

**AGENDA  
OURAY CITY COUNCIL**

**MONDAY, March 15, 2021  
Regular Meeting – 1pm**

**COUNCIL IN-PERSON  
320 6<sup>th</sup> Ave. – Massard Auditorium**

**VIRTUAL MEETING FOR PUBLIC**

Join Zoom Meeting  
<https://zoom.us/j/9349389230>

Meeting ID: 934 938 9230    Passcode: 491878  
Or dial:            408 638 0968    or    669 900 6833

---

**Regular Meeting – 1pm**

- Changes to this agenda can be found on the bulletin board at City Hall
- Electronic copies of the Council Packet are available on the City website at [www.cityofouray.com](http://www.cityofouray.com). A hard copy of the Packet is also available at the Administrative Office for interested citizens.
- Action may be taken on any agenda item
- Notice is hereby given that a majority or quorum of the Planning Commission, Community Development Committee, Beautification Committee, and/or Parks and Recreation Committee may be present at the above noticed City Council meeting to discuss any or all of the matters on the agenda below for Council consideration

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC HEARINGS
  - a. Ordinance 2, Series 2021 - Adding Default Judgement Provision to Municipal Code    Page 149
  - b. Application to plat the remaining portions of unplatted land of the Wanakah Estates Subdivision into one lot for the purposes of multifamily residential development - to be known as the Ouray Workforce Housing Minor Subdivision Page 2
4. CEREMONIAL/INFORMATIONAL - none
5. CITIZENS' COMMUNICATION
6. CITY COUNCIL REPORTS/INFORMATION - Glenn Boyd, Ethan Funk, Peggy Lindsey, John Wood, and Greg Nelson    Page 130
7. DEPARTMENT REPORTS
  - a. City Administrator    Page 132
  - b. Finance and Administration Director
    - i. Sales Tax – January 2021    Page 139
    - ii. LOT – January 2021    Page 143
8. CONSENT AGENDA - Liquor License Renewal, Friends of the Wright Opera House    Page 146
9. ACTION ITEMS    Page 147
  - a. Ordinance 2, Series 2021 - Adding Default Judgement Provision to Municipal Code – Second Reading    Page 149
  - b. Application to plat the remaining portions of unplatted land of the Wanakah Estates Subdivision into one lot for the purposes of multifamily residential development - to be known as the Ouray Workforce Housing Minor Subdivision Page 152
  - c. Ouray City Planning Commission and Committee Appointments    Page 158
  - d. PSA - Digital Messaging Agreement    Page 160
  - e. Possible confirmation of new OVFD Fire Chief, Adam Kunz, and Assistant Chief, Ronald Floyd Williams
10. DISCUSSION ITEMS
  - a. Meeting Format and Notices
  - b. Future Agenda Items
11. ADJOURNMENT

320 6<sup>th</sup> Avenue  
 PO Box 468  
 Ouray, Colorado 81427



970.325.7211  
 Fax 970.325.7212  
 www.cityofouray.com

TO: Ouray City Council  
 FROM: Silas Clarke, City Administrator (Original by: Aja Tibbs, Community Development Coordinator)  
 DATE: March 12, 2021  
 SUBJECT: Ouray Workforce Housing Minor Subdivision

**APPLICATION & PROPERTY SUMMARY**

<b>Application Summary:</b>	Plat of 1 lot for the remaining un-platted land of Wanakah Estates for the purposed of Multifamily, condominium development
<b>Address:</b>	TBD Hinkson Terrace
<b>Legal Description:</b>	N/A
<b>Applicant/Agent:</b>	Mark Iuppenlatz
<b>Property Owner:</b>	San Juan Mountainside, LLC
<b>Zoning:</b>	R-2: Residential – High Density
<b>Existing Use:</b>	Vacant
<b>Proposed Use:</b>	Multifamily Residential (3 buildings, each with 10 condos)
<b>Site Size:</b>	3.09 acres
<b>Adjacent Land Uses:</b>	
North:	Residential – Wanakah Estates Subdivision
South:	Residential – Wanakah Estates Subdivision
East:	Residential – Wanakah Estates Subdivision
West:	Ouray County – San Juan National Forest
<b>Located Within National or Local Historic District Boundary</b>	No
<b>Located Within Commercial Historic Boundary</b>	No

## **ZONE DISTRICT DIMENSIONAL REQUIREMENTS**

<b>Requirement</b>	<b>Required</b>	<b>Proposed/Existing</b>
<b>Minimum Lot Area</b>	7,100 SF	Approx. 134,000+ SF
<b>Maximum Density</b>	3,550 SF/DU, 1,183 SF/LU	37 DU or 113 LU
<b>Setbacks</b>		
<b>Front (East)</b>	15 ft.	25.7 ft., 33.1 ft., and 30.1 ft.
<b>Rear (West)</b>	5 ft. (+100' easement)	Approx. 240 ft.
<b>Side (North)</b>	5 ft.	13.6 ft.
<b>Side (South)</b>	5 ft.	7.5 ft.
<b>Roof Eaves</b>	1ft into setback / on property	TBD
<b>Building-to-Building</b>	10 ft.	10 ft.
<b>Minimum Floor Area</b>	Comply w/ building code	Comply w/ building code
<b>Maximum Floor Area</b>	10,650 SF	TBD
<b>Maximum Height</b>	35 ft.	TBD
<b>Off-Street Parking</b>	2 spaces per residential unit	TBD

## **BACKGROUND**

The applicant is asking the City Council to plat the remaining un-platted portions of the Wanakah Subdivision into one lot for the purpose of a multifamily development which will include three buildings, each containing ten condominiums. A copy of the application has been attached for reference.

The Planning Commission of the City of Ouray held a public hearing on February 9, 2021 and voted (3-1) to recommend denial of the application.

## **CRITERIA FOR DECISION**

Minor subdivision applications are for subdivisions resulting in 2 (or fewer) lots, which have all required improvements and comply with the design standards of subsections 7-7-E and 7-7-F, they shall also be exempt from the requirements of a sketch plan and preliminary plat.

Any subdivision of land must also comply with the applicable zone district regulations. The property is zoned R-2 and must comply with sections 7-5-D and 7-5-E-4 of the Ouray Municipal Code (OMC).

Lastly, the applicant is proposing to condominiumize the proposed property through the proposed minor subdivision which must also comply with section 7-10 of the OMC.

## **STAFF ANALYSIS**

### ***SECTION 7-7-E, DESIGN STANDARDS***

#### **General Design Standards:**

Compliance with the Master Plan (Community Plan 2004). The 2004 community plan encourages opportunities to develop affordable housing, and support the diversification of the economy. Other sections of the plan address the need to ensure that new development is high quality and pays for itself (through the installation of new infrastructure).

Staff finds that the infrastructure required and intended to serve this property was already installed through the development of the Wanakah Estates Subdivision. Public and private utilities have already been installed and Hinkson Terrace is fully improved (paved, curb and gutter, and public sidewalks).

Streets and Circulation:

As previously mentioned, all public street infrastructure is in place per the approved Wanakah Estates Subdivision. Internal site access will be provided and signed through the future Site Development Application (SDP) process.

Lots:

Staff finds that the shape, width and size of the proposed lot is appropriate for the proposed use and density. The SDP process will require an internal drive to limit access to Hinkson Drive, as well as improving the walkability of the street.

Water, Fire Protection and Sewer Systems:

Utility infrastructure is available through Hinkson Terrace, and a utility plan meeting city standards will be reviewed and required during the SDP process. Unless otherwise agreed upon by the City Council, the applicant shall also be required to pay tap investments fees for all water and sewer tap connections.

In order to develop this property, Emergency Ordinance 1 – series 2019 would need to be amended by the City Council. Any approval of this plat should include a condition of an amendment to the ordinance, or that the property may not be developed until a new wastewater treatment plant is operational. This condition has been included in the draft resolution.

Drainage, Hazard Mitigation, and Snow Storage:

All three of these sections will be required and reviewed for compliance with the SDP application.

Plat Notes and Monuments:

Plat notes has been reviewed by staff and revised as appropriate. Monuments will be placed appropriately upon approval of the plat.

Parks, Trails, Open Space, Recreation Facilities, Common Areas:

Regulations for private common areas shall be outlined in the condominium documents. No regional watercourse, or public trail is adjacent or on or proposed for the subject property.

The park dedication requirement per section 14-g. is .75 acres, which does not meet the minimum area for a city park. Therefore, staff recommends requiring a fee-in-lieu as permitted by the code. Per section 14.i.i, the applicant shall pay a park fee of \$36,090 prior to the recording the minor subdivision, but the fee may also be reduced by the city council per section 14.i.ii.

***SECTION 7-7-F, REQUIRED IMPROVEMENTS***

As previously explained, all required improvements for the development of this lot are complete.

***SECTION 7-5-D, DIMENSIONAL REQUIREMENTS***

As outlined in the Zone District Dimensional Requirements table, staff finds that the proposed plat and condominium request is in compliance with section 7-5-D. The remaining items will be reviewed and met through the SDP application when the site and structure details and been further finalized.

***SECTION 7-5-E-4, RESIDENTIAL DISTRICT – HIGH DENSITY – R2***

Multi-family dwellings are permitted within the R-2 High Density Residential zone district per section 4-b. Dimensional and parking requirements are compliant or will be further determined at the time of site development.

#### ***SECTION 7-10, CONDOMINIUMIZATION***

Condominium documents has been drafted and attached for consideration per section 7-10 of the OMC. While the code suggests recording these prior to consideration, staff would recommend recording and executing them upon final approval of the plat.

In summary, staff finds that the proposed minor subdivision is compliant with the requirements and applicable code of the OMC.

#### **PUBLIC NOTICE**

Public hearing notice was posted at City Hall on February 22, 2021, and published in the *Ouray Plaindealer* on February 25, 2021. Multiple correspondence was received by City staff and is included as Exhibit D (Correspondence included was received before 4:00 pm on March 12, 2021).

#### **OPTIONS FOR THE CITY COUNCIL**

Per staff's analysis above, a Resolution has been drafted making a recommendation of approval. Options for the City Council are as follows:

1. Approve the Resolution as drafted;
2. Approve the Resolution with specific changes;
3. Deny Resolution outlining specific reasons for the denial; or
4. Continue the matter to a specific date.

#### **ATTACHMENTS**

Exhibit A: Proposed Minor Subdivision and Condominium Documents

Exhibit B: Draft Condominium Covenants

Exhibit C: Minor Subdivision Application & Agent Forms

Exhibit D: Correspondence Received by City Staff

# Ouray Workforce Housing

Part of the Watson Placer (M.S. 143)  
City of Ouray, Colorado  
Sec.31 T44N R7W N.M.P.M.

THIS PLAT VERSION WILL NOT BE SIGNED

FOR CITY REVIEW

### CERTIFICATE OF OWNERSHIP:

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned owners of said property, located in the the City of Ouray, State of Colorado, being described as follows:

Tract being a part of the Watson Placer MS 143;

West Portion; Beginning at a point on the line between Corners Eight and Nine of said Watson Placer, also being the Northwest Corner of Lot 13 of Wanakah Estates Subdivision Filing No. 4 (Reception No. 187077) from whence corner Nine of said Watson Placer bears South 19°14'17" East, 995.06 feet and from whence the witness corner for the Northeast Corner of Section 25, Township 44 North, Range 8 West, New Mexico Principal Meridian, bears North 20°57'51" East, 2066.65 feet;

THENCE North 66°59'34" East, 366.50 feet, along the North Boundary of said Lot 13, to the West Right of Way of Hinkson Terrace;  
THENCE along said Right of Way the following five courses;

- (1) a curve to the right with a length of 50.00 feet, a radius of 207.66 feet and a Delta Angle of 13°56'00";
- (2) a curve to the left with a length of 50.50 feet, a radius of 207.66 feet and Delta Angle of 13°56'00";
- (3) North 23°00'26" West, 160.63 feet;
- (4) a curve to the left with a length of 42.66 feet, a radius of 70.00 feet and a Delta Angle of 34°54'56";
- (5) a curve to the right with a length of 79.22 feet, a radius of 130.00 feet and a Delta Angle of 34°54'55", to the Southeast Corner of Lot 21 of said Wanakah Estates Subdivision Filing No. 4;

THENCE South 66°59'34" West, 318.02 feet, along the Southern Boundary of said Lot 21;  
THENCE South 19°14'17" East 375.76 feet, to the point of beginning, containing an area of 3.09 acres.

County of Ouray, State of Colorado

HAVE BY THESE PRESENTS, caused to be laid out, platted, and subdivided the above described into lots, as shown on this plat, under the name and style of Ouray Workforce Housing.

OWNER: \_\_\_\_\_  
San Juan Mountainside LLC  
by Mark Iuppenlatz, Agent

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing signatures were acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

My commission expires \_\_\_\_\_

Witness my hand and seal \_\_\_\_\_  
Notary Public

### CERTIFICATE OF LIEN HOLDERS:

The undersigned holders of mortgages, which encumber the land subdivided, hereby agree to the subdivision and dedications and agree to subordinate its lien to this plat.

Mortgage: \_\_\_\_\_ by \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing signatures were acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

My commission expires \_\_\_\_\_

Witness my hand and seal \_\_\_\_\_  
Notary Public

### TREASURER'S CERTIFICATE:

I certify that as of today, there are no delinquent taxes due, nor are there any tax liens against the property described herein or any part thereof, and that all taxes for previous years that are currently due and payable have been paid in full.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, Ouray County Treasurer

### APPROVAL OF PLANNING COMMISSION:

Approved by the City of Ouray Planning Commission this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Chair

### APPROVAL OF CITY COUNCIL:

Approved by the Ouray City Council this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

### RECORDER'S CERTIFICATE:

This plat was filed for record in the office of the Clerk and Recorder of Ouray County at \_\_\_\_\_M.

on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Ouray County Clerk and Recorder

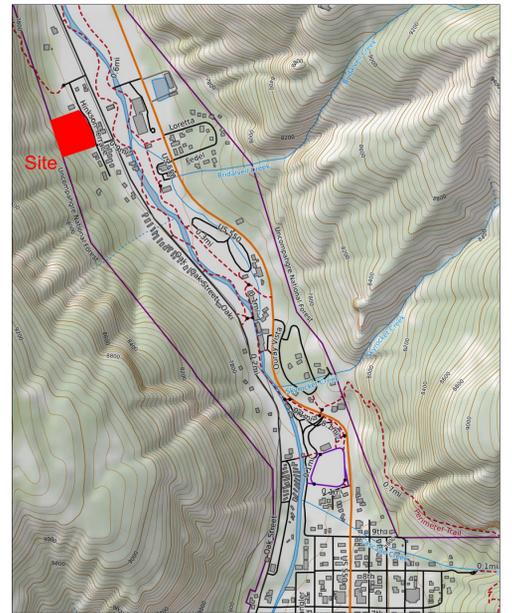
### Surveyor's Certification Statement

I, Timothy A. Pasek, a Professional Land Surveyor licensed in the State of Colorado, do hereby certify that this plat, consisting of seven (7) sheets, accurately represents, to the best of my knowledge, information and belief, a survey made by me or under my responsible charge in accordance with applicable standards of practice. This survey is not a warranty or guarantee, expressed or implied. This survey does not show easements except those specifically shown hereon.

Timothy A. Pasek  
Colorado P.L.S. 38727

### Plat Notes:

1. Title Commitment Order No. UR22005225 by Colorado Title & Closing Services, LLC, the Warranty Deed at Rec.No. 199922, and the Wanakah Estates Subdivision Filing No.4 Final Plat were relied upon for this survey.
2. Property description: "Retained Ownership" parcel as shown on Wanakah Estates Subdivision Filing No.4 plat filed at Rec.No. 187077, Ouray County Public Records; also being the "West Portion" of the real property described in Warranty Deed at Rec.No. 199922, Ouray Public Records.
3. Buildings A, B, and C are condominiums. The outside corners of structural walls serve as monumentation of the corner points in the legal description of each building.
4. This survey is valid only if print has original seal and signature of surveyor.
5. Basis of Bearings: Bearings are local grid bearings. The bearing of the line between the southeast corner of Lot 21, Wanakah Estates Subdivision Filing No.4, City of Ouray, Colorado, and the northeast corner of Lot 23 of said Subdivision is assumed to be N 23°00'26" W as shown on plat of said Subdivision. All bearings shown hereon are relative thereto.
6. No underground utility locates were performed as part of this survey. No research has been done concerning the existence, size, depth, condition, capacity or location of any utility or municipal/public service facility. For information regarding these utilities, please contact the appropriate agencies. All underground utilities must be field located by the appropriate agency or utility company prior to any excavation, pursuant to C.R.S. 9-1.5-103.
7. Dates of fieldwork: November 22 - 27, 2020
8. According to Colorado Law, you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten (10) years from date of certification shown hereon.
9. Any person who knowingly removes, alters, or defaces any legal land boundary monument and/or boundary monument accessory, commits a class 2 misdemeanor pursuant to C.R.S. 18-4-508.
10. The Owner agrees to indemnify and hold harmless the City of Ouray, its agents, officers and employees from and against any and all liability, expenses including defense costs and legal fees, and claims for damages of any nature whatsoever, including bodily injury, death, or property damage arising from or connected with any activity related to geological hazards, geologic conditions and mitigation measures.



Location Map - not to scale

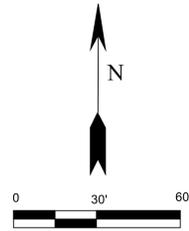
FOR CITY REVIEW

Ouray Workforce Housing  
TBD Hinkson Terrace  
Ouray, CO 81427

Monadnock Mineral Services LLC  
P.O. Box 85 - 342 7th Ave  
Ouray, CO 81427  
Job No. J2020-71 Sheet 1 of 7

# Ouray Workforce Housing

Part of the Watson Placer (M.S. 143)  
City of Ouray, Colorado  
Sec.31 T44N R7W N.M.P.M.



Scale: 1"=30'

Linear Units: U.S. Survey Feet

Major Contour Interval - 10 feet

Minor Contour Interval - 1 foot

Vertical Datum - NGVD 1929

### LEGEND

- - Found 2" aluminum survey cap on #5 rebar - 'MONADNOCK LS 31160'
- - Found 2" aluminum survey cap on #5 rebar - 'MONADNOCK PLS 38727'
- (M) - Measured at time of survey
- (R) - Record as per Warranty Deed of 2/3/2009 at Rec.No. 199922

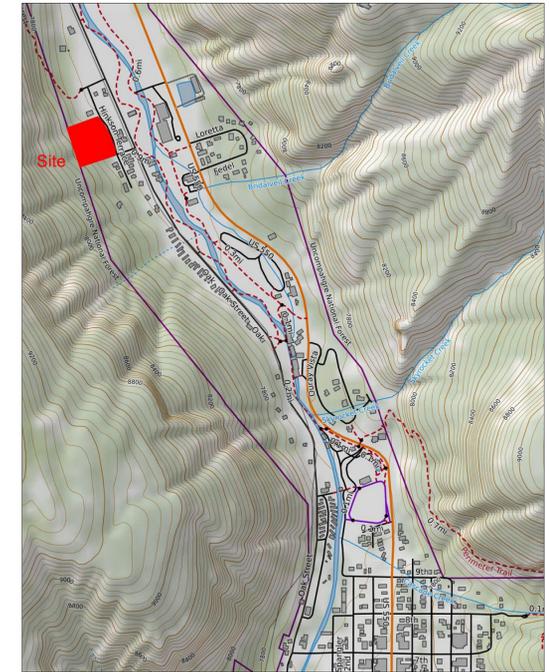
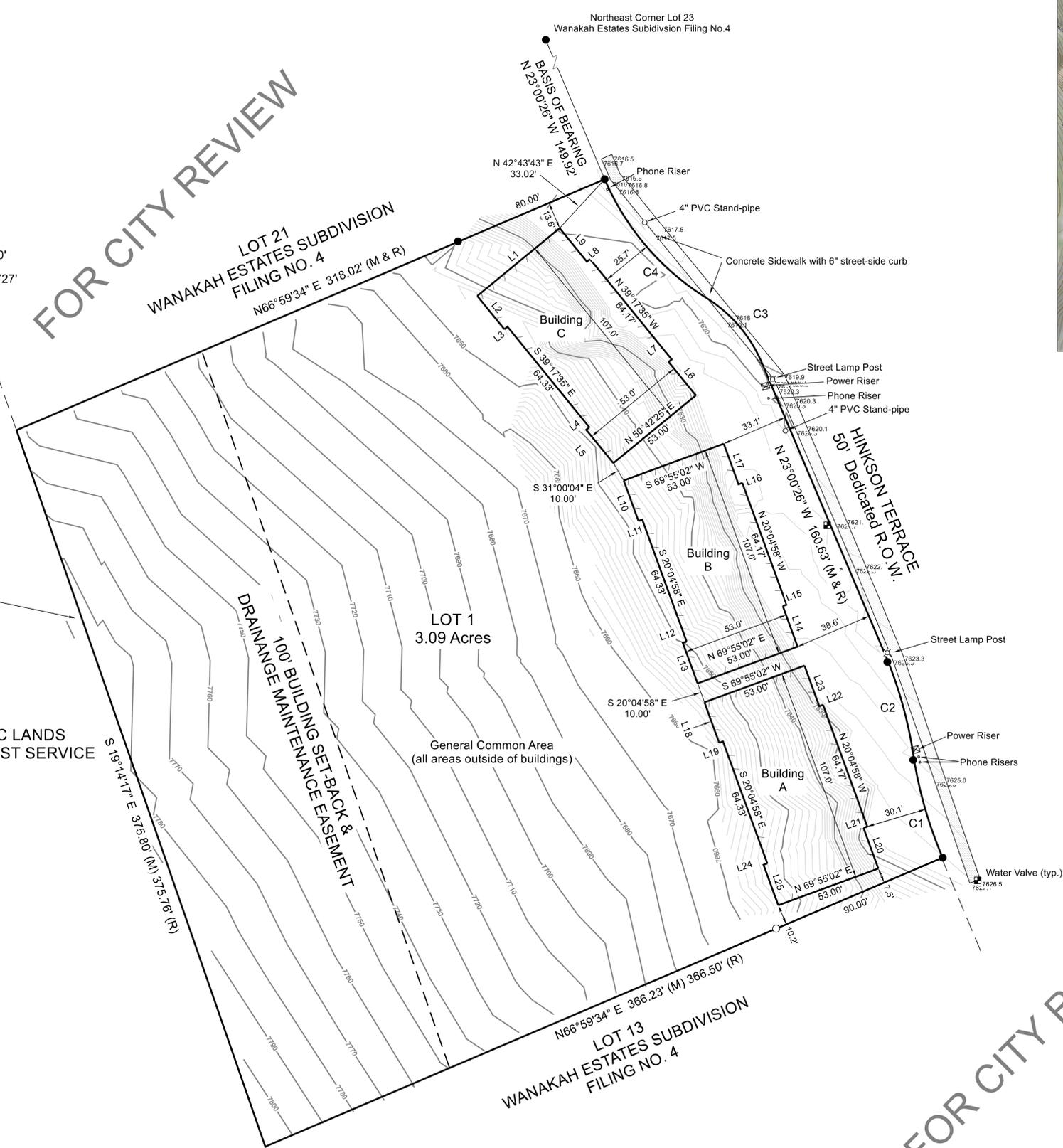
CURVE	DELTA	RADIUS	LENGTH
C1	14°00'24" (M) 13°56'00" (R)	207.66' (M & R)	50.77' (M) 50.00' (R)
C2	13°52'57" (M) 13°56'00" (R)	207.66' (M & R)	50.31' (M) 50.50' (R)
C3	34°54'55" (M) 34°54'56" (R)	70.00' (M & R)	42.66' (M & R)
C4	34°56'15" (M) 34°54'55" (R)	130.00' (M & R)	79.27' (M) 79.22' (R)

"Retained Ownership" parcel as shown on  
Wanakah Estates Subdivision Filing No. 4  
Rec.No. 187077  
Also being the "WEST PORTION" of a tract of land described  
in Warranty Deed at Rec.No. 199922  
3.09 Ac.

PUBLIC LANDS  
U.S. FOREST SERVICE

FOR CITY REVIEW

FOR CITY REVIEW



Location Map - not to scale

LINE	BEARING	HORIZ DIST
L1	S50°42'25"W	53.00'
L2	S39°17'35"E	21.33'
L3	N50°42'25"E	2.00'
L4	S50°42'25"W	2.00'
L5	S39°17'35"E	21.33'
L6	N39°17'35"W	21.42'
L7	N50°42'25"E	2.00'
L8	S50°42'25"W	2.00'
L9	N39°17'35"W	21.42'
L10	S20°04'58"E	21.33'
L11	N69°55'02"E	2.00'
L12	S69°55'02"W	2.00'
L13	S20°04'58"E	21.33'
L14	N20°04'58"W	21.42'
L15	N69°55'02"E	2.00'
L16	S69°55'02"W	2.00'
L17	N20°04'58"W	21.42'
L18	S20°04'58"E	21.33'
L19	N69°55'02"E	2.00'
L20	N20°04'58"W	21.42'
L21	N69°55'02"E	2.00'
L22	S69°55'02"W	2.00'
L23	N20°04'58"W	21.42'
L24	S69°55'02"W	2.00'
L25	S20°04'58"E	21.33'

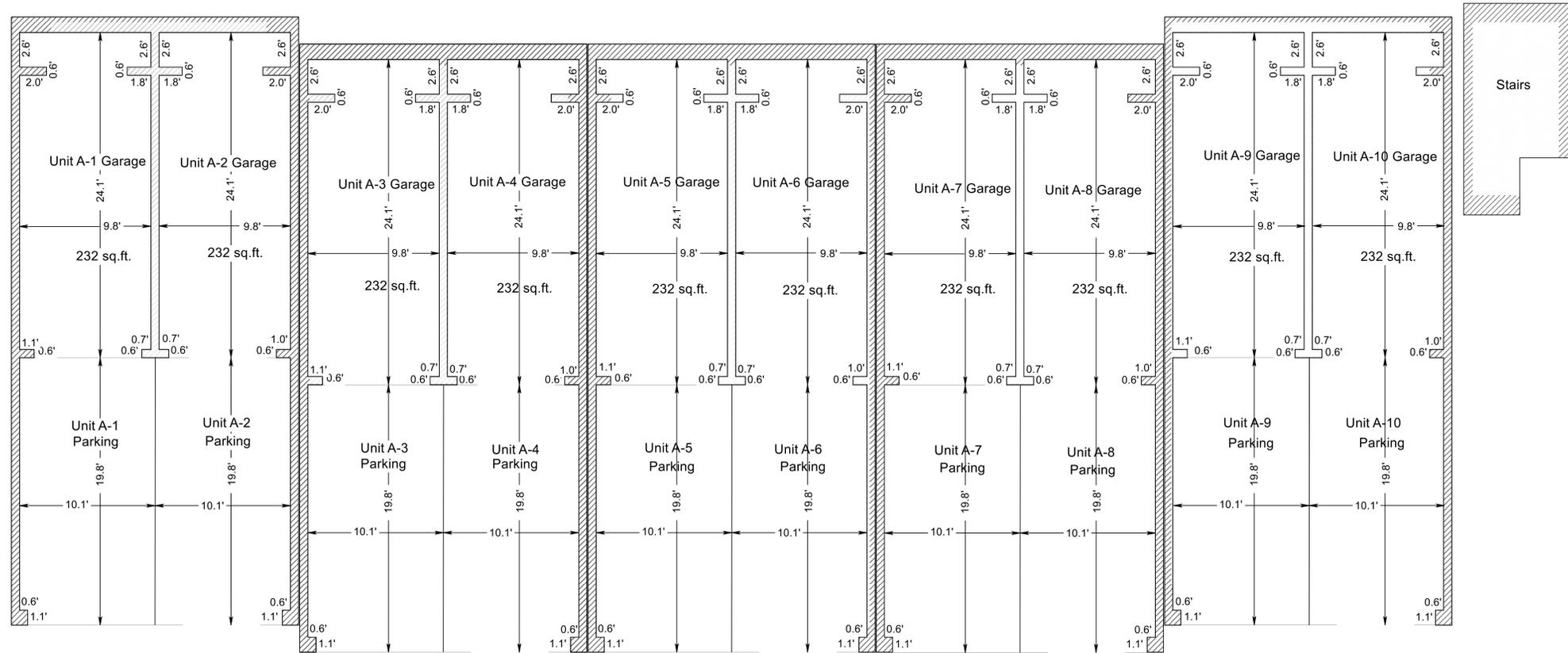
Ouray Workforce Housing  
TBD Hinkson Terrace  
Ouray, CO 81427

Monadnock Mineral Services LLC  
P.O. Box 85 - 342 7th Ave  
Ouray, CO 81427

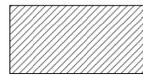
Job No. J2020-71 Sheet 2 of 7

FOR CITY REVIEW

### Unit A Building First Floor 0.0'



#### LEGEND



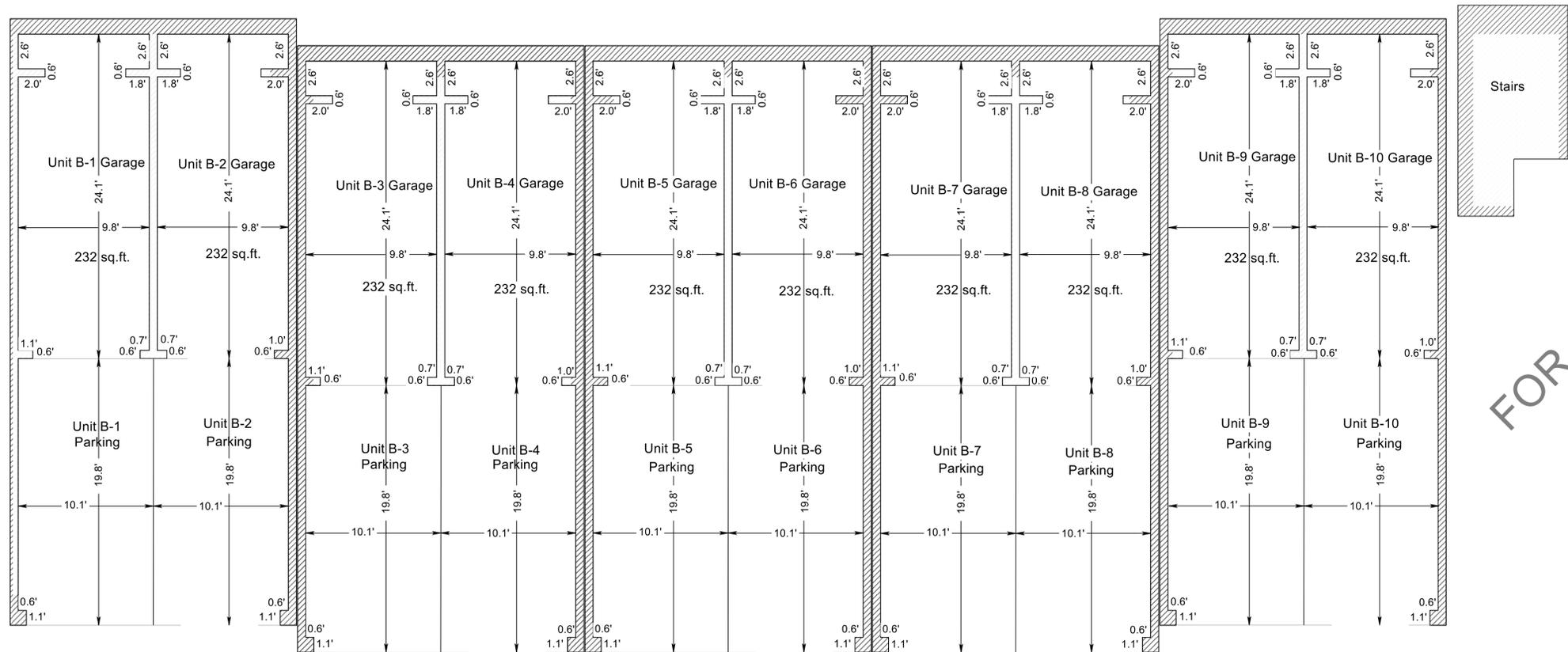
- General Common Element

Note: Unit Parking are Limited Common Elements appurtenant to each unit.



Scale: 1"=5'

### Unit B Building First Floor 0.0'



FOR CITY REVIEW

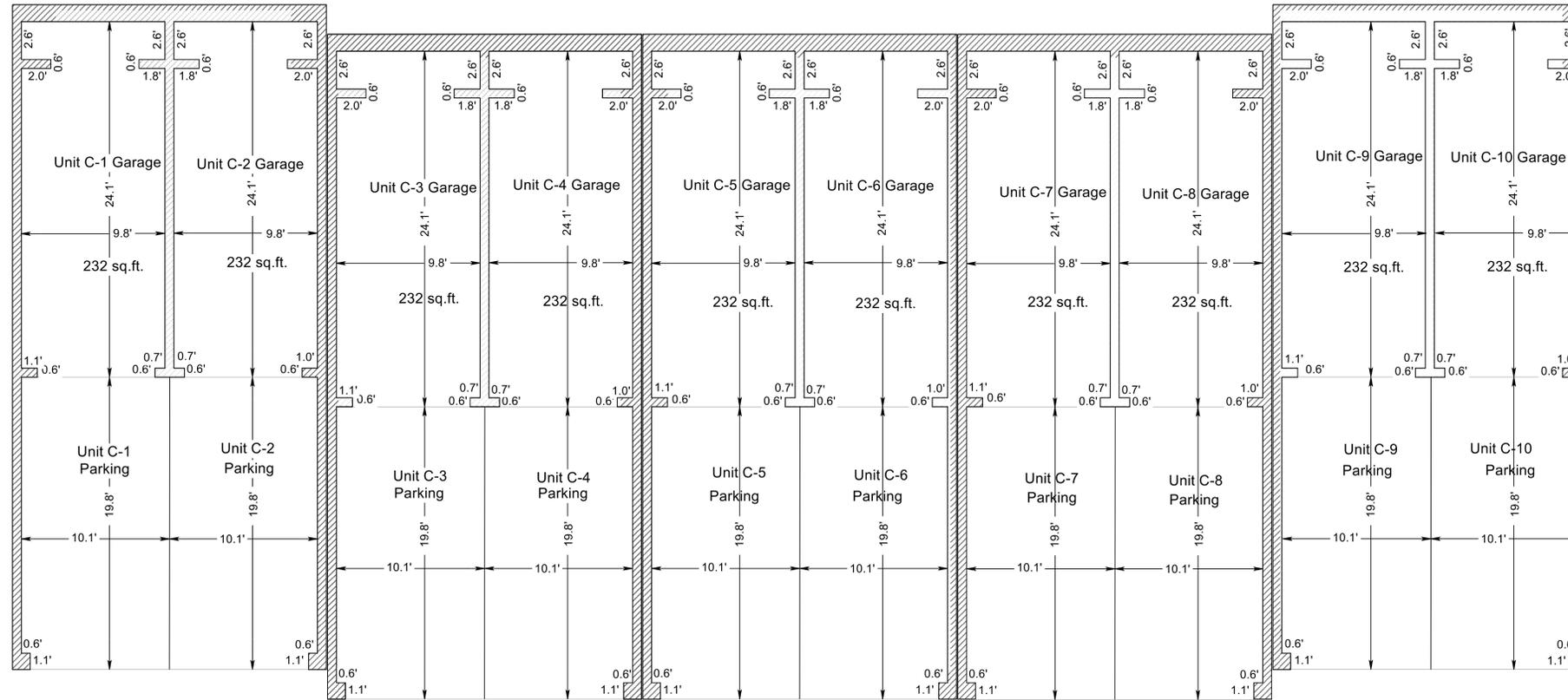
Ouray Workforce Housing  
TBD Hinkson Terrace  
Ouray, CO 81427

Monadnock Mineral Services LLC  
P.O. Box 85 - 342 7th Ave  
Ouray, CO 81427

Job No. J2020-71 Sheet 3 of 7

FOR CITY REVIEW

### Unit C Building First Floor 0.0'



#### LEGEND

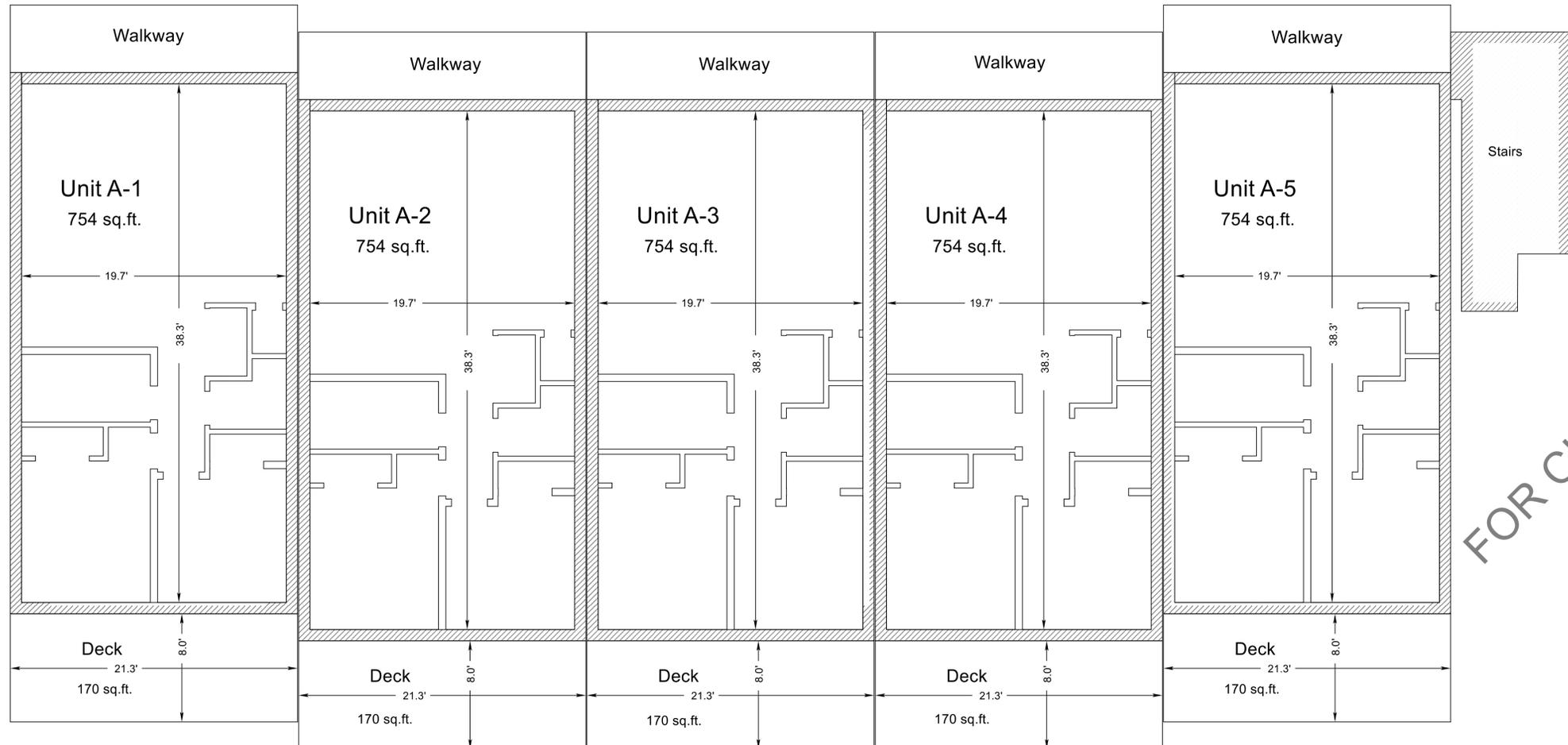


Note: Unit Parking, Decks and Walkways are Limited Common Elements appurtenant to each unit.



Scale: 1"=5'

### Unit A Building Second Floor 10.0'



FOR CITY REVIEW

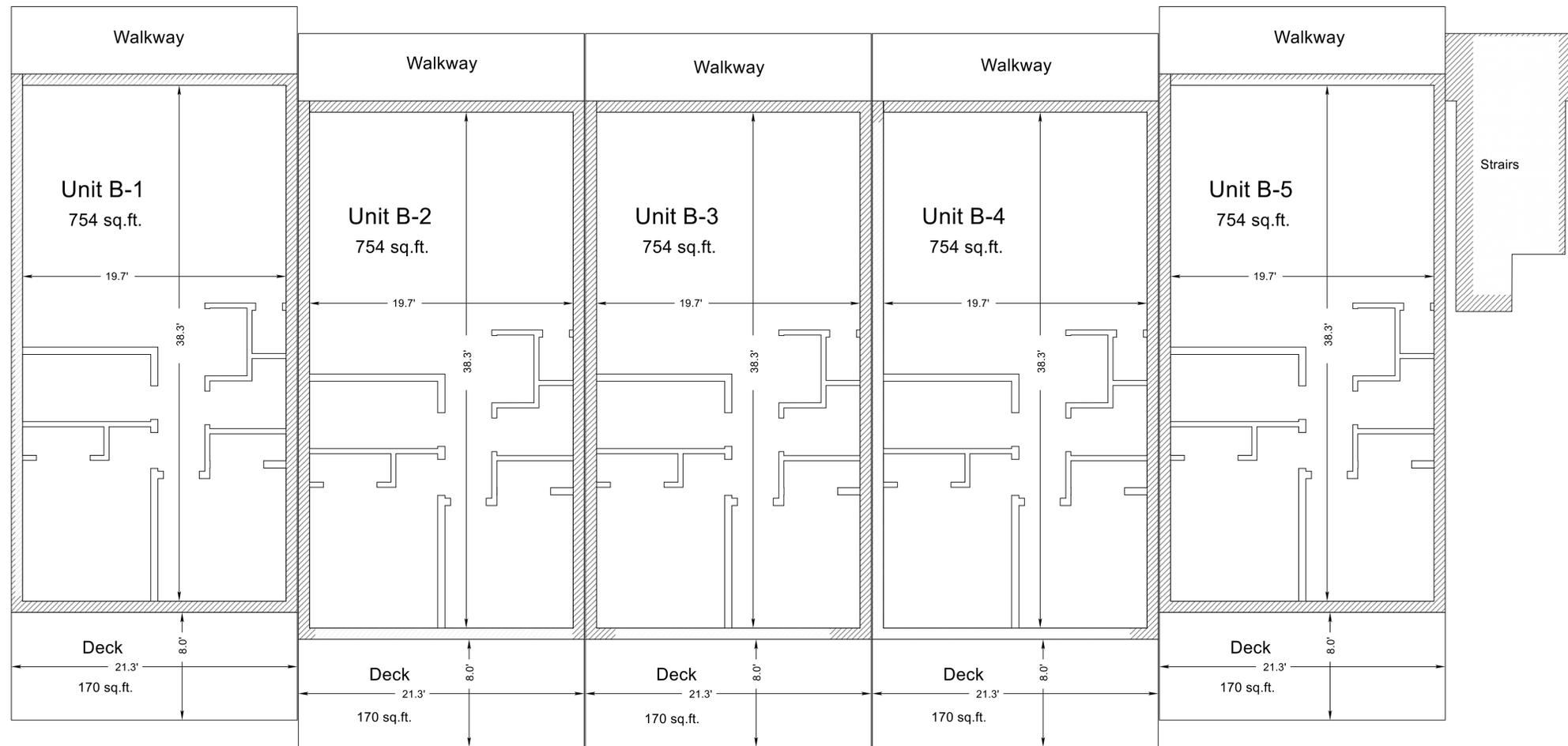
Ouray Workforce Housing  
TBD Hinkson Terrace  
Ouray, CO 81427

Monadnock Mineral Services LLC  
P.O. Box 85 - 342 7th Ave  
Ouray, CO 81427

Job No. J2020-71 Sheet 4 of 7

FOR CITY REVIEW

Unit B Building  
Second Floor 10.0'



LEGEND



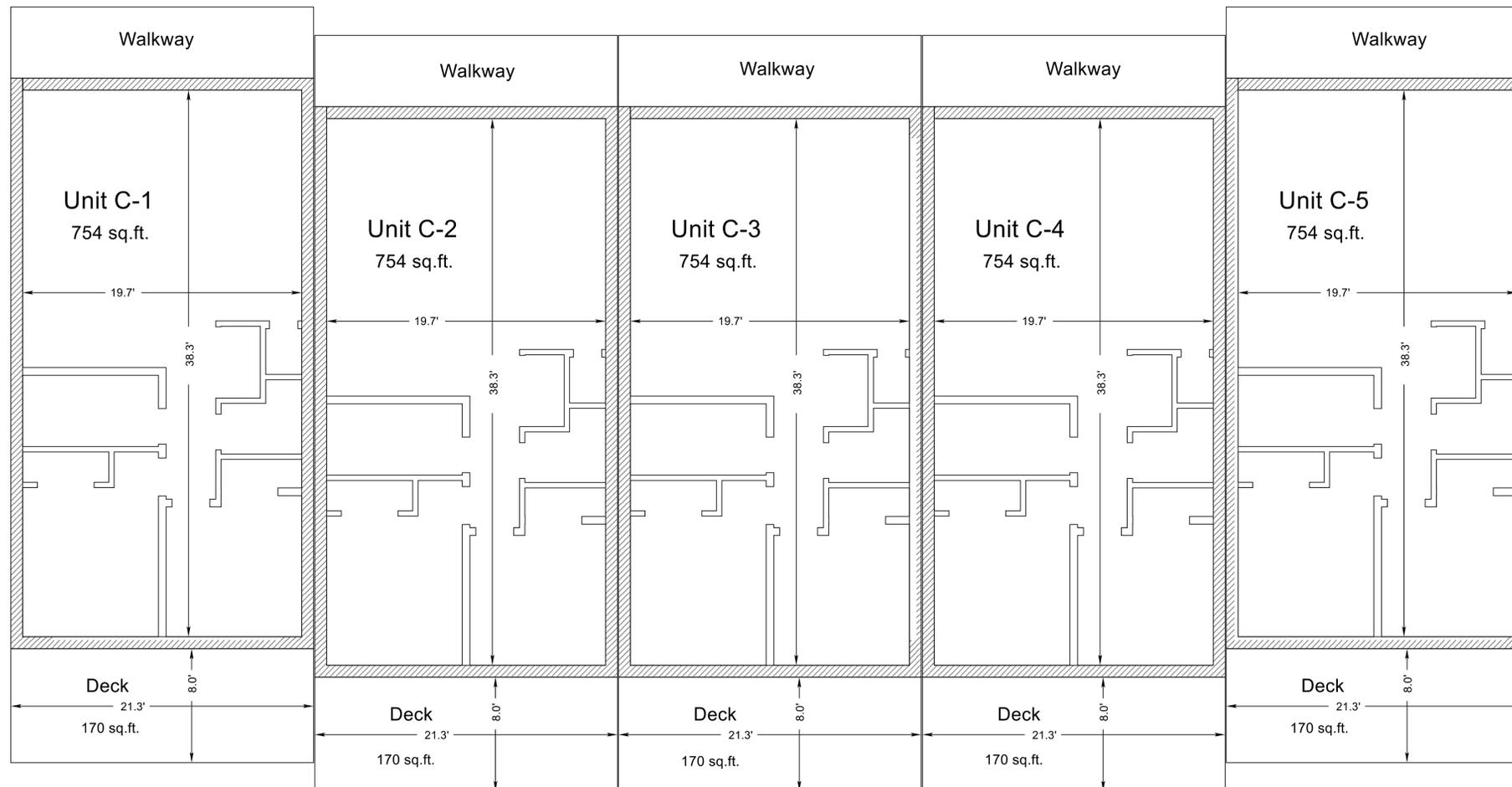
- General Common Element

Note: Unit Decks and Walkways are Limited Common Elements appurtenant to each unit.



Scale: 1"=5'

Unit C Building  
Second Floor 10.0'



FOR CITY REVIEW

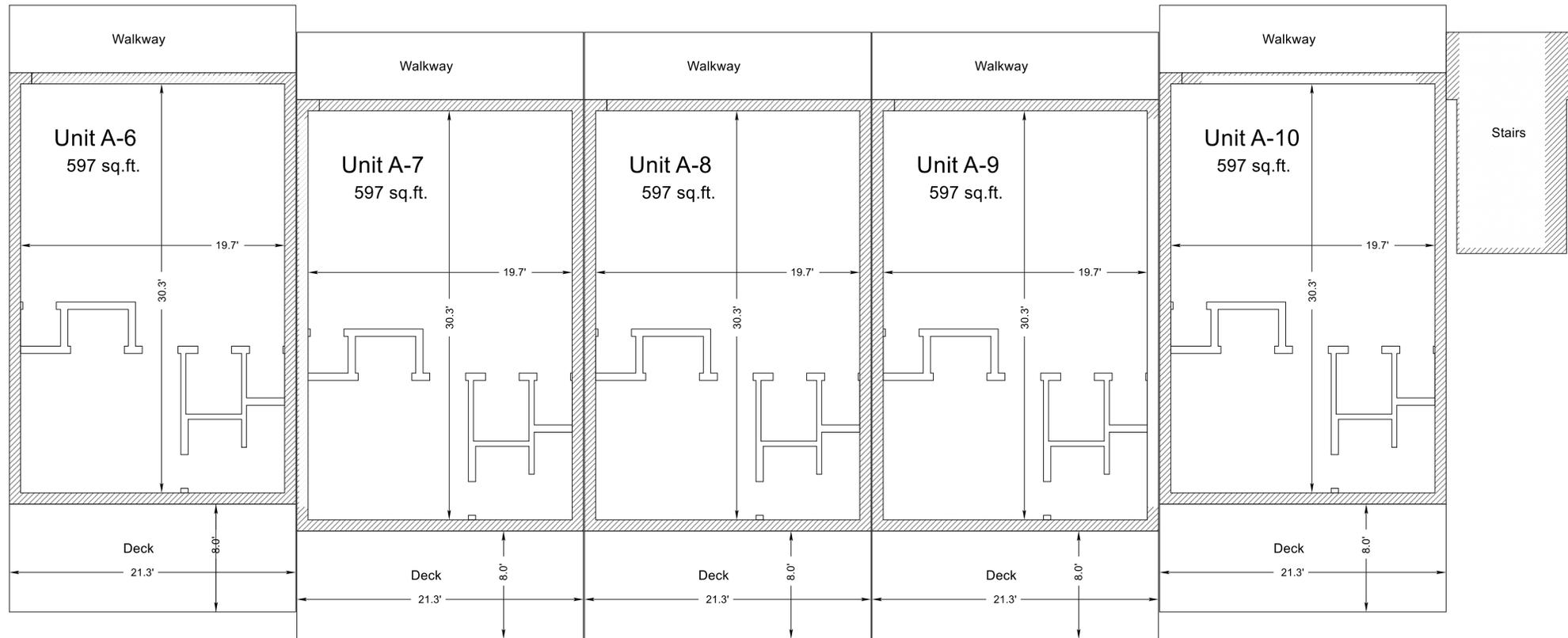
Ouray Workforce Housing  
TBD Hinkson Terrace  
Ouray, CO 81427

Monadnock Mineral Services LLC  
P.O. Box 85 - 342 7th Ave  
Ouray, CO 81427

Job No. J2020-71  
Sheet 5 of 7

FOR CITY REVIEW

Unit A Building  
Third Floor 20.0'

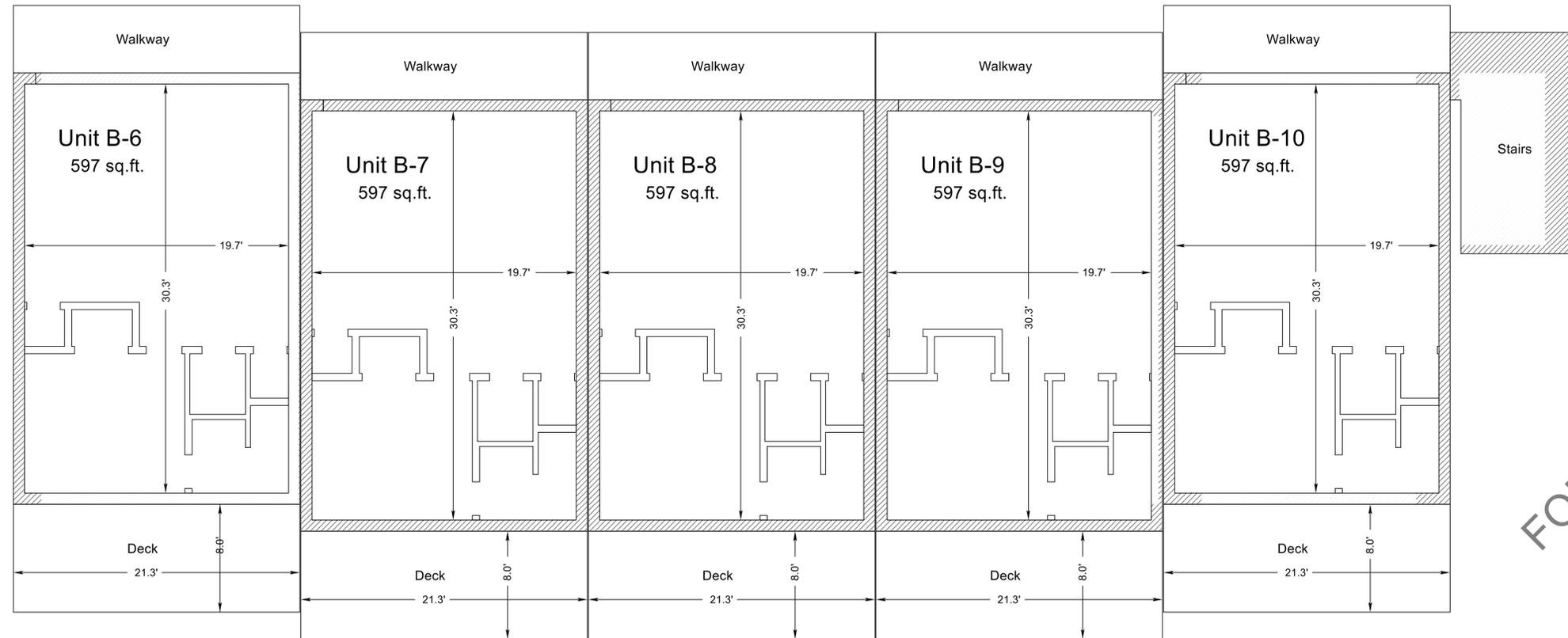


Note: Unit Decks and Walkways are Limited Common Elements appurtenant to each unit.



Scale: 1"=5'

Unit B Building  
Third Floor 20.0'



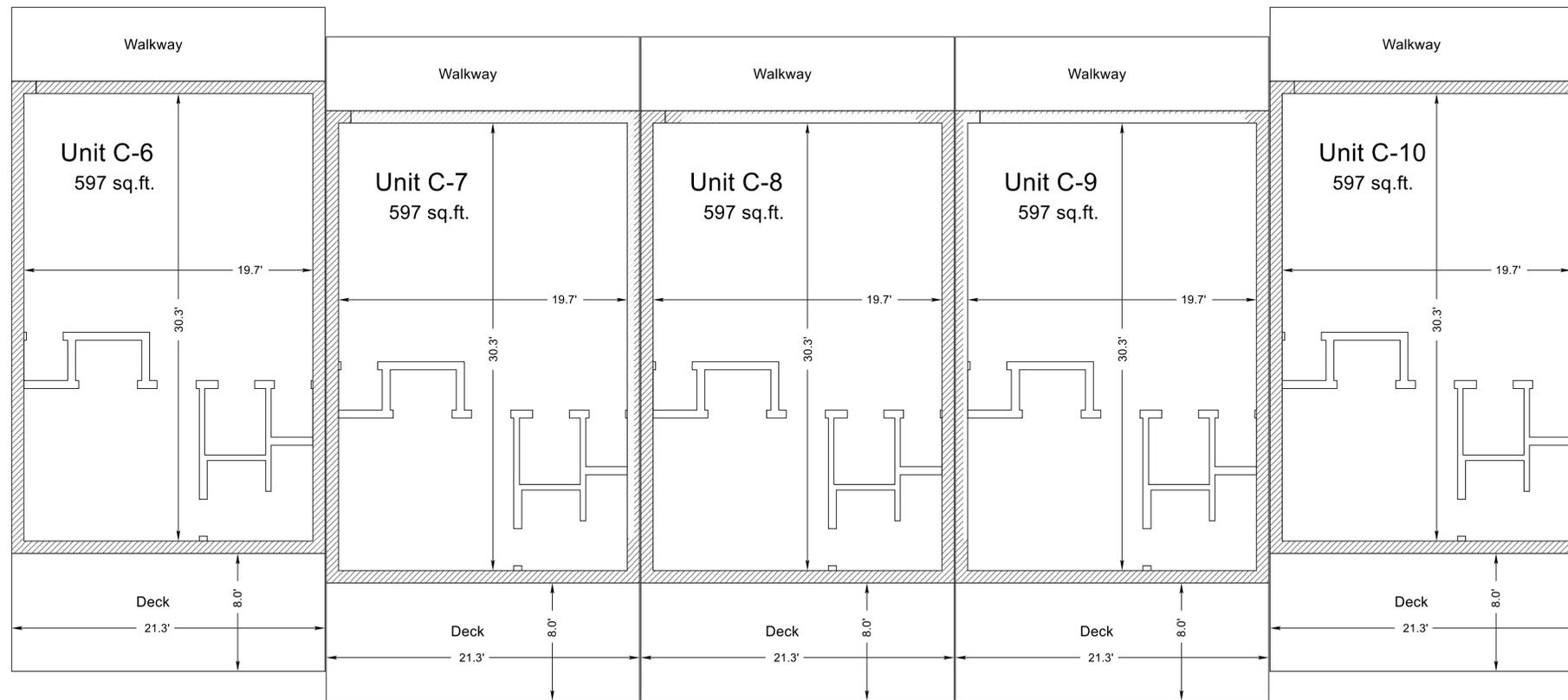
FOR CITY REVIEW

Ouray Workforce Housing  
TBD Hinkson Terrace  
Ouray, CO 81427

Monadnock Mineral Services LLC  
P.O. Box 85 - 342 7th Ave  
Ouray, CO 81427

Job No. J2020-71 Sheet 6 of 7

**Unit C Building  
Third Floor 20.0'**

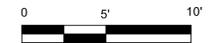


**LEGEND**



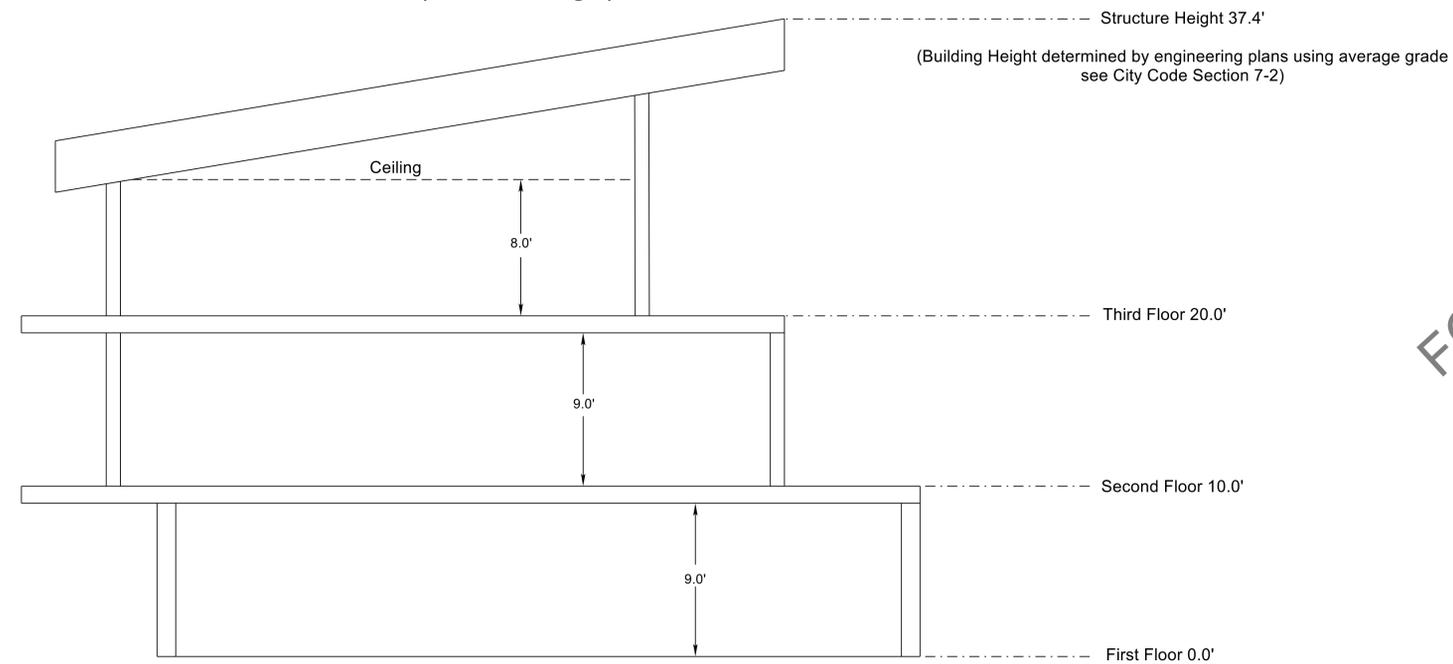
- General Common Element

Note: Unit Decks and Walkways are Limited Common Elements appurtenant to each unit.



Scale: 1" = 5'

**Elevation Profile  
(all buildings)**



FOR CITY REVIEW

FOR CITY REVIEW



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SILVER TERRACE CONDOMINIUMS  
(A Condominium Community)**

**TABLE OF CONTENTS**

**ARTICLE 1. NAME, TYPE, PURPOSES, SUBMISSION AND DEFINITIONS ..... 1**

SECTION 1.1 NAME AND TYPE ..... 1

SECTION 1.2 PURPOSES ..... 1

SECTION 1.3 SUBMISSION OF REAL ESTATE ..... 1

SECTION 1.4 DEFINITIONS ..... 1

**ARTICLE 2. NUMBER OF UNITS, BOUNDARIES, COMMON AND LIMITED COMMON ELEMENTS AND EASEMENTS ..... 3**

SECTION 2.1 NUMBER OF UNITS / MAXIMUM NUMBER OF UNITS THAT MAY BE CREATED ..... 3

SECTION 2.2 UNITS AND BOUNDARIES ..... 3

SECTION 2.3 COMMON ELEMENTS ..... 4

SECTION 2.4 LIMITED COMMON ELEMENTS ..... 4

SECTION 2.5 ASSIGNMENT AND REASSIGNMENT OF LIMITED COMMON ELEMENTS ..... 4

SECTION 2.6 EASEMENTS FOR USE AND ENJOYMENT ..... 4

SECTION 2.7 EASEMENT FOR ENTRY ..... 5

SECTION 2.8 SUPPORT ..... 5

SECTION 2.9 ENCROACHMENTS ..... 5

SECTION 2.10 UTILITIES ..... 5

SECTION 2.11 UTILITY, MAP AND PLAT EASEMENTS ..... 6

SECTION 2.12 EMERGENCY EASEMENTS ..... 6

SECTION 2.13 UTILITY RESERVATIONS ..... 6

SECTION 2.14 WARRANTY, REPAIR AND CONSTRUCTION EASEMENT ..... 6

**ARTICLE 3. ASSOCIATION MEMBERSHIP, ALLOCATION OF INTERESTS AND THE ASSOCIATION ..... 6**

SECTION 3.1 MEMBERSHIP ..... 6

SECTION 3.2 ALLOCATED INTERESTS ..... 6

SECTION 3.3 GENERAL PURPOSES, POWERS, AUTHORITY AND RESTRICTIONS ON AND OF THE ASSOCIATION .....	7
SECTION 3.4 ASSOCIATION AGREEMENTS .....	7
SECTION 3.5 OPEN MEETINGS OF THE ASSOCIATION AND BOARD .....	7
SECTION 3.6 GOVERNANCE POLICIES .....	8
SECTION 3.7 DECLARANT CONTROL .....	8
SECTION 3.8 INITIAL OWNER ELECTIONS OF BOARD MEMBERS .....	8
SECTION 3.9 DECLARANT MAY RELINQUISH RIGHTS .....	8
SECTION 3.10 INDEMNIFICATION .....	8
<b>ARTICLE 4. ASSESSMENTS .....</b>	<b>8</b>
SECTION 4.1 POWER AND PURPOSES OF ASSESSMENTS .....	8
SECTION 4.2 COMMON EXPENSE ASSESSMENTS .....	8
SECTION 4.3 UTILITY ASSESSMENT .....	8
SECTION 4.4 INSURANCE ASSESSMEN .....	8
SECTION 4.5 SPECIFIC UNIT ASSESSMENTS .....	8
SECTION 4.6 PERSONAL OBLIGATION FOR ASSESSMENTS .....	9
SECTION 4.7 COMMENCEMENT OF ASSESSMENTS .....	9
SECTION 4.8 LIEN .....	9
SECTION 4.9 PAYMENT OF ASSESSMENTS .....	9
SECTION 4.10 DELINQUENT ASSESSMENTS .....	10
SECTION 4.11 BUDGET AND COMMON EXPENSE ASSESSMENTS .....	10
SECTION 4.12 SPECIAL ASSESSMENT .....	11
SECTION 4.13 CAPITAL CONTRIBUTION .....	11
SECTION 4.14 STATEMENT OF ACCOUNT .....	11
SECTION 4.15 SURPLUS FUNDS .....	12
SECTION 4.16 BORROWING .....	12
<b>ARTICLE 5. MAINTENANCE RESPONSIBILITIES .....</b>	<b>12</b>

SECTION 5.1 OWNER MAINTENANCE RESPONSIBILITIES .....	12
SECTION 5.2 MAINTENANCE BY THE ASSOCIATION.....	14
SECTION 5.3 MAINTENANCE STANDARDS AND INTERPRETATION.....	15
SECTION 5.4 LIABILITY FOR DAMAGE .....	15
SECTION 5.5 FAILURE TO MAINTAIN .....	15
<b>ARTICLE 6. ARCHITECTURAL CONTROLS.....</b>	<b>15</b>
SECTION 6.1 ARCHITECTURAL COVENANTS .....	15
SECTION 6.2 ALTERATION OF UNITS .....	16
SECTION 6.3 ARCHITECTURAL STANDARDS.....	16
SECTION 6.4 AUTHORITY OF ASSOCIATION TO ENGAGE CONSULTANTS .....	16
SECTION 6.5 ENCROACHMENTS ONTO COMMON ELEMENTS.....	17
SECTION 6.6 CONDITIONS OF APPROVAL .....	17
SECTION 6.7 REQUIRED ACTION BY THE ASSOCIATION .....	17
SECTION 6.8 VARIANCES .....	17
SECTION 6.9 COMMENCEMENT AND COMPLETION OF CONSTRUCTION .....	17
SECTION 6.10 LIMITATION OF LIABILITY .....	17
SECTION 6.11 NO WAIVER OF FUTURE APPROVALS .....	17
SECTION 6.12 ENFORCEMENT .....	17
<b>ARTICLE 7. COVENANTS AND USE RESTRICTIONS.....</b>	<b>18</b>
SECTION 7.1 GENERAL TERMS ON COVENANTS AND RESTRICTIONS OF THIS DECLARATION .....	18
SECTION 7.2 OWNER RESPONSIBILITY FOR COMPLIANCE.....	18
SECTION 7.3 USE OF UNITS .....	18
SECTION 7.4 LEASING .....	19
SECTION 7.5 RESTRICTIONS ON EXTERIOR BUILDING CHANGES, STRUCTURAL ALTERATIONS AND MORE .....	19

SECTION 7.6 SOLAR PANELS OR SIMILAR INSTALLATIONS .....	19
SECTION 7.7 REASONABLE RIGHTS TO DEVELOP .....	19
SECTION 7.8 USE OF COMMON ELEMENTS .....	19
SECTION 7.9 USE OF LIMITED COMMON ELEMENTS .....	19
SECTION 7.10 USE OF GARAGES AND ASSIGNED PARKING SPACES .....	20
SECTION 7.11 COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS .....	20
SECTION 7.12 PROHIBITION OF NUISANCE .....	20
SECTION 7.13 NO DAMAGE OR WASTE .....	20
SECTION 7.14 PETS .....	20
SECTION 7.15 VEHICLES AND PARKING .....	21
SECTION 7.16 VEHICLE REPAIR .....	21
SECTION 7.17 HEATING OF UNITS IN COLDER MONTHS .....	21
SECTION 7.18 TRASH AND GARBAGE .....	22
SECTION 7.19 UNSIGHTLY OR UNKEMPT CONDITIONS .....	22
SECTION 7.20 GRILLING .....	22
SECTION 7.21 PERSONAL PROPERTY ON COMMON ELEMENTS .....	22
SECTION 7.22 RULES AND REGULATIONS .....	22
<b>ARTICLE 8. INSURANCE .....</b>	<b>23</b>
SECTION 8.1 ASSOCIATION’S PROPERTY INSURANCE .....	23
SECTION 8.2 OTHER ASSOCIATION INSURANCE .....	23
SECTION 8.3 STANDARDS FOR ASSOCIATION POLICIES .....	23
SECTION 8.4 INSURANCE DEDUCTIBLES .....	24
SECTION 8.5 OWNERS’ INSURANCE .....	24
SECTION 8.6 OWNER’S RIGHT TO REVIEW ASSOCIATION INSURANCE POLICIES .....	24
SECTION 8.7 SOURCE AND ALLOCATION OF PROCEEDS .....	24
SECTION 8.8 REPAIR AND RECONSTRUCTION REQUIREMENTS .....	25
SECTION 8.9 CLAIMS AND ADJUSTMENTS BY THE ASSOCIATION .....	25

SECTION 8.10 CONSTRUCTION FUND .....	25
SECTION 8.11 CONDEMNATION AND PROPERTY INSURANCE ALLOCATIONS AND DISTRIBUTIONS .....	25
SECTION 8.12 MANAGING AGENT’S INSURANCE .....	25
<b>ARTICLE 9. MORTGAGE HOLDER’S RIGHTS .....</b>	<b>25</b>
SECTION 9.1 ABANDONMENT OR TERMINATION.....	25
SECTION 9.2 LIABILITY FOR ASSESSMENTS.....	25
SECTION 9.3 NOTICE TO MORTGAGE HOLDERS .....	25
SECTION 9.4 NO PRIORITY .....	26
SECTION 9.5 NOTICE TO ASSOCIATION .....	26
SECTION 9.6 FAILURE OF MORTGAGE HOLDER TO RESPOND .....	26
SECTION 9.7 CONSTRUCTION OF THIS ARTICLE.....	26
<b>ARTICLE 10. DEVELOPMENT RIGHTS OF DECLARANT .....</b>	<b>26</b>
SECTION 10.1 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS .....	26
SECTION 10.2 ADDITIONAL RESERVED RIGHTS .....	27
SECTION 10.3 RIGHTS TRANSFERRABLE/RIGHTS TRANSFERRED .....	27
SECTION 10.4 NO FURTHER AUTHORIZATIONS NEEDED .....	27
SECTION 10.5 AMENDMENT OF THE DECLARATION OR MAP .....	27
SECTION 10.6 INTERPRETATION .....	28
SECTION 10.7 CONSTRUCTION.....	28
SECTION 10.8 TERMINATION OF RESERVED RIGHTS .....	28
<b>ARTICLE 11. ALTERNATIVE DISPUTE RESOLUTION—UNITS AND THE COMMON ELEMENTS .....</b>	<b>28</b>
SECTION 11.1 PURPOSE.....	28
SECTION 11.2 DIRECT COMMUNICATION .....	28
SECTION 11.3 MEDIATION.....	28

SECTION 11.4 ARBITRATION .....	28
SECTION 11.5 ACTIONS BY THE ASSOCIATION OR ANY OWNER .....	29
SECTION 11.6 SOLE REMEDY-WAIVER OF JUDICIAL RIGHTS .....	30
SECTION 11.7 BINDING NATURE; APPLICABLE LAW .....	30
SECTION 11.8 LOCATION.....	30
SECTION 11.9 PAYMENT OF EXPENSES UNDER THIS ARTICLE .....	30
SECTION 11.10 AMENDMENT OF THIS ARTICLE .....	30
<b>ARTICLE 12. AUTHORITY AND ENFORCEMENT .....</b>	<b>30</b>
SECTION 12.1 COMPLIANCE WITH AND ENFORCEMENT OF GOVERNING DOCUMENTS.....	30
SECTION 12.2 FAILURE TO ENFORCE .....	31
<b>ARTICLE 13. AMENDMENTS OR TERMINATION .....</b>	<b>31</b>
SECTION 13.1 AMENDMENT BY OWNERS .....	31
SECTION 13.2 MORTGAGE HOLDER APPROVAL FOR MATERIAL AMENDMENTS.....	31
SECTION 13.3 AMENDMENTS BY BOARD OF DIRECTORS .....	31
SECTION 13.4 AMENDMENT OF DECLARATION OR MAP BY DECLARANT .....	31
SECTION 13.5 REQUIRED CONSENT OF DECLARANT TO AMENDMENT.....	32
SECTION 13.6 VALIDITY .....	32
SECTION 13.7 TERMINATION .....	32
<b>ARTICLE 14. GENERAL PROVISIONS.....</b>	<b>32</b>
SECTION 14.1 SECURITY .....	32
SECTION 14.2 IMPLIED RIGHTS .....	32
SECTION 14.3 INTERPRETATION .....	32
SECTION 14.4 ELECTRONIC RECORDS, NOTICES AND SIGNATURES.....	32
SECTION 14.5 DURATION .....	32
SECTION 14.6 SEVERABILITY .....	32

SECTION 14.7 PUBLIC IN GENERAL .....	32
SECTION 14.8 CONFLICTS .....	33
SECTION 14.9 CAPTIONS .....	33
SECTION 14.10 SINGULAR INCLUDES THE PLURAL; GENDER .....	33
<b><u>EXHIBITS</u></b> .....	35
LEGAL DESCRIPTION- EXHIBIT “A” .....	35
INITIAL UNITS- EXHIBIT “B” .....	36

This Declaration of Covenants, Conditions and Restrictions for Silver Terrace Condominiums (“Declaration”) is made by the Declarant (as defined below) and is effective upon recording.

### **RECITALS**

A. Declarant is the Owner of certain real property in the County of Ouray, State of Colorado as described in *Exhibit A*.

B. Declarant desires to create a condominium community on the Real Estate described in *Exhibit A*, under the name of “Silver Terrace Condominiums” in which portions of the real estate described in *Exhibit A* are designated for separate ownership and uses of a residential nature and in which portions of the real estate described in *Exhibit A* are to become co-owned by the Unit Owners.

C. Declarant has caused the “Silver Terrace Condominiums Owners Association, Inc.”, a Colorado nonprofit corporation (“Association”), to be incorporated under the laws of the State of Colorado, as an owners’ association, for the purpose of exercising the functions of an owners association as set forth in this Declaration and the Colorado Common Interest Ownership Act.

### **ARTICLE 1. NAME, TYPE, PURPOSES, SUBMISSION AND DEFINITIONS**

**Section 1.1 Name and Type.** The type of common interest community is a condominium community. The condominium community’s name is Silver Terrace Condominiums. The Association’s name is Silver Terrace Condominiums Owners Association, Inc.

**Section 1.2 Purposes.** One of the Community’s and the Association’s goals, as well as a goal of this Declaration, is to preserve the value and desirability of the Community and the Units. Additional goals are set forth in this Declaration and/or in other Governing Documents of the Community, including the goal of furthering the interests of the Community’s Owners and Residents.

#### **Section 1.3 Submission of Real Estate.**

(a) The Declarant submits the Real Estate described in *Exhibit A*, as it may be amended, together with all easements, rights, and appurtenances and the buildings and improvements erected or to be erected to the provisions of the terms and conditions of this Declaration.

(b) Declarant declares that all of the Real Estate, as described in *Exhibit A*, and as added by expansion, shall be and is held or sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Declaration.

(c) Declarant further declares that this Declaration is made for the purposes set forth in this Declaration, that this Declaration runs with the Real Estate and shall be and is binding on all Persons and parties having any right, title or interest in the Real Estate or any part, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner and the Association.

**Section 1.4 Definitions.** Terms used in these Governing Documents, as defined below, have their normal, generally accepted meanings or the meanings given in the Colorado Common Interest Ownership Act or the Colorado Revised Nonprofit Corporation Act or as the context may otherwise require.

(a) Act means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as may be amended from time to time.

(b) Assessment includes all Common Expense Assessments, any Insurance Assessments (if any), Utility Assessments (if any), and any other expense levied to a Unit pursuant to this Declaration or the Act.

(c) Association means Silver Terrace Condominiums Owners Association, Inc., a Colorado nonprofit corporation and its successors.

(d) Board or Board of Directors means the body responsible for management and operation of the Association. The term has the same meaning as executive board as defined in the Act.

- (e) Bylaws mean the Bylaws of the Association.
- (f) Common Elements means those portions of the property subject to this Declaration and the Map, other than the Units, all of which are co-owned by the Owners as tenants-in-common.
- (g) Common Expense Assessment means an Assessment levied for Common Expenses.
- (h) Common Expenses mean the expenses and liabilities incurred or anticipated to be incurred by the Association including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements, and for fulfilling any of the Association's obligations.
- (i) Community means all that property as more particularly described in *Exhibit A*.
- (j) Declaration means this Declaration, as may be amended and supplemented from time to time.
- (k) Declarant means the Declarant named in this Declaration and/or any successor and/or assignee designated by written notice or assignment executed by Declarant and by the transferee, and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to such transferee.
- (l) Declarant Control means the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of: 60 days after conveyance of 75% of the **maximum number of Units that may be created** as provided for in this Declaration; 2 years after the last conveyance of a Unit by Declarant in the ordinary course of business; or 2 years after the last annexation or expansion of the Community, whichever occurs first.
- (m) Development Rights and/or "Special Declarant Rights" means those rights set forth in this Declaration and those rights set forth in CCIOA.
- (n) Director means any person serving as a member of the Board of Directors.
- (o) Excluded Claim(s) means to the full extent of state statutes, any claim in a civil action, lawsuit or arbitration (other than the arbitration allowed for in this Declaration) related to construction of the Units or the Common Elements, drainage within the Community or any improvements constructed or designed by Declarant on the Common Elements or the following persons: a contractor, subcontractor, developer, builder, architect, engineer or inspector, or any of the affiliates of their persons or persons responsible for any part of the construction or design of the Common Elements, including officers, directors, shareholders, members, managers, employers or servants of these persons.
- (p) Excluded Dispute means a dispute about an Excluded Claim.
- (q) First Lien Holder means a holder, insurer or guarantor of a first Mortgage, subject to the Association's priority lien as allowed by state law and this Declaration.
- (r) Governing Documents mean this Declaration and all exhibits hereto, the Association's Articles of Incorporation, Bylaws, Map, Rules and Regulations, and Policies and Procedures, all as may be supplemented or amended from time to time.
- (s) Insurance Assessment means an Assessment levied for insurance covering parts of a particular Unit.
- (t) Limited Common Elements means portions of the Common Elements reserved for the exclusive use of those entitled to occupy one or more, but less than all, Units, as more particularly set forth in this Declaration or in the Map.
- (u) Managing Agent means the management company, manager and/or bookkeeper engaged by the Association to assist in the operations, administration and governance of the Community.
- (v) Map means the condominium map(s) for the Community as recorded, which map(s) is/are a part of this Declaration.
- (w) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (x) Mortgage Holder means the holder of any Mortgage.
- (y) Officer means any person serving as an officer of the Association in accordance with the Bylaws.
- (z) Owner or Unit Owner or Member means the record titleholder of a Unit within the Community, but does not include a Mortgage Holder.

(aa) Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(bb) Policies and Procedures mean any instrument, however denominated, as a part of any of the Governing Documents, and/or separately adopted by the Association, as required under the Act as responsible governance policies, and other policies as may be adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations and Governance Policies.

(cc) Real Estate means the property to be described in *Exhibit A*, together with all easements, rights, and appurtenances and improvements erected or to be erected. All easements and licenses, that the Community is subject to as of the date of this Declaration, are to be recited in *Exhibit A*. Easements and licenses, that the Community may become subject to, are allowed for as a reserved right of the Declarant and/or the Association.

(dd) Resident means any Person staying overnight in a Unit for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year, and includes tenants.

(ee) Rules and Regulations mean any instrument, however denominated, adopted by the Association, as allowed for under this Declaration and the Act, for the regulation and management of the Community and/or Units, including any amendments or revisions.

(ff) Unit means a physical portion of the Real Estate in the Community designated for individual or separate ownership and use as more particularly described in this Declaration and the Map, specifically including the area shown as the Unit and the area shown as the Unit Garage, and includes the allocated interests assigned to the Unit by this Declaration.

(gg) Utility Assessment means an Assessment for utilities based on the actual usage of utilities by a particular Unit.

(hh) Utility Systems has the meaning set forth in the applicable portions of this Declaration.

## **ARTICLE 2. NUMBER OF UNITS, BOUNDARIES, COMMON AND LIMITED COMMON ELEMENTS AND EASEMENTS**

### **Section 2.1 Number of Units / Maximum number of Units that may be created.**

(a) The number of Units initially included in the Community is 30, as set forth in *Exhibit B*.

(b) Units may be added, combined or subdivided up to the maximum allowed, as provided in this Declaration.

(c) A grand total of 30 Units may be created. The grand total is not a representation or guaranty by the Declarant as to the actual number or type of Units that may ultimately be included in or constructed as part of the Community.

**Section 2.2 Units and Boundaries.** The Community consists of Units, Common Elements and Limited Common Elements and each Unit's allocated interest in the Common Elements. Each Unit is conveyed as a separately designated and legally described Unit subject to the Act and the Governing Documents. Each Unit includes that part of the structure, which lies within the following boundaries:

(a) Residential Unit Boundaries.

(i) Vertical Boundaries. Each Unit's vertical boundaries are the vertical planes formed by the unfinished interior surfaces of the perimeter or vertical walls.

(ii) Horizontal Boundaries. The Unit's horizontal boundaries are the unfinished interior surfaces of the floors and ceilings.

(iii) Additional Information to Interpret Unit Boundaries. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the floors, walls and ceilings are part of the Common Elements. Each Unit includes the spaces and improvements lying within the boundaries of the Unit, including windows, window frames, doors and door frames.

(b) Physical Boundaries. In interpreting deeds and the Map, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Map are conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or the Map, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variances between the boundaries shown on the Map or in a deed and those of the Unit.

(c) Inclusions. Each Unit includes the spaces and improvements lying within the boundaries described above, as depicted on the Map. Each Unit also includes the spaces and improvements containing utility meters, water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, fire protection, smoke detector and security systems and communications, televisions, telephone and other telecommunications and electrical receptacles and boxes serving that Unit exclusively.

(d) Exclusions. Except when specifically included by other provisions of this Declaration or by the Map, the following are excluded from each Unit: the spaces and improvements lying outside the boundaries described above, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other services to other Units and/or any Common Elements.

**Section 2.3 Common Elements.** The Common Elements are to remain undivided, and no Owner or any other Person may bring any action for partition or division of the whole or any part.

**Section 2.4 Limited Common Elements.** The Limited Common Elements include:

(a) Any portions of the Common Elements depicted on the Map as a Limited Common Element, including any Declarant assigned parking or storage space, if any; and in the proper case, any Association assigned spaces, provided the Declaration and/or Map are amendment to reflect that assignment by the Association.

(b) Any fireplaces, decks, balconies, porches, patios, stoops, walkways, skylights, exterior doors and windows, window wells, enclosed yards, enclosed courtyards, storage spaces, parking spaces, carports, garages, attics, crawlspaces, furnaces, hot water heaters, air conditioning units and associated lines, and sump pumps serving a Unit that are not defined or shown as being a part of the Unit; and

(c) Any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside the boundaries of a Unit, the portion serving only the Unit is a Limited Common Element allocated solely to that Unit, and any portion serving more than one Unit is a Limited Common Element to those Units. Any portion serving only the Common Elements is part of the Common Elements.

**Section 2.5 Assignment and Reassignment of Limited Common Elements.**

(a) A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Association, without the need for a vote of the Owners, upon written application to the Association by the Owner or Owners for whose exclusive use the Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected.

(b) Upon application, the Association is to prepare and execute an amendment to the Declaration and/or Map assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment is to be executed by the Owner or Owners making the application.

**Section 2.6 Easements for Use and Enjoyment.**

(a) Owners and Residents have a right and non-exclusive easement of ingress and egress, and use and enjoyment in and to the Common Elements, which are appurtenant to and pass with the title to the Unit, subject to the following provisions:

(i) The Owners' rights to the exclusive use of the Limited Common Elements assigned to their respective Units;

(ii) The Association's right to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Governing Documents, including without limitation, the Association's maintenance responsibility;

(iv) The Association's right to grant easements, leases and licenses across the Common Elements;

(v) the Association's right to dedicate or transfer all or any portion of the Common Elements subject to approval of Owners holding 67% of the total Association vote; and

(vi) The Association's right to change the use of portions of the Common Elements or to close portions of the Common Elements.

(b) Any Owner may delegate their rights of use and enjoyment in and to the Common Elements and facilities located thereon to the members of their family, or other Residents and guests. If the Unit is leased, the Owner is deemed to have delegated these rights to the Residents of their Unit.

**Section 2.7 Easement for Entry.**

(a) Each Unit is subject to an easement in favor of the Association (including its agents, employees and contractors) and to each Unit Owner to allow for their performance of obligations in this Declaration.

(b) On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property, pursuant to this Declaration.

(c) Except in an emergency situation, entry is only during reasonable hours and after reasonable notice to the Owner or Resident of the Unit. For the purposes of this Section, an emergency justifying immediate entry into a Unit includes, but is not limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a Person or animal might be injured or sick and require immediate medical attention.

(d) The failure to exercise the easement rights in the event of emergency, security, or safety purposes does not create liability to the Association, it being agreed that no duty to enter a Unit for such purposes exists.

**Section 2.8 Support.** Every portion of a Unit and all Common Elements contributing to the support of an abutting Unit are burdened with a non-exclusive easement of support for the benefit of the abutting Unit.

**Section 2.9 Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists. This easement does not relieve an Owner of liability in case of willful misconduct.

**Section 2.10 Utilities.** To the extent that any utility line, pipe, wire, or conduit serving any Unit(s) or the Common Elements lies wholly or partially within the boundaries of another Unit or the Common Elements, the other Unit(s) or the Common Elements are burdened with a non-exclusive easement for the use, maintenance, repair and replacement of the utility line, pipe, wire or conduit, the non-exclusive easement to be in favor of the Unit(s) or Common Elements served by the same and of the Association.

**Section 2.11 Utility, Map and Plat Easements.** Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat and on the recorded Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

**Section 2.12 Emergency Easements.** A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

**Section 2.13 Utility Reservations.** Declarant creates and reserves to itself, until Declarant has sold the last Unit that may be created to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Real Estate, the Community and the Units for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment and effluent irrigation systems, gas, telephone and other telecommunications systems, electricity, heat and cooling systems, and master television and satellite antenna or cable systems, and any other utility systems as may be desired or provided (collectively, "Utility Systems"). By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Real Estate and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, heat and cooling facilities, telephone and other telecommunications facilities, telephone and television wires, circuits, conduits and meters, and any other improvements or facilities appurtenant or relating to the Utility Systems. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Declaration requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Real Estate is reserved, provided the easement granted does not conflict with the terms of this Declaration. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Real Estate. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section must be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

**Section 2.14 Warranty, Repair and Construction Easement.** The Declarant and its assignees has the right to perform warranty work, repairs and complete construction on a Unit, the Common Elements or any part of the Community, even after conveyance of a Unit to an Owner, after notice and with reasonable coordination with the Owner or Resident. This includes the right to control such work and repairs, along with a right of access, until completion. These rights of Declarant are not to be construed as development rights or special declarant rights or other rights allowed for under CCIOA, but rather, as rights independent of CCIOA, based on common law.

### **ARTICLE 3. ASSOCIATION MEMBERSHIP, ALLOCATION OF INTERESTS AND THE ASSOCIATION**

#### **Section 3.1 Membership.**

(a) Every Person who is a record Owner of a fee interest in any Unit subject to this Declaration is a Member of the Association.

(b) Membership is appurtenant to and may not be separated from ownership of any Unit.

(c) Ownership of a Unit is the sole qualification for membership.

(d) No Owner, whether one or more Persons, has more than one membership per Unit owned.

(e) Membership is not intended to include Persons who hold an interest merely as security for the performance of an obligation, but the giving of a security interest does not terminate the Owner's membership.

#### **Section 3.2 Allocated Interests.**

(a) Voting. The Owner or collective Owners of a Unit is entitled to one equally weighted vote for the Unit. When more than one Person holds an ownership interest in any Unit, the vote for the Unit is to be exercised as those Owners determine among themselves, otherwise the Unit's vote is suspended if more than one Person seeks to exercise it.

(b) Common Expenses. Except as provided below or elsewhere in the Governing Documents, the amount of all Common Expenses is assessed equally against all Units.

(c) Co-ownership Interests in the Common Elements. The percentage of ownership interest in the Common Elements is divided equally between the Units.

### **Section 3.3 General Purposes, Powers, Authority and Restrictions on and of the Association.**

(a) The Association, acting solely through its, is to perform functions and manage the Community including its business affairs as provided in the Governing Documents so as to serve the purposes of the Community as set forth in the Governing Documents.

(b) Any purchaser of a Unit is deemed to have assented to, ratified and approved this Declaration and the terms of this Declaration.

(c) The Association has all power necessary or desirable to effectuate the purposes of the Community and the purposes of the Association.

(d) The business affairs of the Community shall be managed by the Association, acting through the Board. Unless a particular power is expressly reserved to the Owners, all powers of the Association are to be exercised by, and the business and affairs of the Association are to be conducted and managed by the Board of Directors.

(e) The Association is governed by the Governing Documents and other applicable laws.

(f) The Board may, by written resolution, delegate authority to a Managing Agent or bookkeeper for the Association, provided no such delegation relieves the Board of final responsibility.

(g) The Association may not commence an arbitration on an Excluded Claim without first complying with the terms of other provisions of this Declaration.

(h) The Association may not sue on an Excluded Claim.

**Section 3.4 Association Agreements**. Any agreement for professional management of or bookkeeping for the Community or any contract providing for services of the Declarant may not exceed 1 year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon 30 days written notice. The Association is not bound either directly or indirectly to contracts or leases (including management contracts) entered into during Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after at least 30 days' notice to the other party to the contract.

### **Section 3.5 Open Meetings of the Association and Board.**

(a) All meetings of the Association and the Board are open to every Owner, or to any person designated by an Owner in writing as the Owner's representative.

(b) All Owners or designated representatives so desiring are permitted to attend, listen and speak at an appropriate time during the deliberations and proceedings.

(c) The Board may place reasonable time restrictions on those persons speaking during the meeting but must permit an Owner or a designated representative to speak before the Board takes formal action on an item under discussion, in addition to any other opportunities to speak.

(d) The Board may provide for a reasonable number of persons to speak on each side of an issue.

(e) Upon the final resolution of any matter for which the Board receives legal advice or that concerns pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate.

**Section 3.6 Governance Policies.** The Association is to adopt and maintain Governance Policies, to guide governance and operation of the Community and the Association and as required by CCIOA.

**Section 3.7 Declarant Control.** During Declarant Control, Declarant has the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove Officers and members of the Board of Directors.

**Section 3.8 Initial Owner Elections of Board Members.** Owners are to elect an Owner controlled Board as initially allowed for under a state statute known as the Colorado Common Interest Ownership Act. Subsequently, Board positions are to be filled by vote of the Owners and as allowed for in the Bylaws.

**Section 3.9 Declarant May Relinquish Rights.** At any time prior to the end of the Period of Declarant Control the Declarant may relinquish the right to appoint and remove Board members as may require certain specific actions of the Board to be approved by the Declarant.

**Section 3.10 Indemnification.** To the full extent permitted by law, each Officer and member of the Board of Directors of the Association is indemnified by the Owners and the Association.

#### ARTICLE 4. ASSESSMENTS

**Section 4.1 Power and Purposes of Assessments.** The Association has the power to levy Assessments as provided for in this Declaration and under the Act.

**Section 4.2 Common Expense Assessments.** The Common Expense Assessments are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and Residents in the Community as may be more specifically defined and authorized from time to time by the Association.

**Section 4.3 Utility Assessments.** If any utility is billed in the name of an Owner but is provided, in common, to the Community, or is billed to the Association, the costs of that utility is to divided proportionately between all of the Owners relative to the square footage of their Unit or as determined by the Association relative to use or sub metering. The Association may sub meter utilities billed to it separately to each Unit.

**Section 4.4 Insurance Assessment.** If determined by the Board, Insurance Assessments may be imposed based on allocated risk, as reasonably determined by the Board in consultation with the Association's insurance agent or one or more of the Association's insurers and the Association's attorney.

**Section 4.5 Specific Unit Assessments.** The Association has the power to levy specific Unit assessments against a Unit pursuant to this Section as it deems appropriate.

(a) Any expense or liability incurred by the Association as a result of the willful, negligent or wrongful act of an Owner, their family, guests or other Residents of the Unit, or any breach by any of these parties of any of the provisions of the Governing Documents, may be an assessment against the Unit.

(b) Any expense associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed against the Unit(s) to which that Limited Common Element is assigned, equally or in any other equitable proportion as determined by the Association.

(c) Any expense benefiting fewer than all of the Units, or significantly disproportionately benefiting all Units, may be assessed equitably against those Units benefited according to the benefit received. Except as provided in subsection (a) above, expenses incurred for the maintenance, repair or replacement of the Common Elements (but not the Limited Common Elements) may not be assessed as specific Unit assessment.

(d) Any expense related to utilities not separately charged by the utility provider to the Unit or Owner may be assessed among the Units served, with or without separate metering or an evaluation by an independent entity with expertise in making allocation determinations. Each Unit may be sub-metered for water and electricity and sewer. If not separately assessed, utilities may be assessed on the same basis as Assessments.

(e) Any expense related to insurance premiums may be assessed against Units in proportion to risk.

**Section 4.6 Personal Obligation for Assessments.**

(a) Each Owner is deemed to covenant and agrees to pay to the Association:

(i) Common Expense Assessments or charges;

(ii) Special Assessments;

(iii) Any Insurance or Utility Assessments,

(iv) Specific Unit Assessments which are established pursuant to the terms of this Declaration;

and

(v) Any other Assessment authorized under this Declaration or the Act.

(b) Assessments are the personal obligation of the Person who was the Owner of the Unit at the time when the Assessment fell due. The personal obligation to pay any past due sums to the Association does not pass to a successor in title unless expressly assumed.

**Section 4.7 Commencement of Assessments.**

(a) Assessments on the initial Units included in the Community shall begin on the first conveyance of a Unit to an Owner. Prior to conveyance of the first Unit by Declarant the Declarant is responsible for the payment of expenses of the Association.

(b) Assessments for Units subsequently added or annexed to the Community commence from the date the Unit is created under this Declaration.

**Section 4.8 Lien.** All Assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), up to the maximum amount permitted by law, and is a charge on the Unit and a continuing lien upon the Unit against which each Assessment is made. The Association has the authority to record a notice of lien in the Ouray County, Colorado real property records evidencing the lien created under this Declaration. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under state or federal law. The lien has the priority as set forth in the Act.

**Section 4.9 Payment of Assessments.** Assessments are to be paid in the manner and on the dates as may be fixed by the Association. Unless otherwise provided by resolution, the Common Expense Assessments are to be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt himself from liability for or otherwise withhold payment of Assessments for any reason whatsoever, including, but not limited to,

nonuse of the Common Elements, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

**Section 4.10 Delinquent Assessments.** All Assessments and related charges not paid on or before the due date are delinquent, and the Owner is then in default.

(a) If the any Assessment, any part or installment thereof or any other fine, special Assessment or charge is not paid in full within **ten** days of the due date, or any later date as may be set forth in the Association's collection policy:

(i) A late charge in an amount set forth in the Association's collection policy may be imposed without further notice or warning to the delinquent Owner;

(ii) Interest at the rate set forth in the Association's collection policy, not to exceed the maximum amount permitted by Colorado law, may be imposed without further notice or warning to the delinquent Owner; and

(iii) Upon 30 days written notice to the Owner, the Association may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner loses the privilege of paying any and all Assessments and charges in installments for that fiscal year, unless the privilege is otherwise reinstated in the Association's sole discretion.

(b) If Assessments, fines or other charges, or any part thereof, remain unpaid more than **ten** days after the Assessment payments first become delinquent, the Owner's right to vote is automatically suspended until all amounts owed are paid in full, and the Association may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Colorado law, including reasonable attorney's fees actually incurred. Enforcement under this section is not dependent upon or related to other restrictions and/or other actions.

(c) If partial payment of Assessments or other charges are made, the amount received is to be applied as specified in the Association's collection policy.

(d) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay the overdue Assessments or related charges, or monthly or other installments thereof, and may also proceed to foreclose its lien against the Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments or related charges, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien against the Unit.

(e) The Association's foreclosure or attempted foreclosure of its lien is not deemed to preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment or related charges, or monthly or other installments thereof, which are not fully paid when due. The Association has the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant their Unit, the Association may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Owner. The rights of the Association are expressly subordinate to the rights of any holder of a First Lien Holder as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

**Section 4.11 Budget and Common Expense Assessments.**

(a) Prior to the beginning of each fiscal year, the Association is to prepare a proposed budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of improvements that are the Association's responsibility, and establish the annual Assessment or installments for the coming year.

(b) The Association is to deliver a summary of the proposed budget to each Owner within 90 days after adopting the proposed budget and set a date for a meeting of the Owners to consider the proposed budget, which meeting is to occur within a reasonable time after delivery of the proposed budget summary.

(c) The proposed budget and the Assessments from it become effective unless disapproved at a duly called Association meeting by a majority of the total Association vote; provided, however, if a quorum is not obtained at the annual or other meeting called to ratify the budget, the budget becomes effective even though a vote to disapprove the budget could not be called at this meeting.

(d) If the membership disapproves a proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then and until a new budget is determined, the budget in effect for the current year continues for the succeeding year. In such case, the Association may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets applies to a new budget proposed by the Association.

(e) A ratified or approved budget does not operate as a limitation on expenditures by the Association, but, rather, the budget is merely an estimate of Common Expenses.

**Section 4.12 Special Assessments.** In addition to the Common Expense Assessment provided for above, the Association may, at any time, and in addition to any other rights it may have, propose a special Assessment against all Owners in accordance with the meeting and notice procedures set forth above. In order to be effective, any special Assessment (except as provided in this Declaration regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) becomes effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the meeting, the special Assessment becomes effective even though a vote to disapprove the special Assessment could not be called at this meeting.

**Section 4.13 Capital Contribution.** Each Owner, upon transfer of a Unit to that Owner, must pay to the Association at the time of the closing of the transfer, a capital contribution in an amount equal to two months of the Common Expense Assessment to which the Unit is subject at the time of the transfer. The statement of Assessments prepared in accordance with the Act may include the amount of this capital contribution to be due and payable to the Association from the Owner taking title to a Unit at the time of the transfer of the Unit to the Owner. The Association is to deposit the capital contribution in its reserve account. This capital contribution is a lien on the Unit and, if not paid at the closing of the Unit, may be collected in accordance with the terms of this Declaration. This capital contribution does not apply to the following:

- (a) A transfer by a co-Owner to another co-Owner;
- (b) A transfer to the estate of an Owner, a transfer to the surviving spouse of an Owner or a transfer to child of an Owner following the Owner's death;
- (c) A transfer to an entity wholly owned by the grantor, provided that, upon any subsequent transfer of an ownership interest in the entity, the capital contribution becomes due;
- (d) A transfer to a trust of which the Owner is the beneficiary; provided, that upon any subsequent transfer of the Unit to a party other than the Owner, the capital contribution becomes due;
- (e) A transfer in lieu of foreclosure or foreclosure of a deed of trust; provided that upon the subsequent transfer to a third party, the capital contribution becomes due.

**Section 4.14 Statement of Account.** The Association is to furnish to an Owner or the Owner's designee or to a holder of a security interest or its designee a statement setting forth the amount of unpaid Assessments then levied against the Unit in which the Owner, designee or holder of a security interest has an interest. The Association is to deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party within 14 calendar days after the Association's registered agent receives the request by personal

delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in the statement, when signed by the Association's treasurer or managing agent, if any, binds the Association, the Board, and every Owner as to the Person(s) to whom the statement is issued and who rely on it in good faith. The Association may establish a reasonable fee relating to the statement, which may incorporate any fees imposed by a managing agent.

**Section 4.15 Surplus Funds.** Surplus funds from whatever source are to be applied to the payment of Common Expenses. Any funds remaining after application are to, at the Association's option, be: (a) added to the Association's capital reserve account; (b) distributed to the Owners; or (c) credited to the next Assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit.

**Section 4.16 Borrowing.** The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense Assessments.

## ARTICLE 5. MAINTENANCE RESPONSIBILITIES

### Section 5.1 Owner Maintenance Responsibilities.

(a) Each Owner is obligated to maintain, repair, replace, improve and keep in good repair all portions of their Unit, except any portion of a Unit which is expressly made the Association's maintenance obligation as set forth below. This maintenance responsibility includes the responsibility to maintain, repair, replace or improve the following:

(i) The materials making up the finished surfaces of the walls, floors and ceilings, including, but not limited to plaster, drywall, paneling, wallpaper, paint, wall and floor tile, carpet and flooring (but not including the sub-flooring in the lowermost floor of the Unit);

(ii) Exterior cleaning of all glass surfaces;

(ii) All pipes, lines, ducts, conduits, or other apparatus which serve only the Unit from the point where the lines enter the Unit (including all electricity, water, or sewer pipes, lines, ducts, conduits, or other apparatus serving only the Unit;

(iv) Any fireplace (including the chimney, flue and firebox, but excluding chimney caps) that serves only the Unit;

(v) All communications, television, telephone, cable and electrical lines, receptacles and boxes which serve only the Unit from the point where the lines enter the Unit;

(vi) Window wells appurtenant to Unit;

(vii) Carport appurtenant to Unit;

(viii) Patios or deck appurtenant to Unit;

(ix) Balcony decking and balcony railing appurtenant to Unit, but not structural integrity of the balcony;

(x) Enclosed courtyard appurtenant to Unit;

(xii) Storage areas appurtenant to Unit;

(xiii) Skylight(s);

(xiv) Sump pump located within or serving the Unit;

- (xv) Crawlspace appurtenant to Unit;
  - (xvi) Attic appurtenant to Unit;
  - (xvii) Hot water heaters and associated pipes, lines, ducts, conduits or other apparatus which serve the Unit, whether located within or outside the boundaries of the Unit;
  - (xviii) Limited Common Element Garage appurtenant to the Unit, garage door (except painting the exterior surface of garage door) and garage door openers;
  - (xix) Any light fixtures and light bulbs in the front porch area or the rear patio area or on the balcony;
  - (xx) garage portion of the Unit, garage door (except painting the exterior surface of garage door) and garage door openers;
  - (xxi) Any portion of the heating and air conditioning systems including the air conditioning compressor and fan coil serving the Unit, whether located within or outside the boundaries of the Unit; and
  - (xxii) Any improvements to the Unit and/or the Common Elements made by the Owner or the Owner's predecessor. Every Owner is responsible to determine what improvements have been made to the Unit and/or associated Common Elements by any predecessor-in-interest.
- (b) In addition, each Owner has the responsibility:
- (i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving their Unit, including keeping the patio appurtenant to the Unit free and clear of snow, ice, and any accumulation of water or other debris;
  - (ii) To perform their responsibility in a manner so as not to unreasonably disturb other Persons in other Units;
  - (iii) To promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible;
  - (iv) To pay for the cost of repairing, replacing, or cleaning up any component of the Community which, although the responsibility of the Association or another Owner, is necessitated by reason of the willful or negligent act of the Owner, their family, tenants or guests, with the cost thereof to be added to and become part of the Owner's Assessment obligation;
  - (v) To repair incidental damage to another Unit or the Common Elements, resulting from performance of work that is the Owner's responsibility. Such repair and subsequent cleaning is to be performed based upon a reasonableness standard.
- (c) To decrease the possibility of fire or other damage in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Association in procuring or maintaining insurance coverage, the Association, by resolution, may require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility. This authority includes any measures as the Association may reasonably require so long as the cost of the work does not exceed three times the monthly assessment of the Unit in any 12 month period.
- (i) The Association's rights under this Section are in addition to, and not in limitation of, any other rights the Association may have. If any Owner does not comply with any requirement made by the Association pursuant to this Section, the Association, upon 15 days written notice (during which period the Owner may perform the required act or work without further liability), may perform the required act or work at the Owner's sole cost. The cost is to be added to and become a part of the assessment to which the Owner is subject and is the personal obligation of the Owner and a lien against the Unit, and may be collected as provided in this Declaration for the collection of assessments.

(ii) The Association has all rights necessary to implement the requirements mandated by the Association pursuant to this section, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Resident of the Unit, except that access may be had at any time without notice in an emergency situation.

(d) Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Resident which is the Association's responsibility (including, but not limited to landscaping of Common Elements) is to be performed at the Owner's or Resident's sole expense and the Owner or Resident is not entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

### **Section 5.2 Maintenance by the Association.**

(a) Except as provided above, the Association is to maintain, replace and improve as a Common Expense all Common Elements, including any Limited Common Elements, but excluding any improvements made to a Limited Common Element by the Owner or the Owner's predecessor. This responsibility includes:

(i) Structural integrity of the buildings, including foundations;

(ii) Siding on the exterior of the buildings;

(iii) Roofs, roof decking, roof trusses, gutters and downspouts;

(iv) painting or staining of the exterior window frames windows, and screens (but not locking mechanisms), provided however that the cost of repairing any window broken from any object coming from inside the Unit shall be billed to the Unit Owner as a Specific Unit Assessment under Section 4.5;

(v) painting or staining of the exterior surface of entry doors and door frames, doors, doorways, and door frames that are part of the entry system of the Unit (but not locking mechanisms or door hardware), provided however that the cost of repairing any door broken from any object coming from inside the Unit shall be billed to the Unit Owner as a Specific Unit Assessment under Section 4.5;

(vi) All pipes, lines, ducts, conduits or other apparatus until the lines enter a Unit; and

(vii) All communications, television, telephone, cable and electrical lines, receptacles and boxes until the lines enter the Unit.

(b) The foregoing maintenance is to be performed consistent with the standards and specifications as the board may determine.

(c) If, during the course of performing its maintenance responsibilities, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and the maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform the work on behalf of the Owner and at the Owner's sole expense, without prior notice to the Owner, the maintenance repair or replacement being deemed an emergency situation.

(d) At the Association's sole expense, without need for a membership vote, and without the consent of any affected Owner, the Association, on behalf of the Owner can relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after relocation, the system serving the Unit functions at least as well and at no greater cost to the Owner as existed prior to the relocation.

(e) The Association has the right, with the approval of 67% of those Members voting in person or by proxy at a meeting called for such purpose, to assume additional maintenance, repair or replacement responsibilities on any limited basis it determines, as a Common Expense. By way of example, with the requisite approval the Association may undertake a Community-wide window replacement without assuming the future responsibility for window maintenance, repair and replacement.

(f) If the Association determines that the need for maintenance or repair of the Common Elements is caused through the willful or negligent act of any Owner, or Resident or their family, guests, lessees, or invitees, then the Association may assess the cost of the maintenance, repair, or replacement against the Owner's or Resident's Unit, which also becomes the Owner's personal obligation, a lien against the Unit, and is to be collected as provided in this Declaration for the collection of Assessments.

**Section 5.3 Maintenance Standards and Interpretation.** The maintenance standards and enforcement and interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

**Section 5.4 Liability for Damage.**

(a) The Association is to repair incidental damage to any Unit resulting from performance of work that is the Association's responsibility. As finish levels can have varying degrees, the repairs are to be complete only to the extent of being "paint-ready." The repair and subsequent cleaning is to be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association has authority to delegate any of its duties to Persons, firms or corporations it chooses.

(b) The Association is not liable for injury or damage to Person or property caused by the elements or by any Owner, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain, except for injuries or damages arising after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association is not liable to any Owner, or any Owner's Resident, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this article where the damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments may be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the Association's responsibility, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**Section 5.5 Failure to Maintain.**

(a) If the Association determines that any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, then it may give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice is to set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

(b) Unless the Association determines that an emergency exists, the Owner has ten days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within this time period, to commence replacement or repair within ten days. If the Association determines that: (a) an emergency exists, or (b) that an Owner has not complied with the demand given by the Association, then the Association may perform the maintenance, repair, or replacement at the Owner's sole cost and expense, and the costs are to be added to and become a part of the Assessment to which the Owner is subject, becomes the personal obligation of the Owner and a lien against the Unit, and may be collected as provided in this Declaration for the collection of Assessments.

**ARTICLE 6. ARCHITECTURAL CONTROLS**

**Section 6.1 Architectural Covenants.** Except as otherwise provided herein, by the Rules and Regulations or by law, no Owner, Resident, or any other Person may, without first obtaining the Association's written approval:

- (a) Make any changes which may affect the structural integrity of any building or affect the utilities, as more fully described in this article;
- (b) Make any encroachment onto the Common Elements or Limited Common Elements; or
- (c) Make any exterior change, alteration, or construction (including painting and landscaping).

**Section 6.2 Alteration of Units.** Subject to the provisions of the Act and this Declaration, alterations to the interiors of Units, relocation of the boundaries between adjoining Units, and subdivision of Units are subject to the following restrictions:

(a) **Alterations to the Interiors of the Units- Changes Affecting Common Elements and Load Bearing Portions of Units.** All Owners desiring to make any interior modifications or alterations to a Unit affecting the Common Elements or structure or load bearing portions of a Unit must make application to the Association as described in this article in order for the Association to make the determination of whether its approval is required. No Owner or Resident may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written Association approval. No Owner or Resident may make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written Association approval. Approval is not to be granted unless the Owner has presented to the Association a report or drawing prepared by a licensed structural engineer showing that compensating measures are to be taken to ensure the structural integrity of the Unit and the Community. All building code requirements must be complied with and necessary permits and approvals secured for any modifications.

(b) **Combining Units.** Owners have the right, with written approval from the Association, after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, to remove or alter any intervening partition or create apertures or doorways therein, even if the partition in whole or in part is a Common Element, all as provided for in this Section, provided the alterations and modifications can and do not impair the structural integrity, electrical systems, mechanical systems or utilities or lessen the support of any portion of the Community. As conditions of combining Units, the Association may require the Owner's written agreement (in the form approved by the Association) providing for any or all of the following:

(i) For the Owner to be responsible, now and/or in the future, for any structural deficiencies or problems, electrical deficiencies or problems, mechanical structural integrity, electrical systems, utility or mechanical deficiencies or problems or problems associated with a lessening of support of any portion of the Community, or for violations of any of the provisions of this Section, all as may reasonably be determined by the Association;

(ii) For the Owner to be responsible for ongoing maintenance, repair, replacement and improvement of any or all of the proposed additions/modifications of the Owner. The Association may require Owners to be responsible for all or some of the maintenance, repair, replacement and improvement of the proposed modifications;

(iii) For the Owner's payment of the fees and costs of the Association, together with a deposit against fees and costs which the Association may incur in reviewing and effectuating the application, in an amount reasonably estimated by the Association, in advance of any billing for costs and expenses of the Association;

(iv) For reasonable advance notice by the Owner for the work to be performed, from the Owner or from the Owner's contractor; and

(v) The satisfaction of all conditions as may be reasonably imposed by the Association.

(c) **Subdivision of Units.** No Unit may be subdivided into a smaller Unit or Units.

**Section 6.3 Architectural Standards.** Interpretation, application and enforcement of the architectural standards may vary as members of the Board change. The standard for approval of improvements includes, but is limited to: (a) aesthetic consideration; (b) materials to be used; (c) compliance with the community-wide standard; this Declaration, or the design guidelines which may be adopted by the Association, if any; (d) harmony with the external design of the existing building, Units and structures, and the location in relation to surrounding structures and topography; (e) visibility and location of the proposed modification in the Community; and (f) any other matter the Committee deems to be relevant or appropriate.

**Section 6.4 Authority of Association to Engage Consultants.** The Association has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed. The costs of any consultants are to be paid by the submitting Owner whether or not the application is approved. Prior to incurring consultant costs, the Association is to notify the Owner of its belief that review and/or inspections by consultations are necessary. The Owner is to then have the right to withdraw the submission. The Association may require payment of costs prior to approval.

**Section 6.5 Encroachments onto Common Elements.** The Association may provide written consent to allow Owners to make encroachments onto the Common Elements as it deems acceptable. Any unauthorized exterior change, alteration or construction (including landscaping) upon the Common Elements is at the Owner's sole cost and expense. The Association may require that any unapproved change, alteration or construction be removed or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Resident for any expense he may have incurred in making the change, alteration or construction.

**Section 6.6 Conditions of Approval.** As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself and their successors-in-interest, assumes all responsibilities for maintenance, repair, replacement and insurance of the change, modification, addition, or alteration, unless the Association otherwise agrees in writing. As a further condition of approval, an Owner may be required to execute an agreement setting forth the conditions of approval to be recorded in the records of the Ouray County real property records.

**Section 6.7 Required Action by the Association.** The Association is the sole arbiter of the application and may withhold approval for any reason, including purely aesthetic considerations, provided the Association's decision may not be arbitrary or capricious. Applications for approval of architectural modifications must be in writing and provide any information as the Association reasonably requires. If the Association fails to approve or to disapprove the application within 45 days after the application and all required supplemental information have been submitted, then the submitting Owner may send written notice to the Association president and the Association's managing agent, regarding the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten days of receipt of the Owner's notice, this section's requirements are satisfied, and the approval is not be required as to the items specifically identified in the application. However, no Owner may construct or maintain any structure or improvement that otherwise violates the Declaration, the design guidelines, or the Rules and Regulations, or any applicable governmental requirements or laws.

**Section 6.8 Variances.** The Association may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration to overcome practical difficulties and unnecessary hardships with respect to topography, natural obstructions or aesthetic or environmental considerations arising from application of conditions and restrictions contained in the Declaration or in any design guidelines, provided that such variance is not materially detrimental or injurious to other Units or the Common Elements and is based on unique circumstances. All variances are to be in writing. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing are not considered a hardship warranting a variance.

**Section 6.9 Commencement and Completion of Construction.** All changes, modifications and improvements approved by the Association must be commenced within six months from the date of approval unless the Association otherwise agrees. If not commenced within this time, then approval is deemed revoked, unless the Association gives a written extension for commencing the work. All work approved by the Association must be completed in its entirety within 90 days from the date of commencement, unless the Association otherwise agrees in writing. All approved changes, modifications, and improvements must be completed in their entirety.

**Section 6.10 Limitation of Liability.** Neither the Association nor its directors, officers, committee members or agents bear any responsibility for the design, quality, structural integrity or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its directors, officers, committee members, and agents are not liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Unit. No lawsuit, action or claim may be brought against any of the foregoing for any injury, damage or loss.

**Section 6.11 No Waiver of Future Approvals.** The Association's approval of any proposals, plans and specifications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals, plans and specifications.

**Section 6.12 Enforcement.** The Association is entitled to stop any construction that does not conform to the approved plans. The Association is further entitled to stop any construction if the Owner fails to submit plans and specifications and/or obtain written approval prior to commencing construction. The Association may require any Owner to remove any improvement or modification, whether partial or completed, and restore the property to its prior

condition, if the Owner fails to obtain prior written approval or constructs in a manner that does not conform to the approved plans. These remedies are in addition to all remedies available, including the authority to levy a fine.

## ARTICLE 7. COVENANTS AND USE RESTRICTIONS

**Section 7.1 General terms on Covenants and Restrictions of this Declaration.** All Real Estate within the Community is held, used and enjoyed subject to the covenants, limitations and restrictions of this Declaration, including as set for in this Article. The strict application of the covenants, limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board or by an appropriate committee (subject to review by the Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or Rules and Regulations. All covenants, limitations and use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by Declarant.

**Section 7.2 Owner Responsibility for Compliance.** Each Owner is responsible for ensuring that the Owner's family, guests, and Residents comply with all provisions of the Governing Documents. Each Owner and Resident is to always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, or Residents as a result of the Person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, or Residents.

### **Section 7.3 Use of Units.**

#### **(a) Occupancy, Residential and Business Use Covenants and Restrictions.**

(i) Each Unit is to be used primarily for residential purposes. No trade or business of any kind may be conducted in or from a Unit or any part of the Community, except that the Owner, residing in the Unit, or Resident may conduct ancillary business activities within the Unit so long as the business activity:

(A) is not apparent or detectable by sight, sound, or smell from outside of the Unit;

(B) does not involve visitation of the Unit by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential Unit without business activity;

(C) is legal and conforms to all zoning requirements for the Community;

(D) does not increase traffic in the Community in excess of what would normally be expected for residential Units in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other similar delivery services);

(E) does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(F) is consistent with the Community's residential character, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Residents, as determined by the Association; and

(G) does not result in a materially greater use of Common Element facilities or Association services.

(ii) The terms "business" and "trade," as used in this section, have their ordinary, generally accepted meanings, and include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

(b) **Occupancy.** If an Owner is a corporation, partnership, trust or other legal entity which is not a natural person, the entity is to designate in writing to the Association the name(s) of the natural person(s) who may occupy the Unit.

**Section 7.4 Leasing.** Any Owner has the right to lease or allow occupancy of a Unit upon terms and conditions the Owner deems advisable, subject to restrictions of this Declaration, any other restrictions of record, and the following:

(a) “Leasing” or “Renting” for the purposes of this Declaration is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner. For the purposes of this Declaration, occupancy by not more than one roommate of an Owner who occupies the Unit as their primary residence does not constitute leasing under this Declaration.

(b) Leases are to be for or of the entire Unit.

(c) All leases or rental agreements are to be in writing and provide that the leases or rental agreements are subject to all terms of the Governing Documents. The Association has the authority to require a particular lease form or addendum to implement the provisions of this section. Owners are required to provide Residents with copies of the current Declaration and any Rules and Regulations of the Association.

(d) Each Owner who leases their Unit is to provide the Association, upon request, a copy of the current lease (rental amount may be redacted) and tenant information, including the names of all Residents, and vehicle descriptions, including license plate numbers.

(e) All leases and rental agreements are to state that the failure of the Resident or their guests to comply with the terms of the Governing Documents is a default of the lease or rental agreement and this Declaration.

(f) All Owners who reside at a place other than the Unit are to provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. The Owner is solely responsible to keep this information current.

(g) If a Unit is leased or occupied in violation of this section or if the Owner or Resident violates the Governing Documents, the Association is authorized, in addition to all other available remedies, to levy fines against the Resident and/or Owner, and to suspend all voting.

**Section 7.5 Restrictions on Exterior Building Changes, Structural Alterations and more.** No Owner may make any change to the building’s exterior, or make structural alterations to any Unit or to any portion of the Common Elements or Limited Common Elements without the Association’s prior written approval as provided for in this Declaration. This restriction extends to and includes a restriction on penetrations or cut-outs into Common Elements walls, Limited Common Elements or other portions of the Community.

**Section 7.6 Solar panels or similar installations.** No solar panel or similar installations may be made without the written approval of the Board of Directors or Committee (if established) as elsewhere provided in this Declaration.

**Section 7.7 Reasonable Rights to Develop.** No action of or failure to act, rule or other means may be used by the Association or Board to unreasonably impede the Declarant’s right to develop in accordance with the Plat, any Map and this Declaration.

**Section 7.8 Use of Common Elements.** There may be no obstruction of the Common Elements, nor may anything be kept, parked, or stored on or removed from any part of the Common Elements without the Association’s prior written consent, except as specifically provided for in the Governing Documents. The Association is not liable to the Owner or their Residents, guests, family members and invitees, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

**Section 7.9 Use of Limited Common Elements.** Except as otherwise provided, the use of the Limited Common Elements is restricted exclusively to the Owner of the Unit to which the Limited Common Elements are assigned, and the Owner’s Residents, guests, family members and invitees. The Limited Common Elements are

reserved for exclusive use, but is not construed or interpreted to be separate and apart from the Common Elements in general. The restrictions applicable to the Common Elements also apply to the Limited Common Elements.

**Section 7.10 Use of Garages and Assigned Parking Spaces.** Limited Common Element Garages and Limited Common Element parking spaces are to be used primarily to park or store vehicles. As a secondary use, a garage space may also be used to store any other personal property belonging to the Owner or Resident. Garages may not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of in the garage, or if the garage becomes contaminated in any manner for which the Owner or Resident thereof is legally liable, Owner or Resident indemnifies and holds harmless the Association and Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorney's fees, consultant and expert fees, arising as a result of that contamination by Owner or Resident.

**Section 7.11 Compliance with Laws and Insurance Requirements.** Nothing may be done or kept in the Community, or any part thereof, that would increase the rate of insurance on the Community or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

**Section 7.12 Prohibition of Nuisance.**

(a) The Units in the Community are built in close proximity to one another, resulting in the sharing of common walls, floors and ceilings. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. Therefore, an Owner or Resident may not conduct activities within a Unit or use a Unit in a manner that unreasonably interferes with or causes unreasonable disruption to another Owner's or Resident's use and quiet enjoyment of the Unit.

(b) Noxious, destructive, offensive or unsanitary activity may not be carried on within the Community. No Owner or Resident may use or allow the use of the Unit or any portion of the Community at any time, in any way, which may endanger persons or property, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Residents, or constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Residents a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment by Owners and Residents. Nothing in this section may be construed to affect the rights of an aggrieved Owner or Resident to proceed individually against a violator hereof for relief from interference with their property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise exists by an aggrieved Owner or Resident against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Resident has not personally pursued all available remedies against the violator for redress provided under Colorado law.

**Section 7.13 No Damage or Waste.** No Owner, Resident or agent of either may do any work which would jeopardize the soundness or safety of any structure within the Community, or would impair any easement or other interest in the Community, without prior written consent of all Association Members and their First Lien Holder. No damage to or waste of the Common Elements, or any part, is permitted by any Owner or Resident, or the Owner's or Resident's guest; family member or invitee. Each Owner and Resident indemnifies and holds the Association or other Owners harmless against all loss to the Association or other Owners resulting from such damage or waste caused.

**Section 7.14 Pets.**

- (a) An Owner or Resident may keep up to two (2) generally recognized household pets in the Unit.
- (b) The Association may adopt additional Rules and Regulations to supplement this section.
- (c) No Owner or Resident may keep, breed or maintain any pet for any commercial purpose.
- (d) No structure for the care, housing, or confinement of any pet may be constructed or maintained on any part of the Common Elements, including Limited Common Elements.

(e) Dogs must be kept on a leash and be under the physical control of a responsible Person at all times while on the Common Elements provided, however, dogs need not be leashed when within fenced patio or deck areas when attended.

(f) Feces left by pets upon the Common Elements, Limited Common Elements, or in Units, including the pet owner's Unit, must be removed promptly by the pet Owner or other Person responsible for the pet.

(g) Any Owner or Resident who keeps or maintains any pet within the Community is deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining the pet within the Community.

#### **Section 7.15 Vehicles and Parking.**

(a) General. Parking is subject to the Rules and Regulations adopted by the Board. Each Unit has one Limited Common Element Garage and one Limited Common Element Parking Space appurtenant to the Unit. No garage is to be used for storage if doing so prevents its use for parking the number of vehicles it is designed to hold.

(b) Prohibited Vehicles. No unlicensed vehicles may be parked on the Common Elements. No stored or abandoned or inoperable vehicles of any kind may be stored or parked on the Common Elements. An "abandoned or inoperable vehicle" is defined as any passenger car, truck, motorcycle, boat, trailer, camper house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which for a period of two days or longer, does not have an operable propulsion system installed therein, has one or more flat tires or has another condition preventing the regular and normal operation and movement of the vehicle. A vehicle is considered "stored" if it remains in the same location in the Community for 14 consecutive days or longer without prior written Board permission.

(c) Enforcement. If any vehicle is parked on any portion of the Community in violation of this section or in violation of the Rules and Regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice must include the name and telephone number of the person or entity that is to do the towing and the name and telephone number of a person to contact regarding the alleged violation. If 24 hours after such notice is placed on the vehicle the violation continues, or occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the vehicle owner or user. If a vehicle located in the Community is blocking access to another Owner's parking space or garage, is obstructing the flow of traffic, is parked on any grassy area, is parked in a designated handicapped space without the proper state-issued identification, or otherwise creates a hazardous condition, no notice is required and the vehicle may be towed immediately in accordance with the governmental regulations. If a vehicle is towed in accordance with this section, neither the Association nor any director, officer or agent of the Association is liable to any Person for any claim of damage as a result of the towing. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

**Section 7.16 Vehicle Repair.** Maintenance, repair, rebuilding, dismantling, repainting, or any kind of servicing of vehicles, trailers or boats may not be performed or conducted in the Community unless done within completely enclosed structures that screen the sight and sound of the activity from the street and from adjoining property. This restriction is not deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to washing and polishing.

**Section 7.17 Heating of Units in Colder Months.** To prevent water pipes from breaking during colder months of the year resulting in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units must be maintained with the heat in an "on" position and at a minimum temperature setting of 55° Fahrenheit (except during power failures or periods when heating equipment is being repaired) whenever the temperature is forecasted to or does reach 32° Fahrenheit or below. Owners and Residents must take all reasonable steps on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the colder months when the heating equipment is not working properly, the Owner or Resident must immediately inform the Association of the equipment's failure and of the time needed to repair the equipment. The Association may fine any Owner up to three times the monthly or calculation of the Common Expense Assessment of the Unit in addition to any other remedies of the Association.

**Section 7.18 Trash and Garbage.** All rubbish, trash and garbage must be regularly removed from the Unit and is not allowed to accumulate therein. Garbage or trash must not be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except in trash cans. Trash and garbage must be disposed of in appropriate sealed bags and either placed in the trash cans, dumpsters or proper receptacles designated by the Association for collection or removed from the Community.

**Section 7.19 Unightly or Unkempt Conditions.** Activities which cause disorderly, unsightly, or unkempt conditions, must not be pursued or undertaken on any part of the Common Elements.

**Section 7.20 Grilling.** The use of outdoor grills in any portion of the Community is governed by applicable state laws and local ordinances having jurisdiction over the Community.

**Section 7.21 Personal Property on Common Elements.** Personal property (other than vehicles as otherwise permitted in this Declaration) may not be stored, kept, or allowed to remain for more than 24 hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Association permission. If the Association determines that a violation exists, then, after two days written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Association may remove and either discard or store the personal property in a location which the Association or its agent may determine. Neither the Association nor its agent has any obligation to return, replace or reimburse the owner of the property. The notice is to include the name and telephone number of the person or entity who is to remove the property and the name and telephone number of a person to contact regarding the alleged violation. The Association, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner. In this case, the Board is to give the property owner, if known, notice of the removal of the property and the location of the property within three days after the property is removed.

Neither the Association nor its directors, officers or agent is liable to an Owner or Resident, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements or for any claim of damage resulting from the removal activity in accordance with this section. The Association may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

**Section 7.22 Rules and Regulations.** The Association may adopt, amend and repeal Rules and Regulations concerning and governing the Lots or a Residences, Common Elements and Limited Common Elements in furtherance of the provisions of this Declaration, subject to the following:

(a) **Uniformity/Equal Treatment.** The Rules and Regulations, Policies and Procedures and Governance Policies are to be reasonable and uniformly applied. Similarly situated Owners and Residents must be treated similarly.

(b) **Copies.** Copies must be made available to each Owner and Resident upon request.

(c) **Required Compliance.** Each Owner and Resident must comply with the Rules and Regulations, Policies and Procedures and Governance Policies.

(d) **Authority of the Rules and Regulations.** The Rules and Regulations, Policies and Procedures and Governance Policies have the same authority, force and effect as if they were stated in full in this Declaration. In the event of conflict this Declaration prevails.

(e) **Speech/Political Signs.** The rights of Owners or Residents to display political signs and symbols in or on their Lots or a Residences of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods must not be abridged. The Association may adopt (as allowed by statute and law) reasonable size, time, place, and manner restrictions for the purpose of minimizing damage, disturbance, clutter, and unpleasant aesthetics.

(f) **Religious and Holiday Displays.** The rights of Owners and Residents to display religious and holiday signs, symbols, and decorations normally displayed in residences located in single-family residential neighborhoods must not be abridged. The Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage, disturbance, clutter, and unpleasant aesthetics.

(g) Activities within Residences. No rule may interfere with the activities carried on within the confines of Residences, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Residences, that generate excessive noise, odor or traffic, that create unsightly conditions or conditions otherwise disallowed by this Declaration which are visible outside the Residence, that block the views from other Residences, or that create an unreasonable source of annoyance.

## **ARTICLE 8. INSURANCE**

### **Section 8.1 Association's Property Insurance.**

(a) The Association must obtain and maintain at all times, as a Common Expense, property insurance as required in this Declaration.

(b) The Association must use reasonable efforts to secure a blanket hazard insurance policy providing "special form" coverage in an amount equal to full replacement cost, before application of deductibles. If "special form" coverage is not reasonably available at reasonable cost, the Association must obtain, at a minimum, broad form covered causes of loss, in like amounts.

(c) The Association's insurance must cover the Common Elements.

(d) As to the Units, the Association's insurance policy must cover any of the following types of property contained within a Unit, regardless of ownership: (a) fixtures, improvements and alterations that are part of the building or structure; and (b) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. The Association has the right to change the level of coverage under its policy from the standard outlined in this Section by written Board resolution. Alternative levels of coverage include the exclusion of improvements and betterments made by the Owner or the exclusion of finished surfaces of perimeter and partition walls, floors, and ceilings within the Unit (i.e., paint, wallpaper, paneling, other wall coverings and window coverings, tile, carpet and any floor covering).

(e) All property insurance purchased by the Association runs to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners and their respective Mortgage Holders, and all other Persons entitled to occupy any Unit as their interests may appear.

(f) All insurance coverage for the Association is to be written in the name of the Association as first named insured and each of the Owners as additional insureds. The Association is to periodically review the insurance to determine if the policy in force is adequate to meet its needs.

**Section 8.2 Other Association Insurance.** In addition to the insurance required above, the Association must obtain as a Common Expense:

(a) Workers' compensation insurance if and to the extent necessary to meet the requirements of law;

(b) General liability insurance in amounts no less than \$1,000,000. The general liability insurance policy is to contain a cross liability endorsement;

(c) Directors' and officers' liability insurance in such amounts as the Board may determine.

(d) Fidelity insurance covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds in an amount as required by law, or if no such requirements, consistent with the Board of Directors' best business judgment; and

(e) Other insurance as the Board of Directors may determine to be necessary or desirable.

### **Section 8.3 Standards for Association Policies.**

(a) The Association must use reasonable efforts to obtain policies that provide the following:

(i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

- (ii) The insurer's waiver of subrogation of claims against directors, officers, the managing agent, the individual Owners and their respective household members;
  - (iii) No act or omission by any Owner not under the Association's control voids the policy or be a condition to recovery under the policy;
  - (iv) Ordinance or law coverage, demolition cost coverage and increased cost of construction coverage;
  - (v) Any "other insurance" clause contained in the master policy must expressly exclude individual Owners' policies from its operation;
  - (vi) The master policy may not be canceled, substantially modified, or subjected to non-renewal without at least 30 days prior notice in writing to the Association and all Mortgage Holders of Units, except in instances of nonpayment of premiums, which must require at least ten days prior written notice;
  - (vii) The casualty insurance may not contain a "co-insurance" provision;
  - (viii) All insurance policies of the Association are primary over other insurance in the Owner's name;
  - (ix) An inflation guard endorsement.
- (b) All insurance policies are to be written with a company licensed to do business in Colorado. The company is to provide insurance certificates to each Owner and Mortgage Holder upon request. The Association's Board of Directors has the exclusive authority to adjust losses under the Association's policies. However, no Mortgage Holder having an interest in any losses may be prohibited from participating in the settlement negotiations, if any.
- (c) The Association's insurance is not required to include liability insurance for individual Owners for liability arising within the Unit.

**Section 8.4 Insurance Deductibles.** Unless otherwise specified in written guidelines or a written Board resolution, any required deductible on the Association's policy is a maintenance expense to be paid by the person(s) who would be responsible for the repair or maintenance of the loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the Board may equitably apportion the cost of the deductible among the parties suffering loss in proportion to the total cost of repair. However, if the insurance policy provides that the deductible applies to each Unit separately or to each occurrence, each Owner is responsible for paying the deductible pertaining to their Unit, if any. If any Owner(s) fail to pay the deductible when required under this Section, then the Association may pay the deductible and assess the cost to the Owner pursuant to Article 5 of this Declaration.

**Section 8.5 Owners' Insurance.**

- (a) Every Owner is obligated to obtain and maintain at all times insurance covering those portions of the Unit to the extent not insured by the Association's policies.
- (b) Each Owner is also responsible for insuring all improvements to the Unit or to the Limited Common Elements or Common Elements added by the Owner or the Owner's predecessors-in-title.
- (c) Each Unit Owner is also responsible for obtaining insurance covering their personal property and coverage for liability arising within the Unit and on or within the Limited Common Elements.
- (d) The Association has no liability for failure to maintain required insurance.
- (e) Upon request, the Owner must furnish a copy of such insurance policies to the Association.

**Section 8.6 Owner's Right to Review Association Insurance Policies.** The Association must make a copy of its insurance policies available for review by Owners to assess their personal insurance needs. Each Owner has the right to obtain additional coverage at their own expense.

**Section 8.7 Source and Allocation of Proceeds.** If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair (due to failure of the Association to maintain coverage as provided in this Declaration, or due to the insurance policy's deductible) the additional cost is a Common Expense. If, for any other reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by

the Association, the additional costs are assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. These Assessments are not considered a special Assessment as provided in this Declaration. If there are surplus funds after repair and reconstruction is completed, those funds are common funds of the Association to be used as directed by the Association.

**Section 8.8 Repair and Reconstruction Requirements.** In the event of damage to or destruction of all or any part of the Community as a result of fire or other casualty, the Association must arrange for and supervise the prompt repair and restoration of the structure unless Owners holding at least 67% of the total Association vote, including the Owner(s) of any damaged Unit(s) and Mortgage Holders that represent at least 51% of the votes of Units that are subject to mortgages held by Mortgage Holders, vote not to proceed with the reconstruction and repair of the structure. In the event of substantial damage or destruction, each First Lien Holder is entitled to written notice of the damage, and nothing in these documents are construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

**Section 8.9 Claims and Adjustments by the Association.** Any loss covered by an Association insurance policy is to be adjusted by the Association. The insurance proceeds for a loss are payable to the Association and not to any First Lien Holder. The Association must hold any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.

**Section 8.10 Construction Fund.** The net insurance proceeds collected on account of a casualty and the funds collected by the Association from Assessments against Owners on account of the casualty constitutes a construction fund. The Association is to disburse the funds to pay the cost of reconstruction and repair in appropriate progress payments to the contractor(s), supplier(s), and personnel performing the work or supplying materials or services.

**Section 8.11 Condemnation and Property Insurance Allocations and Distributions.** In the event condemnation proceeds or property insurance proceeds are distributed to the Owners, the distribution must be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

**Section 8.12 Managing Agent's Insurance.** The managing agent, if any, must maintain insurance for the benefit, and must maintain and submit evidence of coverage to the Association. Insurance must include professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage (unless the Association otherwise provides fidelity coverage).

## ARTICLE 9. MORTGAGE HOLDER'S RIGHTS

**Section 9.1 Abandonment or Termination.** Unless First Lien Holder representing at least 51% of the votes of the Units subject to a First Lien Holder and Owners holding at least 67% of the total Association vote give their consent, the Association or the membership must not by act or omission seek to abandon or terminate the Community (except in the case of substantial destruction, as governed by this Declaration).

**Section 9.2 Liability for Assessments.** Where the Mortgage Holder of a First Lien Holder of record, or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it is not liable, nor is the Unit subject to a lien, for the share of the Common Expenses Assessments or other applicable Assessments by the Association chargeable to the Unit which became due prior to acquisition of title except as provided in the Act. The acquirer is responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed. Any unpaid Assessments is deemed to be a Common Expenses collectible from Owners of all the Units, including the acquirer, its successors and assigns.

**Section 9.3 Notice to Mortgage Holders.** Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any First Lien Holder is to be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Community or any Unit on which there is a First Lien Holder;
- (b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to a First Lien Holder which remains unsatisfied for a period of 60 days, and any default in the performance by an individual Owner of any other obligation under the Governing Documents which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Mortgage Holders, as specified herein.

**Section 9.4 No Priority.** No provision of this Declaration or of the Bylaws gives or may be construed as giving any Owner or other party priority over any rights of the First Lien Holder in the case of distribution to an Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

**Section 9.5 Notice to Association.** Upon request, each Owner is obligated to furnish to the Association the name and address of any First Lien Holder encumbering the Owner's Unit.

**Section 9.6 Failure of Mortgage Holder to Respond.** Any Mortgage Holder who receives a written request from the Association to respond to any action is deemed to have approved the action if the Association does not receive a written response from the Mortgage Holder within 60 days of the date of the Association's request, provided the request is delivered to the Mortgage Holder by certified or registered mail, return receipt requested.

**Section 9.7 Construction of this Article.** Nothing contained in this article may be construed to reduce the percentage vote that must otherwise be obtained under the Governing Documents or Colorado law for any of the actions set forth in this article.

## **ARTICLE 10. DEVELOPMENT RIGHTS OF DECLARANT**

**Section 10.1 Development Rights and Special Declarant Rights.** The Declarant reserves, through ten years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) The right to relocate boundaries between adjoining Units owned by the Declarant, enlarge Units, reduce the size of Units, subdivide Units owned by Declarant or complete or make improvements, as the same may be indicated on Maps or Plats filed of record;
- (b) The right to enlarge or reduce the Common Elements and to create additional Units;
- (c) The right to add property adjacent to the Real Estate, with the consent of that Owner of that Real Estate and hereby incorporated by reference and additional unspecified Real Estate according to the provisions of this Declaration subject to the limitations set forth in this Declaration and/or the Act;
- (d) The right to exercise any additional reserved right created by any other provision of this Declaration;
- (e) The right to amend the Declaration to add unspecified Real Estate in accordance with the provisions of this Declaration or the Act;
- (f) The right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;
- (g) The right to amend the Declaration in connection with the exercise of any development right;
- (h) The right to appoint or remove any officer of the Association or any Director during Declarant Control;
- (i) The right to make amendments to this Declaration or the other Governing Documents to meet or comply with any requirements of any lender to an Owner;
- (j) The right to amend the Maps or Plats in connection with the exercise of any development right;

(k) the right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA; and

(l) The right to use and to permit others to use, easements through the Common Elements, as may be reasonably necessary;

(m) The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the real property records of the County of Ouray.

**Section 10.2 Additional Reserved Rights.** In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) Sales. The right to maintain mobile and other sales offices, parking lots, management offices and models on Units of the Declarant.

(b) Signs. The right to maintain signs and advertising at the Community and to advertise the Community or other communities developed or managed by or affiliated with Declarant.

(c) Construction Easement. Declarant and its assignees expressly reserve to itself the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

(d) Use Agreements. The rights to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance and regulation of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

(e) Access Easement. Declarant and its successors and assigns shall have an access easement to and from any real property accessible through the Community.

(f) Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration or by the Act.

**Section 10.3 Rights Transferrable/Rights Transferred.** Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the Ouray County. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners or any holders of a security interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the Ouray County. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) with the consent of the appropriate Owner(s) or any holders of a security interests in the Units.

**Section 10.4 No Further Authorizations Needed.** Except as set forth in this Declaration, the consent of Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

**Section 10.5 Amendment of the Declaration or Map.** If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

**Section 10.6 Interpretation.** Recording of amendments to the Declaration and the plat or plats pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically: (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Unit; and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in This Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all Amendments to the Declaration, and the Plat without specific reference thereto.

**Section 10.7 Construction.** Subsequent to the initial Real Estate and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Real Estate or any part may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the Improvements previously constructed on the Real Estate, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Real Estate as may be added or as shown on the Plat.

**Section 10.8 Termination of Reserved Rights.** The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (a) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (b) extended as allowed by law or, (c) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the Ouray County, State of Colorado.

## **ARTICLE 11. ALTERNATIVE DISPUTE RESOLUTION—UNITS AND THE COMMON ELEMENTS**

**Section 11.1 Purpose.** One of the purposes of the Declaration is to establish a harmonious Community. Because the prompt, efficient and fair resolution of any construction or design dispute is desirable, any construction or design controversy arising out of or relating to the Units and/or the Common Elements must be resolved as set forth in this Article.

**Section 11.2 Direct Communication.** The parties to the disagreement over an Excluded Claim must set forth their respective positions in the dispute in correspondence. Each party must respond within 14 days after receipt of a letter from the other until agreement is reached. If an agreement is not reached, the next section of this Declaration applies.

**Section 11.3 Mediation.** If an Excluded Claim cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly credentialed mediator. The parties must participate in the mediation in good faith until the dispute is resolved for a period not to exceed 60 days with the consent of all parties. The cost of the mediation must be divided equally among the parties. If a mediation does not resolve the Excluded Dispute, the next section of this Declaration applies.

### **Section 11.4 Arbitration.**

(a) If the Excluded Claim cannot be resolved through mediation, such dispute must be decided by mandatory and binding arbitration in accordance with the rules of the American Arbitration Association (“AAA”) currently in effect. All Excluded Disputes must be decided by mandatory and binding arbitration in accordance with the rules of the AAA currently in effect.

(b) The following procedures apply to arbitration:

(i) Demand for arbitration must be filed in writing with the other party and with the AAA.

(ii) A demand for arbitration must be made within thirty days after the dispute in question has arisen and failed to be resolved by mediation.

(iii) In no event may the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

(iv) No arbitration arising out of or relating to this Declaration may include, by consolidation, joinder or any other manner, an additional person or entity not subject to the Declaration, except that the Declarant, at its sole election and in its sole discretion, may by consolidation, joinder or any other manner, include contractors, subcontractors or other parties involved in the construction and/or planning of the Community.

(v) The arbitrator to hear the Excluded Claim may be jointly selected by the parties. If the parties cannot agree within 21 days, the parties shall select the arbitrator they desire. Then, those arbitrators shall, amongst them, select the arbitrator to hear the Excluded Claim.

(c) The provision of this Article to arbitrate, or the Declarant's election to arbitrate, or the Declarant's determination to include any additionally person or entity not subject to this Declaration in an arbitration are specifically enforceable in accordance with applicable law with any court having jurisdiction.

(d) The award rendered by the arbitrator or arbitrators is final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

(e) All filing fees and AAA costs associated with the arbitration itself must be paid for by the party who files the notice of arbitration.

#### **Section 11.5 Actions by the Association or any Owner.**

(a) The Association may not commence or maintain an arbitration on any Excluded Dispute unless the commencement and maintenance has first been recommended by the Board and, is also approved by Owners holding at least 67% of the votes in the Association.

(b) The Association must also comply with all requirements of state statutes on Excluded Claims and ordinance passed by local governmental jurisdiction, if any.

(c) The Association must also comply with all requirements of applicable state statutes.

(d) The Association or any Owner may proceed with communication, mediation, and arbitration, as allowed for under this Article, without a vote of Owners holding at least 67% of the votes as long as they are in compliance with the provisions of the Act.

(e) On an Excluded Dispute, the Association, if the Association complies with the terms of this Article, has the power to commence and maintain an arbitration as may be deemed appropriate by the Board and as may be permitted pursuant to the Act.

(f) In making its recommendation to the Owners to bring an arbitration on an Excluded Claim, the Board is to exercise its reasonable judgment. The Board must consider, without limitation, the likelihood of success, the impact such action may have upon the market values of Units or other portions of the Community, the cost of pursuing the arbitration including attorneys' fees and expert fees, the resources of the Association and whether a special assessment or depletion of reserves may be required in connection with pursuit of those claims or as a result after those claims have been pursued.

(g) The Board must prepare a written analysis of the risks and benefits to the Owners of commencing and maintaining an arbitration on an Excluded Dispute.

(h) The Board must deliver a copy of that written analysis to each of the Owners at least 7 days prior to the date scheduled for the meeting of Owners or vote at which the Owners must vote whether or not to proceed.

(i) The Association may not bring an arbitration on an Excluded Dispute, even with amendment of this Declaration, without compliance with the terms of this Article (un-amended) and without compliance with the terms of the Act.

(j) The Association may not bring a lawsuit on an Excluded Claim, as these claims are subject to the provisions of this Declaration.

(k) Owners may not bring a lawsuit on an Excluded Claim, as these claims are subject the arbitration agreement as initial Owners have entered into with the Declarant and are also subject to the provisions of this Declaration.

**Section 11.6 Sole Remedy-Waiver of Judicial Rights.** Subject to the Declarant's election rights set forth in this Declaration, and the remedies available for Excluded Disputes, the Declarant, the Association, and each Owner expressly consent to the substance and procedures established in this Article as their sole and exclusive remedy. Each of these parties also expressly waive any right they may have to seek resolution of any Excluded Dispute contemplated by this Article in any court, except as expressly allocated to the Association. Each of these parties also waive any right to trial by a jury. If a dispute involves the Declarant, an Owner or the Association, no person may file a memorandum of lis pendens or similar instrument that would encumber or create a lien upon the land owned by the Declarant, an Owner or the Association.

**Section 11.7 Binding Nature; Applicable Law.** The consideration of the parties to be bound by the provisions of this Article of this Declaration is not only the waiver of access to determination by a court (as applicable) and by a jury, but also the waiver of any rights to appeal the arbitration finding other than for the reasons available under Colorado law. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.

**Section 11.8 Location.** All alternative dispute resolution proceedings under this Article must be held in Durango, Colorado, unless otherwise mutually agreed by the parties.

**Section 11.9 Payment of Expenses under This Article.** Beyond filing fees and AAA costs associated with the arbitration (those costs being the obligation of the party who files the notice of arbitration), each party is responsible for their own costs, expenses, experts and attorney fees in the mediation and arbitration.

**Section 11.10 Amendment of this Article.** The Provisions of this Article may be amended with a majority vote of the Owners and with the consent of the Declarant.

## ARTICLE 12. AUTHORITY AND ENFORCEMENT

### **Section 12.1 Compliance with and Enforcement of Governing Documents.**

(a) **Compliance Required.** Every Owner and Resident must comply with the applicable provisions of the Governing Documents. Any aggrieved Owner has the right to take action to enforce the terms of the Governing Documents against another Owner or Resident.

(b) **Association Remedies.** The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for their violation. Sanctions may include, without limitation:

(i) Imposing reasonable monetary fines, after notice and opportunity for a hearing, which may be a lien upon the violator's Unit;

(ii) Suspending the right to vote;

(iii) Suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any Assessment or other charge owed to the Association;

(iv) Exercising self-help or action to abate any violation of the Governing Documents in a non-emergency situation, subject to any requirements as may be set forth in this Declaration, including those related to maintenance, repair or replacement;

(v) Requiring an Owner, at the Owner's expense, to remove any structure or improvement in the Unit or the Common Elements in violation of the Governing Documents and to restore the Unit or Common Elements to its previous condition and, upon the Owner's failure to do so, the Association has the right to enter the Unit or Common Elements, remove the violation and restore the Unit or Common Elements to substantially the same condition as previously existed and any action is not deemed a trespass;

(vi) Recording in the real property records a notice of violation identifying any uncured violation of the Governing Documents; and

(vii) Other remedies provided for in this Declaration or by applicable law.

(c) **Emergencies and Legal Action.** In addition, the Association may take the following enforcement procedures to seek compliance with the Governing Documents:

(i) Exercise self-help in any emergency situation (specifically including, but not limited to, towing vehicles that are in violation of any parking Rules and Regulations); and/or

(ii) Institute any civil action to enjoin any violation or to recover monetary damages or both.

(d) **Remedies Are Cumulative.** All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity.

(e) **Costs Incurred by Association.** If the Association exercises any of its rights pursuant to this section, all costs may be assessed against the violating Owner or Resident and may be a lien against the Unit. Additionally, subject to the Act, the Association is entitled to reasonable attorney fees actually incurred, which may be collected as an Assessment.

**Section 12.2 Failure to Enforce.** The Association has the discretion to pursue enforcement action in any particular case, except that the Association may not be arbitrary and capricious. The Association's failure to enforce any provision of the Governing Documents is not deemed a waiver of its right to do so thereafter. No claim or right of action exists against the Association for failure of enforcement where: (a) the Association determines that its position is not strong enough to justify taking enforcement action; (b) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (c) the Owner or party requesting enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so.

## ARTICLE 13. AMENDMENTS OR TERMINATION

### Section 13.1 Amendment by Owners.

(a) This Declaration and/or the Map may be amended by the affirmative vote, written agreement, or any combination of affirmative vote and written agreement of the Owners holding at least 67% of the total Association vote.

(b) If a proposed amendment is to be considered at a Member meeting, notice of the meeting must state the general subject matter of the proposed amendment. No amendment is effective until certified by the Association's president and secretary and recorded in the real property records.

(c) No amendment made by the Owners or by the Association is effective until certified by the President and secretary of the Association and recorded in the County of Ouray, Colorado land records.

**Section 13.2 Mortgage Holder Approval for Material Amendments.** In addition to the above, amendments to this Declaration of a material adverse nature to First Lien Holder must be approved by First Lien Holder who represent at least 51% of the votes of Units that are subject to first Mortgages. Approval of any proposed amendment by a First Lien Holder is deemed implied and consented to if the First Lien Holder fails to submit a response to any written proposal for an amendment as provided in this Declaration.

**Section 13.3 Amendments by Board of Directors.** The Board of Directors, without the necessity of a vote by the Owners, may amend this Declaration to correct any scrivener's errors, to comply with any applicable local, state or federal law, and/or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") or any successor governmental agencies pursuant to federal law.

**Section 13.4 Amendment of Declaration or Map by Declarant.** If Declarant shall determine that any amendments to this Declaration or the Map shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners or Mortgage Holders. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of 10

years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and Mortgage Holder. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance is deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

**Section 13.5 Required Consent of Declarant to Amendment.** Any proposed amendment or repeal of any provision of this Declaration reserving Development Rights, Special Declarant Rights or other development rights or for the benefit of Declarant or its assignees is not effective unless Declarant or its assignees, if any, have given written consent to such amendment or repeal. That consent may be evidenced by the execution by Declarant or its assignees of a certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal terminates ten years after the recording of this Declaration.

**Section 13.6 Validity.** Any action to challenge an amendment's validity must be brought within one year of the effective date of the amendment.

**Section 13.7 Termination.** This Declaration and the Community may be terminated in the manner as provided for and allowed for in CCIOA.

## ARTICLE 14. GENERAL PROVISIONS

**Section 14.1 Security.** The Association may, but is not required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community. However, each Owner, for himself and their Residents, guests, tenants, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association does not have a duty to provide security in the Community. Furthermore, the Association does not guarantee that non-Owners and non-Residents may not gain access to the Community and commit criminal acts in the Community nor does the Association guarantee that criminal acts in the Community is not committed by other Owners or Residents. Each Owner is responsible to protect their person and property and all responsibility to provide security lies solely with each Owner. The Association is not liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

**Section 14.2 Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or Rule and Regulation, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any of its rights or privileges.

**Section 14.3 Interpretation.** The provisions of this Declaration are to be liberally construed to effectuate their purposes of providing a uniform plan for the Community and of promoting and effectuating the fundamental concepts set forth in the recitals of this Declaration. This Declaration is to be construed and governed under the laws of the State of Colorado.

**Section 14.4 Electronic Records, Notices and Signatures.** Notwithstanding any other portion of this Declaration, records, signatures and notices is not denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws govern the giving of all notices required by this Declaration.

**Section 14.5 Duration.** The covenants and restrictions of this Declaration run with and bind the Community perpetually unless otherwise terminated as provided in C.R.S. § 38-33.3-218.

**Section 14.6 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise does not in any way affect the application of the provision to other circumstances or affect any other provision(s), which remain in full force and effect.

**Section 14.7 Public in General.** The rights and burdens created in this Declaration do not, are not intended to, and is not construed to create any rights and burdens in or for the benefit of the general public.

**Section 14.8 Conflicts.** In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

**Section 14.9 Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and do not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article.

**Section 14.10 Singular Includes the Plural; Gender.** Unless the context otherwise requires, the singular includes the plural, and the plural includes the singular, and each gender referral is deemed to include the masculine, feminine and neuter.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



**EXHIBIT A**

**Legal Description of the Real Estate**

Tract being a part of the Watson Placer MS 143;

West Portion; Beginning at a point on the line between Corners Eight and Nine of said Watson Placer, also being the Northwest Corner of Lot 13 of Wanakah Estates Subdivision Filing No. 4 (Reception No. 187077) from whence corner Nine of said Watson Placer Bears South 19° 14' 17" East, 995.06 feet and from whence the witness corner for the Northeast Corner of Section 25, Township 44 North, Range 8 West, New Mexico Principal Meridian, bears North 20° 57' 51" East, 2066.65 feet;

THENCE North 66° 59' 34" East, 366.50 feet, along the North Boundary of said Lot 13, to the West Right of Way of Hinkson Terrace;

THENCE along said Right of Way the following five courses;

- (1) a curve to the right with a length of 50.00 feet, a radius of 207.66 feet and a Delta Angle of 13° 56' 00";
- (2) a curve to the left with a length of 50.50 feet, a radius of 207.66 feet and Delta Angle of 13° 56' 00";
- (3) North 23° 00' 26" West, 160.63 feet;
- (4) a curve to the left with a length of 42.66 feet, a radius of 70.00 feet and a Delta Angle of 34° 54' 56";
- (5) a curve to the right with a length of 79.22 feet, a radius of 130.00 feet and a Delta Angle of 34° 54' 55", to the Southeast Corner of Lot 21 of said Wanakah Estates Subdivision Filing No. 4;

THENCE South 66° 59' 34" West, 318.02 feet, along the Southern Boundary of said Lot 21;

“ South 19° 14' 17" East, 357.76 feet, to the point of beginning.

County of Ouray, State of Colorado.

**EXHIBIT B**

**Initial Units**

**Building A**

- A-1
- A-2
- A-3
- A-4
- A-5
- A-6
- A-7
- A-8
- A-9
- A-10

**Building B**

- B-1
- B -2
- B -3
- B -4
- B -5
- B -6
- B -7
- B -8
- B -9
- B -10

**Building C**

- C-1
- C -2
- C -3
- C -4
- C -5
- C -6
- C -7
- C -8
- C -9
- C -10

Community Development  
P.O. Box 468  
320 Sixth Avenue  
Ouray, Colorado 81427  
970-325-7211 main  
970-325-7212 fax  
www.cityofouray.com



**FOR STAFF USE ONLY**

Permit Number: \_\_\_\_\_

Receipt Number: \_\_\_\_\_

DATE OF APPLICATION: 1/12/2021

Check appropriate request

### MASTER LAND USE APPLICATION

- Site Development Permit \$200
- Conditional Use Permit \$200
- Variance Request \$500
- Rezone \$200
- Sketch Plan \$200
- Preliminary Plat \$400
- Final Plat \$300
- Lot Split \$300
- Minor Subdivision \$250
- Replat or Plat Amendment \$300
- Mobile Home or RV Park \$300
- Other \_\_\_\_\_

No Fee Applications/Requests:

- Appeal of Administrative Determination
- Interpretation of a Use not Itemized

**PRINT ALL INFORMATION FOR LEGIBILITY**

Project Name: Ouray Workforce Housing  
Ouray County Property Account(s): \_\_\_\_\_  
Ouray County Parcel Number(s): \_\_\_\_\_  
Site Address: (TBD) or #: TBD HINKSON TERRACE

Property Owner(s): San Juan Mountainside LLC  
Address: PO Box 1106  
City/State/Zip: Ouray, CO 81427  
Phone Number: 970 ~~970~~ 596-423 E-Mail Address: MSBAZIN@Hotmail.COM

Applicant (if different than property owner): Ouray Housing Group, LLC  
Address: PO Box 1214  
City/State/Zip: Ouray CO 81427  
Phone: 970-946-12089 E-Mail Address: MARKIUPPENLATS@GMAIL.COM

Authorized Agent (for property owner/applicant): Mark Iuppenlats  
Address: PO Box 1214  
City/State/Zip: Ouray CO 81427  
Phone Number: 970-946-2089 E-Mail Address: MARKIUPPENLATS@GMAIL.COM

Proposed Use: Multi-Family Condo/Apartments  
Existing Use: Undeveloped  
Site Area: 3.09 AC  
Existing Buildings to Remain or be Removed: Yes  No (circle one) N/A NO BUILDINGS EXIST  
Existing Building Coverage (Total Floor Area): N/A Proposed Building Coverage (Total Floor Area): \_\_\_\_\_  
Number of Existing Lots: ? Proposed Number of Lots: 1

Is the property subject to flooding, landslides, debris flows or other natural or geologic hazards? Circle one  Yes  No  
Briefly describe: Rockfall - An ENGINEERED Geohazard Protection Beam will be installed as part of the project.

**SUBMITTAL REQUIREMENTS** (See Chapter 7 for specifics to any request):

**Interpretations for Uses Not Itemized:** A completed application form, cover letter explaining or describing the use or activities proposed for the site with sufficient detail to understand the activity or use adequately. Supplemental information or pictures may be attached. Research from other sources can be provided to help explain what is the use not itemized.

**Variations:** A completed application form, filing fee, a cover letter and supporting documentation to explain the issue at the site that needs a waiver or modification of the regulations and explanation of how the situation might be remedied with the least variance or exception possible to achieve a positive outcome. If work was done contrary to the Building or Land Use Regulations an explanation for this situation will need to be provided. All information to be provided on a compact disk or thumb drive.

**Appeals:** A completed application form, a cover letter and any supporting documentation to explain the appeal from an administration action or determination.

**Site Development Permits and Subdivision Requests:** A completed application form, filing fee, detailed graphics as indicated by the Code provisions (three paper copies or sets), and three paper copies of all supplemental reports and information. Current proof of ownership or notarized consent by the property owner for a different individual or firm to be the applicant of the legal owner (one copy). All information to be provided on a compact disk or thumb drive.

**PLEASE NOTE:** Any incomplete application will not be accepted and will be returned to the applicant for completion and return to the Community Development Office.

**Acknowledgements:**

- a. Per Section 7-3 Administration B. Fees. The applicant is responsible for all costs incurred by the City which may include legal fees, postage, notice and publication costs, other professional services or charges by outside agencies for the review and processing of the applicant's request. The Applicant will be invoiced of such charges for payment within 30 days of mailing. Invoices not paid prior to the final decision meeting or action as requested, may cause the matter to be delayed to a subsequent date/time or the application could be denied. Please review the full statement in the Code regarding payment of fees.
- b. By affixing their signature(s) hereto, I certify under penalty of perjury that the information furnished herein is true and correct to the best of my knowledge and that I am the owner of the premises where the work is to be performed or I am acting as the owner's authorized agent. I further agree to hold harmless the City of Ouray as to any claim (including costs, expenses and attorney fees incurred in the investigation of such claim) which may be made by any person, including the undersigned, and filed against the City of Ouray, but only where such claim arises out of the reliance of the City, including its officers and employees, upon the accuracy of the information provided to the City as a part of this application.

Applicant's Name (Printed): Ouray Housing Group, LLC

Applicant's Signature: [Signature] Date: 1/8/2021

Owner's Name (Printed): SAN JUAN MOUNTAINSIDE, LLC

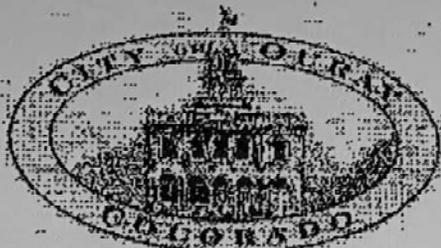
Owner's Signature: SEE ATTACHED Date: \_\_\_\_\_

Authorized Agent's Name (Printed): Mark Juppenthalz

Authorized Agent's Signature: [Signature] Date: 1/8/2021

Please be sure to provide current proof of ownership and written authorization (notarized) for representation as needed. Corporations or similar entities need to provide written documentation on who is authorized to represent and act on behalf of the organization.

320 6th Avenue  
PO Box 408  
Ouray, Colorado 81427



870.325.7211  
Fax: 870.325.7212  
www.cityofouray.com

# City of Ouray Authorization of Agent Form

This form is required if someone other than the owner of a property will be acting as the Authorized Agent for a building project.

LOT 14 thru 20 DAWAKAK

**Property Information:**

Project Address: LOT 14 thru 20 DAWAKAK ESTATES SUB DIVISION  
Parcel Number(s): \_\_\_\_\_

**Contact Information:**

Owner's Name(s): SAN JUAN Mountain Side (MIKE BAZIN)  
Mailing Address: PO Box 1106 Ouray CO 81427  
Phone: 970-596-4123 Email Address: msbazin@hotmail.com

Authorized Agent's Name: MARK LUPPENLATZ  
Mailing Address: PO Box 1817 Ouray Co 81427  
Phone: 970 966 2889 Email Address: mark.luppenlatz@gmail.com

I/we the undersigned owner/s of the above described real property located in the City of Ouray, Colorado hereby authorize:

MARK LUPPENLATZ  
(Print name of authorized agent)

To act in my/our behalf in applying for permits from the City of Ouray as required by existing City of Ouray regulations pertaining to zoning, building, encroachments, excavation, and utilities.

Signature: [Signature]  
(Property owner of record)

Date: 12/1/20

Signature: \_\_\_\_\_  
(Property owner of record)

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

Signature: \_\_\_\_\_  
(Property owner of record)

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

**From:** Corey Bloom <[corey.traveling@gmail.com](mailto:corey.traveling@gmail.com)>  
**Sent:** Saturday, March 6, 2021 11:47 PM  
**Subject:** OPPOSE the 30 unit Workforce Housing Project

8 February 2021

TO: CITY COUNCIL MEMBERS, CITY ADMINISTRATOR – CITY OF OURAY

**REQUEST THAT THIS OBJECTION BE MADE PART OF THE OFFICIAL RECORD**

I would like to take issue with and OPPOSE the 30 unit Workforce Housing Project on Hinkson Terrace and ask that the decision of the Planning Commission DENYING this project be upheld.

Ouray needs affordable housing for our essential workers, service workers and employees who work in our local businesses – and in particular, for families who are or will become permanent residents.

This is not Affordable Housing designed for and limited to the workers and residents of Ouray, but a high density condominium project for the workers of a private business, Ouray Silver Mines, whose parent company is based in Canada. The very small unit size is not conducive to attracting families of the miners, especially when many already have families and homes in nearby Western Slope communities. These units might just become sleeping quarters, not homes, for the miners.

There is no guarantee that Ouray Silver Mines will be in business for the proposed six years of rentals. Without the mine rental agreement, these units will be sold on the open market and investors/owners could convert them to short term rentals, something Ouray definitely does not need or want.

There are many obvious reasons that this high density project is not compatible with the Hinkson Terrace or North Oak Street neighborhoods. The increase in traffic, dust, noise, lack of parking, limited access for emergency vehicles, rockfall and drainage issues impacts both neighborhoods. The deep cut that must be made into the hillside on this steep lot is also of concern. This neighborhood was designed and intended for up to 20 homes and the addition of 30 living units and an additional 30-60 vehicles will have a negative impact on the lifestyle quality and safety of the neighborhoods.

The property values in this area will also be impacted and current owners purchased homes expecting their neighborhood to remain residential, not with a high density apartment built on seven lots.

I also would oppose any reduction of water/sewer tap fees for the developers. The taxpayers are facing a huge expense in building a new wastewater treatment plant and a possible water treatment facility, and the City needs all the required fees from developers. I would also oppose any amendment to Emergency Ordinance 1 to allow the project to be developed before these facilities are operational.

The new Ouray Community Plan reflects the input, ideas and vision of the current Ouray residents who have written this plan over the past few years of studies and suggestions. The Plan designates Hinkson Terrace as residential, reflecting what it is now and was designed to be. This neighborhood, with its committed and local residents, should not be “thrown under the bus” to accommodate greedy developers and a private business.

Respectfully submitted,

Corey Bloom  
Ph. 864-414-9784

## Silas Clarke

---

**From:** Kristin Boettger <krisboet@hotmail.com>  
**Sent:** Friday, March 12, 2021 5:29 AM  
**To:** Silas Clarke; funke@cityofouray.com  
**Subject:** Fw: Objection to Workforce Housing Project

---

**From:** Kristin Boettger <krisboet@hotmail.com>  
**Sent:** Friday, March 12, 2021 6:23 AM  
**To:** nelsong@cityofouray.com <nelsong@cityofouray.com>; Boydg@cityofouray.com <Boydg@cityofouray.com>; funk@cityofouray.com <funk@cityofouray.com>; Lindseyp@cityofouray.com <Lindseyp@cityofouray.com>; clarks@cityofouray.cm <clarks@cityofouray.cm>; woodkj@cityofouray.com <woodkj@cityofouray.com>  
**Subject:** Objection to Workforce Housing Project

To Ouray City Council:

I strongly object to the development of the property known as Hinkson Terrace for the purpose of SMALL housing units to benefit the Ouray Silver Mine and not the citizens of Ouray. We should be looking to the citizens of Ouray who are working in our schools, in small businesses, in restaurants and all businesses which enhance the quality of life in Ouray and not the pockets of a mining company. It is irresponsible to jeopardies the property values of the adjacent homes. The increased traffic on Oak Street and the increased strain on water and other utilities would in no way benefit the citizens of Ouray. These citizens pay taxes, raise families, and have faith that this community will continue to be a place of beauty.

Please consider the negative impact these numerous units will have on Ouray. Above all consider the desires of your constituents who have faith that you as an elected official will protect all that we love about Ouray.

Kristin Boettger  
501 6th Street  
Ouray

## Silas Clarke

---

**From:** Mary Ann Buxton <maryannbuxton@gmail.com>  
**Sent:** Sunday, March 7, 2021 2:01 PM  
**To:** Silas Clarke; Greg Nelson  
**Subject:** Opposition to the Hinkson Terrace development

### **I would like to go on official record as being opposed to the proposed 30-unit development on Hinkson Terrace/Wanakah Estates.**

The Ouray Planning Commission recommended the project be denied permission during their meeting February 9 2021 by a vote of 3 against, 1 for.

I agree with that vote and the opinion of many residents of Ouray that it is a good idea but in the wrong location. There are several more suitable locations to the north of town, on both sides of the main road into town that might be considered to be developed for the needs of businesses needing housing for their employees.

Having lived and worked in the San Francisco Bay Area for many years I am aware of what it means to need affordable housing, and that sometimes that meant inconvenient commutes. However, commuting to work from Hinkson Terrace on Oak Street, aka county road 17, means inconvenience not only for the commuters but also for the current residents. My first property in Ouray was on Oak Street and even 5 years ago I was affected by the traffic, at the time minimal, compared to what it would be with this development. As a resident on the corner of 7<sup>th</sup> Ave and 2<sup>nd</sup> Street, this development of 30 units could add 60 vehicles of all sizes and noises 2x per day – a total of 120 – 7 days a week, 52 weeks per year.

I know this would diminish the value of my historical house as well as cast a shadow on the reasons I moved to Ouray. I moved here for the beauty of the setting, but also the peace and quiet that a small mountain town offers. I love how I can step out my door with friends and my pup and hike into unrivaled beauty. I love how I can ride my bike out of my driveway down to Oak Street and be safe. Add 120 vehicles, and my pup and I will not be at ease. Add 120 vehicles and I will need to put my bike in my car and drive to the bike path in Ridgeway.

I don't think the developers or the miners really care that my historical house value might diminish or that the quality of my life might dim, but I hope that as elected town council members, that you do care about us - we who voted for you, we who pay taxes, we who share the vision for our community.

As for this development being promoted as a boon to the mine and mine workers, I hesitate to ask why we should promote a project ostensibly benefiting one business – not even in the town. I would think that a project to provide affordable housing for our teachers would be a better contribution to the future of our community. How about our ever-struggling artists? I personally want to make sure we have good cooks, waiters, waitresses, dishwashers, grocery store clerks, shop sales people, and don't forget bar-tenders - in town.

I am sure the many others opposed to this development have made an impressive and logical case opposing it for reasons including and not limited to drainage issues, certain rock fall, traffic, dust, noise, limited parking, and dangerous limitations to emergency vehicles. Do any of you remember the limitations caused by the rockfall just 2 years ago on county road 17, just about a mile down the road? Do you remember the amount of work that was needed quite high on the mountain side just to mitigate more rock fall and open the road as well a save the gas line? Is the City prepared to spend that much money just in case the steep slope above this area suffers the same geological phenomenon?

Last year my Ouray City Services bill increased about 25%. How do you think I and others feel about a request by the developers that they be allowed \$450,000 gift for reducing their tap fees? I am incensed by what I would call arrogance in that request! With a need for serious improvements to our sewage system as well a probable need to mitigate our

domestic water supply treatment, how can our City Elders possibly contemplate that request? Shall we all just pitch in and congratulate the developers on their pretended interest in the future of our community? I don't think so.

The developers have made a "reason d'etre" of providing affordable housing for their project but according to the presentation, in just a few years the **very** small condos could be sold to the public. This project has all the potential for short term rentals. Looking at the increase in sales tax revenues increase of 18% it from 2019 to 2020, it looks like the town businesses are doing well. Can't we at some point come to a comprehension of enough growth? Enough development?

I respect the amount of investment the developers have made in their professional drawings and their slick arguments for the project, but I repeat that I am opposed to this proposed building project as not being beneficial to the community as a whole.

Respectfully submitted,

Mary-Ann Buxton

645 2<sup>nd</sup> St (Corner of 2<sup>nd</sup> St and 7<sup>th</sup> Avenue)

Ouray, CO 81427

916-716-7351

[maryannbuxton@gmail.com](mailto:maryannbuxton@gmail.com)

## Silas Clarke

---

**From:** Cindy Carothers <cindycarothers@gmail.com>  
**Sent:** Thursday, March 11, 2021 6:35 PM  
**To:** Silas Clarke  
**Subject:** Fwd: Silver Terrace Condominium Geologic Documentation  
**Attachments:** silver-terrace.pdf; silver-terrace.pptx

City Council, Mayor and City Administrator,

I am opposed to the Silver Terrace Condominium and would like it recorded as such. I have attached a document explaining geologic reasons this is a dangerous location, especially to cut into a hillside. It is in 2 formats and I can send in another if needed. I can also send it in a letter if an attachment is not acceptable. Please let me know. Basically, the documents will illustrate reasons for this objection.

**The proposed Silver Terrace Condominium is the wrong location for a 30 unit condominium for several important reasons that are not seen anywhere else in the Ouray area.**

**The first** is the Ouray Valley is surrounded by interbedded steep, loose sedimentary rock (Hermosa and Cutler Formations). **No where else in the valley has anyone excavated back into these erosive formations in a 350' swath for housing.**

**The second** is the very different geology that has been studied for 80 years+ on the slope above the Hinkson Terrace area. **The geologic structure on the hillside is not seen anywhere else in the Ouray Valley.** It will be described in this document. The monoclinical structure on the hillside has a tight and steeply dipping 42° hinge with associated faulting in the Cutler Formation. Slides illustrate this faulting at the hinge of the monocline and the erosive character of the outcropping Cutler Formation which is just above the proposed condominium.

The overall point in this document is this area has been studied for a long time and the condo location is a dangerous one that could easily be moved to any of the other locations the developers have in Ouray city limits. The developers seem to be maximizing profits by excavated 30 condos into a steep hillside that originally had hookups for 7 houses. Furthermore, the developers have much city vacant land where the subdivision could be placed and it wouldn't be a detriment to the Wanakah neighborhood, a detriment to the steep Hinkson Terrace hillside, and a detriment to the traffic on the narrow street. At least one plat belonging to the developers **is** already platted as a minor subdivision with a reception number, **is** on flat ground, and **is** on a substantially large space.

I would be glad to support REAL affordable housing that won't be 30 short term rentals in a few years.

Thank you for your time and especially your service. It is very appreciated.

812 4th St.  
Cindy Carothers  
303-670-7353 City Council, Mayor and City Administrator,

I am opposed to the Silver Terrace Condominium and would like it recorded as such.

I have attached a document explaining geologic reasons this is a dangerous location, especially to cut into a hillside. It is in 2 formats and I can send in another if needed. I can also send it in a letter if an attachment is not acceptable. Please let me know.

Basically, the documents will illustrate reasons for this objection.

**The proposed Silver Terrace Condominium is the wrong location for a 30 unit condominium for several important reasons that are not seen anywhere else in the Ouray area.**

**The first** is the Ouray Valley is surrounded by interbedded steep, loose sedimentary rock (Hermosa and Cutler Formations). **No where else in the valley has anyone excavated back into these erosive formations in a 350' swath for housing.**

**The second** is the very different geology that has been studied for 80 years+ on the slope above the Hinkson Terrace area. **The geologic structure on the hillside is not seen anywhere else In the Ouray Valley.** It will be described in this document. The monoclinical structure on the hillside has a tight and steeply dipping 42° hinge with associated faulting in the Cutler Formation. Slides illustrate this faulting at the hinge of the monocline and the erosive character of the outcropping Cutler Formation which is just above the proposed condominium.

The overall point in this document is this area has been studied for a long time and the condo location is a dangerous one that could easily be moved to any of the other locations the developers have in Ouray city limits. The developers seem to be maximizing profits by excavated 30 condos into a steep hillside that originally had hookups for 7 houses. Furthermore, the developers have much city vacant land where the subdivision could be placed and it wouldn't be a detriment to the Wanakah neighborhood, a detriment to the steep Hinkson Terrace hillside, and a detriment to the traffic on the narrow street. At least one plat belonging to the developers **is** already platted as a minor subdivision with a reception number, **is** on flat ground, and **is** on a substantially large space.

I would be glad to support REAL affordable housing that won't be 30 short term rentals in a few years.

Thank you for your time and especially your service. It is very appreciated.

812 4th St.  
Cindy Carothers  
303-670-7353

--  
Cindy Carothers  
303-670-7353

## **The proposed Silver Terrace Condominium is the wrong location for a 30 unit condominium for several important reasons that are not seen anywhere else in the Ouray area.**

**The first** is the Ouray Valley is surrounded by interbedded steep, loose sedimentary rock (Hermosa and Cutler Formations). **No where else in the valley has anyone excavated back into these erosive formations in a 350' swath for housing.**

**The second** is the very different geology that has been studied for 80 years+ on the slope above the Hinkson Terrace area. **The geologic structure on the hillside is not seen anywhere else In the Ouray Valley.** It will be described in this document. The monoclinial structure on the hillside has a tight and steeply dipping 42° hinge with associated faulting in the Cutler. Slides are made to show this faulting at the hinge of the monocline and the erosive character of the outcropping Cutler Formation which is just above the proposed condominium.

The overall point in this document is this area has been studied for a long time and the condo location is a dangerous one that could easily be moved to any of the other locations the developers have in Ouray city limits. The developers seem to be maximizing profits by excavated 30 condos into a steep hillside that originally had hookups for 7 houses. Furthermore, the developers have much city vacant land where the subdivision could be placed and it wouldn't be a detriment to the Wanakah neighborhood, a detriment to the steep Hinkson Terrace Hillside, and a detriment to the traffic on the narrow street. At least one plat belonging to the developers is already platted as a minor subdivision with a reception number, is on flat ground, and is on a substantially large space.

The following slideshow has the main point stated in upper left and you can peruse the slide as much as you want.. References or the papers in this Slide Show will be sent upon request. Slide progression is summarized below

1. Drone Photo
2. Introductory Google Earth photo showing location and density of 30 condos which is very different than the character of the neighborhood.
3. Geologic map of mines and rock units (George Moore, 2005) showing a concentration of faulting in the Silvershield/Hinkson area
4. Slide 3 shows concentration of faults in proposed condo area. These faults are highlighted in the red circle.
5. Slide 4 shows faulting on geologic map, cross section of uplift and photo of Hinkson Terrace hillside showing highly dipping hinge of monocline. This is where the tight, steep dip of the monocline is.
6. Slide 5 gives a description and outline of the Cutler Formation which outcrops above and on the proposed condominium location
7. Slide 5 also shows Cutler 2019 rock slide and Hinkson Terrace 15' rockfall inside house
8. Exhibit A detailing slope dip calculation where condominium is proposed
9. Exhibit B shows a detailed cross section, map and photo of the area highlighting faulting and steep dips in rock
10. Exhibit C illustrates Cutler monocline and faulting in details

Slide 1 shows a 3/3/2021 drone photo taken to show steep 29° slope, tight structural hinge of the Cutler monocline, dead trees, tiny space to build 30 condominiums; and large boulders on hillside.

Steep 42° dip at the hinge of the Cutler monocline above Hinkson Terrace

Large boulders on above slope

R004946 30 condominiums cutting into Steep 29° Slope in a 350' swath

Drone Photo taken by Steve Camella



Slide 2 shows dedication of 20 homes total on the east side of Hinkson Terrace while 30 condos are proposed to be built on the west side on 1/3 the street length. They will deeply cut into the hillside. It also shows a recent boulder fall that is still inside the house.

30 condo units  
on 29° slope cut  
into hillside

See Exhibit A for more  
detail on slope

R004946

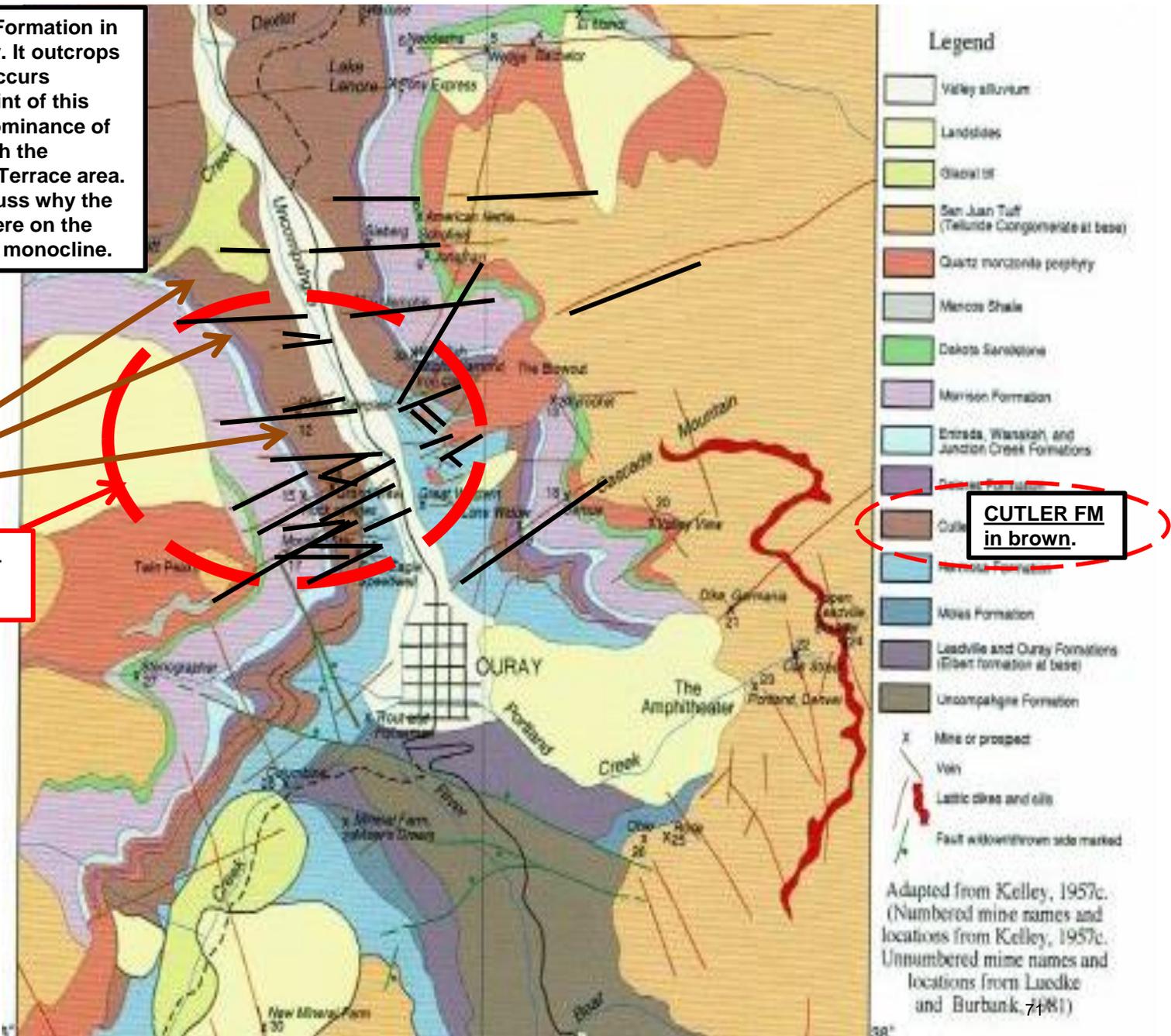
15' Rock fall inside  
house at yellow X. It is  
still there.



**Slide 3** shows the Cutler Formation in brown in the Ouray Valley. It outcrops at Hinkson Terrace and occurs throughout the valley. Point of this slide is to show the predominance of faulting (red lines) through the Silvershield Mill/Hinkson Terrace area. Following slides will discuss why the faults are concentrated here on the tight hinge of a structural monocline.

**CUTLER FM in brown.**

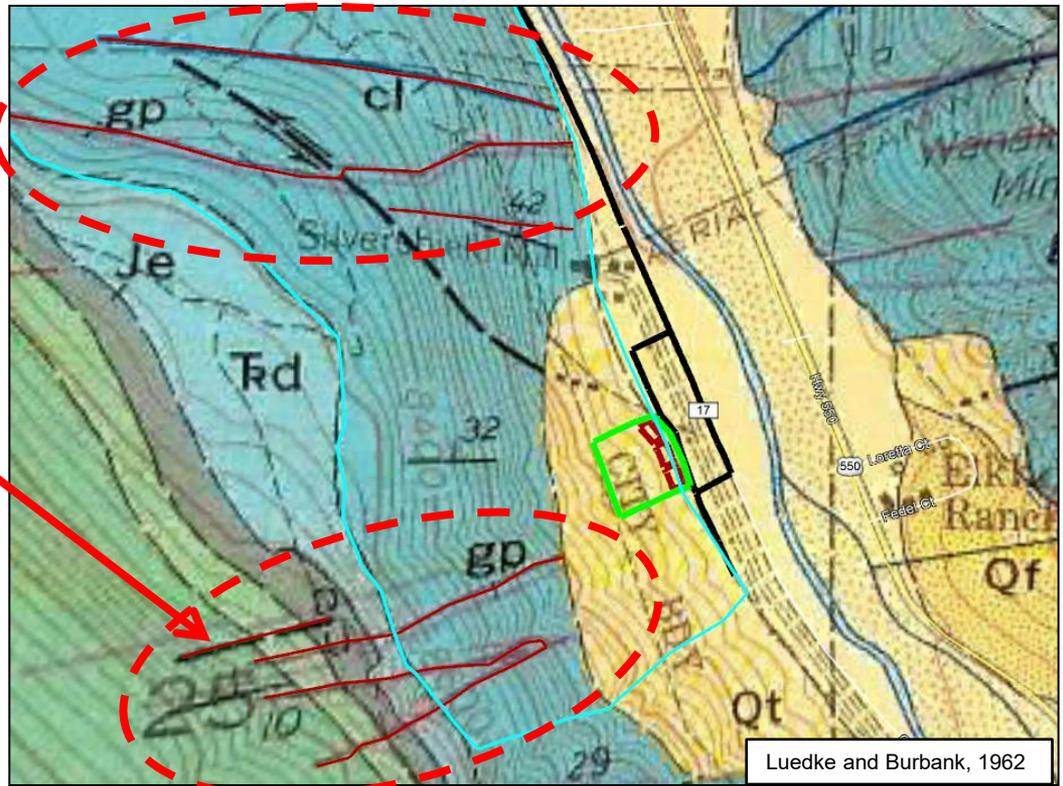
**Concentration of faulting in Cutler in Silvershield - Hinkson Terrace area**



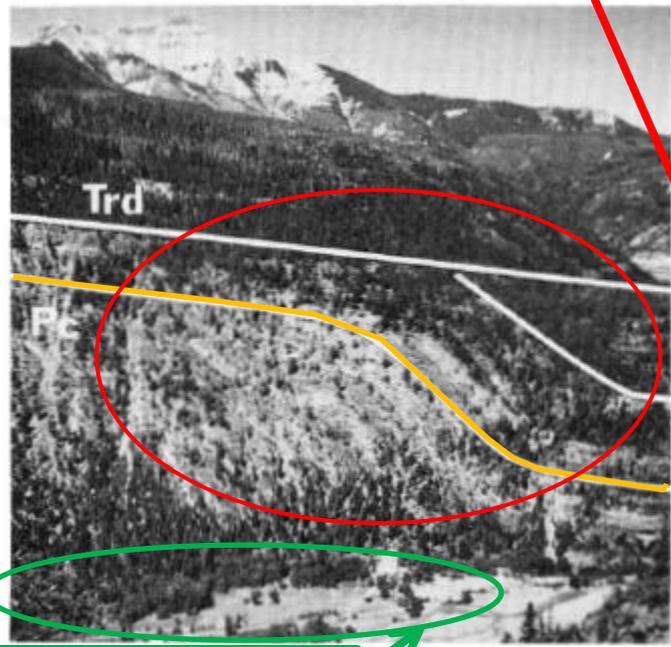
Slide 4 shows the Cutler monocline in yellow with steeply dipping 42° slope; the associated sets of faults in red at the tight Cutler monocline hinge; faults are seen on both map and cross section,

Clusters of faulting outlined in red above Silvershield and Hinkson Terrace slope

Paleodrape over the Sneffels horst which created a series of down-to-the-north faults shown in red on geologic map and on cross section view. See Exhibits B and C for more detail

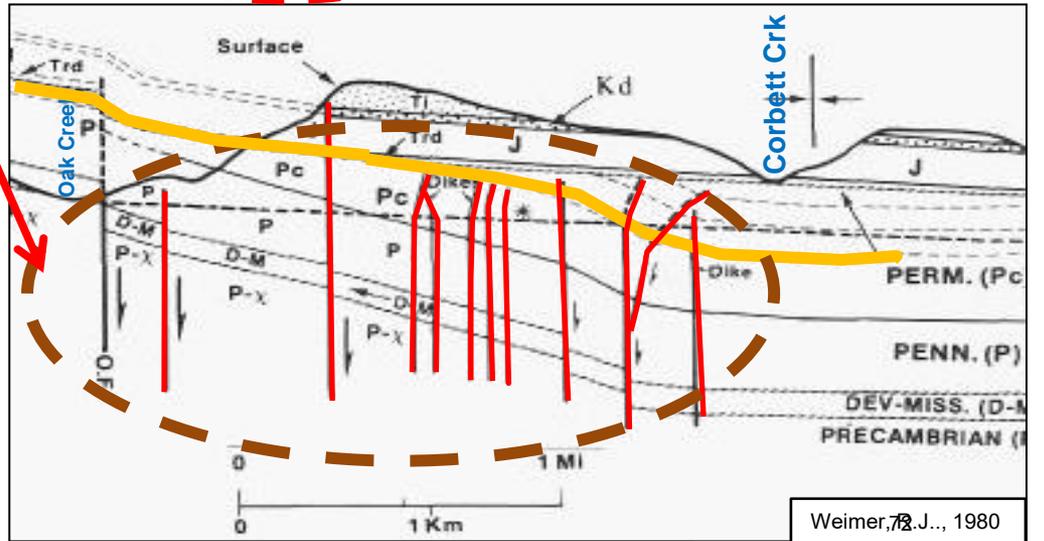


Luedke and Burbank, 1962



Hinkson Terrace Area.

Weimer, P.C., 2013.



Weimer, P.C., 1980

**Slide 5** shows the outline of the Cutler Formation (blue) which outcrops at Hinkson Terrace. The 2019 rockslide just north also occurred in the lower Cutler. A description of the Cutler below explains why it is such an erodible rock. Removing a 350' swath of rock at the toe of the Cutler creates a hazard.

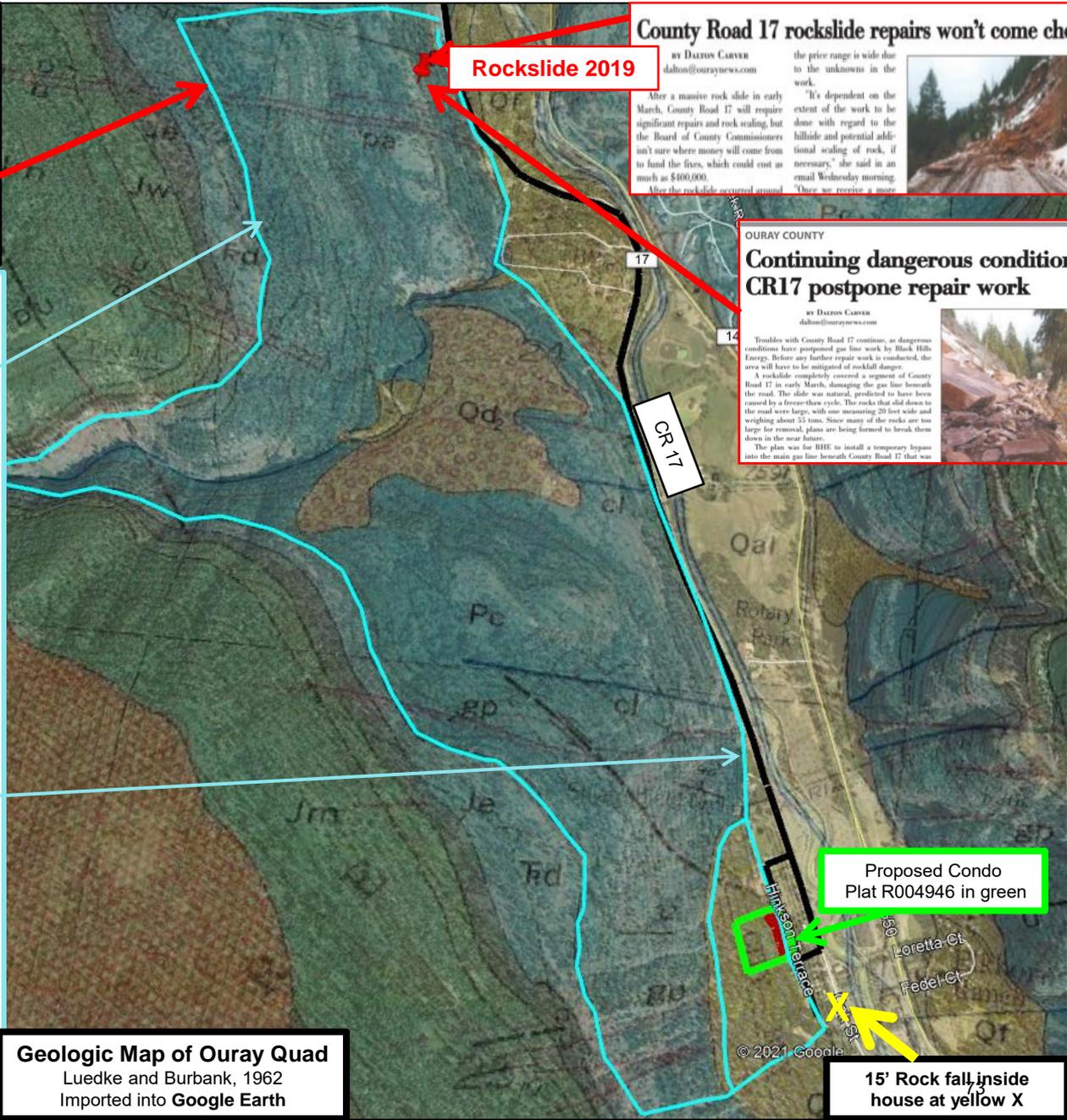
**Cutler Description...**

The Cutler Formation is outlined in blue green and occurs on the steep slopes above and in the proposed condominium location (in green). The Cutler consists of interbedded shale, siltstone, and sandstones. Sandstones are slightly to very conglomeratic with rounded pebbles as much as 4' in diameter (Luedke and Burbank, 1962). Thin interbeds of siltstones and conglomeratic sandstones make for easily-erodible layers.

**Cutler slopes** in the valley do not necessarily mean a danger to houses below, **however, when you remove the toe of the Cutler slope in a rectangular swath that is approximately 350' you greatly increase the chance of rock fall, mudslides., and water drainage problems.** The 30 condos in green outline will cut into a 29° slope (see Exhibit A)..

Final plat notes on the Wanakah Estates Subdivision Filing No. 4 Reception No. 187077.....

**Plat Notes:**  
**3. Lot Owner(s) accept all liability for any hazards due to to geological occurrences including falling rocks, floods, falling trees or any other condition or acts of God.**



**Geologic Map of Ouray Quad**  
 Luedke and Burbank, 1962  
 Imported into Google Earth

**County Road 17 rockslide repairs won't come cheap**  
 by DALTON CARVER  
 dalton@ouraynews.com

After a massive rock slide in early March, County Road 17 will require significant repairs and rock scaling, but the Board of County Commissioners isn't sure where money will come from to fund the fix, which could cost as much as \$400,000.

The price range is wide due to the unknowns in the work. "It's dependent on the extent of the work to be done with regard to the hillside and potential additional scaling of rock, if necessary," she said in an email Wednesday morning. "Once we receive a more

**Rockslide 2019**

**OURAY COUNTY**  
**Continuing dangerous conditions on CR17 postpone repair work**  
 by DALTON CARVER  
 dalton@ouraynews.com

Troubles with County Road 17 continue, as dangerous conditions have postponed gas line work by Black Hills Energy. Before any further repair work is conducted, the area will have to be mitigated of rockfall danger.

A rockslide completely covered a segment of County Road 17 in early March, damaging the gas line beneath the road. The slide was natural, predicted to have been caused by a freeze-thaw cycle. The rocks that slid down to the road were large, with one measuring 20 feet wide and weighing about 25 tons. Since many of the rocks are too large for removal, plans are being formed to break them down in the near future.

The plan was for BHE to install a temporary bypass into the main gas line beneath County Road 17 that was

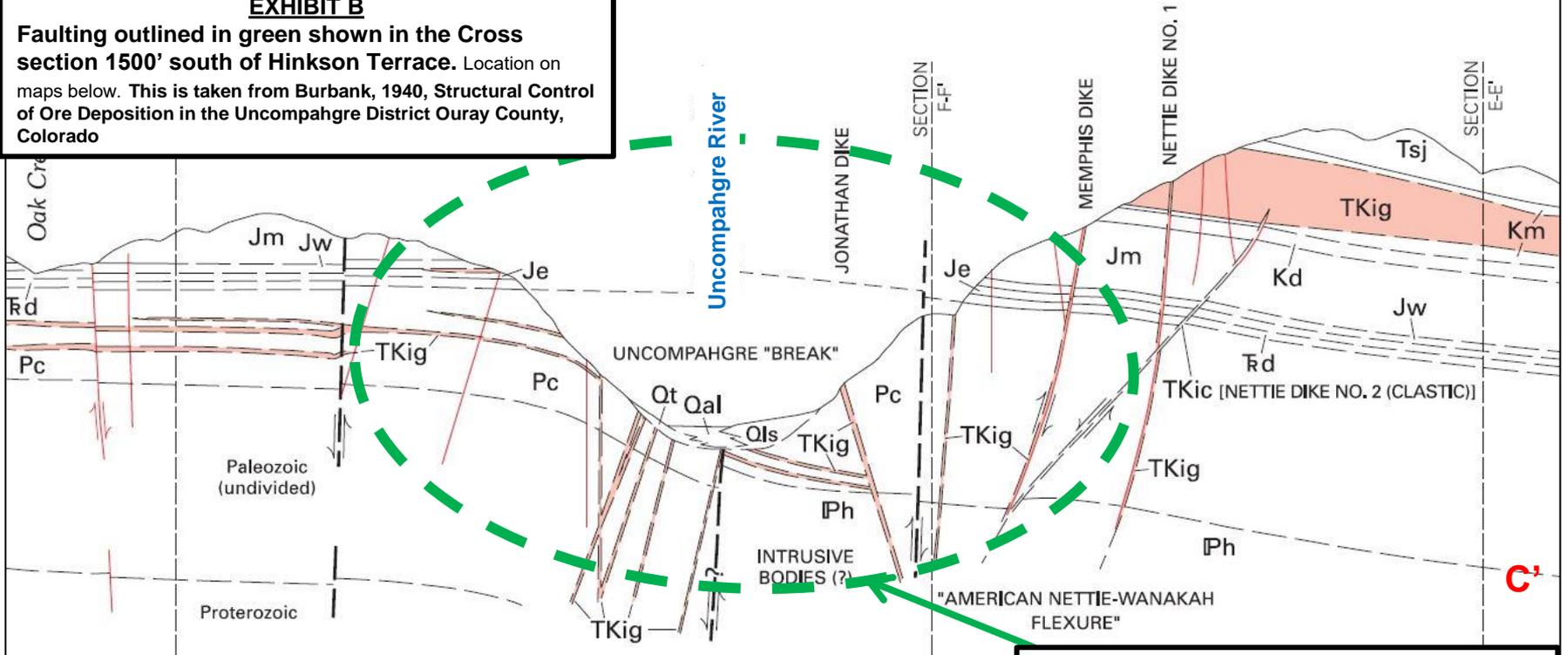
Proposed Condo Plat R004946 in green

15' Rock fall inside house at yellow X

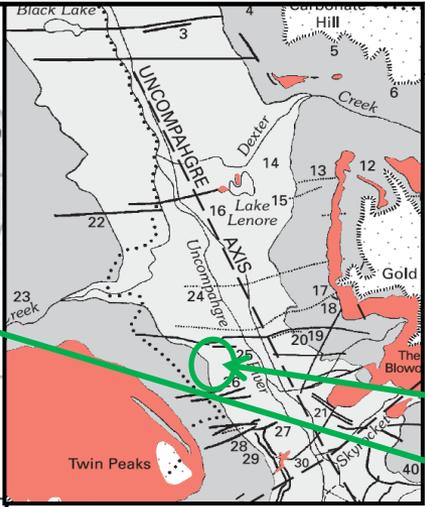
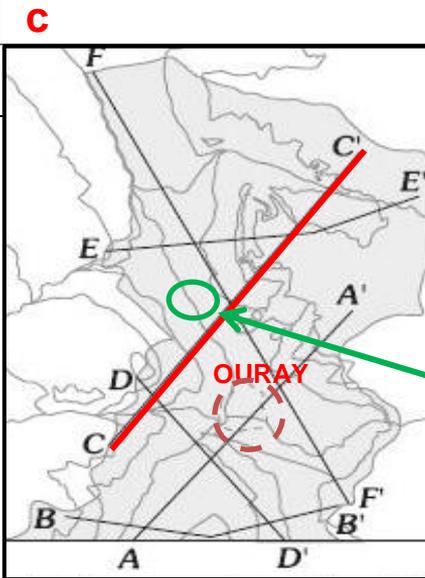


**EXHIBIT B**

**Faulting outlined in green shown in the Cross section 1500' south of Hinkson Terrace.** Location on maps below. This is taken from Burbank, 1940, *Structural Control of Ore Deposition in the Uncompahgre District Ouray County, Colorado*



**Burbank, 1940, Structural Control of Ore Deposition in the Uncompahgre District Ouray County, Colorado.**



NO VERTICAL EXAGGERATION

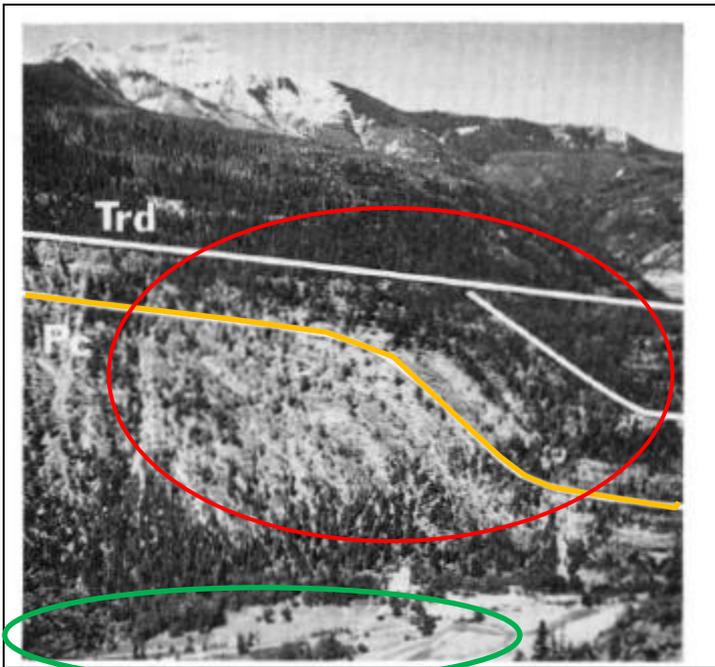
Prevalence of faulting in cross section. Location is 1500' south of Hinkson Ter..

References from top: Burbank, 1940; Burbank, 1940; Burbank, 2008; Moore, 2005

Approximate map and xsection location of the proposed Condominium location

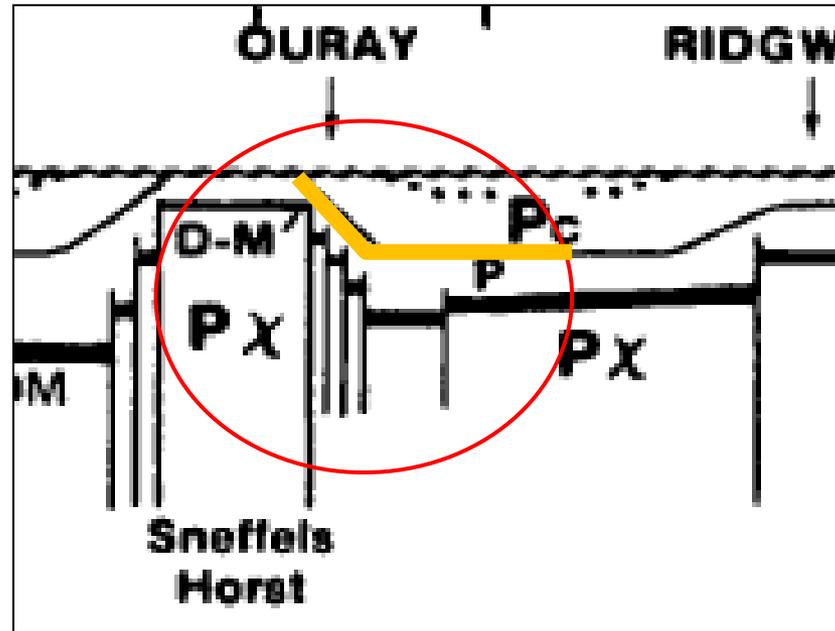
**EXHIBIT C**  
**Cutler Monocline and Faulting**

Paleodrape of Cutler (yellow) to the north as the Sneffels Horst uplifted to the southwest and faulted blocks of rock down-dropped to the north



Hinkson Terrace Area.

Weimer, P.C., 2013.



Weimer, P.C., 2013.

## Silas Clarke

---

**From:** Steve Cumella <stevecumella@gmail.com>  
**Sent:** Monday, March 8, 2021 8:38 PM  
**To:** Silas Clarke; Greg Nelson  
**Subject:** Hinkson Terrace condos

TO: CITY COUNCIL MEMBERS, CITY ADMINISTRATOR – CITY OF OURAY

When I first heard of the proposed worker housing project it sounded like a good idea, but after listening to the planning commission discussion on the matter I changed my mind. The idea for worker housing is good, but the chosen location is not. The narrow streets, parking problems, hillside instability, and traffic issues are some of the problems that have been discussed. I am strongly opposed to a \$450,000 abatement of sewer/water tap fees. The city is facing significant costs for sewage and drinking water improvements - an abatement is not appropriate. I think it is likely that at some point many of these 30 condos may end up being short term rentals, adding to what I think is already a major problem for Ouray.

Thank you,

Steve Cumella  
812 4th St  
Ouray, CO

Eric and Melissa Escalante  
Lot 31 Oak Street  
Ouray CO 81427  
[e\\_mescalante@msn.com](mailto:e_mescalante@msn.com)

March 9, 2021

Delivered via email on 03/09/2021 to City Administrator [clarkes@cityofouray.com](mailto:clarkes@cityofouray.com)  
City Attorney [cviner@vinerlaw.com](mailto:cviner@vinerlaw.com)

Ouray City Council

Re: Proposal for Development of Miner Housing on Hinkson Terrace (“Development”)

REQUEST THAT THIS UPDATED OBJECTION BE MADE PART OF THE OFFICIAL RECORD

NOTICE OF INTENT TO APPEAR AT March 15, 2021 MEETING

Dear Ouray City Council,

We continue to respectfully oppose the approval of the Miner Housing on Hinkson Terrace as stated above. We are grateful for the information and consideration given to us when we attended the Feb 9<sup>th</sup>, 2021 City Planning Meeting and look forward to the same when we attend the City Council meeting on March 15, 2021. WE REQUEST THAT YOU PLEASE UPHOLD THE CITY PLANNING COMMISSION’S DECISION TO DENY THIS APPLICATION AT THE UPCOMING CITY COUNCIL MEETING.

Our family was recently able to purchase lot 31, situated east of said development with the intention to build a single-family dwelling. Since that purchase, we have been made aware of the Minor Housing project. Originally hailing from Gunnison, CO, we were drawn to Ouray and specifically Hinkson Terrace for its small community feel, proximity to nature / solitude, and sound investment. We are concerned about this development’s impact on all of these aspects:

- 1) **Community:** Ouray’s 2021 Community Plan reflects the value that its leaders and citizens place on family, history, natural beauty and recreation. When we purchased our lot (less than 3 months ago!) we were pleased to see that the area of Hinkson Terrace had been deemed “residential,” not “multi-family” per the 2021 City of Ouray Community Plan Update. “Residential” is described as “single family houses, duplexes, smaller multi-family residential uses, and related accessory uses.” We worry that the Minor Housing proposal is not compatible with this new Community Plan and is placing high density housing in an area that is not prepared to sustain this type of housing.
- 2) **Impact on Natural Surroundings:** Our most immediate concerns surround traffic flow and parking. We have been told that we cannot access our lot via Hinkson Terrace and that roadside parking is also restricted due to congestion in this area – where will the

additional 30-60 vehicles be parked? The proposed development only accommodates 2 vehicles per unit, which will not provide parking for visitors or service-persons. The development is also placed on a relatively small footprint with a need for a lot of excavation and we deeply worry about its impact on the surrounding natural environment. At the time of the February 8<sup>th</sup> meeting, the developer was missing a drafted condition for wastewater and had not requested a variance for the extensive hillside excavation / soil report that will be necessary to accommodate 30 units. We also worry about erosion, noise, light pollution, snow removal, and drainage that are a secondary result of more dense population. The developer has already negotiated a possible fee to relocate the required park/open space to a future location – foreshadowing of the absence of open space in the proposed neighborhood. In the Ouray Community Survey this fall, over 88% of Ouray Citizens reported “Natural Beauty, views, scenery,” “Natural Environment,” and “Clean Air and Water” at the most important city characteristics. We ask that this be a priority in considering this proposal.

- 3) **Investment:** We are both school teachers and our project on lot 31 would be our sole real estate investment. It took a lot of personal sacrifice to realize this project and are deeply concerned about the valuation of our property. The project does not match the neighborhood’s character in which small single-family homes are situated in balance with natural surroundings. The current plan will likely allow non-mining families to purchase units after the proposed 6-year exclusive agreement. This short-sightedness will likely mean that units can be purchased and rented short-term by second homeowners and investors. This proposal is once again not compatible with the Community Plan’s vision to recruit working families to Ouray. It also does not meet the criteria for the affordable housing that Ouray so desperately needs. Please consider the negative impact on property valuation in Hinkson Terrace and the need to consider options that will provide long term and affordable housing to working families that would like to choose Ouray to work, play and live in.

We are grateful for your consideration and we look forward to the upcoming city council meeting.

Warm Regards,

**Eric Escalante**

**Melissa Escalante**

Eric and Melissa Escalante

## Silas Clarke

---

**From:** heather@powderhoundmarketing.com  
**Sent:** Sunday, March 7, 2021 11:21 AM  
**To:** Silas Clarke  
**Cc:** nelson@cityofouray.com; Glenn Boyd; Ethan Funk; Peggy Lindsey; John Wood  
**Subject:** Opposition To Hinkson Terrace Housing Project

I am writing to oppose the Hinkson Terrace Housing Project. While I am fully in favor of creating more affordable housing for members of our small community, it does not appear that this is the intention of the proposed project. Ouray Silver Mines is owned by a company based outside of the US, and there is no guarantee that the associated jobs or workers will be permanent members of our community. Since there is no mine rental agreement, these units could technically be sold for significant profit and turned into short-term rentals. From the outside, it appears there is more of a profit motivation than community motivation. Ouray already has a serious housing crisis for essential community members due to the number of short-term rentals, and we do not need to compound this problem with another large investment property.

The reason we moved to Ouray was to escape the exponential growth of other mountain towns in Colorado. I've witnessed first-hand how a small town with long history of a tight community can turn into nothing more than an investment opportunity for wealthy outsiders within a few short years. It will push out the people who built their lives here over generations and put their heart into making Ouray what it is today. We are a tight-knit community, and development like this significantly dilutes the character, integrity, and strength of our town.

The location of this proposed project is also very troubling. As someone who frequently enjoys the solitude of early morning walks and runs on Oak Street, among MANY other community members, the thought of the increased traffic and noise is very troubling. Ouray should remain a place of peace, quiet, and respite for those that came here searching for it.

As our elected leaders, I beg you to consider the needs and desires of people who live here, contribute to the local economy year-round, and take pride in our slice of paradise, instead of bowing to wealthy outside investors. They should not be your priority, nor are you beholden to them. This is not smart growth, nor does it help long-term essential workers and families who need affordable housing in our town.

Sincerely,  
Heather Fornataro  
1271 Main St  
Ouray, CO



Virus-free. [www.avast.com](http://www.avast.com)

**From:** Norbert Green <[norbdonnagreen@yahoo.com](mailto:norbdonnagreen@yahoo.com)>

**Sent:** Wednesday, March 10, 2021 12:12:33 PM

**To:** Greg Nelson <[nelsong@cityofouray.com](mailto:nelsong@cityofouray.com)>; [clarks@cityofouray.com](mailto:clarks@cityofouray.com) <[clarks@cityofouray.com](mailto:clarks@cityofouray.com)>; Glenn Boyd <[boydg@cityofouray.com](mailto:boydg@cityofouray.com)>; Ethan Funk <[funke@cityofouray.com](mailto:funke@cityofouray.com)>; Peggy Lindsey <[lindseyp@cityofouray.com](mailto:lindseyp@cityofouray.com)>; John Wood <[woodkj@cityofouray.com](mailto:woodkj@cityofouray.com)>

**Subject:** Hinkson Terrace #2

Ouray Council,

Donna and I would like to go on record as opposing this proposed development. We agree with the reasons stated by the Planning Commission when they recommended that this project be denied.

We understand the need for affordable housing in Ouray for teachers, law enforcement personnel, city workers and others, but we need to come up with something better than this.

Norbert & Donna Green  
117 Fifth Ave.  
Ouray, CO 81427

## Silas Clarke

---

**From:** Lisa Knight <lknight84@yahoo.com>  
**Sent:** Thursday, March 11, 2021 3:55 PM  
**To:** Silas Clarke  
**Subject:** Potential Hinkson Terrace Development - please include this email in the public record

To Whom It May Concern,

I request that this **objection** be made part of the official record. I am a resident and home-owner of Hinkson Terrace and I object to this development proposal due to it's scale and resultant impacts on the immediate area. Parking for 30 apartment-style units cannot be properly be accommodated in the Wanakah neighborhood nor on the adjacent portion of Oak Street.

*I plan to attend the Zoom meeting of Ouray City Council on 3/15/2021 to discuss this issue, and so would like a link so that I may join.*

Additionally, the following issues comprise a partial list of impacts the project would cause to the neighborhood:

- \* Increased traffic on a street that was not designed for such
- \* This traffic issue extends to the adjacent portion of Oak Street
- \* Parking issues this project would create on Hinkson Terrace, which already exist and would only be exacerbated by this project
- \* Dust issues
- \* Noise Issues
- \* Snow removal
- \* Trash removal
- \* Light pollution
- \* Visual Impact
- \* Drainage impact

Furthermore, you must consider the impact to property values in this area as required by Ouray Municipal Code, Chapter 7 - 4F.

This is by no means a complete list of all the reasons I am requesting the Ouray Planning Commission *refuse approval of this project.*

Sincerely,  
Lisa Knight, Home owner  
1544 Hinkson Terrace

February 4, 2020

To Whom it May Concern:

Re: Proposal for Development of Miner Housing on Hinkson Terrace

We are adamantly opposed to the proposed apartment complex on Hinkson Terrace for the following reasons:

The infrastructure on Hinkson Terrace and the surrounding roads does not allow for more traffic due to narrow roads, lack of parking, and amount of dust. Many parts of Oak Street and Hinkson Terrace are too narrow to allow two cars to pass each other while driving. There are areas from the 4J campground to areas on the north end of Oak where this is a problem. It is also prevalent on the South end of Hinkson Terrace where Hinkson and Wanakah Place meet, which would be the main access to the apartments coming from Ouray.

The lack of parking is predominantly in the summer and tied to the Silvershield Trailhead. This is the only parking for the area, and it is overflowing in the summer onto Silver Shield Trail Road and onto Oak Street and further up onto Hinkson Terrace creating even more narrow locations on the road. The dust, which is an issue throughout Ouray, will increase tremendously with the apartment complex traffic.

I believe there are more suitable areas for a complex this size where residents would access the apartment buildings from highway 550. This would solve the issue of extra wear and tear on small, narrow unpaved streets which are not equipped for up to 30-60 more vehicles per day.

The apartments proposed are either 597 or 754 square feet. This does not help nor resolve the problem of housing in Ouray. Ouray needs family housing, these small apartments would not be sustainable for families, looking to live long term in Ouray. The apartments are being proposed as miner housing. How long will the mine be open in Ouray? In the last 16 years various mines have opened and employed residents, and not one mine has continued to employ a vast amount of employees for over two years. What happens when the mine shuts down? These small units will not help workers in other industries, the apartment sizes are too small. They are more in line with short term/hotel rentals, not long terms rentals. I agree that affordable housing is needed in Ouray, but this is not the solution.

San Juan Mountainside, LLC is requesting the city of Ouray waive sewer/tap fees for this project. We are all aware of the severity of the water/sewer situation in Ouray. All residential water bills have increased tremendously in the last three years and the commercial water bills have more than doubled in the last three years. This is a serious problem, and no fees should be waived in this situation. We have been told the sewer is maxed out in the summer, how will 30 more units affect the sewer? A few years ago, residents were complaining and leaving their homes in Whispering Pines due to the smell caused by the sewer. These homes will once again be impacted negatively when too much strain is put on the sewer

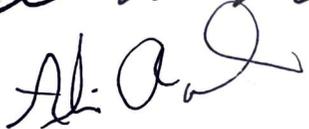
system. We know there is a plan to fix and maintain the sewer system, but until that happens this would be detrimental to Ouray residents.

The impact of an apartment complex in our neighborhood would decrease home values and change the dynamic of the area. This area should be for families, and 597-754 square feet does not accommodate a family. We encourage growth in Ouray and know the economy has been on the rise, but this is not a solution for housing in Ouray. This does not positively impact residents, businesses, the Ouray schools or the city of Ouray. We request that the Planning Committee refuse approval of the development.

Respectfully,

Kane Marschall and Alison Choate

 2/7/21

 2/2/21

## Silas Clarke

---

**From:** L MECKEL & COMPANY <meckel@flash.net>  
**Sent:** Friday, March 12, 2021 1:57 PM  
**To:** Greg Nelson; Silas Clarke  
**Subject:** Proposed Silver Terrace Condominium

Dear Sirs:

I do not think that the proposed site is appropriate for a project of this nature. Oak Street is by custom a single family housing area, and the proposed development would negatively impact the character of the neighborhood.

Traffic would increase on a road not designed for heavy use. The size of the units discourages family usage. Such a bulky building would detract from river views.

The area which is close to the cliff is dangerous, as shown by the destructive recent rockfalls nearby.

There are other locations better suited to a development of this size and type. Perhaps a committee could be formed to identify such places for low cost housing, chosen so as to have lower overall negative impact.

In summary, I would like to see the Council reject the proposed development.

Sincerely,

Barbara Meckel  
602 Oak Street  
Ouray, Colorado

## Silas Clarke

---

**From:** L MECKEL & COMPANY <meckel@flash.net>  
**Sent:** Friday, March 12, 2021 11:38 AM  
**To:** Silas Clarke  
**Subject:** SILVER TERRACE CONDO PROJECT

SILAS. Sorry for the wrong spelling in the first email I sent earlier. Here it is again.

I think the proposed Silver Terrace Condo Project is not a good idea at all for the City of Ouray. Why?

1. Any excavation of the steep, natural rocks back to create additional space is creating an even more unstable geologic hazard for those units. They will additionally dislodge and fall or slide in due time, witness the two fairly recent severe natural rock falls from those exact units we have experienced directly on trend. Additionally you would be setting a precedent for cutting the rocks of our surrounding natural outcrops which our town is known for. If you do it once, you open the door for future requests, and where do you stop? The project would be destroying our scenic and very unique rock heritage.

2. That area currently has nice, attractive residential houses. I think the project will be significantly altering the unique character of that riverside neighborhood with the proposed Condo complex, whether it is cut back or stays in front of the cliff face. Then there is the additional traffic it would create for that area, probably day and night.

I certainly think there should be low cost, affordable housing in our community. I suggest you form a committee to take the initiative and find out where would be the best place to locate such a project and what type of housing should it be. Leadville has done a really nice job with a large group of attractive mini-houses along the RR right-a-way right in town. Perhaps we can learn from those small communities who have successfully tackled the problem.

I recommend the City Council not approve the proposed Silver Terrace Condo Project.

Respectively,

Larry Meckel  
602 Oak Street  
Ouray, Colorado

**From:** Russ Metzger <[russandmartha@yahoo.com](mailto:russandmartha@yahoo.com)>  
**Sent:** Sunday, March 7, 2021 5:07:53 PM  
**To:** Greg Nelson <[nelson@cityofouray.com](mailto:nelson@cityofouray.com)>  
**Subject:** Fwd: Silver Terrace Condominiums

----- Forwarded message -----

**From:** [russandmartha@yahoo.com](mailto:russandmartha@yahoo.com)  
**Date:** Sat Mar 06 16:05:23 MST 2021  
**Subject:** Silver Terrace Condominiums  
**To:** [nelson@cityofouray.com](mailto:nelson@cityofouray.com);

I am opposed to the building of the Silver Terrace Condominium on Hinkson Terrace for the following reasons. Isn't it really workforce housing for the silver mine workers? There was mention of waiving the \$450,000 tap fee. Why would Ouray residents want to give the developers more profit when the city of Ouray is struggling with money for a new sewage and possibly water treatment plants as well as water lines under the city? Any private citizen would have to pay these fees. All 30 units are tiny, only 597 sq ft and 754 sq ft which is not suitable for a family. We need to increase family housing for a more stable workforce. Building into an unstable hill would be precarious at best. Traffic on N Oak St would be unsustainable with an addition of 30 to 60 more cars traveling into town past 4jay trailer park. Please consider carefully. Ouray can't add more roads if we find out traffic becomes an unmanageable problem. You can't undo a bad decision.

Thank you for your consideration and your service.

Respectfully submitted,

Russ and Martha Metzger

1241 Main St, Ouray

## Silas Clarke

---

**From:** Steve Miller <wcroslm@aol.com>  
**Sent:** Monday, March 8, 2021 12:47 PM  
**To:** Silas Clarke  
**Subject:** Hinkson Terrace

Hello,

I'm Steve Miller. My wife and I own a condo on Hinkson Court. We bought it from Craig Hinkson , who assured us our 4 plex, at the end of the street, and the next door duplex, would be the only multi family structures in his entire subdivision. We like the realitive quiet .

This proposed new development will significantly alter the environment around us, decrease our property value and make our small dirt road much worse than it already is.

I encourage you do not approve the development change.

Please make this email part of the official record and I plan to attend the Zoom meeting.

Thank you,

Stephen Miller

## Silas Clarke

---

**From:** gcmoore9@aol.com  
**Sent:** Wednesday, March 10, 2021 9:45 AM  
**To:** Silas Clarke  
**Subject:** Hinkson Terrace Project

Glenda Moore  
220 4<sup>th</sup> Avenue  
Ouray, CO 81427  
March 8, 2021

Silas Clarke  
City Administrator

Sir:

A proposal will come before the city council requesting a permit to construct a 30 unit building on Hinkson Terrace. I am opposed to this project for the following reasons:

The objective of the proposal is to build a miners' boarding house. The units are too small for a miner's family to inhabit comfortably. Although it is stated that the Silver Star Corporation out of Canada will support these "compartments" for six years that is no guarantee that the mine will still be operating. Then the owners will be using these units for short term rentals which brings in another set of problems for the area. This is not affordable housing to accommodate the staffing needed by the businesses in Ouray

The site for these units is located on a narrow street with little parking. The situation will create a traffic crisis. It is my understanding that the traffic would have to go through 4 J RV park which is also a narrow area on which there is much pedestrian traffic. In addition, the area of the building is topographically unstable.

Another issue to consider is the city infrastructure. Although the city should have its concerns solved by 2023, the sewer and water problems will continue to be in the forefront as the tourist numbers increase each year. As outdoor activities are created or enlarged for the area, Ouray will see greater demands on its water supply and sewer. There is no turning back: Ouray has been discovered.

Please preserve the essential quality of this community by voicing your opposition to this project.

Sincerely,  
Glenda Moore

**From:** Joy Payton <[joypayton321@gmail.com](mailto:joypayton321@gmail.com)>

**Sent:** Monday, March 8, 2021 12:00:59 PM

**To:** Greg Nelson <[nelson@cityofouray.com](mailto:nelson@cityofouray.com)>; Ethan Funk <[funke@cityofouray.com](mailto:funke@cityofouray.com)>; Glenn Boyd <[boydg@cityofouray.com](mailto:boydg@cityofouray.com)>; clarks@cityofouray.com <[clarks@cityofouray.com](mailto:clarks@cityofouray.com)>; Peggy Lindsey <[lindseyp@cityofouray.com](mailto:lindseyp@cityofouray.com)>; woodk@cityofouray.com <[woodk@cityofouray.com](mailto:woodk@cityofouray.com)>

**Subject:** OPPOSE HOUSING PROJECT ON HINKSON TERRACE

I would like to take issue with and OPPOSE the 30 unit Workforce Housing Project on Hinkson Terrace and ask that the decision of the Planning Commission DENYING this project be upheld.

There are many obvious reasons that this high density project is not compatible with the Hinkson Terrace or North Oak Street neighborhoods. The increase in traffic, dust, noise, lack of parking, limited access for emergency vehicles, rockfall and drainage issues impacts both neighborhoods. The deep cut that must be made into the hillside on this steep lot is also of concern. This neighborhood was designed and intended for up to 20 homes and the addition of 30 living units and an additional 30-60 vehicles will have a negative impact on the lifestyle quality and safety of the neighborhoods.

I also would oppose any reduction of water/sewer tap fees for the developers. The taxpayers are facing a huge expense in building a new wastewater treatment plant and a possible water treatment facility, and the City needs all the required fees from developers. I would also oppose any amendment to Emergency Ordinance 1 to allow the project to be developed before these facilities are operational.

Respectfully,

Joy Payton  
14 Citadel Dr.  
Ridgway, CO 81432  
432.230.5442

March 5, 2021

Ouray Mayor Greg Nelson

Ouray Council members Glenn Boyd, Ethan Funk, Peggy Lindsey and Mayor Pro Tem John Wood

Ouray City Administrator Silas Clarke

Re: Application and Preliminary Plat for Ouray Workforce Housing Minor Subdivision ("Proposed Project")  
Wanakah Estates Subdivision N. 4  
Part of the Watson Placer (M.S. 143)  
City of Ouray, Colorado  
Sec. 31 T44N R7W N.M. P. M.

Submitted on February, 9th, 2021 to the Ouray Planning Commission

Dear Honorable Mayor, Town Council Members, and City Administrator:

We the undersigned OBJECT in the strongest terms possible to the Proposed Project. Please vote NO.

You are the elected custodians and protectors of the Health, Safety & Welfare for the City of Ouray and its citizens. The Proposed Project will negatively impact the quality of life for full time residents and visitors attempting to pass through this neighborhood and North Oak Street. Our objections are formally set forth in the Planning Commission Hearing held on February 9, 2021, and the letters provided by Ouray residents. We ask that the evidence submitted in that hearing be incorporated herein for all purposes. The evidence and letters that were submitted to the Commission detail the impacts to the public health, safety and welfare of the residents in the Wanakah subdivision and the negative impact on their property values.

We are confident that if the OLUC requirements for project approval relied upon by the Planning Commission are considered that you will also vote NO. Strict compliance with all the appropriate and necessary information, plan submissions, engineering reports, soil analysis and variances required of the developer will also show that this project cannot be approved in this location.

Should you feel that you do not have enough information to make an informed decision, a simple site visit with plans in tow, either attended by the Council and Administrator alone or by them and the interested citizens and developer would easily demonstrate the issues that have been raised in opposition to the Proposed Project. Should you elect to proceed with a site visit, with the developer and/or the interested public we ask that we be properly noticed.

Please make this letter a part of the public record of the proceedings related to the Proposed Project. Thank you for circulating this to the other recipients addressed above.

If you have any questions, please contact Martin Pitts via email at [martinpitts285@gmail.com](mailto:martinpitts285@gmail.com), or call him at (970) 275-4446.

Thank you for your consideration of this important matter.

Respectfully,





13	Ryan Sullivan	201 Queen Street.	619-249-1441
14	Vanessa Brown	245 2nd St.	970 712 2451
15	Kayle Vernon	347 2nd St	970 260 3103
16	Matthew Navarro	615 2nd St.	773.960.2130
17	Erin Latta	621 1/2 main st	970-497-0798
18	MEVOR Latta	621 1/2 main st.	970-497-0797
19	Tom Kelly	691 OR 17	970-318-1327
20	Robert M. Steyer	401 6th St	970-519-1645
21	Curtis Haggard	533 Main St	970-325-4003
22	Ben Kuehling	633 Main St	970-325-4345
23	Jackie Genuit	1554 N. Oak St.	970-519-1497
24	Ruthie McDonald	231 whispering Pines Dr.	916-215-7444
25	Libby Tenere	435 4th St.	(202) 221-4105
26	Bernie Pearce	428 4th St.	(970) 318-8585

**John and Jeanette Quay  
1558 Hinkson Terrace  
Ouray, CO 81427**

March 10, 2021

Delivered via email to City Administrator and City Attorney

Re: Application to plat Ouray Workforce Minor Subdivision in Wanakah Estates

**REQUEST THAT THIS OBJECTION BE MADE PART OF THE OFFICIAL RECORD  
NOTICE OF INTENT TO APPEAR AT MARCH 15, 2021 MEETING**

Dear City Administrator, Mayor and City Council Members,

We are asking the City Council to respect the decision of the Planning Commission and deny the Application to plat a minor subdivision for high density housing to be located in Wanakah Estates.

The Ouray Land Use Code ("OLUC") sets out fifteen (15) criteria to be used in evaluating an application, including, among other things to: promote and protect the public health safety and welfare; maintain the scenic beauty of Ouray; preserve neighborhoods and protect property values; and, provide for the safe and efficient flow of vehicles and pedestrians. The Commissioners discussed that 11 of the 15 criteria were not met and denied the Application. The denial was by a 3-1 vote.

Colorado law mandates that cities enact and enforce subdivision (including minor subdivision) controls through their planning commissions in recognition of the heightened public interest in subdivisions. The Planning Commission properly exercised its authority and fulfilled its obligations pursuant to the OLUC when it denied the Application for minor subdivision. City Council should affirm that denial.

**WANAKAH ESTATES NEIGHBORHOOD**

From its inception in 1998, Wanakah Estates has been represented to potential owners as a single family neighborhood. With the exception of the year 2000 PUD on a private road, that is how it has developed. Every plat filed since the year 2000 in Wanakah Estates is for single family housing and each contains a plat note that the lots can not be subdivided.

Wanakah Estates is now an established neighborhood whose residents have children in the Ouray school, own local businesses, serve on community boards, volunteer and support local organizations both monetarily and as volunteers.

In 2007, the residents of Wanakah Estates enthusiastically supported an affordable housing plan for their neighborhood. The plat filed in 2008 reflected the plan for affordable housing that was approved by City Council. The developer, who is also a developer of this proposed condominium development, did not follow through on his promises and after three years the small lots reverted to him. Those lots are still there and we still support affordable housing on them.

The parcel at issue here has curb cuts and utilities for seven single family lots and has been marketed as such. Residents who recently purchased lots and homes in Wanakah Estates relied on the twenty (20) years development history of the neighborhood and the situation on the ground. Several realtors were showing these seven (7) lots last summer to prospective purchasers.

The project being proposed will negatively impact quality of life in the Wanakah neighborhood and North Oak Street. It will create issues with safety, traffic, noise, dust control, snow removal and storage. The project will result in greatly decreased property values and diminished quality of life for the current owners/residents. This is a community of citizens who are committed to Ouray, some for many years and others who have paid the current market prices to live in this neighborhood. For some of these families, their homes represent a large portion of their net worth and they have sacrificed to live here for a better quality of life.

### **OURAY CITIZEN CONCERNS**

Hinkson Terrace, where the development is proposed, is a narrow unpaved street that runs parallel to North Oak Street. In the winter, snow is often plowed so that only one vehicle can drive down the road. In the spring the runoff from snow on the steep cliff along the western edge of the street results in even more mud than on North Oak Street. Last summer and fall, Hinkson Terrace was barely passable on many days due to the number of vehicles parked on the road.

There are serious issues at the south end of the street at the junction of Wanakah. Last summer and fall there were as many as five (5) vehicles parked in this area due to the overflow from N Oak Street houses and Hinkson Terrace units south of this intersection. At the north end, parking is crowded for access to the Silvershield Trail.

An additional 30-60 vehicles, along with their trailers, ATV's, motorcycles, etc. will create not just traffic issues, but public safety issues. Emergency vehicles will have a difficult, if not impossible, task to respond. The children who live in Wanakah Estates will be put at grave risk due to the increased traffic. Would you want your children or grandchildren to ride their bikes in this area with another 30-60 vehicles using this narrow street and North Oak?

North Oak Street and Hinkson Terrace were overwhelmed with traffic last summer and fall. The dust and noise were greater than we have ever experienced. Driving past the 4J was like running a gauntlet, trying to avoid children, bikes, vehicles, motorcycles and hikers. Adding 30-60 more vehicles to the traffic flow will create a burden on road upkeep and public safety resources. This diminishes the quality of life for everyone who uses the north corridor and additional expense for all Ouray taxpayers.

The new Ouray Community Plan designates all of Wanakah Estates as "Residential", recognizing its current and best use. This plan has been in development for years, with substantial input from the citizens. That work will be disregarded if this project is approved. What signal does that send to the citizens of Ouray?

## **THE APPLICATION TO PLAT A MINOR SUBDIVISION FOR A CONDOMINIUM DEVELOPMENT**

In addition to the Application failing to meet the Purposes of the OLUC, the Application is defective on its face. The OLUC Minor Subdivisions regulation states that it applies to "Subdivisions resulting in 2 lots". The Application clearly states that it is to "plat 1 lot for the remaining un-platted land" and the Plat also shows 1 lot. A Note in the Application from Planning Staff adds that "Minor subdivision applications are for subdivision resulting in 2 (or fewer) lots." The "or fewer" language in parenthesis does not appear in the OLUC. The Planning Staff can not change the plain language of the Code with the stroke of a pen.

This attempt to "slot" the Application into the less stringent rules for a Minor Subdivision is disingenuous and ineffective. Even were it not so, this proposed development is in a location that demands stricter scrutiny. The proposed condo development is in a rock fall zone. The site is represented as 3.09 acres, however the vast majority of the parcel is highly sloped and unusable for construction.

There will be multiple variances required for this project, particularly on the issues of rock fall mitigation and slope. An Engineering Geology Report will be required. There was a significant rock fall event in this area approximately five (5) years ago. There is inadequate provision for snow storage, there is no drainage plan and storm water runoff has been observed to be an issue in this area. There are significant public safety issues with the plan as submitted. There are only two (2) stairways for these three (3) buildings. An additional stairway on each end of Buildings A & C is required for emergency egress. That will likely cause encroachment on the adjoining lots.

This project will require significant excavation, a cursory review shows that the excavation will exceed five thousand (5,000) cubic yards and the excavation will likely encroach on adjacent property. There is no plan for removal and disposal of soils. There is no grading or landscape plan. The project backs up to National Forest and the excavation of this entire area could impact Forest Service land. Has the Forest Service been notified of this proposal?

The developers have stated that they will be looking for an abatement of sewer/water tap fees, which would be \$450,000 for this project. As taxpayers, we object to any fee abatements. Ouray must fund a new wastewater treatment plant and now we have learned of potential groundwater contamination of our water source that must be addressed. This project exacerbates Ouray's infrastructure problems and could be denied for that reason alone.

The condo development does not comply with the park dedication requirement and the fee-in-lieu is grossly inadequate in this case. The regulation at issue assumes a relatively flat parcel and calculates the dedication requirement accordingly. In this case, most of the 3.09 acres is steeply sloped and not capable of supporting construction. The dedication or payment in lieu must be proportional to the burdens created by the development. Even the US Supreme Court has weighed in on this issue, and this payment in lieu of dedication fails the test.

A project of this size does not pay for itself. There is a myriad of land use studies on this point. This project will negatively impact the City services that we residents pay for, such

as police services, emergency services, road maintenance, water, sewer treatment and snow removal.

This project consists of thirty (30) small condos that can be sold to anyone. It is likely to result in another thirty short term rental properties in Ouray and all the problems that will bring. The use of units for short term rental is almost impossible to enforce. When questioned about people coming and going, the usual response is "they're my friends and only staying a few days." We see it all over town.

## **DEVELOPER REPRESENTATIONS**

The developers have represented to City Council and the citizens of Ouray that this development is "work force" housing. They have tried to invoke public sentiment in favor of the Ouray Silver Mine to garner approval. The facts that have been developed paint a different picture. This is a thirty (30) unit high density condominium project, not workforce housing and most definitely not affordable housing. The units are too small for a family and too expensive. The Preliminary Plat filed with the Application states the units are 597 square feet and 754 square feet. The developers said that they will rent for \$1200 and \$1500 per month respectively

The developers stated at the Planning Commission hearing that Ouray Silver Mines had "guaranteed" six (6) years of rentals. This would equate to a \$2.9 million corporate guaranty from a project that, according to the most recent public filings in Canada, has only USD28 million to invest in the Ouray Silver Mine. The public filings also detail how it plans to use the funds and no mention is made of housing for workers.

The developers also stated that the City of Ouray would get a severance/mineral lease distribution tax revenue payment for each miner who lives in Ouray. The miner must live in Ouray, not reside during the week and then go home to their families in Montrose and Delta on weekends. How many families will move to Ouray to reside in these tiny apartments? How many employees of Ouray Silver Mine will crowd into these units during the workweek to save money?

For all the stated reasons, we respectfully request the City Council to uphold the decision of the Planning Commission and deny approval.

Sincerely,

  
John & Jeanette Quay



**From:** Di Rushing <[dirushing@yahoo.com](mailto:dirushing@yahoo.com)>

**Sent:** Sunday, March 7, 2021 6:01:55 PM

**To:** Silas Clarke <[clarkes@cityofouray.com](mailto:clarkes@cityofouray.com)>; Greg Nelson <[nelsong@cityofouray.com](mailto:nelsong@cityofouray.com)>

**Subject:** Proposed condos

Dear Greg and Silas,

I am writing to oppose the proposal for the condos on River Road. We have been residents of Ouray for thirty years. Sam owned and operated Ouray Glassworks for 27 years and I taught at Ouray High School for over twenty years. We are both long-time volunteers in the community as well. I guess my point is that we have a pretty decent sense of how our community works and why so many here are also opposed. I imagine you have heard all of our concerns numerous times so no need to repeat them here.

Please, let's listen to our planning commissioners' recommendations on this; they represent the informed opinions of almost everyone in our community. Instead please focus on our existing problems. The community is excited about our new leadership right now. Don't let us down. Thank you.

Sincerely,  
Sam and Di Rushing

## Silas Clarke

---

**From:** Teris Schery <tschery@gmail.com>  
**Sent:** Tuesday, March 9, 2021 6:35 AM  
**To:** Silas Clarke; Glenn Boyd  
**Subject:** Fwd: Workforce Housing Project on Hinkson Terrace

Forwarding to previously mistyped addresses, see below

----- Forwarded message -----

**From:** Teris Schery <[tschery@gmail.com](mailto:tschery@gmail.com)>

**Date:** Mon, Mar 8, 2021 at 11:08 PM

**Subject:** Workforce Housing Project on Hinkson Terrace

**To:** <[clarks@cityofouray.com](mailto:clarks@cityofouray.com)>, Greg Nelson <[nelsong@cityofouray.com](mailto:nelsong@cityofouray.com)>, <[bodydg@cityofouray.com](mailto:bodydg@cityofouray.com)>, <[funke@cityofouray.com](mailto:funke@cityofouray.com)>, <[lindseyp@cityofouray.com](mailto:lindseyp@cityofouray.com)>, <[woodkj@cityofouray.com](mailto:woodkj@cityofouray.com)>

Please include this Objection as part of the official record.

TO: City Manager, Mayor, and City Council Members

We are OPPOSED to the proposed Hinkson Terrace Workforce Housing Project based on consideration of the written documents both supporting and objecting to its adoption, as well as the updated City Planning document, and request that the members of City Council uphold the recommendation of the City Planning Council to DENY this proposal.

We certainly agree that there is a pressing need for affordable workforce housing in Ouray. However, this plan does not provide for long term affordable workforce housing that would benefit Ouray by attracting families who can become integrated community members. The density and small size of the proposed units are targeted to maximize the number of specific time- limited workers at the Ouray Silver Mine and, after six years, these units appear likely to end up as tourist rentals, complete with renters' vehicles, trailers, ATVs etc. that will require additional parking in an area that already has parking problems. In addition, the proposed prices are not low cost per square foot. Access for emergency services, snow removal, road maintenance will be significantly compromised. Problems with rockfall from the cut into the steep face behind the proposed site are not adequately addressed.

Significant traffic increase along (new) Oak Street will negatively affect residents who purchased and built homes there with the understanding that the area was zoned for single family homes. It is likely that their property values will decrease. Campers at the 4-J campground who walk to trash disposal bins, take children to the playground and walk their dogs and themselves into town along this road will be affected by the increased traffic with resulting safety concerns.

The request to waive tap fees for the 30 units is certainly not warranted, given the increased demand that 30 units will place on the water/sewage system. Ouray's pressing need for increased sewage disposal capacity is being financed in part by these fees and every private household should not be asked to subsidize the developers of this project.

Some other suggestions for developing affordable housing in Ouray that are mentioned in the new Community Plan offer the opportunity to provide more equitable community-wide participation in this process rather than

concentrating on one project for the economic benefit of a single developer/partnership at the expense of the quality of life for a sizeable portion of Ouray that lies on the west side of the Uncompahgre River.

Thank you for your thoughtful consideration and please recognize that alternate, more equitable, ways to develop affordable housing can be encouraged for our community as a whole. We would be happy to participate in these efforts.

Respectfully Submitted,

Teris Schery and Mark Lipsey  
481 N. Pinecrest Drive

## Silas Clarke

---

**From:** Smith, Gretchen <Gretchen.Smith@uhc.com>  
**Sent:** Monday, March 8, 2021 2:47 PM  
**To:** Silas Clarke; Greg Nelson; Peggy Lindsey; John Wood; Glenn Boyd; Ethan Funk  
**Subject:** HINKSON TERRACE CONDOMINIUMS: Opposition

March 8, 2021

TO: CITY COUNCIL MEMBERS, CITY ADMINISTRATOR – CITY OF OURAY

### **REQUEST THAT THIS OBJECTION BE MADE PART OF THE OFFICIAL RECORD**

I am writing to OPPOSE the building of the Silver Terrace Condominiums (30 unit Workforce Housing Project) on Hinkson Terrace and ask that the decision of the Planning Commission DENYING this project be upheld. I oppose this project for the following reasons:

- This high density project is not compatible with the Hinkson Terrace or North Oak Street neighborhoods. The increase in traffic, dust, noise, lack of parking, limited access for emergency vehicles, rockfall and drainage issues impacts both neighborhoods. The deep cut that must be made into the hillside on this steep lot is also of concern. This neighborhood was designed and intended for up to 20 homes and the addition of 30 living units and an additional 30-60 vehicles will have a negative impact on the lifestyle quality and safety of the neighborhoods.
- The property values in this area will be negatively impacted.

Thank you for your consideration.

Respectfully,

Gretchen Smith  
338 6<sup>th</sup> Street  
Ouray, CO 81427

This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this e-mail is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by replying to this message and delete this e-mail immediately.

March 10, 2021

RE: Application to plat Ouray Workforce Minor Subdivision in Wanakah Estates

Dear Mayor Nelson and City Council Members:

I realize that many of my neighbors likely have already brought up multiple concerns on parking, congestion, loss of property value, additional stress on roads and sewer, dust, noise, and more that this project will indeed bring to our small quiet neighborhood at the very north end of the City; I am writing today to question what this project is hoping to accomplish and to ask for your thoughtful consideration on the long term (more than the 6 year promises being made) effects this project will have.

This project was originally promoted as “miner housing” with the mine participating in a council work session. It has now morphed and is being hailed as “workforce” housing. In the work session I attended in November and later in the newspaper, Mr. Luppenlatz was quoted as saying a 683 sqft one bedroom condo (on the current plans they are 597 sqft) would likely rent for \$1200. In my profession, I see a lot of payroll numbers in this city and a \$1200 apartment will by no means be rented by someone making \$15 an hour (and that is a relatively high year-round wage here). According to the Ouray School District website, the average salary for a teacher is approximately \$50,000 for a licensed professional with a master’s degree and tenure.

Easy math example: IF you are lucky enough to be working a solid or guaranteed 40 hours a week at \$20 an hour, your gross pay is \$3467. Reduce that by the required Social Security and Medicare taxes of 7.65% and that leaves you with \$3202 before any state or federal taxes are withheld so now let’s take out rent of \$1200 and that gives you a whopping \$2002 to pay for your car, utilities, gas, food, insurances, HOA fees (as this is proposed), any debt, taxes, etc., for the entire month! Never mind if you have a child and their expenses because where would you put them in such a small a one-bedroom apartment? There is no way this can even be considered “workforce” housing unless all our workforce is married with dual incomes and not planning on children.

There is nothing to keep this anywhere near affordable if individual units can be sold off at market rate. This will become a project for 2<sup>nd</sup> homeowners looking to have a place in Ouray to stay for a week or two and likely rented short term for the remainder of the year. Even if the mine were to become an investor (per the article and work session) and rent to the miners at the above rates because they really could be the only ones able to afford it...would the miners really relocate with a family to a one or two bedroom apartment or would it honestly just be a bunk house to sleep while they are on shift and then they take their money and go back to their families and homes when on they are “off shift” and would the severance tax not then follow the miners to their legal residence of record (likely where their families live)? And if they can afford such small units, why would they not purchase a larger house to live in long term and pay a mortgage and gain equity for about the same amount?

These apartments are tiny and will lack any sunlight being built directly into the mountain. There will be no green space for kids to play or dogs to do their business. Only during the planning commission meeting did Mr. Luppenlatz mention that there would be terraces up the hill with a playground and grills, none of which is shown or mentioned anywhere in the submittal. The architectural rendering provided by the applicant does not accurately portray how this project would look on this street and in

the hillside. This project is not promoting community or our current workforce and most certainly does not fit into the scale of the current neighborhood nor the 2021 community master plan that should soon be adopted.

The architect hired for the project is from out of state and from what we have heard is that the contractors will likely be from out of state as well. From where I stand, it seems this project in its current form truly is only good for the developers. There is no question that the mine is good for Ouray, but mining is a transient profession as they must go where the work is. I question whether miners truly will relocate their families here and claim Ouray as their legal residence...especially in such small units.

Waiving any fees for this for profit venture would be absurd. The developer is dangling a sugar cube of projected \$\$ that could very well melt with the first sign of adversity and then where will we be? \$450,000 is a lot of money for the City to just waive in the hopes that more could come in the long run especially with the current need for immediate infrastructure improvements. Regardless, deed restrictions and other incentives need to be given by the developer to offset any waived development costs from the City and to keep a project designated as affordable or available for our workforce in the long run.

I completely agree that workforce and affordable housing are a necessity in Ouray. I also believe that duplexes, triplexes, or smaller single-family homes that are more in line with the current use of the surrounding development would likely be more accepted in the parcel under consideration. I know there are parcels available with highway access or even in the downtown core that would be better suited for this type of extremely high-density development.

I believe Council should accept the Planning Commission's recommendation to deny this application or at a minimum schedule a work session to do a site visit and truly understand the scope and scale of this development in its proposed location and see for yourself where the face of the building would start in the hillside; the sheer amount of dirt work that would affect drainage; the current street and parking situation without an added 60+ vehicles; and get a few of these TBD's and questions on the application cleared up.

Thank you for your service and your time.

Sincerely,



Heather L Smith, CPA  
1618 Oak Street  
Ouray, CO 81427

March 12, 2021

City council members,

The General Provisions and Purposes of the Ouray Land Use Code provide a litmus test for all projects that occur in the city of Ouray and should always be considered when decisions need to be made regarding development. These provisions address development from preliminary conceptual plating all the way through completed development. I am opposed to the Ouray Workforce Housing development located on Hinkson Terrace for the below stated reasons.

As stated in Chapter 7-1 General Provisions, C. Purposes of the Ouray Municipal Code:

The general purposes of the OLUC are as follows: (items that do not apply to this project have been omitted)

1. Promote and protect the public health, safety, and welfare;
  - This project is located in a hazardous area and does not protect the safety and welfare of the people that would reside in this development. Health is a factor too, entering your residence in a dark cavern consisting of a retaining wall on one side and a stucco wall on the other with the main living area facing the same does nothing to improve one's mental health. In addition placing 30 living units at this location instead of seven increases the potential issues and does not seem to be a responsible decision.
2. Insure that new development bears its fair share of the cost of providing new improvements and services;
  - If water and sewer taps are waived this point will be violated and therefore should have never been mentioned by the applicant as occurred in the work session with council.
3. Omitted, N/A
4. To facilitate adequate provisions for water, sewage, storm water, fire protection, schools, parks, open space, recreation, public utilities and other public and historical buildings;
  - This development will tax our existing system for water and sewer, storm water runoff is a likely issue with such a substantial paved area required, recreation amenities are not addressed on this site, fire protection is difficult with the

narrow street that serves the proposed development and on street parking will only create more of a problem.

5. To maintain the scenic beauty of the Ouray area;
  - Carving up a hillside with engineered terracing and removing a substantial amount of mature trees will not improve the scenic beauty of Ouray, the terracing and the hazard mitigation will be visible up the hillside from 550.
6. To manage development that mitigates and minimizes hazards due to erosion, geologic conditions, flood, soil conditions, excessive slopes and other potential dangers to public health, safety and welfare;
  - The proposed development will require a massive amount of excavation that will only contribute to the hazards due to erosion, geologic conditions, flood, soil conditions, excessive slopes and other potential dangers. Attempts can be made to mitigate the issues but they are not likely to overcome and stop the forces of nature; again jeopardizing the health, safety, and welfare of the people residing at the development.
7. Implement the goals, objectives and policies of City's Master Plan;

-From the current City Master Plan:

"Residents commented on the need to keep development in balance with the city's ability to provide community services and facilities . In 1993 residents stated that taxpayers should not have to pay for additional capital improvements required by new development. Since then policies and regulations have been adopted that require development to pay its own way.

- Again, the ask out of the door for the city to wave water and sewer tap fees is in direct conflict with this policy, it doesn't seem the development group has read and taken the existing or proposed community plan into consideration.

-Goal (From the current City's Master Plan)

1. Plan for growth and redevelopment that maintains the high quality, small town character of Ouray, preserves and enhances the scenic beauty, natural resources, environmental quality, and cultural assets that make Ouray a desirable place to live.
  - An over scaled stucco box condo unit with no architectural character does not fit within the established neighborhood or city character, is not going to be high quality, does not preserve small town character, is not improving our natural resources or environmental quality, and will not contribute to the city's cultural

assets making Ouray a desirable place to live. This project achieves none of the items mentioned items.

8. Preserve the neighborhoods and protect property values in Ouray;
  - Introducing a project of this scale, building mass, and activity level to an established single family/duplex neighborhood will not preserve the neighborhood and protect the property values.
9. Promote energy conservation, use of alternate energy sources, cluster development and other land use practices that result in reduced energy consumption;
  - This project indicates no measures to promote energy conservation, does not indicate any alternate energy sources to be used, can be considered cluster development but is not located in an appropriate location, and does not incorporate land use practices that result in reduced energy consumption (such as locating on a reasonably flat site to reduce excavation requirements, locating in an area with lower environmental hazards to protect its residents, locating to an area served by a major arterial roadway which can provide public transportation service in the future)
10. To encourage the development of affordable housing and encourage the development of long-term rental housing;
  - The 6 year timeframe projected for this to be workforce housing before it converts to free market units is a temporary band-aid that will contribute to the short-term rental problem Ouray already has and does not provide long-term rental or affordable housing. No measures have been presented that will keep this development as affordable housing in the future.
11. Protect quality of air, cultural and natural resources;
  - Carving up a substantial amount of hillside to force an oversized development into the hillside does nothing to contribute to the hillside natural resources that are currently present. Even development of the lots on a smaller scale will be more mindful than what will occur with this development.
12. To protect the City's water resources by maintaining the natural watershed, preventing accelerated erosion, reducing run off and consequent sedimentation, and eliminating pollutants introduced directly or indirectly into the City's streams;
  - The accelerated erosion and run off created will only increase with this proposed development. Runoff will make its way to the storm drain located at the intersection of

Wanakah Place and Oak Street (provided the drain continues to be maintained, it is often neglected) which will then make its way to the river.

13. To manage and regulate the density of land use and prevent demands on existing services and infrastructure that cannot be satisfied;

- Demands are a current issue both when it comes to supply water and sewage treatment, while these should be resolved in the future this development is planned to occur now before those measures are in place.

14. To enhance and provide for safe and efficient flow of vehicles and pedestrians

- The plat for the neighborhood shows 50' right of ways but that is property line to property line and does not account for the planting buffer and sidewalks present in the neighborhood. Traffic activity is already overwhelming in this area and the development will only contribute to the already existing problems, along with increasing road maintenance issues that are not currently addressed on a regular basis.

15. To otherwise plan for and regulate the use of land so as to provide for a planned and orderly use of land and encourage the most appropriate use of land throughout the City.

- While this development complies with the R-2 zoning requirements it is not the most appropriate use of land in this established neighborhood. There are several other options to locate a project such as which are much better suited and beneficial to the city overall in the long term.

I have also provided the following material to represent some of the measures necessary to develop the project in this location:

Many results can be achieved with today's engineering but they do not always produce outcomes that are desirable. Placing these condos on this particular site will require large engineered retaining walls to make this development possible resulting in excessive excavation, loss of the established mature trees that are shown in the rendering provided by the applicant, and dark living spaces that look onto a lifeless retaining wall.

I created the attached building/site sections based off of the materials submitted to the planning department to better understand the magnitude of what it will take to locate the development as shown in the application materials. The base elevations (7,627'/7,625'/7,621') noted on the site sections are estimated since none were provided, I imagine they are higher than what is indicated in the architectural rendering that was provided by the applicant but the shown elevation is to the

developer's advantage in these drawings since it will result in less required excavation. If the building is lowered on the site it will require more excavation and increased height of retaining walls. Due to the steepness of the site moving the building up or down in elevation by a few feet is not going to remedy any of the hurdles that will occur with this project.

These site sections and 3D model provide a general reference of the minimal material that will need to be removed simply to provide light and access to the living units, they also represent the conditions that will need to be addressed for these structures to exist on this site as proposed by the applicant. The drawings do not take into account stepping of the retaining wall that will likely be proposed by the engineer and rock fall mitigation that will occur further up the hillside, both resulting in additional excavation required to allow the condos to exist on this site. In all likelihood it would be better to lay the hillside back more than shown but this results in more terracing and interference on the hillside without achieving a result that will make much difference when it comes to creating better livability for the tenants that would occupy the proposed development.

Sincerely,

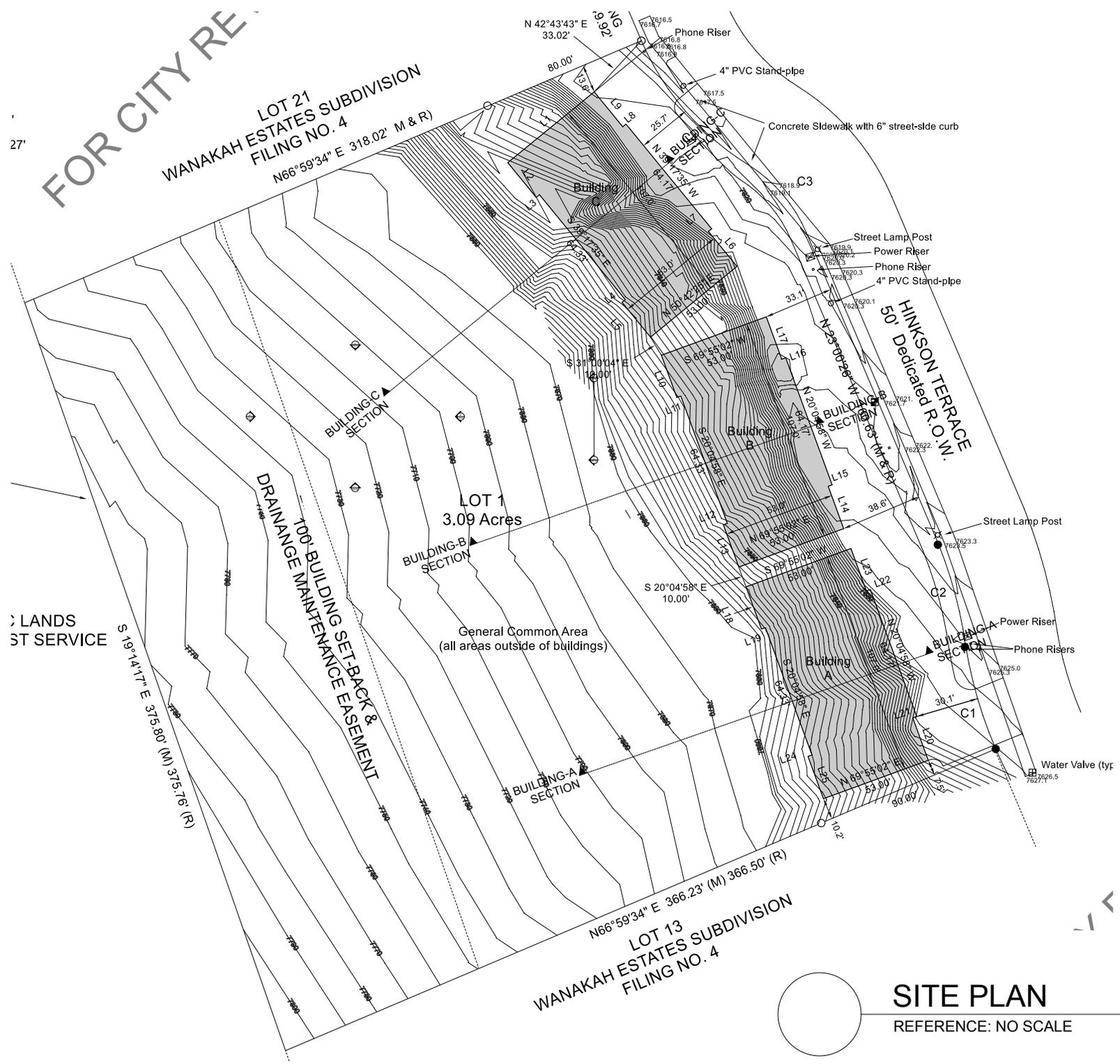
*Josh Smith*

Josh Smith  
1618 Oak Street, Ouray

FOR CITY REVIEW

LOT 21  
WANAKAH ESTATES SUBDIVISION  
FILING NO. 4  
N66°59'34" E 318.02' M & R)

LOT 13  
WANAKAH ESTATES SUBDIVISION  
FILING NO. 4  
N66°59'34" E 366.23' (M) 366.50' (R)



LANDS  
ST SERVICE

S 19°14'17" E 375.80' (M) 375.76' (R)

100' BUILDING SET-BACK &  
DRAINAGE MAINTENANCE EASEMENT

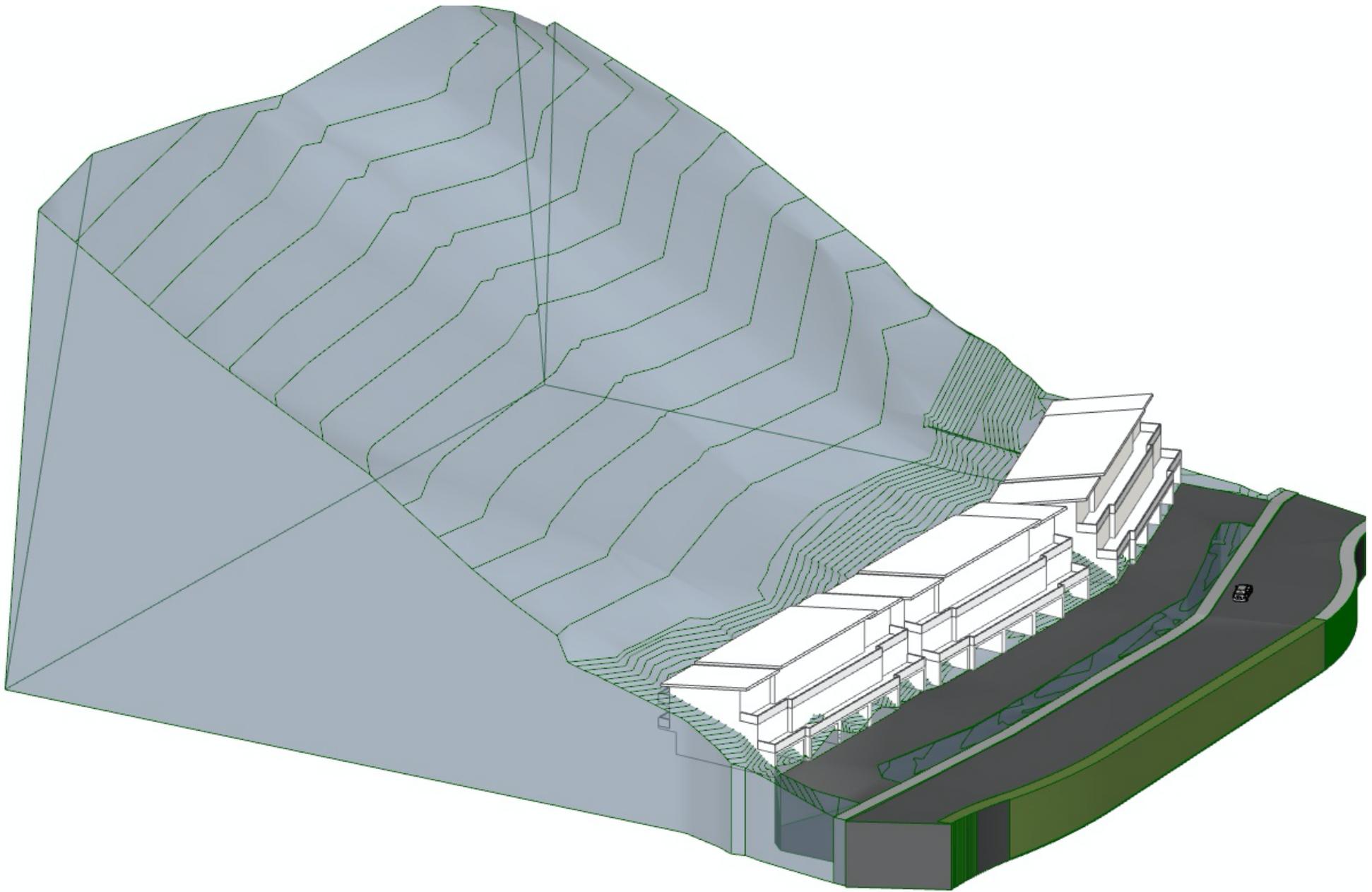
LOT 1  
3.09 Acres

General Common Area  
(all areas outside of buildings)

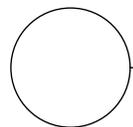
HINKSON TERRACE  
50' Dedicated R.O.W.

# SITE PLAN

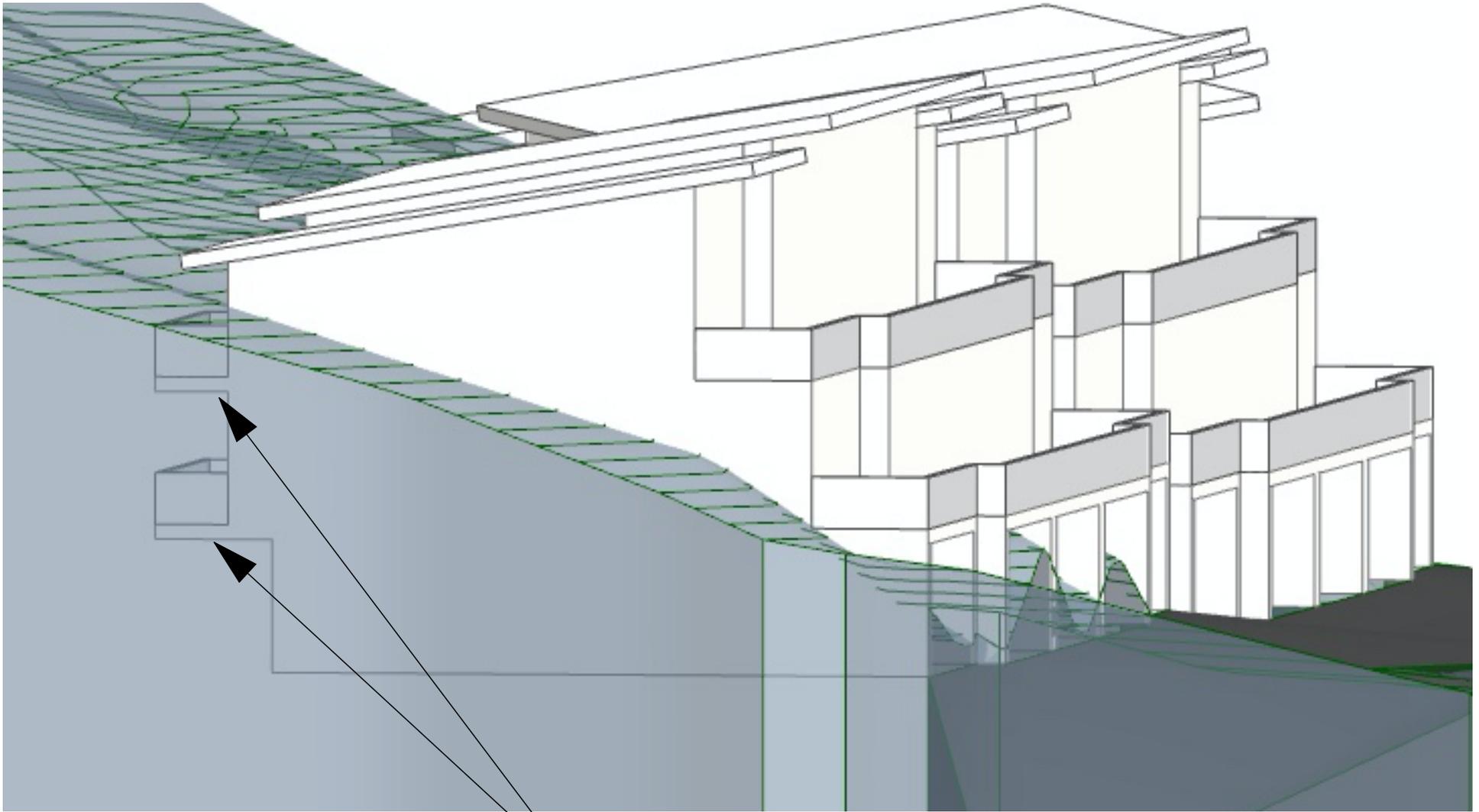
REFERENCE: NO SCALE



PROPOSED BUILDINGS SHOWN IN EXISTING GRADE



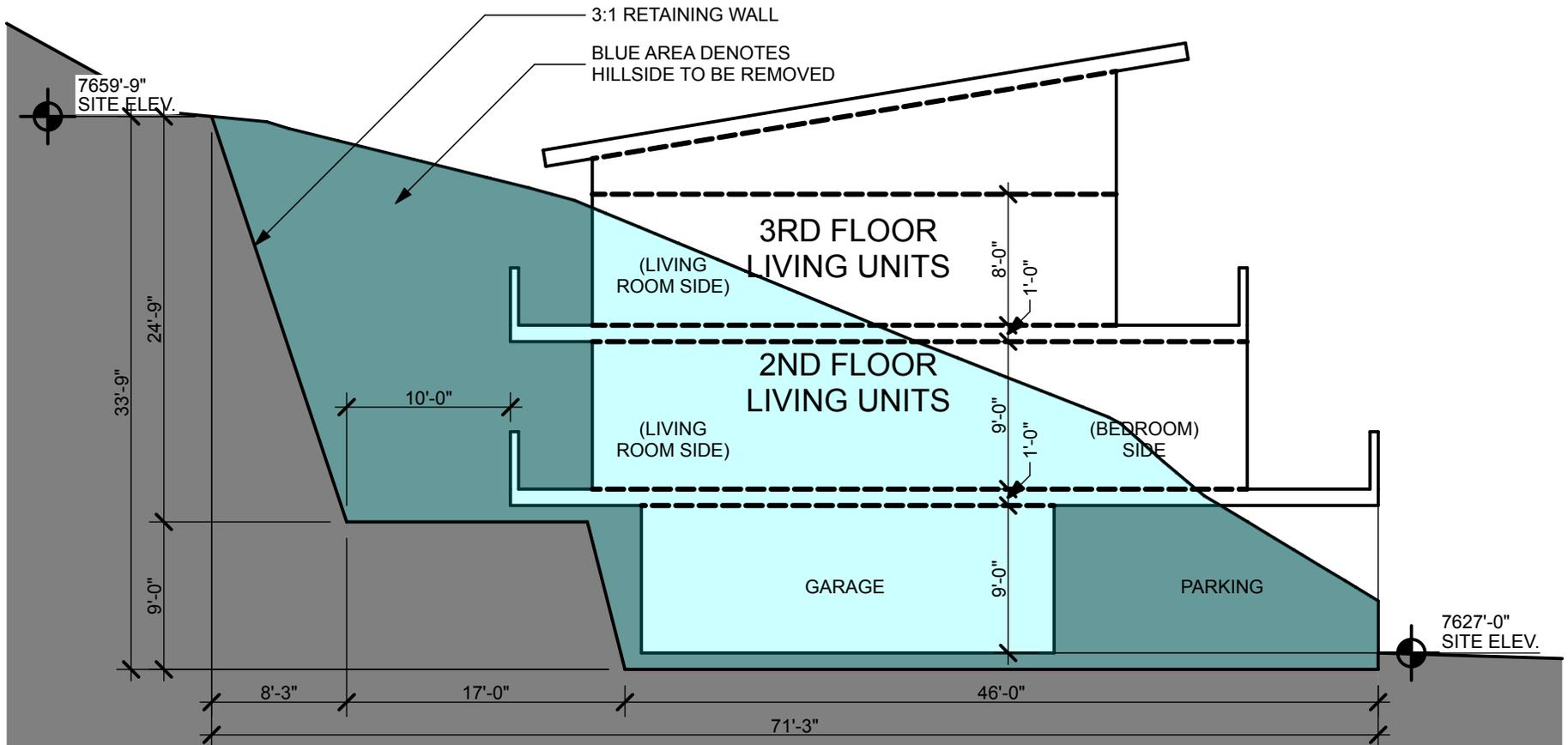
Overall Site-Looking NW



EXCAVATION REQUIRED TO  
MAKE 2ND & 3RD FLOOR  
LIVING FUNCTIONAL

PROPOSED BUILDINGS SHOWN IN EXISTING GRADE

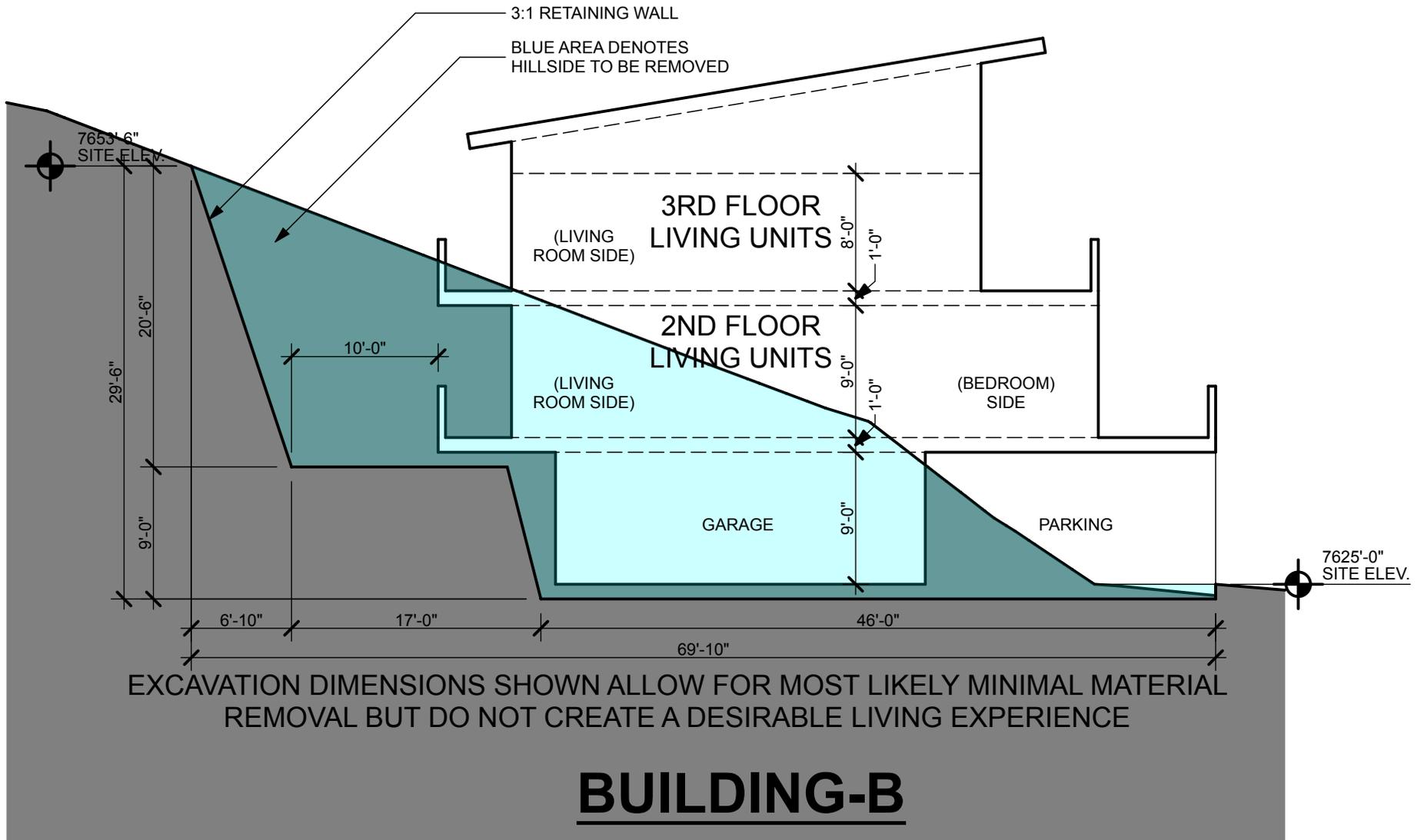




EXCAVATION DIMENSIONS SHOWN ALLOW FOR MOST LIKELY MINIMAL MATERIAL REMOVAL BUT DO NOT CREATE A DESIRABLE LIVING EXPERIENCE

# BUILDING-A

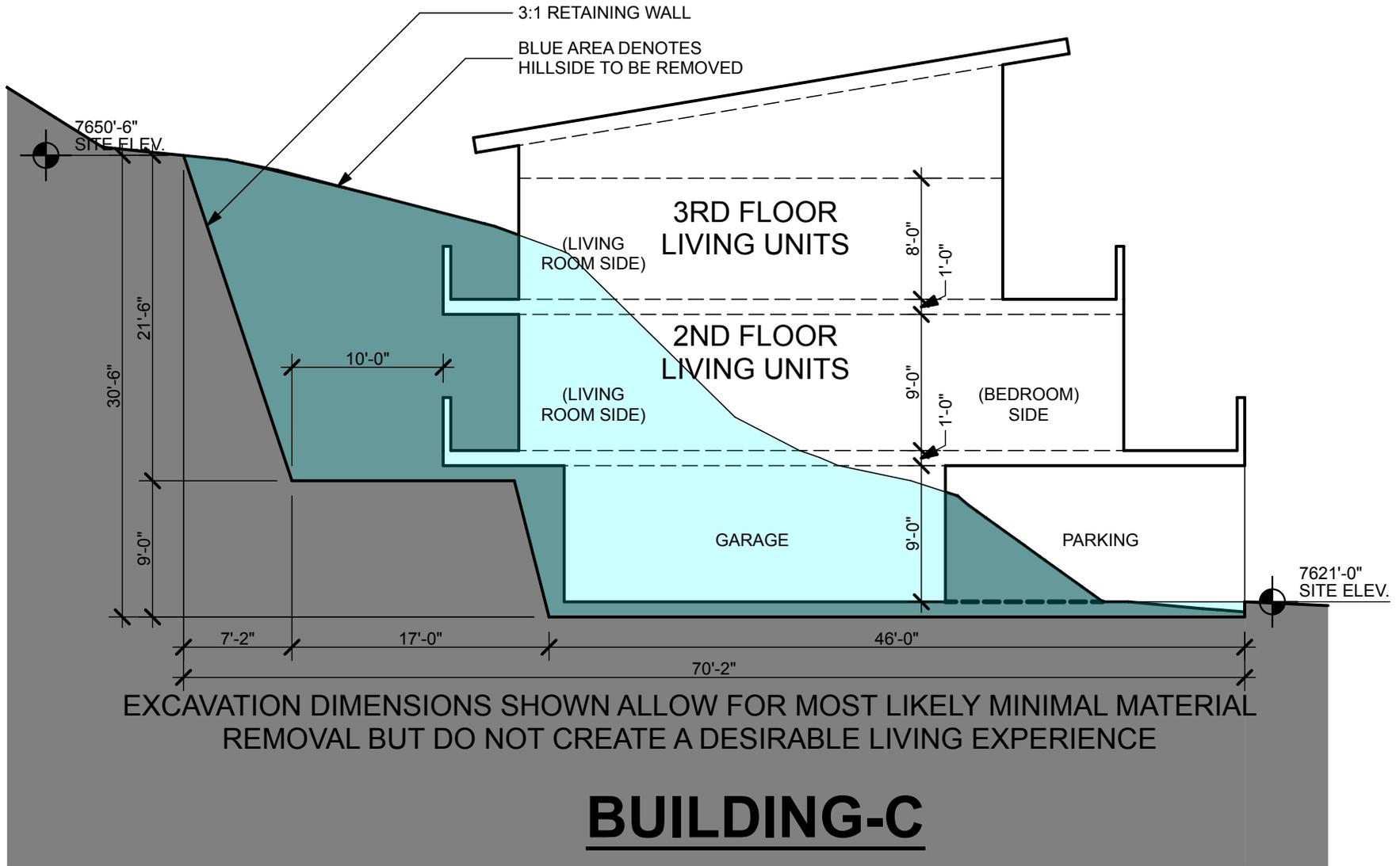
**1** SITE SECTION  
SCALE: 1" = 10'



1

## SITE SECTION

SCALE: 1" = 10'



**1** SITE SECTION  
SCALE: 1" = 10'

## Silas Clarke

---

**From:** Smith, Gretchen <Gretchen.Smith@uhc.com>  
**Sent:** Wednesday, March 10, 2021 9:16 AM  
**To:** Silas Clarke; Greg Nelson; Peggy Lindsey; John Wood; Glenn Boyd; Ethan Funk  
**Cc:** Nancy Smith (snancy327@gmail.com)  
**Subject:** FW: Objection

I am forwarding this message to you on behalf of Richard and Nancy Smith.

---

**From:** Nancy Smith <snancy327@gmail.com>  
**Sent:** Tuesday, March 09, 2021 7:02 PM  
**To:** Smith, Gretchen <Gretchen.Smith@uhc.com>  
**Subject:** Objection

We OPPOSE the building of the Workforce Housing Project on Hinkson Terrace in Ouray, Colorado for the following reasons:

The size of the proposed units is not suitable for year-around families.

The project may soon turn into short stay rentals. (condominiums or motel).

Limited available parking.

Limited access for Emergency Vehicles on a narrow congested road.

Danger of rockfall.

Noise and dust from added traffic.

PLEASE uphold the decision of the PLANNING COMMISSION which DENIED this project.

WE REQUEST THAT THIS OBJECTION BE MADE PART OF THE OFFICIAL RECORD.

Respectfully submitted,

Mr. and Mrs. Richard D. Smith

338 6th Street  
Ouray, CO  
81427

This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this e-mail is not the intended

recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by replying to this message and delete this e-mail immediately.

**From:** Rachel Smith <[sagedog338@gmail.com](mailto:sagedog338@gmail.com)>  
**Sent:** Sunday, March 7, 2021 8:35:36 PM  
**To:** Greg Nelson <[nelson@cityofouray.com](mailto:nelson@cityofouray.com)>  
**Subject:** Fwd: Opposition to 30 Unit Workforce Housing Project

Sent from my iPad

Begin forwarded message:

**From:** Rachel Smith <[sagedog338@gmail.com](mailto:sagedog338@gmail.com)>  
**Date:** March 7, 2021 at 4:53:48 PM MST  
**To:** [clarkes@cityofouray.com](mailto:clarkes@cityofouray.com), [nelson@cityofouray.com](mailto:nelson@cityofouray.com), [boyd@cityofouray.com](mailto:boyd@cityofouray.com),  
[funke@cityofouray.com](mailto:funke@cityofouray.com), [lindseyp@cityofouray.com](mailto:lindseyp@cityofouray.com), [woodkj@cityogouray.co](mailto:woodkj@cityogouray.co),  
[nelson@cityofouray.com](mailto:nelson@cityofouray.com)  
**Subject: Opposition to 30 Unit Workforce Housing Project**

I would like to go on official record as being opposed to the proposed 30 unit development on Hinson Terrace/ Wanakah Estates and request that the decision of the Planning Commission denying the project be upheld. I agree with the decision by the Planning Commission for the following reasons:

- \*increased traffic/dust/noise and impact on already congested area through 4J trailer/campground.
- \*limited access for emergency vehicles
- \*rockfall danger increase due to hillside construction
- \*impact on property value on current residents

I also strongly oppose any reduction on sewer/water tap fees for the developers of this proposed project. We are facing a huge expense in building a new wastewater treatment plant and a possible water treatment facility and the City needs all required fees from developers. I also oppose any amendment to Emergency Ordinance 1 to allow the project to be developed before these facilities are operational.

Respectfully submitted,

Rachel Smith  
338 6th Street  
Ouray, CO 81427

## Silas Clarke

---

**From:** Barbara Wade <bwade@ouraynet.com>  
**Sent:** Tuesday, March 9, 2021 1:18 PM  
**To:** Silas Clarke  
**Subject:** Silver Terrace Condominiums

City Council and City Administrator,

I am opposed to the building of the Silver Terrace Condominium on Hinkson Terrace and would like that stated as part of the official record. I cite the following reasons:

- Is it really Workforce Housing which only appears as the title of the document but is nowhere addressed within the building request?
- There was mention of waiving \$450,000 tap fee by City Council. Why would Ouray Residents want to give the developers more profit when Ouray is struggling with money for the new sewage system? Any private citizen has to pay a tap fee, this project should pay it as well.
- All 30 units are tiny, only 597 sqft and 754 sqft which is not suitable for a family. Ouray should be trying to increase family housing for a more stable workforce.
- Loss of property values for the neighbors
- Instability of 29° slope with 30 condos built 70' into crumbly hillside. Excavating into a steep slope would have potential snow removal, water drainage, dead tree fall and rock fall problems
- Traffic will be heavy with 30 additional families, potentially 30-60 more cars; it will be very tough in the summer and fall.
- Within 6 yrs all could be STRs, short term rentals. This would only exacerbate the STR problem and lack of long term housing for families.
- Inadequate parking now on a narrow street will be worsened along with limited access for emergency vehicles.
- Planning Commission recommended against it. Why have Planning Commission if you don't listen to their analysis?

Please consider carefully. The Planning Commission denied their proposal for several reasons. You can't undo a bad decision.

Thank you for your consideration and especially your service.

Respectfully submitted,  
Barbara Wade

102 Spruce Ct., Ouray

## Silas Clarke

---

**From:** Susette Warynick <susettew@earthlink.net>  
**Sent:** Sunday, March 7, 2021 1:29 PM  
**To:** Silas Clarke; Greg Nelson; John Wood; Glenn Boyd; Ethan Funk; Peggy Lindsey  
**Subject:** Minor Housing Subdivision Application

8 February 2021

TO: CITY COUNCIL MEMBERS, CITY ADMINISTRATOR – CITY OF OURAY

### **REQUEST THAT THIS OBJECTION BE MADE PART OF THE OFFICIAL RECORD**

I would like to take issue with and OPPOSE the 30 unit Workforce Housing Project on Hinkson Terrace and ask that the decision of the Planning Commission DENYING this project be upheld.

Ouray needs affordable housing for our essential workers, service workers and employees who work in our local businesses – and in particular, for families who are or will become permanent residents.

This is not Affordable Housing designed for and limited to the workers and residents of Ouray, but a high density condominium project for the workers of a private business, Ouray Silver Mines, whose parent company is based in Canada. The very small unit size is not conducive to attracting families of the miners, especially when many already have families and homes in nearby Western Slope communities. These units might just become sleeping quarters, not homes, for the miners.

There is no guarantee that Ouray Silver Mines will be in business for the proposed six years of rentals. Without the mine rental agreement, these units will be sold on the open market and investors/owners could convert them to short term rentals, something Ouray definitely does not need or want.

There are many obvious reasons that this high density project is not compatible with the Hinkson Terrace or North Oak Street neighborhoods. The increase in traffic, dust, noise, lack of parking, limited access for emergency vehicles, rockfall and drainage issues impacts both neighborhoods. The deep cut that must be made into the hillside on this steep lot is also of concern. This neighborhood was designed and intended for up to 20 homes and the addition of 30 living units and an additional 30-60 vehicles will have a negative impact on the lifestyle quality and safety of the neighborhoods.

The property values in this area will also be impacted and current owners purchased homes expecting their neighborhood to remain residential, not with a high density apartment built on seven lots.

I also would oppose any reduction of water/sewer tap fees for the developers. The taxpayers are facing a huge expense in building a new wastewater treatment plant and a possible water treatment facility, and the City needs all the required fees from developers. I would also oppose any amendment to Emergency Ordinance 1 to allow the project to be developed before these facilities are operational.

The new Ouray Community Plan reflects the input, ideas and vision of the current Ouray residents who have written this plan over the past few years of studies and suggestions. The Plan designates Hinkson Terrace as residential, reflecting what it is now and was designed to be. This neighborhood, with its committed and local residents, should not be “thrown under the bus” to accommodate greedy developers and a private business.

Respectfully submitted,

Susette Warynick

1261 Main Street – Skyrocket            805-705-2390   970-325-7356

Ouray, CO 81427                    [susettew@earthlink.net](mailto:susettew@earthlink.net)

# Craig R. and Helen Whitney

PO Box 752  
1721 Hinkson Terrace  
Ouray, CO 81427

E-mail: craigrwhit@gmail.com  
helenwhit@me.com

March 8, 2021

Via Email

**TO:** Greg Nelson, Mayor of Ouray  
John Wood, Mayor Pro Tem  
Glenn Boyd, City Councilor  
Ethan Funk, City Councilor  
Peggy Lindsey, City Councilor  
Silas Clarke, City Administrator  
Carol Viner, City Attorney

**RE:** Proposed Condominium Development on Hinkson Terrace

We OPPOSE this Proposal. Please accept these comments and include them in the official record of the March 15 meeting of the City Council. We will attend that meeting and are happy to answer whatever questions the Council may have.

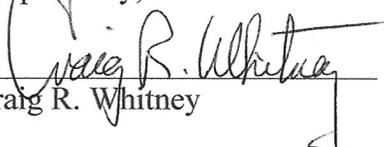
We bought our home in 2008 on Hinkson Terrace because of its quiet setting of single family homes, a mile from downtown, off the main road, and free of through traffic. Is it fair to us and others who live here if the City allows this Proposal to transform our neighborhood by putting three apartment buildings for 30 families on a series of tiny lots intended for only 7 families?

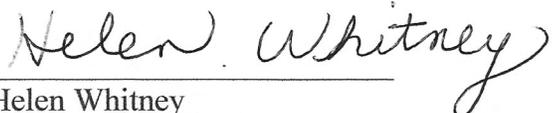
Many residents for good reasons expressed opposition to the Proposal whereupon the Planning Commission denied the subdivision application. We share these concerns including:

- The traffic impact of upwards of 30-60 additional cars;
- Limited on-street parking for associated cars, trucks, campers, and trailers of tenants and their visitors;
- The public safety threat to emergency vehicles on narrow roads, especially after winter snowstorms and the influx of summer hikers to the Silvershield Trail;
- Decreased property values; and
- The noise, dust, and general reduction in quality of life in our neighborhood.

Based on scale alone, this Proposal overwhelms the capacity of both the site, and the neighborhood. Planning Commission members themselves said so after they visited the site. They acknowledged that these and other residents' concerns are reasonable and valid. We urge the City Council to uphold the decision of the Planning Commission DENYING THE SUBDIVISION APPLICATION.

Respectfully,

  
Craig R. Whitney

  
Helen Whitney

## Silas Clarke

---

**From:** Dee Williams <deedraewilliams@gmail.com>  
**Sent:** Tuesday, March 9, 2021 11:16 AM  
**To:** Silas Clarke; Greg Nelson; Glenn Boyd; Ethan Funk; Peggy Lindsey; John Wood  
**Subject:** Silver Mine Condos

City Council and City Administrator,

I understand the need for housing for mine employees and ALL employees in the City of Ouray. Home Trust of Ouray County is working toward this end goal..attainable housing for Ouray workers.

When considering this proposal, I believe the council should have several stipulations,... the main one being that the residences remain affordable after the mines have closed. With this in mind,the development could be part of a community land trust, which the Home Trust of Ouray County would manage.

The board of HTOC will be glad to meet with council and the developers to discuss this possibility.

Dee Williams  
826 Main St  
Ouray  
970 318 1278

**CITY OF OURAY  
RESOLUTION NO. 4, (SERIES 2021)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO APPROVING A PLAT FOR A 3.09 ACRE LOT THAT WAS PREVIOUSLY UN-PLATTED AND APPROVE A CONDOMINIUM DEVELOPMENT FOR SUCH LOT SUBJECT TO OBTAINING A SITE DEVELOPMENT PERMIT THAT COMPLIES WITH ALL APPLICABLE LAWS.**

**WHEREAS**, Mr. Mark Iuppenlatz (“**Applicant**”) on behalf of San Juan Mountainside, LLC (“**Owner**”) submitted a land use application, to plat one lot for the development of three, ten-unit multifamily condominium buildings, as further drawn and defined in the attached “Exhibit A” (“**Application**”);

**WHEREAS**, the Applicant submitted a minor subdivision application requesting to plat the remaining portion of the un-platted area, also known as the “retained ownership” piece of the Wanakah Estates Subdivision, Filing No. 4, recorded in Ouray County, Reception No. 202804, on March 3, 2010, as further described and defined in the attached “Exhibit B” (“**Property**”);

**WHEREAS**, the Property is located within the R-2 Residential – High Density Zone District and the Application complies with the zone district requirements established in section 7-5 of the *Ouray Municipal Code*;

**WHEREAS**, the staff finds that the Application is in compliance with sections 7-7-E and 7-7-F of the *Ouray Municipal Code* and further meets the requirements of a Minor Subdivision;

**WHEREAS**, staff finds that the proposed high-density use of condominiums are an allowed use in the R-2 zone, and the lot is in compliance with section 7-10 Condominiumization of the *Ouray Municipal Code*, which outlines the requirements for a subdivision to establish condominium rights within the City of Ouray;

**WHEREAS**, the approval for the use of the lot for condominiums does not waive the strict compliance with section 7-4 Site Development Permits and Regulations of the *Ouray Municipal Code*;

**WHEREAS**, this public hearing was properly noticed within the *Ouray Plaindealer* on February 25, 2021 and posted within City Hall;

**WHEREAS**, the Planning Commission of the City of Ouray held a public hearing on February 9, 2021 and voted to recommend denial of the application; and

**WHEREAS**, City Council has reviewed said application request, studied the compatibility of this request with adjacent land uses and considered this request in

accordance with the criteria established in *Ouray Municipal Code*, considered all public comment and direct and rebuttal testimony provided.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO** as follows:

1. The un-platted lot shown as “retained ownership” on Exhibit B is hereby accepted as a platted and the legal description contained in the Application is hereby adopted.
2. A final plat consisting of one page conforming to Ouray Municipal Code, section 7-7-D-3, shall be submitted for approval by City staff within 30 days. If City staff is unable to approve it for any reason, the proposed plat will be referred to City Council for approval at the next regularly scheduled meeting.
3. The use of the approved lot for condominiums is approved subject to strict compliance with Ouray Municipal Code, section 7-4 Site Development Permit and Regulations.
4. The approval of the use of the lot for condominiums is limited to dedicating this lot for use as condominiums under Ouray Municipal Code 7-7-D-3-f, and any reference to condominium development project specific such as building footprints shall not be included on the Final Plat.
5. The proposed declaration of covenants, conditions, and restrictions will not be recorded until the site development permit is obtained and are subject to revisions, as necessary.
6. *Any other conditions approved by City Council.*

ADOPTED this 15th day of January 2021, by the Ouray City Council.

CITY OF OURAY, COLORADO

\_\_\_\_\_  
Greg Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

Community Development  
P.O. Box 468  
320 Sixth Avenue  
Ouray, Colorado 81427  
970-325-7211 main  
970-325-7212 fax  
www.cityofouray.com



FOR STAFF USE ONLY

Permit Number: \_\_\_\_\_

Receipt Number: \_\_\_\_\_

DATE OF APPLICATION: 1/12/2021

EXHIBIT A

Check appropriate request

### MASTER LAND USE APPLICATION

- Site Development Permit \$200
- Conditional Use Permit \$200
- Variance Request \$500
- Rezone \$200
- Sketch Plan \$200
- Preliminary Plat \$400
- Final Plat \$300
- Lot Split \$300
- Minor Subdivision \$250
- Replat or Plat Amendment \$300
- Mobile Home or RV Park \$300
- Other \_\_\_\_\_

No Fee Applications/Requests:

- Appeal of Administrative Determination
- Interpretation of a Use not Itemized

PRINT ALL INFORMATION FOR LEGIBILITY

Project Name: OURAY Workforce Housing  
Ouray County Property Account(s): \_\_\_\_\_  
Ouray County Parcel Number(s): \_\_\_\_\_  
Site Address: (TBD) or #: TBD HINKSON TERRACE

Property Owner(s): San Juan Mountainside LLC  
Address: PO Box 1106  
City/State/Zip: Ouray, CO 81427  
Phone Number: 970 ~~924~~ 596-423 E-Mail Address: MSBAZIN@Hotmail.COM

Applicant (if different than property owner): OURAY Housing Group, LLC  
Address: PO Box 1214  
City/State/Zip: OURAY CO 81427  
Phone: 970-946-12089 E-Mail Address: MARKIUPPENLATS@GMAIL.COM

Authorized Agent (for property owner/applicant): MARK IUPPENLATS  
Address: PO Box 1214  
City/State/Zip: OURAY CO 81427  
Phone Number: 970-946-2089 E-Mail Address: MARKIUPPENLATS@GMAIL.COM

Proposed Use: Multi-Family Condo/Apartments  
Existing Use: undeveloped  
Site Area: 3.09 AC  
Existing Buildings to Remain or be Removed: Yes  No (circle one) N/A NO BUILDINGS EXIST  
Existing Building Coverage (Total Floor Area): N/A Proposed Building Coverage (Total Floor Area): \_\_\_\_\_  
Number of Existing Lots: ? Proposed Number of Lots: 1

Is the property subject to flooding, landslides, debris flows or other natural or geologic hazards? Circle one  Yes  No  
Briefly describe: Rockfall - An ENGINEERED Geohazard Protection Beam will be installed as part of the project.

**SUBMITTAL REQUIREMENTS** (See Chapter 7 for specifics to any request):

**Interpretations for Uses Not Itemized:** A completed application form, cover letter explaining or describing the use or activities proposed for the site with sufficient detail to understand the activity or use adequately. Supplemental information or pictures may be attached. Research from other sources can be provided to help explain what is the use not itemized.

**Variations:** A completed application form, filing fee, a cover letter and supporting documentation to explain the issue at the site that needs a waiver or modification of the regulations and explanation of how the situation might be remedied with the least variance or exception possible to achieve a positive outcome. If work was done contrary to the Building or Land Use Regulations an explanation for this situation will need to be provided. All information to be provided on a compact disk or thumb drive.

**Appeals:** A completed application form, a cover letter and any supporting documentation to explain the appeal from an administration action or determination.

**Site Development Permits and Subdivision Requests:** A completed application form, filing fee, detailed graphics as indicated by the Code provisions (three paper copies or sets), and three paper copies of all supplemental reports and information. Current proof of ownership or notarized consent by the property owner for a different individual or firm to be the applicant of the legal owner (one copy). All information to be provided on a compact disk or thumb drive.

**PLEASE NOTE:** Any incomplete application will not be accepted and will be returned to the applicant for completion and return to the Community Development Office.

**Acknowledgements:**

- a. Per Section 7-3 Administration B. Fees. The applicant is responsible for all costs incurred by the City which may include legal fees, postage, notice and publication costs, other professional services or charges by outside agencies for the review and processing of the applicant's request. The Applicant will be invoiced of such charges for payment within 30 days of mailing. Invoices not paid prior to the final decision meeting or action as requested, may cause the matter to be delayed to a subsequent date/time or the application could be denied. Please review the full statement in the Code regarding payment of fees.
- b. By affixing their signature(s) hereto, I certify under penalty of perjury that the information furnished herein is true and correct to the best of my knowledge and that I am the owner of the premises where the work is to be performed or I am acting as the owner's authorized agent. I further agree to hold harmless the City of Ouray as to any claim (including costs, expenses and attorney fees incurred in the investigation of such claim) which may be made by any person, including the undersigned, and filed against the City of Ouray, but only where such claim arises out of the reliance of the City, including its officers and employees, upon the accuracy of the information provided to the City as a part of this application.

Applicant's Name (Printed): Ouray Housing Group, LLC

Applicant's Signature: [Signature] Date: 1/8/2021

Owner's Name (Printed): SAN JUAN MOUNTAINSIDE, LLC

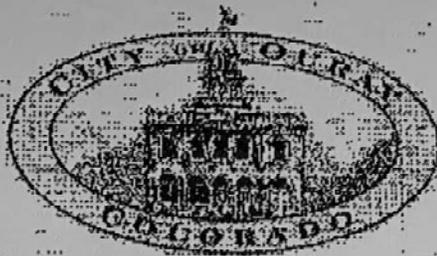
Owner's Signature: SEE ATTACHED Date: \_\_\_\_\_

Authorized Agent's Name (Printed): Mark Juppenthalz

Authorized Agent's Signature: [Signature] Date: 1/8/2021

Please be sure to provide current proof of ownership and written authorization (notarized) for representation as needed. Corporations or similar entities need to provide written documentation on who is authorized to represent and act on behalf of the organization.

320 6th Avenue  
PO Box 408  
Ouray, Colorado 81427



870.325.7211  
Fax: 870.325.7212  
www.cityofouray.com

## City of Ouray Authorization of Agent Form

This form is required if someone other than the owner of a property will be acting as the Authorized Agent for a building project.

LOT 14 thru 20 DAWAKAK

**Property Information:**

Project Address: LOT 14 thru 20 DAWAKAK ESTATES SUB DIVISION  
Parcel Number(s): \_\_\_\_\_

**Contact Information:**

Owner's Name(s): SAN JUAN Mountain Side (MIKE BAZIN)  
Mailing Address: PO Box 1106 Ouray CO 81427  
Phone: 970-596-4123 Email Address: msbazin@hotmail.com

Authorized Agent's Name: MARK LUPPENLATZ  
Mailing Address: PO Box 1817 Ouray CO 81427  
Phone: 970-922-2889 Email Address: mark.luppenlatz@gmail.com

I/we the undersigned owner/s of the above described real property located in the City of Ouray, Colorado hereby authorize:

MARK LUPPENLATZ  
(Print name of authorized agent)

To act in my/our behalf in applying for permits from the City of Ouray as required by existing City of Ouray regulations pertaining to zoning, building, encroachments, excavation, and utilities.

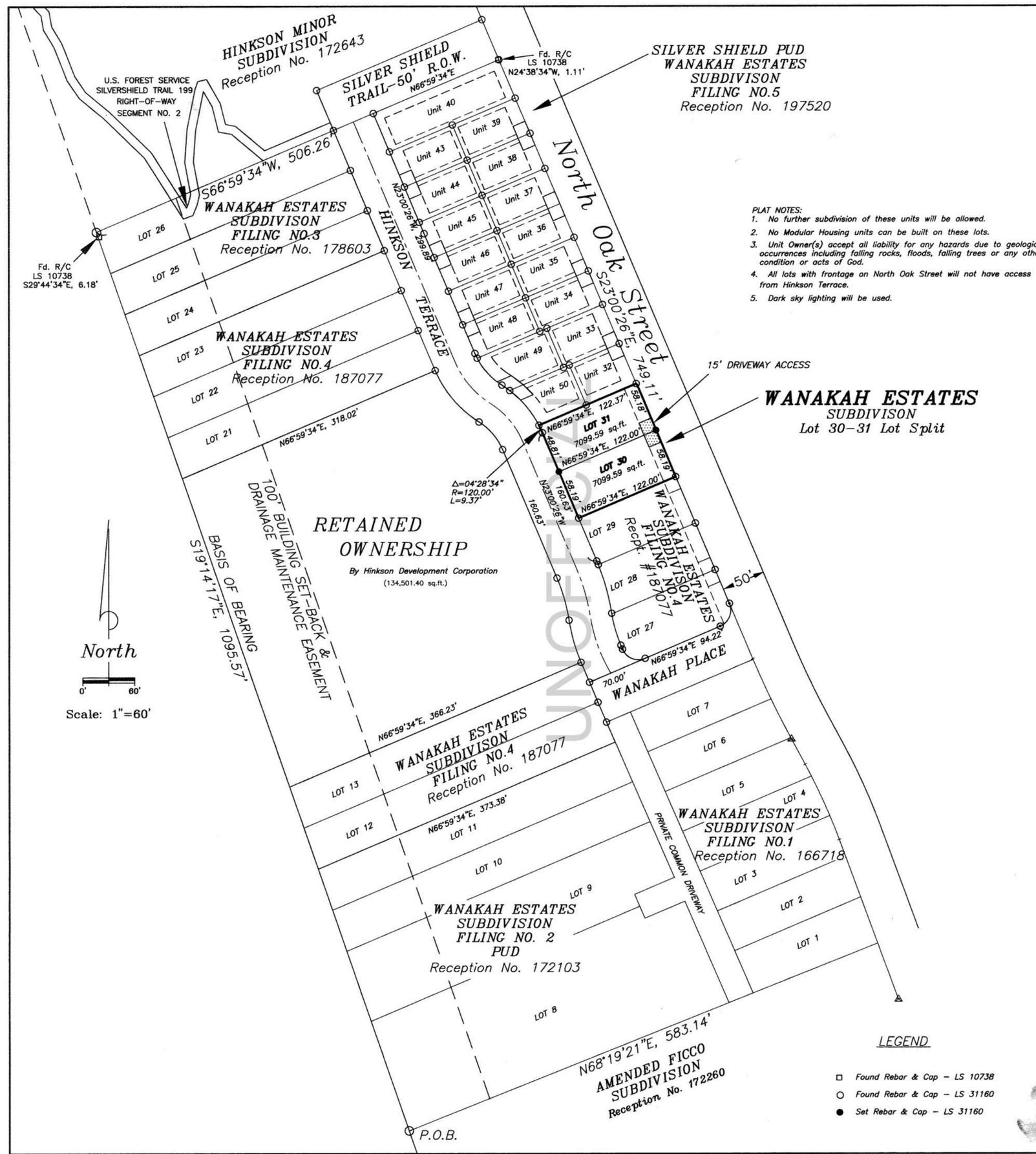
Signature: <u>[Signature]</u>	Date: <u>12/1/20</u>
(Property owner of record)	
Signature: _____	Date: _____
(Property owner of record)	
Signature: _____	Date: _____
(Property owner of record)	

Exhibit B

# WANAKAH ESTATES SUBDIVISION

## LOT 30-31 LOT SPLIT

Part of Watson Placer  
City of Ouray, Colorado



- PLAT NOTES:**
- No further subdivision of these units will be allowed.
  - No Modular Housing units can be built on these lots.
  - Unit Owner(s) accept all liability for any hazards due to geological occurrences including falling rocks, floods, falling trees or any other condition or acts of God.
  - All lots with frontage on North Oak Street will not have access from Hinkson Terrace.
  - Dark sky lighting will be used.

**CERTIFICATE OF OWNERSHIP AND DEDICATION:**

KNOW BY THESE PRESENTS that the undersigned being the owner of a tract of land in the City of Ouray, Colorado, and being part of the Watson Placer Mineral Survey No. 143, Uncompahgre Mining District, County of Ouray, State of Colorado and described as follows: BEGINNING on the line between corners eight and nine of said Watson Placer and being identical with the northwest corner of the Amended Ficco Subdivision whence corner nine of said Watson Placer bears S19°14'17"E, 575.95 feet and the witness corner to the northeast corner of Section 25, T44N, R8W, N.M.P.M. bears N14°29'51"E, 2402.04 feet; Thence N68°19'21"E, 583.14 feet, along the north line of said Amended Ficco Subdivision to the west R.O.W. of City of Ouray's North Oak Street; Thence along said R.O.W. the following five courses:  
1) N20°24'56"W, 127.33 feet;  
2) 95.13 feet along the arc of a tangent curve to the left, said curve having a radius of 675.00 feet, central angle of 08°04'30" and chord bearing N24°27'13"W, 95.05 feet;  
3) N28°29'29"W, 32.83 feet;  
4) 102.88 feet along the arc of a tangent curve to the right, said curve having a radius of 1075.00 feet, central angle of 05°29'00" and chord bearing N25°44'58"W, 102.84 feet;  
5) N23°00'26"W, 749.11 feet to the south line of a tract of land recorded on Book 202 at Page 498 in the office of the Ouray County Clerk and Recorder; Thence S66°59'34"W, 506.26 feet along said south line to a point on line eight-nine of said Watson Placer; Thence, S19°14'17"E, 1095.57 feet along said line to the Point of Beginning, containing 13.75 acres. Excepting therefrom Wanakah Estates Subdivision Filing No. 1, Wanakah Estates Subdivision Filing No. 2, Wanakah Estates Subdivision Filing No. 3, Planned Unit Development, and Wanakah Estates Subdivision Filing No. 4.  
HAVE BY THESE PRESENTS cause same to be laid out, platted and subdivided into lots, as shown on this plat, under the name and style of Lot 30-31 Lot Split, and do here by grant and dedicate, the perpetual easements, as shown hereon, for the use of public utility suppliers for installation and maintenance of utility facilities, including but not limited to, electric lines, gas lines, telephone lines, water and sewer lines, together with perpetual right of ingress and egress for installation, maintenance, and replacement of such lines. Said easements and rights shall be utilized in a reasonable and prudent manner.

San Juan Mountainside Partnership, LLLP  
Michael Bazin by Michelle Nauwer POA  
By: Michael Bazin, (General Partner)



STATE OF COLORADO }  
COUNTY OF OURAY } ss

The foregoing signature was acknowledged before me this 5th day of March, A.D., 2010 by  
My commission expires 07-23-2011  
Witness my hand and seal Jessica A. Frigetto  
Notary Public

**CERTIFICATE OF LIEN HOLDER:**

The undersigned holders of mortgages, which encumber the land subdivided, hereby agree to the subdivision and dedications.  
Mortgage: The Citizens State Bank of Ouray by James T. Reese, President

STATE OF Colorado }  
COUNTY OF Ouray } ss

The foregoing signature was acknowledged before me this 3rd day of March, A.D., 2010, by Dennis F. Reese  
My commission expires 07-23-2011  
Witness my hand and seal Jessica A. Frigetto  
Notary Public



**ATTORNEY'S CERTIFICATE:**

I, John J. Flanery, Jr., an attorney at law, duly licensed to practice in Colorado do hereby certify that: (1) I have examined title to the platted property and that title is in the name of those parties executing the certificate of ownership and dedication; (2) such property is free and clear of all liens and encumbrances except Reception # 187077 + Reception # 187124; and (3) any property dedicated to the City of Ouray will be free and clear of all liens and encumbrances affecting marketability.

John J. Flanery, Jr. 015766 3/17/10  
Attorney at Law Registration No. Date

**APPROVAL OF PLANNING COMMISSION:**

Approved by the City of Ouray Planning Commission this 22nd day of March, A.D., 2010  
Angela Y. Santos  
Chairman

**APPROVAL OF CITY COUNCIL:**

Approved by the Ouray City Council this 1st day of March, A.D., 2010  
A. D. Fresh  
Mayor

**APPROVAL OF CITY ATTORNEY:**

Approved for recording this 22nd day of March, A.D., 2010, by David L. Masters, City Attorney.  
David L. Masters 15869 3/22/10  
Attorney at Law Registration No. Date

**BASIS OF BEARING:**

The bearing between the northwest corner of the Wanakah Estates Subdivision Filing No. 3, defined by a rebar & cap, LS 31160, and the southwest corner of said Subdivision, defined by a rebar & cap, LS 10738, is assumed to be S19°14'17"E as shown on the plat of said Subdivision, recorded at Reception No. 178603 in the records of Ouray County, Colorado.

**SURVEYOR'S CERTIFICATE:**

I, Robert A. Larson, a Registered Land Surveyor in the State of Colorado, do hereby certify that this plat accurately represents to the best of my knowledge and information, a survey made by me or under my direct supervision, and that said survey conforms to all State laws and standards for property boundaries.

Robert A. Larson LS 31160 Date SEAL

**RECORDER'S CERTIFICATE:**

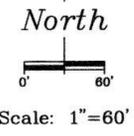
This plat was filed for record in the office of the Clerk and Recorder of Ouray County at 10:23 AM, on the 23 day of March, A.D., 2010, in Book     , Page     .  
Reception No. 202804  
Michelle Nauwer  
County Clerk and Recorder  
by Vickie D. Harris sep clerk

FINAL PLAT	
San Juan Mountainside, LLLP Ouray, Colorado 81427	
SURVEYED BY R.A.L.	DATE FILED 12/08
DRAWN BY R.A.L.	SCALE 1"=60'
MONADNOCK MINERAL SERVICES 210-728 Ann. - P.O. Box 85, Ouray, Colorado 81427 FILE NO. J09064	
SHEET 1 of 1	

- LEGEND**
- Found Rebar & Cap - LS 10738
  - Found Rebar & Cap - LS 31160
  - Set Rebar & Cap - LS 31160



NOTICE: According to Colorado Law you must commence any legal action upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.



# OURAY VOLUNTEER FIRE DEPARTMENT MONTHLY MEETING

**FEBRUARY 08, 2021**

*CALLED TO ORDER AT 7:30*

## ***ATTENDANCE AND REPORTS***

17 members present; 2 excused; 7 absent  
The Treasurer's Report was read and approved.  
Prior minutes were read and approved.

## ***DETAILED ATTENDANCE***

### **Present**

Trevor Latta, John Fedel, Patrick Rondinelli, Adam Kunz, Craig Kaminsky, Junior Mattivi, Bumper Williams, Chris Miller, Max Austin, Nathan Judd, Dack Klein, Brittany Kunz, Ted Pullig, Dave Turner, Sam Tyler, Tom Fedel, Taylor Brantly

### **Excused**

Steve Martinez, Amy Winterrowd

### **Absent**

Travis Manley, Steve Duce, Tyler Ferguson, Chris Folsom, Kevin Koprek, Chris Lee, Danny Wilbur

## ***OLD BUSINESS***

None

## ***NEW BUSINESS***

*Joint Training* - Adam provided the department with an annual calendar - through September at this time - for training throughout 20201. This week, we have a joint training in Log Hill PPE/SCBA (details on the calendars). There is another joint training on February 10th in Ridgway focused on truck content and SCBA.

*Ouray School Kids* - Chris Lee and Danny Wilbur are going to bring the trucks up to the school. The ladder will be in the alley in between the playground and the school. If enough people are available, we can bring up the Engine and stage it in the alley by the gymnasium. Chris was suggesting the first week of March either in the morning or around lunchtime. Craig Kaminsky, Chris Miller, Max Kunz and Adam Kunz are all available to help early that week. Chris Lee will coordinate with fire fighters.

*Topper for Command* - The new Command is getting a new topper tomorrow. Chief requested suggestions from the department for how to best utilize the topper. He was planning to do this on Friday around 5:00 pm (weather cooperating).

*Fireworks* - Chief suggested we do an inventory of the department's stock and where we might stand on a July 4 show. Bumper suggested ordering another show's worth so we always have one in the bank. Chris Miller noted it would be done before the next meeting.

*Training Hours* - End of February is the deadline to get hours in for last year. Chief encouraged department members to get all straggler hours into the city this month.

*Election* - Next month. Chief requested for all to throw their hats in the ring. The hope is to have an in-person meeting, pandemic allowing.

*Special Funds* - Over 20,000. Move 10,000 into interest bearing vehicle to make a few bucks on it.  
*Grants* - Danika is finishing up the grants but needs Ouray to report data to the federal reporting system for fires in order for the grant to be successful. This must happen quickly as the grant is due Friday.

Additionally, Bumper Williams is finishing up a micro-grant for radios. He feels there is a high probability that we will be awarded this grant.

*Homecoming* - The department was asked to help with the school's homecoming festivities. We will organize a bonfire/burn pile from the felled and dead Christmas trees already down at Rotary Park.

The department will send either the Engine or Tender to the park, using the remaining two trucks for a "parade" down Main Street and accompanied by the high school kids' in their decked-out cars. The parade will start at 7:30pm. Craig Kaminsky will text the bonfire crew a few minutes out and they will light the bonfire so it's burning as the kids arrive.

*ADJOURNED AT 8:10*



---

## **City Administrator**

### **Report for March 15, 2020 City Council**

#### **March 1 – March 12, 2021:**

Per the attached letter, the Colorado Department of Public Health and Environment has reclassified the City's drinking water to Ground Water Under the Direct Influence of Surface Water (GWUDI). The letter outlines the interim measures required by June 1, 2021 and the treatment requirements within 18 months. Public Works and I are moving quickly to determine the best interim options and permanent treatment options. Multiple weekly meetings are taking place and will continue for the foreseeable future related to this project.

Lots of my time has gone to the Community Development Department over the last two weeks. Multiple projects are in need of pre-application meetings and calls are coming in from developers. Since the new CDC position will not be filled until the first week of May, I am in the process of hiring the assistance of SEH, Inc. out of Durango to temporarily assist with the development applications within their Planning Department.

Currently open is the Utilities Systems Operator position within Public Works. The seasonal Visitor's Center Coordinator position, IT position, and Parks Maintenance and Facilities Manager position will be open soon.

I am still waiting on a proposal from an outside contractor to assist the City with the further implementation of the Backflow Prevention program. (From last report for clarification: The services on behalf of the City include electronic management, identification of backflow needs, and inspections. Testing will be an option for property owners through the contractor or through their own plumber.) I have followed up with the businesses that were identified as requiring backflow prevention devices that had not been previously installed. All six of the identified businesses as of last week are in compliance. This ensures another letter will not have to be sent out to the water customers based on non-compliance.

City of Ouray/Region 10 generator for fiber internet/server backup behind City Hall was successfully tested. This generator did not start up during the power outage on February 5, 2021 and caused major internet issues across the community.

**Meetings Attended:**

Unified Command

Multi-Agency Coordination Group

City Council Agenda Setting Meeting

City Council Meeting

JVA (Waste Water Treatment Facility Bi-Weekly Project Meeting)

Waste Water Treatment Plant Question/Answer with Operators (Three Meetings)

Leadership Team Meeting (Weekly)

Six Basins, Inc. meeting on potential board kiosk in Hwy 550 horseshoe for backcountry literature

County Bridge and Road Meeting

Joint Policy Group Meeting

DOLA Funding Meeting

Pool Manager Interviews

CEDC Meeting

Drinking Water Options (Two Meetings)

CDPHE Water Meeting

CML Executive Director Town Hall Meeting

320 6<sup>th</sup> Avenue  
PO Box 468  
Ouray, Colorado 81427



970.325.7211  
Fax 970.325.7212  
www.cityofouray.com

---

TO: Ouray City Council  
FROM: Joe Coleman, Director of Public Works  
DATE: July 20, 2020  
SUBJECT: Reclassification to Ground Water Under the Direct Influence (GWUDI)

---

On March 2, 2021, the Colorado Department of Public Health (CDPHE) notified The City of Ouray that the City's water source, Weehawken Spring, has been reclassified to ground water under the direct influence of surface water (GWUDI). The evaluation of the source as GWUDI was conducted by CDPHE utilizing data collected by the City from April 2020 through October 2020. The City will be required to provide adequate surface water treatment for the Weehawken Spring within eighteen months of receiving this notice. After multiple meetings with CDPHE, they realize that this is an unrealistic timeline. As long as we continue to show progress on our effort to meet adequate surface water treatment, they will work with us on the eighteen-month timeline. Over the past year, we have established open lines of communication with CDPHE and they are willing to help us through this process

In the interim, the City must maintain a minimum entry point chlorine disinfectant level of 2.0 mg/L. This must be monitored twice a day and reported to CDPHE monthly. The City will also be given a new monthly operating plan from CDPHE beginning June 1<sup>st</sup>, 2021.

The City is working diligently on possible interim measures that can be taken as well as a long-term solution to our water treatment needs. Attached are the official documents from CDPHE.



March 2, 2021

JOE COLEMAN  
OURAY CITY OF - PWSID CO0146588  
PO BOX 468  
OURAY CO 81427

**Requirements Notice**  
**Reclassification to Ground Water Under the Direct Influence of Surface Water (GWUDI)**

Dear JOE COLEMAN:

The Colorado Department of Public Health and Environment (“Department”) notified **OURAY CITY OF** (“Supplier”) that **SPRING NO 1 WEEHAWKEN (002)** has been reclassified to ground water under the direct influence of surface water (GWUDI). Listed below are the specific regulatory requirements associated with the reclassification.

**Treatment**

Section 11.8(1)(b)(iv) of the Colorado Primary Drinking Water Regulations 5 CCR 1002-11 (“Regulation 11”) requires any ground water source determined to be GWUDI to provide adequate surface water treatment for the source within eighteen (18) months of receiving notification from the Department. Adequate surface water treatment is considered to be a treatment system that is designed and operated to:

1. Achieve at least 99.99 percent (4-log) inactivation and/or removal of viruses and at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts. The inactivation of viruses and *Giardia lamblia* is primarily accomplished by disinfection with chlorine.
2. Achieve at least 99 percent (2-log) removal of *Cryptosporidium*. *Cryptosporidium* cyst removal is achieved by filtration.
3. Additionally, the outcome of a source water risk assessment required by the Long Term 2 Enhanced Surface Water Treatment Rule may require additional treatment that is capable of removing/inactivating up to 99.9997 percent (5.5-log) of *Cryptosporidium*.

Section 11.8 of Regulation 11 requires additional daily turbidity and chlorine residual monitoring. The Supplier should consider the costs and benefits of adding/upgrading treatment to all water sources and the potential for other and future sources to be classified as GWUDI. The Supplier must install adequate surface water treatment by **October 1, 2022**. Alternatively, the Supplier may discontinue use by physically disconnecting GWUDI sources.

**Waterworks Plan and Specification Approval**

Section 11.4(1) of Regulation 11 requires plans and specifications associated with the construction or modifications of any waterworks to be submitted to the Department for review and approval. This includes, but is not limited to:

1. Commencing construction of any new waterworks.
2. Making improvements to or modifying any existing treatment.
3. Initiating the use of a new source.



Approval, for any changes, must be obtained prior to installation/operation. For community water systems, all plans and specifications must be prepared by a Professional Engineer registered in the State of Colorado. If the Supplier chooses to install filtration, note that water quality monitoring will be required to justify the design of the filtration system. Attachment A outlines the water quality that must be collected. The Department recommends the Supplier begin water quality monitoring as soon as possible to collect sufficient data to justify any design.

A copy of the design criteria and information regarding plan reviews, including all forms and guidance, can be obtained from the Department's website at [wqcdcompliance.com/eng](http://wqcdcompliance.com/eng). If you have technical questions regarding plans and specifications submittal and review or questions about the approval process, please contact the Engineering Section at 303-692-6298.

### Interim Measures

In accordance with Section 11.8(3)(a)(ii) of Regulation 11, the Supplier is required to implement interim measures until full surface water treatment is installed and operational. In order to protect public health and to comply with Regulation 11, all reclassified sources are evaluated by the Department to determine the degree of interim measures that are appropriate until adequate treatment is approved and installed. Until adequate surface water treatment is approved, installed and operational, the following interim measures are required for all reclassified GWUDI systems:

1. Immediately, the Supplier must operate continuous chemical disinfection treatment prior to each entry point to the distribution system.
2. The Supplier must begin maintaining 2.0 mg/L disinfection residual at all entry points served by SPRING NO 1 WEEHAWKEN (002) by June 1, 2021. On June 1, 2021, the Supplier must begin daily monitoring of the entry point. The first monthly operating report (MOR) must be submitted by July 10, 2021 and monthly thereafter. Please visit [wqcdcompliance.com/mors](http://wqcdcompliance.com/mors) for reporting forms and additional reporting instructions.

A minimum entry point chemical disinfectant residual level of 2.0 mg/L must be maintained at all times unless a Department approved alternative minimum residual level is requested and obtained. Technical questions regarding alternative level approval should be directed to the Engineering Section. If the Supplier would like to request a reduction of the required disinfectant residual, the Supplier must contact the Department by April 1, 2021.

The disinfection residual must be measured, recorded and reported in accordance with the requirements in Sections 11.8(3)(c) and 11.8(3)(f) of Regulation 11, respectively. If additional interim measures are required in the future, the Department will notify the Supplier in writing.

### Monitoring Schedule

As a result of the source water reclassification the Supplier's monitoring requirements may have changed. Please visit [wqcdcompliance.com/schedules](http://wqcdcompliance.com/schedules) to access the Supplier's monitoring schedule and regularly check the website as schedules are updated on a weekly basis. If you have any problems accessing the schedule, or if you do not have computer access, please call 303-692-3556.

If there are any questions regarding the contents of this letter and/or requirements for the Supplier, please contact your compliance specialist:

Ben Keilly  
720-507-7761  
[ben.keilly@state.co.us](mailto:ben.keilly@state.co.us)

ec:  
JOE COLEMAN - COLEMANJ@CITYOFOURAY.COM; AC

CLIFF JARAMILLO - JARAMILLO@CITYOFOURAY.COM; OPERATOR  
DR. ELISABETH LAWACZECK - ELAWACZECK@OURAYCOUNTYCO.GOV; OURAY COUNTY ENVIRONMENTAL  
HEALTH DEPT

File: CO0146588, OURAY COUNTY, COMMUNITY - GROUNDWATER UNDER THE DIRECT INFLUENCE OF  
SURFACE WATER (GWUDI)

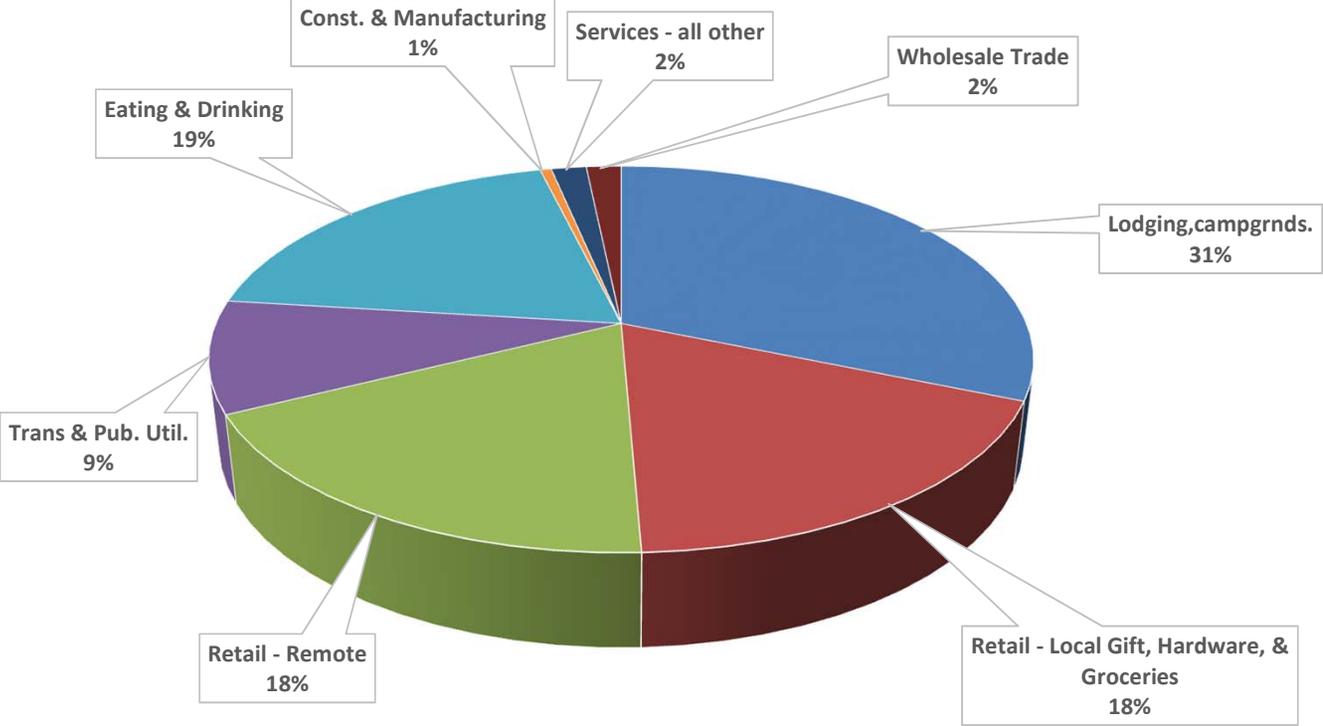
### Attachment A: Water Quality Data Monitoring

As a result of the reclassification to GWUDI, the Supplier may choose to install filtration on the source. If filtration is chosen, the Supplier must collect sufficient water quality data to justify selection of a given filtration technology in accordance with Section 1.2.3 of the State of Colorado Design Criteria for Potable Water Systems (Policy 5, DCPWS).

Section 1.2.3 discusses that if Bag or Cartridge filtration is chosen, then in addition to water quality specified in Section 1.2.3, additional data must be collected in accordance with Section 4.3.9.5 of the DCPWS to ensure that the filtration will comply with Regulation 11. The options available to justify the selection of bag or cartridge filtration include: turbidity results, pilot/demonstration studies, or a particulate removal study. A summary of the options is below (for additional information consult the DCPWS):

- **Turbidity (Section 4.3.9.5a of the DCPWS):** Weekly raw water turbidity samples from March through June (one year preferred) to ensure turbidity stays below 1.49 NTU at all times. The Supplier should consider purchasing a turbidimeter so that samples can easily be analyzed on-site (for example: Hach 2100Q).
- **Pilot/Demonstration Study (Section 4.3.9.5b):** Install a filter onsite during the month of most challenging conditions and demonstrate the filter achieves less than 1.49 NTU turbidity as well as will work economically (doesn't require too frequent filter change out).
- **Particulate Removal Study (Section 4.3.9.5c):** Using a turbidimeter and the procedure outlined in Appendix L of the DCPWS, the Supplier can demonstrate that the proposed filtration is capable of removing the turbidity in the water. Weekly sampling must occur for two months.

**City of Ouray**  
**January 2021 Sales Tax Revenues by Business Category**  
**(received in March 2021)**

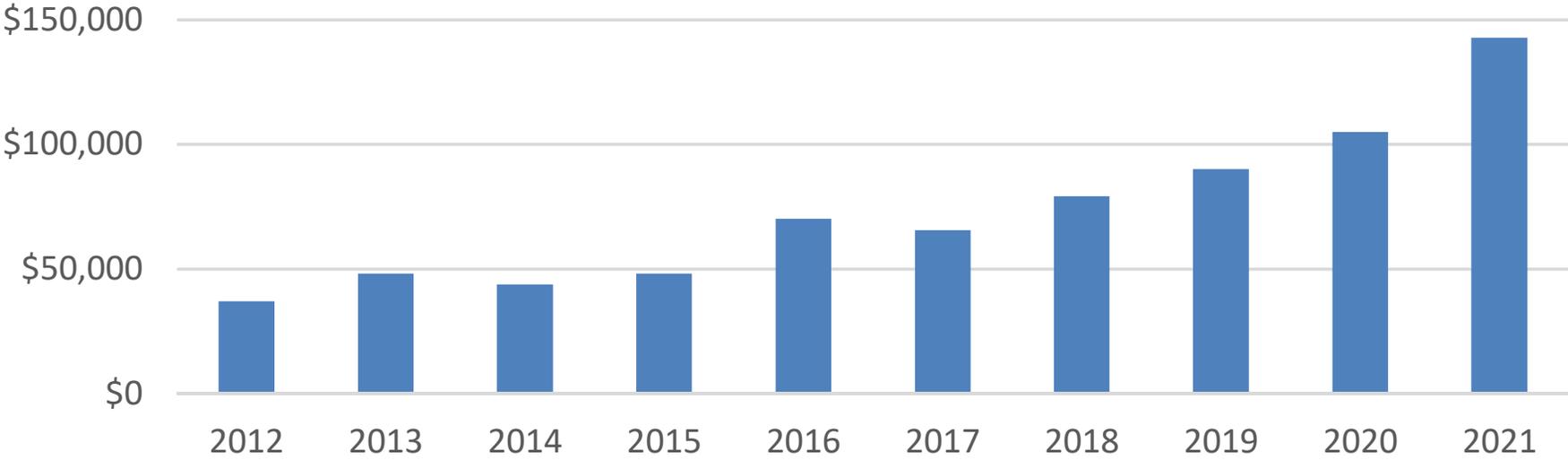


**CITY OF OURAY**  
**2021 MONTHLY SALES TAX REVENUES BY BUSINESS CATEGORY**

(1) Month tax received from State of Colorado, representing sales from two months earlier (e.g. tax shown as APRIL is mostly from FEBRUARY)

2021 SALES TAX REVENUES BY BUSINESS CATEGORY							
(1) Funds received by City in: July (mostly re: May)							
Business Category	January	February	March	April	May	June	
Lodging, campgrnds.	\$ 26,010.45	\$ 36,995.90	\$ 44,754.54				
Retail - Local Gift, Hardware, & Groceries	\$ 21,286.27	\$ 32,966.65	\$ 25,734.23				
Retail - Remote	\$ 22,394.45	\$ 26,286.38	\$ 25,877.98				
Trans & Pub. Util.	8,743.59	11,494.47	13,382.39				
Eating & Drinking	21,469.16	26,647.64	27,495.58				
Const. & Manufacturing	651.34	1,830.76	747.51				
Services - all other	1,978.85	2,282.00	2,341.32				
Wholesale Trade	755.57	1,551.93	2,516.98				
<b>TOTAL</b>	<b>\$ 103,289.68</b>	<b>\$ 140,055.73</b>	<b>\$ 142,850.53</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	
Business Category	July	August	September	October	November	December	Year-to-date
Lodging, campgrnds.							\$ 107,760.89
Retail - Local Gift, Hardware, & Groceries							\$ 79,987.15
Retail - Remote							\$ 74,558.81
Trans & Pub. Util.							33,620.45
Eating & Drinking							75,612.38
Const. & Manufacturing							3,229.61
Services - all other							6,602.17
Wholesale Trade							4,824.48
<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 386,195.94</b>

CITY OF OURAY  
JANUARY SALES TAX REVENUE COMPARISON  
Over Past 10 Years



Notes: Figures represent Revenue Received in March 2021  
Sales Tax increased from 3% to 4% on January 1, 2016

CITY OF OURAY  
SALES TAX REVENUES BY BUSINESS CATEGORY 2012-2021

SALES TAX REVENUES BY BUSINESS CATEGORY

Business Category	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Lodging, campgrnds.	\$ 10,381.17	\$ 10,038.41	\$ 11,491.55	\$ 16,302.70	\$ 19,928.67	\$ 19,396.51	\$ 25,429.29	\$ 28,795.73	\$ 32,270.70	\$ 44,754.54
Retail - Local Gift, Hardware, & Groceries									\$ 18,926.37	\$ 25,734.23
Retail - Remote									\$ 13,972.85	\$ 25,877.98
Retail - groceries, liquor, candy, hardw	4,526.59	3,386.36	5,169.48	6,105.99	12,203.43	11,497.76	13,388.91	25,020.27		
Retail - gift, souvenir, variety, books	4,255.51	4,409.22	4,478.21	5,046.44	7,566.37	7,405.60	7,963.39	1,688.88		
Trans & Pub. Util.	8,129.95	9,268.20	8,857.41	10,823.56	8,857.92	8,380.85	8,225.15	8,921.19	11,518.84	13,382.39
Eating & Drinking	5,935.67	15,647.78	6,408.14	7,057.26	13,693.37	10,231.00	14,923.52	14,541.71	25,248.24	27,495.58
Const. & Manufacturing	2,795.71	2,532.56	4,892.67	3,995.65	6,861.62	6,296.02	6,837.63	8,063.58	1,205.57	747.51
Services - all other	472.93	607.00	529.28	819.99	899.12	821.72	1,989.72	1,263.49	1,002.37	2,341.32
Finance, Ins. Real Estate	547.24	2,000.93	1,975.82	(2,003.02)	158.43	1,550.34	440.83	970.95		
Wholesale Trade	13.96	162.00	34.99	43.00	73.10	80.40	183.49	992.09	878.12	2,516.98
Mining	-	-	-	-	-	-	-	-	-	-
All Other	57.00	128.25	14.25	45.00	-	-	-	-	-	-
<b>TOTAL</b>	<b>\$ 37,115.73</b>	<b>\$ 48,180.71</b>	<b>\$ 43,851.80</b>	<b>\$ 48,236.57</b>	<b>\$ 70,242.03</b>	<b>\$ 65,660.20</b>	<b>\$ 79,381.93</b>	<b>\$ 90,257.89</b>	<b>\$ 105,023.06</b>	<b>\$ 142,850.53</b>
							\$2,991.19 out-of-period	\$3,196.17 out-of-period	\$7,138.03 out-of-period	\$8,038.42 out-of-period

**Ouray Lodging Occ. Tax Collection Summary**

ROOMS	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	21 VS 20
<b>Month</b>											
January	4452	4343	4349	5712	5826	5113	5782	6196	6245	5931	-5.03%
February	3446	3673	3874	4816	5226	4509	5085	5593	4641		
March	2975	2746	2949	3394	3638	3499	4763	4152	1952		
April	1912	1661	1836	2236	2660	2411	3080	2857	32		
May	4914	4248	4149	5047	5850	5939	7396	7894	3111		
June	10282	10971	10718	12015	13521	14494	14578	15026	12736		
July	16781	16285	17248	19171	19960	20248	19802	19482	20444		
August	14672	13688	15198	16477	16949	17344	17613	18629	16919		
September	12361	12004	13377	15478	16149	16526	17743	18498	17564		
October	4876	5825	6450	7937	7691	7762	7462	9407	19127		
November	1709	2084	1936	2141	2113	2674	2856	3237	3864		
December	2805	3589	3696	3656	3382	4226	5038	4268	5153		
<b>Total Rooms</b>	<b>81185</b>	<b>81117</b>	<b>85780</b>	<b>98080</b>	<b>102965</b>	<b>104745</b>	<b>111198</b>	<b>115239</b>	<b>111788</b>		

DOLLARS											
January	\$11,755	\$11,729	\$11,848	\$15,867	\$15,819	\$13,795	\$16,294	\$22,444	\$25,204	\$27,058	7.36%
February	\$8,855	\$9,749	\$10,430	\$12,468	\$13,908	\$12,648	\$14,021	\$19,580	\$18,464		
March	\$7,792	\$7,260	\$7,945	\$9,240	\$9,505	\$9,529	\$12,884	\$14,526	\$6,834		
April	\$4,974	\$4,475	\$4,975	\$5,701	\$6,633	\$6,294	\$8,090	\$8,312	\$107		
May	\$13,131	\$11,738	\$11,357	\$13,876	\$15,372	\$15,734	\$19,031	\$22,068	\$7,922		
June	\$26,440	\$28,572	\$28,419	\$31,431	\$34,498	\$36,654	\$36,236	\$62,392	\$51,634		
July	\$43,054	\$42,369	\$44,740	\$47,884	\$49,767	\$50,344	\$49,371	\$110,244	\$114,230		
August	\$34,737	\$35,708	\$40,035	\$41,643	\$41,801	\$42,090	\$43,236	\$90,952	\$92,809		
September	\$33,413	\$32,326	\$35,960	\$40,336	\$41,704	\$41,965	\$44,480	\$79,505	\$93,050		
October	\$13,309	\$15,848	\$17,556	\$21,385	\$20,717	\$20,355	\$19,711	\$37,511	\$60,690		
November	\$4,261	\$5,348	\$5,092	\$5,136	\$5,802	\$7,079	\$7,000	\$10,367	\$15,399		
December	\$7,617	\$9,816	\$9,918	\$9,571	\$9,590	\$11,882	\$13,622	\$17,593	\$24,892		
<b>Total Dollars</b>	<b>\$209,338</b>	<b>\$214,938</b>	<b>\$228,275</b>	<b>\$254,538</b>	<b>\$265,116</b>	<b>\$268,369</b>	<b>\$283,976</b>	<b>\$495,494</b>	<b>\$511,234</b>		

Data represents rooms and dollars for month in which lodging activity occurred.  
 LOT report and payment are due by 20th of following month.  
 "ROOMS" data includes exempt rooms.

**OURAY LODGING OCCUPANCY TRENDS**

Based on Lodging Occupation Tax Collections

	2019				2020				2021			
	Avail. Rooms	Rooms Rented	Occ.%	Exempt Rooms	Avail. Rooms	Rooms Rented	Occ.%	Exempt Rooms	Avail. Rooms	Rooms Rented	Occ.%	Exempt Rooms
	+ RVs, Unfurnished Cabins				+ RVs, Unfurnished Cabins				+ RVs, Unfurnished Cabins			
January	19378	6196	32.0%	387	19301	6245	32.4%	61	16347	5931	36.3%	61
February	17556	5593	31.9%	287	15753	4641	29.5%	103				
March	18409	4152	22.6%	388	13973	1952	14.0%	18				
April	18291	2857	15.6%	247	42	32	76.2%	10				
May	22770	7894	34.7%	334	12725	3111	24.4%	29				
June	21708	15026	69.2%	302	21195	12736	60.1%	28				
July	22944	19482	84.9%	452	22744	20444	89.9%	654				
August	24090	18629	77.3%	465	18745	16919	90.3%	10				
September	22482	18498	82.3%	493	20654	17564	85.0%	30				
October	21554	9407	43.6%	307	19127	12877	67.3%	18				
November	17290	3237	18.7%	184	13475	3864	28.7%	40				
December	18825	4268	22.7%	170	16609	5153	31.0%	107				
<b>Total</b>	<b>245297</b>	<b>115239</b>	<b>47.0%</b>	<b>4016</b>	<b>194343</b>	<b>105538</b>	<b>54.3%</b>	<b>1108</b>	<b>16347</b>	<b>5931</b>	<b>36.3%</b>	<b>61</b>

Data represents rooms for month in which lodging activity occurred.

LOT report and payment are due by 20th of following month.

"Rooms Rented" columns includes exempt rooms.

"Exempt Rooms" columns are for memo purposes only.

**2021 Lodging Occupation Tax, By Business Category**

AVAILABLE ROOMS	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Hotel, Motel	12,782												12,782
Bed and Breakfast	649												649
House, Townhouse, Condo (1)	2,885												2,885
RV Space, Unfurnished Cabin	31												31
<b>Total Rooms</b>	16,347	-	-	-	-	-	-	-	-	-	-	-	16,347

ROOMS RENTED	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Hotel, Motel	4,931												4,931
Bed and Breakfast	167												167
House, Townhouse, Condo (1)	803												803
RV Space, Unfurnished Cabin	30												30
<b>Total Rooms</b>	5,931	-	-	-	-	-	-	-	-	-	-	-	5,931

DOLLARS	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
													-
Hotel, Motel	\$ 19,561.54												\$ 19,561.54
Bed and Breakfast	\$ 1,008.24												\$ 1,008.24
House, Townhouse, Condo (1)	\$ 6,428.74												\$ 6,428.74
RV Space, Unfurnished Cabin	\$ 59.85										\$ -	\$ -	\$ 59.85
<b>Total Dollars</b>	\$ 27,058.37	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 27,058.37

(1) For a property that is marketed as a stand-alone short-term rental, for which there are no hotel/motel amenities offered.  
 Data represents rooms for month in which lodging activity occurred.  
 LOT report and payment are due by 20th of following month.  
 "Rooms Rented" columns includes exempt rooms.

**Submit to Local Licensing Authority**

Fees Due		
Renewal Fee		
Storage Permit	\$100 X _____	\$
Sidewalk Service Area	\$75.00	\$
Additional Optional Premise Hotel & Restaurant	\$100 X _____	\$
Related Facility - Campus Liquor Complex	\$160.00 per facility	\$
Amount Due/Paid		\$

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

## Retail Liquor or Fermented Malt Beverage License Renewal Application

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name Friends of the Wright Opera House		Doing Business As Name (DBA) The Wright Opera House		
Liquor License # 42-94142-0002	License Type Tavern (city)	Sales Tax License # 42941420002	Expiration Date 5/7/2021	Due Date 3/23/2021
Business Address 472 Main Street, Ouray CO. 81427				Phone Number (970) 325-4399
Mailing Address PO Box 17, Ouray CO. 81427			Email info@thewrightoperahouse.org	
Operating Manager Alyssa Preston	Date of Birth	Home Address	Phone Number	
1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Are the premises owned or rented? <input checked="" type="checkbox"/> Owned <input type="checkbox"/> Rented* *If rented, expiration date of lease _____				
2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
3a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
3b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
4. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
5. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
7. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

P.O. Box 468  
320 Sixth Avenue  
Ouray, Colorado 81427



970.325.7211  
Fax 970.325.7212  
www.cityofouray.com

---

## **ACTION ITEMS (March 15, 2021):**

### **Ordinance 2, Series 2021 – Adding Default Judgement Provision to Municipal Code – Second Reading**

**Action Requested** – *Will City Council approve Ordinance 2, Series 2021 – Adding Default Judgement Provision to Municipal Code – First Reading?*

**Background** – This Ordinance comes at the request of the City Attorney and Ouray Police Department. Currently, per the municipal code, if a parking ticket does not get paid there is no other recourse than a bench warrant. The issuance of a bench warrant is unpractical in this situation and this proposed Ordinance allows for a default judgement provision.

**Recommendation** – Staff recommends approval.

### **Application to plat the remaining portions of unplatted land of the Wanakah Estates Subdivision into one lot for the purposes of multifamily residential development - to be known as the Ouray Workforce Housing Minor Subdivision**

**Action Requested** – *Will City Council approve the application to plat the remaining portions of unplatted land of the Wanakah Estates Subdivision into one lot for the purposes of multifamily residential development?*

**Background** – The applicant is asking the City Council to plat the remaining un-platted portions of the Wanakah Subdivision into one lot for the purpose of a multifamily development which will include three buildings, each containing ten condominiums.

Minor subdivision applications are for subdivisions resulting in 2 (or fewer) lots, which have all required improvements and comply with the design standards of subsections 7-7-E and 7-7-F, they shall also be exempt from the requirements of a sketch plan and preliminary plat. Any subdivision of land must also comply with the applicable zone district regulations. The property is zoned R-2 and must comply with sections 7-5-D and 7-5-E-4 of the Ouray Municipal Code (OMC). Lastly, the applicant is proposing to condominiumize the proposed property through the proposed minor subdivision which must also comply with section 7-10 of the OMC. See documentation in packet.

The Planning Commission considered this application and made a recommendation that City Council deny this application on a vote of 3 to 1.

**Recommendation** – Staff finds that the proposed minor subdivision is compliant with the requirements and applicable code of the OMC and recommends approval.

### **Ouray City Planning Commission and Committee Appointments**

**Action Requested** – *Will City Council appoint members of the Planning Commission and Committees?*

**Background** – Several seats on the Planning Commission, Beautification Committee, Parks and Recreation Committee (PARC), and Community Economic Development Committee (CEDC) have expired this year. Announcements of the open seats were made and citizens, included past members, were invited to apply or reapply. A list of received applications is included in this packet your review.

**Recommendation** – Council decision

### **PSA – Digital Messaging Agreement**

**Action Requested** – *Will City Council approve the digital messaging professional services agreement with Markus Van Meter?*

**Background** – This agreement is a continuation and expansion of the PSA the City has had with Mr. Van Meter over the last 10 months. The new agreement will expire in 2 years and the scope of services are listed in Exhibit A within the packet. The cost of \$7,350.00 per month will be paid by the City accordingly to the work completed through a combination of LOT funds and General Funds. Lot funds will only be utilized for appropriate expenditures.

**Recommendation** – Staff recommends approval.

### **Possible confirmation of new OVFD Fire Chief, Adam Kunz and Assistant Fire Chief, Ronald Floyd (Bumper)**

**Action Requested** – *Will City Council confirm the newly elected Fire Chief, Adam Kunz and Assistant Fire Chief, Ronald Floyd (Bumper)?*

**Background** – The Ouray Volunteer Fire Department (OVFD) has elected Adam Kunz to serve as Fire Chief and Ronald Floyd (Bumper) as Assistant Fire Chief. OVFD By-laws states that this election must be confirmed by City Council.

**Recommendation** – Mr. Kunz and Mr. Floyd have both been long time members of the Ouray Fire Department and staff recommends approval.

**CITY OF OURAY  
ORDINANCE 2021-02**

**AN ORDINANCE OF THE CITY OF OURAY REPEALING AND REPLACING SECTION 5-8 OF CHAPTER 5 OF THE OURAY MUNICIPAL CODE CONCERNING ENFORCMENT OF FINES TO PROVIDE AUTHORITY FOR THE COURT TO ENTER A CIVIL JUDGMENT IN FAVOR OF THE CITY OF OURAY FOR FAILURE TO PAY ANY FINES, FEES, OR COSTS AND ASSIGN SUCH CIVIL JUDGMENT TO A PRIVATE COLLECTION AGENCY FOR COLLECTION ALONG WITH ALL INTEREST, COSTS, AND REASONABLE COLLECTION FEES ALLOWED BY LAW.**

**WHEREAS**, the City of Ouray is a home rule city which established a municipal court under Article V11 of the City of Ouray Home Rule Charter, adopted on May 5, 2009;

**WHEREAS**, local authorities may enact and enforce traffic regulations on roads and streets within its jurisdiction and municipal courts have jurisdiction over violations of traffic regulations enacted or adopted by municipalities pursuant to C.R.S. § 42-4-110;

**WHEREAS**, the City has no mechanism for reducing the fines, fees, and costs owed to the City of Ouray from a defendant to a civil judgment and allowing for the assignment of such judgement to a private collection agency; and

**WHEREAS**, the City finds it necessary to repeal and replace Section 5-8 concerning enforcement of fines to allow the Municipal Judge to enter a civil judgment in favor of the City of Ouray for all fines, fees, or costs and to allow for such civil judgments be assigned to a private collection agency, along with turning a delinquent ticket over to the state.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OURAY, COLORADO** that:

**SECTION 1.**

Section 5-8 of the Chapter 5 of the Ouray Municipal Code is repealed and replaced as follows:

**5-8 Enforcement of Fines, Fees, and Costs**

- A. If a defendant fails to appear at a mandatory court appearance date, the Court may enter a civil judgment in favor of the City of Ouray and against the defendant upon request of the City for any outstanding fines, costs, or fees which the defendant has failed to pay. The civil judgment may be assigned to a private collection agency for the collection, together with all interest, costs, and reasonable collection fees allowed by law. Interest on such civil judgment shall be at the rate of eight percent per annum, compounded annually.
- B. If a defendant fails to appear at a mandatory court appearance date and the violation can be reported to the State of Colorado as an outstanding judgement warrant (OJW) on the

defendant's record, so that that it must be resolved or the defendant's license to drive may be canceled or denied, the Court may issue the OJW, upon request by the City.

- C. Incarceration for failure to pay is prohibited absent the Court following the procedural protections set forth under C.R.S. § 18-1.3-702, as amended.

**SECTION 2: EFFECTIVE DATE.**

The provisions of this Ordinance shall become effective pursuant to City of Ouray Home Rule Charter, 3.5 which is thirty days after publishing following the second reading.

**SECTION 3: SEVERABILITY**

Each section of this Ordinance is an independent section and a holding of any section or part thereof to be unconstitutional, void, or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other section or part thereof.

**SECTION 4: SAFETY CLAUSE**

The City Council hereby finds, determines, and declares that this Ordinance is promulgated pursuant to the City's home rule authority and under the general police power of the City of Ouray and that it is promulgated for the protection of the health, safety, and welfare of the citizens of the City of Ouray. The City Council further determines that this Ordinance bears a rational relationship to the legislation proposed hereof.

**SECTION 5: PRIOR PENALTY**

The amendment of various provisions of the Ouray Municipal Code by this ordinance shall not affect any offense or act committed, any penalty incurred, any contract, right or duty established or accruing before the effective date of this ordinance.

**INTRODUCED, READ, APPROVED AS INTRODUCED, AND A TITLE AND SUMMARY ORDERED PUBLISHED** on first reading by \_\_\_\_\_ vote of the Ouray City Council, this 1st day of March 2021.

CITY OF OURAY, COLORADO

\_\_\_\_\_  
Greg Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

**INTRODUCED, READ, ADOPTED AND TITLE AND SUMMARY ORDERED PUBLISHED** on second reading by \_\_\_\_ vote of the Ouray City Council, this \_\_ day of March 2021.

CITY OF OURAY, COLORADO

---

Greg Nelson, Mayor

ATTEST:

---

Melissa M. Drake, City Clerk

**CITY OF OURAY  
RESOLUTION NO. 4, (SERIES 2021)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO APPROVING A PLAT FOR A 3.09 ACRE LOT THAT WAS PREVIOUSLY UN-PLATTED AND APPROVE A CONDOMINIUM DEVELOPMENT FOR SUCH LOT SUBJECT TO OBTAINING A SITE DEVELOPMENT PERMIT THAT COMPLIES WITH ALL APPLICABLE LAWS.**

**WHEREAS**, Mr. Mark Iuppenlatz (“**Applicant**”) on behalf of San Juan Mountainside, LLC (“**Owner**”) submitted a land use application, to plat one lot for the development of three, ten-unit multifamily condominium buildings, as further drawn and defined in the attached “Exhibit A” (“**Application**”);

**WHEREAS**, the Applicant submitted a minor subdivision application requesting to plat the remaining portion of the un-platted area, also known as the “retained ownership” piece of the Wanakah Estates Subdivision, Filing No. 4, recorded in Ouray County, Reception No. 202804, on March 3, 2010, as further described and defined in the attached “Exhibit B” (“**Property**”);

**WHEREAS**, the Property is located within the R-2 Residential – High Density Zone District and the Application complies with the zone district requirements established in section 7-5 of the *Ouray Municipal Code*;

**WHEREAS**, the staff finds that the Application is in compliance with sections 7-7-E and 7-7-F of the *Ouray Municipal Code* and further meets the requirements of a Minor Subdivision;

**WHEREAS**, staff finds that the proposed high-density use of condominiums are an allowed use in the R-2 zone, and the lot is in compliance with section 7-10 Condominiumization of the *Ouray Municipal Code*, which outlines the requirements for a subdivision to establish condominium rights within the City of Ouray;

**WHEREAS**, the approval for the use of the lot for condominiums does not waive the strict compliance with section 7-4 Site Development Permits and Regulations of the *Ouray Municipal Code*;

**WHEREAS**, this public hearing was properly noticed within the *Ouray Plaindealer* on February 25, 2021 and posted within City Hall;

**WHEREAS**, the Planning Commission of the City of Ouray held a public hearing on February 9, 2021 and voted to recommend denial of the application; and

**WHEREAS**, City Council has reviewed said application request, studied the compatibility of this request with adjacent land uses and considered this request in

accordance with the criteria established in *Ouray Municipal Code*, considered all public comment and direct and rebuttal testimony provided.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO** as follows:

1. The un-platted lot shown as “retained ownership” on Exhibit B is hereby accepted as a platted and the legal description contained in the Application is hereby adopted.
2. A final plat consisting of one page conforming to Ouray Municipal Code, section 7-7-D-3, shall be submitted for approval by City staff within 30 days. If City staff is unable to approve it for any reason, the proposed plat will be referred to City Council for approval at the next regularly scheduled meeting.
3. The use of the approved lot for condominiums is approved subject to strict compliance with Ouray Municipal Code, section 7-4 Site Development Permit and Regulations.
4. The approval of the use of the lot for condominiums is limited to dedicating this lot for use as condominiums under Ouray Municipal Code 7-7-D-3-f, and any reference to condominium development project specific such as building footprints shall not be included on the Final Plat.
5. The proposed declaration of covenants, conditions, and restrictions will not be recorded until the site development permit is obtained and are subject to revisions, as necessary.
6. *Any other conditions approved by City Council.*

ADOPTED this 15th day of January 2021, by the Ouray City Council.

CITY OF OURAY, COLORADO

\_\_\_\_\_  
Greg Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

Community Development  
P.O. Box 468  
320 Sixth Avenue  
Ouray, Colorado 81427  
970-325-7211 main  
970-325-7212 fax  
www.cityofouray.com



FOR STAFF USE ONLY

Permit Number: \_\_\_\_\_

Receipt Number: \_\_\_\_\_

DATE OF APPLICATION: 1/12/2021

EXHIBIT A

Check appropriate request

### MASTER LAND USE APPLICATION

- Site Development Permit \$200
- Conditional Use Permit \$200
- Variance Request \$500
- Rezone \$200
- Sketch Plan \$200
- Preliminary Plat \$400
- Final Plat \$300
- Lot Split \$300
- Minor Subdivision \$250
- Replat or Plat Amendment \$300
- Mobile Home or RV Park \$300
- Other \_\_\_\_\_

No Fee Applications/Requests:

Appeal of Administrative Determination

Interpretation of a Use not Itemized

PRINT ALL INFORMATION FOR LEGIBILITY

Project Name: OURAY Workforce Housing

Ouray County Property Account(s): \_\_\_\_\_

Ouray County Parcel Number(s): \_\_\_\_\_

Site Address: (TBD) or #: TBD HINKSON TERRACE

Property Owner(s): San Juan Mountainside LLC

Address: PO Box 1106

City/State/Zip: Ouray, CO 81427

Phone Number: 970 ~~924~~ 596-423 E-Mail Address: MSBAZIN@Hotmail.COM

Applicant (if different than property owner): OURAY Housing Group, LLC

Address: PO Box 1214

City/State/Zip: OURAY CO 81427

Phone: 970-946-12089 E-Mail Address: MARKIUPPENLATS@GMAIL.COM

Authorized Agent (for property owner/applicant): MARK IUPPENLATS

Address: PO Box 1214

City/State/Zip: OURAY CO 81427

Phone Number: 970-946-2089 E-Mail Address: MARKIUPPENLATS@GMAIL.COM

Proposed Use: Multi-Family Condo/Apartments

Existing Use: undeveloped

Site Area: 3.09 AC

Existing Buildings to Remain or be Removed: Yes  No (circle one) N/A NO BUILDINGS EXIST

Existing Building Coverage (Total Floor Area): N/A Proposed Building Coverage (Total Floor Area): \_\_\_\_\_

Number of Existing Lots: ? Proposed Number of Lots: 1

Is the property subject to flooding, landslides, debris flows or other natural or geologic hazards? Circle one  Yes  No

Briefly describe: Rock fall - An ENGINEERED Geohazard Protection Beam will be installed as part of the project.

**SUBMITTAL REQUIREMENTS** (See Chapter 7 for specifics to any request):

**Interpretations for Uses Not Itemized:** A completed application form, cover letter explaining or describing the use or activities proposed for the site with sufficient detail to understand the activity or use adequately. Supplemental information or pictures may be attached. Research from other sources can be provided to help explain what is the use not itemized.

**Variations:** A completed application form, filing fee, a cover letter and supporting documentation to explain the issue at the site that needs a waiver or modification of the regulations and explanation of how the situation might be remedied with the least variance or exception possible to achieve a positive outcome. If work was done contrary to the Building or Land Use Regulations an explanation for this situation will need to be provided. All information to be provided on a compact disk or thumb drive.

**Appeals:** A completed application form, a cover letter and any supporting documentation to explain the appeal from an administration action or determination.

**Site Development Permits and Subdivision Requests:** A completed application form, filing fee, detailed graphics as indicated by the Code provisions (three paper copies or sets), and three paper copies of all supplemental reports and information. Current proof of ownership or notarized consent by the property owner for a different individual or firm to be the applicant of the legal owner (one copy). All information to be provided on a compact disk or thumb drive.

**PLEASE NOTE:** Any incomplete application will not be accepted and will be returned to the applicant for completion and return to the Community Development Office.

**Acknowledgements:**

- a. Per Section 7-3 Administration B. Fees. The applicant is responsible for all costs incurred by the City which may include legal fees, postage, notice and publication costs, other professional services or charges by outside agencies for the review and processing of the applicant's request. The Applicant will be invoiced of such charges for payment within 30 days of mailing. Invoices not paid prior to the final decision meeting or action as requested, may cause the matter to be delayed to a subsequent date/time or the application could be denied. Please review the full statement in the Code regarding payment of fees.
- b. By affixing their signature(s) hereto, I certify under penalty of perjury that the information furnished herein is true and correct to the best of my knowledge and that I am the owner of the premises where the work is to be performed or I am acting as the owner's authorized agent. I further agree to hold harmless the City of Ouray as to any claim (including costs, expenses and attorney fees incurred in the investigation of such claim) which may be made by any person, including the undersigned, and filed against the City of Ouray, but only where such claim arises out of the reliance of the City, including its officers and employees, upon the accuracy of the information provided to the City as a part of this application.

Applicant's Name (Printed): Ouray Housing Group, LLC

Applicant's Signature: [Signature] Date: 1/8/2021

Owner's Name (Printed): SAN JUAN MOUNTAINSIDE, LLC

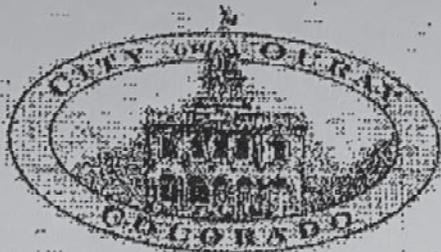
Owner's Signature: SEE ATTACHED Date: \_\_\_\_\_

Authorized Agent's Name (Printed): Mark Juppenhats

Authorized Agent's Signature: [Signature] Date: 1/8/2021

Please be sure to provide current proof of ownership and written authorization (notarized) for representation as needed. Corporations or similar entities need to provide written documentation on who is authorized to represent and act on behalf of the organization.

320 6th Avenue  
PO Box 468  
Ouray, Colorado 81427



870.325.7211  
Fax: 870.325.7212  
www.cityofouray.com

## City of Ouray Authorization of Agent Form

This form is required if someone other than the owner of a property will be acting as the Authorized Agent for a building project.

LOT 14 - 20 DOWNSIDE

**Property Information:**

Project Address: LOT 14 thru 20 WAWAKAK ESTATES SUB DIVISION

Parcel Number(s): \_\_\_\_\_

**Contact Information:**

Owner's Name(s): SAN JUAN Mountain Side (MIKE BAZIN)

Mailing Address: PO Box 1106 Ouray CO 81427

Phone: 970-596-4123 Email Address: msbazin@hotmail.com

Authorized Agent's Name: MARK TUPPENLATZ

Mailing Address: PO Box 1817 Ouray Co 81427

Phone: 970-966-2889 Email Address: mark.tuppenlatz@gmail.com

I/we the undersigned owner/s of the above described real property located in the City of Ouray, Colorado hereby authorize:

MARK TUPPENLATZ

(Print name of authorized agent)

To act in my/our behalf in applying for permits from the City of Ouray as required by existing City of Ouray regulations pertaining to zoning, building, encroachments, excavation, and utilities.

Signature: \_\_\_\_\_

(Property owner of record)

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

12/1/20

Signature: \_\_\_\_\_

(Property owner of record)

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

Signature: \_\_\_\_\_

(Property owner of record)

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



**City of Ouray Committee Applications for 2021 Appointment Consideration**

<b>Beatification Committee: 7 Members (3 Year Staggered Terms)</b>		
<b>Need: 3 Appointments</b>		
<b>Name:</b>	<b>Date App Received:</b>	<b>Application Status:</b>
Gray, Sarah	3/9/2021	New Applicant

<b>Park and Recreation Committee (PARC): 7 Members (Appointed Annually)</b>		
<b>Need: 7 Appointments</b>		
<b>Name:</b>	<b>Date App Received:</b>	<b>Application Status:</b>
Adams, Brock	3/10/2021	Term Expiration/Current Member
Kelly, Kim	3/7/2021	Term Expiration/Current Member
Nelson, Diane	2/22/2021	Term Expiration/Current Member
Cline, Karla	2/26/2021	New Applicant
Cumella, Steve	2/16/2021	New Applicant
Johnson, Trisha	3/2/2021	New Applicant

<b>Planning Commission: 5 Members (2 Year Staggered Terms)</b>		
<b>Need: 3 Appointments</b>		
<b>Name:</b>	<b>Date App Received:</b>	<b>Application Status:</b>
Gulde, Tamara	3/3/2021	Term Expiration/Current Member
Skoloda, Jeff	2/3/2021	Term Expiration/Current Member
Smith, Josh	2/23/2021	Term Expiration/Current Member
Fedel, Mike	3/5/2021	New Applicant
Hakola, Mike	2/25/2021	New Applicant
Iuppenlatz, Mark	3/4/2021	New Applicant
Mayfield, Todd	2/8/2021	New Applicant - Planning or CEDC

**Community Economic Development Committee (CEDC):**

**Need: 0 Appointments Necessary/Can Appoint 4 Additional Members**

<b>Name:</b>	<b>Date App Received:</b>	<b>Application Status:</b>
Mayfield, Todd	2/8/2021	New Applicant - Planning or CEDC

3.12.2021sc

**CITY OF OURAY**  
**Professional Service Agreement**

THIS AGREEMENT is effective this March 1, 2021 between the City of Ouray, a Colorado home rule corporation (the City) and Markus Van Meter, Inc., a Colorado for profit company with a principal office address of 525 2nd Ave, Ouray CO 81427 (the Contractor).

WHEREAS, Contractor has delivered digital messaging services set to the City since on or about May 2020 and the services provided have been exemplary.

WHEREAS, the City desires to enter a contact with Contractor to provide digital messaging and other services as more fully set forth in the attached Exhibit A fir a period of two years.

NOW THEREFORE, in consideration of the mutual representations, promises and conditions contained herein, the parties agree as follows.

1. SCOPE OF CONTRACTOR SERVICES. The Contractor agrees to provide services in accordance with the Scope of Contractor Services attached and incorporated as Exhibit A.
2. TERM OF AGREEMENT. The term of this agreement shall begin on the effective date above and continue until March 1, 2023 unless terminated earlier by either party upon three (3) day notice with or without cause.
3. FEES FOR SERVICES. In consideration of the services to be performed pursuant to this agreement the City will pay the Contractor a sum of Seven Thousand Three Hundred and Fifty dollars (\$7,350.00) dollars per month.
4. PAYMENT FOR SERVICES. The Contractor shall submit a detailed invoice to the City describing the professional services rendered by the 8<sup>th</sup> of each month. The invoice shall document the hours spent on the project identifying by Work performed for the period and the approximate hours worked by Contractor on the Work. The City shall have access to backup payroll documentation identifying individual employee, date, and hours worked. The City shall pay the invoice by the 30<sup>th</sup> of each month so long as the invoice is received by the City on the 8<sup>th</sup> of each month unless the work or the documentation therefore is unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation.
5. CITY REPRESENTATIVE. The City designates the City Administrator as its representative and authorizes him or her to make all necessary and proper decisions with reference to this agreement. All requests for contract interpretations, changes, or instructions shall be directed to the City representative. City representative shall have complete control over all content produced by Contractor. Contractor agrees to work closely with the City

Representative or anyone appointed by the City Representative to ensure that all digital messaging by Contractor is approved by the City.

6. SUBCONTRACTORS. Contractor may not subcontract any of the Work set forth in the Exhibit A, Statement of Work without the prior written consent of the city, which shall not be unreasonably withheld. If any of the Work is subcontracted hereunder (with the consent of the City), then the following provisions shall apply: (a) the subcontractor must be a reputable, qualified firm with an established record of successful performance in its respective trade performing identical or substantially similar work, (b) the subcontractor will be required to comply with all applicable terms of this Agreement, (c) the subcontract will not create any contractual relationship between any such subcontractor and the City, nor will it obligate the City to pay or see to the payment of any subcontractor, and (d) the work of the subcontractor will be subject to inspection by the City to the same extent as the work of the Contractor.
7. CONFIDENTIALITY. Contractor agrees that any information that has or will come into its possession or knowledge in connection with the performance of services for the City may be confidential and/or proprietary. The Contractor agrees to treat as confidential (a) all information that is owned by the City, or that relates to the business of the City, or that is used by the City in carrying on business, and (b) all information that is proprietary to a third party (including but not limited to customers and suppliers of the City). The Contractor shall not disclose any such information to any person not having a legitimate need-to-know for purposes authorized by the City. Further, the Contractor shall not use such information to obtain any economic or other benefit for itself, or any third party, except as specifically authorized by the City.
8. DIGITAL CONTENT. Any digital messaging to be posted by Contractor must conform, in the sole and exclusive opinion of the City, as follows. It must: (i) conform to all applicable laws, (ii) be appropriate in the context of the general purposes of the Work; (iii) not be obscene, pornographic, patently offensive, hateful, abusive or promote racism or discrimination of any kind; (iii) not provide personal information, or solicit such information from any other user of the digital platform; (iv) not involve or result in the transmission of junk E-mail, unsolicited mass e-mailings, “spamming,” “spimming” or “phishing;” (v) not transmit or distribute any potentially harmful programs such as Trojan horses, worms, viruses, spyware or any malicious software or code; (vi) not contain any material or images owned by any other person or entity unless you have obtained all necessary rights, licenses and permissions needed to post the material and have it used as contemplated by Work; and (vii) be only for City purposes.
9. MARKETING MATERIALS OWNERSHIP. Any digital marketing materials and content of any kind developed by the Contractor, posts, photos, content, articles, and any other writings made in connection with this Agreement are owned by the City; along with any commercial use of the City brand, alternative titles, logo, or any visible sign or devise used by the City

to identify its goods and distinguish itself, is owned sole by the City and Contractor only has permission to use the same under this Agreement.

10. PROPRIETARY RIGHTS. The City owns all the intellectual property used by Contractor to deliver the Work, including software, text, graphics, and logos. The look, feel, and compilation of materials and content are owned by the City. Contractor shall not modify, copy, distribute or reverse engineer any City content. Any software that is licensed by Contractor without using City money to purchase the license shall be the property of the Contractor.
11. INDEPENDENT CONTRACTOR. The services to be performed by the Contractor are those of an independent contractor and not as an employee of the City. Nothing in this agreement shall constitute or be construed as a creation of a partnership or joint venture between the City and the Contractor, or their successors or assigns. No agent or employee of the Contractor shall be or shall be deemed to be the employee or agent of the City. The City is interested only in the results obtained under this agreement; the manner and means of conducting the work are under the sole control of the Contractor. None of the benefits provided by the City to its employees, including, but not limited to, worker compensation insurance and unemployment compensation insurance, are available from the City to the employees of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, and subcontractors during the performance of this agreement. The Contractor will pay all federal and state income tax on any moneys paid pursuant to this agreement.
12. INSURANCE. The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance as called for in this agreement. Insurance shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained during the term of this agreement. Each shall be primary insurance and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall provide the City with certificates of insurance, or other acceptable evidence, showing the required coverages. The City reserves the right to request and receive a certified copy of any policy.
  - a. The Contractor shall procure and maintain the minimum insurance coverages listed below.
    - i. Workers' compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of the Contractor engaged in the performance of work under this agreement.
    - ii. Professional liability errors and omissions or general liability coverage, as appropriate, with minimum limit of One Million Dollars (\$1,000,000.00).

- b. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.
  - c. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this contract, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Contractor upon demand, or the City may offset the cost of the premiums against any monies due to the Contractor.
  - d. The Contractor shall be responsible for any deductible under any policy required above.
13. GOVERNMENTAL IMMUNITY. The Contractor understands and acknowledges that the City relies on and does not waive or intend to waive by any portion of this agreement any provision of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
14. INDEMNIFICATION. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against liability for damage, including attorney fees and costs, arising out of death or bodily injury to persons or damage to property, caused by the negligence or fault of the Contractor or any third party under the control or supervision of the Contractor, but not for any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers.
15. EMPLOYMENT OF ILLEGAL ALIENS. Pursuant to COLO. REV. STAT. § 8-17.5-101, *et seq.*, the Contractor certifies the following:
- a. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
  - b. Contractor shall not enter a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
  - c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either (a) the E-Verify Program, (the electronic employment

verification program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration, or its successor program) or (b) the Department Program (the employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c).

- d. The Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
  - e. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (a) notify the Subcontractor and the City within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
  - f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment in an investigation that the Department undertakes pursuant to C.R.S. § 8-17.5-102(5).
  - g. If the Contractor violates these illegal alien provisions, the City may terminate this Contract for a breach of contract. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. The City will notify the Office of the Secretary of State if the Contractor violates these provisions and the City terminates this Contract for that reason.
  - h. The Contractor shall notify the City of participation in the Department Program and shall within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Contract affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 USC § 1324a, and not altered or falsified the identification documents for such employee. Contractor shall provide a written, notarized copy of the affirmation to the City.
16. ASSIGNMENT. The Contractor shall neither assign any responsibilities nor delegate any duties arising under this agreement without the prior written consent of the City.
17. PAYMENTS BY CITY. Any payments of money by the City pursuant to this agreement shall be subject to the annual appropriations of money.

18. LEGAL COMPLIANCE. The Contractor shall comply with all laws, ordinances, rules, and regulations relating to the performance of this agreement, use of public places and safety of persons and property.
19. FURTHER ASSURANCES. Each party agrees to take such actions and sign such documents, certificates and instruments reasonably requested by the other party to complete the transactions contemplated by this agreement and to enable the requesting party to enjoy the full benefits conferred upon such party by this agreement.
20. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this agreement. Each person signing the contract warrants that they have authority to bind the City or Contractor.
21. BINDING EFFECT. This agreement shall inure to the benefit of and be binding on the parties, their heirs, executors, administrators, assignees, and successors.
22. SEVERABILITY. If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain a particular part, term or provision held to be invalid.
23. GOVERNING LAW. This agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes arising out of this agreement and venue shall be in Ouray County, Colorado.
24. WAIVER. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.
25. COUNTERPARTS. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
26. FACSIMILE SIGNATURES. For the convenience of the parties, signatures to this agreement may be provided through facsimile transmission. The signature of a party to this agreement supplied by facsimile transmission shall be as binding as an original.

27. PRONOUNS. Wherever in this agreement, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this agreement, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply.

IN WITNESS WHEREOF, the City and the Contractor have signed this agreement effective the day and year first written above.

CITY OF OURAY:

\_\_\_\_\_  
Greg Nelson, Mayor

Attest:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

CONTRACTOR:

\_\_\_\_\_  
Markus Van Meter, President

## **Exhibit A-Services for Destination Tourism Marketing**

Total Price: 7,350.00/month (This will be paid by the City according to the work completed through a combination of LOT funds and General Fund. LOT funds will only be utilized for appropriate expenditures)

Content Creation for Social Media Channels-Facebook, Instagram and YouTube (5 posts per week with craft messaging and content aimed at education, promotion, and economic development.

Photography for City use and Tourism- Creating short promotional videos for tourism

Collaboration with regional tourism partners (I.e. Montrose, Ridgway and beyond)

Collaboration with Colorado Tourism Office as a Destination Marketing Outlet (DMO)

Collaboration with community entities associated with tourism

Promotion and Marketing out Ouray assets ( Box Canyon, Hot Springs, Via Ferrata, Ice Park, Concerts, 4th of July events)

Management of [VisitOuray.Com](http://VisitOuray.Com)

Development of seasonal marketing campaigns for tourism

Collaboration with Visitor Center Staff and the Main St. Program in either a lead position or supporting depending on function or topic.

Maintain and grow the Visit Ouray Media House by working with local digital artists and media

Host Media and Travel Writers

Host and work with TV and or Movie Production Crews

Consult with City Administration and City Council on Digital Media, Messaging, Tourism and special initiatives.

## **Services for City of Ouray Messaging and Branding-Ways to help the City in consistent brand management and messaging.**

Work with City departments on messaging job function, special announcements, promotions and branding on City Facebook Page

Consolidate all the individual social channels into one main feed for City of Ouray

Work closely with City staff and City Council on Public Relations

Develop and enhance the Mayor's Message (Video council recaps)

Provide blanket photography for the City of Ouray for individual departments, special events, or promotions

Work with the County on collaboration efforts deemed necessary by the City Administrator

Provide blanket videography for the City of Ouray

Maintain and develop consistent graphics in the form of signs, banners, ads for the City of Ouray

Develop a branding package that matches the tourism function

Point of contact for PR matters for the City of Ouray