and Safety, Notice of Intent to Conduct Prospecting Operations

Dear Mr. Castrodale:

Please find attached a copy of the Draft Colorado Division of Reclamation, Mining and Safety Notice of Intent to Conduct Prospecting Operations Application Form sent to Mr. Lucas West, Environmental Protection Specialist for Ouray County, Grand Junction Field Office, Division of Reclamation, Mining and Safety and to Vincent Beresford, Geologist with the Bureau of Land Management, Uncompahgre Field Office in Montrose Colorado on January 27, 2022.

To follow the Ouray County Land Use Code, I respectfully request “Mineral Extraction/Processing” be added to Section 3 Zoning: Section 3.8 Zones, H. Valley Zone (1) Uses Allowed by Right, based upon historical precedence, in accordance with Section 3.4 Uses Not Listed. Following is a list of Patents issued by the United States under July 26, 1866: Mineral Patent-Placer (15 Stat. 251), as evidence of historical land use:

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<tr>
<th>GLO Number</th>
<th>Claim Name</th>
<th>Patent Issued</th>
<th>Claimants</th>
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<td>Sec. 11 &amp; 12, T44N, R8W</td>
<td>Near Portland</td>
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Attempted to telephone you this morning prior to email delivery of this letter. Please telephone me at your convenience with comments and question. I look forward to working with you, and your staff, on this project. Thank you for your time and consideration.

Sincerely,
Thomas C. Anderson, P.E.
Ouray County, named after nineteenth-century Ute leader Ouray, is a small county of 524 square miles in southwestern Colorado. It is bisected by the Uncompahgre River, which flows from Lake Como northeast of Silverton, through the county seat of Ouray, through Ridgway and Colona, and out of the county toward Montrose. US Route 550 splits the county into eastern and western halves along the Uncompahgre, linking with Colorado Highway 62 at Ridgway. Ouray County is bordered by Montrose County to the northwest, north, and northeast, by Gunnison and Hinsdale Counties to the east and southeast, by San Juan County to the south, and by San Miguel County to the west and southwest. The county has a total population of 4,629, with about 1,000 residing in Ouray and 924 in Ridgway.

Tabeguache (pronounced TAB-a-watch) Utes

By 1500 the Ute people occupied nearly all of Colorado’s Rocky Mountains. The Ouray County area, along with the Uncompahgre Plateau, the Gunnison Valley, and much of the northern San Juan Mountains, was home to the Tabeguache Utes (later called the Uncompahgres). The Utes lived off the natural wealth of Colorado’s mountains and river valleys, hunting elk, deer, jackrabbit, and other game and gathering a wide assortment of wild berries and roots, including the versatile yucca root. In the summer, they followed game into the high country, and in the winter they followed the animals back to the Uncompahgre and other valleys. The Tabeguache also frequented the hot springs near present-day Ouray, as the soothing mineral waters helped rejuvenate body and spirit.

Explorers and Prospectors

The first Europeans to enter southwest Colorado were likely Spanish prospectors and trappers in the late eighteenth century. The explorer Juan de Rivera’s expedition in 1765 did not come through present-day Ouray County, but the Spaniards who followed in his footsteps did. A party led by friars Francisco Atanasio Domínguez and Silvestre Velez de Escalante came over Dallas Divide on the western edge of present-day Ouray County in the summer of 1776. Both
expeditions met and traded with Tabeguache Utes, who helped guide the parties and warned them about possible attacks from the Comanche, one of the Utes’ great rivals.

With the exception of traders such as Antoine Robidoux and explorers John C. Frémont and John Gunnison, the sheer ruggedness of the San Juans kept most Europeans and Anglo-Americans out of the Ouray County area for about another eighty years.

In 1858–59 the Colorado Gold Rush lured hundreds of white prospectors into the Rockies in search of the next big strike. A gold-seeking party led by Charles Baker prospected near present-day Silverton in 1860, likely passing through the Ouray County area on the way.

While nothing came of the Baker venture, the 1858 gold discoveries prompted the US government to organize the Colorado Territory in 1861 and to dislodge Native Americans from the eastern Rockies. By this point, with the exception of their recent rivalry with the Arapahos, Colorado’s Utes had held exclusive dominion over the Rockies’ abundant resources for more than four centuries. But the eastern edge of that resource base was now strained by a growing population of whites along the Front Range.

Ouray and Ute-American Relations

Ouray, the famous Tabeguache chief whose name translates to “the arrow,” was born in 1833 to a Jicarilla Apache father and a Tabeguache mother. In addition to the Ute language, Ouray was fluent in Spanish and learned a bit of English, though he never knew enough to speak it proficiently. By the mid-1850s, he had taken his first wife and was recognized as a Tabeguache chief.

Colorado’s multiple Ute bands had no single leader; each was led by its own chief and subchiefs. However, after Ouray’s Tabeguache were the most numerous of the bands in attendance at an 1863 treaty conference in Denver, US officials began recognizing Ouray as the de facto representative of all Utes. The 1863 treaty ostensibly granted the United States the Rocky Mountains east of present-day Gunnison (east of the Continental Divide plus Middle Park?) and left the Utes most of the Western Slope. It also required that the government make annual payments ($10,000 each year for 10 years, $100,000) to the Utes in exchange for the territory.
The 1863 agreement was largely symbolic, as most of Colorado’s Utes had not agreed to it and some resented Ouray’s Tabeguache for signing it. Preoccupied with the Civil War, the government also routinely failed to provide the promised annuities. A new treaty in 1868 (for east of present-day Gunnison), this one signed by representatives of seven Ute bands, stated that the Utes were to remain on the Western Slope in exchange for thirty years of annuities valued at $60,000 ($2,000 each year), as well as a guarantee that no nonnative person be allowed on Ute lands.

San Juan Cession and Ute Removal

As with previous treaties, the agreement of 1868 did not hold fast. Over the next few years, Utes continued to range beyond the reservation into traditional hunting grounds, raiding and sometimes killing Anglo or Hispanic miners and ranchers. Ignorant or incompetent Indian agents did little to ease tensions on the reservation, while gold and silver miners simply ignored the treaty and prospected on Ute lands.

The biggest obstacle to lasting peace was the mineral wealth lying beneath the San Juans. By the summer of 1872, gold and silver ore worth more than $30,000 per ton were being carved out of the region. The San Juan Cession of 1873, also known as the Brunot Agreement, cleared the way for present-day Ouray County by removing the people who had called it home for centuries. The agreement gave the United States a 4-million-acre chunk of the mineral-rich San Juan Mountains. The government paid the Utes seven and a half cents per acre for their land ($25,000 per year for 3.7 million acres, less than $0.01 per acre), even as it simultaneously charged homesteaders $1.25 per acre for inferior land elsewhere. For his role in negotiating the agreement, Ouray got 160 acres and a $1,000 pension for the rest of his life that would help support Chipeta until her death in 1924.

In 1879 the Meeker Incident, a Ute uprising in northwest Colorado, prompted cries for the Utes’ expulsion from the state. The government drew up an agreement that sent the Utes onto a reservation in eastern Utah. Ever the diplomat, an ailing Ouray attempted to convince representatives of the Ute bands that they had no choice but to leave their homelands. Some signed, but an agreement was still out of reach when Ouray died in August 1880.

Ouray’s death changed the course of the negotiations. First, in an act of shocked acceptance, Kaneache, a Ute chief who had previously railed against a new agreement, suddenly began
recruiting signatures. Then, fearing that Ouray’s death would make Utes less warm to an agreement (and thus hurt his business interests), transportation mogul Otto Mears spent $2,800 of his own money bribing individual Utes to sign the accord. It was completed on September 11, 1880, and took all of the Utes’ land in western Colorado (Final compensation received in 1947). By 1882 the army had shunted most remaining Utes onto the Utah reservation. Unlike the Utes, Otto Mears was fully reimbursed by the federal government. Mears went on to build the roads and railroads that would finally bring gold and silver out of the San Juans.

County Formation

In July 1875, A. W. “Gus” Begole and John Eckles found gold near present-day Ouray, the first of several strikes by a handful of prospectors over the next several months. The town of Uncompahgre, later renamed Ouray, was platted in the spring of 1876. It incorporated in September and had 400 residents by winter. When Ouray County was established on January 18, 1877, it stretched from the Utah border in the west to its present-day boundary on the east; the county’s current boundaries were drawn in 1883 with the breakup of Gunnison County to the north and the creation of San Miguel County to the west.

Mines, Roads, and Railroads

After nearly two decades of prospecting and calling for Ute removal, Ouray County miners had finally begun to tap the wealth of the San Juans. But transporting ore out of the rugged, remote region proved difficult and expensive. For example, ore worth more than $400,000 was shipped from the region in 1878, but that was only a fraction of what San Juan miners had actually extracted.

Otto Mears helped relieve this problem in 1883 with the construction of a toll road between Ouray and the now-defunct town of Ironton to the south. The road formed the base of today’s US 550 and greatly eased the transport of supplies and ore between the county’s mining towns.

Mears’s timing could not have been better, as an enormous amount of silver had been discovered in the Red Mountains south of Ironton in 1882. The silver deposit was so large that the Red Mountain mining district was second only to Leadville in silver production at the time and was served by two towns, Ouray and Silverton. The Yankee Girl was the district’s most profitable mine, producing $8 million in ore over the next decade. Its shaft house still stands today.
In 1887 the Denver & Rio Grande Railroad arrived in Ouray, and Mears’s Silverton Railroad reached the Red Mountain mines in 1888. In 1890 another Mears railroad, the Rio Grande Southern, was under construction in the Uncompahgre Valley to the north and was the basis for the town of Ridgway, founded the same year. The cost of ore transportation decreased even further with the arrival of the railroads.

The mines and the roads and railroads that connected them made Ouray the second-largest town in the San Juans (behind Silverton) during the 1880s. The regional wealth allowed for the construction of many prominent brick buildings, including the Beaumont Hotel (1886); St. Joseph’s Hospital (1887); a two-story, four-room schoolhouse (1888); Wright’s Opera House (1888); and the St. Elmo Hotel (1899). The county courthouse was built in 1888 and later became the setting for scenes in the movie True Grit starring John Wayne. Ouray also featured about thirty-five saloons during the 1880s and 1890s, and more than 100 prostitutes plied their trade in a bustling Red Light District on Second Street.

By 1890 the county population had reached 6,510. Major gold strikes continued throughout the decade, but the Panic of 1893 still hit the area hard. The collapse of the silver economy forced many businesses in Ouray to close and caused the city’s electric streetlights to go dark for a year. Gold helped keep the area alive. Tom Walsh’s Camp Bird Mine, founded in 1896, was particularly rich, yielding about $3 million per year in gold by 1900. Wages at Walsh’s mine and others were among the highest in the state.

**Hot Springs**

Ouray County’s mines finally began to peter out within the first two decades of the twentieth century, but the same roads and railroads that allowed miners to ship their ore to market also allowed tourists access to the county’s breathtaking scenery and hot springs. The passage of the federal Good Roads Bill in 1916 allowed Mears’s old wagon road—which became known as the “Million Dollar Highway”—to be paved by 1924.

Development of the hot springs dates to 1879, when W. J. Buchanan built a small indoor pool on the east side of Ouray. In 1919 L. F. Orvis built a bathhouse on the Lopa Hot Springs about a mile southeast of Ridgway. The house quickly became a destination for health seekers and
tourists and remains so today. Ouray’s swimming pool was fed by the hot spring and was paid for by individual contributions from city residents; it opened to the public in 1927.

In September 1925, on the southwest edge of Ouray, Richard Cogar opened the Cogar Sanitarium on the grounds of the Box Canyon hot springs. The sanitarium quickly became popular. The facility changed hands several times between 1929 and 1945, and operates today as the Box Canyon Lodge & Hot Springs.

Mining in the Twentieth Century

Mining activity resumed in the 1940s to meet the metal demands of World War II. In 1939 the Newmont Mining Corporation obtained the Treasury Tunnel, a 2,000-foot mining tunnel south of Ouray that had gone through several owners and periods of operation since its initial excavation in 1896. Newmont also purchased several other mines and formed the Idarado Mining Company to operate them. Idarado extended the Treasury Tunnel more than 8,000 feet, adding a second opening at Pandora near Telluride and extracting large amounts of lead and zinc for the war effort. Although the Treasury Tunnel's mill shut down in 1956, miners still worked both sides of the tunnel, and the operation was one of the most productive in Colorado until it finally closed in 1978.
Ouray – The First Land Use Commissioner

https://coloradoencyclopedia.org/article/ouray

Oрай и Чипэта
Ouray (1833–80), whose name means “Arrow” in the Ute language, was a leader of the Tabeguache (Uncompahgre) band of Ute Indians in Colorado during the late nineteenth century. Even though Ouray had no ultimate authority over Colorado’s Utes and spoke little English, the US government assigned him the title of Chief of all Utes in Colorado and made him the primary contact for treaty negotiations.

As a promoter of peace and the lead representative to the government, Ouray negotiated a series of agreements that resulted in the loss of Ute territory and, eventually, the removal of the White River and Uncompahgre Utes from Colorado. Today, Ouray’s legacy is reflected in that series of agreements as well as by place names in Colorado, including Ouray County and the town of Ouray. The Ute Indian Museum in Montrose lies just northwest of land that once belonged to Ouray and his wife, Chipeta.

**Early Life**

Ouray was born in 1833 in Abiquiú, New Mexico, to a Jicarilla Apache father and a Tabeguache Ute mother. When Ouray and his brother, Quenche, were young, their parents sent them to Taos, New Mexico, as criados—indentured servants to wealthy landowners.

In Taos, Ouray and his brother were servants to the wealthy and powerful Padre Martínez; the Martínez clan was the largest and most powerful landowner in the region. In the seven years they worked for the Martínez family, Ouray and Quenche became familiar with high culture, elite individuals, and how the ruling classes conducted business. In 1850 Ouray returned to his hometown of Abiquiú to work for Martínez relatives. Already fluent in Apache, Ouray is believed to have developed the ability to speak Ute, Spanish, and some English in this decade. His ability to communicate with the various communities in northern New Mexico, coupled with his introduction to high-profile people, would soon change his position in society.

In 1851 Ouray moved to Colorado and married his first wife, an Apache named Black Mare. In 1857 the couple celebrated the birth of their first child, a son named Paron (Pahlone). That same year, Black Mare died suddenly for unknown reasons. Two years later, Ouray married Chipeta, his second and much younger wife.
Chipeta

Chipeta was an Apache by birth but had been raised by the Ute tribe. She had originally been chosen to care for Pahlone after the death of Ouray’s first wife. Chipeta became famous for her hospitality, negotiation skills, and beauty. Pahlone historians believe that Lakota kidnapped Ouray’s son in 1862, but the circumstances of his life after capture are still subject to debate. The year 1863 would prove to be a pivotal year for Ouray and Chipeta, as their various skills and multiethnic backgrounds would place them in high esteem among both the Ute people and US government officials.

Ouray and the US Government

Ouray’s relationship with the US government began on October 3, 1863, when he helped complete a treaty at Conejos in the San Luis Valley. At the meeting, Ouray served as a representative of the Tabeguache, but a few members of other Ute bands had agreed to attend. As a result, Ouray was the prominent signer of a treaty that relinquished all Ute land east of the Continental Divide, as well as the area of Middle Park, to the United States. It was essentially an agreement that formally gave up all Ute land already occupied by white miners and homesteaders. Historians often refer to this treaty as the Treaty of 1864, as Congress affirmed the treaty that year and approved the monetary and property payments to be made to the Ute Nation. Unfortunately, this was only the beginning of the forced removal of many Utes from Colorado.

On March 2, 1868, Ouray helped negotiate another treaty that removed the Utes from the San Luis Valley and created a massive reservation on the Western Slope for all Colorado Utes. This meeting was better attended by different Ute bands but still did not reflect the interests of all Utes in the territory. Representatives of seven Ute bands, along with Commissioner of Indian Affairs Nathaniel G. Taylor, Alexander Hunt, Kit Carson, and others, met in Washington, DC, to draft the treaty. The Western Slope reservation was to have two Indian agencies: one for the three bands of Northern Utes near the current town of Meeker and one for Southern Utes on the Los Piños River near present-day Durango. This was a pivotal moment for Ouray, as the United States officially named him the chief of all Ute Indians at the meeting.
Brunot Agreement

The Utes’ new reservation on the Western Slope covered some 20 million acres, but it didn’t take long before the US government again met with Ouray to acquire more Ute land. The San Juan Mountains were largely ignored during the Colorado Gold Rush of 1858–59, but by the early 1870s, prospectors had found promising deposits of gold and silver there and sought to claim the riches. Initially, the government ordered the miners out of Ute territory, citing the 1868 treaty, but when they refused to leave, state and federal officials began working on a plan to annex the rugged, remote mountains to Colorado.

The government’s first attempt to acquire the San Juans from the Utes was a dismal failure from the US perspective, as Ouray and other Ute representatives unanimously refused to sell any more of their land. But soon after attending that first meeting, Felix R. Brunot, chairman of the Board of Indian Commissioners, learned that Ouray’s son had been taken captive by other Indigenous groups years before. Brunot persuaded the Ute leader to agree to sell the San Juans if the government could reunite him with his son. Although the effort to find Pahlone ultimately failed, Ouray became convinced of Brunot’s sincerity and eventually helped him induce the other Ute bands to relinquish a 4-million-acre piece of the San Juans in exchange for hunting rights in the mountains, an annual payment of $25,000 to the Utes, and other deliverables.

Since Congress declared in 1871 that the United States would no longer recognize the sovereignty of Indian nations, the agreement that ceded the San Juans to the United States was not a treaty; rather, it became known as the Brunot Agreement. Signed in 1873, it included an annual stipend of $1,000 for Ouray as well as land for him and Chipeta near present-day Montrose.

Meeker Incident

While white Coloradans opened mines in the San Juans, the state’s Ute populations were having difficulties adjusting to life on the reservation. The situation came to a head in the fall of 1879, when Ouray again found himself in the middle of a dispute between whites and Utes. In 1879 Nathan C. Meeker was appointed Indian agent at the White River Indian Agency, which managed the Yampa and Parianuche (Grand River) Utes. A zealous individual with little understanding of Ute culture, Meeker’s aim was to force the Utes out of their hunter-gatherer
way of life into a life of farming and Christianity. But the Utes resisted these attempts at nearly every turn, and the final straw came in September 1879, when Meeker requested federal troops to safeguard the agency. The Utes saw this as a threat and rebelled, killing Meeker and ten others and taking the agent’s family captive.

The captives taken during the Meeker Incident included the families of the slain White River employees and Meeker’s wife and adult daughter, Josephine. The women and children were kept as prisoners for three weeks until their release was negotiated by US agents. They were then taken to Ouray and Chipeta’s ranch.

Aftermath

Historians generally agree that Meeker and his attitude toward the Utes were to blame for the violence in September 1879; nonetheless, the incident terrified white Coloradans and prompted them to call for the removal of all Utes from the state. Ouray feared white retaliation for the Meeker Massacre and worked to encourage the cessation of hostilities. But he did not offer up any new land for the taking, nor did he relent to pressure from government officials to name and deliver the Utes responsible for the murders. For his part, Ouray was ordered to deliver twelve Ute men for sentencing in Washington, DC. The Ute men were acquitted of the charges, but after the Meeker Massacre, the US government wanted the Ute Nation removed.

Final Agreement

On March 6, 1880, nine Utes, including Ouray, signed an agreement to move the White River (Parianuche and Yampa) Utes to the Uintah Reservation in northern Utah. The government initially planned to move the Uncompahgre Utes to lands near the mouth of the Gunnison River, near present-day Grand Junction, but road builder Otto Mears knew white settlers coveted the site, which would make him a great deal more money. Additionally, Colorado governor Frederick Pitkin did not want the Uncompahgres living so close to other white settlements, so it was eventually determined that Ouray’s people would move to a 1.9-million-acre reservation in Utah near the Uintah Reservation. It was named the Ouray Reservation, after the now-famous chief.

By the summer of 1880, few Utes had agreed to relocate. As public pressure mounted on state and federal officials and the threat of forced removal became more real, Ouray made one final
attempt to save his people from what he thought would be certain annihilation. In August 1880, at the age of forty-seven, he traveled to southwest Colorado to meet the defiant Southern Ute leader Ignacio, hoping to enlist his help in collecting signatures for the new peace agreement. But this journey proved too much for Ouray; he had been suffering from Bright’s disease, a kidney ailment associated with high blood pressure, for at least five years. He fell terribly ill while on the Southern Ute reservation and died there on August 24, 1880. In 1925 Ouray’s friends recovered his body from a secret burial site and reburied the chief in the Ute Cemetery near Ignacio, just across the Los Piños River from the place where he died.

In the end, the Uncompahgre Utes were reluctant to leave their Colorado homelands for the reservation named after their fallen chief; when they finally did agree to leave the Uncompahgre valley, more than 1,000 US troops hovered behind them, ushering them along the 350-mile journey to the new reservation. The Southern Utes were allowed to stay in Colorado.

Chipeta’s Final Years

Chipeta survived Ouray for thirty-four years, living in near poverty for the remainder of her life. The federal government never fully compensated Chipeta or finished the beautiful home she had been promised in the 1880 agreement. She died on August 12, 1924, at age eighty-one. She was buried in a traditional shallow grave. In 1925 Chipeta’s body was exhumed by members of her tribe and moved to a mausoleum at the Ouray Memorial Park in Montrose.

Legacy

Like many other Indian leaders who lived to see their people pushed off their lands by whites, Ouray leaves a complicated legacy. His early life experiences in New Mexico, as well as his proximity to the Mexican-American War, gave him deep knowledge of how landed elites operated and an appreciation for US military power. That knowledge would help him when he reluctantly became the US government’s designated negotiator for agreements with all Utes. In that capacity, Ouray often faced the unenviable task of deciding between protecting his people’s land or making a dangerous stand that might get many Utes killed. For the most part, Ouray deftly applied the knowledge gained in his early life in these situations, remaining skillfully defiant when he saw no threat to his people but capitulating to white interests when he perceived no other path but warfare and death.
Some Utes and historians have blamed Ouray for the forced removal of Colorado’s Northern Utes to Utah, while others believe he acted in the Utes’ best interest because voluntary relocation—even if the army encouraged it—spared them from a violent alternative, possibly even genocide. For better or worse, Ouray is remembered as a leader who unfailingly opted for peace in an otherwise violent and turbulent time.

Today, the experiences and legacies of Ouray and Chipeta are chronicled in exhibits at the Ute Indian Museum in Montrose and in the minds and stories of the Ute people who live on the reservation bearing his name. Author: Henry Platts

First Placer Mine

montrosemirror.com/wp-content/uploads/2020/02/362ISSUEFINAL.pdf
The Montrose Mirror  February 3, 2020

A William Henry Jackson photo taken in about 1884 shows the hydraulic mining process used at the Dallas Creek Placer Project

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EARLY DAY DALLAS CREEK PLACER PROJECT HARNESSED THE POWER OF WATER TO SEARCH FOR FREE GOLD

By Bob Cox

OURAY COUNTY-Ouray County is well known for its mining history, but most of that history is focused around famous mines in the Red Mountain and Sneffels areas. Mines like the Idarado, Camp Bird, American Nettie and Virginius come to mind, but less than 25 miles south of Montrose was a mining operation that also held big dreams.

Just north of the intersection of Ouray County Road 24 and U. S. Highway 50, at the confluence of Dallas Creek and the Uncompahgre River, is the location of one of the few placer mining operations in Western Colorado. It is now part of Ridgway State Park. The Town of Dallas was located just south of the operation, and when the mining there first started, there were some who proposed that the name of the new town be Gold City. Of course, those who wanted to honor George Mifflin Dallas, the 11th Vice President of the United States, prevailed and the town took his name. Crofutt's Grip Sack Guide of Colorado, published in 1885, shows the town as Dallasville. Crofutt, while promoting rail travel in Colorado, gave little attention to the Town of Dallas and never mentioned the mining operation. He did highlight many of the mining camps in the south end of Ouray County.

As a general rule, gold comes in two forms in Colorado. First is what is called lode gold. It is gold that is locked in another medium such as quartz or granite. Rock containing lode gold must be crushed and put through some sort of extraction process to recover the gold. The other form is placer gold, often called 'free gold.' The gold is in the form of nuggets, or more commonly flakes, that settle into stream and riverbeds as the various materials are carried down from the mountains.

Lode gold is the most common in the Ouray/Telluride area, but people speculated that some of the gold locked up in other media had to become dislodged in the raging fury of mountain streams and end up in the beds and banks of select rivers. Abe Lee, who developed a large placer gold operation in California Gulch just east of Leadville, first looked at the Dallas/Uncompahgre confluence in about 1860, not long after his discovery in California Gulch. There is some speculation that the suggestion of naming the town of Dallas 'Gold City' was attributed to Lee, who called his California Gulch diggings Oro City.
But there was a problem with the location of the Dallas exploration. It belonged to the Utes. When word of possible gold findings reached the Denver area, a reporter for the Rocky Mountain News, hoping to be the first to expand on gold rush news, contacted Lee. Lee declined getting specific and did not acknowledge the rightful possession of the area by the Utes. He was quoted as saying simply, "The area has been well guarded by hostile Indians." It was in late 1871 when, taking advantage of the Brunot Agreement, mining began in earnest in the San Juans.

Lee's discoveries continued to pique the interests of some mining speculators. In the late 1870s and early 1880s the Colorado Gold Rush was waning somewhat and a group of speculators took a new interest in the possibilities of placer mining in western Colorado. The Dallas placer project was hatched in early 1878, but in order to use the techniques developed in places like Fairplay, the developers needed to find a source of high-pressure water.

Taking advantage of several displaced Chinese railroad workers, and without really big investors, several people from Lake City formed the Dallas Placer Mining Company in 1883 and excavated a ditch that diverted water from Dallas Creek 11 miles south of the confluence with the Uncompahgre. The ditch started at an elevation of about 7500 ft. and entered the head gate and pressure box above the project at about 6700 ft. From the pressure box the water entered a piping system that sent high-pressure water through a monitor and washed the gravel from the sides of the riverbed. The slurry then entered a sluice, where the gold settled, separating it from the other material.

The project was in operation by October of 1883 and was capable of processing 2,000 cubic yards of gravel per day. While 140 years of development, erosion, construction and natural growth have nearly obliterated most of the evidence of the ditch, a careful look at the side of Log Hill Mesa from the current Dallas Day Use Area in Ridgway State Park will reveal a few clues that the ditch existed.

Not a lot of gold was recovered in the project and records show that most of it was about 760 fine. The word fine is used two different ways when it comes to gold. Gold that is 760 fine means it is 76 percent pure. If the developers sold one troy ounce of their gold at the time, it was worth slightly over $15 - not nearly enough to keep the operation viable, but it did not entirely go away.

After the Dallas Placer Company dissolved, several Chinese immigrants registered a placer operation in the same area as the Old China Mine and used water from the ditch to sluice gold. Records show that the Chinese operators recovered enough gold to supplement income they had
from laundry services in Ridgway. Until 1905 they sold most of the gold directly to the Ridgway Bank. The Old China Mine still showed on USGS reports in the early 1930s, but production was almost nothing.

So, is there gold in that creek? Well maybe, but before you grab a gold pan and head for Ridgway State Park, be aware that panning for gold within the park boundaries is not permitted.

**First Land Use Code**

Apparently, the Tabeguache had a similar Land Use Code to the current Ouray County Land Use Code. The Tabeguache denied any right to minerals and any right to mine.

The first recorded Amendment to the Land Use Code was made by the Brunot Agreement between the Utes and the US government in 1873. Mining in the San Juan Mountains was encouraged and developed by taking 3.7 million acres from the Utes in western Colorado. Compensation for the taking was $25,000 per year (less than $0.01 per acre) and a $1,000 per year salary for Ouray, as well as land for him and Chipeta near present-day Montrose.

[https://coloradoencyclopedia.org/article/brunot-agreement](https://coloradoencyclopedia.org/article/brunot-agreement)

**Brunot Agreement**

The Brunot Agreement between the Utes and the US government in 1873 led to the development of mining in the San Juan Mountains by taking 3.7 million acres (about 5,780 square miles) from the Ute Reservation in western Colorado. As white encroachment continued over the next decade, the Utes were eventually forcibly removed to Utah in 1881.

Unlike previous agreements between the US government and Native Americans, the Brunot Agreement was not a treaty; treaties were considered to be agreements between sovereign nations, and the US government no longer recognized Native American sovereignty after 1871.

**Origins**

Miners first made their way into the San Juan Mountains in 1860–61, but it was not until 1869 that valuable minerals were discovered and not until 1871–72 that mine development took place.
The Treaty of 1868 put the San Juan Mountains within a Ute reservation that encompassed almost the entire western third of Colorado. Although off limits to non-Indians, prospectors and miners entered the region. The growing mining activity drew the attention of the Utes, who were unhappy about the incursions but not openly hostile.

First Negotiations

Realizing the importance of the minerals, the federal government began negotiating with the Utes in 1872 to have the San Juan Mountains ceded from the reservation. The first attempt at an agreement was a dismal failure. In 1872 John D. Lang of Maine, Colorado territorial governor Edward M. McCook, and John McDonald of Missouri were appointed commissioners to carry out the negotiations, which began at the Los Piños Indian Agency on August 26, 1872. Although not an official member of the commission, Felix R. Brunot, Chairman of the Board of Indian Commissioners, was present. Nearly all of the Ute bands, as well as the Jicarilla Apache, were represented by headmen, and the government recognized Chief Ouray, a Tabeguache Ute, as the overall Ute leader. The meeting also included numerous government officials and almost all the Indian agents of the respective bands. Suspicious of government and territorial officials, the Utes flatly refused to sell any of their reservation, wanting only that the government live up to its obligations of the Treaty of 1868 by removing trespassers.

Second Negotiations

Despite the Utes’ distrust of Brunot during negotiations, he had private conversations with Ouray in which he discovered that Ouray’s only son had been taken captive by the Lakota and traded to the Arapaho. Using this information, Brunot succeeded in finding a young man he thought was Ouray’s son, whom he promised to return to Ouray. In return, Ouray reassured Brunot that the Utes would agree to cede the mining lands in the San Juan Mountains.

Charles A. Adams, the agent at Los Piños, and Jerome B. Chaffee, delegate to Congress from Colorado, worked to have Brunot appointed to a new commission to negotiate the land cession. Brunot and Nathan Bishop of the Board of Indian Commissioners were appointed on June 2, 1873. On June 25, before the negotiations, Ouray and Adams went to Cheyenne to finalize arrangements with Brunot. Brunot planned to bring Ouray’s son with him to the negotiations.
Brunot was delayed by waiting for Ouray’s son to arrive. Bishop was also unable to join him, so Brunot, secretary of the Board of Indian Commissioners Thomas K. Cree, and Spanish interpreter James Phillips finally arrived at the Los Piños Agency on September 5, 1873. Ouray acted as the Ute interpreter for each of the Ute bands, all of which were represented by headmen except the White River Utes, whose leaders had left because of the delay. Representatives of the Jicarilla Apache were also present. Upon his arrival, Brunot learned that the Indians were unhappy about the delay and that Ouray was disappointed to have not been reunited with his son.

Before negotiations began, several days were spent deflecting questions from Shavano of the Tabeguache about the eastern and southern reservation boundaries, the desire of the Muache and Capote bands to remain in New Mexico, and a request for Brunot’s intervention on behalf of the Jicarilla Apache in New Mexico. In these matters, Brunot was far from forthcoming and rather deceitful, brushing issues aside in order to get to the real point of the negotiations: the land cession. Brunot spent considerable time ingratiating himself with the Utes, attempting to convince them that he was trustworthy. Although Ouray noted that “they [miners and other Utes] say the man who comes to make the treaty will go off to the States, and it will all be as they [the government] want it,” he indicated that Brunot had convinced him of his trustworthiness.

**Finalizing the Agreement**

Brunot quickly discovered that the Utes were willing to sell only the existing mines, so long as no houses or permanent settlements were established and only a single road provided access. To the Utes’ surprise, Brunot declined to negotiate on those terms, knowing that trespasses were certain. A keen negotiator, Brunot asked the Utes what the boundary line should be around land that they would cede. He convinced the Utes it would be better to sell their land rather than lose it by force with no compensation. He proposed that an agency be established in the southern portion of the reservation for the Muache and Capote, that the Utes could continue to go onto the plains to hunt buffalo, and that the land west of the ceded portion remain in Ute hands to connect the southern and northern parts of the reservation.

After Ouray consulted with the Ute bands, Brunot offered $25,000 per year forever in exchange for the mountains. Ouray pointed out that the abundant game in the mountains was important, so Brunot agreed that the Utes could continue to hunt on the land that they sold. Brunot then added a $1,000 yearly salary for Ouray. On September 13, 1873, all of the principal men of the Utes...
signed the agreement, providing that representatives of the different bands visit the land being
sold to make certain that it contained only mining land and no farmland. In accordance with the
agreement, Cree, Adams, and Dolan accompanied several Utes on a weeklong inspection
journey, which confirmed that little or no agricultural land was included in the cession. As a
result, the remaining Utes at the agency signed the agreement, and a copy was sent to the White
River, Denver, Cimarron, and Tierra Amarilla agencies to be signed by other Utes. Ouray and a
delegation of Utes carried the agreement to Washington in October 1873, and Congress approved
it on April 24, 1874.

The ceded land boundary began on the eastern boundary of the Ute Reservation fifteen miles
north of the southern boundary of Colorado, then ran west parallel with the southern boundary to
a point twenty miles east of the western boundary of Colorado. The boundary then ran north
parallel to the western boundary for ten miles to the 38th parallel, east to the eastern boundary of
the reservation, and then south along the boundary to the first point. Uncompahgre Park, valley
land on the Uncompahgre River just north of the current town of Ouray, was to be excluded from
the ceded land. The Weenuche, Capote, and Muache Utes retained the southern part of the
reservation for their own use, and an agency was to be established for them when the president
deemed it expedient.

Aftermath

With completion of the agreement, the San Juan Mountains saw a mining rush that resulted in
many towns being established in 1874 and 1875, including Silverton. When the boundaries of
the ceded lands were surveyed, the surveyor failed to exclude Uncompahgre Park, and it was
quickly settled, much to the dissatisfaction of the Utes. Seeing the abundant farm and grazing
land that surrounded the ceded territory, the Colorado citizenry became even more covetous of
the Utes’ land, making it only a matter of time before most of the Utes were forced from their
Colorado homeland. Author: Jonathon C. Horn
Recorded Placer Mining Claims

To determine exact location of claims, searched the US Bureau of Land Management, Mineral & Land Records System (MLRS), Mineral Surveys for placer claims.

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<tr>
<th>Mineral Survey</th>
<th>Claim Name</th>
<th>Approved Accepted</th>
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<td>143</td>
<td>Daniel F. Watson et al Placer</td>
<td>6/15/1877</td>
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<td>19.61</td>
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<td>2000</td>
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<td>2236</td>
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Sixteen Placer Claims with Surveys Total 531.61
### Patented Placer Mining Claims

Approximately in order downstream along the Uncompahgre River, South to North.

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<tr>
<th>GLO Number</th>
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<th>Patent Issued</th>
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<td>and Uncompahgre River</td>
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Otto Mears

https://coloradoencyclopedia.org/article/otto-mears

Oray and Mears
Clearing Paths in the San Juans

The Poncha Pass road marked the start of Mears’s extensive road empire. He soon turned west to the San Juan Mountains, where he played a key role in both clearing the region for white settlement and clearing paths along which those immigrants could travel. Since Mears had arrived in Colorado, he had been developing ties with the Ute Indians, who had lived in the region for more than 400 years. Already in the 1860s, he became the tribe’s official trader, with a government contract to supply food to the Utes at the Los Piños Indian Agency. He also learned to speak Ute—one of the few white men to do so—and became friends with Ouray, the Tabeguache leader who often negotiated treaties with the US government. As a result of these close ties, Felix Brunot consulted Mears during the negotiation of the Brunot Agreement in 1873. By suggesting that Brunot promise Ouray an annual salary of $1,000 for ten years, Mears helped smooth the way for the Ute cession of the San Juan Mountains.

Like most men of his time and station, Mears saw no clear line between his business interests and his government service. As Ute territory became more restricted, the Indians became more reliant on the government for their survival, and Mears was happy to snatch up government contracts to provide them with trade goods. He was also happy to build and profit from the infrastructure that made white settlement possible on former Ute land. In 1873, the same year he greased the wheels for the Brunot Agreement, Mears acquired an interest in the Saguache and San Juan Toll Road Company, which was building a route from Saguache to Lake City via Cochetopa Pass. By August 1874, Mears had taken control of the company and completed the road.

As he expanded his growing toll road empire, Mears followed the market to new mining camps in need of better transportation. When necessary, he also took time away from his businesses to secure a stable environment for economic growth. Most notably, he secured Ute support for the treaty that removed the Utes to a smaller reservation. With the treaty on its way to ratification, Mears worked to ensure that the new Ute reservation would be located in Utah, not in western Colorado’s potentially fertile Grand River Valley, which he already envisioned as an agricultural paradise full of white farmers who would pay to use his roads.

In his work with the Utes, Mears did what he thought was necessary to avert a war that could have resulted in the annihilation of the Utes. But he also did what was best for his own bottom
line. In the years after the Meeker Incident, he earned a small fortune in toll fees from soldiers traveling his roads, helped open vast new regions in western Colorado to white settlement, and secured the contracts to build and supply the Utes’ new reservation in Utah.

Over the next five years, Mears worked tirelessly to expand his San Juan road network to about 450 miles. The most significant of these projects were the roads he built to the Red Mountain mining district between Ouray and Silverton, which boomed after the discovery of the Yankee Girl mine in 1882. First, Ouray County asked Mears in 1883 to construct a toll road south from town up Uncompahgre Canyon. He completed the road to Red Mountain in September 1883, at a cost of almost $10,000 per mile. The new road worried residents of Silverton, who feared that all Red Mountain ores would now flow through Ouray. They, too, hired Mears to build from their town to Red Mountain. Construction on the Silverton–Red Mountain Toll Road started in July 1884 and was completed that November, linking Silverton not only to Red Mountain but also on to Ouray via Mears’s earlier road.

Mears’s work on Ute removal also gained him the publicity to launch his own bid for public office. Starting in the 1870s, he had already become a de facto Republican Party boss for the San Luis Valley and southwest Colorado. He served as a state presidential elector in 1876 and engineered the nomination of Frederick Pitkin for governor in 1878. After his work on Ute removal, he ran for office himself, serving a single term in the state legislature in 1883. His brief political experience was enough to convince him that he preferred to focus on making money and then using it to influence politics. Over the next few decades, Mears’s main official political role was as a member of the Board of Capitol Managers, to which he was appointed in 1889. Mears helped speed completion of a new state capitol, whose construction had dragged on for years, and he characteristically ensured that a stained-glass portrait of himself would adorn the building’s second floor. Today Mears is often remembered for his suggestion that the capitol dome be covered in gold leaf as a symbol of the state’s mining heritage.

**Railroad Baron**

Building toll roads eventually drew Mears into railroad development. After connecting Silverton to the mines at Red Mountain, he started the Mears Transportation Company to carry ore along the route. His company soon became the largest freighting firm in Colorado, but at the same time he saw firsthand that slow wagons could not keep up with the mines’ production. To enable faster and cheaper transportation to the Red Mountain mines, he decided in 1887 to replace his...
toll road with a railroad. When the Silverton Railroad was completed to Red Mountain in 1889, it was a triumph of engineering, maintaining a grade of less than 5 percent thanks to two loops and four switchbacks along the route. Red Mountain mines boomed because cheaper railroad transportation allowed them to ship lower-grade ores at a profit. Silverton boomed, too, as a supply center for Red Mountain, as did Durango as a source of coal and a smelting center.

Enjoying the profits and stature that went along with being a nineteenth-century railroad president, Mears dreamt up grander rail projects that had the potential to make him a national figure. The first step was the Rio Grande Southern (RGS), which Mears incorporated in 1889. His goal with the line was to bridge a gap in Denver & Rio Grande (D&RG) service between the northern and southern San Juans. With heavy investment from the D&RG, Mears established the new railroad town of Ridgway in 1890 and laid track from there to Telluride by the end of the year. In 1891 he continued the line southwest past Ophir, where he had to negotiate a treacherous passage from valley floor to canyon walls, and on through Rico, Dolores, and Hesperus to reach Durango on December 20. On the other side of the state, the Rocky Mountain News described the completion of the Rio Grande Southern as “the most important railroad event of the year.”

What would the Ouray County Citizens, the Ouray County Land Use, Planning, and Building Department, the Ouray County Planning Director, the Ouray County Planning Commission, and the Ouray County Board of County Commissioners say to Otto Mears today?
Private Property Rights and Land Use Regulations


“…taxpayers would be unwilling to pay for all the things the critics want. Indeed, the great fear of those who oppose taking a principled approach to regulatory takings is that once the public has to pay for the benefits it now receives “free,” it will demand fewer of them. It should hardly surprise that when people have to pay for something they demand less of it.” By Roger Pilon


Property Rights, Regulatory Takings, and Environmental Protection  Jonathan H. Adler 04/01/1996

Under current environmental laws individual Americans have been prevented from building homes, plowing fields, filling ditches, felling trees, clearing brush, and repairing fences, all on private land. Many believe that such regulations infringe upon private property rights and violate the Fifth Amendment to the U.S. Constitution’s admonition “…nor shall private property be taken for public use without just compensation.” When the federal government condemns a piece of private land to create a publicly-desired resource, such as a military base, road, or wildlife preserve, it pays the land’s owner for the value of the property. However when the government regulates the use of the same private land to achieve the same purpose, it rarely pays a dime. In this manner, private land is taken for public use — through a “regulatory taking” — without just compensation.

The Supreme Court held in Armstrong v. United States that the Constitutional prohibition on uncompensated takings “was designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” Private individuals should not be forced to bear the costs of providing public goods desired by other people. Owning property should entitle the owner to the full use of that property, so long as the use of that property does not lead to the harming of other people or their properties. Ensuring compensation for regulatory takings will not only restore much-needed property
protections, it also serves as the first step toward the development of a new generation of environmental protection.

Federal environmental laws are not the sole source of so-called regulatory takings by the federal government. However they are the most prominent. For two decades, federal land-use control has been the dominant means of achieving many environmental objectives. Two federal laws, in particular, have been the focus of the debate over compensation for regulatory takings: the Endangered Species Act (ESA) and Section 404 of the Clean Water Act (CWA), the source of regulations limiting the development of wetlands.

Numerous legislative proposals have been introduced in response to the growing demand for a greater protection of private property. Twenty-three states have enacted property rights legislation of some kind. The two primary property rights proposals under consideration in Congress are S. 605 and H. R. 925, both of which would require the payment of compensation to landowners for regulatory takings.

Groups opposing compensation for regulatory takings suggest that requiring compensation for regulatory takings would impose an extreme financial burden upon the federal government. Such claims are overstated. Under most proposals, compensation is paid directly out of those funds appropriated to the agency responsible for the taking, and therefore would have no impact on the deficit. Requiring federal agencies to pay compensation for regulatory takings would also make agencies more aware of the financial risks of over-relying on land-use regulation to achieve statutory goals.

There is a fundamental distinction between government actions that incidentally affect land values — positively or negatively — and those that affect property values because they are directed at particular properties. Property values are not the fundamental issue in the property rights debate. Compensation should be paid when the federal government acts so as to deprive a property owner of a right to use and enjoy that property. Yet property rights, properly understood, do not include the right to injure or harm the person or property of another. This means that when the government limits or prohibits the use of property in a manner that is likely to harm another person or property — what would be considered a nuisance under common law — no compensation is called for. However, should the government limit the use of property for some other purpose, such as the provision of wildlife habitat or some other “public good,” compensation should be paid.
Because the government does not pay for the costs of regulatory takings, it overuses coercive land-use regulations to achieve environmental goals, even when other approaches are available. Reviews of incentive-based wetland conservation programs have concluded that such programs are far more cost-effective than land-use regulation. Forcing agencies to pay for the private property rights that they take through regulatory action will encourage them to examine non-regulatory approaches to achieving their statutory goals. Being forced to bear the costs of regulation can markedly change agency behavior.

It must also be recognized that efforts to regulate land use — to “take” private property without compensation — are often bad for both landowners and the environmental values that the government regulation is designed to protect. By making the ownership of wetlands or endangered species habitat a liability, federal land-use regulation actually discourages stewardship by private parties.

Private property should be viewed as the cornerstone of environmental protection. Whether the owner is seeking a profit on the property or not, self-interest still provides a powerful incentive to preserve, if not enhance, the value of the resource. Not all property owners will follow the incentives, but, in the aggregate, most property owners will. The institution of private property promotes stewardship and conservation. In fact, the private sector provides a wide array of environmental amenities, typically in a more effective and responsive manner than the federal government. Moreover, if private property rights are respected by the federal government, then those lands protected privately are not dependent upon the vicissitudes of politics for their preservation.

Property rights are important for both economic and environmental reasons, and must be protected from both government regulation and private malfeasance. Compensating landowners when they are deprived of the reasonable use of their land will not produce environmental catastrophe. Far from it. In many cases it will eliminate the negative environmental incentives created by the heavy hand of existing government regulations. Properly understood, property rights do not undermine sound environmental conservation, they lie at its foundation.
Government Actions and Interference with Constitutionally Protected Property Rights
EXECUTIVE ORDER NO. 12630 March 15, 1988, 3 C.F.R. 554

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

Section 1. Purpose.

(a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes of paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to
reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental actions. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is subject to this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department or agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions….

RONALD REAGAN, THE WHITE HOUSE, March 15, 1988


THE PROPERTY OWNERSHIP FAIRNESS ACT: PROTECTING PRIVATE PROPERTY RIGHTS

…Taking Property Rights through Regulation

While in an eminent domain case, the government takes outright ownership of a person’s property, the government can also take away property through regulations that prohibit owners from using, selling, or building on their land. Such restrictions block people from pursuing the purpose for which they bought the property—thus taking away their property rights just as much as an eminent domain condemnation does—but because the government does not technically take the title to the land, judges often hold that owners are not entitled to any “just compensation.” People are therefore forbidden from using their property, but they are stuck with the purchase price, the taxes, the loan payments, and the possible liability if someone is injured on the land. Yet such regulations often destroy the property’s value, meaning the owner also cannot sell it. In the 1870s, the U.S. Supreme Court warned that allowing the government to evade the just compensation requirement through the trick of leaving the owner in technical
possession while taking away his rights to use the land “would pervert the constitutional provision . . . and make it an authority for invasion of private right under the pretext of the public good, which had no warrant in the laws.”

Sadly, state and federal court rulings since then have allowed government to do just that.

Arizona courts were as culpable as any state’s when it came to these regulatory takings. Before the Private Property Rights Protection Act, citizens could rarely obtain the just compensation their constitution promises them unless the property restriction completely destroyed the market value of their land. When Kent and Judith Wonders sought permission to develop their property in Pima County, the local board of adjustment demanded that they set aside 45 acres as habitat to preserve native plants. Because this open-space dedication destroyed “only” 30 percent of their property value, and they had “not been deprived of all economically beneficial use of [their] land,” the court ruled that the Wonders had not suffered any taking, and were entitled to nothing.

Following federal and state precedents that since the 1970s had essentially eliminated constitutional protections against regulatory takings, the court held that almost any government restriction on property use that fell short of a total wipeout was exempt from the compensation requirement. Only when a property owner could show that the government regulated his property so extremely as to “preclude its use for any purpose to which it is reasonably adapted” was the government required to pay for what it took away.

Shutting Down the Sharing Economy

Consider just one of the many ways land-use regulations stifle economic opportunity by interfering with the rights of homeowners: restrictions on short-term rentals. The advent of the so-called Sharing Economy has opened new opportunities for property owners to make money and improve their local economies—and to benefit consumers with more choice and lower prices. Airbnb and VRBO.com in particular have opened a new era for vacationers and others who are looking for places to spend the night, the weekend, or longer. To get a sense of how profound this revolution is, consider that Airbnb alone offers more rooms than major international hotel chains such as Hilton and Marriott and makes up about 8 percent to 17 percent of the short-term rental supply in New York City alone. With expensive hotels no longer the only option, short-term rentals bring people to new destinations and encourage them to patronize the local economy and experience the local atmosphere. In 2013, visitors to Coachella Valley, California, booked over a quarter-million nights at short-term rental homes, pouring more than $272 million into the local economy and creating 2,500 jobs.
Unfortunately, regulators have responded not by welcoming these innovations with open arms, but by driving them out of business. Powerful hotels and vocal neighbors are successfully urging cities to ban property owners from offering their homes to travelers, despite the fact that these restrictions have no connection to the government’s legitimate functions of protecting people’s health and safety. From New York City to Santa Monica, places with bustling tourism economies are rushing to restrict homeowners from offering rooms in their homes to travelers. Honolulu, which already prohibits rentals of fewer than 30 days, is considering raising fines to $10,000 per day for homeowners who offer short-term rentals. Other cities are imposing burdensome restrictions though not complete bans. Rancho Mirage, California, requires at least one occupant to be 30 years old, thus discriminating against legal adults who are younger. Nashville, Tennessee, limits the number of properties that may be “non-owner-occupied short-term rentals” to 3 percent, meaning that property owners like P.J. and Rachel Anderson—a young couple who are often on the road for P.J.’s job and who rent their home while they are away to supplement their income—are out of luck, as is Lindsey Vaughn, who bought a property with the hope the rental income would help fund her children’s college education.

These restrictions reveal a growing belief that an individual’s private property should be micromanaged by regulators, despite the fact that they are often more interested in serving vocal special interests, such as the hotel industry, than in respecting the rights of property owners. Such efforts do not just hurt tourism, they also reduce property values, drive up the costs of travel and lodging, and put entrepreneurs out of business. Unfortunately, most states fail to protect unsuspecting property owners and entrepreneurs from these extreme regulations.

In 2008, the city of Sedona, a popular Arizona tourist destination, made renting residential property for fewer than 30 days a crime, punishable by up to six months in jail and a $2,500 fine. Astonishingly, the ordinance defined “rent” so broadly that the term could apply to purchasing a time-share, contracting for home improvements, and even hiring a babysitter. Other Arizona cities are following in Sedona’s footsteps. In 2012, Glenn Odegard bought a century-old home in historic Jerome, an old Arizona mining town known as “America’s Most Vertical City” because of its steep streets and 5,200-foot elevation. Founded in 1876, Jerome was a copper boomtown with a peak population of 15,000 in the 1920s, but since the mine’s closing in 1953, the population has dwindled to about 450. The remaining residents have sustained the town by transforming it into a tourist destination with ghost tours, art galleries, bed-and-breakfasts, restaurants, bars, and shops.
Glenn tried to contribute to that restoration by resuscitating a home that had been abandoned and left vacant for 60 years after a landslide filled it with rocks and mud. Intending to offer it as a vacation rental, Glenn lovingly restored the dilapidated house to its original historic condition. His successful efforts earned the home a feature in Arizona Highways magazine and a spot on the Jerome Historic Home and Building Tour. Yet despite issuing the relevant permits and initially embracing Glenn’s home renovation, town officials decreed he could no longer use the home as a vacation rental. Under the town’s newly announced ban, Glenn and other homeowners face fines of $300 and up to 90 days in jail for each day they allow paying guests to stay. His “reward” for the investment of his time, money, and labor was to be considered an outlaw.

Sadly, state courts routinely uphold vacation rental bans, on the theory that “preserving the character and integrity of residential neighborhoods” and “securing affordable housing for permanent residents” (by forcibly keeping housing values down) are legitimate goals the government may pursue by restricting private property rights. Because owners can still rent their property long-term and live in the homes themselves, bans on short-term vacation rental bans generally do not destroy the entire economic value of a home, meaning that under the laws of most states, owners are not entitled to any compensation, no matter how much the restriction costs them.26

While it is understandable that neighbors don’t want loud renters next door or excessive traffic on their streets, those concerns are already addressed by existing city ordinances that forbid noise or other nuisances. Diverting valuable resources to policing short-term rental bans and negotiating petty arguments between neighbors, instead of enforcing the anti-nuisance laws already on the books, does nothing to improve neighborhoods.27 Anti-short-term rental laws are more effective at creating “Not In My Back Yard”-style barriers that punish residents for letting guests use their homes, than they are at ensuring the fair treatment of all homeowners. Meaningful protections for property rights—like the Property Ownership Fairness Act—encourage cities to focus on enforcing legitimate rules against noise and traffic congestion, instead of imposing new restrictions that only drive up the cost of living, hurt local businesses, and violate the rights of property owners....
Private Property and Government Under the Constitution

The economic concept of private property refers to the rights owners have to the exclusive use and disposal of a physical object. Property is not a table, a chair, or an acre of land. It is the bundle of rights which the owner is entitled to employ those objects. The alternative (collectivist) view is that private property consists merely of a legal deed to an object with the use and disposal of the object subject to the whims and mercies of the state. Under this latter view, the state retains ownership and may at any time regulate or even repossess the property it temporarily cedes to individuals.

The Founding Fathers upheld the economic view of property. They believed that private property ownership, as defined under common law, pre-existed government. The state and federal governments were the mere contractual agents of the people, not sovereign lords over them. All rights, not specifically delegated to the government, remained with the people—including the common-law provisions of private property. Consequently, the constitutional rights regarding free speech, freedom of religion, the right of assembly, and private property rights are all claims that individuals may hold and exercise against the government itself. In brief, private property refers to the rights of owners to use their possessions which are enforceable against all nonowners—even the government.

The Economic Concept of Ownership

“We may speak of a person owning land and using it as a factor of production,” writes Nobel laureate Ronald Coase in his essay on “The Problem of Social Cost,” “but what the owner in fact possesses is the right to perform certain (physical) actions.” These “rights to perform physical actions,” called private property, constitute the real factors of production and the real articles of trade. Legal title itself means nothing. At best, a title or deed amounts to proof of ownership, not the rights inherent in ownership.

Many people confuse the economic concept of ownership with the mere holding of legal title. Often, title and ownership coincide, but not necessarily. Sometimes businesses lease equipment from manufacturers under circumstances which transfer all of the meaningful rights of ownership
to the lessee while title remains with the manufacturer. Here are two examples: if a lease approximates the useful life of the equipment or if the lease itself contains an option to buy the equipment outright for a nominal sum. In both cases the lease transfers ownership in the true economic meaning of rights to employ the equipment without actually changing title. Proper accounting principles, in such cases, require the lessee to record the equipment on its books as an asset and the lease itself becomes a method of financing the purchase. The manufacturer although still retaining title to the equipment no longer “owns” the property and, accordingly, should not include it as an asset.

In other cases, the “bundle of rights” to use an object may be separated and sold apart from the title. Once again, here are two examples: landowners may lease property for a specified period of time while retaining the residual rights to the land upon termination of the contract or the same landowner may sell only the mineral rights, while retaining title along with most of the “sticks” in the property rights bundle. The validity of these contracts implies that ownership refers to the many legitimate uses and disposal of things, rather than title to the object itself.

The economic view of property consisting of primarily actions, rather than things, is also compatible with intellectual property, such as copyrights and patents. The right to publish a book or construct a machine may be reserved to the author/inventor. These species of private property do not refer to any specific objects at all, but are legitimate articles of property nonetheless.

The Common Law Boundaries of Private Property

The British common law has established the legal limits to property rights through case precedents, reflecting the practical needs of trade long before the North American colonies even existed. The common law provided a clear picture of ownership to the Founding Fathers.

The common law has three pillars: private property, tort liability, and the law of contract. Property and tort liability are inexorably intertwined. No one has a right to infringe upon the legitimate rights of others.

If one uses his possessions to create a health hazard or nuisance to others, he is fully liable for damages. In some instances, an injunction may even prevent an unlawful action before it causes damages to others. The very boundaries of private property are defined by common law.
liabilities. For example, if Mr. A erects a six-foot fence at the border of his land and this fence blocks the sunlight to Ms. B’s garden, does Ms. B have a common law right to access the sunlight? If so, she would have a claim under tort law. If not, Mr. A may construct the fence and Ms. B either relocates her garden or persuades or compensates Mr. A to move his fence away from the established boundary. The point is that a reasonable and efficient result should occur under either rule. What is important is for the liability limits to property be well-established and clearly defined. After many case precedents the common law courts begin to sharply define the boundaries of private property. Owners may then negotiate, mutually reaching an arrangement, without going to battle in court over a legal ambiguity or seeking a new statute.

The “bundle of rights” we call private property comprise the subject matter for all contracts. Every time goods exchange hands, land is purchased, and an employment contract is signed, “bundles of rights” to resources are exchanged. All commerce, and the prosperity which it generates, depend upon the security and certainty of property rights. If an urban area has a notorious high crime rate, local businesses will tend either to relocate or increase prices. If the courts do not establish consistent liability rules, then litigation costs increase and the basis for agreements is undercut. If the legislature threatens to regulate business, then potential competitors may be frightened away. If the potential uses to which property may be employed are subject to regulation by a governmental body, then the value of property declines. Men like James Madison and Alexander Hamilton understood that prosperity depends upon the security and certainty of property rights and designed the Constitution accordingly.

The common law does evolve slowly to reflect changes in both technology and social mores, but it provides a stable set of rules of conduct. Moreover the common people on juries decide common law cases, not kings, not legislatures. This establishes an important rule-making authority outside of any centralized government.

The English Whigs on Property and Government

Our American forefathers did not develop their political theories in an intellectual vacuum. More than a century before the American Revolution, a Civil War raged in Britain. It pitted the Monarchy against Parliament. Among the opponents of the Monarchy were the seventeenth-century English Whigs. Over the course of a few decades, English Whig intellectuals expounded
their theories about property and government. These thinkers, including John Locke, Algernon Sidney, and Thomas Gordon, taught America’s founders much about property and government.¹

Prior to the rise of the English Whigs, the “divine right of kings” had held that all rights, liberties, and properties actually belonged to the king. The king merely permitted his subjects to use their possessions. The king, however, might regulate the use or even seize these possessions outright at his whim. The people had no claims or rights which could be exercised against the sovereign. Their possessions were at the mercy of the government.

By contrast, the English Whigs believed that the fountainhead for all rights was the sanctity of the individual, not the divinity of the state. John Locke contended that human rights were “natural rights” which pre-existed government. The original owners of the land were the real sovereigns, not the king. Remember the old English saying, “A man’s house is his castle and every man is king.” Owners, however, might consent to give up a small part of their liberty and property to government in order to institute criminal law and national defense and to perform certain other specifically delegated tasks. Legitimate government is formed by contract and may never acquire more rights than delegated by the property owners who institute it. The authorities must never exceed their narrow constitutionally delegated authority—lest they become despotic.

According to the Whig view, legitimate government is an agent, a servant, a mere convenience charged with certain specific tasks. Moreover, even elected governments tend to become despotic as the British Parliamentary experience illustrated. Most of the descriptions of political power during colonial times were negative. Thomas Gordon discussed the issues of the day in Cato’s Letters. Power was often shown as a “clutching grasping hand” or described as a “cancer that eats away at the body public.”

It is also relevant that the Whigs expressed all rights in terms of property. Each man owned his own person and labor. Slaveholders were condemned as man-stealers, the lowest sort of thief who stole the whole person, not merely part of his labor. Whenever the Whigs argued for freedom of religion, the teachers of our forefathers referred to “property in one’s conscience.” When they opposed Sabbatarian laws, prohibiting certain activities on Sunday, they referred to “property in one’s time.” The Whig view equated property and liberty, once again reflecting the economic concept that property refers primarily to freedoms to act.
The Founders and Framers on Property and Government

The best way to examine the importance of private property to our forefathers and its place under the law is to study the words of the founders and framers themselves: men like Thomas Jefferson, James Madison, and Alexander Hamilton. In the passage below Jefferson argues that the colonial landholdings had always been held free and clear of the British crown. Throughout American colonial experience, the British crown exacted a small fee called a quit-rent upon all landholders. The quit-rent often went uncollected and never raised much revenue, but it remained on the books as a legal assertion that all land titles were held subject to the crown. In 1774, Jefferson disputed this kingly claim. Jefferson’s reasoning gave historical teeth to the Whig view that sovereignty belongs to individuals and that property pre-exists government. Therefore the United States government formed two years later would be established by free men, not serfs. Neither could the new government claim to be the recipient of any superior monarchical rights or claims to private landholdings. According to Jefferson:

That we shall at this time also take notice of an error in the nature of our landholdings, which crept in at a very early period of our settlement. The introduction of the feudal tenures into the kingdom of England, though ancient, is well enough understood to set this matter in its proper light. In the earlier ages of the Saxon settlement feudal holdings were certainly altogether unknown, and very few, if any, had been introduced at the time of the Norman conquest. Our Saxon ancestors held their lands, as they did their personal property, in absolute dominion, disencumbered with any superior... William the Conqueror first introduced that system [feudalism] generally. The lands which had belonged to those who fell at the battle of Hastings, and in the subsequent insurrections of his reign, formed a considerable proportion of the lands of the whole kingdom. These he granted out, subject to feudal duties, as did he also those of a great number of his new subjects, who by persuasions or threats were induced to surrender then for that purpose. But still much of the land was left in the hands of his Saxon subjects, held of no superior, and not subject to feudal conditions. ... A general principle indeed was introduced that “all lands in England were held either mediately or immediately of the crown”: but thus was borrowed from those holdings which were truly feudal, and applied to others for the purposes of illustration. Feudal holdings were therefore but exceptions out of the Saxon laws of possession, under which all lands were held in absolute right. These therefore still form the basis of the common law, to prevail whenever the exceptions have not taken
place. America was not conquered by William the Norman, nor its lands surrendered to him or any of his successors. Possessions are undoubtedly of the [absolute disencumbered] nature. Our ancestors however, were laborers, not lawyers. The fictitious principle that all lands belong originally to the king, that they were early persuaded to believe real, and accordingly took grants of their own lands from the crown. And while the crown continued to grant for small sums and on reasonable rents, there was no inducement to arrest the error.²

In The Federalist Papers, James Madison and others argued that the proposed U.S. Constitution would protect the liberty and property of the citizens from usurpations of power from the federal government.

Power in the new government was to be divided into three branches: legislative, executive, and judicial. This would create a system of checks and balances necessary to hinder the unwarranted expansion of political power. The division of power would also make it more difficult for a majority to oppress a political minority and political stability would more likely result. In the following passage James Madison discusses the problems of “mutable policy” (governmental activism). Madison believed that the new Constitution would establish a consistent, stable set of laws necessary to promote prosperity. Otherwise, he warned:

The internal effects of a mutable policy are still more calamitous. It poisons the blessings of liberty itself. It will be of little avail to the people that the laws are made by men of their choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the monied few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any manner affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow citizens. This is a
state of things in which it may be said with some truth that the laws are made for the few, not the many.

In another point of view, great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend upon a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans will be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim of inconsistent government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady stream of national policy.³

Alexander Hamilton contended that the new federal Constitution would protect private property and liberty from abuses arising at the state level. Between the end of the Revolutionary War in 1781 and the ratification of the Constitution in 1788 state governments faced debtor uprisings, such as Shays’ Rebellion.

State legislatures sometimes granted debt relief or “stays” on the payments of debts. Hamilton believed the proposed Constitution had “precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit.”⁴ He referred to Article I section 10 of the Constitution which explicitly protects creditors by forbidding states to pass laws “impairing the obligation of contract” or even devaluing debt obligations by making “any thing but gold and silver a tender in payment of debts.”

The “impairment of contract” clause remains effective today. New state laws affecting long-standing agreements may only alter future contracts, not existing ones. This protects interstate commerce, such as insurance and banking, from potential abuses by state and local politicians who may be tempted to rewrite contracts to redistribute income from outsiders to local constituents.

In the body of the Constitution, Article I sections 9 and 10, also expressly forbids both federal and state governments to grant titles of nobility. This prohibits the establishment of a formal, hereditary class in the United States. In England, the titles “Prince,” “Duke,” and “Earl”
consisted of much more than a prefix to a name. Nobility also laid feudal claim to the land held by the common people. Feudal titles, such as Prince of Wales and Duke of York, pretend ownership to the entire realm, subordinating the rights of the landholdings of commoners. America’s framers hated the European class system and the feudal pretense to the land that it represented. The United States are forbidden to ever establish feudal land tenures to lands because sovereign landholdings are essential to a free “Republican form of government.”

The U.S. Constitution contained a number of flaws, most notably, the official sanctioning of slavery. Nor did the Constitutional framers advocate laissez-faire capitalism. Some of the framers, including Alexander Hamilton, believed that the government should actively encourage economic growth through protective tariffs. Nonetheless, the framers all held private property in high esteem. Indeed, commercial prosperity seems to be the chief end of good government to them. The economic system under the Constitution is capitalism with a very few specific exceptions explicitly delegating limited powers to Congress, i.e., coin money, establish a Post Office, lay customs duties, etc. James Madison summarized, “The powers delegated to the federal government are few and defined.”

**The Bill of Rights on Private Property**

Many people were fearful that the Constitution still concentrated too much power in the hands of the federal government. The electorate in key states insisted upon a “Bill of Rights” lest they would reject the proposed Constitution.

These amendments soon became incorporated into the new Constitution. Six of these ten amendments pertain either directly or indirectly to private property rights.

The Third Amendment states, “No soldier shall in times of peace be quartered in any house, without consent of the owner, nor in times of war, but in a manner prescribed by law.” This amendment grew out of abuses by the British, who had forced people to allow troops into their homes. The amendment clearly protects the rights of homeowners, but is too specific for wider applications.

The Fourth Amendment includes the clause, “The rights of people to be secure in their persons, houses, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause . . .” The “search and seizure” clause has been
interpreted to pertain primarily to criminal cases, but the stated intent of this statement is to make people secure in their persons and possessions. In civil cases law enforcement officials presently are able to seize property without a warrant and place the burden of proof upon the owner to show that he did not commit a crime. In fact, some local governments now use civil seizures to supplement their budgets.

The Seventh Amendment requires that for civil cases in federal courts, “no fact tried by a jury, shall be otherwise re-examined in any court of the United States than according to common law.” The common law, as we have seen, rests upon three pillars, including private property rights. This indirect recognition of private property only protects individual owners against other private parties. These common law property claims become enforceable against the federal government under the Ninth and Tenth Amendments.

Amendment Nine states, “The enumeration of certain rights, shall not be construed to deny or disparage others retained by the people.” Amendment Ten further stipulates, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states and the people.” The original intent of the “enumeration” and the “reservation” clauses clearly reaffirm the contract theory of government held by John Locke and James Madison alike. All “powers not delegated to the federal government” includes any and all private property rights described under the common law. Historically, however, U.S. courts have never used the “reservation” clause to decide important cases.

The most explicit recognition of private property comes in the Fifth Amendment which states “Nor shall [anyone] be deprived of life, liberty, or property without due process of law; Nor shall private property be taken for public use without just compensation.” The first clause is called the “due process” clause while the second part is referred to as the “takings” clause.

Until the middle of the twentieth century, the “due process” clause was often used to strike down regulations imposed on private property especially if they amounted to confiscation by regulation or if they exceeded the federal government’s constitutionally delegated authority. For example, when President Franklin Roosevelt’s National Recovery Act required all trades and businesses to form trade associations, restrict entry, and establish minimum wages and prices, the Supreme Court overturned this wholesale reorganization of U.S. industry as a violation of the “due process” clause. This prompted President Roosevelt to threaten to “pack” the Supreme Court. Although Roosevelt failed to gain congressional approval to expand the Supreme Court from
nine to fifteen members, the Court no longer overturned New Deal policies. Subsequently, Courts have created an artificial distinction between “property liberties” and “personal liberties.” Rarely, do Courts use the “due process” clause to uphold “property liberties” anymore. Current judicial theorists argue that the Constitution does not prescribe a particular economic system (capitalism). Therefore, private property liberties are not protected while “personal liberties” such as First Amendment guarantees of free speech are still upheld under the “due process” clause.

The “takings” clause requires all levels of government to justly compensate owners for property taken for public use. Whenever land is condemned or taken for highway construction, military bases, and so forth, courts must estimate the fair value of the property to be paid to the owners. The “takings” clause also requires governments to compensate owners when confiscatory taxes are imposed or regulatory acts render property worthless.

The “takings” clause was intended to prevent the government from forcing a few property owners to bear the burdens of legislative measures intended to benefit the general public. It reduces the uncertainties of property ownership arising out of the political system, helping to mitigate the problems of “mutable” policy alluded to by Madison. Requiring government to compensate owners for the resources that it takes for public use also enhances proper cost-benefit planning on the part of policymakers; but the primary purpose of this clause is to protect property owners from arbitrary governmental power, not to assist bureaucratic planners–or else the framers would have added a “givings” clause entitling the State to be compensated for the public benefits it claims to generate.

Until the twentieth century, U.S. courts never applied the “takings” clause to regulations falling short of transferring legal title to the government. Courts, however, did respect private property. Owners could find relief under the “due process” clause which could overturn state and federal legislation altogether. Indeed, the failure to apply the “due process” clause in property cases places the “takings” clause as the final barrier to full governmental supremacy over private property rights.

At present, courts are evolving their opinions regarding the “takings” clause. They are willing to allow the regulation of property to some extent, but if the regulation goes too far it may become a taking. The current legal uncertainty results from the clashing views on the nature of private property. Does property constitute the rights of individual owners to actions which enjoy
constitutional protections against arbitrary government actions or is the government supreme? In our forefathers’ day, the latter view was known as “the divine right of kings.” During the middle of the twentieth century, the economic system which allows ownership on paper while the government made all of the important decisions regarding the uses of property was called fascism. Today, in the United States government supremacy over individual property owners means that the government may temporarily permit us to hold title to certain of its possessions and use them in limited ways at its pleasure. So far, the opponents of constitutional property rights have refused to give their system a new name, but it amounts to the same old system called tyranny.

The essence of private property is the bundle of actions which owners may rightfully perform. Logically, any legislation restricting these ownership acts amounts to a regulatory “taking” and the owner ought to be entitled to be compensated for the decline in value of his assets. The Constitution did not establish unlimited majority rule. Even the legislature must be subject to the rule of law.

Nevertheless, many regulations would not involve compensation under the Fifth Amendment because they either do not involve a regulatory “taking” or measurably reduce the fair market value of property. For example, if landowners have a right to be free of pollution under the common law of nuisance and the owners are too disorganized to protect their rights against polluters, a governmental statute may empower the executive to bring the polluters to court under the common law and even impose special statutory penalties upon them. Since the right to pollute did not exist, no “taking” is involved and the government is merely performing its legitimate role in defense of private property. Other regulations, such as Civil Rights public accommodations cases, the regulatory requirement to serve all patrons would not adversely affect the value of the property. Zoning laws often increase land values. No compensation would be required unless the value of the “takings” is measurably reduced.

Under any interpretation, the “takings” clause is a comparatively weak protection of private property. The government may still impose taxes and acquire resources for public use. Courts must still determine “fair” value by making very imprecise approximations. Finally, some government regulations inhibit trade while actually augmenting the value of certain properties. For example, a zoning ordinance which severely restricts the land available for commercial use might increase the value of the property already employed in trade. Although such laws stifle growth and commercial liberty, the “takings” clause offers no relief to prospective businessmen.
who are unable to enter the market. The broad interpretation of the “takings” clause is no substitute for the judicial protection of “property liberties” under the “due process” clause.

Following the Civil War, the Thirteenth Amendment ended slavery and the Fourteenth Amendment extended the application of the “Bill of Rights.” Section 1 of the Fourteenth Amendment reads, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The application of the “due process” clause to the states gives to individuals and businesses the same Fifth Amendment grounds to challenge state regulations as they already possessed against federal law. The “equal protection” clause extends the basic rights of citizenship to all Americans, regardless of race and sex.

Both clauses were specifically intended to protect the property and liberty of blacks from outrageous actions on the part of southern states. It obviously outlaws the old southern “separate but equal” segregation laws. Thanks to the Fourteenth Amendment, all citizens are joint heirs to the old Saxon and English Whig concepts of liberty and property.

Where Have All Our Property Rights Gone?

The constitutional history discussed above clearly shows that the founders did take private property seriously and designed the Constitution accordingly. In order to limit the potential for tyranny the framers:

(1) Divided the powers into three separate branches (legislative, executive and judicial).

(2) Further separated the functions of government between federal and state levels, giving the federal level only a few enumerated powers.

(3) Incorporated a “Bill of Rights” which specifically listed some of the most important applications of individual rights for all people to read and the courts to uphold.
The constitutional protections of our liberties have withered over the years. The division of powers within the federal government may have checked the expansion of one part of the federal government into the domain of another, but there is no protection for the people and states against collusions and the conspiracies among the different branches to exceed the delegated powers of federal authority. For example, the Constitution does not grant the federal government jurisdiction over education, housing, agriculture, or energy, but these functions have been elevated to cabinet level status in Washington by Congress, administered by the executive branch and approved by the courts.

Federal regulations have become so extensive that Congress often delegates its rule-making powers to numerous, non-elected agencies, such as the FTC, FDA, OSHA, SEC, and EPA. These agencies combine executive and judicial functions with their rule-making authority—subverting the division of power concept becoming laws unto themselves with feudal-like dominions in command over the private property held by commoners. James Madison condemned “the accumulation of all powers legislative, executive, and judicial in the same hands, whether of one, few or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny. Were the Constitution chargeable with this accumulation of power or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.”

Most recently, the federal government’s appetite for power exceeds its capacity to raise revenues. Instead of taxation and spending, Congress prefers to subvert the rights of private property owners by imposing unfunded mandates upon them, such as “family leave” and employer mandates or forced “contributions” to proposed health-care legislation. The words of Madison decrying the problems of “mutable” policy have been drowned out amidst a flood of ever wider calls for new government powers.

The usurpation of powers and rights belonging to the states and people by the federal government is partly due to defects in the Constitution itself. The framers, unfortunately, never established an effective check or balance that state governments could invoke against the encroachment of federal power into their proper domains. Ever since the Civil War, the threats by states to secede or nullify laws are not taken seriously, no matter how intrusive federal regulations become. Abuses of federal power may only be addressed in federal courts, hardly an independent or adequate restraint on federal authority.
The unfortunate legacy of slavery also made it more difficult to defend both private property and federalism. The framers granted the same constitutional protections to slave-holding as it accorded to legitimate private property. This has led to the mistaken notions among scholars, including noted Civil War historian James McPherson who called the abolishment of slavery in the Thirteenth Amendment as representing one of “the greatest seizures of property in world history.” In fact, no one can ever legitimately own another human being. The English Whigs understood that the first right was self-ownership. The emancipation of slaves recognized the legitimate claims by southern blacks to self-ownership. The United States did not “seize” the slaves as third world governments take over factories. The Thirteenth Amendment set the captives free.

Following the Civil War, the southern states frequently violated the property rights and liberties of black people. The Fourteenth Amendment gave the federal Congress the power to protect their civil rights. This amendment was necessary, but it also established a precedent, “a hook” which the federal government has used to exceed its legitimate powers. Today, federal usurpation of the domain belonging to the states and people goes unchecked. “Liberal” scholars consider private property rights to be government grants of privilege—to be tolerated when convenient to the government, but no longer as a significant human right in itself. The concept of “states’ rights” holds even less respect because it reminds one of past injustices committed by states, rather than as safeguards against the centralization of power.

The “Bill of Rights” provides very explicit words guaranteeing the rights of the common people. Unfortunately, words are not self-enforcing. The constitutional contract between the people and the government must provide incentives, counterforces, etc. to ensure that politicians remain the servants of the people, rather than the other way around. Even the most ingenious constitutional safeguards will wither and die if the public no longer appreciates the importance of liberty and property and if they can be made to believe that the crises of the day invariably requires extra-constitutional remedies.

Modern intellectuals do not take private property seriously, nor do they wish to constrain the makers of public policy. Ever since the “New Deal” of the 1930s, “liberal” scholars have rejected the belief that any economic system is proper for all periods of history. To them, political economy does not reveal any enduring set of legal principles. Political economy instead molds itself to the crises of the moment. The Great Depression, The War on Poverty, Projected
Environmental Disasters, and the Health-Care Crisis, all supposedly require radical reorganization of the economy. Property rights and the rule of law must give way to the reformers.

In truth, no crisis is ever bigger than the Constitution. A solid education in economics would teach that private property and markets normally align the interests of property owners with the public. Most of the attempts by government to eliminate poverty, regulate prices, control macro-economic fluctuations, or otherwise manage the economy have proven very costly and usually counterproductive. It is also probable that many of the recent ecological scares are scientifically unfounded. Real world problems can usually be addressed within the context of private property and market economics.

Infrequently, a government regulation may provide a convenient route in mitigating a particular problem of the day, but the benefits of infringing property rights are small compared to the sheer costs of government and the uncertainties found in the law today. Moreover the Constitution contains an amendment process to handle situations where the need to act is great and normal remedies appear to be inadequate. This amendment process, however, is a slow, deliberate one which enables the people and the experts alike to investigate, study, and analyze the problem and the costs of alternative remedies. Prudent, reasoned solutions require time.

Neither the Constitution, nor the rule of law can long endure the blight of a misinformed public. As friends of liberty, our eternally vigilant task must be an educational one. The people must ever remember the words of the founders, the wisdom of economists, and the lessons of history. Let us endeavor to turn back the regulatory lords in Washington, the twentieth-century pretenders to our property.
Land-Use Regulations and the Takings Clause

https://legal-dictionary.thefreedictionary.com/Private+Land-Use+Restrictions

The U.S. Supreme Court has examined the relation between land-use regulations and the Takings Clause. In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992), the Court held that a total deprivation of economic use amounts to a taking for which damages may be awarded. *Lucas* involved a developer who had purchased coastal lots to construct two single-family residences. A South Carolina law, which sought to protect the eroding shoreline, prohibited him from building anything except wooden walkways and a wooden deck. The Supreme Court agreed that he was entitled to compensation because this was a regulatory taking.

In *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994), the Court limited government power to take private property for the public good. The Court ruled that a city cannot force a store owner to make part of the owner's land a public bike path in exchange for a permit to build a larger store. The decision makes it more difficult for municipalities to require that land developers give up for public purposes part of their property, including sidewalks, access roads, and parks. If the government needs the land, it must compensate the owner.
Government Agencies and Appropriate Permits Include:

- US Mine Safety and Health Administration – Safety and Health of Mine Workers
- US Army Corps of Engineers – Clean Water Act, Section 404 Permit
- US Fish and Wildlife Service – Endangered Species Act Consultation
- Colorado Division of Reclamation, Mining, and Safety – Notice of Intent to Conduct Prospecting Operations and Plan of Operations
- Colorado Department of Transportation – Highway Access Permit
- Colorado Division of Water Resources – Water Rights
- Colorado Water Quality Control Division – CDPS Discharge Permit
- Colorado Water Quality Control Division – Construction Stormwater Discharge Permit
- Colorado Air Pollution Control Division – Air Quality Permit
- Colorado State Historical Preservation Office – Properties of Potential Historical Significance Consultation
- Ouray County Land Use, Planning, and Building Department – Zoning and Land Use

The government agencies and appropriate permits listed currently provide adequate regulation of mineral extraction and processing operations. Any objection to an Amendment to the Ouray County Land Use Code to add three words to Section 3 Zoning: Section 3.8 Zones, H. Valley Zone: (1) Uses Allowed by Right: (f) “Mineral Extraction/Processing” is probably already covered by the government agencies and appropriate permits.
Form 2 (Public File)
NOTICE OF INTENT TO CONDUCT PROSPECTING OPERATIONS
FOR HARD ROCK/METAL MINES

CHECK ONE:
- There is an NOI Number Already Assigned to this Operation (Please reference the file number assigned to this operation)
- New NOI
- Modification to an Existing NOI (Provide NOI# P- for Modifications to an existing NOI)

GENERAL OPERATION INFORMATION
Type or print clearly, in the space provided, ALL information described below.

I. GENERAL INFORMATION
1. DATE NOI RECEIVED BY THE DIVISION:

(office use only)

2. PROJECT NAME: Yukon Kiss

3. PROSPECTOR: Thomas C. Anderson

PERSON MLRB SHOULD CONTACT:

Thomas C. Anderson
Name
Title
Company Name
4. APPLICATION FEE: $86. (NOIs require an $86 fee which must accompany this notice or it cannot be processed by the Division).

5. LOCATION INFORMATION:
County: Ouray

Principal Meridian (check one):
- [ ] 6th (Colorado)
- [x] 10th (New Mexico)
- [ ] Ute

Section (write number) 13

TOWNSHIP 44

N [x]
S [ ]

RANGE 8 E [ ] W [x]

QUARTER SECTION (check one):
- [ ] NE
- [x] NW
- [ ] SE
- [ ] SW

QUARTER/QUARTER SECTION (check one):
- [ ] NE
- [x] NW
- [ ] SE
- [ ] SW

GENERAL DESCRIPTION: (the number of miles and direction to the nearest town and the approximate elevation):
3.6 miles north of the City of Ouray at approximately 7365 ft
NOTE: Supply longitude and latitude or UTM coordinates if lands have not been surveyed or as supplemental information to this NOI. GPS measurements will be acceptable for this purpose:

Lat: 38° 4'4.59"N  X: _______________________
Long: 107°41'42.60"W  Y: _______________________

6. LAND OWNERSHIP:

☐ Private  ☐ Public Domain (BLM)  ☐ National Forest (USFS)
☐ State  ☐ State Sovereign Lands  ☐ Other (please describe)

If prospecting is located on BLM or USFS land the remaining section must be completed, otherwise go to section II Maps & Drawings

7. PROSPECTING ON BUREAU OF LAND MANAGEMENT (BLM) LAND AND U.S. FOREST SERVICE (USFS) LAND

The Division and the BLM/USFS have entered into cooperative agreements that eliminate the need for a prospector to post a financial warranty with each agency and allow them to coordinate the review of the NOI in order to minimize administrative processing time and effort.

A. CLAIMANT:

Name  Thomas C. Anderson
Address  
City, State, Zip
Telephone  ( )
Fax  

Form 2 – Public File  Page 3 of 14
B. SITE/CLAIM INFORMATION:
List names, serial numbers and provide legal description to nearest quarter-quarter section of all sites or claims (attach additional page, if necessary).

<table>
<thead>
<tr>
<th>NAME</th>
<th>SERIAL NUMBER</th>
<th>LEGAL DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yukon Kiss</td>
<td>Serial No. CO105760654</td>
<td>Lot 28, Section 13, T44N, 8W, NM</td>
</tr>
</tbody>
</table>

C. LOCATION MAP: Attach a USGS 7.5 minute quad, or similar map of adequate scale, which locates the prospecting site(s).

D. Are prospect sites (e.g., drill holes, trench locations, etc.) staked on the ground? Yes ☐ No ☑

E. Specify the Land Management Agency, Address and Telephone Number:
Agency
US Bureau of Land Management
Address
2465 S. Townsend Ave.
City, State, Zip
Montrose CO 81401
Telephone
(970) 240-5300

F. The prospector is required to document that the NOI has been sent to the BLM or the USFS. Processing of the NOI will not begin until the prospector has submitted evidence acceptable to the Division that the NOI was sent to the BLM or USFS. Check one:

☐ Evidence of notification is attached to this NOI for BLM Land

☐ Evidence of notification is attached to this NOI for USFS Land.

☐ Other proof of notice is attached to this NOI
II. MAPS & DRAWINGS

An accurate topographic base map showing the location of the proposed project must be submitted with this notice. The prospector may submit a U.S.G.S. 7.5 minute quadrangle, or similar map of adequate scale that:

1. Identifies the proposed prospecting site(s) or activity areas involving surface disturbance. Activity areas include all drill holes, mud pits, excavations, trenches, adits, shafts, tunnels, rock dumps, stockpiles, impoundments and prospecting roads, and

2. Includes sufficient detail to identify and locate known prospecting features and facilities that may be affected and those that are not anticipated to be affected. This includes the location of all drill holes, mud pits, excavations, trenches, adits, shafts, tunnels, rock dumps, stockpiles, impoundments and prospecting roads. Color photographs, adequately labeled (including date, orientation and location), of the prospecting site may be used to fulfill this requirement if included with the NOI submittal.

III. PROJECT DESCRIPTION

1. Mineral(s) and/or Resource(s) being Investigated:

   Gold Diamonds and Heavy Minerals

   ________________________________

2. Estimated dates of commencement and completion:

   Commencement: / / 
   Completion: / / 

3. Amount of material (specify units) to be extracted, moved or proposed to be moved: 2,000+/- Units cu.yds.

   Identify the type or method of prospecting proposed and quantity (place an "X")

   □ Cuts
   □ Shafts
   □ Declines
   □ Drilling and Blasting
   □ Pits
   □ Tunnels
   □ Air Drilling
   □ Trenches
   □ Adits
   □ Fluid Drilling

*Form 2 – Public File*
5. Describe proposed surface excavation or other land disturbance, including roads, pits, trenches, waste piles, drill pads and collar areas of underground workings, ponds, etc. Please see attachments. Shoulder widening of Highway 550 to provide safe highway access to the claim. Construction of log bridge crossing of the Uncompahgre River, including associated cut-and-fill excavation and construction of log abutments and wing walls.

6. Proposed Disturbance (approximate) Describe the proposed drilling to be conducted, including anticipated number of holes, diameter, depth, location, etc. Submit additional pages if necessary:

A. Drill Pads:
   Quantity        Average Width (ft)  Average Length (ft)

B. Drill Holes:
   Quantity        Depth (ft)        Diameter (in)

C. Mud Pits
   Quantity        Average Width (ft)  Average Length (ft)  Average Depth (ft)

D. Described proposed underground work, including reopening of old workings, advancement of adits or shafts, trenches, pits, cuts, rock dumps, or other types of disturbance, describe type, quantity and general dimensions:
E. Other Disturbances (please describe)
Shoulder widening of Highway 550 to provide safe highway access to the claim.
Construction of log bridge crossing of the Uncompahgre River, including associated
cut-and-fill excavation and construction of log abutments and wing walls.

F. Indicate Chemicals and Fuels used or stored on site. List type, quantity and method to
store.
Fuel (gasoline and/or diesel) for equipment only in quantities in tanks and daily anticipated
use in approved containers.

G. New Roads:
   Significantly Upgraded Roads
   Length (ft): Width (ft):
   Length (ft): Width (ft):

Are culverts or other crossings proposed? If so, please describe:
Please see attachments. Shoulder widening of Highway 550 to provide safe highway access to the claim.
Construction of log bridge crossings of the Uncompahgre River, including associated cut-and-fill excavation,
and construction of log abutments and wing walls.

H. Total project area to be disturbed (acres) less than 1 acre

I. Describe the equipment to be used for the prospecting operations:
Excavator, 1987 Bobcat 743 Skid-Steer Loader, Wash Plant To Be Determined.
J. Describe and locate any structures to be constructed (i.e. stockpiles, ponds, impoundments):
Please see attachments. Shoulder widening of Highway 550 to provide safe highway access to the claim. Construction of log bridge crossings of the Uncompahgre River, including associated cut-and-fill excavation and construction of log abutments and wing walls.

K. Describe anticipated relationship to surface water and groundwater (proximity to streams, penetration of ground water aquifers):
Please see attachments. Prospecting for both near-surface and near-bedrock placer deposits along the Uncompahgre River. Anticipated relationship to surface water and groundwater in the Uncompahgre River Alluvium is direct contact. Planned excavation will directly impact both surface water and groundwater.

IV. OPERATION AND RECLAMATION MEASURES:
1. The Board suggests that a photographic record of the pre-prospecting and post-prospecting conditions be kept by the prospector. These photos should be taken from the same location and by the same method to clearly show the pre-prospecting condition of the land and the reclamation efforts. Upon completion of reclamation and request for bond or surety release, the Board may consider the photos as evidence of adequate reclamation, and thus, be able to act more quickly on the request for release.

2. Provide a description of the native vegetation of the area to be disturbed, including tree, shrub, and grass communities of the area. Color photographs, sufficient to adequately represent the ecology of the site and adequately labeled (including date, orientation and location), may be used in lieu of a written description. Based on the quality of the photographs, the Division may require additional detail.
Please see attachments. One photo is included showing the approximate location of bridge taken on January 15, 2022 when the claim was posted. Video taken at the site on May 18, 2022 is posted on YouTube at https://youtu.be/4YO-nyP6uPs. Shoulder widening of Highway 550 to provide safe highway access to the claim. Construction of log bridge crossing of the Uncompahgre River, including associated cut-and-fill excavation and construction of log abutments and wing walls will be limited to Uncompahgre River Alluvial Area where vegetation is sparse. On-site timber will be utilized for log abutments and wing walls.
3. Describe the estimated topsoil depth and how topsoil will be salvaged, stockpiled and redistributed for the re-establishment of vegetation. Specify approximate topsoil redistribution depth:

Please see attachments. Shoulder widening of Highway 550 to provide safe highway access to the claim. Construction of log bridge crossings of the Uncompahgre River, including associated cut-and-fill excavation and construction of log abutments and wing walls will be limited to Uncompahgre River Alluvial Area where topsoil, if any, is sparse.

4. Describe how drill holes will be plugged (refer to Rule 5.4 of the Rules for required abandonment procedures):

5. Describe how portals, adits, shafts, ponds, excavations, or other disturbances will be reclaimed (refer to Rule 3 and Rule 5 for specific reclamation performance standards). You may wish to contact the Division for closure specifications.

The Reclamation Plan is for Improved Public Access to the small parcel of Public Land along the Uncompahgre River. Activity proposed at this time is limited to providing safe highway access to the claim and west side of the Uncompahgre River.
6. Describe how roads will be reclaimed or returned to their pre-prospecting (or better) condition:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

7. List the seed mixture to be used in the re-establishment of vegetation. See the attached seed mixture calculation to obtain PLS/acre. For assistance with formulating seed mixtures and rates, contact the local NRCS if on private land, BLM/USFS if on public land or State Land Board if on state land.

   A. Plant name and seeding rate:

<table>
<thead>
<tr>
<th>Plant Name</th>
<th>Seeding Rate (PLS/Acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Be Determined.</td>
<td></td>
</tr>
</tbody>
</table>

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

Form 2 – Public File
B. Describe the method for seed bed preparation, and application method for grass/forb seeding:

To Be Determined.

V. TERMS AND CONDITIONS FOR PROSPECTING OPERATIONS:

1. Reclamation measures shall be fulfilled in a timely manner and completed within five (5) years of completion of prospecting activities.

2. The prospecting operations described in this Notice will be conducted in such a manner as to minimize surface disturbances. In addition to the measures required in Rule 5, precautions to be taken include:

   A. Confinement of operations to areas near existing roads or trails, where practicable. Existing roads which are to remain as permanent roads after prospecting activities are completed shall be left in a condition equal to or better than the pre-prospecting condition;

   B. Drilling shall be conducted in such a way as to prevent cuttings and fluids from directly entering any dry or flowing stream channel. Drill cuttings must be spread to a depth no greater than one-half (1/2) inch or buried in an approved disposal pit;

   C. Proper and timely abandonment of drill holes upon completion of drilling;

   D. Reclamation of affected lands upon completion of operations or phases of an operation;

   E. Backfilling and revegetating any pits to blend in with the surrounding land surface;
F. Safeguarding mine entries, trenches and excavations from unauthorized entry at all times;

G. Disposal of any trash, scrap metal, wood, machinery, and buildings;

H. Control of noxious weeds within the area affected by the prospector

3. The prospecting operations shall be conducted in such a manner as to comply with all applicable local, state and federal laws and regulations including applicable state and federal air and water quality laws and regulations.

4. The prospecting operations shall be conducted so as to minimize adverse effects upon wildlife to include covering of open drill holes until properly plugged.

5. During the prospecting operations, the operator will perform the necessary stabilization and reclamation work to ensure those areas affected by prospecting activities are erosionally and geotechnically stable.

6. All prospecting operations shall be in compliance with the Colorado Mined Land Reclamation Act, as amended (34-32-101 et seq. C.R.S.), and all rules and regulations currently in effect or promulgated pursuant thereto. See 2 CCR 407-1, Mined Land Reclamation Board Hardrock /Metal Mining Rules.

VI. ADDITIONAL TERMS AND CONDITIONS FOR PROSPECTING ON BLM/USFS LANDS

1. The prospector will supply a copy of this NOI to the appropriate BLM and/or USFS office.

2. The prospector authorizes the MLRB to discuss the information in this Notice of Intent with the BLM and/or USFS.

3. If on BLM land, the prospector will complete reclamation to the standards described in 43 CFR 3809.1-3 (d) and implement reasonable measures to prevent unnecessary or undue degradation of lands during operations.

VII. FINANCIAL WARRANTY

A financial warranty must be provided for the cost of reclamation of the disturbance described in this Notice. The prospector can either file a "One Site Prospecting Financial Warranty" or a "Statewide Financial Warranty." The financial warranty must be submitted and approved by the Division prior to entry upon lands for the purpose of prospecting.
A One-Site Prospecting Financial Warranty is usually filed by individuals or companies where prospecting activities are limited to a single area. It must be filed in the amount of $2,000 per acre for land to be disturbed, or such other amount as determined by the Division, based on the projected costs of reclamation. A Statewide Financial Warranty is usually filed by companies with multiple prospecting sites. It must be filed in an amount equal to the estimated cost of reclamation per acre of affected land for all anticipated sites statewide. (You may increase the statewide bond at any time in order to cover additional or expanded prospecting activities.)

VIII. SIGNATURE REQUIREMENT

Please place your initials on the line provided:

I hereby verify that the foregoing information is true and accurate and commit to the reclamation of the aforementioned prospecting site as required by the Colorado Mined Reclamation Act and the rules as specified in the Hard Rock/Metal Mining Rules and Regulations and this NOI form.

I have enclosed the required permit fee.

I authorize the Division to contact and copy the BLM and/or USFS on any correspondence related to the prospecting operation, if the prospecting operation is located on federal public land.

I have also enclosed the appropriate reclamation surety amount or will post an amount as determined by the office, based on the projected costs of reclamation.

I understand that I am not authorized to create any surface disturbance until the surety amount is posted and approved in writing from the Division of Reclamation, Mining and Safety.

I accept and agree to comply with the foregoing terms and conditions and with all of the provisions of Rules 3 and 5, and C.R.S. 34-32-101.

I hereby certify that concurrent with submittal of this NOI to the Division, I have sent notice to the Boards of County Commissioners in the counties where the proposed activities will occur. This notice also indicated that non-confidential information regarding the proposed activities will be available for review at the Division’s website.

This form has been approved by the Mined Land Reclamation Board pursuant to section 34-32-113, C.R.S., of the Mined Land Reclamation Act. Any alteration or modification of this form shall result in voiding any NOI issued on the altered or modified form and subject the operator to cease and desist orders and civil penalties for operating without a NOI pursuant to section 34-32-123, C.R.S.
I, the undersigned, being the NOI holder or the person authorized to sign on behalf of the NOI holder, declare that the information given in this NOI form is true and correct.

SIGNATURES MUST BE IN BLUE INK

Signed and dated this ___ day of May, 2022

Signature of NOI holder or person authorized to sign:

Name (typed or printed): Thomas C. Anderson

Title/Position:

M:\min\oss\slb\MineralsForms\ProspectForm2 30 Aug 2017
AGENDA
OURAY COUNTY PLANNING COMMISSION
PUBLIC HEARING/REGULAR MEETING

June 21, 2022 4:00 – 6:00 pm
Meeting to be held at the Ouray County Land Use Office
111 Mall Road, Ridgway, Colorado

Please Note: If an agenda item ends early, the Planning Commission may choose to move on to the next item on the agenda as long as there is no objection by the Applicant.

Zoom Log In Info:
On the web:  https://us02web.zoom.us/j/86124340956
Via telephone:  1 253 215 8782
Meeting ID:  861 2434 0956

A. 4:00 - Public Hearing: Divide Ranch & Club, Filing #7, Final Development Plan
   a. Open Public Hearing
   b. The Planning Commission will review a proposal by Barry Zane, authorized agent, for approval of a Final Development Plan for the Divide Ranch, Filing No. 7.
   c. Close Public Hearing

B. 5:00 – Public Hearing: Citizen-Initiated Code Amendment
   a. Open Public Hearing
   b. The Planning Commission will review a proposed citizen initiated amendment to the Land Use Code to allow ‘Mineral Extraction/Processing’ as a use-by-right in the Valley Zone.
   c. Close Public Hearing

C. 0:00 - Regular Meeting Open:
   a. Approve Minutes (items A and B above)
   b. Old Business
   c. New Business
   d. Approve Minutes

D. Adjourn
Application: Final Development Plan – Divide Ranch Filing 7
Owner of Property(s): Heritage Inn & Suites/Theraldson (Paul Stashick)
Authorized Agent: Barry Zane (Evil Pineapple Solutions, LLC)
Zoning: South Mesa
Case Manager: Mark Castrodale
Pending Application: Final Plat

Request

This application seeks approval of the Final Development Plan for Filing 7 of the Divide Ranch & Club. (aka. Fairway Pines) Staff notes that the Applicant requested running the Final Development Plan and Final Plat applications concurrently. Unfortunately this is not possible as the Final Development Plan process may trigger changes to the Final Plat. As soon as Final Development Plan approval is received from the BOCC, and the Applicant may apply for Final Plat approval.

Clarification:

Although the Applicant’s materials propose “4 cabins/cottages with a minimum square footage of 1650 sq ft” and “1 (2) unit duplex”, Staff notes that there is no proposed or planned construction as part of this application. It is Staff understanding that the Applicant intends to sell the residential lots in Filing 7 that will then be subsequently developed by the new owner per County and HOA rules and regulations.

Background/History:

An amended Preliminary Development Plan for Divide Ranch and Club was granted approval by the BOCC on June 25, 2007, and the Planned Unit Development (PUD) Agreement was originally executed on July 2, 2007. The PUD agreement was subsequently extended several times and is still active through July 2, 2024. (See Exhibit F, Resolution No. 2017-018)

Revisions to the Original PDP:

Revision 1

The current/approved PDP for Filing No. 7 includes 6 lots. However, lots 705 (.91 acres) and 706 (.71 acres) are both less than 1-acre in size. Section 6.6(D) of the Land Use Code limits
lot size to a minimum of 1-acre unless connected to a “central sewage treatment system” and Filing 7 is not within the sanitation district’s service boundary. Although the ‘less than 1-acre’ lots shown on the original PDP may be legal, non-conforming, the Applicant is proposing combining Lots 705 and 706 into a single, 1.45-acre lot (Lot 705) that will allow 1 or 2 units of density. The density for Filing No. 7 remains at #6 units. See Staff proposed conditions specifically addressing this lot.

Revision 2

The 0.17-acre ‘Greenbelt’ shown on the original PDP along the west side of Lot 701 has been moved to the southern boundary of Lot 705. This proposed change increases Lot 701 to more than an acre (as required by the Land Use Code) and better utilizes the small greenbelt area/opens space as a buffer between a maintenance lot and a residential lot.

County Referrals and Outside Agency Referrals:

County Administrator Referral:

The County Administrator did not express any concerns with the application

County Attorney Referral:

The County Attorney returned several comments which were addressed by Land Use Staff.

Notification Requirements:

Published Notice

- Public Notice of the Planning Commission Public Hearing was published in the Ouray County Plaindealer on June 2, 2022. (Note that the LUC does not require this notice, but it was executed regardless).

- Public Notice of the hearing before the Board of County Commissioners was published on TBD.

Land Use Code Section 6.8C – Review Requirements (only pertinent portions have been included)

A. FINAL DEVELOPMENT PLAN (FDP)

(1) General: Within one (1) year (or any extension granted by the BOCC), after approval by the BOCC of the PDP, or within such greater period of time as may have been specified in the Commissioners’ approval, the Applicant shall submit to the County an application for Final Development Plan (FDP) approval.

STAFF RESPONSE: Extension granted by BOCC to July 2, 2024 – See Resolution 2017-018 attached as Exhibit F.

(3) Additional Information: The following information shall accompany the submittal for the approval of the FDP:
(a) Updated reports as may be required to supplement those items described in Section 6.7 B.

**STAFF RESPONSE:** Staff requested that the Applicant obtain current will serve letters (water, electric) for evidence that utilities were available for all lots. Will-serve letters were provided. Additionally, the Applicant must pre-purchase taps for all 5 lots, clarifying that the tap for Lot 705 is suitable for a 2-unit lot. A will-serve letter has been provided from Dallas Creek Water Company and San Miguel Power Association (SMPA). Additionally, prior to final plat the Applicant must work with SMPA to extend power along North Badger Trail and adjacent to the subject lots.

(b) Covenants shall be submitted that comply with all prior conditions of approval and shall include all required Code and statutory language. The covenants shall be reviewed by the County Attorney prior to recording.

**STAFF RESPONSE:** Revised covenants for Fairway Pines Estates (aka. Divide Ranch & Club) were submitted by the Applicant.

(4) **Contents of Final Development Plan (FDP):** The Applicant shall confirm with the Staff the minimum number of submittal copies required. At a minimum the FDP shall show the following information:

(c) Written and graphic scale, date of preparation, north arrow and number of each sheet of the total number of sheets (e.g., Sheet 5 of 7).

(d) The names of any abutting developments. In the case of abutting unplatted land, the notations “unplatted” should appear.

(e) All property boundary lines and lot lines with lengths to one one-hundredth of a foot, bearings, points of curvature and lengths of arcs. All bearing determinations must be explained in a statement by the land surveyor for the PUD. “Assumed North” is not an acceptable basis for bearings.

(f) The boundaries of all areas within the development which may subject to periodic inundations by a one hundred (100) year flood and located within known, designated or identified as areas of special flood hazard.

(g) The bearings and distances for every lot line and building area(s) shall be shown; lot dimensions shall be shown in feet and hundredths of feet. The net acreage of all lots shall be shown to the nearest on one-hundredth of an acre.

(h) All lots shall be numbered consecutively with no omissions or duplications throughout the entire development, including all units of any development that has a single tract name but is designated by different units. If blocks are numbered, they shall be numbered consecutively. Each lot shall be shown entirely on one sheet.
(i) The side lines, total width, width of the portion being dedicated and width of existing dedications of all roads or streets shall be shown. In addition, the centerline of all roads or streets shall be dimensioned with bearings, distances and detailed curve data to include arc, radius, chord length and length of arc. Curve data may appear in a table, with the date referenced to each curve by a method acceptable to the County.

(j) The survey for the development shall close with an accuracy of one in five thousand.

(k) Existing and proposed easements, public roads or trails as identified by the County records, or through reference to recorded documents shall be shown, including the reference to the County's records. If the easement is being dedicated on the FDP, it shall be properly set out in the owner's certificate of dedication.

(l) The names of all streets and highways, as reviewed and approved by appropriate County departments or agencies.

(m) The names, locations and widths of all abutting roads, if any.

(n) The location and a description of all monuments, both found and set, which mark the boundaries of the property, including, if possible, a description of two or more recorded monuments on record with the State Board of Registration for Professional Engineers and Land Surveyors used in conducting the survey.

(o) Any monumented and recorded benchmark (USGS datum) within the development and within thirty (30) feet of the proposed construction work area.

(p) Any other information or submittal items as the Planning Commission or the Joint Planning Board or the BOCC may reasonably request in order to review and act upon the FDP.

**STAFF RESPONSE:** The Final Development Plan provided by the Applicant contains all of the information required by this section.

(5) **Filing and Fees:** The Applicant shall, at the time of filing a FDP, pay a fee as determined by the County's current fee schedule.

**STAFF RESPONSE:** The appropriate application fee has been paid by the Applicant.

(6) **Certificate of Title:** There shall be filed with the FDP, evidence of title and liens or encumbrances issued by a reputable title insurance or abstract company or title opinion by an attorney licensed to practice law in the State of Colorado, showing the names of all persons and entities having any right, title or interest in the land proposed for development and whose consent is necessary to convey clear title to the said land. The policy or commitment for
title insurance or title opinion shall be issued or updated within sixty (60) days of the submittal of the FDP application.

**STAFF RESPONSE:** The applicant provided a current title policy or ‘Alta Commitment’ issued by Land Title Guarantee Company on June 2, 2022. (in packet materials)

(7) **Certification of Water and Sewer Facilities:** (If required)

(q) **Sewer:** A certificate of the CDPHE that the sewage treatment system, as submitted by the Applicant, will comply with State and local laws and regulations.

**STAFF RESPONSE:** Sewer services for Filing 7 will be provided by ‘On-Site Wastewater Treatment System’ or ‘OWTS’. (No connection to the sanitation district system.) Prior to review of the application by the BOCC, the Applicant will provide percolation tests for all lots showing reasonable percolation rates and the ability to design/install typical OWTS systems. The individual lot buyer/owner will be responsible for obtaining the OWTS design, permitting, and installation. All systems/designs will require an engineers stamp.

(r) **Water:** A certificate from the State Engineer or the appropriate water district or municipality, that the water system, as submitted by the Applicant, will provide adequate and safe water, in compliance with State law and regulation, to the development.

**STAFF RESPONSE:** Potable water supply for Filing 7 is to be obtained from Dallas Creek Water Company. Staff did not request a certificate from the State Engineer, because Dallas Creek Water is an established utility provider in the development area and regulated under the Colorado Public Utilities Commission. A will serve letter was obtained from Dallas Creek Water Company (in packet materials) and the Applicant will be required to purchase taps for all lots prior to obtaining approval and signature of the final plat.

(8) **Weed Mitigation:** Applicant shall submit a revegetation plan and a weed mitigation and control plan that has been reviewed and approved by the County Weed Manager, including the approximate cost for the required work. As a condition of any PUD approval, the Applicant shall be required to comply with the terms of any such approved plan, including posting an appropriate bond as per recommendation by County Staff.

**STAFF RESPONSE:** A ‘Weed Management’ prepared by the County Vegetation Manager is pending and will be required prior to obtaining ‘final plat’ approval by the BOCC.

(9) **Performance Bond:** As a condition of FDP approval, the Applicant shall be required to execute a bond in an amount as approved by the BOCC. The bond shall be in the form approved by the County and shall be conditioned
upon the Applicant completing the plan, or the stage, as finally approved. The bond shall be in cash or security acceptable to the County. The bond may provide for phased satisfaction and release upon completion of phases as approved by the County. The amount of the bond shall be determined by the BOCC based upon satisfactory information supplied by the Applicant, such as current engineering estimates, signed contracts with contractors expected to perform the work, or other information required by the BOCC. (To apply to Limited PUDs on a case-by-case basis only.)

**STAFF RESPONSE:** No performance bond is being recommended by Staff. However, the Applicant will be required to purchase water taps for all subject lots from Dallas Creek Water Company, extend electrical service along North Badger Trail, and submit a ‘school impact fee’ (in-kind contribution) to the Ridgway School District, prior to approval of the final plat.

(10) **Action on Final Development Plan (FDP):**

Upon submission of the FDP, it shall be reviewed by the Planning Commission or the Joint Planning Board to ascertain whether it is in compliance with the PDP and this Section. The Planning Commission or the Joint Planning Board shall then certify to the County Commissioners that the FDP as submitted is in compliance with the requirements of the Land Use Code and the approved PDP. If it is not in compliance, the Planning Commission or Joint Planning Board findings shall note those areas of noncompliance. A copy of the Planning Commission or the Joint Planning Board findings shall be given to the Applicant. The Planning Commission or the Joint Planning Board action shall be in the form of a motion as noted in the minutes. The Planning Commission or the Joint Planning Board minutes, together with copies of all submissions by the Applicant and other information developed by the Planning Commission or the Joint Planning Board shall be forwarded to the BOCC.

**STAFF RESPONSE:** The Planning Commission will review the subject application in a properly noticed public hearing. Staff confirmed that notice was properly published in the Plaindealer, at least 14-days prior to the date of the public hearing before the Planning Commission.

Upon receipt of the Planning Commission or the Joint Planning Board findings, the BOCC shall, within a period of not more than thirty (30) days and at a legally noticed public hearing called for such purpose, review the recommendation of the Planning Commission or the Joint Planning Board and the technical aspects of the FDP submittal, and determine if such FDP is in compliance with the requirements of this Section and the approved PDP. Notice of such public hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date. The BOCC shall approve, conditionally approve or disapprove the FDP. The action of the BOCC shall be transmitted to the Applicant.
(t) Approval of the FDP shall not constitute acceptance for maintenance by the County of roads, streets, alleys or other public lands within the PUD.

**STAFF RESPONSE:** There is no dedication of any roads per the subject plat and the County is not accepting maintenance of roads, streets or alleys in the approval of this application. Staff notes that ‘North Badger Trail’ was originally dedicated to the County as a public road on February 8, 2001 as part of Fairway Pines Estates Filing No. 5-C.

(11) **Impact Fees:** If the BOCC determine, on the basis of information submitted and available to it, that a proposed development will have an impact on, or will necessitate, improvements to facilities or services provided by the County, the school districts or other governmental entities within the County, the BOCC shall, to the greatest extent possible and as a condition of approval, require that the Applicant take steps to mitigate the impact by payment of impact fees or provision of in-kind contributions. The amount and purpose of any impact fee shall be determined by the BOCC based upon a finding that there is an essential nexus between the payment or contribution and a legitimate local government interest and the payment or contribution is roughly proportional in nature, timing and extent to the impact of the proposed use. Failure to fund such impacts by the Applicant may be grounds for denial of the development. The BOCC may require that the Applicant obtain a traffic analysis, completed by a professional engineer, illustrating the expected traffic by type and volume for the anticipated use; the BOCC may require that other appropriate studies or analyses be obtained by the Applicant, depending upon the anticipated impacts of the proposed development. *Any land dedication and/or payment for school purposes required shall comply with Section 17 of this Code.*

**From Section 17:**

A. Assumptions

1) Average student generation (ASG) per residential unit (RU) .33

2) Prototypical school site in terms of total acres (AC) 20 acres

3) Number of Students per school site 300

4) Number of Students per acre of school site (300/20) 15

5) Per-acre allocation of school site per student (PAA)(1/15) .067 acre

B. Calculation of Land Dedication Requirement (DR)
ASG x (# of RUs) x PAA = (DR)

\[ .33 \times 6 \times .067 = 0.132 \]

C. Calculation of Cash In Lieu Payment

1) Where cash in lieu payment is to be made, determine value of land in subdivision being dedicated, based on zoned and platted residential land, using comparables to result in a Per Acre Value (PAV).

   a. Subject parcel - 19.2 (Filing 7 and Filing 8) AC property sold in October for $700,000 = $36,457/acre

2) DR x PAV = Cash in Lieu Fee

   a. 0.132 x $36,457 = $4,812.32 Due for Cash in Lieu Payment

   **STAFF RESPONSE:** Staff is recommending the following condition to approval: Prior to approval of a Final Plat, the Applicant shall pay the Cash in Lieu Payment for the “Fair Contribution of Public School Sites”, in the amount of $4,812.32 to the Ridgway School District.

(12) Construction of Planned Unit Development: No construction shall commence and no permits for construction shall be granted until the FDP (or combined PDP/FDP) has been approved by the BOCC.

   **STAFF RESPONSE:** The Applicant is not proposing any construction as part of this FDP application. The owner/applicant intends to sell the subject lots and any construction permitting will be the responsibility of the new owner. (ie. building permit, septic permit, driveway permit, etc.)

Soil/OWTS/Foundation/Drainage Considerations:

The Applicant will provide documents from a Colorado Licensed Professional Engineer addressing soils suitability for foundations, On-Site Wastewater Treatment Systems (OWTS), and drainage on the subject parcel, prior to review by the BOCC.

Septic/OWTS Considerations:

Unlike Divide Ranch & Club Filing No. 8, Filing No. 7 is not within the Fairway Pines Sanitation District area of service. For this reason, septic service for lots within Filing No. 7 will be provided by On-Site Wastewater Treatment Systems (ie. OWTS) only and there is no connectivity to the sanitation district system.

Short-Term Rental Considerations:

The language in the original Preliminary Development Plan and associated PUD Agreement for the Divide Ranch & Club addressing short-term rentals is applicable to Filings 8, 9, and 11 only. As such, there are no issues or concerns regarding Short-Term Rentals in Filing No.
as this matter filing falls solely under the provisions of the Short-Term Rental Ordinance, No. 2018-003.

**Staff Conclusions and Recommendations:**

It is the determination of Staff that this application, for a plat amendment, is in conformance with the Preliminary Development Plan, and in substantial conformance to the requirements of the Land Use Code Section 6.7C. Therefore, Staff is recommending the Planning Commission forward the subject application to the Board of County Commissioners with a recommendation of approval with the following conditions:

1. A draft of the final plat shall be included as an exhibit to the BOCC Resolution approving the Final Development Plan. (Actual final plat will be subsequently approved by the BOCC and recorded.)

2. All applicable conditions, rules, and regulations within the covenants, the phase/plat, the Ouray County Land Use Code, and the Building Code shall remain in effect.

3. Land adjacent to the subject development shall be labeled “Unplatted” and any specific name or filing number shall also be labeled.

4. Lot 705 shall be clearly labeled: “1 or 2 Unit Lot (aka. Cluster Lot) See Notes 1-3”

5. In addition to the standard required plat notes, the final plat shall also include the following additional plat notes:

   1. Lot 705 includes 2 units of density (ie. 2 dwelling units) and may be developed as a single dwelling unit or as a 2 Dwelling Unit Condominium unit in compliance with State of Colorado CCIOA Regulations, C.R.S. 38-33.3-102.

   2. If Lot 705 is to be developed as a 2-Unit Cluster Lot, prior to commencing construction the owner must apply for, and receive, approval of a Final Plat Amendment. Such amendment shall clearly delineate access, building envelope, and all ‘elements’ as required by State CCIOA regulations.

   3. If Lot 705 is developed as a single dwelling unit, the additional single unit of density shall be permanently extinguished upon issuance of a ‘Certificate of Occupancy’ (ie. C.O.) and said unit of density is no longer available for further development or transfer.

6. Prior to approval of the final plat, the Applicant shall provide a ‘Weed Management Plan’, developed by the County Vegetation Management Department.

7. Prior to review of the FDP application by the BOCC, the Applicant shall provide copies of percolation testing (ie. perc tests) for each subject lot, conducted by a Colorado Licensed Professional Engineer, demonstrating that the lots qualify for standard/typical OWTS systems.

8. Prior to review of the FDP application by the BOCC, the Applicant shall provide written documentation, prepared by a Colorado Licensed Professional Engineer, stating that soils on each subject lot are suitable for typical foundation design/construction for residential structures or other similar structures. (ie. garage, shop, etc.) Documentation from engineer shall also address any drainage issues on the subject lots.

9. Within 1-year of approval of this Final Development Plan for Divide Ranch & Club, Filing No. 7, Applicant shall apply to the BOCC for approval of the Final Plat.
10. Prior to final plat approval, the Applicant shall pay the Cash in Lieu Payment, for the “Fair Contribution of Public School Sites”, in the amount of: **$4812.32** to the Ridgway School District.

11. Prior to final plat approval, Applicant shall purchase all taps for all subject lots and provide proof of such purchase in writing to the Land Use Department. Such proof of taps purchase shall clarify that tap or taps for Lot 705 is/are suitable for a single dwelling unit or two residential units. (ie. condo/townhome)

12. Prior to final plat approval, Applicant shall work with San Miguel Power Association to extend electrical service along North Badger trail, adjacent to the subject lots in Filing 7. A final ‘as-built’ drawing shall be provided to the Land Use Department.
EXHIBIT LIST

EXHIBIT A – VICINITY MAP
EXHIBIT B – APPLICATION FORM/AGENT AUTHORIZATION
EXHIBIT C – PROPOSED DRAFT FDP PLAT
EXHIBIT D – CLOSE UP OF ORIGINAL FILING 7 PLAT
EXHIBIT E – APPLICANT’S SUBMITTED MATERIALS
EXHIBIT F – CURRENT/ACTIVE RESOLUTION 2017-018
EXHIBIT G – CURRENT/ACTIVE PUD AGREEMENT
EXHIBIT H – 2007 RESOLUTION & PUD AGREEMENT
EXHIBIT I – ORIGINAL APPROVED PDP, FILINGS 6 – 11
EXHIBIT J – PDP, FILING 7, UNSIGNED, HI-RESOLUTION
EXHIBIT K – FAIRWAY PINES ESTATES CURRENT COVENANTS
EXHIBIT L – UTILITY CO. ‘WILL-SERVE’ LETTERS
EXHIBIT M – ALTA COMMITMENT (LAND TITLE CO.)
EXHIBIT - A -
EXHIBIT

- B -
PUD & PLAT AMENDMENT APPLICATION

Name of Landowner(s): Heritage Inn and Suites of Telluride City, Inc. and
                        H.T. Heritage Inn and Suites, LLC
Address: 111 Mall Road
City CO 81435
Telephone (970) 241-6114
E-Mail padsrepresent.com

Authorized Agent: Paul Stark
Address: 59 E. Main Street
Ridgway CO 81432
Telephone (719) 888-6800
E-Mail PStark@DimeTownHomes.com

Application for Limited/Regular PUD (check one)
□ Regular         □ Limited        □ Sketch Plan        □ Preliminary Plan    □ Final    □ Amendment
Property Identification Number: Filing #7
Property Description: Section: 308 T., Township: 46N Range: 8W
Deed recorded in Book_____, and Page_____

Proposed Development Name ________________________
Number of lots 5 Filing number 7 Total number filings 1 Size of Parcel 7,744.18

Fee included $_5 x $83 = $415.00

I am the landowner of record or authorized agent and am hereby making application for approval of the above request. I understand I am responsible for providing the required information, and that the County will not process my application until all required information is provided. I further understand that if there are extenuating circumstances concerning this application, there may be additional fees required to process my application, and that the County will advise me of additional fees and receive my approval before proceeding with my application.

(Signature of owner(s)/Agent) __________________________ (Date) 4/11/22
I/we, the undersigned owner(s) of the following described real property located in Ouray County, Colorado hereby authorize:

**Agent:**

Name: **Barry Zane**

Phone: **[Redacted]**

E-Mail: **Barry@DivideRanchHomes.com**

Name of Business or Entity: **Eulal Pineapple Solutions LLC**

Address: **7621 Cajnon Drive**

City: **Ridgway**

State: **CO**

Zip: **81432**

to act in my/our behalf in applying for permits from the County of Ouray.

**Legal Property Description:**

Parcel or Account Number: **Filings #7 Divide Ranch OCP.**

Section: **3015**

Township: **46N**

Range: **8W**

Quarter Section(s): **[Redacted]**

Permit(s) Applied For: **Final Development Plan & Final Plat.**

**Signature(s) of Property Owners of Record:**

By my signature I hereby certify that I have read any applications and other materials completely and that all information provided is correct to the best of my knowledge. All laws, regulations, and ordinances governing the scope of the project contemplated by this application will be complied with, whether or not specifically described within this application. I understand that providing false or misleading information may result in any permit(s) issued being revoked. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating the scope of the project contemplated by this application.

I understand that this application may be open for public inspection as required by the Colorado Open Records Law (C.R.S. 24-72-202, et seq.) and that my personal information contained on this application may be available to the public for review.

I/We, understand that Ouray County is overall a rural county located in rough and difficult terrain with a limited transportation network and County services may be unavailable or service may be untimely in some or all areas of the County. I am aware that approval of a site development permit or any other permit does not constitute and shall not be considered as constituting any guarantee or expectation of the provision of any County service (including emergency services).

Signature: **[Redacted]**

Printed Name: **[Redacted]**

Date: **4/1/2022**

**Signature:**

Printed Name: **[Redacted]**

Date: **[Redacted]**
STATEMENT OF AUTHORITY

(§38-30-172, C.R.S.)

1. This Statement of Authority relates to an entity\(^1\) named H.T. HERITAGE INN OF ERIE, LLC, A NORTH DAKOTA LIMITED LIABILITY COMPANY

2. The type of entity is a:
   - [ ] Corporation
   - [ ] Nonprofit Corporation
   - [x] Limited Liability Company
   - [ ] General Partnership
   - [ ] Limited Partnership
   - [ ] Registered Limited Liability Partnership
   - [ ] Registered Limited Liability Limited Partnership
   - [ ] Limited Partnership Association
   - [ ] Government or Governmental Subdivision or Agency
   - [ ] Trust

3. The entity is formed under the laws of North Dakota

4. The mailing address for the entity is 4520 36TH AVE S, FARGO, ND 58104

5. The [x] name [x] position of each person authorized to execute instruments conveying, encumbering or otherwise affecting title to real property on behalf of the entity is PAUL STASHICK, VICE PRESIDENT AND/OR GARY THARALDSON, ADMINISTRATIVE MANAGER (EITHER MAY SIGN)

6. The authority of the foregoing person(s) to bind the entity: [x] is\(^2\) not limited [ ] is limited as follows:

7. Other matters concerning the manner in which the entity deals with interests in real property:

8. This Statement of Authority is executed on behalf of the entity pursuant to the provisions of §38-30-172, C.R.S. \(^3\)

9. This Statement of Authority amends and supersedes in all respects any and all prior dated Statements of Authority executed on behalf of the entity.

Executed this day of November 3rd, 2021

H.T. HERITAGE INN OF ERIE, LLC, A NORTH DAKOTA LIMITED LIABILITY COMPANY

By: [Signature]

PAUL STASHICK, VICE PRESIDENT

State of Colorado

County of OURAY

Oct. 26, 2021

The foregoing instrument was acknowledged before me on this day of November 3rd, 2021 by PAUL STASHICK, VICE PRESIDENT OF H.T. HERITAGE INN OF ERIE, LLC, A NORTH DAKOTA LIMITED LIABILITY COMPANY

Witness my hand and official seal:


Notary Public

\(^1\)This form should not be used unless the entity is capable of holding title to real property.

\(^2\)The absence of any limitation shall be prima facie evidence that no such limitation exists.

\(^3\)The statement of authority must be recorded to obtain the benefits of the statute.
EXHIBIT - C -
EXHIBIT - D -
EXHIBIT - E -
Enclosed is the Submittal for Final Development Plan and Final plat for Filing 7 on existing North Badger Trail, Divide Ranch and Club.

Evil Pineapple Solutions LLC has this property under contract with the master developer and will close it and resell the individual lots once final plat registration is complete. An Agent authorization form for the project has been executed by both parties and is included with this submittal.

We have enclosed both application forms and payments after reviewing the submittal of filing #8, John Peters project, in order to simplify the process. We would like to run the Final Development Plan and Final Plat concurrently, since no offsite infrastructure is required.

Please note a key difference for Filing 7 from Filing 8, all lots are fully serviced with infrastructure, will have septic systems, and no offsites other than paying the DCWC tap fee will be required. We have requested the appropriate letters already from the utility companies and will send them shortly.

Since no other infrastructure is required, we included the Fairway Pine Homeowner covenants that will be attached to title for platting purposes as they contain, Ouray County weed management controls along with architectural controls etc.

The Filing 7 project has a Preliminary Development Plan (PDP) with 6 lots (6 units of density) and a 0.17-acre open space. This Final Development Plan would be only 5 lots. This reduction of lots is because the Fairway Pines Sanitation District conducted a field verification and realized the original developer did not put infrastructure in the area to support the project. The Sanitation district will not annex this property and will register a “Notice of Absent Sewer Service Line” with the county as it has done on two previous lots in the development.

This will require each lot to be 1 acre for septic systems. The open space remains the same but is relocated to buffer the project from the golf maintenance area.

The proposed residential make up would then be 4 cabins/cottages with a minimum square footage of 1650 sq ft as an area identified for such use in both the Fairway Pines PUD and Divide Ranch and Club PUD “Core Area” documents, 1 (2) unit duplex multifamily building (1250 sq ft each min) will make up the density (6) as defined in the Divide Ranch and Club PUD.

Please let me know what other information that may be required in order for this to move forward. Thank you in advance for your time and review of this Submittal for the Subdivision of Filing 7.

Barry Zane
Evil Pineapple Solutions LLC
6.1 **ENABLING AUTHORITY:**

6.2 **OBJECTIVES OF DEVELOPMENT AND STATEMENT OF PURPOSE:**

6.3 **PLANNED UNIT DEVELOPMENT TYPES DEFINED:**

6.4 **REVIEWING BODY:**

6.5 **DEVELOPMENT STANDARDS:**

6.6 **OPEN SPACE AND BUILDING/NON-BUILDING AREA REQUIREMENTS:**

6.7 **PLANNED UNIT DEVELOPMENT REQUIREMENTS AND PROCEDURES:**

6.8 **PLANNED UNIT DEVELOPMENT REQUIREMENTS AND PROCEDURES:**

The following requirements shall apply to all PUD’s unless otherwise noted:

A. **SKETCH PLAN**

B. **PRELIMINARY DEVELOPMENT PLAN (PDP):** (See Section 6.8 C for explanation on combining PDP and FDP applications.)

C. **FINAL DEVELOPMENT PLAN (FDP)**

1. **Preliminary Development Plan/Final Development Plan Combined Application:** For PUD’s that propose a maximum of 6 lots and do not include phasing, the PDP and FDP processes may be combined and included in one application. For a combined PDP/FDP, Applicant shall submit all required materials as detailed in this Section 6. (*See Land Use Fee Schedule for fee information for a combined PDP/FDP application.)*

2. **General:** Within one (1) year (or any extension granted by the BOCC), after approval by the BOCC of the PDP, or within such greater period of time as may have been specified in the Commissioners’ approval, the
Applicant shall submit to the County an application for Final Development Plan (FDP) approval. Agreed

(3) **Size and Scale:** The FDP shall be drawn at a scale sufficiently large to clearly show the details of the development plan; 1” = 100’ is preferred. The FDP shall be drawn on double matte reproducible Mylar in black permanent ink. The outer dimensions of the map shall be 24” x 36”; a margin of at least two (2) inches shall be reserved at the left edge of the map and at least one-half (1/2) inch shall be reserved around the remainder of the drawing. In Progress with a surveyor.

(4) **Title Sheet:** The purpose of the title sheet is to clearly describe the property being developed and to indicate approval of the FDP by the County. Accordingly, the FDP/final plat title sheet shall contain the following information:

(a) The legal description of the outer boundary of the land included in the FDP, to include the exact acreage.

In Progress, will be completed prior to the final plat

(b) The title of the development, which shall be different from any other development in the County.

Cimarron Estates

(c) A statement by the land surveyor for the PUD, who shall be licensed in the State of Colorado, that the survey was performed by him or her, under direct supervision, responsibility and checking, and that the FDP accurately and properly shows the results of that survey and is in accordance with the requirements of C.R.S. §38-51-104 and §38-51-106, as the same may be amended from time to time.

On plat, signatures pending

(d) The signature and seal of the land surveyor for the PUD.

On plat, signatures pending

(e) Signature blocks for the chair of the BOCC, with spaces for the date.

On plat, signatures pending

(f) A certificate to be signed and acknowledged by all parties having record title interest in the property, consenting to the preparation and recordation of the FDP. On plat, signatures pending
(g) A statement to be signed by the owners and other holders of record interests of the land encompassed by the FDP dedicating the streets, rights-of-way, public sites and other public land, as required, to the County.

(h) Signature block for the County Treasurer, certifying that there are no delinquent taxes due or tax liens against the property included in the PUD.

On plat, signatures pending

(i) Attorney’s certification that title to the property has been examined and that all record owners and holders of encumbrances affecting the property have properly executed the plat and joined in the dedication of the subdivision of the property as well as roadways, easements or rights-of-way shown on the plat.

On plat, signatures pending

(j) Signature block for all holders of encumbrances against the property included on the plat certifying that they consent to the division of the property and join in the dedication of the roadways, easements or rights-of-way shown on the plat.

No lienholder, Not applicable

(k) Acceptance block for the County Clerk and Recorder to record the filing of the final plat.

On plat, signatures pending

(l) Where the FDP includes more than one sheet and, where the FDP is a portion of a larger approved PDP, a key map shall be provided that shows the relationship of each sheet to the overall area encompassed by the FDP and its relationship to the approved PDP.

(m) Where there is a subdivision of land involved in the proposed development of the land, a final subdivision plat shall also be prepared. The map sheets of the Final Plat shall show the boundary survey information described above and the survey data for each of the lots contained in the subdivision.

Submitted

(n) Any other required plat notes or dedications, such as restrictions on open space, non-building areas, engineering requirements, wildlife
restrictions, visual impact regulations, restriction of further development, etc.

Reviewed, non applicable

(5) **Additional Information:** The following information shall accompany the submittal for the approval of the FDP:

(a) Updated reports as may be required to supplement those items described in Section 6.8 B.

(b) Covenants shall be submitted that comply with all prior conditions of approval and shall include all required Code and statutory language. The covenants shall be reviewed by the County Attorney prior to recording.

Submitted

(6) **Contents of Final Development Plan (FDP):** The Applicant shall confirm with the Staff the minimum number of submittal copies required. At a minimum the FDP shall show the following information:

(a) Written and graphic scale, date of preparation, north arrow and number of each sheet of the total number of sheets (e.g., Sheet 5 of 8).

Submitted

(b) The names of any abutting developments. In the case of abutting unplatted land, the notations “unplatted” should appear.

Submitted

(c) All property boundary lines and lot lines with lengths to one one-hundredth of a foot, bearings, points of curvature and lengths of arcs. All bearing determinations must be explained in a statement by the land surveyor for the PUD. “Assumed North” is not an acceptable basis for bearings.

Submitted

(d) The boundaries of all areas within the development which may subject to periodic inundations by a one hundred (100) year flood
and located within known, designated or identified as areas of special flood hazard.

N/A

(e) The bearings and distances for every lot line and building area(s) shall be shown; lot dimensions shall be shown in feet and hundredths of feet. The net acreage of all lots shall be shown to the nearest on one-hundredth of an acre.

Submitted

(f) All lots shall be numbered consecutively with no omissions or duplications throughout the entire development, including all units of any development that has a single tract name but is designated by different units. If blocks are numbered, they shall be numbered consecutively. Each lot shall be shown entirely on one sheet.

Submitted

(g) The side lines, total width, width of the portion being dedicated and width of existing dedications of all roads or streets shall be shown. In addition, the centerline of all roads or streets shall be dimensioned with bearings, distances and detailed curve data to include arc, radius, chord length and length of arc. Curve data may appear in a table, with the date referenced to each curve by a method acceptable to the County.

Submitted

(h) The survey for the development shall close with an accuracy of one in five thousand.

Updated survey pending FDP approval

(i) Existing and proposed easements, public roads or trails as identified by the County records, or through reference to recorded documents shall be shown, including the reference to the County’s records. If the easement is being dedicated on the FDP, it shall be properly set out in the owner’s certificate of dedication.

Completed

(j) The names of all streets and highways, as reviewed and approved by appropriate County departments or agencies.

Completed
(k) The names, locations and widths of all abutting roads, if any.

County will supply info for Surveyor prior to Final Plat

(6.8C6)

(l) The location and a description of all monuments, both found and set, which mark the boundaries of the property, including, if possible, a description of two or more recorded monuments on record with the State Board of Registration for Professional Engineers and Land Surveyors used in conducting the survey.

Final survey after FDP approval

(m) Any monumented and recorded benchmark (USGS datum) within the development and within thirty (30) feet of the proposed construction work area.

Final survey after FDP approval

(n) Any other information or submittal items as the Planning Commission or the Joint Planning Board or the BOCC may reasonably request in order to review and act upon the FDP.

(7) **Filing and Fees:** The Applicant shall, at the time of filing a FDP, pay a fee as determined by the County’s current fee schedule.

Submitted

(8) **Certificate of Title:** There shall be filed with the FDP, evidence of title and liens or encumbrances issued by a reputable title insurance or abstract company or title opinion by an attorney licensed to practice law in the State of Colorado, showing the names of all persons and entities having any right, title or interest in the land proposed for development and whose consent is necessary to convey clear title to the said land. The policy or commitment for title insurance or title opinion shall be issued or updated within sixty (60) days of the submittal of the FDP application.

Ordered

(9) **Certification of Water and Sewer Facilities:** (If required)

(a) **Sewer:** A certificate of the CDPHE that the sewage treatment system, as submitted by the Applicant, will comply with State and local laws and regulations. **N/A septic**
(b) **Water:** A certificate from the State Engineer or the appropriate water district or municipality, that the water system, as submitted by the Applicant, will provide adequate and safe water, in compliance with State law and regulation, to the development.

*Will serve requested from Dallas Creek Water Company*

(10) **Weed Mitigation:** Applicant shall submit a revegetation plan and a weed mitigation and control plan that has been reviewed and approved by the County Weed Manager, including the approximate cost for the required work. As a condition of any PUD approval, the Applicant shall be required to comply with the terms of any such approved plan, including posting an appropriate bond as per recommendation by County Staff.

*Currently under review with County Vegetation Manager*

(11) **Additional Information:** Any other evidence and material that are or may hereafter be required by law or by the conditions of approval of the PDP.

(12) **Performance Bond:** As a condition of FDP approval, the Applicant shall be required to execute a bond in an amount as approved by the BOCC. The bond shall be in the form approved by the County and shall be conditioned upon the Applicant completing the plan, or the stage, as finally approved. The bond shall be in cash or security acceptable to the County. The bond may provide for phased satisfaction and release upon completion of phases as approved by the County. The amount of the bond shall be determined by the BOCC based upon satisfactory information supplied by the Applicant, such as current engineering estimates, signed contracts with contractors expected to perform the work, or other information required by the BOCC. (To apply to Limited PUDs on a case-by-case basis only.)

(13) **Action on Final Development Plan (FDP):**

(a) Upon submission of the FDP, it shall be reviewed by the Planning Commission or the Joint Planning Board to ascertain whether it is in compliance with the PDP and this Section. The Planning Commission or the Joint Planning Board shall then certify to the County Commissioners that the FDP as submitted is in compliance with the requirements of the Land Use Code and the approved PDP. If it is not in compliance, the Planning Commission or Joint Planning Board findings shall note those areas of noncompliance. A copy of the Planning Commission or the Joint Planning Board findings shall be given to the Applicant. The Planning Commission or the Joint Planning Board action shall be in the form of a motion.
as noted in the minutes. The Planning Commission or the Joint Planning Board minutes, together with copies of all submissions by the Applicant and other information developed by the Planning Commission or the Joint Planning Board shall be forwarded to the BOCC.

(b) Upon receipt of the Planning Commission or the Joint Planning Board findings, the BOCC shall, within a period of not more than thirty (30) days and at a legally noticed public hearing called for such purpose, review the recommendation of the Planning Commission or the Joint Planning Board and the technical aspects of the FDP submittal, and determine if such FDP is in compliance with the requirements of this Section and the approved PDP. Notice of such public hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date. The BOCC shall approve, conditionally approve or disapprove the FDP. The action of the BOCC shall be transmitted to the Applicant.

(c) Approval of the FDP shall not constitute acceptance for maintenance by the County of roads, streets, alleys or other public lands within the PUD.

14) Impact Fees: If the BOCC determine, on the basis of information submitted and available to it, that a proposed development will have an impact on, or will necessitate, improvements to facilities or services provided by the County, the school districts or other governmental entities within the County, the BOCC shall, to the greatest extent possible and as a condition of approval, require that the Applicant take steps to mitigate the impact by payment of impact fees or provision of in-kind contributions. The amount and purpose of any impact fee shall be determined by the BOCC based upon a finding that there is an essential nexus between the payment or contribution and a legitimate local government interest and the payment or contribution is roughly proportional in nature, timing and extent to the impact of the proposed use. Failure to fund such impacts by the Applicant may be grounds for denial of the development. The BOCC may require that the Applicant obtain a traffic analysis, completed by a professional engineer, illustrating the expected traffic by type and volume for the anticipated use; the BOCC may require that other appropriate studies or analyses be obtained by the Applicant, depending upon the anticipated impacts of the proposed development. Any land dedication and/or payment for school purposes required shall comply with Section 18 of this Code.

15) Construction of Planned Unit Development: No construction shall commence and no permits for construction shall be granted until the FDP (or combined PDP/FDP) has been approved by the BOCC.
(a) Prior to undertaking construction, the Applicant shall first apply for, and obtain, a PUD construction permit from the County Land Use Department/Road & Bridge Department. The application for a PUD construction permit shall include construction plans for all improvements described in the PUD development plan. These shall consist of three (3) copies of plans and profiles for all streets drawn to a scale of 1” = 10’ vertical and 1” = 5’ vertical and 1” = 50’ horizontal, showing all proposed utility line locations and sizes, connections, valves, fire hydrants, detailed plans for all water supply and sanitary sewer service facilities (if applicable) and detailed plans for all drainage structures and flood plain channelization facilities. Applicant shall also submit a preliminary grading plan showing proposed grades, the extent of cuts and fills and the proposed slope angle of all banks. Preliminary grading plans may be based on a photogrammetric survey of a scale not less than 1” = 100’. Contour intervals shall be as follows:

i. Greater than or equal to 10% slope - 10’ interval

ii. Less than 10% slope - 5’ interval

(b) The County shall approve the application and issue a permit only if it finds that construction will be in conformance with the previously approved FDP, the County development standards, and other applicable laws and regulations.

(c) The County Land Use Department or Road and Bridge Department may refer construction drawings to the County Engineer for review and comment.

(d) All construction shall be in conformance with the approved Final Development Plan (FDP) and all standards in Section 15 - Ouray County Road Standards, or as may be required by the Road & Bridge Superintendent.

(e) Any material variation from the FDP must be approved by the BOCC as an amendment to the FDP.

(f) The PUD or the stages of a PUD must be completed in accordance with the schedule established by the PUD Agreement. Failure to so complete may result in forfeiture of the Applicant’s performance bond, as heretofore required.

(16) Final Plat:

(a) Within one year of FDP approval, or upon completion of required improvements or, in the case of a phased development, upon completion of the improvements for a particular phase, the
Applicant shall apply to the BOCC for final plat or final approval of any phase. If the BOCC find that there has been compliance with this Code and the PUD Agreement, final plat approval shall be granted.

(b) No PUD property (lots) shall be transferred, sold or occupied for its intended purpose until final approval, or final approval of any phase, has been granted.

(c) The final plat (paper and appropriate digital format) shall be submitted to Land Use Staff for review and compliance with all previous approvals. If the final plat conforms to prior approvals, the Staff shall submit the final plat to the BOCC at a regular meeting for approval and signature by the Chair of the BOCC. The final plat shall then be recorded by the Applicant in the office of the County Clerk & Recorder within 30-days from the date of final approval. No such final plat, or portion of plan, shall, however, be filed until final approval has been granted, all required fees have been paid, and the plan and plats have been executed by the BOCC. All signatures and seals affixed to the final plat shall be original, in black permanent ink and clearly readable.

(d) If the improvement work required under the PUD Agreement has been substantially, but not entirely, completed, the Applicant may, nevertheless, apply for final plat approval and the BOCC may grant such approval if the Applicant enters into a final improvements agreement, in the form specified by the County, agreeing to complete the work within a specified period of time and further agreeing that, should such work not be satisfactorily completed within the specified time limit, the County may complete it and recover the costs thereof from the Applicant. A good and sufficient performance bond or cash deposit in the name of the County shall secure the agreement. The amount of the bond or cash deposit shall be sufficient to cover the estimated costs of the improvements. The agreement shall provide for release of the collateral or bond upon completion of the improvements and may provide for partial release of the collateral or bond upon partial completion of the improvements.
EXHIBIT - F -
RESOLUTION No. 2017-018

A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
CONCERNING A SECOND EXTENSION OF THE
PRELIMINARY DEVELOPMENT PLAN AND PUD AGREEMENT FOR THE DIVIDE RANCH AND CLUB

WHEREAS, on June 25, 2007, the Board of County Commissioners of Ouray County, Colorado (Board) approved an amendment to the preliminary development plan for The Divide Ranch and Club, previously known as Fairway Pines Estates and ratified the approval on July 2, 2007 pursuant to Resolution 2007-033; and

WHEREAS, on July 2, 2007, the Board and Heritage Inn and Suites of Kansas City, Inc. and H.T. Inn of Erie, L.L.C (herein collectively called Developer) executed a Planned Unit Development Agreement (PUD Agreement) with the County as required by Resolution 2007-033; and

WHEREAS, Resolution 2007-033 required the Developer to submit a request for approval of a final development plan for at least one phase of The Divide Ranch and Club within one year of the date of Resolution 2007-033 or Preliminary Development Plan approval may be revoked or modified as the County deemed appropriate; and

WHEREAS, on July 1, 2008, the Developer submitted a request for approval of a final development plan for Filing 6A of The Divide Ranch and Club and as a result, was granted vested rights for a period five years from July 2, 2007; and

WHEREAS, on August 15, 2011, the Developer requested, and was granted approval of, an extension of the Preliminary Development Plan and PUD Agreement for a period of an additional five years, or until July 2, 2017; and

WHEREAS, on September 1, 2015, the Board of County Commissioners granted approval of the Final Development Plan for Filing 6A of the Divide Ranch and Club PUD, which satisfied Condition 1c of Resolution No. 2007-033, requiring the Developer to acquire and/or develop additional water supplies to meet golf course irrigation demands; and

WHEREAS, on March 31, 2017, the Developer requested a (5) five-year minimum extension of the currently approved Preliminary Development Plan and PUD Agreement for the Divide Ranch and Club, but expressed concern that five (5) years would not allow the certainty for financing and planning that would be beneficial and requested the Board to consider a longer term; and

WHEREAS, during its meeting on May 16, 2017 the Board took comment from the Developer, the public, and staff on the request for extension; and

WHEREAS, on May 16, 2017, the Board made the following findings regarding the request for extension:

FINDINGS

1. The Divide Ranch and Club is a unique planned unit development as it is partially completed and lots within completed phases of The Divide Ranch and Club, previously known as Fairway Pines Estates (collectively referred to as "PUD" herein), have been sold at the time of the Developer's request for extension. In addition to the existence of current property owners within the PUD, the development has an operating golf course and clubhouse.

2. A homeowners association and sanitation district also operate in conjunction with the completed phases of the PUD. Both the association and district could fail and dissolve if the development is not completed, at great detriment to the property owners within the PUD. The homeowners association has expressed its support for a 5-year extension of the Preliminary Development Plan.

3. The decline in the economy and home sales since the adoption of Resolution 2007-033 and the execution of the PUD agreement has substantially affected the ability of the Developer to move forward with the PUD process and granting the extension would provide the Developer with the additional time in which to complete the PUD.

4. There is a compelling public interest of the County and its citizens that the PUD achieve financial viability and sustainability and that the PUD be completely platted.
RESOLUTION No. 2017-018

5. The Developer, property owners within the PUD, and potential purchasers of lots within the PUD require the assurance of existing vested property rights in order to complete the PUD, retain ownership of lots already purchased within the PUD, and continue sales of unsold platted lots within the PUD.

6. An extension of the Resolution 2007-033 and vested property rights would benefit the current landowners within the PUD by maintaining property values.

7. Denying the request for an extension would lead to great uncertainty for the property owners who currently own property within the PUD.

8. The Developer has infused and expended a substantial investment of money and has completed significant improvements within the PUD, including but not limited to parking lots, paved cart paths, clubhouse, and irrigation system. As such, the Board recognizes the positive development within the PUD accomplished by the Developer.

9. The Board finds that as a matter of public policy and pursuant to the Board's authority to regulate land use within Ouray County, it is in the best interests of the public, property owners within the PUD, and the County to grant the request for extension for a period of seven (7) years, until July 2, 2024, as requested by the Developer.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:

1. The Board grants the Developer's request for an extension of Resolution 2007-033 and the PUD Agreement until July 2, 2024. As a result, the Developer's vested property rights granted by Resolution 2007-033 and the PUD Agreement will expire on July 2, 2024, if not otherwise extended by the Board of County Commissioners.

2. The terms and conditions contained in Resolution 2007-033 and the PUD Agreement shall remain in full effect until July 2, 2024.

3. As a condition of this extension, the Developer will execute a Modification of the PUD Agreement extending the vested property rights granted to Developer in PUD Agreement to July 2, 2024.

APPROVED AND ADOPTED THIS 30th DAY OF May, 2017.

Voting for: Commissioners Tisdell, Batchelder, Peters

Voting against: NONE

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:

Ben Tisdell, Chair

Don Batchelder, Vice-Chair

John Peters, Commissioner

Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

Resolution 2017-018 - Page 2 of 2
EXHIBIT

- G -
SECOND MODIFICATION OF PLANNED UNIT DEVELOPMENT AGREEMENT WITH THE DIVIDE RANCH AND CLUB

THIS MODIFICATION is made this 16th day of May, 2017 by and between the Board of County Commissioners of Ouray County (Board) and Heritage Inn and Suites of Kansas City, Inc., a North Dakota corporation and H.T. Inn of Erie, L.L.C., (herein collectively called Developer), as follows:

WHEREAS, pursuant to Resolution 2007-033, attached herein as Exhibit 1, Developer and the County entered into a Planned Unit Agreement, dated July 2, 2007, (PUD Agreement) attached herein as Exhibit 2 and recorded in the records of the Ouray County Clerk and Recorder at Reception Number 195394; and

WHEREAS, pursuant to Resolution 2012-012, the Board of County Commissioners granted the Developer a 5-year extension of the Preliminary Development Plan and PUD Agreement or until July 2, 2017; and

WHEREAS, Developer is the owner of contiguous parcels of property (Property) located in the County of Ouray, State of Colorado (County), as more particularly described in Exhibit A to the PUD Agreement; and

WHEREAS, the vested property rights granted to Developer under Resolution 2007-033 and the PUD Agreement will expire on July 2, 2017; and

WHEREAS, the Developer has requested an extension of Resolution 2007-033 and the PUD Agreement for an additional period of five (5) or more years, with Developer pointing out that five (5) years is less than a desirable extension of time for obtaining stable financing and for planning purposes; and

WHEREAS, on May 30, 2017, the Board passed Resolution 2017-018, approving the Developer’s request for extension for a period of 7 years from July 2, 2017, subject to the terms and conditions of Resolution 2007-033 and the PUD Agreement and on the condition that the Developer and the Ouray execute this Modification of the PUD Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, and pursuant to Resolution 2012-018, and Paragraph 6.0 of the original 2007 PUD Agreement, the parties hereto agree to modify the PUD Agreement follows:
1. The vested property rights granted to the Developer in Paragraph 2.0 of the PUD Agreement, executed on July 2, 2007, shall be extended for an additional seven (7) years to July 2, 2024.

2. The parties expressly recognize that by submitting Filing 6A of The Divide Ranch and Club for final development plan approval on July 1, 2008, the Developer met the requirement of submitting at least one Filing of the Property for Final Development Plan, as required in Paragraph 5.0 of the PUD Agreement and paragraph 3 of the Resolution 2007-033.

3. The parties expressly recognize that approval of the Final Development Plan for Filing 6A of the Divide Ranch and Club by Resolution 2015-027, satisfied requirement 1a of Resolution 2007-033, requiring the Developer to acquire and/or develop additional water supplies to meet golf course irrigation demands.

4. All terms and conditions of the PUD Agreement, not in conflict with this Modification, shall remain in full effect until July 2, 2024, unless otherwise agreed upon by the parties.

DEVELOPER

By: Paul Stashick
Its authorized representative

BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY

Ben Tisdel, Chair

ATTEST:

Michelle Dauer, Ouray County Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board
A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
FOR APPROVAL OF AN AMENDMENT TO THE
PRELIMINARY PLAN/PLAT FOR FAIRWAY PINES ESTATES

WHEREAS, Heritage Inn and Suites of Kansas City, Inc. and H.T. Heritage Inn of Erie, LLC ("Applicant") has filed an application for an amendment to an existing Preliminary Plan/Plat for Fairway Pines Estates, ("Application") located on a parcel of property containing approximately 159 acres of un platted property ("Property"), to be known as The Divide Ranch and Club described on Exhibit A attached hereto; and

WHEREAS, the Board of County Commissioners of Ouray County, Colorado ("Board") heard public comments on the Application and the Applicant's request for an amendment to the Preliminary Development Plan/Plat at its regularly scheduled and noticed meeting on June 25, 2007; and

WHEREAS, the Board has reviewed the Application and supporting materials, Staff Report and various other information supplied to the Board regarding the Application; and

WHEREAS, based upon the Application, supporting materials, Staff Report and public comments, the Board has determined that the Application meets the conditions and criteria as set forth in the Ouray County Land Use Code ("LUC") of Section 6.10 of the LUC and otherwise complies with the applicable provisions of the LUC for approval of the amendment to the Preliminary Development Plan/Plat for Fairway Pines Estates, now known as The Divide Ranch and Club; and

WHEREAS, the Board reviewed the PUD Agreement to be executed by the Applicant,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:

1. The amendment to the Preliminary Development Plan/Plat for the Divide Ranch and Club is approved, subject to the following conditions:

   a. Prior to final plan approval, the Applicant shall provide evidence that the Applicant has acquired and/or developed additional water supplies to meet golf course irrigation demands.

   b. Prior to final plan approval, the Developer shall address, to the satisfaction of the Ouray County Engineer, concerns #5, #6 and #10 as set forth in the February 8, 2007 letter signed by Mark Wright. This includes drainage issues on Lots 1108, 1007 and 1008.

   c. Prior to final plan approval, the mail kiosk to serve the Fairway Pines Estates/Divide Ranch and Club lots and properties shall be located on Lot CV-102 and traffic shall be routed so that traffic does not cross the median.

   d. If the Applicant seeks to construct a new effluent pond (as shown on Exhibit "ee" of the Applicant's submittal) on The Estates at Fairway Pines PUD, Applicant shall be required to comply with all applicable Ouray County Land Use Code requirements for such construction, including...
seeking approval of an amendment to the Preliminary Plan/Plat for The Estates at Fairway Pines.

e. Prior to recordation of the Preliminary Plan/Plat, the Applicant shall sign a PUD Agreement, approved by the Ouray County Attorney, and the PUD Agreement shall include an exhibit listing all of the improvements required to be constructed by the Applicant.

f. The setback along Ouray County Road 1A and Ponderosa Drive shall be fifty-feet from the edge of the traveled way and a note shall be placed on all final plats that no vegetation shall be removed from within such fifty-foot setback.

g. A note shall be placed on all final plats that a site-specific geologic study shall be required prior to submittal of an application for a building permit.

2. The Applicant shall sign the PUD Agreement within ten days of approval, and the terms and conditions of the PUD Agreement shall be considered incorporated into this BOCC resolution.

3. The Applicant shall have one (1) year from the date this resolution is recorded within which to submit a request for approval of a final development plan(s) for at least one (1) phase of The Divide Ranch and Club or the Preliminary Development Plan approval may be revoked or modified if the County deems such action necessary or in the public interest. Provided that the Applicant complies with the forgoing submittal requirement, the rights granted pursuant to this BOCC resolution and pursuant to the PUD Agreement shall be vested property rights for a period of five (5) years from date this BOCC resolution approving the Preliminary Development Plan has been recorded.Developer shall have such vested property right to undertake and complete the approval of the Final Development Plan for all phases of the development of the Property within such five (5) year period as provided in the Preliminary Development Plan, the PUD Agreement and according to the Code.


BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO

Don Batchelder, Chair

Heldi M. Allbritton, Vice Chair

K. Keith Meinert, Commissioner Member

Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board
EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY SUBJECT TO PRELIMINARY DEVELOPMENT PLAN
PLANNED UNIT DEVELOPMENT AGREEMENT
THE DIVIDE RANCH AND CLUB

THIS PLANNED UNIT DEVELOPMENT AGREEMENT is made this 2\textsuperscript{nd} day of \textit{July} 2007 by and between the Board of County Commissioners of Ouray County ("Board") and Heritage Inn and Suites of Kansas City, Inc. a North Dakota corporation and H.T. Inn of Erie, L.L.C. (herein collectively called "Developer"), as follows:

WHEREAS, Developer is the owner of contiguous parcels of property ("Property") located in the County of Ouray, State of Colorado ("County"), as more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Ouray County Land Use Code ("Code"), Section 6.10.C(6)(c), requires the parties to enter into a PUD Agreement ("PUD Agreement") as a condition of Preliminary Development Plan approval; and

WHEREAS, on November 2, 1998, the Board approved a Preliminary Plan for and Planned Unit Development Agreement for a Planned Unit Development known as Fairway Pines Estates PUD (the Prior PUD); and

WHEREAS, subsequent to the approval of the Prior PUD and after properly noticed public hearings, the Board adopted certain resolutions, all of which are recorded in the Office of the Ouray County Clerk and Recorder, requiring that the Developer (as that term is defined in the Prior PUD) or its successors and assigns, submit an application to the County to amend the provisions of the Prior PUD or suffer its revocation; and

WHEREAS, on June 25, 2007, following referral, notice and hearing, all as required by the Code, the Board passed Resolution 2007-023 which Resolution sets forth the terms and conditions upon which the Board is willing to grant approval of the Preliminary Development Plan for a development known as The Divide Ranch and Club, being an amendment to the Prior PUD and the Prior Preliminary Development Plan as required; and

WHEREAS, it is the intent of the parties hereto that this PUD Agreement shall supersede and replace in its entirety the Prior PUD and Preliminary Development Plan to the extent that it pertains to the real property described on Exhibit A attached hereto;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the parties hereto agree as follows:
1.0 PLANNING PARAMETERS AND DETAILED LAND USE SUMMARY.

1.1 DENSITY. Overall density (primary residential dwelling units per acre and any other uses) shall not exceed that allowed by the approved Preliminary Development Plan/Preliminary Plat, a copy of which is attached hereto as Exhibit B and incorporated herein by reference and as set forth in the summary below.

1.2 PARCEL CONFIGURATION AND MINIMUM LOT SIZE. The Developer's ability to subdivide the Property pursuant to the terms of this PUD Agreement shall be authorized and limited as provided in the approved Preliminary Development Plan/Preliminary Plat which is attached hereto and incorporated herein by reference and as set forth in the summary below, unless otherwise amended or modified and approved pursuant to the Code. A complete copy of the approved Preliminary Development Plan will be maintained in the records of the Ouray County Planning Department with a duplicate copy retained by the Developer together with an electronic .pdf copy. The final configuration of lots and the location of units will be reviewed by the Planning Staff and the County, as appropriate, as the various phases of the development are submitted for final platting. This PUD Agreement contemplates and recognizes that separate Final Development Plans will be submitted and approved in phases for separate portions of the Property and that the Developer will not be required to submit a Final Development Plan for all the filings, lots, and units described herein at one time. The Property will be developed and platted in staggered phases in any order the Developer deems appropriate.

The Developer will complete the Final Development Plan approvals of all the phases of the Property by no later than five (5) years after the date this Preliminary Development Plan is approved and recorded. The final configuration and sizes of the lots and the filings described herein will conform generally with the layout and schematic depiction as shown in the Preliminary Development Plan. Reasonable and minor variations from the Preliminary Development Plan may be allowed in a Final Development Plan to accommodate site topography, development constraints, efficient usage of the site and other reasonable planning and development considerations and may be approved by staff unless staff determines that a higher level of review and approval is necessary.

1.3 ALLOWABLE LAND USES. Use of the Property shall be allowed and limited as designated in the approved Preliminary Development Plan, which is attached hereto and incorporated herein by reference and as set forth in the summary below.

1.4 LAND USE SUMMARY. The following Table I summary sets forth the allowed densities and uses for each of the Filings as described more specifically in the Preliminary Development Plan.
Table 1

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<th>Units</th>
<th>Use</th>
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<td><strong>161</strong></td>
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</tr>
</tbody>
</table>

Multifamily “Townhome” Units are intended to be attached units subject to condominiumization or subdivision into either individual air space units or units sharing a common party wall(s).

Multifamily “Cottage” Units are intended to be detached units without common party walls, but sharing common elements or common areas with other Units.

Multifamily Townhome and Cottage Units are intended for fee ownership as single-family residential units but may be utilized by the Unit owner for short-term rentals (periods of less than three (3) months) or long-term rentals to members of the general public subject to any additional restrictions or limitations as set forth in the covenants, conditions and restrictions for each filing. Timeshare ownership will not be permitted in Multifamily Townhome or Cottage Units.

Single-family detached units are intended for single-family residential occupancy primarily by the owner of the property. Long term residential rentals of the residences are permitted provided that the minimum lease term for any rental will be three (3) months.

1.5 PHASING OF SUBDIVISION AND DEVELOPMENT. The Developer may develop and subdivide the Property in phases based on a number of factors, including but not limited to, market conditions, the availability and economic considerations for installation of utilities and roads, impacts on adjacent properties, site constraints, weather conditions and other factors. Each phase of the project will be reviewed at the time of the submittal for Final Development Plan approval based on general conformity with these planning parameters, this PUD Agreement, the BOCC resolution, the provisions of the Code, and the approved Preliminary Development Plan. Each phase may be subjected to additional restrictions or covenants by the Developer through individual sets of covenants, conditions and restrictions and sub-associations as deemed appropriate by the Developer. Draft covenants will be submitted for review by the Planning Staff at the time of Final Development Plan submittal for each phase. The Developer currently foresees Final Development Plan submittals possibly
occurring in the following order: 1) Filing 6, 2) Filing 8, 3) Filing 7, 4) Filing 11-Phase 1, 5) Filing 10, 6) Filing 11-Phase 2 and 7) Filing 9. This proposed phasing schedule is based on current market conditions and may be subject to change.

1.6 DENSITY TRANSFERS. The density allocations depicted in this Preliminary Development Plan will substantially govern the Final Development Plan and final platting of the phases of the Property. At the time of Final Development Plan submittal, any allocated density that is not utilized on the parcel being subdivided will be deemed extinguished unless the Developer submits and obtains approval of an amendment to this PUD Agreement and the Preliminary Development Plan to transfer the unused density to another portion of the Property that has not yet been subdivided or to any other property subject to this PUD Agreement. Such proposed amendment will be reviewed under section 6.13 and any other applicable provisions of the County Code relating to PUD amendments.

2.0 EFFECT OF APPROVAL. Pursuant to the Ouray County Land Use Code § 6.10 C.(6)(h), the BOCC resolution, and subject to Section 5.0 below, the parties hereby agree that the rights granted under this PUD Agreement shall be vested property rights for a period of five (5) years from date the BOCC resolution approving this PUD Agreement and Preliminary Development Plan has been recorded. Developer shall have such vested property right to undertake and apply for the approval of the Final Development Plan for all phases of the development of the Property within such five (5) year period as provided in this PUD Agreement and according to the Code.

2.1 Improvements. Any and all public improvements necessary for each phase of the development shall be constructed and installed or assurances made therefore prior to the recordation of the final plat for the subject phase of the development and prior to the issuance of any building permit on the Property. All such improvements shall be constructed in accordance with any deadlines set by the Board or as set forth in the Code. The required improvements are all those required by the Code and as may be identified in the Preliminary Development Plan and such other improvements as the Board may deem necessary at the time of Final Development Plan approval. A list of the proposed improvements as depicted in the Preliminary Development Plan for the Property is attached hereto as Exhibit C. All such improvements shall be installed in accordance with the standards and specifications as may be set forth in the Code at Section 7 and Section 23. It is a further condition of the approval of this PUD Agreement and Preliminary Development Plan that the Developer shall apply for a Special Use Permit and a building permit (the "Permits") for the construction of the clubhouse facility on Parcel CV-103 to serve the operation of the golf course at the time of the approval and filing of the first final plat for any portion of the Property or within twelve (12) months of the approval and recording of this Preliminary Development Plan, whichever occurs first. The Developer must then begin construction of the..
clubhouse within six (6) months of the date of the approval of the permits or recording of the final plat. If at the time the developer seeks final development plan approval it has not obtained such permits for the clubhouse, the County may require the posting of a bond, letter of credit, cash deposit, or other acceptable security in an amount necessary to cover the estimated costs of the completion of the clubhouse or any other lesser amount deemed acceptable by the County to provide security for the completion of the clubhouse as a condition of the approval and recording of the first final plat for any phase of the property development.

Bonding or Other Assurance. If the developer seeks to obtain final plat approval for any phase of the project from the Board prior to substantial completion of all of the required improvements for that phase, developer may nevertheless apply for final plat approval for that phase. the County may in such event require the developer, pursuant to the provisions of section 6.10.D(9)(d), to enter into a final improvements agreement, in the form specified by the County, agreeing to complete the work within a specified period of time and further agreeing that, should such work not be satisfactorily completed within the specified time limit, the County may complete it and recover the costs thereof from the developer. the agreement shall be secured by a good and sufficient performance bond, letter of credit, cash deposit, or other acceptable security in the name of the County. the amount of the bond, cash deposit, or other security shall be sufficient to cover the estimated costs of the completion of the improvements. the agreement shall provide for release of the bond or other security upon completion of the improvements and may provide for partial release of the bond or other security upon partial completion of the improvements.

3.0 Successors. This PUD Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, and assigns and all benefits and burdens created by this PUD Agreement are intended to and shall run with the land described herein as the property.

4.0 Severability. Invalidation of any of the provisions of this PUD Agreement or any paragraph, sentence, clause, phrase or word herein or the application thereof in any given circumstance, shall not affect the validity of any other provision of this PUD Agreement.

5.0 Final Development Plan Review and Approval. Prior to and as a condition of the final platting of all or any portion of the property pursuant to the terms and conditions of this PUD Agreement, developer shall obtain the County's approval of and signature upon a Final Development Plan for each phase in accordance with the requirements of the code and within the time limits set forth in this Agreement and in the BOCC resolution. In compliance with Code Section 6.10.D(3)(k), any proposed final platting of less than all of the property subject to the approved preliminary development plan will comply with the approved plan then in force. Developer shall submit at least one filing of the property for final development plan approval prior to the expiration of one (1) year from the date of the recording of the BOCC resolution approving the
Preliminary Development Plan, or the entire PUD and Preliminary Development plan may be revoked or modified if the County deems such action necessary or in the public interest.

6.0 AMENDMENT. This PUD Agreement may be amended by the written and recorded agreement of the parties in accordance with any applicable notice and public hearing requirements of state and county law and regulation.

7.0 ATTORNEY’S FEES. The prevailing party in any action to enforce the terms or conditions of this PUD Agreement shall be awarded their reasonable attorney’s fees and costs incurred in such action.

BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY

Don Batchelder, Chairperson

[Signatures]

By Linda Munson-Haley, Deputy Clerk and Recorder
EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY
SUBJECT TO PRELIMINARY DEVELOPMENT PLAN
EXHIBIT B - PRELIMINARY DEVELOPMENT PLAN/PRELIMINARY PLAT
PRELIMINARY DEVELOPMENT PLAN
THE DIVIDE RANCH AND CLUB FILNG NO. 6, 7, 8, 9, 10, AND 11
AN AMENDMENT TO THE APPROVED FAIRWAY PINES ESTATES PRELIMINARY DEVELOPMENT PLAN
OURAY COUNTY, COLORADO
SECTIONS 26 AND 31, T41N, R144W, M.N.W.M.

AGENCY CONTACT LIST

DRAWN ANDPREPARED BY:

CHECKED ANDAPPROVED BY:

MILLER AND MILLER, LTD.
1420 S. MAIN ST.
ORANGE, CA 92868

OURAY COUNTY, COLORADO

MAP

SHEET SIZE

PRELIMINARY DEVELOPMENT PLAN

PRELIMINARY DEVELOPMENT PLAN

PRELIMINARY DEVELOPMENT PLAN
EXHIBIT C - LIST OF PROJECTED IMPROVEMENTS AND ESTIMATED COSTS
(SUBJECT TO REVISION AT FINAL DEVELOPMENT PLAN)
Name of Subdivision
or Planned Unit Development: The Divide Ranch and Club

Filing: 6

Location: A Part of Sections 35 & 36, Township 5 North, Range 53 West, of the Fifth Principal
Sixth Principal Meridian County of Weld, State of Colorado

Intending to be legally bound, the undersigned Applicant hereby agrees to provide throughout
this Subdivision or Planned Unit Development the following Improvements.

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>EST. QUANTITY</th>
<th>UNIT</th>
<th>EST. UNIT COST</th>
<th>SUBTOTAL</th>
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<tbody>
<tr>
<td>STORM SEWER IMPROVEMENTS</td>
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<tr>
<td>Subgrade Prep</td>
<td>17,000</td>
<td>SY</td>
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<td>$60.00</td>
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TOTAL EST: $245,641.00

Name of Subdivision
or Planned Unit Development: The Divide Ranch and Club

Filing: 7

Location: A Part of Sections 35 & 36, Township 3 North, Range 68 West, of the Sixth Principal
Sixth Principal Meridian County of Weld, State of Colorado

Intending to be legally bound, the undersigned Applicant hereby agrees to provide throughout
this Subdivision or Planned Unit Development the following improvements.

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>EST. QUANTITY</th>
<th>UNIT</th>
<th>EST. UNIT COST</th>
<th>SUBTOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EROSION CONTROL</strong></td>
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<tr>
<td>6&quot; PVC</td>
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<td>EA</td>
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<td>EA</td>
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**TOTAL** $55,252.00
Name of Subdivision or Planned Unit Development: The Divide Ranch and Club

Filing: 8

Location: A Part of Sections 26 & 36, Township 3 North, Range 68 West, of the Sixth Principal Meridian County of Weld, State of Colorado

Intending to be legally bound, the undersigned Applicant hereby agrees to provide throughout this Subdivision or Planned Unit Development the following improvements.

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>EST. QUANTITY</th>
<th>UNIT</th>
<th>EST. UNIT COST</th>
<th>SUBTOTAL</th>
</tr>
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<tbody>
<tr>
<td>EROSION CONTROL</td>
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<td>WATER LINE IMPROVEMENTS</td>
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<tr>
<td>Water Service with Meter pit</td>
<td>28</td>
<td>EA</td>
<td>$500.00</td>
<td>$15,400.00</td>
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TOTAL: $25,400.00
Name of Subdivision
or Planned Unit Development: The Divide Ranch and Club

Filing: 8

Location: A Part of Sections 35 & 36, Township 3 North, Range 68 West, of the Sixth Principal
Sixth Principal Meridian County of Weld, State of Colorado

Intending to be legally bound, the undersigned Applicant hereby agrees to provide throughout
this Subdivision or Planned Unit Development the following improvements.

<table>
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<tr>
<th>ITEM DESCRIPTION</th>
<th>EST. QUANTITY</th>
<th>UNIT</th>
<th>EST. UNIT COST</th>
<th>SUBTOTAL</th>
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<td>STREET IMPROVEMENTS</td>
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<tr>
<td>Subgrade Prep</td>
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<td>Asphalt Pavement (4.5 inches)</td>
<td>9,404</td>
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<td>$14,000</td>
</tr>
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<td>Sewer Service</td>
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TOTAL: $172,164.00
Name of Subdivision
or Planned Unit Development: The Divide Ranch and Club

Filing: 10

Location: A Part of Sections 35 & 36, Township 3 North, Range 48 West, of the Bitch Principal
Sixth Principal Meridian County of Weld, State of Colorado

Intending to be legally bound, the undersigned Applicant hereby agrees to provide the following improvements throughout
this Subdivision or Planned Unit Development:

<table>
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<tr>
<th>ITEM DESCRIPTION</th>
<th>EST. QUANTITY</th>
<th>UNIT</th>
<th>EST. UNIT COST</th>
<th>SUBTOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>STREET IMPROVEMENTS</td>
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</tr>
<tr>
<td>Subgrade Prep</td>
<td>3,000</td>
<td>SY</td>
<td>$1.80</td>
<td>$5,400.00</td>
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<tr>
<td>Asphalt Paving (4.5 inches)</td>
<td>15,490</td>
<td>BY - IN</td>
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<td>$32,537.00</td>
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TOTAL: $87,608.00
Name of Subdivision
or Planned Unit Development: The Divide Ranch and Club

Filing: 11

Location: A Part of Sections 35 & 38, Township 3 North, Range 63 West, of the 8th Principal
8th Principal Meridian County of Weld, State of Colorado

Intending to be legally bound, the undersigned Applicant hereby agrees to provided throughout
this Subdivision or Planned Unit Development the following improvements:

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>EST. QUANTITY</th>
<th>UNIT</th>
<th>EST. UNIT COST</th>
<th>SUBTOTAL</th>
</tr>
</thead>
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<tr>
<td>STREET IMPROVEMENTS</td>
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<tr>
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<td>SY</td>
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<td>$5,900.00</td>
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<td>Asphalt Pavement (4.5 inches)</td>
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<td>SY-IN</td>
<td>$2.10</td>
<td>$31,044.80</td>
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<td>Class B Base Course (6 inches)</td>
<td>26,578</td>
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<td>$13,289.00</td>
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<td>$4,543,594.00</td>
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| EROSION CONTROL             |               |      |                |          |
| Gravel Fence                | 667           | LF   | $1.40          | $931.80  |
| Soil Protection              | 9             | EA   | $160.00        | $1,440.00|
| SUBTOTAL                    |               |      |                | $1,532.60|

| EARTH WORK                  |               |      |                |          |
| Cut To Fill                 | 588           | CY   | $2.90          | $1,723.20|
| SUBTOTAL                    |               |      |                | $1,723.20|

| STORM SEWER IMPROVEMENT     |               |      |                |          |
| 10" CSD                     | 244           | LF   | $22.00         | $5,368.00|
| SUBTOTAL                    |               |      |                | $5,368.00|

| SANITARY SEWER IMPROVEMENT  |               |      |                |          |
| 6” PVC                      | 2,104         | LF   | $27.00         | $56,808.00|
| 4” Dia. Standard Manhole    | 17            | EA   | $1,760.00      | $29,760.00|
| Sewer Service               | 32            | EA   | $600.00        | $19,200.00|
| Core Existing Manhole/ Connect to existing main | 1        | EA   | $400.00        | $400.00  |
| SUBTOTAL                    |               |      |                | $86,768.00|

| WATER LINE IMPROVEMENTS     |               |      |                |          |
| 6” PVC Waterline            | 1,360         | LF   | $33.00         | $44,880.00|
| Sand Fire Hydrant           | 3             | EA   | $4,400.00      | $13,200.00|
| Water Service with Meter pt | 32            | EA   | $550.00        | $17,600.00|

|                             |               |      |                |          |

| TOTAL                        |               |      |                | $109,427.00|

REVISED: 06/15/2007 10:58 AM

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EXHIBIT

- J -
1. Reception Number 162227 Ouray County Records dedicate to the Reception Number 150511 Ouray County Records as extended by the EASEMENTS for FAIRWAY PINES ESTATES, recorded plot.

2. The DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS for FAIRWAY PINES ESTATES, PHASE 2, recorded July 17, 1996.

3. SETBACKS

4. GREENBELTS may also be used for utility and drainage purposes.

5. 3. SETBACKS

6. 4. GREENBELTS may also be used for utility and drainage purposes.
1. Thence north 00'47'58" east with all bearings contained herein being relative thereto; Thence south 00'54'51" east, a distance of 188.02 feet, to a point on the northwesterly boundary line of Fairway Pines Golf Course.

Thence south 09'13'09" west, a distance of 224.72 feet; which bears N21°42'04" E, and a long chord which bears N34°50'45" E, and a long chord which bears N62°00'52" W, a distance of 245.85 ft.

Thence south 174.27 ft.;

Thence along the arc of a curve to the left having a central angle of 49°49'10", and a long chord which bears N79°50'45" W, a distance of 222.40 feet, the chord of which bears S34°50'45" E, a radius of 130.00 feet and an arc length of 73.00 feet; Village 1 A, recorded December 5, 2001, Reception No. 176360, Ouray County Records, containing 3.840 acres more or less.

2. Thence south 01'29'16" west, a distance of 200.00 feet to the southwest corner of said section 36, thence the following courses along said western boundary line of Golf Course Greenbelt, Fairway Pines Estates Filing 4A-1 as shown by instrument recorded July 17, 1996, Reception 44193, Ouray County Records, containing 20.050 acres more or less.

3. Thence south 01'42'17" west along the east line of said tract 15, a distance of 210.00 ft.;

Thence south 00'54'51" east, a distance of 104.66 feet; Thence along the arc of a curve to the right having a central angle of 45°44'21", and a long chord which bears N59°59'56" E, a distance of 73.00 feet, a radius of 320.00 ft., an arc length of 47.28 ft., and a point of curvature; thence the following courses along said easterly boundary line of Golf Course Greenbelt, Fairway Pines Estates Filing 4A-1 as shown by instrument recorded July 17, 1996, Reception No. 176360, Ouray County Records, containing 3.840 acres more or less.

4. Thence south 00'54'51" east, a distance of 188.02 feet; recorded April 9, 1998, Reception No. 166607, Ouray County recorded October 23, 2000, Reception No. 173387, Ouray County Records,

5. Thence south 09'13'09" west, a distance of 224.72 feet; which bears N21°42'04" E, and a long chord which bears N34°50'45" E, and a long chord which bears N62°00'52" W, a distance of 245.85 ft.

6. Thence south 01'42'17" west along the east line of said tract 15, a distance of 210.00 ft.;

Thence south 00'54'51" east, a distance of 104.66 feet; Thence along the arc of a curve to the right having a central angle of 45°44'21", and a long chord which bears N59°59'56" E, a distance of 73.00 feet, a radius of 320.00 ft., an arc length of 47.28 ft., and a point of curvature; thence the following courses along said easterly boundary line of Golf Course Greenbelt, Fairway Pines Estates Filing 4A-1 as shown by instrument recorded July 17, 1996, Reception No. 176360, Ouray County Records, containing 3.840 acres more or less.

7. Thence south 00'54'51" east, a distance of 188.02 feet; recorded April 9, 1998, Reception No. 166607, Ouray County recorded October 23, 2000, Reception No. 173387, Ouray County Records,

8. Thence south 09'13'09" west, a distance of 224.72 feet; which bears N21°42'04" E, and a long chord which bears N34°50'45" E, and a long chord which bears N62°00'52" W, a distance of 245.85 ft.

9. Thence south 01'42'17" west along the east line of said tract 15, a distance of 210.00 ft.;

Thence south 00'54'51" east, a distance of 104.66 feet; Thence along the arc of a curve to the right having a central angle of 45°44'21", and a long chord which bears N59°59'56" E, a distance of 73.00 feet, a radius of 320.00 ft., an arc length of 47.28 ft., and a point of curvature; thence the following courses along said easterly boundary line of Golf Course Greenbelt, Fairway Pines Estates Filing 4A-1 as shown by instrument recorded July 17, 1996, Reception No. 176360, Ouray County Records, containing 3.840 acres more or less.

10. Thence south 00'54'51" east, a distance of 188.02 feet; recorded April 9, 1998, Reception No. 166607, Ouray County recorded October 23, 2000, Reception No. 173387, Ouray County Records,
EXHIBIT

- K -
Resolution Adopting the First Amendments to the Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements For Fairway Pines Estates

The Board of Directors of Fairway Pines Estates Owners Association finds and resolves that:

1. This First Amendment to the Second Restatement was prepared by the Association’s Covenants and Rules Committee and reviewed by the Board of Directors.
2. This restatement adds amendments adopted by the Association’s membership.
3. These First and this Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development, are transcribed and consolidated versions of the actual recorded documents listed in paragraph 1 of the Recitals and in Appendix A of the Covenants. While care was taken in the transcription process to eliminate errors, some discrepancies from the original documents may be present. In the event of any conflict between this Second Restatement and its original counterparts or in their legal effect, the original recorded documents shall control and should be referenced for certainty with regard to any specific provision or effect.
4. This First Amendment to the Second Restatement was adopted by the Association Board of Directors at a properly noticed meeting on September 12, 2016.
5. This First Amendment to the Second Restatement shall be recorded in the official records of Ouray County.

Signed by [Redacted]  Date 9-13-2016
First Amendment
To The
Second Restatement of the
Declaration of Covenants, Conditions, Restrictions and
Easements
For Fairway Pines Estates
A Planned Unit Development

Adopted by the Board of Directors on September 12, 2016

(Restates the original Declarations dated March 27, 1992, and all amendments, extensions, and
restatements up to and including amendments certified and recorded on September 13, 2016.)

NOTICE: The following is a transcribed and consolidated version of the actual, recorded
documents listed in Recital 1. While care was taken in the transcription process to minimize
errors, some discrepancies from the original documents may be present. In the event of any
conflict between these transcriptions and their original counterparts or in their legal effect, the
original recorded documents shall control and should be referenced for certainty with regard to
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RE bâtiments

1. Loghill Village investors, Ltd., a California limited partnership, on March 27, 1992, recorded the original Declaration of Covenants, Conditions, Restrictions and Easements (The Initial Declaration), including the legal description attached thereto, in Ouray County Colorado, at Reception No. 150511, which has been amended, extended, or restated as follows (collectively, “Declaration”):

   a. As amended by the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records, on September 11, 1992, Reception No. 151656;

   b. As extended to Phase II by the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates Phase II, recorded in the official records on July 17, 1996, at Reception No. 162227;

   c. As further amended by Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records on July 22, 1996, Reception No. 162268;

   d. As further amended by Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records on May 31, 2001, Reception No. 174891;

   e. As further amended by Certification of Amendment of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on July 22, 2008, Reception No. 198301;

   f. As further amended by Certification of Amendment of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on September 11, 2008, Reception No. 198637;

   g. As restated in the First Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, recorded in the official records on November 12, 2008, Reception No. 199474;

   h. As further amended by Certification of Amendment to the Declaration of Covenants, Conditions, Restriction and Easements of the Fairway Pines Subdivision, recorded in the official records on August 5, 2013, Reception No 210505.
i. As further amended by the Certification of Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on September 13, 2016, Reception No. 216942.

2. In addition to the Declaration, the following described plats of Fairway Pines have been duly executed and recorded (collectively, the “Plat”):

   a. Fairway Pines Estates PUD, Filing #1, Book 276C & 388, Page 18 all, Dated 7/7/92.
   e. Fairway Pines Estates, Filing 4A, Book 371, Page 0, 8/21/95.
   g. Fairway Pines Estates, Filing 5A, Book 371, Page 0, Dated 11/6/97.
   j. Fairway Pines Estates Village 1, 2, 3, 4, 5, & 6 (PDP), Book 371, Page -, Dated 7/7/98.
   k. Fairway Pines Estates Village 1A, Book 573, Page 8, Dated 1/19/01.
   m. The Estates at Fairway Pines (PDP), Book 574, Page 1, Dated 9/15/2000.
   o. The Divide Ranch and Club Filing #6, 7, 8, 9, 10, & 11 (PDP), Dated November 2006.

   Reviewed and deemed complete as of June 30, 2016 per Ouray Clerk and Recorder Records.

3. On October 22, 2007, an Assignment of Declarant Rights for Fairway Pines Estates was recorded in the official records at Reception No. 196324, wherein, effective June 12, 2006, all remaining rights of then Declarant under the Fairway Pines Declaration were transferred and assigned to Heritage Inn and Suites of Kansas City, Inc., a North Dakota Corporation and H.T. Heritage Inn of Erie, LLC, a North Dakota limited liability company (Assignees). Under the terms of the assignment, Assignees from the effective date shall be the “Declarant” under the Fairway Pines Declaration and assume all obligations of the Declarant under the Fairway Pines Declarations. Notwithstanding the foregoing, in this Assignment of Declarant Rights, Assignees disclaim and do not accept any obligations under any other document,
instrument or agreement that the Assignors may have assumed or entered into, be they oral or written, unless and until Assignees may, by written instrument, expressly agree to assume such obligation.

4. The documents reviewed in the course of preparing the First and Second Restatements of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines are listed in Appendix A, together with recording dates and reception numbers.

5. The Initial Declaration as amended or extended by the documents listed in Recital 1, and-as affected by the Assignment of Declarant Rights for Fairway Pines Estates identified in Recital 2, and as consolidated into the First Restatement of the Declaration is hereby amended to read as in the following “Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates.”

6. The foregoing documents as well as the following additional documents, as they may be amended from time to time, are collectively referred to as the “Community Documents.”

   a. Articles of Incorporation
   b. By-Laws
   c. Policies and Procedures
   d. Architectural Standards
ARTICLE I -- DEFINITIONS

Section 1. "Association" shall mean and refer to the Fairway Pines Estates Owners Association, Inc., a Colorado Nonprofit Corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, Cluster Lot, or Cluster Lot Unit which is a part of the Properties, including contract sellers, but excluding Declarant and those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Residence" shall mean and refer to a residential structure that has been built, or may be built, on a Lot or Cluster Lot in accordance with the Community Documents and those certain land use approvals granted for Fairway Pines by Ouray County.

Section 5. "Lot" shall mean and refer to any residential lot, Cluster Lot or Commercial plot of land shown upon the PUD map of the Properties whether or not all phases and filings have received final approval. The term Lot shall include the terms Cluster Lot and Cluster Lot Unit, unless otherwise intended by the context.

Section 6. “Declarant” shall mean and refer to Loghill Village Investors, Ltd., a California Limited Partnership, and its successors and assigns if such successors or assigns should acquire, in bulk, all of the then remaining subdivision inventory from Loghill Village Investors, Ltd. for the purpose of resale.

Note: This Section 6 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on September 11, 1992, at Reception No. 151656. The Declarant’s rights were assigned to the Heritage Inn and Suites of Kansas City, Inc., a North Dakota corporation, and H.T. Heritage Inn of Erie, LLC, a North Dakota limited liability company, effective
Section 7. "Board of Directors" or "Board" shall refer to the Board of Directors of the Association consisting of persons designated or elected as follows:

a. Until ninety percent (90%) of the lots have been sold or until December 31, 2005, whichever event occurs first, one member of the Board shall be designated by the Owners and the remainder shall be designated by the Declarant's General Partner. The member designated by the Owners shall serve a term of one (1) year and shall be permitted to serve consecutive additional terms only with the express assent of Declarant. The General Partner may prospectively waive the Declarant's right to designate Board members at any time in which event elections will be governed by the Association’s Articles of Incorporation and By-Laws.

b. After the expiration of Declarant's designation rights as specified in Part A of this Section 7, the members of the Board of Directors shall be elected in accordance with the Articles of Incorporation and By-Laws of the Association.

Section 8. "Subdivision" refers to the development project commonly known as Fairway Pines Estates as shown by the PUD filing and plat so titled. Declarant has reserved the right to develop, construct and market the project in multiple phases.

Section 9. "Commercial" means lawful business activities directed to consumer oriented activities and does not include activities commonly understood as industrial or manufacturing.

Section 10. "Cluster Lot" refers to those portions of the Fairway Pines Community which have been designated on the Plat as a Cluster Lot, which may be used, occupied and developed for multiple single family residences, each a Cluster Lot Unit, and common open space, under the governance of a Sub-Association of the Association with authority to adopt rules, regulations and assessments applicable only to a specific Cluster Lot and the Cluster Lot Units governed thereunder. The number of Cluster Lot Units that may be developed on the Cluster Lot is noted on the Plat.

Section 11. “Cluster Lot Units” (also referred to as cluster units) refers to the separate Residences that may be used, occupied and developed on a Cluster Lot either as attached or detached units. Each Cluster Lot Unit shall be formed as part of a Sub-Association and shall constitute a separate Residential unit, capable of sale, transfer, conveyance, use and occupancy by different owners. Each Cluster Lot Unit, whether built or able to be built in the future, shall: (a) be separately assessed and shall be responsible for the payment of all assessments, dues, fees,
restrictions as the same become due and payable, (b) shall be entitled to vote in Association matters, and (c) shall be deemed to be a member of the Association with all associated and accompanying rights and benefits, including proportionate rights in the ownership of the Common Areas.

Section 12. “Founders Golf Course Club Membership” shall mean a base level of membership in the Golf Club with those annual golf course playing and use privileges that existed as of the date of the adoption of these amendments. Golf course club facility use privileges include reasonable golf season access to first-floor amenities, and also include off-season availability to Founders Members use based on demand as determined by the Golf Course and Golf Club Owner. Founders golf course club members shall not be required to pay greens fees. The Golf Course and Golf Club Owner is Heritage Inn of Fairway Pines, a North Dakota LLC, and its successors and assigns.

Section 13. “Golf Club Membership” refers to a broad category of membership which shall include, but is not limited to, Founders Golf Course Club Membership. The Golf Course and Golf Club owner may establish other optional levels of golf course and golf club membership and define the playing and use privileges attached thereto.

ARTICLE II -- MEMBERSHIP AND VOTING RIGHTS

Section 1. Association Membership. Every Owner of a Lot or cluster unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting. Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Notwithstanding the foregoing, a Cluster Lot shall be entitled to as many votes as there are Cluster Lot Units allocated to the Cluster Lot in accordance with the Plat.

Section 3. Declarant's Rights. The Declarant is not an owner as defined in Article I Section 2; however, the Declarant is entitled to cast votes as Owner or member for each Lot owned by it in Phase 1 and Phase 2 of the subdivision (as shown in the overall Ouray County PUD application whether such lots are held for future development or as unsold inventory or otherwise) as may be herein expressly authorized and for all purposes of voting in Articles III and IV, except for elections to authorize Special Assessments for Capital Improvements within the meaning of Article III, Section 4.
Section 4. **Sub-Associations.** Each Cluster Lot shall have a Sub-Association subject to the approval of the Association. Each Sub-Association shall be distinctively named and shall be governed by the Cluster Lot Unit owners. The Sub-Association shall adopt By-Laws, rules and regulations as well as uniform assessments applicable only to that Cluster Lot containing such provisions as are apropos to the particular circumstances and conditions thereof including by way of illustration but not limited to joint sewer system maintenance, landscaping and joint driveway maintenance. The covenants, lien rights and remedies provided to the Association in Article III of this Declaration shall be likewise applicable to each Sub-Association. The Sub-Association shall hold title to the common area and joint facilities within the Cluster Lot.

**ARTICLE III -- COVENANT FOR ASSESSMENTS AND ESTABLISHMENT OF LIEN**

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed of a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments for capital improvements, (3) Founders Golf Course Club Membership dues, (4) domestic water assessments, (5) assessments for fines or penalties for violation of Association rules, policies, or procedures, and (6) special assessment for uninsurable unusual or uninsurable extraordinary golf course and golf club costs, such assessments and dues to be established and collected as hereinafter provided. These charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment and the dues, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. In the case of a Cluster Lot, each Owner of a Cluster Lot shall be responsible for the full and timely payment of all such assessments, dues and other payments required by this Section, which will be allocated and assessed in a manner that is equal to the number of Cluster Lot Units designated to the Cluster Lot on the Plat. The allocation of assessments shall not vary, be reduced or otherwise waived because the owner of the Cluster Lot has not yet constructed Cluster Lot Units on the Cluster Lot. The intent of the Association is that assessments, dues and other payments required by this Section shall be due and payable without regard to whether or not Cluster Lot Units have been constructed on the Cluster Lot.

Section 2. **Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively for its operating expenses and to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and
maintenance of the streets (unless such street responsibility is assumed by Ouray County), lighting and any parks, other services, property, open space and green belts owned by the Association. Annual assessments for these purposes attach separately to each residential Lot and separately to each Cluster Lot Unit within each plat-designated Cluster Lot.

Section 3. Maximum Annual Assessment. The maximum annual assessment updated to 2013 shall be three hundred forty-five dollars ($345) per Lot and three hundred forty-five dollars ($345) per each built or unbuilt Cluster Lot Unit.

(a) The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) The maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount less than the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association 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 or replacement of a capital improvement owned by the Association designated by the Board of Directors, providing that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Owners entitled to vote not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of Owners entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be at a uniform rate for all Lots and each built or unbuilt Cluster Lot Unit and may be collected on a
monthly or yearly basis; provided, however, that the Board may make non-uniform adjustments as it may determine in its sole discretion to be equitable and advisable regarding liability of cluster and commercial lots for assessments.

Section 7. **Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to each Lot and to each built or unbuilt Cluster Lot Unit on the first day of the month following the Owner’s acquisition of a Lot, Cluster Lot, or Cluster Lot Unit. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment for such Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments, dues and water charges on a specified Lot (or built or unbuilt Cluster Lot Unit) have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot or built or unbuilt Cluster Lot Unit is binding upon the Association as of the date of its issuance.

Section 8. **Founders Golf Course Club and Membership Dues.** In addition to Association Membership, all owners of residential lots and built or unbuilt Cluster Lot Units shall have a Founders Golf Course Club Membership. Founders Golf Course Club Membership shall be appurtenant to and may not be separated from such lot or unit ownership. Founders Golf Course Club Membership dues were set initially and cannot be increased except as provided herein. Founders Golf Course Club Membership dues are payable to the golf course and golf club owner or through the Association or such other billing service as may be designated from time to time; provided, however, that dues may not be increased, after the initial setting thereof, by a factor in excess of the percentage increase in the average annual CPI-U (rounded up to a one tenth of a percent) for the previous twelve months shown in the consumer price index for all urban consumers (CPI-U) of the U.S. Department of Labor’s Bureau of Labor Statistics (BLS) and shall be calculated as follows: (1) Determine the difference of the average annual CPI-U index for each of the two previous years as published by the BLS; (2) Convert to a percentage by dividing that difference by the lesser of the two annual CPI-U indices, multiplying times 100, and rounding up to one tenth of a percentage point maximum; (3) Multiply that percentage increase times the current year’s dues; and (4) Add that amount to the current year’s dues to determine next year’s dues. In the event there is no dues increase in any year, any future increase will be established as set forth above, and no consideration shall be given to any increase that could have been imposed but was not.
Founders Golf Course Club Memberships as herein set forth provide playing and use privileges as defined and established from time to time by the Golf Course and Golf Club owner and do not include any management or ownership rights. Founders Golf Course Club Membership dues are subject to all lien and collection procedure and remedies provided by this Declaration for assessments.

The Golf Course Owner may from time to time, in its sole discretion, offer other Golf Course Memberships aside from the Founders Golf Course Club Membership described in this Declaration for which other types, kinds, or levels of membership the Golf Course and Golf Club Owner may charge additional fees. If the Owner of any Residential Lot(s) or Cluster Lot Units elects to participate in one or more of the Golf Course and Golf Club Owner’s additional or different Golf Course Memberships, any additional fee charged by the Golf Course and Golf Club Owner above the amount charged for the Founders Golf Course Membership dues, described above, shall be the personal obligation of such Owner(s) only and shall not be subject to the lien and collection procedures or remedies provided in this Declaration for assessments.

However, nothing in this Declaration shall be construed to limit, restrict or in any way affect the legal rights of the Owners or the Golf Course and Golf Club Owner in connection with such Golf Course Memberships, or the payment of the fees associated therewith.

In addition, the Board is empowered to levy a special assessment on Owners of up to 10% of the annual Founders Golf Course Club Membership dues to cover uninsurable unusual or uninsurable extraordinary costs caused by events of nature. Such special assessment may be levied only upon request by the Golf Course and Golf Club Owner. The amount of the assessment will be based on the concept that both the Owner and the Golf Course and Golf Club Owner will share in the cost of any such event. There shall not be any more than one such assessment in any calendar year, and any such assessment shall not extend into the next year.

Section 9. Domestic Water Assessment. In addition to Association membership and Founders Golf Course Club Membership as herein provided, all owners of lots, or built or unbuilt Cluster Lot Units shall pay through the Association, or such other billing service as may be designated from time to time, domestic water consumption charges as an assessment. The entity providing domestic water shall set such charges from time to time in accordance with its duly established policies. These charges are subject to all lien and collection procedures and remedies provided by this Declaration for assessments.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate set by the board consistent with law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the
property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Association property or services or by abandonment of his Lot or built or unbuilt Cluster Lot Unit. Public notice of the lien shall be given in the event of a delinquency in the payment of any assessment by the recording by the Board of a Notice of Assessment Lien specifying the delinquency, the owner, and the property to which the lien is applicable. In the event of foreclosure, the procedure applicable to judicial foreclosure of Deeds of Trust in Colorado shall be employed. A notice of release of a lien shall be provided to the owner when all assessments, costs and charges secured by the lien have been fully paid or satisfied.

Section 11. Subordination of the Lien to Mortgagee. The lien of the assessment provided for herein shall be subordinate to the lien of any first Deed of Trust or mortgage. Sale or transfer of any Lot or Cluster Lot Unit shall not affect the assessment lien. However, the sales or transfer of any Lot or Cluster Lot Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Homestead Waiver. Each Owner hereby agrees that the Association's lien on a Lot or built or unbuilt Cluster Lot Unit for assessments shall be superior to the homestead exemption provided by Colorado law as amended from time to time and each Owner hereby agrees that the acceptance of the deed conveying the Owner's property within the subdivision to him shall signify the Owner's waiver of the homestead right granted by said Colorado law.

ARTICLE IV -- ARCHITECTURAL CONTROL

Section 1. Approval. No building, fence or other structure or improvement of any kind including home identification devices, shall be commenced, erected or maintained upon the Properties, nor shall any exterior repair, replacement, addition to or change or alteration, therein be made until detailed and legible plans and specifications showing the nature, kind, color, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, and topography and finish grade elevation by the Board of Directors of the Association, or by an Architectural Review Committee (hereafter referred to as the Committee) designated as hereafter provided. Evidence of submission of such materials shall be issued by said Board or Committee showing the date of such submission. In the event said Board, or its designated committee, fails to approve or request additional information or disapprove with recommendations or disapprove entirely such design and location within sixty (60) days in writing after said plans and specifications have been submitted to it, approval will not be required and this Article will be
deemed to have been fully complied with. Approval of such plans and specifications shall not be arbitrarily or unreasonably withheld. So long as an Architectural Review Committee is appointed, the Board of Directors shall refer all requests for approval to the Committee. A reasonable fee may be charged to any Lot Owner for each plan review. Owners, the Association and Sub-Associations must comply with all applicable governmental regulations including but not limited to §6.11 open space requirements and to the visual impact regulations being §9 respectively of the Ouray County Land Use Code as amended from time to time. [Note: The only area affected by the visual impact regulations in the form in effect as of the date of recording this Declaration consists of Lots along County Road 1.]

Section 2. Lot Owner Consent. Neither the Architectural Review Committee, the Board of Directors nor Declarant nor their respective successors or assigns shall be liable in damages to anyone submitting plans and specifications for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other person who submits plans for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the approving body or Declarant to recover any such damages. Approval of plans and specifications shall not be deemed to constitute compliance with the requirements of any local building codes or land use regulations and it shall be the responsibility of the Owner or other person submitting plans and specifications to comply therewith.

Section 3. Standards and Specifications. The Board of Directors shall promulgate architectural standards and specifications and revisions thereto. The current standards and specifications shall be published in their entirety on the Association’s website. Such standards and specifications shall be reviewed by the Committee and subject to amendment by the Board of Directors at least every two years, and shall govern all structures, improvements, commercial signs and home identification devices proposed for any Lot.

Section 4. Financial Responsibility. The Committee or the Board of Directors may, as a condition of approval of any construction on any Lot or Cluster Lot, require proof of the applicant's financial ability to pay for the entire cost of the proposed work, subject to Board-adopted policies and procedures.

Section 5. View Restriction, Screening, and Visual Impacts. No vegetation or other obstruction shall be planted upon any lot in such location or of such height as to unreasonably obstruct the view from any other lot in the vicinity thereof. In the event of a dispute among owners as to the obstruction of a view from a lot, such dispute shall be submitted to the Board whose decision in such matters shall be binding. The Board may refer the matter to the
Committee. Any such obstruction shall, upon request of the Board or the Committee, be removed or otherwise altered to the satisfaction thereof by the owner of the lot upon which the obstruction is located. Each owner shall be responsible for periodic trimming and pruning of all hedges, shrubs and trees located on his lot so that they do not grow in a manner as to unreasonably obstruct the view of adjacent owners or street traffic.

In reviewing applications, the Committee may require the planting of screening vegetation to reasonably soften the visual impact of the structure or improvement from the golf course or roads.

Section 6. Committee Membership. If the Board elects to appoint an Architectural Review Committee it shall designate three or more persons to so act. The Board shall adopt policies and procedures for establishing qualifications for Committee membership, appointing members, and setting terms of membership. Members of the Committee may be removed by the Board at any time without cause.

Section 7. Committee Inspection. The Committee shall inspect construction in progress to assure its conformance with plans approved by the Committee.

Section 8. Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may, from time to time by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to act as project liaison, to inspect for compliance with the project approval, and to approve minor project changes. In the absence of such designation, the vote of a majority of the Committee, or the written or email consent of a majority of the Committee taken without a meeting, shall constitute an act of the Committee.

The Committee may meet by remote meetings or email, but the Committee shall maintain a record of such meetings, including documentation of any decisions made.

Section 9. No waiver of Future Approvals. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 10. Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them for
the performance of their duties hereunder. A Committee representative, however, may be paid as a consultant to the Committee.

Section 11. Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

a. The Committee or its representative may at any time inspect any improvement for which approval of plans is required under this Declaration; provided, however, that the Committee's right of inspection of improvements for which plans have been submitted and approved shall terminate sixty (60) days after such work of improvement shall have been completed and the respective owner shall have given written notice to the Committee of such completion. The Committee’s rights of inspection shall not terminate pursuant to this paragraph in the event that plans for the work of improvement have not previously been submitted to and approved by the Committee. If, as a result of such inspection, the Committee finds that such improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Committee, it shall notify the owner in writing of failure to comply, specifying the particulars of noncompliance. The Committee shall have the authority to require the owner to take such action as may be necessary to remedy the noncompliance.

b. If upon the expiration of sixty (60) days from the date of such notification the owner shall have failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. Upon notice and hearing, as provided in the By-Laws, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing, the same. If a noncompliance exists, the owner shall remedy or remove the same within a period of not more than forty five (45) days from the date that notice of the Board ruling is given to the owner. If the owner does not comply with the Board ruling within such period, the Board, at its option, may record a notice of noncompliance in the office of the Ouray County Clerk and Recorder and may thereafter peacefully remove the non-complying improvement or otherwise peacefully remedy the noncompliance, and the owner shall reimburse the Association, upon demand, for all expenses, including reasonable attorney's fees, incurred in connection therewith. If such removal or remedy may not peacefully be accomplished, the Board may take such legal action as may be required to accomplish the acts herein authorized. If expenses are not promptly repaid by the owner to the Association or, in any event, if the Board is required to take Court action, the Board shall levy an assessment against such owner for reimbursement as authorized in this Declaration for other assessments. The Board shall have all remedies and rights in such proceedings as are otherwise granted to it in this Declaration.
ARTICLE V -- RESTRICTIONS

Section 1. Dwelling Quality and Size. All structures must be of a permanent nature constructed on site affixed to a permanent foundation. No trailer house or mobile home shall be set upon any Lot within said Subdivision.

All dwellings must be of workmanlike quality using new Committee-approved materials and shall be completely finished before occupancy. Completion must normally occur within one (1) year of issuance of a building permit. Construction shall commence within twelve (12) months of the date of an approval of final plans by the Committee. Completion of construction occurs with the issuance of a Certificate of Occupancy by the County. Where the County issues a six (6) month extension of the one-year County building permit, the one-year completion requirement of this Section is also extended upon notification of the Committee of the County extension. A second six (6) month extension of the one-year requirement of this Section may also be granted by the Committee, if the County issues a second six (6) month extension of the building permit and the Committee makes its own determination that there has been continuous diligent pursuit of completion of the dwelling, unless any delays in construction are established by the Committee to have been caused by unusual weather or unexpected delays in the delivery of construction materials or “an act of God”.

Each residence structure shall contain at least 2000 square feet of living space, of which not less than 1,250 square feet shall be the above ground, ground level main floor; provided, however, that a minimum square footage of 1,600 will be permitted within the core area, as designated by the Planned Unit Development (PUD) Amendment approved by the County in 1998, and a minimum square footage of 1,250 will be permitted on Cluster Lot Units on a Cluster Lot anywhere, including any Lot in the core area, and that no minimum square footage is applicable to commercial Lots. The Board may set a maximum building footprint in the Architectural Standards, provided however that the Committee may consider a variance allowing a larger footprint upon finding that the proposed project would have less visual impact. Square footage is to be determined by exterior wall measurement.

No barn yard, security or yard lights will be allowed to burn from 11:00 PM to 6:00 AM on residential and Cluster Lots or Cluster Lot Units unless approved by the Board of Directors or its Architectural Review Committee. Additionally, all exterior lighting shall comply with Ouray County’s dark-sky ordinance. No roof material or building materials that reflect light shall be employed on any structure. Solar panels shall be installed to minimize annoying reflections on neighboring lots consistent with state and federal laws.
Section 2. Signs.

a. Except for activities of Declarant, no signs, advertisements, billboards or advertising structures of any kind or character may be erected or maintained upon any Residential or Cluster Lot or Cluster Lot Unit including those for the sole purpose of advertising the sale or lease of a property. The Committee will seek to work with the Declarant to select a pleasant appearing scheme for the Declarant’s signage. Signage for commercial Lots shall be as permitted by the Committee. Notwithstanding the foregoing, the Board or its Committee may approve and authorize home identification devices and signage for street identification, public directions, rules enforcement and golf course and open space usage.

b. Consistent with state and federal laws, the Association may adopt reasonable rules and regulations regarding the size, location, and manner of display of the American and Colorado flags, service flags, or political signage.

c. Further, notwithstanding paragraph a, the Board of Directors, in its discretion, may provide to homeowners, whose houses are up for sale, tasteful appearing designators with symbols indicating a house is for sale and with attached boxes for holding for-sale flyers with information on the house and with attachment devices for affixing the designator and box to an address monument. The designator with box shall be limited in size to a maximum facing size of eight and one half (8-1/2) by eleven (11) inches. The Board of Directors may, in its discretion, authorize the use of, or provide, tasteful "Open House" signs of a predetermined size or sizes for use by homeowners and to set the term and conditions of the use of such signs, including, but not limited to, when they can be used and where they can be placed. The Board of Directors may set a reasonable charge for the rental or purchase of signs provided by the Board, to compensate for the cost of providing such signs.

Also, the Board, in its discretion, may exclude, or limit the placement of "For Sale" and "Open House" signs on Fairway Pines Common Areas (areas available for use by multiple owners, e.g. entrance areas and greenbelt areas), including at the entrances to the Subdivision. The Board may, in its discretion, provide or specify a tasteful generic "For Sale" sign, and, for use at appropriate times, a separate or combined tasteful generic "Open House" sign. The generic "For Sale" sign would be applicable to all houses and lots for resale, in Fairway Pines and would include information on the houses and lots for resale and where they are located by address, such as with slide-in panels, and/or with a brochure or information box, and/or directions where to get information on houses and lots for sale.

The Board of Directors may also enter into an agreement with Log Hill Village and other subdivisions for the use of similar common "For Sale" and "Open House" signs on, or partially
on, Fairway Pines common properties. The Board of Directors, in its discretion, may also erect or authorize the erection of tasteful governementally-related signs on Fairway Pines' Common Areas.

The Association may remove any unauthorized signs from lots and Common Areas and take such other action as is necessary to have such signs removed or prevent their use.

Section 3. Commercial Activity Prohibited. Except for sales offices and activities of Declarant related to the property, no business or commercial uses may be made on the premises of any residential Lot, provided, however, that permission to operate home businesses such as are generally defined as "cottage industries" exemplified by sewing goods, Tupperware sales, craft objects, carvings, stained glass, photography, paintings and woodworking may be granted upon request by the Board of Directors upon an express finding that such home business activity will not interfere with the peace and quiet of the neighborhood, increase traffic or create a safety hazard.

These covenants shall preclude use of residential Lots or Cluster Lot Units as a base of operations for businesses that store vehicles, inventories or goods outside of the residence. Examples of businesses that might fall in this category are contractors who store vehicles or supplies for future use such as building contractors storing commercial trailers, vehicles, equipment, scaffolding, ladders, lumber, sheetrock, etc., and other goods which would create visual intrusion on the neighborhood.

Section 4. Setback. On residential lots, no permanent structure of any kind except fences, shall be placed within twenty five (25) feet of boundary line adjacent to golf course property and twenty five (25) feet from Subdivision roadways nor within fifteen (15) feet of other boundary lines. Any reductions to setbacks for residential lots are major variances governed by policies and procedures established by the Board. Notwithstanding the setback designations herein specified, the Board or Committee may, at the time of initial plan review, impose greater setback requirements in the event of circumstances unique to individual situations if required for safety or aesthetic or other reasons. Commercial lot and Cluster Lot or Cluster Lot Unit setback requirements shall be established by the Board or Committee on a case by case basis. Driveways shall be easily accessible by emergency equipment.

Section 5. Use.

a. Residential. Each Residence constructed on a Residential Lot or Cluster Lot Unit shall be used for one single family private dwelling only per Lot, designed for the occupancy of and by one family except that maid's quarters or separate living quarters occupied only by a domestic
help or care provider or persons related to the owner may be constructed upon approval by the Committee. Family members include domestic help, caregivers, and significant others as well as persons related to one another by bonds of blood or legal ties. In no event shall a residence be occupied by more individuals than permitted by applicable law, zoning, or other local government regulations. The Owner may also construct one garage attached to or within fifteen (15) feet of the residence, provided said garage is constructed of suitable material and design so as to be aesthetically compatible with the dwelling and approved by the Board of Directors or Architectural Review Committee.

b. Commercial. Lots designated on the PUD recorded plat and filings as "commercial" shall be used and occupied only for commercial purposes as above defined. The commercial Lots specified and the plat are subject to Declarant’s right to substitute other or additional commercial lots as may be permitted within the PUD process. All provisions of this Declaration are applicable to the commercial Lots except that the covenants (Article V §3 and §5) limiting the use of Lots to residential occupancy are not applicable to commercial Lots; furthermore, signage is governed by the Board of Directors or the Committee and are not absolutely prohibited on commercial Lots. In all other respects, the Owners of commercial Lots are subject to the terms and conditions of this Declaration, membership in the Association and obligation for assessments and assessment liens as herein provided.

c. Cluster Lots. The Cluster Lots of the subdivision and the number of Cluster Lot Units allocated and capable of development on each Cluster Lot is as indicated on the Plat. The Cluster Lots specified and the plat are subject to Declarant’s right to substitute other or additional Cluster Lots as may be permitted within the PUD process. All the provisions of this Declaration are applicable to Cluster Lots and the individual Cluster Lot Units authorized to be used and developed therein and, in addition, the following further covenants, conditions and restrictions apply exclusively to Cluster Lots and Cluster Lot Units; namely:

(i) The individual dwellings within each Cluster Lot shall be designated and referred to as Cluster Lot Units within the Cluster Lot so that dwellings thereon will be described for purposes of legal descriptions as "Cluster Lot ___, Cluster Lot Unit ___, Fairway Pines Estates per the Subordinate Association Declaration and the Subordinate Association Map". No part of a Cluster Lot or a Cluster Lot Unit therein may be further partitioned between or among the Owners thereof.

(ii) The Declarant or its successor in title to the Cluster Lot shall file for record either separately or as a part of the PUD plat a map for each Cluster Lot specifying the location thereof and the approximate location, the designation and linear dimensions of each Cluster Lot Unit therein as well as driveways and any shared sewage disposal systems. The map shall contain a certification
that it fully and accurately depicts the layout, measurements and location of the proposed buildings and improvements, the Cluster Lot Unit designations and the dimensions of each Cluster Lot Unit; however, the Declarant hereby reserves unto itself and its successor in title to the Cluster Lot the right, from time to time, without the consent of any unit Owner being required, to amend the map and any supplements thereto, to conform them to the actual location of any of the constructed improvements, to establish, except with reference to the golf course and its use, easements, drainage, and encroachments, to vacate and relocate easements, driveways and joint property. The actual location of a Cluster Lot Unit shall be deemed conclusively to be the property intended to be occupied by the dwelling thereon situate and conveyed to the Owner thereof notwithstanding any minor deviations from the location thereof indicated on said map.

(iii) After the approval by the Board of County Commissioners of Ouray County of the subordinate association map aforesaid of the Cluster Lot, and the recording of such subordinate association and subordinate association declaration as approved, the Owner of the Cluster Lot shall be entitled to sell the individual Cluster Lot Units within the Cluster Lot to individual Owners and to transfer title by deed to the Cluster Lot Units; likewise, the property not encompassed within the Cluster Lot Units for dwelling purposes shall be conveyed to the applicable Sub-Association for administration as common area as herein provided.

(iv) Each built or unbuilt Cluster Lot Unit shall be deemed to be a separate parcel and shall be subject to separate assessment and taxation by the Ouray County Assessor and each assessing unit and special district represented by the Assessor's office including ad valorem levies and lawful special, assessments. The lien for taxes assessed to any Cluster Lot Unit shall be confined to such Cluster Lot Unit. In the event, that such taxes or assessments attributable to property owned by the Sub-Association for any year are not separately assessed as herein contemplated but rather are assessed on the Cluster Lot as a whole, then each Owner and the Association shall pay his proportionate share thereof, and, in said event such taxes or assessments shall be a common expense of the Sub-Association.

(v) Each Owner of a Cluster Lot Unit within a Cluster Lot may use the property of the Sub-Assocation in accordance with the purpose for which the property is intended, without hindering or encroaching upon the lawful rights of the other Owners. Such use may be to the exclusion of the other Owners within the subdivision who do not own a Cluster Lot Unit within a Cluster Lot. The Sub-Association may from time to time adopt rules and regulations governing the use of the property of the Sub-Association so long as they are uniform and non-discriminatory among the persons entitled to use such property.

(vi) Two or more Cluster Lot Units within each Cluster Lot may be served by a single engineered on-site sewage disposal system, subject to applicable County and State regulations as well as the
provisions of this Declaration. The repair, maintenance and upkeep of these systems shall be the joint responsibility of the Owners of the Cluster Lot Units within the Cluster Lot served by such system. In the event the Sub-Association is unable to manage or administer shared on-site sewage disposal systems because of a deadlock of the Owners of Cluster Lot Units within the Cluster Lot, the Association may take jurisdiction and make the decisions necessary to administer such systems and impose the necessary assessment for such repairs, maintenance or upkeep.

(vii) In addition to its pro rata share of Cluster Lot assessments levied by the applicable Sub-Association, the owner of each built or unbuilt Cluster Lot Unit will be assessed by the Sub-Association the assessments and dues contemplated by Article III §1, which assessments are to be assessed by the Association to each Cluster Lot Unit at such time that a Cluster Lot has been platted and the right to develop each Cluster Lot Unit was established.

(viii) The timing for imposition of Association assessments for Cluster Lot Units is the same as for other Lots, whether or not a Residence has been constructed on the Lot, notwithstanding any determination by Ouray County as to when County property taxes may be assessed and levied on Cluster Lot Units.

Section 6. Livestock and Pets. No agricultural activity shall be undertaken for any business or commercial purpose and no animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot in the Subdivision for business or commercial purposes except for a pet store on a commercial Lot. Homeowners may keep, not to exceed three (3), generally recognized house or yard pets provided they are appropriately fenced, leashed or otherwise kept within the Owner’s control both on and off the Owner's Lot. “Owner’s control” shall be as defined in Ouray County’s pet control ordinance. Except for bird feeders, owners and their guests shall not provide feed and/or water to wildlife except such as is naturally available within the subdivision. The Board may establish additional policies or rules relating to the control of pets.

Section 7. Certain Permanent and Temporary Structures. No permanent or temporary structure, including tent, shack, basement, trailer, barn, garage, outbuilding or the like, or any building, or structure may be constructed or used on any part of the Subdivision, unless in accordance with other provisions of these Covenants and approved by the Architectural Control Committee.

Section 8. Fences. All fences must be approved by the Board of Directors or the Committee and all fences must be maintained in good repair.
Section 9. Repairs. Any building or improvement which has been damaged by fire or other casualty causing the same to be unsightly shall be repaired or removed within four (4) months from the date of such casualty. An extension may be granted upon application to the Board of Directors. All structures, buildings and improvements erected on Lots within the Subdivision shall at all times be kept in good repair and attractive.

Section 10. Abandoned Inoperable or Dilapidated Vehicles, Commercial Vehicles, Machinery and Equipment, Vehicle Screening and Parking, Garage Doors.

a. Abandoned, Inoperable or Dilapidated Vehicles. Except for golf course owned lots or lots related to golf course operations, no motor vehicle shall be constructed, reconstructed, or repaired on any Lot except for emergency repairs which do not take more than seventy-two (72) hours or except inside a garage or other approved structure. No abandoned, dilapidated, or inoperable vehicles shall be permitted on any Lot. A vehicle shall be considered abandoned, dilapidated, or inoperable if it remains non-operative for a period of thirty (30) days or if its physical appearance suggests it is incapable of operating. In such instance the Association shall send a letter requiring removal of the vehicle within thirty (30) days from the receipt of the letter and if the Owner does not comply within that period of time the Association may have the vehicle towed away at the violator's expense.

b. Parking. Overnight parking of vehicles on the roads and streets within the Subdivision is prohibited, except as may be approved by the Board of Directors of the Association. Further, on and adjacent to Residential Lots, Cluster Lots and Cluster Lot Units, other than automobiles and pickup trucks, all vehicles including but not limited to recreational vehicles, cycles, campers, motor homes, horse trailers, utility trailers, watercraft, and snowmobiles, shall be parked in a garage or screened from view from streets, roads, golf course and neighboring property by approved structures, natural vegetation or terrain in a manner previously approved by the Committee or Board of Directors.

Temporary parking of such vehicles not to exceed seventy-two (72) hours is permitted for the specific purpose of loading, unloading, or cleaning.

No vehicle shall be stored or parked for any period of time on an unimproved lot or the unsurfaced portion of an improved lot.

c. Commercial Vehicles. Except for automobiles and pickup trucks with no more than two rear wheels, no commercial vehicle used for business shall be parked on any property unless the vehicle is parked within a fully enclosed garage. The Board may by rule define what is “commercial vehicle.” Specifically exempt from this requirement are:
i. Trucks of any size or configuration that are parked on a property for use related to an open construction permit.

ii. Service company vehicles present for home or vehicle repairs.

iii. Pickup trucks and vans used for business purposes and designated by the manufacturer as full size, mid-size or compact, that do not have dual rear wheels, regardless of other body configuration or permanently affixed advertising.

iv. A commercially licensed pickup truck of any size, equipped with a standard pickup bed, and used as a private vehicle not for business purposes. A private use pickup truck may have dual wheels as required for recreational uses.

v. Vehicles used in the maintenance, operations, or improvement of the golf course.

d. Commercial Trailers. No utility or box type trailer, commonly used by but not limited to the construction industry, either open at the top or fully enclosed, is to be stored on a residential lot, with the exception of an active construction site.

e. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any lot except such as is usual or customary in connection with the use, maintenance or repair of a residential or commercial property. For example, nothing larger than a residential type lawn and garden tractor.

f. Motor Homes, RVs, and Campers. Motor homes, recreational vehicles and campers may be hooked-up to an owner's water or sewer system and they may be occupied by owner’s guests on a temporary basis and in any event for not more than ten (10) days in any calendar month.

g. Garage Doors. All residential garage doors shall be kept closed at all times, with the exception of those times a vehicle is actually entering or exiting the garage. The door may remain open for periodic maintenance of the door or garage area.

Section 11. Burning and Trash Disposal. Trash, slash, or garbage shall not be permitted to accumulate upon any Lot except in properly covered containers which shall be emptied on a regular basis to avoid overflow and unreasonable odors or conditions resulting therefrom. Solid waste disposal is the responsibility of the individual homeowner or occupant. The Association may contract with a trash removal service within the Subdivision; however, the expense for such service will be the responsibility of each Owner who elects to participate in the service.
Open burning of trash shall not be permitted. This covenant shall not be construed to prohibit fireplaces or barbecue pits or open cooking on Lots, provided fireplaces or fire pits are properly screened to arrest sparks. Use of coal as a heat source in fireplaces, furnaces and stoves is prohibited. The Board may impose greater restrictions as necessary for fire safety. Emergency burn bans issued by the Board or a relevant government agency shall be obeyed.

Section 12. Weed Control. Weeds must be cut often enough so as to not permit land within the Subdivision to become unsightly or a fire hazard due to the overgrowth of weeds. If such weed control is not exercised by an Owner, the Association will have the right to have the weeds mowed and assess the Owner for the expense of same with the Association having all the rights and remedies provided by Article III Section 10 above. (See §24 of this Article V). Noxious weeds as identified by Ouray County must be removed.

Section 13. Off Road Vehicles Prohibited or Limited.

a. Except for construction equipment, golf course maintenance equipment, and golf carts, only "street legal" vehicles may be operated within the Subdivision and on the Lots and roads thereof; provided, however, that prohibited vehicles may be operated for purposes of loading and unloading.

b. Golf carts are prohibited on all streets or roads within the Subdivision, unless authorized by the Board of Directors and unless the use of golf carts is in accordance with such regulations as may be set by the Board and is in accordance with governmental laws and regulations applicable to the Subdivision. The Board may institute appropriate actions to enforce the prohibition and any regulations on usage, where permitted, including withdrawal of any usage rights authorized by the Board. To the extent that the Board of Directors does not authorize golf carts of homeowners to use the roads and streets in the Subdivision and/or the County does not permit such use, homeowners who own golf carts as of December 3, 2000, may have access directly from their property to the golf course.

Section 14. Mining and Drilling Activities Prohibited. Any use of the surface of any Lot within the Subdivision for water, oil, gas, mineral, geothermal or oil shale exploration, development, mining or drilling activities of any kind whatsoever is expressly and absolutely prohibited.

Section 15. Offensive Activity, Outside Storage. No noxious or offensive activity, sounds, lights, or odors shall be permitted or carried on at any Lot nor shall anything be done or placed therein which may be unsightly, or may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to other Owners in the enjoyment of their Lots or in
the property of the Association or in the use of the golf course. Firearms shall not be discharged within the Subdivision.

Except for Lots subject to an open construction permit, there shall be no outside storage or piles of equipment, building supplies, or other materials that would visually intrude on the neighborhood.

Section 16. Antenna Limitations. No outside television or radio antenna or satellite dish or other communication relay or transmitting or receiving device shall be erected, installed or maintained on any residential Lot, or structures thereon, or commercial Lot, or structure thereon, or on any area or structure in the Subdivision for the purpose of serving the Subdivision or any other area, unless the antenna or satellite dish or other communication device is approved by the Committee or authorized by the Architectural Standards. The Committee may not withhold the approval of such devices located on or adjacent to a structure on a residential or commercial Lot, or impose requirements as to the use of such devices in such a way as to interfere with reception. The Committee may make reasonable requirements as to the size, normally not to exceed twenty (20) inches in any direction, and as to the nature and location of such antenna or satellite dish or other communication device, to assure compatibility of the architectural style of the dwelling and its surroundings.

Section 17. Energy Conservation Devices, Solar Panels, Clothes Dryers. No exterior clothes dryer shall be erected, installed or maintained on any Lot, or on any structure thereon, except as authorized by state or federal law. While state and federal laws impose some limits on the ability of property owner associations to regulate energy conservation devices, the installation of solar panels and other energy conservation devices is subject to the review and approval of the Committee.

Section 18. Utility Lines Underground. Electric, telephone, television, radio and other utility lines shall be placed underground when extended from the street or Lot line to any structure on a Lot. Trenching shall avoid damage to trees and plants and all trenches shall be fully compacted and shall contain not less than four (4) inches of indigenous topsoil placed in the top of the trench to the end that the prior natural state of the area trenched is replicated.

Section 19. Sound Devices Prohibited. No exterior horns whistles, bells or other sound devices except security devices used exclusively to protect the security of dwellings and other improvements located on the Lot or essential to the function of community services shall be placed or used on any Lot or elsewhere in the Subdivision. This section shall not apply to entertainment systems, so long as they are not operated in an offensive manner described in Section 15, above.
Section 20. Preservation of the Natural Character of the Subdivision, Tree Removal.

Except for fire hazards, maintaining or improving plant health and vigor or for removal of insect or disease affected vegetation, for approved driveways, for construction of approved structures and for golf course construction, no indigenous trees or perennial bushes may be cut or removed, no action affecting drainage direction or affecting other property and no grading of the land surface shall be done within the Subdivision except upon variance as hereafter authorized. (See Article VI §6).

Application for such variance shall be accompanied by such drawings, plans or photographs as may be reasonably required by the Committee or the Board to show the nature of the proposed cutting, removal or grading. It is desirable to preserve the natural character of the area and therefore to limit cutting, removal and grading to that which is necessary to the reasonable use and enjoyment of the property within the Subdivision. Approval of applications for variances within the contemplation of this section may be conditioned upon installation of appropriate drainage facilities to be installed at the applicant's expense.

Section 21. Water Wells, Domestic Water. Water wells and cisterns are prohibited on any lot. Domestic water for use on all lots must be obtained from the pipeline system installed by the developer.

Section 22. House Numbers. The design and display of house numbers shall be regulated by the Committee and shall be posted by the owner so as to be readily visible from the street.

Section 23. Sewage Disposal. No sewage collection system or sewage disposal shall be installed or used on any Lot unless and until such system is designed, constructed and located in conformity with the then existing standards, regulations and criteria employed by the Ouray County Sanitarian acting under the direction and within the regulations of the State of Colorado. No construction of any such system shall be undertaken until the plans, specifications and design therefor have received such approval and no such system shall be placed in use until the completed construction has received final governmental approval.

Section 24. Insurance Rates. Nothing shall be done or kept in the properties which will increase the rate of insurance on any Association property without the approval of the Board or the Committee, nor shall anything be done or kept in the properties which would result in the cancellation of insurance on any Association property or which would be in violation of any law.
Section 25. **No Further Subdivision.** No Lot may be further subdivided nor may any easement or other interest therein less than the whole be conveyed by the owner thereof without the approval of the Board of Directors.

Section 26. **Association Remedies.** In the event any owner fails to comply with any affirmative duty imposed on owners by or under the authority of this Declaration, the Association may perform such after fifteen (15) days’ prior written notice to the owner and charge the owner with the expense thereof. The Association shall have the right to enter the owner's lot for this purpose unless there exists an emergency, there shall be no entry into a building without the consent of the owner. In the event the Association is required under the terms of this section to perform a duty of the owner, the cost thereof including reasonable attorney's fees, shall constitute an assessment payable by the offending owner which cost shall create a lien enforceable in the manner set forth in Article III § 10 above. Additionally, the Association may impose other sanctions, including fines, as authorized by article VI, Section 5.

Section 27. **Declarant's Rights.** Nothing in this Declaration shall be construed to limit or interfere with the Declarant's development of the property, construction of the golf course and amenities or the construction of utilities or other facilities contemplated by the PUD plan.

**ARTICLE VI -- GENERAL PROVISIONS**

Section 1. **Enforcement.** The Declarant, the Association, a Sub-Association, or any Owner, or the Board of County Commissioners of Ouray County, Colorado, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and shall recover reasonable attorney's fees and costs for doing so. Such right of enforcement includes but is not limited to actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration or the rules, regulations and compliance sanctions adopted pursuant to §5 of this Article VI or the standards and specifications adopted pursuant to §3 of Article IV above. Failure by the Declarant, the Association, the County or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or abandonment of the right to do so thereafter.

Section 2. **Severability.** Invalidation of any one of these covenants or restrictions by Judgment or Court Order shall in no way effect any other provisions which shall remain in full force and effect.

Section 3. **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded,
after which time they shall be automatically extended for successive periods of twenty-five (25) years. This Declaration may be amended by the affirmative vote or agreement of owners to whom at least fifty-one percent (51%) of the votes in the Association are allocated. Any amendment must be recorded. For purposes of this section, Declarant and its assigns and successors are considered Owners as to Lots held by Declarant, whether for development, investment or resale.

**Section 4. Annexation.** Additional property may be annexed to the Properties by Declarant or its successor or assignee.

**Section 5. Rules, Regulations and Compliance Sanctions.**

a. The Board of Directors shall have authority to adopt reasonable rules and regulations for the purposes of insuring compliance with this Declaration and interpreting any of the provisions hereof as well as governing use of the property of the Association.

b. Rules and regulations governing Founders Golf Course Club Memberships and use of facilities as promulgated by the Golf Course and Golf Club Owner and as amended from time to time have the same force and effect as those adopted by the Board and are likewise enforceable in accordance with the sanctions and procedures of this Declaration.

c. The Board of Directors shall also have the right to suspend the voting rights of any Owner who is delinquent in payment of assessments or for infraction of such rules and regulations. Compliance sanctions may also include the imposition of fines to penalize infractions of such rules and regulations.

**Section 6. Variances.** The Board of Directors or its Architectural Review Committee if appointed as herein authorized shall have the authority to grant variances from the terms and conditions contained in Article V hereof so long as such variances do not result in conditions which are inconsistent with the general concept, harmony and values within the Subdivision.

**Section 7. Association Property and Management.** Declarant shall convey to the Association the property shown on the PUD plat other than the Lots, golf course and other private property therein designated. Such conveyance shall take place not later than six (6) months after the date the first Lot is conveyed to an Owner. At the time of the conveyance, the Association property shall be free of any mortgages, judgment liens or similar liens or encumbrances. The Association shall hold such property subject to the right of the Declarant, its successors and assigns, to lay, install, construct and maintain utilities and other improvements in the areas designated therefor on the plat. The property conveyed to the Association shall be held
by it for the use, benefit and enjoyment, in common, of each Owner. Each Owner, in common with all other Owners, shall have the right and privilege to use and enjoy the property of the Association for the purposes for which the same were designed. This right and privilege shall be appurtenant to and pass with the title to the Lot. The right to the use and enjoyment of such property shall be subject to the following provisions:

a. The right of the Association to charge reasonable admission and other fees for use of facilities.

b. The right of the Association to suspend the voting rights and rights to use the Association property by an Owner for any period in which any assessment against his Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of published rules and regulations of the Association.

c. The Association shall supervise, manage, use, repair, provide utility services and maintain its property, at its own cost and expense, in such manner as is determined by its Board of Directors from time to time. In the event a driving range is constructed on open space owned by the Association, the Board may contract with the golf course owner for a lease to govern the operation and maintenance of the driving range in which case a reasonable fee would be charged to the Lessee to cover the Association's expenses including but not limited to taxes, insurance and administration.

d. The Association and each Cluster Lot Unit Sub-Association constitutes the organization for the ownership and maintenance of the open space required by §6.11 "Open Space Requirements" of the County of Ouray Land Use Code providing for adequate future ownership and maintenance of open space and common areas. The provisions of this Section 7 are applicable to all of the property and assets owned by the Association or any Sub-Association thereof but are not applicable to property, assets and easements owned or reserved by Declarant such as the golf course and appurtenant facilities and water rights.

e. The Association may obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent deemed advisable by the Board of Directors thereof. The Association may also employ other personnel deemed to be necessary or desirable for the proper operation of the assets of the Association (or Sub-Association) whether such personnel are furnished or employed directly by the Association or by any person, firm or entity with which the Association contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its business and shall provide such operating statements, reports and budgets as it may deem advisable.
f. The Board is authorized to charge, at its actual cost, an administrative fee to other entities for which it agrees in writing to collect and disburse assessments and dues as provided in the Declaration, such as the Golf Course and Golf Club Owner and domestic water provider.

Section 8. PUD Amendment. Declarant or its successors or assigns reserves the right to amend the PUD filings from time to time as may be authorized by the applicable governmental entity.

Section 9. Easements.

a. Easements for the installation and maintenance of utilities and drainage facilities, if any, are hereby reserved by Declarant for itself and its assignees and are dedicated to the public over the ten (10) feet adjacent to the boundaries of each Lot. No conveyance of a Lot by Declarant shall be deemed to be a conveyance or release of the foregoing easement in the absence of a specific expression of intent to do so. The Association is hereby granted the right to grant and convey to any person or firm easements and rights of way in, on, over or under any portion of Association property in carrying out any duty or power belonging to the Association.

b. Declarant expressly reserves for the benefit of all properties reciprocal easements for access, ingress and egress for all owners and Declarant to and from their respective lots; for installation and repair of utility services; for encroachments of improvements constructed by Declarant or authorized by the Board over Association assets; for drainage of water over, across and upon adjacent lots and property of the Association resulting from the normal use of adjoining lots or property of the Association; and for necessary maintenance and repair of any improvement. Such easements may be used by the Declarant, its successors, assigns, the Association and all owners, their guests, tenants and invitees.

Section 10. Golf Course. It is understood that the golf course portions of the PUD filing are included in open space designations therein but that the golf course is privately owned by Declarant and is not included in any public dedication or common properties. Use and maintenance of the golf course are subject to the requirements and restrictions of Declarant but is otherwise governed by this Declaration. Declarant contemplates that the Association will be authorized to use portions of the golf course for winter sports activities such as cross country skiing subject to reasonable rules, regulations and charges adopted by the Declarant or negotiated with the Association.

Section 11. Liability Insurance. The Association and Sub-Association shall be required to maintain liability insurance insuring against injury to persons or property as a result of use of the property of the Association. Such insurance shall be maintained with a company licensed to do
business in the State of Colorado and shall have minimum amounts of liability for injury or
damage to persons or property in the amount of ONE MILLION DOLLARS ($1,000,000.00) per
incident, with such amount to be adjusted periodically and increased if the same is required in
the reasonable judgment of the Board of Directors of the Association and if such increased
amounts of insurance are available for purchase at such time.

Section 12. No Representations. Except as expressly set forth herein, Declarant makes no
representations regarding use of the property of the Association or within the Subdivision and the
restrictions placed thereon by these Covenants or by the County of Ouray or by other
governmental authorities. Further, Declarant makes no representations as to the existence,
preservation or permanence of any view from any Lot.

Section 13. Notices. Any notice required to be sent to any owner under the provisions of this
Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last
known address of the person who appears as such Owner of the records of the Association at the
time of such mailing. Each Owner shall keep the Association informed of any address changes.

Section 14. Number and Gender. Words used herein, regardless of the number and gender
specifically used, shall be deemed and construed to include any other number, singular or plural,
and any other gender, masculine, feminine or neuter, as the context requires.

Section 15. Cumulative Remedies. Each remedy provided herein is cumulative and not
exclusive. The Association, without waiving its right to foreclose an assessment lien, may at its
option bring a suit to enforce and/or collect a delinquent assessment obligation or any violation
of any provision of the Declaration.

Section 16. Liberal Construction. The provisions, of this Declaration shall be liberally
construed to promote and effectuate the purposes hereof.

Section 17. Captions. All captions and titles used in this Declaration are intended solely for
convenience of reference and shall not affect that which is set forth in any of the provisions
hereof.

Section 18. Transfer Fee. A fee of $3,000.00 is due and payable at the time of the transfer of
any legal or equitable interest in any Residential lot, Cluster Lot or Cluster Lot Unit except a
transfer made to related persons for estate planning purposes or in lieu of foreclosure or by virtue
of law through any judicial or administrative proceeding or a transfer made by Declarant. The
transfer fee shall be paid to Declarant's General Partner and commingled but accounted for
separately from other assets of Declarant. The transfer fee proceeds shall be used for such
purposes as Declarant may determine to be in the best interest of the development of the subdivision including but not limited to infrastructure, Association property, administrative expenses and capital improvements but shall not be used for Declarant's debt reduction or its property acquisition. Declarant shall provide an accounting annually to the Association as to the income and expenses of the transfer fee fund. Payment of the fee is subject to the lien and collection remedies herein provided for the Association and the Association is authorized to take such action as Declarant may request to assure the recovery of the transfer fee. At such time as Declarant specifies to the Association in writing that the subdivision project is totally sold out, the transfer fee shall thereafter be payable to the Association and collectable in accordance with assessment procedures. The Association shall then be entitled to use the transfer fee income for any Association purpose. At any time after the Association becomes entitled to receive the transfer fee, the membership may vote to terminate or modify the transfer fee.
## APPENDIX A

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Recording Date</th>
<th>Reception No.</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.</td>
<td>March 27, 1992</td>
<td>150511</td>
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<td>2</td>
<td>Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.</td>
<td>September 11, 1992</td>
<td>151656</td>
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<td>3</td>
<td>Notice of Standards and Remedies for Fairway Pines Golf Course.</td>
<td>October 6, 1994</td>
<td>157753</td>
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<td>5</td>
<td>Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates Phase II.</td>
<td>July 17, 1996</td>
<td>162227</td>
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<td>6</td>
<td>Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.</td>
<td>July 22, 1996</td>
<td>162268</td>
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<td>7</td>
<td>Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, Filing 5A.</td>
<td>December 23, 1997</td>
<td>165843</td>
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<td>8</td>
<td>Affidavit of Correction of Typographical Error in Fairway Pines Estates Declaration Title Re: Phase II.</td>
<td>June 18, 1999</td>
<td>169881</td>
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<td>9</td>
<td>Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.</td>
<td>May 31, 2001</td>
<td>174891</td>
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<td>11</td>
<td>Resolution of Manager of The Pines Development Group, LLC.</td>
<td>February 19, 2004</td>
<td>183960</td>
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<td>12</td>
<td>Agreement and Vacation of Certain Instruments.</td>
<td>September 27, 2007</td>
<td>196142</td>
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<td>13</td>
<td>Assignment of Declarant Rights for Fairway Pines Estates.</td>
<td>October 22, 2007</td>
<td>196324</td>
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<td>15</td>
<td>Certification of Amendment of the Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision.</td>
<td>September 11, 2008</td>
<td>198637</td>
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<td>16</td>
<td>Declaration of Covenants, Conditions, Restrictions and Easements for Ridge View Ouray Sub-Association.</td>
<td>February 22, 1999</td>
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<td>December 29, 2005</td>
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<td>17</td>
<td>Declaration of Covenants, Conditions, Restrictions and Easements for The Den Sub-Association of Fairway Pines.</td>
<td>June 28, 1995</td>
<td>159647</td>
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<td>18</td>
<td>First Restatement of the Declaration of Covenants, Conditions, Restrictions, and Easements for Fairway Pines Estates</td>
<td>November 13, 2008</td>
<td>199474</td>
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<td>19</td>
<td>Certification of Amendments to the Declaration of Covenants, Conditions, Restrictions and Easements for the Fairway Pines Estates Owners Association</td>
<td>August 5, 2013</td>
<td>210505</td>
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<td>Certification of Amendments to the Declaration of Covenants, Conditions, Restrictions and Easements to the Fairway Pines Estates Owners Association</td>
<td>September 13, 2016</td>
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CERTIFICATION AND ACKNOWLEDGMENT

Michael Forstner, President of the Board of Directors of the Fairway Pines Estates Owners Association, Inc., a Colorado non-profit corporation, certify that the foregoing First Amendment to the Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, (First Amendment) was adopted by the Association Board of Directors at a properly noticed meeting on September 12, 2016, and that the Board resolution adopting this First Amendment contains the following:

a. This First Amendment was prepared by the Association’s legal counsel, reviewed by the Covenants Committee, reviewed and approved by the Board of Directors, approved by the membership, and adopted by the Board of Directors on September 12, 2016.

b. The First and Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development, are transcribed and consolidated versions of the actual recorded documents listed in paragraph 1 of the Recitals of Appendix A. While care was taken in the transcription process to eliminate errors, some discrepancies from the original documents may be present. In the event of any conflict between this Second Restatement and its original counterparts or in their legal effect, the original recorded documents shall control and should be referred to with regard to any specific provision or effect.

c. This First Amendment to the Second Restatement shall be recorded in the official records of Ouray County.

Michael Forstner

President

STATE OF COLORADO
}{
COUNTY OF OURAY

The foregoing certification was acknowledged before me this 13th day of September, 2016, by Michael Forstner, who acknowledged himself to be the President of the Board of Directors of the Fairway Pines Estates Owners Association, Inc., a Colorado non-profit corporation, and that he being authorized to do so executed the foregoing instrument for the purposes therein contained.

Witness my hand and official seal.

My commissions expires 1-19-2020

SUSAN M. LEVERENZ
Notary Public
State of Colorado
Notary ID 20064021499
My Commission Expires Jan 19, 2020
Ouray County Land Use  
111 Mall Rd  
Ridgway, CO  81432

June 10, 2022

Re: Commit to serve Divide Ranch Filing No 7, Cimarron Estates

Attention: Mark Castrodale, Brian Sampson

Dallas Creek Water Company, Inc has been asked by Barry Zane to supply a commit to serve letter for the Cimarron Estates Final Development Plan meeting scheduled for June 16, 2022.

Dallas Creek Water Company, Inc will commit to serve this property once taps have been purchased according to the density of the final platting. The developer will be required to enter into a Subdivision Water Service agreement according to Section 5.2 of the company tariff and also a Water Service Agreement for each tap individually.

I will be available to answer any questions you have and can be reached at (970) 240-8123.

Regards,

Pam Mencimer  
Administrator  
Dallas Creek Water Company, Inc  
administrator@dallascreekwater.com  
970-240-8123
S.M.P.A. has enough available power to service the 5 lots and 6 dwellings on Filing 7 at Divide Ranch and Club.

Thank you.

Scott Davidson
Service Planner

P.O. Box 1150
Ridgway, CO 81432
Office: 970-626-5549
Cell: 970-729-2482
www.smpa.com

It is the Mission of San Miguel Power Association, Inc. to demonstrate corporate responsibility and community service while providing our members with safe, reliable, cost-effective, and environmentally responsible electrical service.

SMPA is an equal opportunity provider and employer.
EXHIBIT

- M -
Land Title Guarantee Company
Customer Distribution

PREVENT FRAUD - Please remember to call a member of our closing team when initiating a wire transfer or providing wiring instructions.

Order Number: OU85007935 Date: 06/02/2022
Property Address: TBD, RIDGWAY, CO 81432

PLEASE CONTACT YOUR CLOSER OR CLOSER'S ASSISTANT FOR WIRE TRANSFER INSTRUCTIONS

For Closing Assistance
Land Title Ouray County Title Team
218 SHERMAN
RIDGWAY, CO 81432
PO BOX 276
(970) 626-7001 (Work)
(877) 375-5025 (Work Fax)
ourayresponse@ltgc.com

For Title Assistance
BARRY ZANE
barry@zanecentral.com
Delivered via: Electronic Mail

Seller/Owner
HERITAGE INN AND SUITES OF KANSAS CITY, INC.,
A NORTH DAKOTA CORPORATION
Attention: PAUL STASHIK
Delivered via: Electronic Mail
Date: 06/02/2022

Property Address: TBD, RIDGWAY, CO 81432

Parties: A BUYER TO BE DETERMINED
HERITAGE INN AND SUITES OF KANSAS CITY, INC. AND H.T. HERITAGE INN OF ERIE, LLC

Visit Land Title’s Website at www.ltgc.com for directions to any of our offices.

<table>
<thead>
<tr>
<th>Estimate of Title insurance Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>“TBD” Commitment</td>
</tr>
<tr>
<td>$265.00</td>
</tr>
<tr>
<td>Total $265.00</td>
</tr>
</tbody>
</table>

If Land Title Guarantee Company will be closing this transaction, the fees listed above will be collected at closing.

Thank you for your order!

Note: The documents linked in this commitment should be reviewed carefully. These documents, such as covenants conditions and restrictions, may affect the title, ownership and use of the property. You may wish to engage legal assistance in order to fully understand and be aware of the implications of the effect of these documents on your property.

Chain of Title Documents:

- Ouray county recorded 06/12/2006 under reception no. 191799
- Ouray county recorded 06/06/2006 under reception no. 191748
ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule A
Order Number: OU85007935

Property Address:
TBD, RIDGWAY, CO 81432

1. Effective Date:
05/25/2022 at 5:00 P.M.

2. Policy to be Issued and Proposed Insured:
"TBD" Commitment
Proposed Insured:
A BUYER TO BE DETERMINED

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:
A FEE SIMPLE

4. Title to the estate or interest covered herein is at the effective date hereof vested in:
HERITAGE INN AND SUITES OF KANSAS CITY, INC. AND H.T. HERITAGE INN OF ERIE, LLC

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

A PARCEL OF LAND LOCATED IN THE SE¼SE¼ OF SECTION 25, AND THE NE¼NE¼ OF SECTION 36, ALL IN TOWNSHIP 46 NORTH, RANGE 9 WEST OF THE NEW MEXICO PRINCIPAL MERIDIAN, COUNTY OF OURAY, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NE¼NE¼ OF SAID SECTION 36 AND CONSIDERING THE NORTH LINE OF THE NE¼NE¼ OF SAID SECTION 36 TO BEAR NORTH 87°24'57" WEST WITH ALL BEARINGS CONTAINED HEREIN BEING RELATIVE THERETO; THENCE SOUTH 87°24'57" EAST, A DISTANCE OF 470.86 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 00°52'21" EAST, A DISTANCE OF 47.87 FEET;
THENCE NORTH 00°54'51" EAST, A DISTANCE OF 188.02 FEET;
THENCE NORTH 30°03'09" EAST A DISTANCE OF 323.49 FEET;
THENCE SOUTH 74°16'17" EAST, A DISTANCE OF 250.19 FEET,
THENCE NORTH 09°13'09" EAST, A DISTANCE OF 224.72 FEET;
THENCE SOUTH 80°46'51" EAST, A DISTANCE OF 128.41 FEET TO A POINT OF CURVATURE;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 32°10'21", A RADIUS OF 70.00 FEET AND AN ARC LENGTH OF 39.31 FEET;
THENCE SOUTH 48°36'30" EAST, A DISTANCE OF 41.16 FEET TO A POINT OF CURVATURE;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 90°00'00", A RADIUS OF 20.00 FEET, AND AN ARC LENGTH OF 31.42 FEET;
THENCE SOUTH 41°23'30" WEST, A DISTANCE OF 43.95 FEET TO A POINT OF CURVATURE;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 40°01'40", A RADIUS OF 340.00 FEET, AND AN ARC LENGTH OF 237.53 FEET;
THENCE SOUTH 01°21'50" WEST, A DISTANCE OF 210.83 FEET TO A POINT OF CURVATURE;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 44°01'45", A RADIUS OF 260.00 FEET, AND AN ARC LENGTH OF 199.80 FEET;
THENCE SOUTH 45°23'00" WEST, A DISTANCE OF 224.99 FEET TO A POINT OF CURVATURE;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 06°39'54", A RADIUS OF 430.00 FEET, AND AN ARC LENGTH OF 50.02 FEET;
THENCE NORTH 52°15'07" WEST, A DISTANCE OF 313.81 FEET;
THENCE NORTH 00°52'21" EAST, A DISTANCE OF 65.16 FEET TO THE POINT OF BEGINNING;
ALTA COMMITMENT

Old Republic National Title Insurance Company

Schedule A

Order Number: OU85007935

COUNTY OF OURAY, STATE OF COLORADO.

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All of the following Requirements must be met:

This proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

Pay the agreed amount for the estate or interest to be insured.

Pay the premiums, fees, and charges for the Policy to the Company.

Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

1. RECORD DULY EXECUTED AND ACKNOWLEDGED PLAT OF FILING 7, LOTS 701-706, THE DIVIDE RANCH AND CLUB.

NOTE: INCLUDING THE LOTS IN THE SUBDIVISION NAME MAY CAUSE CONFUSION WITH INDEXING AND SEARCHING THIS SUBDIVISION.


NOTE: THE LEGAL DESCRIPTION ON THE PLAT INDICATES THAT THIS PARCEL IS BOTH 7.74 ACRES AND 8.570 ACRES.

NOTE: THE CERTIFICATE OF SURVEY ON THIS PLAT REFERS TO THE PLAT AS A BOUNDARY AGREEMENT INSTEAD OF A PLAT AND STATES THAT NO NEW PARCELS WERE CREATED BUT THERE ARE NEW PARCELS BEING CREATED.

NOTE: THE BASIS OF BEARINGS IS INCOMPLETE.

NOTE: THE APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS SECTION STATES THAT THE APPROVAL "DOES NOT CONSTITUTE ACCEPTANCE OF ROADS" AND ALSO STATES THE BOARD OF COUNTY COMMISSIONERS "HEREBY ACCEPTS ANY DEDICATIONS". THESE TWO STATEMENTS SEEM TO CONTRADICT EACH OTHER.

NOTE: "LINEAL UNITS" APPEARS TWICE ON THIS PLAT.

NOTE: RINGTAIL WAY HAS NOT BEEN DEDICATED AS A ROAD ON ANY PRIOR FILINGS. ALTA/ACSM LAND TITLE SURVEY RECORDED SEPTEMBER 01, 2006 UNDER RECEPTION NO. 192769 SHOWS IT AS AN APPARENT UTILITY EASEMENT.

2. WRITTEN CONFIRMATION THAT THE INFORMATION CONTAINED IN STATEMENT OF AUTHORITY FOR H.T. HERITAGE INN OF ERIE, LLC, A NORTH DAKOTA LIMITED LIABILITY COMPANY RECORDED JULY 29, 2020 UNDER RECEPTION NO. 229847 IS CURRENT.

NOTE: SAID INSTRUMENT DISCLOSES PAUL STASHICK AS THE VICE PRESIDENT AUTHORIZED TO EXECUTE INSTRUMENTS CONVEYING, ENCUMBERING OR OTHERWISE AFFECTING TITLE TO REAL PROPERTY ON BEHALF OF SAID ENTITY. IF THIS INFORMATION IS NOT ACCURATE, A CURRENT STATEMENT OF AUTHORITY MUST BE RECORDED.
Order Number: OU85007935

All of the following Requirements must be met:

3. EVIDENCE SATISFACTORY TO THE COMPANY THAT THE TERMS, CONDITIONS AND PROVISIONS OF THE DIVIDE GOLF TRANSFER ASSESSMENT HAVE BEEN SATISFIED.

4. WARRANTY DEED FROM HERITAGE INN AND SUITES OF KANSAS CITY, INC. AND H.T. HERITAGE INN OF ERIE, LLC TO A BUYER TO BE DETERMINED CONVEYING SUBJECT PROPERTY.

NOTE: ADDITIONAL REQUIREMENTS OR EXCEPTIONS MAY BE NECESSARY WHEN THE BUYERS NAMES ARE ADDED TO THIS COMMITMENT. COVERAGES AND/OR CHARGES REFLECTED HEREIN, IF ANY, ARE SUBJECT TO CHANGE UPON RECEIPT OF THE CONTRACT TO BUY AND SELL REAL ESTATE AND ANY AMENDMENTS THERETO.
This commitment does not republish any covenants, condition, restriction, or limitation contained in any document referred to in this commitment to the extent that the specific covenant, conditions, restriction, or limitation violates state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

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

7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.

8. EXISTING LEASES AND TENANCIES.

9. RIGHT-OF-WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 23, 1912 IN BOOK 64 AT PAGE 317.


11. OIL, GAS AND MINERAL RIGHTS RESERVED IN WARRANTY DEED RECORDED AUGUST 16, 1979 IN BOOK 190 AT PAGE 767; AND IN WARRANTY DEED RECORDED OCTOBER 6, 1986 IN BOOK 202 AT PAGE 909.

12. OIL, GAS AND MINERAL RIGHTS RESERVED IN WARRANTY DEED RECORDED JULY 24, 1980 IN BOOK 196 AT PAGE 186.
13. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FAIRWAY PINES ESTATES, A PLANNED UNIT DEVELOPMENT RECORD MARCH 27, 1992 IN BOOK 222 AT PAGE 20; AND AS AMENDED IN INSTRUMENT RECORDED SEPTEMBER 11, 1992 IN BOOK 222 AT PAGE 454; AND IN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FAIRWAY PINES ESTATES, PHASE II RECORDED JULY 17, 1996 UNDER RECEPTION NO. 162227; AND IN AMENDMENT OF DECLARATION FOR FAIRWAY PINES ESTATES RECORDED JULY 22, 1996 UNDER RECEPTION NO. 162268; AND IN AFFIDAVIT RECORDED JUNE 18, 1999 UNDER RECEPTION NO. 169881; AND IN AMENDMENT RECORDED MAY 31, 2001 UNDER RECEPTION NO. 174891; AND IN RESOLUTION OF MANAGER OF THE PINES DEVELOPMENT GROUP RECORDED FEBRUARY 19, 2004 UNDER RECEPTION NO. 163960; AND IN AGREEMENT AND VACATION OF CERTAIN INSTRUMENTS RECORDED SEPTEMBER 27, 2007 UNDER RECEPTION NO. 196142; AND IN CERTIFICATION OF RESULTS (VOTE TO AMEND) RECORDED JULY 22, 2008 UNDER RECEPTION NO. 198300; AND IN CERTIFICATION OF AMENDMENT RECORDED JULY 22, 2008 UNDER RECEPTION NO. 198301; AND IN CERTIFICATION OF RESULTS RECORDED SEPTEMBER 11, 2008 UNDER RECEPTION NO. 198636; AND IN CERTIFICATION OF AMENDMENT RECORDED SEPTEMBER 11, 2008 UNDER RECEPTION NO. 198637; AND IN FIRST RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FAIRWAY PINES ESTATES RECORDED NOVEMBER 13, 2008 UNDER RECEPTION NO. 199474; AND IN CERTIFICATION OF AMENDMENT RECORDED JUNE 2, 2010 UNDER RECEPTION NO. 203232; AND IN CERTIFICATION OF AMENDMENTS TO THE DECLARATION OF THE COVENANTS, CONDITIONS AND RESTRICTIONS AND EASEMENTS FOR FAIRWAY PINES ESTATES OWNERS ASSOCIATION RECORDED AUGUST 5, 2013 UNDER RECEPTION NO. 210505; AND IN SECOND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND EASEMENTS FOR FAIRWAY PINES ESTATES RECORDED SEPTEMBER 11, 2013 UNDER RECEPTION NO. 210748; AND IN RESOLUTION ADOPTING THE FIRST AMENDMENTS TO THE SECOND RESTATEMENT RECORDED SEPTEMBER 13, 2016 UNDER RECEPTION NO. 216942.

NOTE: ASSIGNMENT OF DECLARANT RIGHTS RECORDED OCTOBER 22, 2007 UNDER RECEPTION NO. 196324.

NOTE: ASSIGNMENT OF DECLARANT RIGHTS RECORDED MARCH 1, 2018 UNDER RECEPTION NO. 220483 AND ASSIGNMENT OF DECLARANT RIGHTS RECORDED MARCH 1, 2018 UNDER RECEPTION NO. 220484.

14. TERMS, CONDITIONS AND PROVISIONS OF NOTICE OF STANDARDS AND REMIDIES FOR FAIRWAY PINES GOLF COURSE RECORDED OCTOBER 06, 1994 IN BOOK 230 AT PAGE 499.

15. EASEMENTS GRANTED IN QUITCLAIM DEED RECORDED JULY 10, 1996 UNDER RECEPTION NO. 162174.
16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN NOTICE OF RESERVATION OF GROUNDWATER AND CONSENT TO WITHDRAW GROUNDWATER RECORDED SEPTEMBER 07, 1993 IN BOOK 227 AT PAGE 417; QUIT CLAIM DEED IN CONNECTION WITH SAID NOTICE RECORDED JANUARY 22, 1996 UNDER RECEPTION NO. 161121.

17. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS, PROVISIONS AND NOTES ON THE PLAT OF FAIRWAY PINES DEVELOPMENT FILING NO. 4A-1 RECORDED JULY 1, 1996 UNDER RECEPTION NO. 162087; AS REVISED BY AMENDMENT TO PLAT RECORDED JULY 17, 1996 UNDER RECEPTION NO. 162226; AND ON THE PLAT OF FAIRWAY PINES ESTATES FILING NO. 5C RECORDED APRIL 17, 2001 UNDER RECEPTION NO. 174553.

18. TERMS, CONDITIONS AND PROVISIONS OF NOTICE OF STANDARDS AND REMEDIES FOR FAIRWAY PINES GOLF COURSE RECORDED OCTOBER 6, 1994, UNDER RECEPTION NO. 157753; AND THE EFFECT OF AGREEMENT TO VACATE RECORDED NOVEMBER 6, 2007 UNDER RECEPTION NO. 196476.

19. EASEMENT FOR WATER LINE ACCESS, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JULY 7, 1997 UNDER RECEPTION NO. 164618 INSOFAR AS SAME MAY AFFECT SUBJECT PROPERTY. NOTE: SPECIFIC LOCATION OF SAID EASEMENT IS NOT DESCRIBED.

20. TERMS, CONDITIONS, STIPULATIONS, OBLIGATIONS AND PROVISIONS OF THE OURAY COUNTY WEED MANAGEMENT RESOLUTION, RECORDED AUGUST 8, 1997 AT RECEPTION NO. 164857.

21. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF PRELIMINARY DEVELOPMENT PLAN FAIRWAY PINES ESTATES VILLAGE 1, 2, 3, 4, 5, AND 6 RECORDED APRIL 29, 1999 AT RECEPTION NO. 169504; AND ON ALTA/ACSM LAND TITLE SURVEY RECORDED SEPTEMBER 01, 2006 UNDER RECEPTION NO. 192769; ON ALTA/ACSM LAND TITLE SURVEY RECORDED FEBRUARY 20, 2006 AT RECEPTION NO. 193569.


23. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN THE CLUBHOUSE AT FAIRWAY PINES, CLUB RULES & REGULATIONS RECORDED DECEMBER 04, 2007 UNDER RECEPTION NO. 196659.

24. TERMS, CONDITIONS AND AGREEMENTS AS CONTAINED IN AMENDED AND RESTATATED DEVELOPMENT AND MARKETING AGREEMENT RECORDED NOVEMBER 20, 2008 UNDER RECEPTION NO. 199508.

25. ANY TAX, LIEN OR FEE RESULTING FROM INCLUSION IN LOGHILL MESA FIRE PROTECTION DISTRICT AS EVIDENCED BY INSTRUMENT RECORDED JANUARY 7, 2010 UNDER RECEPTION NO. 202339; AND BY INSTRUMENT RECORDED SEPTEMBER 24, 2013 UNDER RECEPTION NO. 210821.

27. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS OF A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO APPROVING A CITIZEN-INITIATED AMENDMENT TO THE LAND USE CODE RECORDED MAY 27, 2015 AT RECEPTION NO. 214080.

28. TERMS, CONDITIONS, PROVISIONS BURDENS AND OBLIGATIONS SET FORTH IN SETTLEMENT AGREEMENT RECORDED FEBRUARY 20, 2019 UNDER RECEPTION NO. 222499; AND IN QUIT CLAIM DEEDS (WATER RIGHTS) RECORDED FEBRUARY 20, 2019 UNDER RECEPTION NO. 222500 AND RECEPTION NO. 222501.
Note: Pursuant to CRS 10-11-122, notice is hereby given that:

(A) The Subject real property may be located in a special taxing district.

(B) A certificate of taxes due listing each taxing jurisdiction will be obtained from the county treasurer of the county in which the real property is located or that county treasurer's authorized agent unless the proposed insured provides written instructions to the contrary. (for an Owner's Policy of Title Insurance pertaining to a sale of residential real property).

(C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note: Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

Note: Colorado Division of Insurance Regulations 8-1-2 requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

Note: Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

(A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.

(B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.

(C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.

(D) The Company must receive payment of the appropriate premium.

(E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.
Note: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner’s policy commitments disclosing that a mineral estate has been severed from the surface estate, in Schedule B-2.

(A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and

(B) That such mineral estate may include the right to enter and use the property without the surface owner’s permission.

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

Note: Pursuant to Colorado Division of Insurance Regulations 8-1-3, notice is hereby given of the availability of a closing protection letter for the lender, purchaser, lessee or seller in connection with this transaction.

Note: Pursuant to CRS 10-1-11(4)(a)(1), Colorado notaries may remotely notarize real estate deeds and other documents using real-time audio-video communication technology. You may choose not to use remote notarization for any document.
JOINT NOTICE OF PRIVACY POLICY OF
LAND TITLE GUARANTEE COMPANY,
LAND TITLE GUARANTEE COMPANY OF SUMMIT COUNTY
LAND TITLE INSURANCE CORPORATION AND
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

This Statement is provided to you as a customer of Land Title Guarantee Company as agent for Land Title Insurance Corporation and Old Republic National Title Insurance Company.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to your non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
- your transactions with, or from the services being performed by us, our affiliates, or others;
- a consumer reporting agency, if such information is provided to us in connection with your transaction;
- and
- The public records maintained by governmental entities that we obtain either directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- We may share your Personal Information with affiliated contractors or service providers who provide services in the course of our business, but only to the extent necessary for these providers to perform their services and to provide these services to you as may be required by your transaction.
- We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- We regularly assess security standards and procedures to protect against unauthorized access to Personal Information.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT STATED ABOVE OR PERMITTED BY LAW.

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows: Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
Commitment For Title Insurance
Issued by Old Republic National Title Insurance Company

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Minnesota corporation (the “Company”), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured. If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company’s liability and obligation end.

COMMITMENT CONDITIONS

1. DEFINITIONS
   (a) “Knowledge” or “Known”: Actual or implied knowledge, but not constructive notice imparted by the Public Records.
   (b) “Land”: The land described in Schedule A and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
   (c) “Mortgage”: A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
   (d) “Policy”: Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
   (e) “Proposed Insured”: Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
   (f) “Proposed Policy Amount”: Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
   (g) “Public Records”: Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
   (h) “Title”: The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, Commitment terminates and the Company’s liability and obligation end.

3. The Company’s liability and obligation is limited by and this Commitment is not valid without:
   (a) the Notice;
   (b) the Commitment to Issue Policy;
   (c) the Commitment Conditions;
   (d) Schedule A;
   (e) Schedule B, Part I—Requirements; and
   (f) Schedule B, Part II—Exceptions; and
   (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY’S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

(a) The Company’s liability under Commitment Condition 4 is limited to the Proposed Insured’s actual expense incurred in the interval between the Company’s delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured’s good faith reliance to:
   i. comply with the Schedule B, Part I—Requirements;
   ii. eliminate, with the Company’s written consent, any Schedule B, Part II—Exceptions; or
   iii. acquire the Title or create the Mortgage covered by this Commitment.

(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.

(c) The Company shall only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Company included the added matter when the Commitment was first delivered to the Proposed Insured.

(d) The Company’s liability shall not exceed the lesser of the Proposed Insured’s actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

(e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
6. **LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT**
   (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
   (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
   (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, related to the subject matter of this Commitment.
   (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
   (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
   (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company’s only liability will be under the Policy.

7. **IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**
   The issuing agent is the Company’s agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company’s agent for the purpose of providing closing or settlement services.

8. **PRO-FORMA POLICY**
   The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. **ARBITRATION**
   The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is $2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at http://www.alta.org/arbitration.

IN WITNESS WHEREOF, Land Title Insurance Corporation has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A to be valid when countersigned by a validating officer or other authorized signatory.

Issued by:
Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
303-321-1880

Craig B. Rants, Senior Vice President

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(812) 371-1111

By
President

Attest
Secretary

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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