

CRESTED BUTTE FIRE PROTECTION DISTRICT BOARD
OF DIRECTORS REGULAR MEETING

Station 2

751 Gothic Road, Mt. Crested Butte, CO 81225

Tuesday August 8, 2023 5:15 PM

- 5:15 CALL REGULAR MEETING TO ORDER
1. Introduction of Guests
 - a. Todd Goulding – Goulding Development Advisors
 - b. John Chmil – Lyons Gaddis P.C.
 2. Review / Changes to Agenda
- 5:20 CONSENT AGENDA
1. Approval of minutes July 11, 2023 regular meeting
 2. Approval of monthly financial reports
- 5:25 FIRE PREVENTION REPORT
- 5:35 EMS & FIRE CHIEF REPORT
1. Badging – Luke Danek
 2. Operations and Staffing Report
- 5:45 CHIEF EXECUTIVE REPORT
1. Butte Avenue Bridge Letter
 2. Station 2 Outrun Street & Property Lines
- 5:55 PUBLIC COMMENT
- 6:00 OLD / UNFINISHED BUSINESS
1. Emergency Services Campus Update – Caffrey / Goulding / Chmil
 - a. FCI Contracts Discussion
 - b. Geothermal Feasibility
 2. Larkspur Final Documents
 3. Lazy K Unit Purchase
- 6:15 NEW BUSINESS
1. September Board and Pension Board Meeting Potential Reschedule
- 6:20 UNSCHEDULED BUSINESS AND BOARD MEMBER COMMENTS
- 6:25 EXECUTIVE SESSION
1. Pursuant to Section 24-6-402(4)(a), C.R.S., concerning the purchase, acquisition, lease, transfer, or sale of any real, personal or other property interest for member housing.
- 6:30 ADJOURNMENT

Online Meeting Information

<https://zoom.us/j/9703495333?pwd=ZUINRFBCL253UzlxSGNhQ0laS29TQT09>

One Tap Mobile +16699009128,,9703495333# US (San Jose)

+1 312 626 6799 US (Chicago) - Meeting ID: 970 349 5333

Password: 5333

CRESTED BUTTE FIRE PROTECTION DISTRICT
MINUTES OF REGULAR MEETING
Mt. Crested Butte Fire Station 2
Tuesday, July 11, 2023
Approved _____

Attendance

Board Members Present: Chris McCann, Jack Dietrich, Ken Lodovico, Tina Kempin, Eric Tunkey
Staff, Volunteers and Public: Sean Caffrey, Annie Tunkey, Ric Ems, Joe Wonnacott, Brent Meyer, Randy Felix
Guests: Todd Goulding- Goulding Development Advisors,

Changes to Agenda

Meeting called to order at 5:15 pm by Board Chairman Chris McCann.
There were no changes to the agenda.

Consent Agenda

Approval of minutes July 2023 Regular Meeting
Approval of Monthly Financial Reports
Motion to approve the consent agenda by Dietrich, seconded by Lodovico. Motion passes unanimously.

Fire Prevention Report

Fire Marshal Ems presented his written report.

EMS & Fire Chief Report

CEO Caffrey presented the EMS & Fire Chief report as Chief Weisbaum is on leave; CEO Caffrey does not have much to add beyond the written report. Board Member Kempin asks if there was an incident with the fireworks on July 4th or if that was a typo in the report. Caffrey responds that he is unaware of any problems with the firework show. In staffing, Kempin asks if we anticipate hiring for the EMS Training Lieutenant position or if it will be an internal promotion. Caffrey responds that at this time he does not anticipate hiring.

Chief Executive Report

CEO Caffrey reports that the 2022 Audit was finalized Monday, July 10th. Board member Kempin requested clarification on the District's investment policies. Caffrey reports that the District does not have specific investment policies as we follow the state statutes for investments. Motion to approve the 2022 Audit by Lodovico, seconded by Tunkey. Motion passes unanimously.
In other news, Caffrey reports that geothermal test drilling is currently underway at the HQ building site and that testing will conclude tomorrow. Finally, the ambulance grant deadline has been extended, as there are still delays in the supply chain, which have delayed construction.

Public Comments

There were no public comments

Old Business

CEO Caffrey turned the floor over to Todd Goulding. Todd presented both the schematic design and project budget for the new Station 1 and CBSAR buildings. He advises the board that once approved, design development plans will be finalized and issued in September and key trades will be on-boarded early to lock in pricing. Goulding and FCI are both carrying escalation cost and contingency in the budget. Goulding presented his budget

totaling 3.5 million, which currently carries 8.75% contingency costs, but once costs are “locked in” he will ease this contingency to 7%. CEO Caffrey presented his term investment forecasts and states that he feels comfortable with the \$500,000 gap that is not covered by the bond proceeds and recommends board adoption of the budget and schematic design. Board members commented on both the budget and schematic design with all members in favor of adoption. Motion to approve the budget and schematic design plan presented July 11, 2023 by Dietrich seconded by Lodovico. Motion passes unanimously.

CEO Caffrey believes that the two Larkspur agreements in the packet will not change; however, the legal team was not able to finalize the documents prior to the board meeting. The District’s attorney John Chmil advises the board to approve the Purchase Agreement pending final adjustments made by legal. Motion to approve the Larkspur Purchase Agreement pending final adjustments by legal by Dietrich, seconded by Tunkey. Motion passes unanimously.

Board member Dietrich would like to see the HOA vote to allow for triplex rental occur relatively quickly after purchase. Caffrey agrees and advises that if the vote is not in our favor when can sell the lots or build on the lots and do for sale properties.

New Business

In new business, Caffrey brought the Town of Crested Butte’s transportation plan to the Board’s attention with specific attention to opening the Butte Avenue Bridge to vehicular traffic. The board determined that with the new Station 1 location they are in favor of opening the Butte Avenue bridge to vehicles; specifically emergency vehicles.

Unscheduled Business

Motion to adjourn at 6:25 pm by Dietrich, seconded by Lodovico. Motion passes unanimously.

Crested Butte Fire Protection District

BUDGET VS. ACTUALS: CBFPD 2023 APPROVED - FY23 P&L

January - December 2023

	Actual	Budget	over Budget	Total % of Budget
INCOME				
4000 Property Tax - General Fund	3,182,063.93	3,364,776.00	-182,712.07	94.57 %
4020 Specific Ownership Tax	95,936.94	130,000.00	-34,063.06	73.80 %
4040 Intergovernmental Revenue		25,000.00	-25,000.00	
4100 Ambulance/ EMS Service Fees	201,913.80	300,000.00	-98,086.20	67.30 %
4200 Plan Review Fees	302,336.50	125,000.00	177,336.50	241.87 %
4240 Rental Income	56,726.00	69,500.00	-12,774.00	81.62 %
4300 Impact Fees	17,217.30	25,000.00	-7,782.70	68.87 %
4400 Interest Income	64,598.22	25,000.00	39,598.22	258.39 %
4500 Grant Proceeds		150,000.00	-150,000.00	
4600 Contributions / Donations	1,000.00		1,000.00	
4710 Sale of Assets	6,300.00	2,000.00	4,300.00	315.00 %
4720 Vendor Refunds	13,560.00		13,560.00	
Unapplied Cash Payment Income	-3,104.00		-3,104.00	
Total Income	3,938,548.69	4,216,276.00	-277,727.31	93.41 %
COST OF GOODS SOLD				
Cost of Goods Sold	280.44		280.44	
Total Cost of Goods Sold	280.44	0.00	280.44	0.00%
GROSS PROFIT	3,938,268.25	4,216,276.00	-278,007.75	93.41 %
EXPENSES				
5010 (A) Wages - Administration	95,319.80	176,000.00	-80,680.20	54.16 %
5020 (A) Wages - Fire Prevention	160,676.70	303,208.00	-142,531.30	52.99 %
5030 (A) Part-Time / Temp Salaries		4,800.00	-4,800.00	
5060 (A) Payroll Processing Fees	3,956.20	6,000.00	-2,043.80	65.94 %
5130 (A) Medicare Tax	3,158.80	7,018.00	-3,859.20	45.01 %
5140 (A) Social Security Tax	3,092.94	6,112.00	-3,019.06	50.60 %
5150 (A) FPPA Pension - ER	20,383.89	41,338.00	-20,954.11	49.31 %

	Actual	Budget	over Budget	Total % of Budget
5160 (A) FAMILI Premium - ER	1,026.01	2,178.00	-1,151.99	47.11 %
5200 (A) Health Benefits	52,272.69	95,193.00	-42,920.31	54.91 %
5210 (A) EAP Program Fees	587.00	3,500.00	-2,913.00	16.77 %
5260 (A) Workers Compensation Insurance	40,664.00	45,000.00	-4,336.00	90.36 %
5270 (A) Ski Pass Benefit		6,000.00	-6,000.00	
5290 (A) Health Reimbursement	66,254.01	92,700.00	-26,445.99	71.47 %
5300 (A) Advertising	1,926.06	5,000.00	-3,073.94	38.52 %
5320 (A) Accounting and Audit Fees	6,380.45	8,000.00	-1,619.55	79.76 %
5330 (E) Ambulance Billing Fees	7,560.34	18,000.00	-10,439.66	42.00 %
5340 (A) Bank Charges	684.69	2,500.00	-1,815.31	27.39 %
5341 QB Credit Card/ACH Fees	2,277.41		2,277.41	
Total 5340 (A) Bank Charges	2,962.10	2,500.00	462.10	118.48 %
5360 (A) Board Expenses	505.09	11,000.00	-10,494.91	4.59 %
5365 (A) Board Stipends	3,900.00	7,000.00	-3,100.00	55.71 %
5370 (A) Debt Service - Lease Purchase	7,125.53	13,979.00	-6,853.47	50.97 %
5380 (A) Down Payment Assistance		1,500.00	-1,500.00	
5400 (A) Dues & Subscriptions	6,001.90	8,000.00	-1,998.10	75.02 %
5420 (A) Education & Training	3,842.08	18,000.00	-14,157.92	21.34 %
5440 (A) Elections	19,153.26	25,000.00	-5,846.74	76.61 %
5460 (A) Fire Prevention & Life Safety	4,835.98	15,000.00	-10,164.02	32.24 %
5500 (A) Insurance - General	34,717.00	35,000.00	-283.00	99.19 %
5520 (A) IT Services & Subscriptions	27,153.04	40,000.00	-12,846.96	67.88 %
5540 (A) Legal & Professional	13,344.68	45,000.00	-31,655.32	29.65 %
5550 (A) Meals & Incentives	6,697.65	23,500.00	-16,802.35	28.50 %
5600 (A) Office Supplies & Equipment	6,344.71	18,000.00	-11,655.29	35.25 %
5620 (A) Postage & Shipping	721.07	3,000.00	-2,278.93	24.04 %
5640 (A) Rent	15,377.28	39,000.00	-23,622.72	39.43 %
5640.1 410 Cascadilla Unit A	19,200.00		19,200.00	
Total 5640 (A) Rent	34,577.28	39,000.00	-4,422.72	88.66 %
5660 (A) Repairs - Buildings	14,108.56	40,000.00	-25,891.44	35.27 %
5670 (A) - Repairs - Rental Units	2,148.78	5,000.00	-2,851.22	42.98 %
5700 (A) Snow Removal	12,432.51	10,000.00	2,432.51	124.33 %

	Actual	Budget	over Budget	Total % of Budget
5720 (A) Telecom - Fixed	9,077.22	9,000.00	77.22	100.86 %
5760 (A) Travel	11,011.07	20,000.00	-8,988.93	55.06 %
5780 (A) Treasurer's Fee - GF	95,513.92	102,001.00	-6,487.08	93.64 %
5810 (A) Utilities - Rental Units	3,223.62	3,000.00	223.62	107.45 %
5820 (A) Utilities	27,756.65	45,000.00	-17,243.35	61.68 %
5850 (A) Volunteer Pension Contribution	75,000.00	75,000.00	0.00	100.00 %
5900 (A) Miscellaneous-1		2,000.00	-2,000.00	
6010 (O) Wages - Ops FT	794,025.77	1,487,218.00	-693,192.23	53.39 %
6020 (O) Wages - Ops PT	83,011.96	165,000.00	-81,988.04	50.31 %
6060 (O) Unscheduled Overtime	35,476.36	79,011.00	-43,534.64	44.90 %
6070 (O) Training Pay	100.00	7,500.00	-7,400.00	1.33 %
6080 (O) Special Event Pay		1,500.00	-1,500.00	
6090 (O) Volunteer Stipends	13,950.00	50,000.00	-36,050.00	27.90 %
6130 (O) Medicare Tax	12,137.12	25,828.00	-13,690.88	46.99 %
6140 (O) Social Security Tax	6,333.70	13,330.00	-6,996.30	47.51 %
6150 (O) FPPA Pension - ER	90,420.54	178,411.00	-87,990.46	50.68 %
6160 (O) FAML I Premium - ER	3,680.87	8,016.00	-4,335.13	45.92 %
6200 (O) Health Benefits	146,155.92	290,707.00	-144,551.08	50.28 %
6270 (O) Ski Pass Benefit		45,000.00	-45,000.00	
6360 (O) Dispatch Fees	49,219.11	51,000.00	-1,780.89	96.51 %
6420 (O) Education & Training	32,762.29	50,000.00	-17,237.71	65.52 %
6440 (E) EMS Supplies	18,839.13	35,000.00	-16,160.87	53.83 %
6450 (F) Firefighting Supplies	10,913.67	15,000.00	-4,086.33	72.76 %
6460 (O) Fuel	22,133.92	45,000.00	-22,866.08	49.19 %
6480 (O) Hazardous Waste Disposal		1,600.00	-1,600.00	
6550 (O) Meals - Training	8,893.13	16,800.00	-7,906.87	52.94 %
6580 (E) Medical Direction	5,532.20	10,000.00	-4,467.80	55.32 %
6600 (O) Protective Equipment	14,741.56	30,000.00	-15,258.44	49.14 %
6620 (O) Radio & Computer Equipment	4,963.94	20,000.00	-15,036.06	24.82 %
6640 (O) Repairs - Equipment	2,522.24	6,000.00	-3,477.76	42.04 %
6660 (O) Repairs - Vehicles	10,507.11	40,000.00	-29,492.89	26.27 %
6670 (O) Responder Incentives	2,730.28	10,000.00	-7,269.72	27.30 %
6675 (O) Station Supplies	5,637.28	7,500.00	-1,862.72	75.16 %

	Actual	Budget	over Budget	Total % of Budget
6680 (E) Service Contracts	19,776.22	12,700.00	7,076.22	155.72 %
6720 (O) Telecom - Mobile	7,019.26	14,000.00	-6,980.74	50.14 %
6730 (O) Tools & Hardware	698.25	2,000.00	-1,301.75	34.91 %
6750 (O) Training Equipment & Supplies	7,436.12	8,000.00	-563.88	92.95 %
6760 (O) Travel	13,845.82	20,000.00	-6,154.18	69.23 %
6800 (O) Uniforms	28,031.14	22,500.00	5,531.14	124.58 %
6820 (O) Wellness & Physicals	3,947.80	10,000.00	-6,052.20	39.48 %
6900 (O) Miscellaneous		2,000.00	-2,000.00	
Total Expenses	2,340,855.30	4,217,148.00	-1,876,292.70	55.51 %
NET OPERATING INCOME	1,597,412.95	-872.00	1,598,284.95	-183,189.56 %
OTHER EXPENSES				
8010 Capital Expenditures		472,500.00	-472,500.00	
Total Other Expenses	0.00	472,500.00	-472,500.00	0.00%
NET OTHER INCOME	0.00	-472,500.00	472,500.00	0.00 %
NET INCOME	\$1,597,412.95	\$ -473,372.00	\$2,070,784.95	-337.45 %

Crested Butte Fire Protection District

Balance Sheet As of July 31, 2023

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
1000 Operating Checking	83,840.26
1010 BOTW Money Market	492,980.17
1100 COLORTRUST - General Fund	3,418,020.81
1120 COLORTRUST - Debt Proceeds	0.00
1130 CSIP Operating	504,910.51
1200 Triplex Lease Purchase	0.00
Total Bank Accounts	\$4,499,751.75
Accounts Receivable	
1210 Accounts Receivable- Rent/Fees	26,446.58
1211 Mill Levy Property Tax Receivable	182,712.07
1250 Property Tax Receivable	0.00
2220 Prepaid Rent Revenue	0.00
Total Accounts Receivable	\$209,158.65
Other Current Assets	
1000.2 Payroll Posting	0.00
1000.3 Clearing Account	0.00
1150 Due from CBFPD Bond Fund	0.00
1255 Accounts Receivable - AUDIT	0.00
1260 Undeposited Funds	0.00
1300 Prepayments	57,321.41
Total Other Current Assets	\$57,321.41
Total Current Assets	\$4,766,231.81
Fixed Assets	
1500.1 306 Maroon Ave	
Depreciation	0.00
Original cost	0.00
Total 1500.1 306 Maroon Ave	0.00
1500.2 751 Gothic Road	
Depreciation	0.00
Original cost	0.00
Total 1500.2 751 Gothic Road	0.00

	TOTAL
1500.3 331 Teocalli Road	0.00
Depreciation	0.00
Original cost	0.00
Total 1500.3 331 Teocalli Road	0.00
1500.4 104 Avion Dr	
Depreciation	0.00
Original cost	0.00
Total 1500.4 104 Avion Dr	0.00
1500.5 819,821 & 823 Teocalli Ave.	0.00
1500.6 10 9th Street	0.00
1500.8 New Station 1 Campus	0.00
1510 Vehicles	
1510.3 2020 North Star Med 46	0.00
Original cost	0.00
Total 1510.3 2020 North Star Med 46	0.00
1510.4 2020 Kenworth Tender	0.00
Original cost	0.00
Total 1510.4 2020 Kenworth Tender	0.00
1510.5 2020 Chevrolet Blazer	0.00
Original cost	0.00
Total 1510.5 2020 Chevrolet Blazer	0.00
1510.6 2020 Light Rescue	0.00
Original cost	0.00
Total 1510.6 2020 Light Rescue	0.00
1510.7 2021 Chevrolet Suburban	0.00
Original cost	0.00
Total 1510.7 2021 Chevrolet Suburban	0.00
1510.8 2022 Type 6- Brush 1	0.00
Total 1510 Vehicles	0.00
1510.1 2019 Chevrolet Colorado D-1	0.00
1510.2 2019 Chevrolet Colorado D-2	0.00
1520 Capital Equipment	138,809.27
1520.2 Machinery & Equipment	0.00
Total 1520 Capital Equipment	138,809.27
1520.1 Machinery & Equipment	0.00
1540 Computer & Office Equipment	425.88
Total Fixed Assets	\$139,235.15
Other Assets	
1600 Bond Fund Reimbursables	0.00
Total Other Assets	\$0.00
TOTAL ASSETS	\$4,905,466.96

	TOTAL
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2000 Accounts Payable	0.00
Total Accounts Payable	\$0.00
Credit Cards	
1050.1 CBFPD Mastercard	14,688.06
Total Credit Cards	\$14,688.06
Other Current Liabilities	
2005 Accounts Payable- Audit	0.00
2140 Payroll Wages Payable	0.00
2150 Payroll Taxes Payable	0.00
2151 Federal Withholding Liability	0.00
2155 FICA / Medicare Payable	0.00
2160 State Withholding Liability	0.00
2170 FPPA Pension Payable	1,095.54
2180 Garnishment Payable	0.00
2225 Prepaid Rent	3,104.00
2300 Cash Due Vol Pension Fund	0.00
Total Other Current Liabilities	\$4,199.54
Total Current Liabilities	\$18,887.60
Long-Term Liabilities	
2210 Deferred Property Tax	182,712.07
2500 Rental Unit Security Deposits	2,600.00
2500.1 Triplex Lease - Purchase	-23,687.45
Total Long-Term Liabilities	\$161,624.62
Total Liabilities	\$180,512.22
Equity	
3000 Opening Balance Equity	0.00
3050 TABOR Reserve	124,000.00
3100 Operating Reserve	1,421,189.00
3150 Restricted for Spann Note Payable	0.00
3200 Major Incident Reserve	100,000.00
3250 Down Payment Assistance Fund	80,000.00
3300 Impact Fee (Capital) Reserve	389,815.38
3310 Mt. CB Impact Fee Reserve	0.00
3320 CB Impact Fee Reserve	0.00
3330 County Impact Fee Reserve	0.00
3350 Committed Subs Years Budget	521,021.00
3400 Unrestricted Reserve	445,774.19
Net Income	1,643,155.17
Total Equity	\$4,724,954.74
TOTAL LIABILITIES AND EQUITY	\$4,905,466.96

Crested Butte Fire Protection District

Expenses by Vendor Summary

July 2023

	TOTAL
ADP	478.40
ADP Screening & Selection Services	26.24
AirBnB	1,485.85
Alerus	748.06
Alpine Lumber Co.	167.68
Amazon	711.15
Amazon Web Services	7.05
Ambulance Medical Billing	1,550.36
Apple	0.99
AT&T	598.98
ATMOS Energy	295.67
Austin Hardware Supply	487.60
Autumn Accounting	945.00
AV-TECH Electronics	347.60
Bank of the West	50.25
Blackjack Garage Door	939.00
Bound Tree Medical	2,103.08
CEBT	27,489.93
CenturyLink	208.42
Chris McCann	100.00
City Market	130.28
Clark's Market	444.29
CoDFPC - Colorado Division of Fire Prevention and Control	30.00
Colorado ALS	141.00
Concur Solutions (christopherson Business Travel)	4.00
Courtyard By Marriott	958.33
Creative Catering	329.18
Crested Butte South Metro District	314.63
Denver International Airport	60.00
East River Sanitation District	84.19
Element By Westin	1,395.15
Elk Avenue Prime	390.79
Embroidered Sportswear Company	140.00
Emergency Medical Services Association of Colorado	285.00
Employers Council	1,600.00
ESO	2,585.00
Exxon Mobil	4,493.61
Fastenal	6.15
Gunnison County Electric Association	548.11
Gunnison Valley Health	2,003.00
Gunsmoke Travel Plaza	70.97
Guru Importer	10.00
Halvorson Alpine Condos	340.00
Henry Schein	1,173.00
Immediate Action Medicine	7,950.00

	TOTAL
Jack Dietrich	100.00
Jayson Simons Jones	2,400.00
Ken Lodovico	100.00
Kristina F Kempin	100.00
L.N. Curtis & Sons	346.83
Life Assist	672.23
Lyft	12.76
Lyons Gaddis	1,033.50
Mayberry & Company LLC	1,300.00
Montrose Water Factory	178.50
Monty's Auto Parts	122.67
Mt. Crested Butte Water& Sanitation	115.49
NEMSMA	90.00
NFPA	175.00
Northwest River Supply	29.55
Paper Clip	367.50
Pat's Screen Printing	1,156.80
Public Safety Answers	1,125.00
QuickBooks Payments	691.82
Radio Resource Inc.	35.00
Restaurant (Generic)	499.14
Robert Weisbaum	58.00
ROI	398.00
Ryce Asian Bistro	319.00
Safeway	87.75
SatCom Global	110.47
Sean Caffrey	641.52
Secret Stash	294.00
Shamrock Foods	486.67
Shay Krier MD	475.00
SlingTV	55.00
Special District Association of Colorado	750.00
Spectrum	286.05
Stanford Computer & Technical Services LLC	400.00
Sticker Mule	290.00
Summitcove Rentals	1,069.02
Supply Cache	289.80
SurveyMonkey	900.00
The Fire Store	-11.92
Tiger Electric Inc.	1,483.42
Town of Crested Butte	121.25
Uber	12.23
UMR	7,106.69
USPS	132.00
Verizon	377.69
Visionary Broadband	146.10
W. Eric Tunkey	100.00
Wal-Mart	155.71
Waste Management	2,132.48
Wildcats Performance	500.00
Not Specified	197,987.15

	TOTAL
TOTAL	\$292,032.86

Crested Butte Fire Protection District

Transaction Report

July 2023

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
07/05/2023	Journal Entry	0512			5030 (A) Part-Time / Temp Salaries	-Split-	0.00	0.00
07/05/2023	Journal Entry	0512			5050 (A) Overtime	-Split-	0.00	0.00
07/05/2023	Journal Entry	0512			6080 (O) Special Event Pay	-Split-	0.00	0.00
07/05/2023	Journal Entry	0513		Regular Earnings	5010 (A) Wages - Administration	-Split-	6,682.44	6,682.44
07/05/2023	Journal Entry	0513		SICK	5010 (A) Wages - Administration	-Split-	94.65	6,777.09
07/05/2023	Journal Entry	0512			5010 (A) Wages - Administration	-Split-	0.00	6,777.09
07/05/2023	Journal Entry	0513		Employer Medicare Tax	5130 (A) Medicare Tax	-Split-	234.84	7,011.93
07/05/2023	Journal Entry	0512			5130 (A) Medicare Tax	-Split-	0.00	7,011.93
07/05/2023	Journal Entry	0513		Employer Social Security Tax	5140 (A) Social Security Tax	-Split-	223.89	7,235.82
07/05/2023	Journal Entry	0512			5140 (A) Social Security Tax	-Split-	0.00	7,235.82
07/05/2023	Journal Entry	0513		ER AD&D CORRECT	5150 (A) FPPA Pension - ER	-Split-	247.91	7,483.73
07/05/2023	Journal Entry	0513		ER PENSION CONT	5150 (A) FPPA Pension - ER	-Split-	1,320.68	8,804.41
07/05/2023	Journal Entry	0512			5150 (A) FPPA Pension - ER	-Split-	0.00	8,804.41
07/05/2023	Journal Entry	0513		Voluntary Life Contribution	5200 (A) Health Benefits	-Split-	-60.57	8,743.84
07/05/2023	Journal Entry	0513		Overtime Earnings	6010 (O) Wages - Ops FT	-Split-	4,269.57	13,013.41
07/05/2023	Journal Entry	0513		Regular Earnings	6010 (O) Wages - Ops FT	-Split-	45,403.73	58,417.14
07/05/2023	Journal Entry	0513		SICK	6010 (O) Wages - Ops FT	-Split-	1,997.99	60,415.13
07/05/2023	Journal Entry	0513		VACATION	6010 (O) Wages - Ops FT	-Split-	1,292.58	61,707.71
07/05/2023	Journal Entry	0512			6010 (O) Wages - Ops FT	-Split-	0.00	61,707.71
07/05/2023	Journal Entry	0513		Regular Earnings	6020 (O) Wages - Ops PT	-Split-	9,938.20	71,645.91
07/05/2023	Journal Entry	0512			6020 (O) Wages - Ops PT	-Split-	0.00	71,645.91
07/05/2023	Journal Entry	0514		Regular Earnings	6090 (O) Volunteer Stipends	-Split-	2,450.00	74,095.91
07/05/2023	Journal Entry	0512			6070 (O) Training Pay	-Split-	0.00	74,095.91
07/05/2023	Journal Entry	0513		OVERTIME UNSCH	6060 (O) Unscheduled Overtime	-Split-	1,098.24	75,194.15
07/05/2023	Journal Entry	0512			6060 (O) Unscheduled Overtime	-Split-	0.00	75,194.15
07/05/2023	Journal Entry	0514		CO FAMILI - ER	6140 (O) Social Security Tax	-Split-	151.90	75,346.05
07/05/2023	Journal Entry	0513		Employer Social Security Tax	6140 (O) Social Security Tax	-Split-	616.17	75,962.22
07/05/2023	Journal Entry	0512			6140 (O) Social Security Tax	-Split-	0.00	75,962.22
07/05/2023	Journal Entry	0513		ER AD&D CORRECT	6150 (O) FPPA Pension - ER	-Split-	900.39	76,862.61
07/05/2023	Journal Entry	0513		ER PENSION CONT	6150 (O) FPPA Pension - ER	-Split-	5,031.56	81,894.17
07/05/2023	Journal Entry	0512			6150 (O) FPPA Pension - ER	-Split-	0.00	81,894.17
07/05/2023	Journal Entry	0514		CO FAMILI - ER	6130 (O) Medicare Tax	-Split-	35.53	81,929.70
07/05/2023	Journal Entry	0513		Employer Medicare Tax	6130 (O) Medicare Tax	-Split-	822.79	82,752.49

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
07/05/2023	Journal Entry	0512			6130 (O) Medicare Tax	-Split-	0.00	82,752.49
07/05/2023	Journal Entry	0512			6030 (O) On-Call Pay	-Split-	0.00	82,752.49
07/05/2023	Deposit			Refund for Premium Endorsement Mt. West Insurance	5500 (A) Insurance - General	1010 BOTW Money Market	-457.00	82,295.49
07/05/2023	Journal Entry	0513		Fire Prevention	5020 (A) Wages - Fire Prevention	-Split-	11,416.80	93,712.29
07/05/2023	Journal Entry	0513		CO FAML I - ER	5160 (A) FAML I Premium - ER	-Split-	72.89	93,785.18
07/05/2023	Journal Entry	0514		CO FAML I - ER	6160 (O) FAML I Premium - ER	-Split-	11.04	93,796.22
07/05/2023	Journal Entry	0513		CO FAML I - ER	6160 (O) FAML I Premium - ER	-Split-	255.36	94,051.58
07/10/2023	Check	36803	Joseph Blunn	New skylight trailer	6660 (O) Repairs - Vehicles	1000 Operating Checking	30.00	94,081.58
07/11/2023	Journal Entry	0516			5780 (A) Treasurer's Fee - GF	-Split-	15,380.94	109,462.52
07/11/2023	Check	36805	Tanner Perkins	Work Pants Reimbursement	6800 (O) Uniforms	1000 Operating Checking	78.38	109,540.90
07/12/2023	Deposit			Donation from Martha Walton for training meal	6550 (O) Meals - Training	1010 BOTW Money Market	-50.00	109,490.90
07/18/2023	Expense			BANCORPSV BANCORPSV 071823 99994 CCD,WH ALERUS 99994 SETTLE PURCHASE,PREAUTHORIZED ACH DEBIT	5290 (A) Health Reimbursement	1000 Operating Checking	253.40	109,744.30
07/19/2023	Journal Entry	0519		VACATION	5010 (A) Wages - Administration	-Split-	252.40	109,996.70
07/19/2023	Journal Entry	0518			5010 (A) Wages - Administration	-Split-	0.00	109,996.70
07/19/2023	Journal Entry	0519		Employer Medicare Tax	5130 (A) Medicare Tax	-Split-	242.04	110,238.74
07/19/2023	Journal Entry	0518			5130 (A) Medicare Tax	-Split-	0.00	110,238.74
07/19/2023	Journal Entry	0519		Employer Social Security Tax	5140 (A) Social Security Tax	-Split-	234.33	110,473.07
07/19/2023	Journal Entry	0518			5140 (A) Social Security Tax	-Split-	0.00	110,473.07
07/19/2023	Journal Entry	0519		ER AD&D CORRECT	5150 (A) FPPA Pension - ER	-Split-	254.37	110,727.44
07/19/2023	Journal Entry	0519		ER PENSION CONT	5150 (A) FPPA Pension - ER	-Split-	1,372.79	112,100.23
07/19/2023	Journal Entry	0518			5150 (A) FPPA Pension - ER	-Split-	0.00	112,100.23
07/19/2023	Journal Entry	0519		Voluntary Life Contribution	5200 (A) Health Benefits	-Split-	-60.57	112,039.66
07/19/2023	Journal Entry	0519		HOLIDAY	6010 (O) Wages - Ops FT	-Split-	3,349.14	115,388.80
07/19/2023	Journal Entry	0519		Overtime Earnings	6010 (O) Wages - Ops FT	-Split-	4,273.98	119,662.78
07/19/2023	Journal Entry	0519		Regular Earnings	6010 (O) Wages - Ops FT	-Split-	47,329.38	166,992.16
07/19/2023	Journal Entry	0519		SICK	6010 (O) Wages - Ops FT	-Split-	959.24	167,951.40
07/19/2023	Journal Entry	0519		VACATION	6010 (O) Wages - Ops FT	-Split-	1,030.78	168,982.18
07/19/2023	Journal Entry	0518			6010 (O) Wages - Ops FT	-Split-	0.00	168,982.18
07/19/2023	Journal Entry	0519		HOLIDAY	6020 (O) Wages - Ops PT	-Split-	184.00	169,166.18
07/19/2023	Journal Entry	0519		Overtime Earnings	6020 (O) Wages - Ops PT	-Split-	483.00	169,649.18
07/19/2023	Journal Entry	0519		Regular Earnings	6020 (O) Wages - Ops PT	-Split-	6,894.84	176,544.02
07/19/2023	Journal Entry	0518			6020 (O) Wages - Ops PT	-Split-	0.00	176,544.02
07/19/2023	Journal Entry	0518			6070 (O) Training Pay	-Split-	0.00	176,544.02
07/19/2023	Journal Entry	0519		OVERTIME UNSCH	6060 (O) Unscheduled Overtime	-Split-	3,255.02	179,799.04
07/19/2023	Journal Entry	0518			6060 (O) Unscheduled Overtime	-Split-	0.00	179,799.04
07/19/2023	Journal Entry	0519		Regular Earnings	5010 (A) Wages - Administration	-Split-	6,712.86	186,511.90

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
07/19/2023	Journal Entry	0519		HOLIDAY	5010 (A) Wages - Administration	-Split-	201.92	186,713.82
07/19/2023	Journal Entry	0518			6080 (O) Special Event Pay	-Split-	0.00	186,713.82
07/19/2023	Journal Entry	0519		CO FAML I - ER	6160 (O) FAML I Premium - ER	-Split-	269.82	186,983.64
07/19/2023	Journal Entry	0518			5030 (A) Part-Time / Temp Salaries	-Split-	0.00	186,983.64
07/19/2023	Journal Entry	0518			5050 (A) Overtime	-Split-	0.00	186,983.64
07/19/2023	Journal Entry	0519		CO FAML I - ER	5160 (A) FAML I Premium - ER	-Split-	75.12	187,058.76
07/19/2023	Journal Entry	0519		Employer Social Security Tax	6140 (O) Social Security Tax	-Split-	468.85	187,527.61
07/19/2023	Journal Entry	0518			6140 (O) Social Security Tax	-Split-	0.00	187,527.61
07/19/2023	Journal Entry	0519		ER AD&D CORRECT	6150 (O) FPPA Pension - ER	-Split-	968.01	188,495.62
07/19/2023	Journal Entry	0519		ER PENSION CONT	6150 (O) FPPA Pension - ER	-Split-	5,409.54	193,905.16
07/19/2023	Journal Entry	0518			6150 (O) FPPA Pension - ER	-Split-	0.00	193,905.16
07/19/2023	Journal Entry	0519		Employer Medicare Tax	6130 (O) Medicare Tax	-Split-	869.39	194,774.55
07/19/2023	Journal Entry	0518			6130 (O) Medicare Tax	-Split-	0.00	194,774.55
07/19/2023	Journal Entry	0518			6030 (O) On-Call Pay	-Split-	0.00	194,774.55
07/19/2023	Journal Entry	0519		Fire Prevention	5020 (A) Wages - Fire Prevention	-Split-	11,575.20	206,349.75
07/24/2023	Deposit			GVHF IA Critical Care Certification Prep Course	6420 (O) Education & Training	1010 BOTW Money Market	-7,950.00	198,399.75
07/31/2023	Deposit			Volunteer Squad Payment for Pancake Breakfast order Shamrock Inv 28472092	5550 (A) Meals & Incentives	1010 BOTW Money Market	-412.60	197,987.15
TOTAL							\$197,987.15	

Crested Butte Fire Protection District Capital Funds Project

Balance Sheet

As of July 31, 2023

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
1000 Checking	228,197.98
1010 Money Market	314,882.02
1050 CSIP Investment Account - Bond Payment	926,857.11
1051 Colotrust Account- Multi-Year Land Purchase	1,877,138.77
1100 CSIP Investment Account - Proceeds	26,946,655.01
Total Bank Accounts	\$30,293,730.89
Accounts Receivable	
1211 Mill Levy Property Tax Receivable	91,604.63
Total Accounts Receivable	\$91,604.63
Other Current Assets	
1260 Capital Accrued Interest- CSIP	42,438.52
1520 Bond Cash with County Treasurer	0.00
2010 Due to CBFPD Operating Account	0.00
Total Other Current Assets	\$42,438.52
Total Current Assets	\$30,427,774.04
TOTAL ASSETS	\$30,427,774.04
LIABILITIES AND EQUITY	
Liabilities	
Long-Term Liabilities	
2210 Deferred Property Tax	91,604.63
Total Long-Term Liabilities	\$91,604.63
Total Liabilities	\$91,604.63
Equity	
3100 Restricted for Debt Service	-2,605,747.00
3150 Restricted Spann Note Payable	2,605,747.00
Retained Earnings	29,567,999.61
Net Income	768,169.80
Total Equity	\$30,336,169.41
TOTAL LIABILITIES AND EQUITY	\$30,427,774.04

Crested Butte Fire Protection District Capital Funds Project

Expenses by Vendor Summary

January 1 - August 2, 2023

	TOTAL
Bio-Environs	1,080.00
Blythe Group + co	196,854.67
BOK Financial	527,350.00
Cesare, Inc.	2,108.28
Goulding Development Advisors	13,259.06
Gunnison County	4,165.00
Lyons Gaddis	7,249.27
Maureillo Planning Group, LLC	51,795.00
McDowell Engineering, LLC	6,780.00
Panterra Energy, LLC	5,600.00
Virgil & Lee Spann Ranches, Inc	349,266.33
Not Specified	47,921.09
TOTAL	\$1,213,428.70

Crested Butte Fire Protection District Capital Funds Project

Profit and Loss
January - July, 2023

	TOTAL
Income	
4010 Property Tax - Capital Fund	1,588,095.37
4020 Specific Ownership Tax	48,520.94
4100.2 Interest Income (Capital)	342,640.27
4100.3 Interest Income (Bond)	2,341.92
Total Income	\$1,981,598.50
GROSS PROFIT	\$1,981,598.50
Expenses	
5300 Land	349,266.33
5400 Soft Costs	288,891.28
5780 Treasure's Fee - CF	47,676.09
5790.2 Bank Charges (Capital)	210.00
5790.3 Bank Charges (Bond)	35.00
5795 Bond Interest	527,350.00
Total Expenses	\$1,213,428.70
NET OPERATING INCOME	\$768,169.80
NET INCOME	\$768,169.80

Crested Butte Fire Protection District Capital Funds Project

Transaction Report

January - July, 2023

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
01/03/2023	Deposit		Bank of the West	Miscellaneous Fee Refund VALUED CUSTOMER MONTHLY SERVICE	5790.2 Bank Charges (Capital)	1000 Checking	-25.00	-25.00
01/03/2023	Expense		Bank of the West	Miscellaneous Fees PREVIOUS PERIOD ACTIVITY RESULTE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	0.00
01/03/2023	Expense		Bank of the West	Wire Fee Spann Payment Miscellaneous Fees OUTGOING DOMESTIC WIRE/REF # 230	5790.2 Bank Charges (Capital)	1000 Checking	35.00	35.00
01/20/2023	Expense		Bank of the West	Miscellaneous Fees NON ANALYZED CHARGES/MISCELLANE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	60.00
02/01/2023	Deposit		Bank of the West	Miscellaneous Fee Refund VALUED CUSTOMER MONTHLY SERVICE	5790.2 Bank Charges (Capital)	1000 Checking	-25.00	35.00
02/01/2023	Expense		Bank of the West	Miscellaneous Fees PREVIOUS PERIOD ACTIVITY RESULTE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	60.00
02/10/2023	Journal Entry	28			5780 Treasure's Fee - CF	-Split-	4,760.60	4,820.60
02/21/2023	Expense		Bank of the West	Miscellaneous Fees NON ANALYZED CHARGES/MISCELLANE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	4,845.60
03/01/2023	Expense		Bank of the West	Miscellaneous Fees PREVIOUS PERIOD ACTIVITY RESULTE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	4,870.60
03/01/2023	Deposit		Bank of the West	Miscellaneous Fee Refund VALUED CUSTOMER MONTHLY SERVICE	5790.2 Bank Charges (Capital)	1000 Checking	-25.00	4,845.60
03/14/2023	Journal Entry	30			5780 Treasure's Fee - CF	-Split-	14,833.89	19,679.49
03/20/2023	Expense		Bank of the West	Miscellaneous Fees NON ANALYZED CHARGES/MISCELLANE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	19,704.49
04/03/2023	Expense		Bank of the West	Miscellaneous Fees PREVIOUS PERIOD ACTIVITY RESULTE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	19,729.49
04/03/2023	Deposit		Bank of the West	Miscellaneous Fee Refund VALUED CUSTOMER MONTHLY SERVICE	5790.2 Bank Charges (Capital)	1000 Checking	-25.00	19,704.49
04/10/2023	Journal Entry	48			5780 Treasure's Fee - CF	-Split-	5,351.80	25,056.29
04/20/2023	Expense		Bank of the West	Miscellaneous Fees NON ANALYZED CHARGES/MISCELLANE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	25,081.29
05/01/2023	Deposit		Bank of the West	Miscellaneous Fee Refund VALUED CUSTOMER MONTHLY SERVICE	5790.2 Bank Charges (Capital)	1000 Checking	-25.00	25,056.29
05/01/2023	Expense		Bank of the West	Miscellaneous Fees PREVIOUS PERIOD ACTIVITY RESULTE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	25,081.29
05/10/2023	Journal Entry	53			5780 Treasure's Fee - CF	-Split-	11,263.86	36,345.15
05/11/2023	Expense		Bank of the West	Wire Fee	5790.3 Bank Charges (Bond)	1010 Money Market	35.00	36,380.15
05/22/2023	Expense		Bank of the West	Miscellaneous Fees NON ANALYZED CHARGES/MISCELLANE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	36,405.15
06/02/2023	Expense		Bank of the West	Miscellaneous Fees PREVIOUS PERIOD ACTIVITY RESULTE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	36,430.15
06/02/2023	Deposit		Bank of the West	Miscellaneous Fee Refund VALUED CUSTOMER MONTHLY SERVICE	5790.2 Bank Charges (Capital)	1000 Checking	-25.00	36,405.15
06/10/2023	Journal Entry	55			5780 Treasure's Fee - CF	-Split-	3,778.57	40,183.72
06/20/2023	Expense		Bank of the West	Miscellaneous Fees NON ANALYZED CHARGES/MISCELLANE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	40,208.72
07/03/2023	Deposit		Bank of the West	Miscellaneous Fee Refund VALUED CUSTOMER MONTHLY SERVICE	5790.2 Bank Charges (Capital)	1000 Checking	-25.00	40,183.72
07/03/2023	Expense		Bank of the West	Miscellaneous Fees PREVIOUS PERIOD ACTIVITY RESULTE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	40,208.72
07/11/2023	Journal Entry	59			5780 Treasure's Fee - CF	-Split-	7,687.37	47,896.09
07/20/2023	Expense		Bank of the West	Miscellaneous Fees NON ANALYZED CHARGES/MISCELLANE	5790.2 Bank Charges (Capital)	1000 Checking	25.00	47,921.09
TOTAL							\$47,921.09	



Customer Service
PO Box 11813
Harrisburg, PA 17108-1813

ACCOUNT STATEMENT

Crested Butte Fire Protection District

For the Month Ending
July 31, 2023

Client Management Team

Chris Blackwood

Managing Director
950 17th Street, DN-CO-T8
Denver, CO 80202
720-955-2530
blackwoodc@pfmam.com

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Individual Accounts

Accounts included in Statement

2210106001	Crested Butte Fire Protection District
2210106002	Operating Account Fund
2210106003	Bond Payment Fund

Important Messages

CSIP will be closed on 09/04/2023 for Labor Day.

CRESTED BUTTE FIRE PROTECTION DISTRICT
SEAN CAFFREY
P.O. BOX 1009
CRESTED BUTTE, CO 81224

Online Access www.csipinvest.com

Customer Service 1-855-274-7468



Account Statement

For the Month Ending July 31, 2023

Important Disclosures

Important Disclosures

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Proxy Voting PFMAM does not normally receive proxies to vote on behalf of its clients. However, it does on occasion receive consent requests. In the event a consent request is received the portfolio manager contacts the client and then proceeds according to their instructions. PFMAM's Proxy Voting Policy is available upon request by contacting Service Operations at the address below.

Questions About an Account PFMAM's monthly statement is intended to detail our investment advisory activity as well as the activity of any accounts held by clients in pools that are managed by PFMAM. The custodian bank maintains the control of assets and executes (i.e., settles) all investment transactions. The custodian statement is the official record of security and cash holdings and transactions. PFMAM recognizes that clients may use these reports to facilitate record keeping and that the custodian bank statement and the PFMAM statement should be reconciled and differences resolved. Many custodians use a settlement date basis which may result in the need to reconcile due to a timing difference.

Account Control PFMAM does not have the authority to withdraw funds from or deposit funds to the custodian outside the scope of services provided by PFMAM. Our clients retain responsibility for their internal accounting policies; implementing and enforcing internal controls and generating ledger entries or otherwise recording transactions.

Market Value Generally, PFMAM's market prices are derived from closing bid prices as of the last business day of the month as supplied by Refinitiv or Bloomberg. For certain short-term investments or where prices are not available from generally recognized sources the securities are priced using a yield-based matrix system to arrive at an estimated market value. Prices that fall between data points are interpolated. Non-negotiable FDIC-insured bank certificates of deposit are priced at par. Although PFMAM believes the prices to be reliable, the values of the securities may not represent the prices at which the securities could have been bought or sold. Explanation of the valuation methods for a registered investment company or local government investment program is contained in the appropriate fund offering documentation or information statement.

Amortized Cost The original cost of the principal of the security is adjusted for the amount of the periodic reduction of any discount or premium from the purchase date until the date of the report. Discount or premium with respect to short term securities (those with less than one year to maturity at time of issuance) is amortized on a straightline basis. Such discount or premium with respect to longer term securities is amortized using the constant yield basis.

Tax Reporting Cost data and realized gains / losses are provided for informational purposes only. Please review for accuracy and consult your tax advisor to determine the tax consequences of your security transactions. PFMAM does not report such information to the IRS or other taxing authorities and is not responsible for the accuracy of such information that may be required to be reported to federal, state or other taxing authorities.

Financial Situation In order to better serve you, PFMAM should be promptly notified of any material change in your investment objective or financial situation.

Callable Securities Securities subject to redemption prior to maturity may be redeemed in whole or in part before maturity, which could affect the yield represented.

Portfolio The securities in this portfolio, including shares of mutual funds, are not guaranteed or otherwise protected by PFMAM, the FDIC (except for certain non-negotiable certificates of deposit) or any government agency. Investment in securities involves risks, including the possible loss of the amount invested. Actual settlement values, accrued interest, and amortized cost amounts may vary for securities subject to an adjustable interest rate or subject to principal paydowns. Any changes to the values shown may be reflected within the next monthly statement's beginning values.

Rating Information provided for ratings is based upon a good faith inquiry of selected sources, but its accuracy and completeness cannot be guaranteed.

Shares of some local government investment programs and TERM funds are marketed through representatives of PFMAM's affiliate, PFM Fund Distributors, Inc. which is registered with the SEC as a broker/dealer and is a member of the Financial Industry Regulatory Authority ("FINRA") and the Municipal Securities Rulemaking Board ("MSRB"). You may reach the FINRA by calling the FINRA Hotline at 1-800-289-9999 or at the FINRA website address <https://www.finra.org/investors/investor-contacts>. A brochure describing the FINRA Regulation Public Disclosure Program is also available from FINRA upon request.

Key Terms and Definitions

Dividends on local government investment program funds consist of interest earned, plus any discount ratably amortized to the date of maturity, plus all realized gains and losses on the sale of securities prior to maturity, less ratably amortization of any premium and all accrued expenses to the fund. Dividends are accrued daily and may be paid either monthly or quarterly. The monthly earnings on this statement represent the estimated dividend accrued for the month for any program that distributes earnings on a quarterly basis. There is no guarantee that the estimated amount will be paid on the actual distribution date.

Current Yield is the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical fund account with a balance of one share over the seven-day base period including the statement date, expressed as a percentage of the value of one share (normally \$1.00 per share) at the beginning of the seven-day period. This resulting net change in account value is then annualized by multiplying it by

365 and dividing the result by 7. The yields quoted should not be considered a representation of the yield of the fund in the future, since the yield is not fixed. **Average maturity** represents the average maturity of all securities and investments of a portfolio, determined by multiplying the par or principal value of each security or investment by its maturity (days or years), summing the products, and dividing the sum by the total principal value of the portfolio. The stated maturity date of mortgage backed or callable securities are used in this statement. However the actual maturity of these securities could vary depending on the level or prepayments on the underlying mortgages or whether a callable security has or is still able to be called.

Monthly distribution yield represents the net change in the value of one share (normally \$1.00 per share) resulting from all dividends declared during the month by a fund expressed as a percentage of the value of one share at the beginning of the month. This resulting net change is then annualized by multiplying it by 365 and dividing it by the number of calendar days in the month.

YTM at Cost The yield to maturity at cost is the expected rate of return, based on the original cost, the annual interest receipts, maturity value and the time period from purchase date to maturity, stated as a percentage, on an annualized basis.

YTM at Market The yield to maturity at market is the rate of return, based on the current market value, the annual interest receipts, maturity value and the time period remaining until maturity, stated as a percentage, on an annualized basis.

Managed Account A portfolio of investments managed discretely by PFMAM according to the client's specific investment policy and requirements. The investments are directly owned by the client and held by the client's custodian.

Unsettled Trade A trade which has been executed however the final consummation of the security transaction and payment has not yet taken place.

Please review the detail pages of this statement carefully. If you think your statement is wrong, missing account information, or if you need more information about a transaction, please contact PFMAM within 60 days of receipt. If you have other concerns or questions regarding your account, or to request an updated copy of PFMAM's current disclosure statement, please contact a member of your client management team at PFMAM Service Operations at the address below.

PFM Asset Management LLC
Attn: Service Operations
213 Market Street
Harrisburg, PA 17101

NOT FDIC INSURED NO BANK GUARANTEE MAY LOSE VALUE



Consolidated Summary Statement

Account Statement
For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District

Portfolio Summary

Portfolio Holdings	Cash Dividends and Income	Closing Market Value	Current Yield
CSIP LGIP	9,626.98	1,991,730.99	5.39 %
CSIP TERM	0.00	22,980,772.95	* N/A
CSIP Managed Account	25,247.40	3,518,285.70	* N/A
Total	\$34,874.38	\$28,490,789.64	

* Not Applicable

Investment Allocation

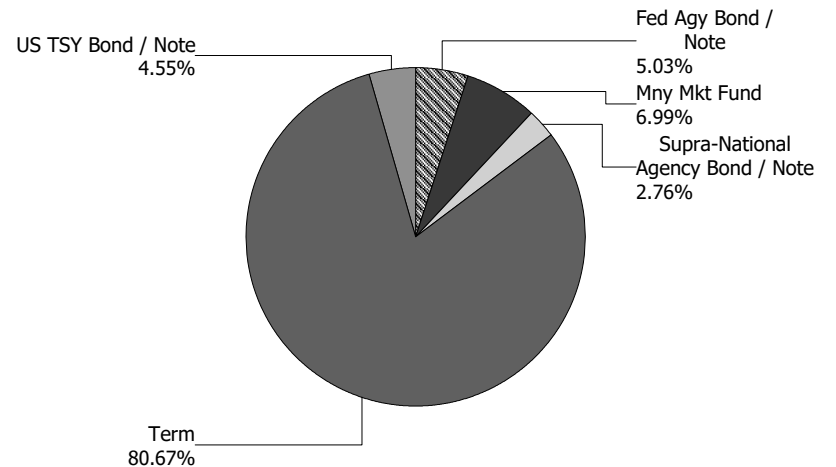
Investment Type	Closing Market Value	Percent
Federal Agency Bond / Note	1,433,890.50	5.03
Money Market Mutual Fund	1,991,730.99	6.99
Supra-National Agency Bond / Note	787,238.95	2.76
Term Investment	22,980,772.95	80.67
U.S. Treasury Bond / Note	1,297,156.25	4.55
Total	\$28,490,789.64	100.00%

Maturity Distribution (Fixed Income Holdings)

Portfolio Holdings	Closing Market Value	Percent
Under 30 days	5,788,887.24	20.32
31 to 60 days	787,238.95	2.76
61 to 90 days	2,414,663.45	8.48
91 to 180 days	6,000,000.00	21.06
181 days to 1 year	13,500,000.00	47.38
1 to 2 years	0.00	0.00
2 to 3 years	0.00	0.00
3 to 4 years	0.00	0.00
4 to 5 years	0.00	0.00
Over 5 years	0.00	0.00
Total	\$28,490,789.64	100.00%

Weighted Average Days to Maturity 160

Sector Allocation





Consolidated Summary Statement

Account Statement
For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District

Account Number	Account Name	Opening Market Value	Purchases / Deposits	Redemptions / Sales/ Maturities	Unsettled Trades	Change in Value	Closing Market Value	Cash Dividends and Income
2210106001	Crested Butte Fire Protection District	27,033,683.38	3,750,941.23	(3,740,797.10)	0.00	14,329.51	27,058,157.02	34,013.63
2210106002	Operating Account Fund	504,911.92	1.49	0.00	0.00	0.00	504,913.41	1.49
2210106003	Bond Payment Fund	476,859.95	450,859.26	0.00	0.00	0.00	927,719.21	859.26
Total		\$28,015,455.25	\$4,201,801.98	(\$3,740,797.10)	\$0.00	\$14,329.51	\$28,490,789.64	\$34,874.38



Account Statement - Transaction Summary

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001

CSIP LGIP	
Opening Market Value	1,789,727.19
Purchases	1,750,941.23
Redemptions	(2,000,797.10)
Unsettled Trades	0.00
Change in Value	0.00

Closing Market Value	\$1,539,871.32
Cash Dividends and Income	8,766.23

CSIP TERM	
Opening Market Value	20,000,000.00
Purchases	2,000,000.00
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00

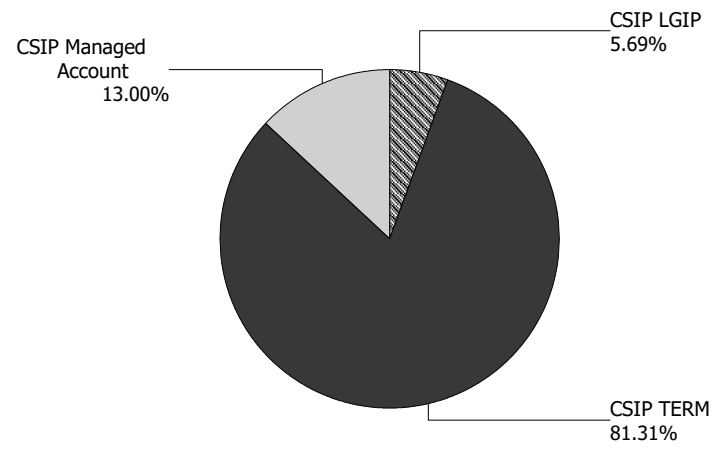
Closing Market Value	\$22,000,000.00
Cash Dividends and Income	0.00

CSIP Managed Account	
Opening Market Value	5,243,956.19
Purchases	0.00
Redemptions	(1,740,000.00)
Unsettled Trades	0.00
Change in Value	14,329.51

Closing Market Value	\$3,518,285.70
Cash Dividends and Income	25,247.40

Asset Summary		
	July 31, 2023	June 30, 2023
CSIP LGIP	1,539,871.32	1,789,727.19
CSIP TERM	22,000,000.00	20,000,000.00
CSIP Managed Account	3,518,285.70	5,243,956.19
Total	\$27,058,157.02	\$27,033,683.38

Asset Allocation





Investment Holdings

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001

Trade Date	Settlement Date	Security Description	Maturity Date	Rate	Investment Amount	Estimated Earnings	Est. Value at Maturity
CSIP TERM							
03/16/23	03/17/23	TERM - Colorado Statewide Investment Pool Term Dec 24	08/23/23	4.9100	2,500,000.00	46,073.29	2,553,471.92
12/08/22	12/08/22	TERM - Colorado Statewide Investment Pool Term Dec 23	11/03/23	5.1400	2,000,000.00	66,467.95	2,092,942.47
11/08/22	11/09/22	TERM - Colorado Statewide Investment Pool Term Dec 23	11/06/23	5.3400	4,000,000.00	155,079.45	4,211,844.38
02/03/23	02/03/23	TERM - Colorado Statewide Investment Pool Term Dec 24	02/01/24	4.9900	2,000,000.00	48,943.01	2,099,253.15
02/13/23	02/13/23	TERM - Colorado Statewide Investment Pool Term Dec 24	02/13/24	5.0400	2,000,000.00	46,671.78	2,100,800.00
04/18/23	04/19/23	TERM - Colorado Statewide Investment Pool Term Dec 24	04/16/24	5.2400	2,000,000.00	29,779.23	2,103,940.98
05/22/23	05/23/23	TERM - Colorado Statewide Investment Pool Term Dec 24	05/20/24	5.2400	2,000,000.00	20,043.72	2,103,940.98
06/15/23	06/16/23	TERM - Colorado Statewide Investment Pool Term Dec 24	06/11/24	5.8200	3,500,000.00	25,601.64	3,700,917.21
07/18/23	07/19/23	TERM - Colorado Statewide Investment Pool Term Dec 24	07/17/24	5.8900	2,000,000.00	4,184.15	2,117,156.28
Total					\$22,000,000.00	\$442,844.22	\$23,084,267.37



Managed Account Summary Statement

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001 - (15231590)

Transaction Summary - Money Market		Transaction Summary - Managed Account		Account Total	
Opening Market Value	\$1,789,727.19	Opening Market Value	\$5,243,956.19	Opening Market Value	\$7,033,683.38
Purchases	1,750,941.23	Maturities/Calls	(1,740,000.00)		
Redemptions	(2,000,797.10)	Principal Dispositions	0.00		
		Principal Acquisitions	0.00		
		Unsettled Trades	0.00		
		Change in Current Value	14,329.51		
Closing Market Value	\$1,539,871.32	Closing Market Value	\$3,518,285.70	Closing Market Value	\$5,058,157.02
Dividend	8,766.23				

Earnings Reconciliation (Cash Basis) - Managed Account	
Interest/Dividends/Coupons Received	2,175.00
Less Purchased Interest Related to Interest/Coupons	0.00
Plus Net Realized Gains/Losses	23,072.40
Total Cash Basis Earnings	\$25,247.40

Cash Balance	
Closing Cash Balance	\$0.00

Earnings Reconciliation (Accrual Basis)	Managed Account	Total
Ending Amortized Value of Securities	3,537,925.18	5,077,796.50
Ending Accrued Interest	9,902.47	9,902.47
Plus Proceeds from Sales	0.00	2,000,797.10
Plus Proceeds of Maturities/Calls/Principal Payments	1,742,175.00	1,742,175.00
Plus Coupons/Dividends Received	0.00	0.00
Less Cost of New Purchases	0.00	(1,750,941.23)
Less Beginning Amortized Value of Securities	(5,275,940.83)	(7,065,668.02)
Less Beginning Accrued Interest	(9,655.19)	(9,655.19)
Dividends	0.00	8,766.23
Total Accrual Basis Earnings	\$4,406.63	\$13,172.86

Cash Transactions Summary- Managed Account	
Maturities/Calls	1,742,175.00
Sale Proceeds	0.00
Coupon/Interest/Dividend Income	0.00
Principal Payments	0.00
Security Purchases	0.00
Net Cash Contribution	(1,742,175.00)
Reconciling Transactions	0.00



Portfolio Summary and Statistics

For the Month Ending **July 31, 2023**

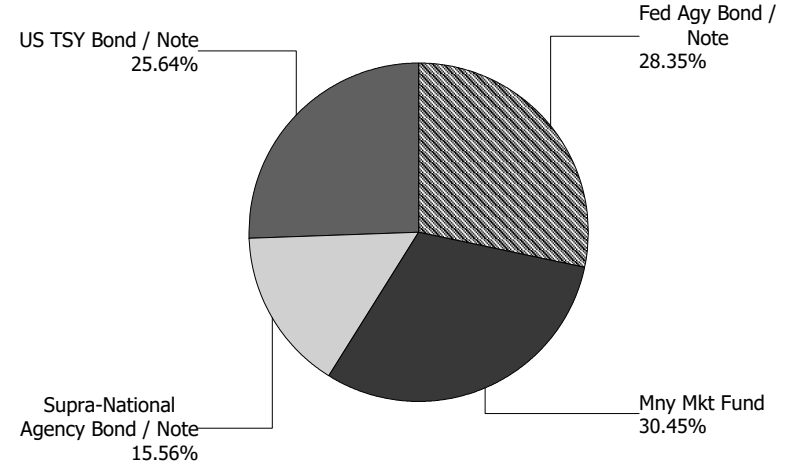
Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001 - (15231590)

Account Summary

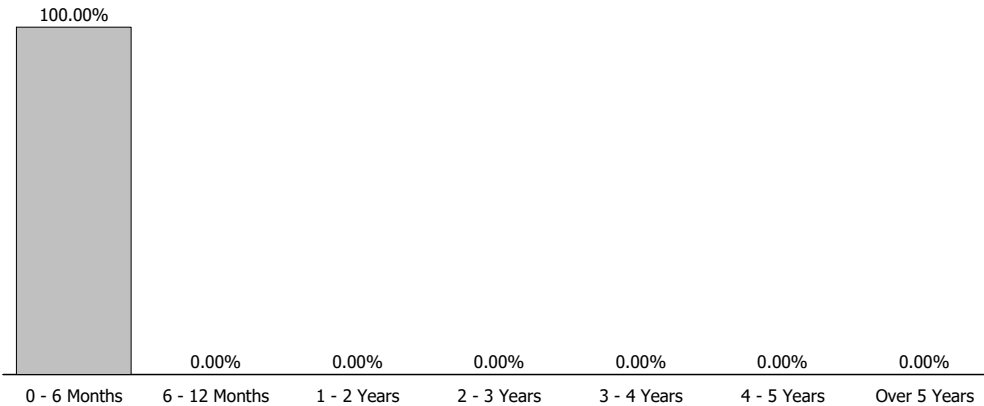
Description	Par Value	Market Value	Percent
U.S. Treasury Bond / Note	1,300,000.00	1,297,156.25	25.64
Supra-National Agency Bond / Note	790,000.00	787,238.95	15.56
Federal Agency Bond / Note	1,450,000.00	1,433,890.50	28.35
Managed Account Sub-Total	3,540,000.00	3,518,285.70	69.55%
Accrued Interest		9,902.47	
Total Portfolio	3,540,000.00	3,528,188.17	
CSIP LGIP	1,539,871.32	1,539,871.32	30.45
Total Investments	5,079,871.32	5,068,059.49	100.00%

Unsettled Trades **0.00** **0.00**

Sector Allocation



Maturity Distribution



Characteristics

Yield to Maturity at Cost	1.24%
Yield to Maturity at Market	5.44%
Weighted Average Days to Maturity	48



Managed Account Issuer Summary

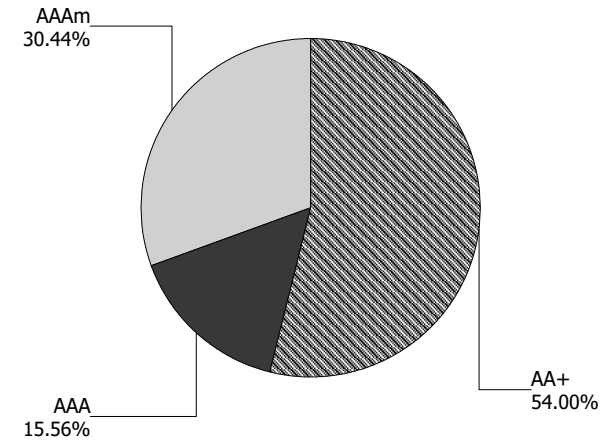
For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001 - (15231590)

Issuer Summary

Issuer	Market Value of Holdings	Percent
AFRICAN DEVELOPMENT BANK	787,238.95	15.56
CSIP LGIP	1,539,871.32	30.45
FREDDIE MAC	1,433,890.50	28.35
UNITED STATES TREASURY	1,297,156.25	25.64
Total	\$5,058,157.02	100.00%

Credit Quality (S&P Ratings)





Managed Account Detail of Securities Held

For the Month Ending July 31, 2023

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001 - (15231590)

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
U.S. Treasury Bond / Note											
US TREASURY NOTES DTD 08/15/2020 0.125% 08/15/2023	91282CAF8	1,300,000.00	AA+	Aaa	02/09/22	02/10/22	1,279,179.69	1.20	749.65	1,299,470.99	1,297,156.25
Security Type Sub-Total		1,300,000.00					1,279,179.69	1.20	749.65	1,299,470.99	1,297,156.25
Supra-National Agency Bond / Note											
AFRICAN DEVELOPMENT BANK BOND DTD 09/20/2018 3.000% 09/20/2023	00828EDCO	790,000.00	AAA	Aaa	02/09/22	02/11/22	811,914.60	1.25	8,624.17	791,869.85	787,238.95
Security Type Sub-Total		790,000.00					811,914.60	1.25	8,624.17	791,869.85	787,238.95
Federal Agency Bond / Note											
FREDDIE MAC NOTES DTD 10/16/2020 0.125% 10/16/2023	3137EAEY1	1,450,000.00	AA+	Aaa	02/09/22	02/10/22	1,422,450.00	1.27	528.65	1,446,584.34	1,433,890.50
Security Type Sub-Total		1,450,000.00					1,422,450.00	1.27	528.65	1,446,584.34	1,433,890.50
Managed Account Sub-Total		3,540,000.00					3,513,544.29	1.24	9,902.47	3,537,925.18	3,518,285.70
Money Market Mutual Fund											
CSIP LGIP		1,539,871.32	AAA	NR			1,539,871.32		0.00	1,539,871.32	1,539,871.32
Liquid Sub-Total		1,539,871.32					1,539,871.32		0.00	1,539,871.32	1,539,871.32
Securities Sub-Total		\$5,079,871.32					\$5,053,415.61	1.24%	\$9,902.47	\$5,077,796.50	\$5,058,157.02
Accrued Interest											\$9,902.47
Total Investments											\$5,068,059.49



Managed Account Fair Market Value & Analytics

For the Month Ending July 31, 2023

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001 - (15231590)

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	Broker	Next Call Date	Market Price	Market Value	Unreal G/L On Cost	Unreal G/L Amort Cost	Effective Duration	YTM at Mkt
U.S. Treasury Bond / Note										
US TREASURY NOTES DTD 08/15/2020 0.125% 08/15/2023	91282CAF8	1,300,000.00	JPM_CHA		99.78	1,297,156.25	17,976.56	(2,314.74)	0.04	5.41
Security Type Sub-Total		1,300,000.00				1,297,156.25	17,976.56	(2,314.74)	0.04	5.41
Supra-National Agency Bond / Note										
AFRICAN DEVELOPMENT BANK BOND DTD 09/20/2018 3.000% 09/20/2023	00828EDCO	790,000.00	JPM_CHA		99.65	787,238.95	(24,675.65)	(4,630.90)	0.14	5.48
Security Type Sub-Total		790,000.00				787,238.95	(24,675.65)	(4,630.90)	0.14	5.48
Federal Agency Bond / Note										
FREDDIE MAC NOTES DTD 10/16/2020 0.125% 10/16/2023	3137EAEY1	1,450,000.00	RBS		98.89	1,433,890.50	11,440.50	(12,693.84)	0.21	5.45
Security Type Sub-Total		1,450,000.00				1,433,890.50	11,440.50	(12,693.84)	0.21	5.45
Managed Account Sub-Total		3,540,000.00				3,518,285.70	4,741.41	(19,639.48)	0.13	5.44
Money Market Mutual Fund										
CSIP LGIP		1,539,871.32			1.00	1,539,871.32	0.00	0.00	0.00	
Liquid Sub-Total		1,539,871.32				1,539,871.32	0.00	0.00	0.00	
Securities Sub-Total		\$5,079,871.32				\$5,058,157.02	\$4,741.41	(\$19,639.48)	0.13	5.44%
Accrued Interest						\$9,902.47				
Total Investments						\$5,068,059.49				



Managed Account Security Transactions & Interest

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001 - (15231590)

Transaction Type		Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
Trade	Settle									
MATURITY										
07/14/23	07/14/23	ASIAN DEVELOPMENT BANK NOTES DTD 07/14/2020 0.250% 07/14/2023	045167EV1	1,740,000.00	1,740,000.00	2,175.00	1,742,175.00	23,072.40	0.00	
Transaction Type Sub-Total				1,740,000.00	1,740,000.00	2,175.00	1,742,175.00	23,072.40	0.00	
Managed Account Sub-Total					1,740,000.00	2,175.00	1,742,175.00	23,072.40	0.00	
Total Security Transactions					\$1,740,000.00	\$2,175.00	\$1,742,175.00	\$23,072.40	\$0.00	



Account Statement

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Crested Butte Fire Protection District - 2210106001

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
CSIP LGIP					
Opening Balance					1,789,727.19
07/14/23	07/14/23	Purchase - Principal 045167EV1	1.00	1,742,175.00	3,531,902.19
07/19/23	07/19/23	Redemption - TERM Investment	1.00	(2,000,000.00)	1,531,902.19
07/26/23	07/26/23	IP Fees June 2023	1.00	(505.43)	1,531,396.76
07/26/23	07/26/23	U.S. Bank Fees May 2023	1.00	(291.67)	1,531,105.09
07/31/23	08/01/23	Accrual Income Div Reinvestment - Distributions	1.00	8,766.23	1,539,871.32
Closing Balance					1,539,871.32

	Month of July	Fiscal YTD January-July	
Opening Balance	1,789,727.19	2,345,229.22	Closing Balance
Purchases	1,750,941.23	15,203,708.32	Average Monthly Balance
Redemptions (Excl. Checks)	(2,000,797.10)	(16,009,066.22)	Monthly Distribution Yield
Check Disbursements	0.00	0.00	5.28%
Closing Balance	1,539,871.32	1,539,871.32	
Cash Dividends and Income	8,766.23	50,401.85	

Trade Date	Settlement Date	Transaction Description	Maturity Date	Stated Yield	Dollar Amount of Transaction
CSIP TERM					
07/18/23	07/19/23	Purchase - TERM Investment	07/17/24	5.8900	2,000,000.00



Account Statement - Transaction Summary

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Operating Account Fund - 2210106002

CSIP LGIP	
Opening Market Value	331.52
Purchases	1.49
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00

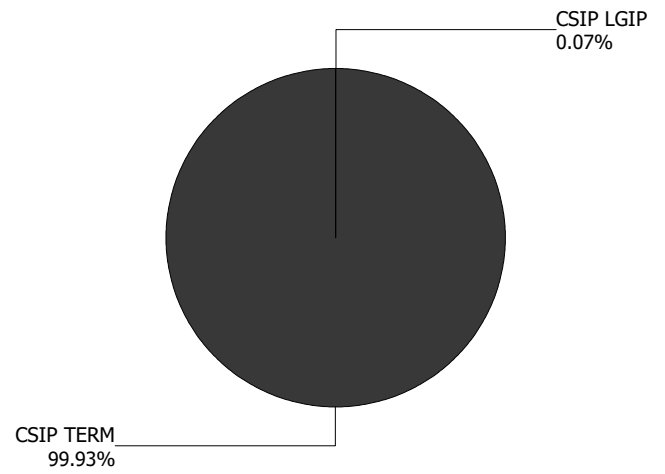
Closing Market Value	\$333.01
Cash Dividends and Income	1.49

CSIP TERM	
Opening Market Value	504,580.40
Purchases	0.00
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00

Closing Market Value	\$504,580.40
Cash Dividends and Income	0.00

Asset Summary		
	July 31, 2023	June 30, 2023
CSIP LGIP	333.01	331.52
CSIP TERM	504,580.40	504,580.40
Total	\$504,913.41	\$504,911.92

Asset Allocation





Investment Holdings

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Operating Account Fund - 2210106002

Trade Date	Settlement Date	Security Description	Maturity Date	Rate	Investment Amount	Estimated Earnings	Est. Value at Maturity
CSIP TERM							
11/15/22	11/16/22	TERM - Colorado Statewide Investment Pool Term Dec 23	10/10/23	4.9400	504,580.40	17,619.12	526,979.90
Total					\$504,580.40	\$17,619.12	\$526,979.90



Account Statement

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Operating Account Fund - 2210106002

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
CSIP LGIP					
Opening Balance					331.52
07/31/23	08/01/23	Accrual Income Div Reinvestment - Distributions	1.00	1.49	333.01
Closing Balance					333.01

	Month of July	Fiscal YTD January-July		
Opening Balance	331.52	323.60	Closing Balance	333.01
Purchases	1.49	9.41	Average Monthly Balance	331.57
Redemptions (Excl. Checks)	0.00	0.00	Monthly Distribution Yield	5.28%
Check Disbursements	0.00	0.00		
Closing Balance	333.01	333.01		
Cash Dividends and Income	1.49	9.41		



Account Statement - Transaction Summary

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Bond Payment Fund - 2210106003

CSIP LGIP	
Opening Market Value	667.40
Purchases	450,859.26
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00

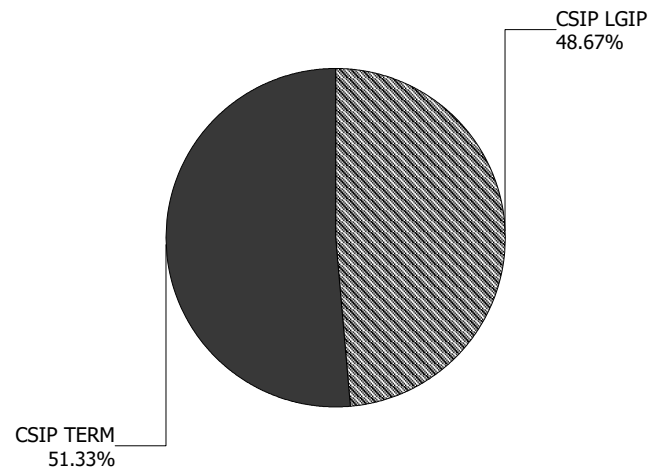
Closing Market Value	\$451,526.66
Cash Dividends and Income	859.26

CSIP TERM	
Opening Market Value	476,192.55
Purchases	0.00
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00

Closing Market Value	\$476,192.55
Cash Dividends and Income	0.00

Asset Summary		
	July 31, 2023	June 30, 2023
CSIP LGIP	451,526.66	667.40
CSIP TERM	476,192.55	476,192.55
Total	\$927,719.21	\$476,859.95

Asset Allocation





Investment Holdings

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Bond Payment Fund - 2210106003

Trade Date	Settlement Date	Security Description	Maturity Date	Rate	Investment Amount	Estimated Earnings	Est. Value at Maturity
CSIP TERM							
04/18/23	04/19/23	TERM - Colorado Statewide Investment Pool Term Dec 23	10/18/23	5.4200	476,192.55	7,353.98	489,062.01
Total					\$476,192.55	\$7,353.98	\$489,062.01



Account Statement

For the Month Ending **July 31, 2023**

Crested Butte Fire Protection District - Bond Payment Fund - 2210106003

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
CSIP LGIP					
Opening Balance					667.40
07/19/23	07/19/23	Purchase - ACH Purchase	1.00	450,000.00	450,667.40
07/31/23	08/01/23	Accrual Income Div Reinvestment - Distributions	1.00	859.26	451,526.66
Closing Balance					451,526.66

	Month of July	Fiscal YTD January-July
Opening Balance	667.40	139,578.20
Purchases	450,859.26	788,141.01
Redemptions (Excl. Checks)	0.00	(476,192.55)
Check Disbursements	0.00	0.00
Closing Balance	451,526.66	451,526.66
Cash Dividends and Income	859.26	3,141.01

Closing Balance	451,526.66
Average Monthly Balance	189,404.80
Monthly Distribution Yield	5.28%



2023 July EMS & Fire Chief
Board Report

July has proven to be our busiest month on recorded history with a total call volume of 116. We have continued to see high acuity calls and rescues and experienced one of the largest natural wildfire starts just 11 miles southwest of Crested Butte in the Mill Creek area. I am proud of what we have built, our members who help drive the mission forward, and the vast improvement in level of service we provide to our community. We experienced 2 critical falls down Judd Falls that required multi-agency response and coordinated efforts. We experienced a cardiac arrest at the Town of Gothic when staffing resources were limited and 2 other calls were occurring. Lastly, numerous calls for smoke showing led to what we know as the Lowline fire. During the first operational period, we were able to send our Type VI Brush 1 with a crew of 4 to help support structure protection. We had an engine boss, and engine boss trainee, and 2 firefighters. In addition, we were able to send our Tactical Tender to Gunnison to assist with 911 coverage in their district. We had numerous members step up to help backfill our district for 911 coverage. We were fortunate enough to acquire 14 Castle road for training purposes. We brought out Matt Chan (Firefighter) from North Metro fire for 3 days of great training and evolutions. The crew has continued to train at this house practice all the various tasks of firefighting.

Part of our health and wellness initiatives, we will be enlisting the help of a local nutritionist and dietician who will teach 4 sessions about behavior modification to better understand why we choose what we choose to eat. The hope is that we can effectively encourage healthy eating habits so that we can have improved health.

As we move into August, we are reminded by the kindness of people, our community, and those that we help. We have received numerous thank you cards and notes recognizing members of our team. We are thankful for the level of professionalism our members continue to show. I've attached the letters to my board report for viewing.

Lastly, we are entering quarter 4 with our leadership contract. The past 9 months have proven to be beneficial to our organization. James and I recently reviewed our updated cultural survey and compared it to when we began the process. I'm pleased to say that we have seen overall improvement. There are certainly items that still need improvement but we are committed to the process and look forward to our continued growth. I am thankful to all the members who continue to be engaged and make an effort to use this process as informational and an opportunity to move us forward as an organization.

Personnel/Volunteers

Today marks the 6 month period for Paramedic Luke Danek. Luke constantly brings a healthy and positive attitude to the department and has shown his commitment to learning our ways, increasing his paramedicine practice, and learning to be a firefighter. He has completed his S130/190 wildland certification and is working through his red book. He will complete his official firefighter training at our next firefighter course. Today, we are pleased to announce that Luke has completed his probationary period and will consider him a full time, permanent employee of the CBFPD.

Paramedic hiring update: We originally received 3 applicants. 1 applicant removed himself from the process as he realized he was pleased with his current situation and location. As of now, 1 candidate has done a ride along with us while we have invited the other candidate to travel out here for a ride along. We have not had a response from that candidate.

Captain McDonnell is currently out on short term disability due to the need for surgery. We hope for a speedy recovery. We are also aware of another Captain that will likely have to have surgery in the near future. As such, we have opened the Acting Officer (A/O) task book for Engineer John Bielak. We have also been

speaking with FF/Paramedic Joe Blunn about the possibility of opening his A/O task book.

Part time Paramedic Judy Shehane has turned in her resignation as she pursues her next chapter. She has moved to Grand Junction and his continuing her career out there. We wish her the best.

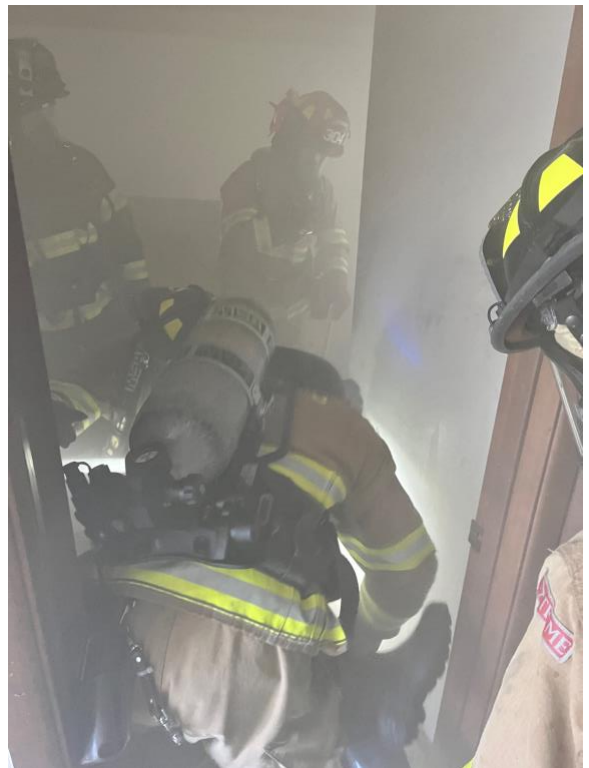
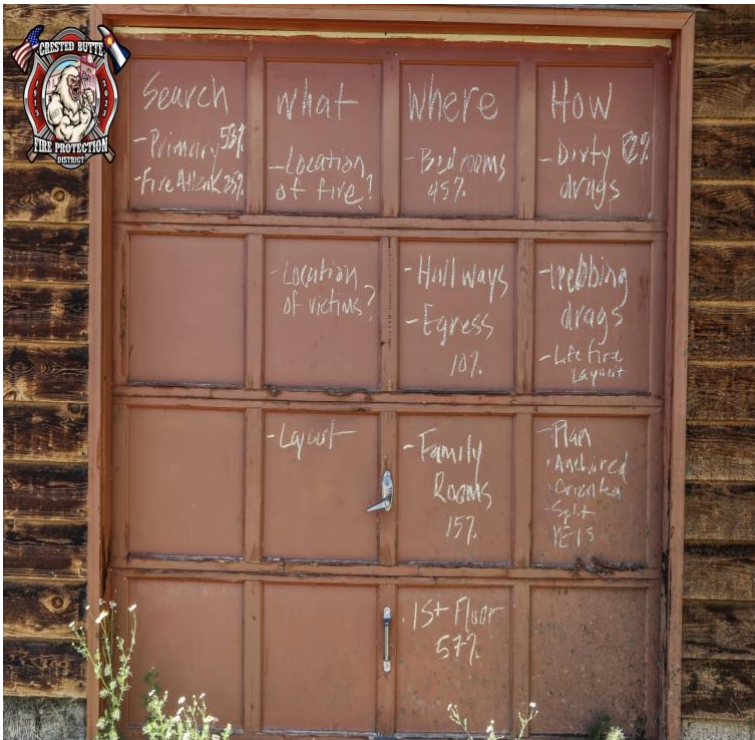
Training

The team has conducted a lot of training during July. We have certainly taken advantage of the good weather and placed a lot of focus on firefighting tactics and strategy.

We continue to plan for our upcoming EMT class. The start date is September 6th and we currently have 16 students enrolled.

Myself and Chief Reily are heading to Kansas City, MO for Fire Rescue International leadership conference in mid-August.

Chief Duke, Corey, and Joe Mirza are heading to Fort Collins for a weeklong Emergency Vehicle Technician (EVT) course. This will go over maintenance instruction on fire apparatus.



Vehicles

The trip to the Rosenbauer factory went great. We had an opportunity to operate and drive the King Cobra which differs from the original model we were looking at as a committee. However, as we discuss further this model may very well meet all the needs of our community that we would hope for.

The new command box in D8 has been received well by the crews and we are quite happy with the way it turned out. Med 40 (Suburban) is being taken back to SVI in Fort Collins for new graphics (under warranty) as the existing ones are bubbling and peeling. SVI has been very accommodating and will correct the issues.



Maintenance

Engine 3 is making progress. The part needed for the repair should have arrived at this point. The repair work will be performed immediately and hopefully will be returning to district and placed back in service by the end of this week.

Engine 1 has been out of service as well due to an error code causing the truck to idle up without reason. I'm pleased to say the issue seems to have been resolved. A pressure regulator on the pump panel seemed to be faulty. Jeff had one for another engine, replaced it onto E1 and it seems as though the issue has been resolved. We will need to purchase another one of these regulators for the other Engine.



MONTH IN REVIEW: JULY 2023

911

116
total incidents
574 YTD



EMS calls
70
53% transported
19% non-transport
9% other



Fire calls
81
Fire - 5
EMS assist - 47
Service calls/false alarm - 29



Avg. Chute time -
01:57
Avg. Response time -
12:08



Calls by zone
Town of CB - 46 Mt. CB - 31 CB South - 4 County - 31

Re: Gratitude from a Pt



From: Corey Tibljas <ctibljas@cbfpd.org>
Sent: Friday, July 28, 2023 8:13:26 AM
To: Randy Felix <rfelix@cbfpd.org>; Robert Weisbaum <rweisbaum@cbfpd.org>; Liam Reily (liamreily125@gmail.com) <liamreily125@gmail.com>; Peter Esselstyn <peterje9@hotmail.com>; Zach Springer <zspringer@cbfpd.org>
Cc: Tony Jakino <tjakino@cbfpd.org>
Subject: Gratitude from a Pt

Hi Everyone,

Im pleased to pass along a debt of gratitude shared from one of our patents from 1/1/23 IR 2023-048.

Deborah stopped by today to share with Tony and I her overwhelming thanks for "saving her life" resulting from a ski accident. The call originated from CBSP likely Nick Fessmeyer and team to meet CBSP directly at Prospect for a Femur Fx. She is especially thankful for the care received from Dustin and his team. She continued to speak of Dustins kindness and professionalism.

Looking up the notes, I recall this being an all call with Peter coming in off-shift to assist; thanks Peter!

Deborah is still recovering with a walking cane but beyond thankful she is still here to thank everyone.

She mentioned pledging a Q4 donation to the FFF that will be matched by her organization and a 2x match from her Husband's organization to show their support.

Chief, would you like to share her thanks with CBSP? Pending any donation, The Association can also contribute a share to CBSP pending their (c)3 status.

Tony has shared this with Dustin.

Thanks all and job well done!

-Corey

RE: Thank You CB Fire and Rescue 

Sent: Monday, July 31, 2023 9:21 AM

To: Robert Weisbaum <rweisbaum@cbfpd.org>

Subject: FW: Thank You CB Fire and Rescue

From: AW <anthonywilbanks@gmail.com>

Sent: Saturday, July 29, 2023 11:00 AM

To: CBFPD Office <office@cbfpd.org>

Subject: Thank You CB Fire and Rescue

Hello,

On July 18th around 8:30pm I arrived at CB Fire Station 2 with a dislocated shoulder and a few cracked ribs. I had crashed my mountain bike on the 401 trail and painfully hiked 2 miles to a parking lot where I then got a ride to the Fire Station. I want to give a big THANK YOU to everyone who helped me. Beth Shaner got my arm back in place while Kyle Koelliker & Tanner Perkins got me in the ambulance and took my vitals. Thank You for everything you do! I'm soooo fortunate youz guys were on shift! Keep up the great work!

Regards,
Anthony Wilbanks

 Reply  Forward

Dear Ty + Tanner,

Thank you so much for all your lifesaving efforts in Gothic the other day. Although the patient was not a member of the KMBL community, many of us witnessed the scene and grieved for the loss. It's hard to believe incidents like this tragedy can occur in such an idyllic place, but we were heartened by your hard work and knowing you did everything you could. We are so lucky to have you working on the mountain with us and we deeply appreciate you. Take care, we are all sending thankful thoughts your way!

Sincerely, RMBL

Kyle Voss
 Jody Johnson
 Susan Washko
 Michelle Thurber
 Will Tawawa
 Thomas
 Makene Lang
 Kira-Ann
 Izzy Redellus
 Jazmya Rivera
 Hannah Burbey
 Nishita Eastport
 Be Sabel! Zach Z
 Riley Hunter
 Angellica Kucinski
 Carmen Sealea
 Brandon Chan
 Lydia Wong
 Melanie Kazenel
 Thank you!
 Kana
 Ben Davis
 Brayden Saunders
 Ryan Smith
 Thank you!
 Colbey
 Thank you so much!
 Emma Demefact
 YOU ARE HUGEY APPRECIATED
 Tara
 Elizabeth Overaker



CRESTED BUTTE FIRE PROTECTION DISTRICT

306 MAROON AVENUE
P.O. BOX 1009
CRESTED BUTTE, CO 81224
(970) 349-5333 FAX: (970) 349-3420
WEBSITE: WWW.CBFPD.ORG

August 2, 2023

CBFPD Board of Directors (BOD)

RE: Fire Prevention Division work summary for July 2023

Dear Board of Directors,

Addressed are some of the larger projects in the plan development and review stages:

Major Projects: (planning, fire requirements & multiple meetings) ON GOING

Mount Crested Butte

- Prospect II-on going
- North Village-on going
- Honey Rock Ridge
- CB Ridge (old Nevada Ridge)
- Bear Crossing

Crested Butte

- Academy Place Multifamily
- Mineral Point
- New Town WWTP
- Fire Campus
- 48 affordable housing units
- Clark's Market
- Bruhaus
- CBCS

County

- County Whetstone Housing (240 units)
- New subdivision at Cement Creek & Hwy, 135 (75 homes)
- changing commercial district in CBS to One-Way traffic
- Solar Farm on Hwy 135
- Clark commercial expansion-CBS

Plan Reviews/Letters: completed in July- (16 total)

Mount Crested Butte

- Marcellina
- Marcellina
- Whetstone
- Hunter Hill
- Coyote Ridge
- Paradise Road
- Prospect Drive

Crested Butte

- 3rd St.
- 3rd St.
- Butte Ave.

County

- Lexie Court
- Elcho Ave.
- Nicholson Lake Ridge Rd.
- Coal Camp Rd.
- Saddle Ridge
- Meridian Lake Dr.

Inspections & Meetings: 32

Mount Crested Butte

3

Crested Butte

16

County

13

Company Level Annual Life Safety Inspections: 3 performed in the month of July

Fire Prevention Division summary: Congratulations to Deputy Fire Marshal Joe Wonnacott who has received his Colorado Division of Fire Prevention & Control's Fire Inspector 3 Plans Examiner and his International Code Counsel Residential Fire Sprinkler Inspector/Plans Examiner. This has been a big accomplishment on his part. The Fire Prevention Division currently has many invoices out waiting for their plan review payment. Upon receipt of payment, we will start the process to perform their plan review. We have been involved with helping to educate the public with Wildland Mitigation concerns around the Lowline Fire. On Tuesday evening, we attended the Lowline Fire Community Meeting. Thank you to Operations crews who have been helping us with drafting testing on new cisterns and dry hydrants.

Updates & Enforcement issues:

1. The new Bruhaus has started their remodel/upgrades to their building. (old Brick Oven)
2. Clark's Market has started their remodel and will be closing until November on August 17th, 2023.
3. A thank you to Chris, Taylor and Annie who put our Fire Prevention Wildland Mitigation Resources & Guide on our CBFPD website.
4. We are continuing our follow-up on all the cleaning & inspection reports that all the restaurants are required to submit to us. More to follow

Action request to the Board of Directors:

-none as of this packet submittal

CRESTED BUTTE FIRE PROTECTION DISTRICT
Chief Executive's Report

August 8, 2023

1. Consent Agenda

- a) July 11th Regular Meeting Minutes
- b) Monthly Financial Reports

2. Chief Executive's Comments:

As I put the finishing touches on this report Saturday afternoon the Lowline Fire Incident Management Team (IMT) has just provided their briefing on the long term fire outlook. As of today, the fire is showing at 1,814 acres and 55% containment. All of the primary fire line has been constructed and secured. Firefighting resources will likely be leaving the area soon, including the IMT as the fire will be left to burn westward towards the West Elk Wilderness boundary. Overall, the CBFDP was able to help with the initial attack of the fire on 7/27 and 7/28 that included our crews doing a lot of work protecting structures in the Mill Creek area. During the past week we were also able to connect our fire prevention team with the public information organization of the fire to do a good bit of public education and wildfire mitigation planning. Another success from the fire was that we ironed out the details that now have us in the federal wildfire dispatch system for the first time ever. As the first major fire in Gunnison County in a number of decades, we learned a great deal, have been able to leverage the public education opportunity, developed some important relationships, and will be better prepared for the next wildfire event.

I regret I will be unavailable to join you in person this month in person as I will be attending a 2-day state meeting in Lake City that will have me joining by Zoom instead. John Chmil and Todd Goulding will also be joining us remotely. I'm fairly certain Todd will still be in Switzerland so be sure to ask him what time it is when he calls in!

In other news we received and placed in service the new command module for vehicle D-8 and have turned that over for daily use by our on-duty captains. Chief Weisbaum and the committee investigating a new quint-type aerial / pumper combination vehicle visited the Rosenbauer USA factory in Minnesota and came back with some great information. On the financial front, our 2023 budget continues to track well and we are on target to receive information on our 2024 assessed value information by the end of the month. Fire prevention has also continued to see plenty of activity and Chief Weisbaum will provide an update on vehicles, and hiring in addition to our badging ceremony for Luke Danek.

In my report I provided a copy of the letter sent to the Town of Crested Butte regarding the Butte Avenue bridge. We have also had some recent conversations about the interesting lot lines of Station 2 and how they interact with both Outrun Street and the Ski Jump Condos that I will explain briefly.

Most of our discussions this month will be in Old Business and many will involve future member housing. First off, however, Todd and John will walk us through the proposed contracts with FCI for services as our general contractor under a guaranteed maximum price arrangement. The base contracts are American Institute of Architects (AIA) templates A133 and A201. Both John and Todd have reviewed the terms extensively and John has suggested a variety of changes Lyons Gaddis typically recommends. A few loose ends were under discussion with FCI as of late Friday, however we appear to be very close to final language for your review and approval. The reason we are working on the contracts at this point is to be able to bring key subcontractors onboard over the winter and begin the ordering of long lead time items such as the generator which will likely take 14 – 18 months to receive.

Todd will also have information to share on the geothermal feasibility testing for the site. We received very preliminary info late Friday and hope to have a report in hand before the meeting that I will upload

CRESTED BUTTE FIRE PROTECTION DISTRICT
Chief Executive's Report

as soon as we have it. We do not have geothermal in the current budget so we will need to work that through if proceeding with geothermal is a preference of the board.

Regarding the Larkspur lots we have also finished up our agreement language with Gunnison County for the purchase of the Nicky Ct. lots. At this point we are just waiting for the go-ahead to proceed from the County. I was advised of a brief delay on their end by John Cattles in mid-July as they wanted to officially bring Commissioner Puckett – Daniels up to speed on the situation before they proceeded. Regardless, we are ready to go on our end to purchase both parcels for \$200k.

What was most surprising this month, however, was the next phase of the Lazy K lottery. After not hearing about the results of the lottery on 7/27 I made an inquiry and found out we were the only interested buyer for the current round of 3-bedroom units and they offered us one or both of the currently available units. Both are 3 bedroom 1.5 units in the multi-family building on the site that used to be restaurant and resort office. Unfortunately, that means no garages. One unit is available for \$408k and the other for \$428k. Based on our tour of the site last week it looks like the \$428k Unit B is the nicer of the units with a nice upper level wrap-around deck. We would have no restrictions in renting the unit long term to members or full-time Gunnison County residents, however the unit is deed restricted to 2% annual appreciation and if sold must go to a qualifying business or an individual in the 140% of AMI income range. While they did offer us both units, I don't think buying 2 would be wise at this point so I am inquiring about any member interest in purchasing the other one directly. I do recommend we seriously consider buying one unit as it is turn key and ready to go if we need to support another new hire soon. While it won't appreciate much in value, it is unlikely to lose value and we can probably sell it in a few years when more in-district housing comes online. The packet includes all of the deed restriction info for your consideration and the GVRHA would like an answer by the end of the week regarding our intentions.

In new business, we need to discuss the September meeting date as it also includes the pension board meeting and conflicts with the SDA Conference that Annie and I will be attending. We can either reschedule or Annie and I can attend remotely based on your pleasure.

Following any unscheduled business we do have an executive session scheduled to discuss a private sale offer we received that may be useful for future member housing. I look forward to your comments as we jointly consider Larkspur, Lazy K and the private offer.

3. Action Items

- a) Approve consent agenda
- b) Review, discuss and approve FCI Contracts
- c) Discuss and/or provide authorization for Lazy K purchase
- d) Determine plan for September meeting.
- e) Provide direction on private sale offer



R005220



CRESTED BUTTE FIRE PROTECTION DISTRICT

306 MAROON AVENUE • P.O. BOX 1009
CRESTED BUTTE, CO 81224
(970) 349-5333
FIRE FAX: (970) 349-3420 • EMS FAX: (970) 349-0438
WEBSITE: WWW.CBFPD.ORG

July 20, 2023

Town of Crested Butte
Attention: Troy Russ
507 Maroon Ave.
P.O. Box 39
Crested Butte, CO 81224

Dear Troy,

The Crested Butte Fire Protection District has been made aware that the Town of Crested Butte is exploring the opening of Butte Avenue bridge to vehicular traffic. As the provider of essential fire protection and emergency medical services to the Town and the surrounding area, we strongly support opening the bridge to traffic to the greatest extent possible, as this will be a critical connection to maintain and improve our ability to provide emergency services to all areas of the Town northwest of Coal Creek.

The failure to open this road connection will restrict emergency access to areas northwest of Coal Creek to access via Elk Ave., Maroon Ave., First St. and Second St. bridges which are all on the far western side of town. While our facilities are currently quite proximal to the Maroon Avenue bridge, our new facilities located off County Road 317 will be significantly more distant from these areas. If the Butte Ave. bridge is not opened to vehicular traffic, our responses will be subject to additional delays of 1 – 2 minutes when attempting to access the area via Elk, Maroon, or other east-west avenues. While this delay may seem insignificant, it is worth noting that residential fires can become deadly to occupants in under 10 minutes and response to serious medical emergencies, such as cardiac arrest, require arrival and care within 8 minutes or less to allow for the best chance of survival. When considering overall response time to include notification, dispatch, and travel time, these 1 -2 additional minutes are critical to life safety.

Attached to this letter is a 2009 document published by the Congress of the New Urbanism (CNU) that discusses the value of connected grid networks to emergency responders. While the document is targeted more directly towards larger urban and suburban areas, the concept of a connected street grid is certainly applicable to Crested Butte and a connected street grid would serve to more equitably distribute traffic while keeping traffic speeds low. As you are also aware through the current Transportation and Mobility project, the current situation of a vibrant street grid combined with significant pedestrian and bicycle activity has made Crested Butte a very safe community where winter conditions for pedestrians and

bicyclists, and low-speed parking crashes among vehicles are the most prevalent incidents on our local streets.

The District feels strongly that taking steps to connect the Butte Avenue bridge will not have an adverse impact on safety. By contrast, it will allow for the better distribution of motor vehicle, bicycle and pedestrian traffic throughout the community while taking some of the pressure off of other high-use stress points such as Maroon Avenue and the surrounding streets that are currently carrying a disproportionate share of traffic. While the District recognizes there will likely be opposition to opening the Butte Avenue bridge by individuals who directly benefit from the aesthetic value of lightly used publicly-maintained streets that are disconnected from the grid network, we believe that public safety and overall equity should be the priority when considering street improvements and bridge connections.

Thank you for your consideration on this matter and please feel free to contact us if we can provide any additional information on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. M. Caffrey". The signature is fluid and cursive, with a prominent loop at the end.

Sean M. Caffrey, MBA, CEMSO, FACPE, NR-P
Chief Executive Officer & Commissioner

DRAFT AIA® Document A133™ - 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the ~~«eighththird-»~~ day of ~~« NovemberAugust »~~ in the year ~~« two thousand twenty twohree »~~
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

«Crested Butte Fire Protection District »« »
«306 Maroon Avenue »
«Crested Butte, CO 81224 »
« »

and the Construction Manager:
(Name, legal status, address, and other information)

«FCI Constructors, Inc.»
«P.O. Box 1767 »« _ »
«Grand Junction, CO 81502« »
« »
« »

for the following Project:
(Name, location, and detailed description)

«New Fire station, EMS, SAR and Employee Housing buildings-»
«Northeast corner of CO-HWY 135 & Pyramid Ave »
«Crested Butte 81224 »

The Architect:
(Name, legal status, address, and other information)

«The Blythe Group Company »« »
«622 Rood Avenue »
«Grand Junction, CO 81501 »
« »

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Commented [TG1]: What is the best date to use here? There was pre-con done earlier, and the current effort started before November of 2022. I

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- 4 OWNER'S RESPONSIBILITIES
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- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

- EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
- EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« » Construction of a new Fire Station, Search & Rescue Building & Housing

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

~~« »\$21,085,281 per FCI's December 23, 2022 estimate.\$24,009,294.00 per FCI's estimate dated July 18, 2023 (R5)~~

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

~~« TBD Attach BG schedule here »~~ See Attached EXHIBIT XX (FCI Schedule dated July 5, 2023)

.2 Construction commencement date:

~~« TBD March/April 2024 »~~

.3 Substantial Completion date or dates:

~~« TBD July 2025 »~~

.4 Other milestone dates:

~~« TBD »~~

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

(Identify any requirements for fast-track scheduling or phased construction.)

~~« »NA~~

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

~~« »NA~~

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

~~« »~~

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

~~« Todd Goulding »
« Goulding Development Advisors, LLC »
« 220 Gold Dust Drive »
« Edwards, CO 81632 »
« »
« »~~

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

Formatted: Highlight

« »

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

«Mountain Engineering & Testing» «Cesare Inc/CMT»
[Darin Duran, P.E.](#)
Darin.Duran@cmttechnicalservices.com
[303.570.3291](tel:303.570.3291)
[7108 South Alton Way, Building B](#)
[Centennial, CO 80112](#)
«»
«»
«»

.2 Civil Engineer:

«SGM» «»
«Tyler Harpel»
tylerh@sgm-inc.com
[970.707.8158](tel:970.707.8158)
«103 W Tomichi Ave, Suite A»
[Gunnison, CO 81230](#)
«»
«»

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

«Bio-Environs, LLC (Aquatic resource analysis)»
[Tim Lapello](#)
tim.bioenvirons@gmail.com
[970-641-8749](tel:970-641-8749)
[88 Sandpiper Trail](#)
[Gunnison, CO 81231](#)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »

« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

« »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall comply with all applicable State laws and Ordinances and establish a process, to be reviewed and approved by the Owner, to qualify a list of local subcontractors provided by the Owner, Architect, and Construction Manager will use its commercially reasonable best efforts to provide those subcontractors opportunities to bid on work associated with the Project. As working drawings and specifications are completed, Construction Manager will establish bidding schedules and conduct pre-bid conferences to familiarize bidders with bidding documents, management techniques, and any special systems, materials, or methods. Construction Manager will prepare scope packages for each trade with clearly identifies the bid scope, including items such as cleanup and safety. Construction Manager will review scope packages with the Owner and Architect prior to issuing same to subcontractors. Construction Manager shall (1) analyze all bids; (2) prepare a bid matrix and scoring method (approved in advance by the Owner) and a written bid analysis; (3) review the bids and bid analysis with the Owner and Architect; (4) select and recommend lowest, qualified bidder to the Owner; and (5) award subcontracts.

The subcontractor selected for an award will be the subcontractor whose bid, as presented in the response to the bidding documents, is the most advantageous to the Project. The Owner is not bound to accept the lowest priced bid if that proposal is not in the best interests of the Project as determined by the Owner."

«—»

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

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User Notes:

(3B9AD440)

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information

Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. in a form acceptable to the Owner If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner’s requirements, for the Owner’s review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders’ interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. Construction Manager expressly agrees that Owner is a governmental entity.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document
(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

- « »Attendance at weekly team meetings (majority of which will be virtual)
- Attendance at entitlement meetings as needed including public / neighborhood meetings
- Correspondence and coordination with the District and its consultants
- Estimates at SD, DD, 50%CD and GMP
- Add/Alternates costs/deducts in a trend log format
- Value Engineering pricing as needed to meet budget
- Generate complete project schedule including preconstruction activities
- Maintain project schedule with updates and progress
- Long lead time procurement deadlines
- System selection and analysis assistance
 - Utilities/infrastructure
 - Structural systems
 - MEP systems
 - Finishes
 - Installation details
 - Add alternates

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner’s and Architect’s review, and the Owner’s acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager’s estimate of the Cost of the Work, the Construction Manager’s contingency described in Section 3.2.4, and the Construction Manager’s Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents

and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Contractor shall provide a Contingency Log with every Pay Application identifying the amount and use.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.5.1 Failure of the Owner or Architect to discover inconsistencies or inaccuracies in the information shall not in any way excuse the Construction Manager from completing the project at or below the Guaranteed Maximum Price identified in this Agreement.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall promptly notify the Owner and Architect in writing of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. Notwithstanding the foregoing, the Construction Manager acknowledges that Owner is a public, tax-exempt entity and that Construction Manager shall work with the Owner to avoid the payment of taxes when possible.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Owner represents that Prior to the execution of the Guaranteed Maximum Price Amendment, an amount of money equal to or in excess of the Guaranteed Maximum Price will be appropriated for all payments to be made to Construction Manager pursuant to this Agreement. Owner further represents that no change order or other form of order or directive requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated, will be approved or made by Owner unless Construction Manager is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect,

in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are **reasonably** necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

~~«10 Months @ \$3,000 / month = \$30,000»\$20,000.00~~

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager’s Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

~~«Reference 2023 Billable Rate Sheet in proposal. As noted on the rate sheet, these rates are subject to 3% -5% increase per year after 12 months from the date of the executed agreement -> and such rates shall be used for the duration of the project.»~~

Commented [TG2]: Should this be updated to 2023?

Individual or Position	Rate
« »	

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~«Ten Three»~~ (~~«310»~~) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due ~~and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid «Forty five» («45») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)~~per the attached EXHIBIT XX – GDA Payment Process Memo. Late payments shall bear interest at the rate below.

~~«8»~~ % ~~«per annum»~~

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

~~«Construction Manager’s Fee of four and a half percent (4.5%) shall be applied to the Guaranteed Maximum Price (GMP) and converted to a lump sum at the time of execution of the A133 Exhibit A - Guaranteed Maximum Price Amendment. »~~

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

~~«10% for work in excess of the GMP» Additive and deductive change orders shall increase or decrease the Guaranteed Maximum Price by the cost of the Work as defined in article 6, plus Contractor's Fee, Payment and Performance Bond Premiums, Builder's Risk Coverage and General Liability Insurance Premiums, all of which are included in the 10% noted above. «See below for additional language~~

~~«Construction Manager's Fee for additive Change Orders shall be calculated at the rate of xxxx percent (xx%). Any changes reducing the GMP, shall not be subject to a reduction in the Construction Manager's Fee. »~~

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

~~«Subcontractors limited to 15% markup for overhead and profit on changes to the scope of the work.»~~

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed «Ninety» percent («90.00» %) of the standard rental rate paid at the place of the Project.

~~**§ 6.1.6** Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)~~

~~**§ 6.1.7** ~~6.1.6~~ Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)~~

~~«NA »~~

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. The Date of Substantial Completion shall not be adjusted for a change in the Work unless the Construction Manager demonstrates to the Owner's reasonable satisfaction, in the Owner's sole discretion, that the change in the work will affect the critical path of the Construction Manager's schedule.

§ 6.2.1 Construction Manager shall prepare a detailed cost breakdown of the Guaranteed Maximum Price based on the Drawings provided by the Architect and shall update this cost breakdown throughout the project subject to Owner's approval of any Change Orders. The cost breakdown shall be in a form mutually agreed upon by Owner and Construction Manager.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

Commented [TG3]: Conceptually I am ok with a Lump Sum conversion with the following conditions:
1) FCI's total fee will not be below the original Lump Sum Fee.
2) Deductive change orders shall include a reduction of 4.5% Fee so long as it does not drive the fee below the original lump sum.
2) Fee will only be increased if the GMP increase more than 10% from the original GMP. For example when the first Change Order exceeds the GMP by 11%, then the 1% is subject to the 4.5% additive Fee.

Commented [TG4]: Need to discuss this as we will need LD's or locked GC's.

Commented [BY5]: We can discuss lump sum GCs for the management costs, if situations arise that require additional housing, connexes, temporary storage...etc. We would want to be able to access contingency for those additional costs.

Commented [TG6]: Any addition to the GC's would require Owner Approval. The intent is to avoid pushing GMP savings (contingency) into the Contractors GCs.

Commented [TG7]: This infers all savings revert to the Owner

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

~~§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.~~

~~§ 7.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.~~

~~§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed-upon percentage of time to be devoted to the Work.)~~

«Reference 2023 Billable Rate Sheet in proposal »

Commented [TG8]: We will reference these rates for the duration of the project. Do these need to be updated?

~~§ 7.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

§ 7.2.4-1 The cost of the work includes labor costs for: 1) wages of construction workers directly employed by the Contractor to perform the construction of the Work; 2) wages or salaries of the Contractor’s supervisory and administrative personnel, whether stationed at the site or at offsite locations, but only for that portion of their time attributable to the Work; and 3) the labor burden and benefits associated with such wages and salaries including but not limited to taxes, insurance, contributions, assessments, benefits such as sick leave, medical and health benefits, holidays, vacations, pensions, bonuses, profits sharing, and incentive compensation. Contractor and Owner agree that it is difficult and expensive to calculate the precise amount of such labor costs, and that such costs may constitute proprietary information. Both Contractor and Owner desire to establish such labor cost rates with certainty in advance of incurring such labor costs. Thus, Owner and Contractor agree that labor costs will be charged on the basis of rates set forth in the Labor Rates Exhibit XX. Such rates are guaranteed for one year from the date of this Agreement, and then are subject to escalation not to exceed 5% per year the duration of the Project. Because these rates are mutually agreed to and established in advance of the Work, the rates shall not be subject to audit pursuant to any other provisions in the Contract. Costs paid or incurred by the Construction Manager, as

~~required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. This labor burden is equal to sixty eight (68%) and applies only to FCI-furnished labor.~~

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment ~~or materials shall may~~ not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 ~~Unavoidable~~ Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable ~~despite Owner's tax-exempt status.~~

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

~~§ 7.6.9 Legal, mediation and arbitration. Omitted. Legal and mediation costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any

entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its

responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

The Pay Application process shall be as follows: The Construction Manager shall deliver the draft Pay Application ("Pencil Draw") by the 25th day of the month for all costs incurred. The Owner shall review and comment on the Pencil Draw prior to or at the next OAC/Pay Application meeting. The Construction Manager, the Owner, and the Architect (and others as appropriate) shall walk the site and update the Pay Application comments during the Pay Application Meeting. The Construction Manager shall revise the Pencil Draw and issue a final Pay Application addressing all required comments for Owner and Architect review within five (5) days. The Owner and the Architect shall review the Construction Manager's final Pay Application and shall either endeavor to make payment of the certified final Pay Application amount to the Construction Manager within fifteen (15) days or notify the Construction Manager of an objection to payment within three (3) working days of receipt of the final Pay Application; provided that this procedure shall not apply to final payment, which shall be made pursuant to Section

Commented [TG9]: Need to leave the term endeavor. We will try to pay FCI within 15 days but have 30 days before it is deemed late.

11.2
←→

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the «First» day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the «Twenty-fifth» day of the «same» month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «Thirty» («30») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager and all applicable Subcontractors shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other

evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, including unconditional waivers for previous pay applications from Subcontractors and conditional waivers from Subcontractors for the current pay application, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. Contractor shall track costs for sitework, Fire station/HQ and SAR separately (similar to the FCI estimates provided previously).

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.6.1 General Conditions are to be billed as lump sum/percent complete based on Project duration established within the GMP Amendment. General Conditions shall not be increased absent express approval by Owner in a properly executed Change Order that specifically references an increase in General Conditions.

§ 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«5%»

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

«General Conditions

Insurance & Bonds

Materials delivered on a Material Purchase agreement »

Contractor shall provide a monthly report indicating retainage withheld each month and total retainage withheld to date.

No retainage may be released without Owner’s written approval.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

« »Prior to any retainage payment, Contractor shall provide all closeout documents including but not limited to: final lien waivers, as-builts, O&Ms, and warranties).

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager upon full compliance with the procedural requirements of § 38-26-107, C.R.S., and when

- 1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment, including receipt of unconditional lien waivers from all Subcontractors; and
- 3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, Contingent upon all other close-out requirements of the contract documents are met, or as follows:

« The Architect will not issue the final Certificate for Payment and final payment will not be made until the time of final settlement is established by the Owner and is advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement as required by C.R.S. § 38-26-107. The Owner shall withhold from all payments to Construction Manager sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by Construction Manager or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by Construction Manager or the subcontractor, all in accordance with the provisions of C.R.S. § 38-26-107. »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

«8» % per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

«NA »

« »
« »
« »

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

«»

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all expended costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

«NA-»

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

14.3.1 For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain the insurance required by this Article and as set forth in Article 11 of AIA Document A201–20072017.

§ 14.3.2 The Construction Manager shall provide and maintain during the performance of this Agreement the insurance described below, which insurance shall be placed with a company or companies authorized to do business in the State of Colorado with an A.M. Best's Insurance Report rating at not less than A-/VI. Prior to commencement of Work, the Construction Manager shall furnish and deliver to the Owner proof that the following insurance shall be in force and effect for the duration of the Project. All Certificates of Insurance relating to Broad Form General Liability, Automobile Liability and Excess Liability, shall list Owner as additional project-specific insured.

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Additional Insured Endorsements will be provided to Owner by Construction Manager's Insurance Company with other Certificates of Insurance.

§ 14.3.4 Standard Form Commercial General Liability and Property Damage insurance (as provided on an ISO CG 00 01 form) that includes coverage for (a) claims for bodily injury, including death, and property damage; and (b) contractual liability on an occurrence basis and shall include fire, explosion, collapse, underground hazard and product/completed operations coverages. Minimum limits: General Aggregate \$4,000,000; Products/Completed Operations Aggregate \$4,000,000; Personal and Advertising Injury \$1,000,000; Each Occurrence \$2,000,000;

§ 14.3.5 Workers compensation insurance, at statutory limits, as required by Colorado law, covering all employees working on the site, and Employer's Liability Insurance with the following minimum limits: Each Accident \$1,000,000; Each Occupational Disease \$1,000,000, Occupational Disease Aggregate \$500,000;

§ 14.3.6 Automobile liability insurance, covering the use, operation and maintenance of any automobiles, trucks, trailers or other vehicle owned, hired, or non-owned by the Construction Manager providing bodily injury, including death, and property damage coverage. Minimum limits of liability provided by this coverage shall be a Combined Single Limit of \$1,000,000;

§ 14.3.7 Excess Liability Insurance with a minimum limit of \$2,000,000 for each occurrence and aggregate of \$2,000,000;

§ 14.3.8 Standard, all risk of loss Builder's Risk completed value insurance. In no event shall the amount of the deductible under the Builder's Risk Policy exceed \$10,000.00. The Builder's Risk Insurance shall be carried by the Construction Manager at 100% of the Contract amount, totaling the Guaranteed Maximum Price.

§ 14.3.9 Professional Liability Insurance (Errors and Omissions), covering any design services provided under this Agreement by design / build subcontractors or suppliers, including contractual liability insurance against the liability assumed in this Agreement, as is acceptable to and approved by the Owner. Such insurance shall have minimum policy limits of \$1,000,000 in the aggregate and \$1,000,000 per claim and a maximum deductible of \$25,000 (All deductibles to be paid by Construction Manager). The insurance provided must be primary to any insurance coverage carried by the Owner.

§ 14.3.11 The full aggregate liability policy limits required above shall be available with respect to the Construction Manager's obligations hereunder, and the Construction Manager shall obtain a location specific aggregate limited endorsement confirming such coverages as to the Owner and additional insureds. The Construction Manager agrees to notify the Owner and additional insureds of any substantial claims, paid or resolved, applied against the aggregate of any of the required insurance policies;

§ 14.3.12 All insurance provided by the Construction Manager hereunder shall be primary to any insurance policies held by the Owner and additional insureds. The Construction Manager waives subrogation as to the Owner and its agents, representatives, affiliates, additional insureds, and assigns on all policies carried by the Construction Manager;

§ 14.3.13 All insurance shall include a provision prohibiting cancellation, termination or alteration (so as to affect the intent of this agreement) without thirty (30) days' prior notice by certified mail to the Owner. In the event of threatened cancellation for nonpayment or nonrenewal, the Owner may pay the same on behalf of the Construction Manager, at the Owner's discretion, and deduct the same from any amount or payment due to the Construction Manager hereunder.

§ 14.3.14 Payments for services provided will be withheld from the Construction Manager until acceptable Certificates of Insurance and Additional Insured Endorsements are received by the Owner.

§ 14.3.15 No Work will be conducted on the Project site until satisfactory evidence has been submitted that the Construction Manager has insurance that complies with this Agreement. Construction Manager is also responsible to verify that any design/build subcontractors (any subcontractor providing engineered drawings for review and approval), carry the following Professional Errors and Omissions Insurance: Professional Liability Insurance (Errors and Omissions), covering the services provided under this Agreement, including contractual liability insurance against

the liability assumed in this Agreement, as is acceptable to and approved by the Owner. The insurance provided must be primary to any insurance coverage carried by the Owner.

§ 14.3.16 The Construction Manager shall maintain a performance bond and a separate labor and material payment bond, which shall (a) be executed by a corporate surety licensed to do business in the State, (b) be in customary form, (c) be in the amount payable to the Construction Manager hereunder or to such subcontractor pursuant to its contract with the Construction Manager and (d) be payable to the Owner. A copy of each such bond and all modifications thereto shall be furnished to the Owner.

§ 14.3.1 Preconstruction Phase
The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ~~«One million Dollars and Zero Cents»~~ (\$ ~~«1000000.00»~~) for each occurrence and ~~«2000000.00»~~ (\$ ~~«Two million Dollars and Zero Cents»~~) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ~~«One million Dollars and Zero Cents»~~ (\$ ~~«1000000.00»~~) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and **Employers Liability** with policy limits not less than ~~«One million Dollars and Zero Cents»~~ (\$ ~~«1000000.00»~~) each accident, ~~«One million Dollars and Zero Cents»~~ (\$ ~~«1000000.00»~~) each employee, and ~~«One million Dollars and Zero Cents»~~ (\$ ~~«1000000.00»~~) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ~~«One million Dollars and Zero Cents»~~ (\$ ~~«1000000.00»~~) per claim and ~~«Two million Dollars and Zero Cents»~~ (\$ ~~«2000000.00»~~) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
←→	

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and Owner's Representative as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

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§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 14.5 Other provisions:

1. Small Tools, Consumables and FCI Rental Rates - FCI will provide to the project a full stock of most commonly used small tools (tools worth less than \$1000: drills, saws, screw guns, brooms, wheel barrows, shovels, etc.). These tools will be furnished at no cost to the project but should one need replaced, it will be a direct cost to the project. Consumables such as drill bits, saw blades, powder actuated loads, winter fuel fittings and hose, oxygen, acetylene, etc. will be a direct cost to the project. FCI specialty tools and tools over \$1000 in value will be rented out to the project at a rate at least ten percent (10%) less than any available rental source (see attached FCI Constructors, Inc. Standardized Rental Rates). Tool rent is only to be charged for the time the tool is in use and reasonably required on the job site. FCI tool rental is subject to Owner audit at any time. This Agreement entered into as of the day and year first written above.
2. The Owner agrees to indemnify and hold harmless FCI Constructors, Inc., its employees and its Subcontractors, for any and all claims, fines, penalties, and legal costs including attorney fees arising out of the performance of the work which may involve asbestos or other contaminants which may exist on the Owner's property and is not a part of this Agreement.
3. The Contractor shall promptly notify Owner and Architect if reserves the right to reject a proposed changes in the work which would require the Contractor to include responsibilities not customarily performed or managed by the Contractor or if to reject the assignment by the Owner of any subcontractor to this agreement based on the Contractor has a reasonable objection to any proposed subcontractor b's reasonable assessment of the Subcontractor's qualifications.
4. The Construction Manager agrees to provide submittals consisting of samples, colors, product specifications and details; the Construction Manager is not responsible to provide architectural or engineering design details not indicated in the contract documents except to demonstrate compliance with current design or to support the design professionals in resolving details.
5. The Owner agrees to be responsible for applying for utility installations and for clarifying and modifying the Construction Documents as required by all approving authorities. The Contractor agrees to aid the Owner in coordinating with the public utility companies for the timely installation of all utility installations. The Contractor will not be responsible for any delays caused by the owner or his agents nor by the approving authorities or public utility companies. The completion date of the work is subject to release of all permits and the installation of all public utilities so as not to delay the progress of construction as indicated in the attached Schedule (EXHIBIT XX).
6. The Contractor agrees to aid the owner in evaluating various options for the treatment of potential soils movement. The Contractor acknowledges that the Owner will provide has provided a soils investigation report; however, due to its numerous options in how to reduce soil movement, the Contractor will follow the design shown in the construction drawings and specifications. Contractor shall notify Owner of any conflicts or discrepancies between Contract Documents and Cesare's Geotechnical Study. The Contractor will not be responsible for any damage due to expansive soils unless the work is not performed in accordance with the contract documents.
7. One hundred percent (100%) of the project/value engineering savings shall accrue to the Owner.
8. The Construction Manager shall:
 1. Prepare and update a consolidated project schedule on a monthly basis until Substantial Completion and provide copies to the Owner and the Architect as soon as the schedule is prepared.
 2. Support value-engineering efforts to reduce costs and to identify reasonable equivalent materials

Commented [JC10]: Covered by 10.3 in A201.

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and supplies.

3. Support the Owner in meeting requirements imposed upon the Owner for financing.
4. Conduct weekly construction meetings, until Substantial Completion, with all Subcontractors and any other necessary Project participants and include the Owner and the Architect and develop and distribute minutes of all such meetings, and: Owner and Architect may attend subcontractor meetings at their sole discretion, Contractor shall provide subcontractor meeting minutes if requested.
5. Participate and manage weekly Project meetings with the Owner, Architect and others as needed.

§ 14.5.1 The Construction Manager shall maintain an accurate set of as-built drawings at the site, or online via mutually agreed upon software platform. At the completion of the Work, the Construction Manager shall certify by signing on them that each of the as-built drawings and specifications are complete and accurate. No later than thirty (30) days after Substantial Completion of Owner's Work and prior to application for Final Payment, and as a condition to its approval by the Architect and Owner, the Construction Manager shall transfer the job site as-built drawings, arranged in proper order, indexed and certified as accurate to the Architect for transmittal to the Owner.

§ 14.5.2 All Work performed by the Construction Manager, or any subcontractor or person performing work on its behalf, shall be guaranteed against defective workmanship and materials for a period of two (2) years from the date of Substantial Completion, provided that such two-year period shall not begin with respect to any portion of the Work that is not completed on the date of Substantial Completion until such item is completed.

§ 14.5.3 The Construction Manager shall provide notification within seven(7) days after becoming aware of the basis of any request for change. The Construction Manager shall develop and submit pricing of proposed changes within fourteen-twenty one (421) days after a solution has been provided. The Owner shall provide a written response to the Construction Manager's proposal within ten (10) business days of the Owner's receipt of the Construction Manager's submission.

§ 14.5.4 The Construction Manager shall include with every subcontract the following language: "Subcontractor binds itself to the Construction Manager and the Owner and is obligated to the Construction Manager and the Owner in the same manner and to the same extent that the Construction Manager is bound and obligated to the Owner under the Contract. All rights which the Owner may exercise and enforce against the Construction Manager may be exercised and enforced by the Owner against the Subcontractor. In the event of any dispute between the Owner and Construction Manager, the Subcontractor shall be bound by all decisions, directives, and interpretations and rulings of the Owner, including the Owner's termination or suspension of the Construction Manager."

§ 14.5.5 The Construction Manager represents that it (1) has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) has reviewed, analyzed, and has current knowledge of the site; (3) has reviewed, analyzed and has found sufficient for construction and completion of the Work. The Construction Manager represents and warrants that it can and will complete the Work for the Contract Sum, and that no sums additional to the Contract Sum are required for the Construction Manager's completion of the Work.

§ 14.5.6 The Construction Manager hereby waives and releases any and all claims for consequential and/or indirect damages including but not limited to attorney fees.

§ 14.6 — Illegal Aliens:

§ 14.6.2 — In accordance with C.R.S. § 8-17.5-101, et. seq., the Construction Manager certifies that it has not knowingly employed or contracted with an illegal alien to perform work under this Agreement, and that the Construction Manager will participate in the E-Verify Program or the Department Program to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement. The

Construction Manager further certifies that it will not enter into a contract with a subcontractor who fails to certify to the Construction Manager that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§ 14.6.3 The Construction Manager has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program. The Construction Manager shall not use the E-Verify Program or the Department Program to undertake pre-employment screening of job applicants while the Agreement is being performed. If the Construction Manager obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Construction Manager shall:

a. Notify the subcontractor and the Owner within three (3) days that the Construction Manager has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract if within three (3) days of receiving actual notice the subcontractor does not stop employing or contracting with the illegal alien, except that Construction Manager shall not terminate the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

§ 14.6.4 The Construction Manager shall comply with any reasonable request by the Department of Labor and Employment (hereinafter referred to as the "Department") made in the course of an investigation that the Department is undertaking pursuant to C.R.S. § 8-17.5-102(5)

14.6.5. Governmental Immunity. The Owner and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to the Owner and its officers, attorneys or employees under any applicable law.

14.6.6 Rights and Remedies. The rights and remedies of the Owner under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Owner's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

14.6.7 Subject to Annual Appropriation. Except as otherwise specifically set forth herein, consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Owner not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

14.7.8 For all disputes arising from or related to the Contract Documents, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs.

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ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

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- «»Exhibit XX – Schedule
- Exhibit XX – Contractor Labor Rates
- Exhibit XX – Contractor Equipment Rental Rates
- Exhibit XX – List of Plans and Specifications
- Exhibit XX – GDA Payment Process Memo

.6 Other Exhibits:
(Check all boxes that apply.)

[[«»]] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
 (Insert the date of the E234-2019 incorporated into this Agreement.)

«»

[[«»]] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
«-Geotechnical Study by Cesare Inc»		12/15/22	44
Groundwater Depth Letter by CMT Technical Services (formerly Cesare Inc)		6/7/23	1

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

«»

This Agreement is entered into as of the day and year first written above.

« »

OWNER (Signature)

 « »« »

(Printed name and title)

« »

CONSTRUCTION MANAGER (Signature)

 « »« »

(Printed name and title)

DRAFT AIA[®] Document A133[™] – 2019

Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the «**■**» day of «**■**» in the year «**■**», is incorporated into the accompanying AIA Document A133[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the «**■**» day of «**■**» in the year «**■**» (the “Agreement”)
(In words, indicate day, month, and year.)

for the following **PROJECT**:
(Name and address or location)

« **»**
« **»**

THE OWNER:
(Name, legal status, and address)

« **»**« **»**
« **»**

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

« **»**« **»**
« **»**

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed «**■**» (\$ «**■**»), subject to additions and deductions by Change Order as provided in the Contract Documents.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

<< >>

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
<< >>	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<< >>		

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<< >>		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- [<< >>] The date of execution of this Amendment.
- [<< >>] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

<< >>

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[<< >>] Not later than << >> (<< >>) calendar days from the date of commencement of the Work.

[<< >>] By the following date: << >>

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
<< >>	

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<< >>			

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

<< >>

Section	Title	Date	Pages
<< >>			

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

<< >>

Number	Title	Date
<< >>		

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s and Construction Manager’s roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
<< >>		

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
<< >>	

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

<< >>

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

<< >>

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

<< >>

This Amendment to the Agreement entered into as of the day and year first written above.

<< >>

OWNER (Signature)

<< >>< >>

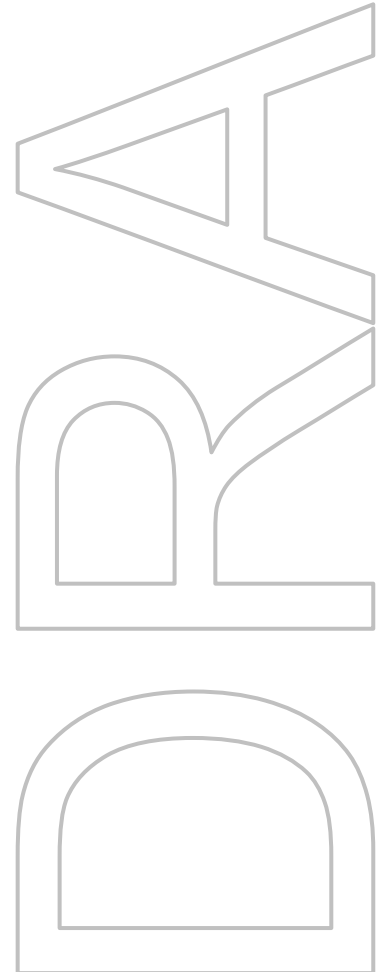
(Printed name and title)

<< >>

CONSTRUCTION MANAGER (Signature)

<< >>< >>

(Printed name and title)



DRAFT AIA® Document A133™ - 2019

Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status, and address)

« »« »
« »

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

« »« »
« »

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.

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§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
« »	

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
« »	

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § B.2.4.1 **Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- § B.2.4.2 **Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- § B.2.4.3 **Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- § B.2.4.4 **Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- § B.2.4.5 **Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- § B.2.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- § B.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- § B.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.

(Indicate applicable limits of coverage or other conditions in the fill point below.)



[« »] § B.2.5.2 Other Insurance

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
« »	

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)



§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than «One Million Dollars and Zero Cents» (\$«1,000,000.00») each occurrence, «Two Million Dollars and Zero Cents» (\$«2,000,000.00») general aggregate, and «Two Million Dollars and Zero Cents» (\$«2,000,000.00») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and

.5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than «One Million Dollars and Zero Cents» (\$«1,000,000.00») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than «One Million Dollars and Zero Cents» (\$«1,000,000.00») each accident, «One Million Dollars and Zero Cents» (\$«1,000,000.00») each employee, and «One Million Dollars and Zero Cents» (\$«1,000,000.00») policy limit.

§ B.3.2.7 Deleted

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than «One Million Dollars and Zero Cents» (\$«1,000,000.00») per claim and «One Million Dollars and Zero Cents» (\$«1,000,000.00») in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than «One Million Dollars» (\$«1,000,000») per claim and «One Million Dollars» (\$«1,000,000») in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than «Two Million Dollars» (\$«2,000,000») per claim and «Four Million Dollars» (\$«4,000,000») in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than «» (\$«») per claim and «» (\$«») in the aggregate.

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User Notes:

(3B9ADA37)

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

« »

§ B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

§ B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

§ B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

§ B.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

« »

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§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	«100% of Contract Sum including any Change Orders »
Performance Bond	«100% of Contract Sum including any Change Orders »

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »



DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

«New Fire Station, EMS & SAR buildings
«300 & 310 CR 317 Northeast corner of CO-HWY 135 & Pyramid Ave
Crested Butte, CO 81224 »
« »

THE OWNER:
(Name, legal status and address)

«Crested Butte Fire Protection District »« »
«306 Maroon Avenue
Crested Butte, CO 81224 »

THE ARCHITECT:
(Name, legal status and address)

«The Blythe Group Company »« »
«622 Rood Avenue
Grand Junction, CO 81501 »

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. Matters not expressly included in the Contract Documents but which are reasonably inferable as being necessary to produce the intended result of complete and workable systems shall be deemed included as part of the Work.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2 Omitted. The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. However, the Contractor shall inform the Owner immediately if the Contractor discovers an error or inconsistency in the information furnished by the Owner.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner plus any allowable interest pursuant to the Contract Documents. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. The terms "Construction Manager", "Construction Manager/General Contractor" or "CM/GM" shall mean Contractor.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work and consult with any relevant Subcontractors, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are also not for the express purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not-executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

3.6.1 The Contractor shall consult and coordinate with the Owner to ascertain whether a sales or use tax may be collectable on purchases of building materials, supplies and equipment used for the Work by the Contractor. Whenever possible, the Contractor shall have building materials, supplies, and equipment for the project delivered to the construction site by common carrier, conveyance by the seller, or by mail to avoid city or municipal sales and use taxes for which refunds will not be made to the Owner.

3.6.2 The Owner is exempt from the payment of any State sales and use taxes for materials, supplies and equipment used upon the project by the Contractor and subcontractors. For the purpose of exercising such exemption, the Contractor and all subcontractors shall be responsible for the fulfillment of the following requirements:

3.6.2.1. The Contractor and all subcontractors shall apply for and obtain a Certificate of Exemption of State sales/use taxes for the project from the Colorado Department of Revenue. A copy of such shall be filed with the Owner. No materials shall be purchased nor shall any work be commenced hereunder until such certificate is obtained.

3.6.2.2. The final bill submitted by the Contractor for final payment shall show the net cost of all materials purchased by the Contractor.

3.6.2.3. At the time of final completion, the Contractor shall execute affidavits, in duplicate, showing the amount of local municipal sales or use taxes, if any, paid by the Contractor upon materials used on the project, which affidavits shall further state that all such materials have been used or consumed in the project, and where books, records, and other substantiating evidence of payment of said taxes are located and where they may be examined by appropriate governmental authorities, is such examination is required.

3.6.2.4 The Contractor shall maintain sufficient records to verify the amount of sales and use taxes paid to any governmental entity. Failure to keep such records resulting in the inability of the Owner to claim a refund for sales and use taxes for such materials, if allowed, shall render the Contractor liable for the amounts of such tax refunds as determined by the Architect's cost estimates of such materials.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall at all times be fully qualified and licensed under all applicable state and local licensing laws. The Contractor shall be responsible for ensuring that each of its Subcontractors are also fully qualified and licensed under all applicable state and local licensing laws.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
- .4 Contractor shall issue a monthly status report of all Allowances including original budget, cost to date, balance to complete and forecasted cost at completion. Contractor shall notify Owner immediately upon knowledge of any Allowance that may exceed the original budget.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. All substantive communications shall be confirmed in writing.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Impacts to activities not on the critical path shall not be the basis for a delay claim. Contractor shall monitor the progress of the Work for compliance with the Construction Schedule and shall promptly advise Owner of any delays or potential delays. Contractor shall deliver a written report to Owner each month (or more frequently if requested by Owner) setting forth the actual progress of the Work and highlighting discrepancies between the actual progress of the Work and the Construction Schedule ("progress reports"). In the event any progress report indicates that the Work has failed to achieve the level of completion required by the Construction Schedule, (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), Contractor shall propose to Owner in written form a schedule recovery plan (the "Schedule Recovery Plan") to correct the delay, including overtime and/or additional labor, if necessary, which Schedule Recovery Plan shall indicate the date by which the progress of the Work will comply with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), and shall be subject to the approval of Owner. Contractor shall not be entitled to any increase in the Contract Sum in connection with the implementation of any Schedule Recovery Plan required to be implemented pursuant to this Section due to the failure of the Work to achieve the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). In no event shall any progress report or Schedule Recovery Plan constitute an adjustment in the Construction Schedule or Contract Time unless any such adjustment is agreed to by Owner and authorized pursuant to a Change Order.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner,

and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Owner and Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely

upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

[3.12.11 Prior to commencement of construction, the Contractor will provide to the Owner a submittal schedule identifying timing of all submittals for the Project. At that time, the Owner shall identify all Shop Drawings that the Owner would like to review and approve.](#)

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's Representative, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Construction Manager agrees to protect, defend, hold harmless and indemnify the Indemnitees (as identified in Section 3.18.1) from and against any and all claims, actions, liabilities, damages, losses, costs and expenses (including attorney fees) to the extent arising out of or resulting from Construction Manager's failure to purchase all insurance required under Article 11 of AIA Document A201-2007 attached as Exhibit A, and Construction Manager's failure to require and obtain proper insurance coverage from its Subcontractors. In any and all claims against the Indemnitees or any employee of the Construction Manager or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this provision will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any Subcontractor under Workers' or Workmen's Compensation Acts, disability benefit acts, or other employee benefit acts.

§ 3.18.4 The indemnification and defense obligations stated above will not apply to any claims, actions, liabilities, damages, losses, costs or expenses caused directly and solely by the affirmative gross negligence or intentional tortious acts of the Indemnitees.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. At the Owner's sole discretion, the Owner may undertake any or all administrative roles of the Architect. Upon written notification to the Contractor of such decision by the Owner, all references to "Architect" herein, as applicable, shall be read to mean the Owner.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or

procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

[§ 5.2.5 A Subcontractor shall not commence work without an executed contract with the Contractor pursuant to Sections 5.1, 5.2 and 5.3 Contractor must execute all subcontracts in a timely manner so no delays in the Work are realized due to the aforementioned statement.](#)

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. ~~Where appropriate,~~ The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate

Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2

A fully executed Change Order represents full and final settlement for all costs (including all impact costs) and time relating to the Work included in the Change Order. The following language shall be typed on the face of the Change Order:

THIS CHANGE ORDER CONSTITUTES FULL AND FINAL SETTLEMENT FOR ALL COSTS AND TIME ASSOCIATED WITH THE WORK DESCRIBED HEREIN. COSTS ARE DEFINED TO INCLUDE ALL DIRECT AND INDIRECT LABOR COSTS RELATED TO, AND/OR OCCASIONED BY THE WORK DESCRIBED HEREIN; ALL MATERIAL AND EQUIPMENT COSTS RELATED HERETO; ANY AND ALL IMPACT COSTS RELATED TO AND/OR OCCASIONED BY THE PERFORMANCE OF THIS WORK; AS WELL AS ALL APPLICABLE TAXES, INSURANCE, BONDS, AND PROFIT. ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT. The Contractor reserves the right to submit a new change order for cumulative impact of excessive quantities of changes throughout the project.

§ 7.1.3 The Contract Documents are subject to Section 24-91-103.6, C.R.S. and in accordance therewith;

.1 The Owner shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable Work to be performed that will cause the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Contract Sum and any subsequent appropriations, unless:

- A. The Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional Work have been made and are available prior to performance of the additional Work; or
- B. The additional Work is covered by the following remedy-granting provision: Contractor may request, in writing, a letter from the Owner explaining the expected sources of funding for the additional Work. In the event the Owner does not provide such written assurance reasonably satisfactory to the Contractor within five (5) days of the Contractor's request, the Contractor may stop Work until such time as the Owner provides satisfactory assurances. The Contractor's acceptance of a Change Order in accordance with any assurances provided under this Paragraph shall not limit or restrict the Contractor from making a Claim under the Contract Documents for an adjustment in the Contract Sum or Contract Times or otherwise for expenses or damages directly attributable to the Contractor's stoppage of the Work as permitted hereunder.

.2 For any Change Order or other directive (other than a clarification) that requires additional compensable Work to be performed, the Owner shall reimburse the Contractor for the Contractor's costs on the periodic basis set forth in the Contract Documents for all additional directed Work performed until the Change Order is finalized. In no instance shall the periodic reimbursement be required before the Contractor has submitted an estimate of cost to the Owner for the additional compensable Work to be performed.

§ 7.1.4 Notwithstanding anything else contained herein, the Construction Manager shall use the follow process to submit Change Orders:

.1 Contractor shall submit a Notice of Claim ("NOC") within ~~seven (7)~~ **fourteen (14)** days of an event triggering such claim, the NOC must contain the date, rough estimate of cost if possible, and reference the triggering event and/or document. Owner is not responsible

.2 The Contractor's weekly Change Order Log will include an entry that meets the notice requirement in sub-section A. above.

.3 The Contractor shall provide a Statement of Claim ("SOC") within twenty-one (21) days of the triggering event for Owner review.

.4 If the Contractor fails to submit a NOC or SOC within the time periods in this § 7.2.4 (or such other time period as Contractor and Owner may agree for a specific claim) then Contractor's right to such claim shall be waived and released.

.5 NOCs for weather delays must be given on the day of such delay so Owner can evaluate conditions at the time of the claim. A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time with and updated Project Schedule showing the current critical path.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

Commented [TG1]: I am ok with 14 days with the condition that the Owner is not responsible for any cost or schedule impacts prior to the NOC and SOC. I would prefer to keep the 7 days as that would coincide with the weekly OAC meeting and I am worried 14 days may be too long.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order

for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the ~~Owner~~Architect determines, justify delay, then the Contract Time ~~may~~shall be extended for such reasonable time as the ~~Owner~~Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. To establish the impact of any delay(s) on the Work, the Contactor must use the Project CPM Schedule to demonstrate such impact. The Contractor must show how the delay(s) affect the critical path and its net impact on the date of Substantial Completion. The Contract Sum shall not be increased and the Contract Time shall not be extended for any delays to the extent contributed to by the primary, concurrent or contributory negligent acts or omissions of the Contractor, its Subcontractors, sub-subcontractors and suppliers of every tier and their respective agents and representatives of every tier.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Contractor. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. With each Application for Payment, the Contractor shall submit fully-executed conditional lien waivers from the Contractor and all Subcontractors and suppliers on whose account payment is sought.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the

Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an

obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor in trust for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. ~~Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. without unreasonable interference by Contractor. Without limiting the foregoing, delivery by Contractor of a certificate of occupancy or a temporary certificate of occupancy for the Work shall be a condition precedent to Substantial Completion unless issuance of a certificate of occupancy or a temporary certificate of occupancy is withheld for reasons outside of the Contractor's control. Work or a designated portion thereof will not be considered suitable for Substantial Completion review until all Project systems included in the Work or designated portion thereof are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, and all final finishes within the Contract are in place. In general, the only remaining Work to be done by the Contractor shall be minor in nature, so that the Owner could occupy the buildings on that date and the completion of the Work by the Contractor would not materially interfere with or hamper the Owner's normal activities

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification

by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate to fifteen (15) calendar days. If parts or equipment are needed to complete the item, which are not available within fifteen (15) calendar days, the Contractor shall complete the item within ten (10) days of the Contractor's receipt of the necessary parts or equipment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims,

security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

[§ 9.10.6 Notwithstanding anything contained herein to the contrary, Architect will not issue the final Certificate for Payment and final payment will not be made until the time of final settlement shall be established by the Owner and shall thereafter be advertised by two \(2\) publications of notice, the last of which shall appear at least ten \(10\) days prior to the time of final settlement as required by to C.R.S. § 38-26-107. The Owner shall withhold from all payments to the Contractor sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by the Contractor or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by the Contractor or the subcontractor, all in accordance with C.R.S. § 38-26-107.](#)

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings

against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property

(other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Nothing contained in this paragraph shall be deemed or construed to be a waiver of any rights or defenses available to Owner pursuant to the Colorado Governmental Immunity Act, the Colorado Constitution, or other applicable law.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence or fault on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. The Contractor must have an approved "Emergency Management Plan" with the Owner, and the Contractor must not address the media without consent from the Owner.

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, all requested additional insureds of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.1.4.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including,

without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.1.54 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Omitted, Failure to Purchase Required Property Insurance. ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

§ 11.2.3 Omitted, Notice of Cancellation or Expiration of Owner's Required Property Insurance. ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

§ 11.3 ~~Omitted~~Waivers of Subrogation

~~§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, each other and their consultants and employees for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, Agreement, except such rights as they may have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. subrogation waiver is limited to the rights and claims of the Owner and Contractor that may be brought against each other, exclusively, and shall only be effective in the context. The Owner and Contractor do not waive and specifically maintain their subrogation rights, including all rights and remedies available at law and equity, against: (1) the Architect and Architect's consultants, agents, and employees; and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation the waiver of subrogation by and between the Owner and Contractor. The waiver of subrogation by and between the Owner and Contractor shall be effective as to a person or entity entity: (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, otherwise; (2) even though that person or entity did not pay the insurance premium directly or indirectly, indirectly; or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 ~~Omitted~~Adjustment and Settlement of Insured Loss

~~§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the ~~one~~ two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. The Contractor shall schedule and attend with the Owner and the Architect an inspection of the Project at twelve (12) months and again at twenty-three (23) months after Substantial Completion. The Owner, the Contractor and the Architect will inspect the project to determine whether any warranty items exist, and will prepare a list of warranty items for the Contractor to correct. The Contractor shall notify the Owner and Architect upon its completion of the warranty work and the Owner and Architect shall perform a follow-up inspection to confirm such completion.

§ 12.2.2.2 The ~~one~~ two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

~~§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 During the warranty period, the Contactor shall assign a qualified and experienced representative to work directly with the Owner's Representatives to address, commence and complete, if reasonably possible, work to correct, within fifteen (15) business days notice from either the Owner or the Architect, any and all warranty items identified from time to time by the Owner or the Architect. If the Contractor does not complete or commence repairing the warranty item within fifteen (15) business days of notification, the Owner, at its discretion, may complete the warranty item and invoice the Contractor for reimbursement of cost incurred. The Owners shall incur no charge or expense for the Contractor's completion of punch list or warranty work. The Contractor acknowledges that its punch list and warranty work obligations are included within the Contract Sum.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the ~~place where the Project is located~~ State of Colorado, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4 located.~~

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 ~~If the unpaid balance of the Contract Sum exceeds c~~Costs of finishing the Work, include but are not limited toing compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, ~~such excess shall be paid to the Contractor.~~ If such costs and damages exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the ~~Contractor or Owner, as the case may be,~~ shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed in accordance with the Contract Documents; costs directly incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The

responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 ~~Omitted~~ Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 ~~In the event of any dispute or claim arising under or related to this Agreement, not resolved by the Initial Decision Maker, the parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbitrator Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the parties agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within 60 days following either party's written request therefor. The costs of such mediation shall be shared equally by the parties. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the local District Court of Gunnison County. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 15.3.3 ~~Omitted~~ Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 ~~Omitted~~ The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§15.4 Arbitration

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.

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DEED OF TRUST

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THIS DEED OF TRUST is made this ____ day of _____, 2023, between **Crested Butte Fire Protection District, a political subdivision of the State of Colorado**, whose address is 306 Maroon Ave., Crested Butte, CO 81224(Grantor), and the Public Trustee of Gunnison County, Colorado (Trustee); for the benefit of the **Board of County Commissions of Gunnison County, Colorado** (Gunnison County), whose address is 200 E. Virginia Avenue, Gunnison, Colorado 81230.

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Grantor and Gunnison County covenant and agree as follows:

1. **Property in Trust.** Grantor, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys to Trustee in trust, with power of sale, the following legally described property:

Lots EM2 and EM3, Larkspur Subdivision, Plat of Larkspur, recorded August 21, 2006 in the real property records of Gunnison County, Colorado at Reception No. 568254, City of Gunnison, County of Gunnison, State of Colorado, together with all its appurtenances (Property).

2. **Obligations Secured.** This Deed of Trust is given to secure to Gunnison County:

2.1. Grantor's performance of certain obligations, including compliance with ownership and rental restrictions on the Property, set forth in the Deed Restriction recorded

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_____ at Reception No. _____ and in the Development and Purchase Agreement dated _____, 2023; and

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2.2. the performance of the covenants and agreements of Grantor herein contained.

3. **Title.** Grantor covenants that Grantor owns and has the right to grant and convey the Property, and warrants title to the same, subject to any applicable general real estate taxes for the current year, all matters of record as of this date, and all exceptions from warranties of title in such deed as conveyed the Property to Grantor from Grantee.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Grantor shall perform all of Grantor's obligations under any prior deed of trust and any other prior liens. Grantor shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner set out in § 20 (Escrow Funds for Taxes and Insurance) or, if not required to be paid in such manner, by Grantor making payment when due, directly to the payee thereof. Despite the foregoing, Grantor shall not be required to make payments otherwise required by this section if Grantor, after notice to Gunnison County, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Grantor making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

5. **Property Insurance.** Grantor shall keep the improvements now existing or hereafter

erected on the Property insured against loss by fire or hazards included within the term “extended coverage” in an amount at least equal to the lesser of (a) the insurable value of the Property or (b) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior and junior encumbrances on the Property.

If the provisions of this paragraph conflict with any subordination agreement signed by Gunnison County with respect to the Property, the terms of the subordination agreement shall control.

6. **Preservation and Maintenance of Property.** Grantor shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. Grantor shall perform all of Grantor's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

7. **Protection of Gunnison County's Security.** Except when Grantor has exercised Grantor's rights under § 4 above, if Grantor fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects Gunnison County's interest in the Property, then Gunnison County, at Gunnison County's option, with notice to Grantor if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Gunnison County's interest, including, but not limited to:

7.1. any general or special taxes or ditch or water assessments levied or accruing against the Property;

7.2. the premiums on any insurance necessary to protect any improvements comprising a part of the Property;

7.3. sums due on any prior lien or encumbrance on the Property;

7.4. the reasonable costs and expenses of defending, protecting, and maintaining the Property and Gunnison County's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of Gunnison County or holder of the certificate of purchase;

7.5. all other costs and expenses allowable by this Deed of Trust; and

7.6. such other costs and expenses which may be authorized by a court of competent jurisdiction.

Grantor hereby assigns to Gunnison County any right Grantor may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Gunnison County pursuant to this § 7, with interest thereon, shall become additional indebtedness of Grantor secured by this Deed of Trust. Such amounts shall be payable upon notice from Gunnison County to Grantor requesting payment thereof, and Gunnison County may bring suit to collect any amounts so disbursed plus interest specified in § 2.2. Nothing contained in this § 7 shall require Gunnison County to incur any expense or take any action hereunder.

8. **Inspection.** Gunnison County may make or cause to be made reasonable entries upon and inspection of the Property, provided that Gunnison County shall give Grantor notice prior to any such inspection specifying reasonable cause therefore related to Gunnison County's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to

Gunnison County as herein provided. However, all of the rights of Grantor and Gunnison County hereunder with respect to such proceeds are subject to the rights of any holder of a prior deed of trust.

~~9.1.~~—In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, if any, with the excess, if any, paid to Grantor. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Gunnison County and Grantor, in the same ratio as the amount of the _

sums secured by this Deed of Trust immediately prior to the date of taking bears to Grantor's equity in the Property immediately prior to the date of taking. Grantor's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

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~~9.2.9.1.~~ If the Property is abandoned by Grantor or if, after notice by Gunnison County to Grantor that the condemnor offers to make an award or settle a claim for damages, Grantor fails to respond to Gunnison County within 30 days after the date such notice is given, Gunnison County is authorized to collect and apply the proceeds, at Gunnison County's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

~~9.3.9.2.~~ If the provisions of this paragraph conflict with any subordination agreement signed by Gunnison County with respect to the Property, the terms of the subordination agreement shall control.

10. **Forbearance by Gunnison County Not a Waiver.** Any forbearance by Gunnison County in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

11. **Remedies Cumulative.** Each remedy provided in this Deed of Trust is distinct from and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Gunnison County and Grantor. All covenants and agreements of Grantor shall be joint and several. The captions and headings of the sections in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

13. **Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Grantor provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Grantor or (2) mailing such notice by first class U.S. mail, addressed to Grantor at Grantor's address stated herein or at such other address as Grantor may designate by notice to Gunnison County as provided herein, and (b) any notice to Gunnison County shall be in writing and shall be given and be effective upon (1) delivery to Gunnison County or (2) mailing such notice by first class U.S. mail, to Gunnison County's address stated herein or to such other address as Gunnison County may designate by notice to Grantor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Grantor or Gunnison County when given in any manner designated herein.

14. **Governing Law; Severability.** This Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust are declared to be severable.

15. **Acceleration; Foreclosure; Other Remedies.** Upon Grantor's breach of any covenant or agreement of Grantor in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Grantor has exercised Grantor's rights under § 4 above), at Gunnison County's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Gunnison County may invoke the power of Deed of Trust

sale and any other remedies permitted by law. Gunnison County shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

~~15.1.~~ If Gunnison County invokes the power of sale, Gunnison County shall give written notice to Trustee of such election. Trustee shall give such notice to Grantor of Grantor's rights as is provided by law. Trustee shall record a copy of such notice and shall cause publication of the legal notice as required by law in a legal newspaper of general circulation in each county in which the Property is situated, and

shall mail copies of such notice of sale to Grantor and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Grantor, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Gunnison County or Gunnison County's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

~~15.2.~~ 15.1. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

~~15.3.~~ 15.2. **Non-Recourse.** Subject to the exceptions and qualifications described below, Grantor shall not be personally liable for the payment of the indebtedness evidenced by or created or arising under or secured by this deed of trust or the obligations secured by this deed of trust. Any judgment or decree in any action brought to enforce the obligation of Grantor to pay the indebtedness shall be enforceable against Grantor only to the extent of Grantor's interest in the property. Any such judgment or decree shall not be subject to execution, or be a lien, on the assets of Grantor other than Grantor's interest in the property. Notwithstanding the foregoing limitation of liability, Grantor shall be fully liable for the following: (a) fraud or intentional misrepresentation with respect to any representations, warranties, or certifications made by Grantor in connection with this deed of trust; (b) all insurance proceeds, condemnation awards, or other similar funds or payments attributable to the property, which, under the terms of this deed of trust should have been paid to beneficiary or used in a manner contrary to the use made by Grantor; and (c) waste of the property. Nothing contained in this paragraph shall affect or limit the ability of beneficiary to enforce any of beneficiary's rights or remedies with respect to any portion of the property.

16. **Grantor's Right to Cure Default.** Whenever foreclosure under this Deed of Trust is commenced, the Grantor shall be entitled to cure the default giving rise to the foreclosure. Upon such cure, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

17. **Assignment of Rents; Appointment of Receiver; Possession.** As additional security hereunder, Grantor hereby assigns to Gunnison County the rents of the Property; however, Grantor shall, prior to Acceleration under § 15 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

17.1. Gunnison County or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration under § 15 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Grantor or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any Court of competent jurisdiction upon ex parte application and without notice; notice being hereby expressly waived.

17.2. Upon Acceleration under § 15 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Gunnison County, in person, by agent or by judicially-appointed Deed of Trust

receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Gunnison County or the receiver shall be applied, first to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the sums secured by this Deed of Trust. Gunnison County and the receiver shall be liable to account only for those rents actually received.

18. **Release.** Upon satisfaction of Grantor's obligations secured by this Deed of Trust, Gunnison County shall cause Trustee to release this Deed of Trust and shall produce for Trustee the evidence of debt secured hereby. Grantor shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Gunnison County shall not produce the aforesaid evidence of debt, then Gunnison County, upon notice in accordance with § 13 (Notice) from Grantor to Gunnison County, shall obtain, at Gunnison County's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

19. **Waiver of Exemptions.** Grantor hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

20. **Escrow Funds for Taxes and Insurance.** Not applicable. Grantor shall pay taxes, if applicable, and insurance directly, and shall provide proof of payment of the same upon request by Gunnison County.

21. **Financial Obligations.** Notwithstanding any provision of this Deed of Trust, any financial obligations of Grantor required by this Deed of Trust are expressly made contingent upon annual appropriation and budgeting by Grantor of sufficient funds to discharge such financial obligations.

22. **Transfer of the Property; Assumption.** Grantor shall have the right to transfer the Property or any part thereof or interest therein. Upon any such transfer, the transferee shall be deemed to have assumed the obligations of Grantor under this Deed of Trust including payment of all sums secured hereby whether or not the instrument evidencing such transfer expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full.

EXECUTED BY GRANTOR.

CRESTED BUTTE FIRE PROTECTION DISTRICT, a political subdivision of the State of Colorado

By: _____ Date _____
Name: Chris McCann
Title: Chairman

State of Colorado)
) ss.
County of Gunnison)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by Chris McCann, as Chairman of Crested Butte Fire Protection District. Witness my hand and official seal. My commission expires: _____.

Notary Public

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RETURN TO:
GVRHA
202 E. Georgia Avenue
Gunnison, CO 81230

LARKSPUR LOTS EM2 and EM3 DEED RESTRICTION

THIS LARKSPUR LOTS EM2 and EM3 DEED RESTRICTION (“Restriction” or “Restrictions”) is entered into this ____ day of _____, 202__ by the Crested Butte Fire Protection District (the “Grantor”), and each the Gunnison Valley Regional Housing Authority of Gunnison, Colorado, and Gunnison County (together referred to as “Beneficiaries” and individually “Beneficiary”) which are duly organized under and by virtue of the laws of the State of Colorado. The Grantor and Beneficiaries are sometimes referred to herein collectively as the “Parties” and individually as “Party.” This Restriction replaces and supersedes in its entirety any other previous deed restriction regarding occupancy and resale encumbering the Property, defined below.

1. Property Subject to Deed Restriction. The following real property (the “Property”) is hereby made subject to these Affordable Housing Restrictions (“Restrictions”):
LOTS EM2 and EM3, LARKSPUR SUBDIVISION as identified on the plat titled
“PLAT OF LARKSPUR LOCATED WITHIN THE E1/2NE1/4 SECTION 12
T14S,R86W, 6TH PRINCIPAL MERIDIAN, COUNTY OF GUNNISON, STATE OF
COLORADO dated August 21, 2006, bearing reception # 568254

Commonly known as **30 Nicky Ct and 12 Nicky Ct, Crested Butte, CO 81224**

WHEREAS, the Beneficiaries, acting as the original declarant, intend to create a valid and enforceable covenant running with the land that assures that all of the Property hereby existing or to be developed on the Property will be used solely by individuals who are either Qualified Owners or Qualified Occupants (as such terms are hereinafter defined), subject to limited exceptions provided for herein; and

WHEREAS, both the Grantor and the Beneficiaries recognize the public need for attainable and affordable housing for the workforce and working families of Gunnison County, particularly within the Gunnison Valley; and

WHEREAS, under this Restriction the Grantor and Beneficiaries intend, declare, and covenant that the regulatory and restrictive covenants set forth herein governing the use of the Property described and provided for herein shall be and are hereby made covenants running with the land and are intended to be and shall be binding upon the Beneficiaries and Grantor, and all subsequent owners of such Property for the stated term of this Restriction, unless and until this Restriction is released and terminated in the manner hereafter described.

2. Definitions

- i. AREA MEDIAN INCOME (AMI) means the median income for Gunnison County adjusted for household size. as established and defined in the most recent annual schedule

published by the U.S. Department of Housing and Urban Development (HUD).

ii. CAPITAL IMPROVEMENT means any fixture erected as a permanent improvement to the Property excluding repair, replacement, maintenance costs, and sweat equity.

iii. COUNTY shall mean the Board of County Commissioners of Gunnison County, Colorado.

iv. GUIDELINES mean the most current Gunnison Valley Regional Housing Authority Housing Guidelines or Gunnison County Housing Guidelines if the Gunnison Valley Regional Housing Authority ceases to exist or is replaced by some other entity, in effect at the time of closing on a sale or transfer of the Property or at the commencement date of a lease or other occupation agreement, or its successor document, as amended from time to time and attached hereto as Exhibit A.

v. FIRST MORTGAGE means a deed of trust or mortgage that is recorded senior to any other deeds of trust or liens against the Property to secure a loan used to purchase the Property by a Mortgagee.

vi. HOUSEHOLD means one or more persons who intend to live together on the Property as a single housekeeping Property.

vii. HOUSING AUTHORITY means the Gunnison Valley Regional Housing Authority. Unless expressly stated otherwise in this Deed Restriction, "Housing Authority" shall refer to the Gunnison Valley Regional Housing Authority, except that if the Gunnison Valley Regional Housing Authority ceases to exist or is replaced by some other entity, "Housing Authority" shall refer to the County.

viii. MAXIMUM RESALE PRICE means the maximum Purchase Price that shall be paid by any purchaser of the Property, other than the initial purchaser who acquires the Property from the Beneficiaries that is determined in accordance with the provisions of Section 6.iii of this Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Property.

ix. MORTGAGEE means any bank, savings and loan association, or any other institutional lender that is licensed to engage in the business of providing purchase money mortgage financing for residential real property and that is the beneficiary of a deed of trust or mortgage encumbering the Property.

x. NON-QUALIFIED OWNER or NON-QUALIFIED TRANSFEREE means an Owner that is not a Qualified Owner.

xi. NET WORTH means the estimated sum of the assets of the Qualified Owner or Qualified Occupant. The term *Asset* refers to liquid assets such as cash in savings, checking or other forms of bank accounts and stocks, bonds or other instruments that can readily be converted to cash. The most recent Assessed Value as provided by the applicable Assessor's Office will be used to determine the value of real estate holdings, regardless of set-offs by encumbrances, costs of sale or holding, or percent of ownership interest. Assets in a

qualified retirement plan and other non-liquid assets such as personal belongings or intangible assets will not be included in the asset limitations for each income category.

xii. OWNER means the Grantor and any subsequent buyer, heir, devisee, transferee, grantee, owner or holder of title to the Property, or any portion of the Property.

xiii. PUBLIC ENTITY means local government or special district organized for the sole purpose of serving the public. Special districts which limit service to a Home Owner's Association or Property Owner's Association shall be excluded.

xiv. PURCHASE PRICE means all consideration paid by the purchaser to the seller for the Property.

xv. QUALIFIED OWNER means (1) the Grantor; (2) either or both Beneficiaries, or (3) a natural person who meets the following requirements at the time that he/she takes ownership interest or transfer of interest in the Property as qualified by the Beneficiaries:

- a. Is employed by or is an active volunteer member of Grantor ~~the Crested Butte Fire Protection District~~ or other Public Entity working a minimum of 30 hours per week on an annual basis as documented with the United States Internal Revenue Service, within Gunnison County, or has a qualified employment contract with an employer in Gunnison County that has been accepted by the Beneficiaries; and
- b. Except as provided for in Section 4.i.b. and 4.1.c., does not own any interest in other improved residential property(s). A purchaser who owns residential real estate must convey all interest in said residential property(s) prior to taking initial ownership or transfer of interest of the Property; and
- c. A qualified household shall not have a net worth that exceeds four (4) times the income based on the AMI applicable to actual household size of a prospective purchaser, such AMI set by HUD annually and adjusted for household size; and
- d. Shall occupy the Property as his/her sole and exclusive primary residence at all times during the ownership of the Property.

OR

- a. Has maintained his/her primary and sole residence in Gunnison County, Colorado for six (6) consecutive months immediately preceding taking initial ownership or transfer of interest in the Property or has a qualified employment contract with an employer in Gunnison County that has been accepted by the Beneficiaries; and
- b. Has earned his/her primary (80% or more) source of income working a minimum of 30 hours per week on an annual basis, as documented with the United States Internal Revenue Service, within Gunnison County, or has a qualified employment contract with an employer in Gunnison County that has been accepted by the Beneficiaries; and

- c. Except as provided for in Section 4.i.b. and 4.1.c., does not own any interest in other improved residential property(s). A purchaser who owns residential real estate must convey all interest in said residential property(s) prior to taking initial ownership or transfer of interest of the Property; and
- d. A qualified household shall not have a net worth that exceeds four (4) times the income based on the AMI applicable to actual household size of a prospective purchaser, such AMI set by HUD annually and adjusted for household size.
- e. Income restrictions are applicable at the time of qualification, when taking an initial ownership interest in the Property, and shall be verified by the Beneficiaries. Income guidelines are based on the Area Median Income (AMI) set by HUD annually and adjusted for household size. At the time of initial ownership or transfer of interest the combined household income shall not exceed 150% of AMI; and
- f. Shall occupy the Property as his/her sole and exclusive primary residence at all times during the ownership of the Property.

xvi. QUALIFIED OCCUPANT means a person who meets the following requirements at the time he or she takes initial occupancy of the Property as qualified by the Beneficiaries:

- a. Is employed by or is an active volunteer member of Grantor ~~the Crested Butte Fire Protection District~~ or other Public Entity working a minimum of 30 hours per week on an annual basis as documented with the United States Internal Revenue Service, within Gunnison County, or has a qualified employment contract with an employer in Gunnison County that has been accepted by the Beneficiaries; and
- b. Except as provided for in Section 4.i.b. and 4.1.c., does not own any interest in other improved residential property(s). A purchaser who owns residential real estate must convey all interest in said residential property(s) prior to taking initial ownership or transfer of interest of the Property; and
- c. A qualified household shall not have a net worth that exceeds four (4) times the income based on the AMI applicable to actual household size of a prospective purchaser, such AMI set by HUD annually and adjusted for household size; and
- d. Shall occupy the Property as his/her sole and exclusive primary residence at all times.

OR

- a. Has maintained primary and sole residence in Gunnison County, Colorado for three consecutive months immediately preceding taking initial occupancy of the Property or has a qualified employment contract with an employer in Gunnison County that has been accepted by the Housing Authority; and
- b. Has earned his/her primary (80% or more) source of income working a minimum of 30 hours per week on an annual basis, as documented with the United States Internal Revenue Service, within Gunnison County, or has a qualified employment contract with an employer in Gunnison County that has been accepted by the Beneficiaries; and

- c. Except as provided for in Section 4.i.a. and 4.i.c., does not own any interest in other improved residential property(s). An occupant who owns residential real estate must convey all interest in said residential property(s) prior to taking initial occupancy of the Property; and
- d. A qualified household shall not have a net worth that exceeds two (2) times the income based on the AMI applicable to actual household size of a prospective occupant, such AMI set by HUD annually and adjusted for household size; and
- e. Income restrictions are only applicable at the time of taking initial occupancy and shall be verified by the Beneficiaries. Income restrictions are based on the Area Median Income (AMI) set by HUD annually and adjusted for household size. At the time of initial occupancy, the combined household income shall not exceed 150% of AMI; and
- f. Shall occupy the Property as his/her sole and exclusive primary residence.

xvii. TRANSFER means an act of a Party, or of the law, by which the title to a Property is wholly or partially transferred to another; including but not limited to the sale, assignment voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest or any interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title, except that, this definition does not include any transfer of an interest by the Beneficiaries.

If reviewed and approved in writing by the Beneficiaries prior to occurrence the following transfer(s) are exceptions to the definition, provided that the new Owner, other than an estate, shall use the Property as his/her principal residence:

- a. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner who is also a Qualified Owner.
- b. A transfer resulting from a decree of dissolution of marriage or legal separation or from a settlement incidental to such a decree by which a transfer is made to a spouse who is also a Qualified Owner.

3. Restriction Runs with the Land and Interests.

- a. This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, each of the Beneficiaries, and their successors and assigns, and this Restriction shall bind the Beneficiaries and all subsequent Owners and occupants of the Property. Each Owner and Qualified Occupant, upon earlier of acceptance of a deed or lease to the Property or executing this Restriction, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions, and restrictions contained herein during the Owner's period of ownership or Qualified Occupant's tenancy, as

may be appropriate. Each and every Transfer or lease of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction in any document of conveyance.

- b. Neither Beneficiary may sell, transfer or assign their interest in the Restriction without the express written permission of the other. If one of the Beneficiaries ceases to exist, that Beneficiary's interest in the Restriction shall be deemed to be assigned to the remaining Beneficiary. In the event of a dispute between the Beneficiaries regarding interpretation, enforcement or otherwise of this Restriction or any portion of it, the position of Gunnison County shall prevail.

4. Ownership, Use, Occupancy and Rentals.

i. Ownership.

- a. Qualified Owner(s). The ownership of the Property is hereby, and shall henceforth be, limited exclusively to Qualified Owner(s) which shall include the parties described and approved as set forth in Section 4.ii. In the event that the Property is occupied without compliance with this Restriction, the Beneficiaries shall have the remedies set forth herein, including but not limited to the rights under Section 8 herein.
- b. Employee Housing. Upon the written consent of the Beneficiaries, which consent may be recorded, a non-qualifying natural person or entity that owns or operates a business located in and serving the county may purchase the Property, provided, however, that by taking title to the Property, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not meet the definitions of both a Qualified Owner and Qualified Occupant shall rent the Property to a natural person(s) who does meet the definitions of a Qualified Occupant, and shall not occupy or use the Property for such Owner's own use or leave the Property vacant except as otherwise provided herein.
- c. Rental Projects. Upon the written consent of the Beneficiaries, which consent may be recorded, a non-qualifying natural person or entity may own the Property for the purpose of operating a rental project. However, by taking title to the Property, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not meet the definitions of both a Qualified Owner and Qualified Occupant shall rent the Property to a natural person(s) who does meet the definitions of a Qualified Occupant, and shall not occupy or use the property for such Owner's own use or leave the Property vacant except as otherwise provide herein.

- ii. Use and Occupancy. Except as provided for in Section 4.i.b and 4.i.c here in, the use and occupancy of the Property is hereby, and shall henceforth be, limited exclusively to Qualified Owner(s) or Qualified Occupant(s), his or her spouse and child(ren) and other immediate family members.

iii. Rental of Property.

- a. Qualified Owner(s). An owner may not, except with prior written approval of the Beneficiaries' conditions of approval, rent the Property to a Qualified Occupant(s) for less than six (6) months or more than one (1) year and occurring not more than once every five (5) years. All rentals must comply with the current Guidelines. The foregoing notwithstanding, Grantor may rent the Property to a Qualified Occupant that is an employee or volunteer of Grantor for any period of time.
- b. Employee Housing. A non-qualifying natural person or entity that owns the Property, pursuant to Section 4.i.b, may rent the Property for any period of time. All renters must be Qualified Occupants. Any occupancy of the Property pursuant to sections 4.i.b and 4.iii.b shall not exceed two persons per bedroom, unless the Beneficiaries approve otherwise.
- c. Rental Projects A non-qualifying natural person or entity that owns the Property, pursuant to Section 4.i.c, may rent the Property for any period of time. All renters must be Qualified Occupants. Any occupancy of the Property pursuant to Sections 4.i.c and 4.iii.c shall not exceed two persons per bedroom, unless the Beneficiaries approve otherwise.
- iv. Roommates. The requirements of this Restriction shall not preclude the Owner from sharing occupancy of the Property with non-owners on a rental basis provided that the non-owner(s) is also a Qualified Occupant. Owner continues to occupy the Property as his/her sole and primary residence and meets the obligations contained in this Restriction, including the definition of Qualified Owner or Qualified Occupant. Short-term rentals/roommates are strictly prohibited.
- v. No Indemnification or Waiver of Immunity. Nothing herein shall be construed to require either of the Beneficiaries to protect or indemnify the Owner against any losses attributable to a rental including, but not limited to, non-payment of rent or damages to the Property; nor to require either of the Beneficiaries to obtain a Qualified Occupant for the Owner in the event that none is found by the Owner. In addition, nothing herein shall be construed as a waiver by any of the Parties' governmental immunity provided by the Colorado Governmental Immunity Act or other applicable law.
- vi. Initial Finance and Refinance Restriction.
 - a. At the time of the purchase of the Property the original principal amount of any indebtedness secured by a First Mortgage shall not exceed an amount equal to one hundred percent (100%) of the Purchase Price paid for the Property by that Owner, subject to the Guidelines.
 - b. An Owner may refinance a First Mortgage that encumbers the Property with the consent of the Beneficiaries; provided, however, that the original principal amount of any refinanced indebtedness secured by a First Mortgage shall not exceed an amount equal to ninety-seven percent (97%) of the then current Maximum Resale Price limit.
- vii. Ownership Interest in Other Residential Property. Except with respect to a Non-Qualified Owner permitted to purchase a Property as set forth in Section 4 or Grantor, if

at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property in or out of the County, the Owner shall immediately list such other property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Owner within one hundred twenty (120) days of its listing required hereunder, then the Owner shall immediately list his or her Property for sale pursuant to Section 8.v. of this Restriction. In the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties that constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Section 4.vii. provided that the Owner is not occupying any of the inventoried properties for residential or commercial purposes.

viii. Compliance. Any Owner of the Property is required to comply with annual certifications to the Beneficiaries that they are in compliance with the requirements of this Restriction. The Housing Authority acknowledges and recognizes that the income and net worth of a Qualified Owner or Qualified Occupant may increase over time, however, such increases over the maximum income and net worth requirements at initial purchase or occupancy shall not constitute a default of this Restriction.

5. Initial Purchase Price. Upon completion of construction of the Property, the Property may be sold to a Qualified Owner at an affordable Purchase Price as determined by the Guidelines or rented to a Qualified Occupant.

6. Transfer of Property.

i. Resale. No Transfer of the Property shall occur subsequent to the original purchase from the County or the Beneficiaries, except upon full compliance with the procedures set forth in this Section 6. In the event the Property is sold and/or conveyed without compliance with this Restriction, such sale and/or transfer shall be wholly null and void and shall confer no title whatsoever upon the purported buyer.

ii. Notice of Intent. The Property shall not be sold or transferred without prior submission by the Qualified Owner to the Housing Authority of a written Notice of Intent to Sell or Transfer Affordable Housing Unit as set forth in Exhibit C attached hereto.

iii. Maximum Resale Price.

a. The initial purchase price of the Property shall be the basis for calculating the Maximum Resale Price in accordance with this Restriction and the Guidelines in effect at the time of listing the Property for sale.

b. The Maximum Resale Price of the Property shall be limited to be no more than the following calculation:

The Maximum Resale Price may not exceed the sum of: (i) the Purchase Price paid by the Owner for the Property, plus: (ii) an increase of two percent (2%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month, but not

compounded annually) from the date of the Owner's purchase of the Property to the date of the Owner's Notice of Intent to Sell the Property; plus (iii) an amount equal to any special improvement district assessments, if applicable and not transferable, paid by the seller during the seller's ownership of the Property; (iv) the cost of Permitted Capital Improvements made to the Property by the Owner as set forth in Exhibit D attached hereto.

- c. Permitted Capital Improvements. The amount for Permitted Capital Improvements shall not exceed ten per cent (10%) of the original purchase price for an initial ten (10) year period. For every ten (10) year period from the earlier of the date of the original purchase of the Property or the execution of this Restriction, another ten (10) per cent of the purchase price may be added to the value of the Property for Capital Improvements. In calculating such amount, only those Permitted Capital Improvements identified in Exhibit C hereto shall qualify for inclusion. Seller's contributed labor or "sweat equity" shall not be part of the cost of an eligible improvement.
 - d. Pursuant to the Guidelines, each Owner shall be responsible for ensuring that at the Transfer of his or her Property, the same is clean, the appliances are in working order, and that there are no health or safety violations regarding the Property. Prior to the sale of the Property the Beneficiaries are authorized to take necessary actions and incur necessary expenses for bringing the Property into saleable condition. Such actions and expenses include, but are not limited to, cleaning the Property and making necessary repairs to or replacements of appliances and/or Property fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting fixtures, and/or correcting any health or safety violations on the Property. Expenses incurred by the Beneficiaries to bring the Property into a saleable condition shall be itemized and documented by the Housing Authority and deducted from the Owner's proceeds at closing of the Transfer of the Property.
 - e. No Owner shall permit any prospective purchaser to assume any or all of the Owner's closing costs. No Owner shall accept anything of value from a prospective purchaser except for the Maximum Resale Price before, during or after closing of the Transfer of the Property.
 - f. Nothing in this Restriction represents or guarantees that the Property will be re-sold at an amount equal to the Maximum Resale Price. Depending upon conditions affecting the real estate market, the Property may be re-sold for less than the Maximum Resale Price.
- iv. Grantor Right to Acquire Ownership – Right of First Refusal. The initial Owner, after Grantor, and each subsequent Owner shall not transfer the Property, or any part thereof, without first offering the same to the Grantor. The Grantor shall have a right of first refusal to purchase the property as follows:

- a. If an Owner receives any offer to purchase or tenders any offer of sale for the Property for any amount less than or equal to the Maximum Resale Price, the Grantor shall have the absolute right of the first refusal to purchase the Property at the offered sales price.
 - b. Grantor shall have the option to exercise its right of first refusal by executing a written and binding commitment to purchase the Property within twenty-one (21) days after Grantor receives written Notice of Intent to Sell or Transfer Affordable Housing Unit by Owner. The commitment to buy shall set a closing date within a reasonable period of time.
 - c. Grantor shall have the right to inspect the Property prior to exercising its right of first refusal. If the Property is damaged there shall be a decrease in the sales price of the Property equal to the amounts necessary to bring the Property into saleable condition as reasonably determined by the Grantor, including but without limitation cleaning, painting, replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures.
 - d. In the event Grantor fails to execute a written and binding commitment to purchase the Property within said twenty-one (21) day period, this right of first refusal shall expire.
 - e. If the Owner does not sell or otherwise transfer the Property, the terms and conditions of this right of first refusal shall again apply to any subsequent sale or transfer of the Property.
 - f. This right of first refusal shall be in full force and effect from the earlier of the date of initial sale of the Property, or any part thereof, by Grantor to the initial Owner or the execution of this Restriction and continues in perpetuity. Any sale or attempted transfer of the Property, or any part thereof, effected without first giving Grantor the right of first refusal described above shall be wholly null and void and shall confer no title whatsoever upon the purported buyer.
- v. Beneficiaries Right to Acquire Ownership - Right of Second Refusal. Each of the Beneficiaries shall have a right of second refusal to purchase the Property as follows:
- a. If an Owner receives any offer to purchase or tenders any offer of sale for the Property for any amount less than or equal to the Maximum Resale Price and Grantor does not exercise its right of first refusal pursuant to 6.iv, each of the Beneficiaries shall have the absolute right of the second refusal to purchase the Property at the offered sales price. This right of second refusal will first be granted to the County, using the form attached here to as Exhibit E, and then the Gunnison Valley Regional Housing Authority, using the form attached hereto as Exhibit F, only if the County does not exercise its right of second refusal.

- b. Each of the Beneficiaries shall have the option to exercise its right of second refusal, with the County prevailing as detailed in 6.v.a., by executing a written and binding commitment to purchase the Property within twenty-one (21) days after each of the Beneficiaries receives written Notice of Intent to Sell or Transfer Affordable Housing Unit by Owner and confirmation that Grantor has not exercised its right of first refusal. The commitment to buy shall set a closing date within a reasonable period of time.
 - c. Each of the Beneficiaries shall have the right to inspect the Property prior to exercising its right of second refusal. If the Property is damaged there shall be a decrease in the sales price of the Property equal to the amounts necessary to bring the Property into saleable condition as reasonably determined by the Beneficiaries, including but without limitation cleaning, painting, replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures.
 - d. In the event neither of the Beneficiaries executes a written and binding commitment to purchase the Property within said twenty-one (21) day period, this right of second refusal shall expire.
 - e. If the Owner does not sell or otherwise transfer the Property, the terms and conditions of this right of second refusal shall again apply to any subsequent sale or transfer of the Property.
 - f. This right of second refusal shall be in full force and effect from the earlier of the date of initial sale of the Property, or any part thereof, to the initial Owner or the execution of this Restriction and continues in perpetuity. Any sale or attempted transfer of the Property, or any part thereof, effected without first giving both of the Beneficiaries the right of second refusal described above shall be wholly null and void and shall confer no title whatsoever upon the purported buyer.
- vi. Beneficiaries Made Whole. No transfer of the Property shall occur unless and until each and every encumbrance, debt or liability owed by the Owner to the Beneficiaries is fully satisfied.

7. Foreclosure

- i. It shall be a breach of these Restrictions for an Owner to default in the payments or other obligations due or to be performed under a promissory note secured by deed of trust or lease purchase agreement encumbering the Property. The Owner hereby agrees to notify the Beneficiaries, in writing, of any notification Owner receives from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust or lease purchase agreement,

as described herein, within five (5) calendar days of Owner's notification from lender, or its assigns, of said default or past due payments

- ii. Upon receipt of notice as provided herein, the Beneficiaries shall have the right, in its sole discretion, to solely or jointly cure the default or any portion thereof, thereby becoming the Curing Party. In such event, the Owner shall be personally liable to the Curing Party for past due payments made by the Curing Party, together with interest thereon at the rate specified in the promissory note secured by the deed of trust or lease purchase agreement, plus one (1) per cent, and all actual expenses of the Curing Party incurred in curing the default. In the event the Owner does not repay the Curing Party within sixty (60) days of notice that the Curing Party has cured the Owner's default, the Owner agrees that the Curing Party shall be entitled to a lien against the Property to secure payment of such amounts. Such a lien may be evidenced by a notice of lien setting the amounts due and rate of interest accruing thereon, and such notice of lien may be recorded in the real property records of Gunnison County, Colorado, until such lien is paid and discharged. The Curing Party shall have the additional right to bring an action to foreclose on the Property for the payment of the lien set forth in this section 7.ii.
- iii. In the event of a foreclosure on a promissory note secured by a first deed of trust or a lease purchase agreement on the Property, or any portion of the Property, and the issuance of a public trustee's deed by the holder of such note and deed of trust ("Holder"), or the acceptance by Holder of such note and deed of trust or a deed in lieu of foreclosure of the Property, and Holder's subsequent recordation of the same in the Office of the Gunnison County Clerk and Recorder, the Beneficiaries may acquire the Property by exercising that certain "Option to Purchase," the copies of which is attached hereto as Exhibits E and F. In the event that the Option is not exercised by either of the Beneficiaries, this Deed Restriction shall be released and shall be of no further force or effect.

8. Default/Breach

- i. In the event either of the Beneficiaries has reasonable cause to believe an Owner is violating the provisions of these Restrictions, that entity, through its authorized representatives, may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, after providing the Owner with no less than 24 hours written notice.
- ii. The respective Beneficiary shall send a notice of violation to the Owner, with a copy to the other Beneficiary, detailing the nature of the violation and allowing the Owner fifteen (15) days to determine the merits of the allegations, or to correct the violation. In the event the Owner disagrees with the allegation of violation of these Restrictions, the Owner may request, in writing, a hearing before the Gunnison Valley Regional Housing Authority Grievance and Appeals Committee or some similar body convened by the County if the Gunnison Valley Regional Housing Authority Grievance and Appeals Committee ceases to exist or is replaced. If the Owner does not request a hearing and the violation is not cured within the fifteen-day period, the Owner shall be considered in violation of these Restrictions.

- iii. Whenever these Restrictions provide for a hearing before the Gunnison Valley Regional Housing Authority Grievance and Appeals Committee, such hearing shall be scheduled by the Beneficiaries within twenty-one (21) days of the date of receipt of a written request for a hearing. At any such hearing, the Owner or other aggrieved party may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made, and the decision of the Beneficiaries shall be a final decision, subject to judicial review.
- iv. There is hereby reserved to the Parties hereto any and all remedies provided by law for breach of these Restrictions or any of its terms. In the event the Parties resort to litigation with respect to any or all provisions of these Restrictions, the prevailing Party shall be awarded its damages, expenses and costs, including reasonable attorney's fees.
- v. In the event the Property is sold and/or conveyed without compliance with the terms of these Restrictions, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, even without reference therein to these Restrictions.
- vi. In the event an owner fails to cure any breach of these Restrictions, each of the Beneficiaries may resort to any and all available legal or equitable actions, including but not limited to specific performance of these Restrictions, an injunction against future sale(s) in violation of these Restrictions, or eviction of noncomplying owners and/or occupants.
- vii. In the event of a breach of any of the terms or conditions contained herein by an Owner, his or her heirs, successors or assigns, the Owner's initial purchase price of the Property shall, upon the date of such breach as determined by either of the Beneficiaries, automatically cease to increase as set out in Section 6.iii. of this Restriction, and shall remain fixed until the date of cure of said breach or until the Owner repays the Curing Party.

10. General Provisions

- i. These Restrictions shall constitute covenants running with the Real Property as a burden thereon, for the benefit of, and shall be specifically enforceable by each of the Beneficiaries and/or its respective successors and assigns, as applicable. Enforcement by any appropriate legal action may include, but is not limited to specific performance injunction, reversion, or eviction of noncomplying owners and/or occupants.
- ii. Equal Housing Opportunity. Pursuant to the Fair Housing Act and each of the public policy, the Housing Authority shall not discriminate on the basis of race, creed, color, sex, national origin, familial status, disability or sexual orientation in the lease, sale, use or occupancy of the Property.

- iii. Waiver of Exemptions. Every Owner, by taking title to the Property, shall be deemed to have subordinated to this Restriction any and all right of homestead and any other exemption in, or with respect to, such Property under state or federal law presently existing or hereafter enacted.
- iv. Any notice, consent, approval, or request which is required to be given by any Party hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the address provided herein or to the address of the owner. The Owner shall also notify, in writing, the Beneficiaries of any change in address.

To Beneficiaries: Gunnison County Manager
 200 E. Virginia Avenue
 Gunnison, Colorado 81230
 Fax: 970-641-3061

AND

Gunnison Valley Regional Housing Authority
Executive Director
202 E. Georgia Avenue
Gunnison, Colorado
Fax: 888-406-1360

To Owner: Crested Butte Fire Protection District
 PO Box 1009
 Crested Butte, CO 81224

To Subsequent Owners: At the address maintained in the records of the
 Gunnison County Assessor's office

- v. Whenever possible, each provision of these Restrictions and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of these Restrictions shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remaining provisions of such document.
- vi. These Restrictions and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado. If any legal action is necessary to interpret or enforce the terms and conditions of this Restriction and related documents, the Parties agree that the jurisdiction and venue for bringing such action shall be in the appropriate court in Gunnison County, Colorado.
- vii. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the Parties.

- viii. Owners and subsequent owners agree that he or she shall be personally liable for their participation in any of the transactions contemplated herein and that he or she will execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of these Restrictions or any agreement or document relating hereto or entered into in connection herewith.

- ix. Any modifications of these Restrictions shall be effective only when made by a duly executed instrument by the Beneficiaries and an Owner and recorded with the Clerk and Recorder of Gunnison County, Colorado. Notwithstanding the foregoing, the Parties agree that the Beneficiaries may amend these Restrictions where deemed necessary to effectuate the purpose and intent of these Restrictions, so long as both Beneficiaries agree to such amendments.

EXECUTED, this ____ day of _____, 20____.

GUNNISON VALLEY REGIONAL HOUSING AUTHORITY

By: _____
 _____, Executive Director

State of Colorado)
) ss.
 County of Gunnison)

The foregoing Gunnison Valley Regional Housing Authority Affordable Housing Deed Restriction for been acknowledged before me this ____ day of _____, 2023 by _____, Executive Director of the Gunnison Valley Regional Housing Authority

Witness my hand and official seal.
 My commission expires:

 Notary Public

**BOARD OF COUNTY COMMISSIONERS
 OF GUNNISON COUNTY, COLORADO**

By: _____
Matthew Birnie, County Manager

ATTEST:

Deputy County Clerk

DEVELOPMENT AND
PURCHASE AGREEMENT

This DEVELOPMENT AND PURCHASE AGREEMENT (the “Agreement”), dated ___, 2023, is between the Board of County Commissioners of Gunnison County, Colorado (the “County”) and Crested Butte Fire Protection District, a special district and political subdivision of the State of Colorado (“Developer”). The County and the Developer may be referred to herein individually as a “Party,” or collectively as the “Parties.”

RECITALS

WHEREAS:

- A. The County owns the following real property (the “Property”): LOTS EM2 and EM3, LARKSPUR SUBDIVISION as identified on the plat titled “PLAT OF LARKSPUR LOCATED WITHIN THE E1/2NE1/4 SECTION 12 T14S,R86W, 6TH PRINCIPAL MERIDIAN, COUNTY OF GUNNISON, STATE OF COLORADO dated August 21, 2006, bearing reception # 568254.
- B. The County desires to have the Property developed to provide affordable housing for residents of Gunnison County (the “Project”).
- C. In the interest of furthering public policy, the Colorado General Assembly has declared at Colorado Revised Statutes § 29-26-101. Legislative Declaration: “(1) The general assembly hereby finds and declares that:
1. It is in the public interest to maintain a diverse housing stock in order to preserve some diversity of housing opportunities for [Colorado’s] residents and people of low—and moderate—income.
 2. A housing shortage for persons of low—and moderate—income is detrimental to the public health, safety and welfare. In particular, the inability of such persons to reside near where they work negatively affects the balance between jobs and housing in many regions of the state and has serious detrimental transportation and environmental consequences.”
- D. The Colorado General Assembly has defined affordable housing to include rentals as follows: C.R.S. § 29-26-102, Definitions, “(1) Affordable housing dwelling unit” means a residential structure that is purchased or rented by and is occupied as a primary residence by one or more income eligible households, or a comparable definition as established by a local government.”
- E. The Gunnison County Land Use Resolution, which evidences the County’s policy with respect to affordable housing, defines “Essential Housing” as “housing for qualified households as determined by the Gunnison

County Housing Authority,” and in turn defines “qualified household” as a “household that earns less than 120 percent of the AMI as qualified by the Gunnison County Housing Authority.”

F. The Board has the legal authority to convey real property as follows: C.R.S. § 30-11-101, Powers of counties. (1) Each organized county within the state...shall be empowered...(c) To sell, convey, or exchange any real...property owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants...” (d) To make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers. Any such contract may by its terms exceed one year and shall be binding upon the parties thereto as to all of its rights, duties and obligations.

G. The Parties have negotiated this Agreement to meet their mutual needs and goals in providing affordable housing for individuals that live and work in the County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Developer agree as follows:

1. THE PROJECT.

a. The Project consists of the transfer of ownership of the Property to the Developer, and the development of a single-structure, two (2) residential unit complex on Lot EM2 of the Property and a single-structure, three (3) residential unit complex on Lot EM3 of the Property, by the Developer, in accordance with the following “Project Documents”:

- i. This Agreement; and
- ii. Deed Restriction, attached as Exhibit A;
- iii. Deed of Trust, attached as Exhibit B.

b. Upon transfer of ownership of the Property to the Developer, the Property will be encumbered by the Deed Restriction, which will be recorded against title to the lots and each of the residential units, and will, among other restrictions:

- i. Mandate that the units are available for households that include one or more employees or volunteers of Developer, or which meet the parameters as qualified owners or qualified occupants under the Deed Restriction.
- ii. Mandate that rental rates include utilities (water, wastewater, trash, electricity, heat), but do not include telephone, internet, or television.
- iii. Prohibit short term rentals, with minimum lease terms of three months.
- iv. Provide a process for the Gunnison Valley Housing Authority or County to verify household qualifications and compliance with the Deed Restriction.
- v. Provide protection of the Deed Restriction in case of sale of the Property.

2. PURCHASE AND SALE OF THE PROPERTY.

- a. Within 14 days of the mutual execution of this Agreement, Developer shall obtain an updated commitment to issue a title insurance policy for the Property. Developer shall disclose any title objections to County within 25 days of mutual execution of this Agreement.
- b. Closing shall occur within 55-65 days of mutual execution of this Agreement, on a date and time that is mutually acceptable to the Developer and County ("Closing").
- c. The purchase price shall be \$200,000, payable by Developer to County in good funds at Closing.
- d. Within 20 days of mutual execution of this Agreement, County shall disclose all documents in its possession related to the Property. Developer shall report any objections to County's disclosures within 10 days of receiving County's disclosures.
- e. Any objections must be resolved within 40 days of mutual execution of this Agreement. Notwithstanding any other provision of this Agreement, the Developer may terminate this Agreement, without penalty, upon written notice to County at least 10 days prior to Closing, subject to any unavoidable costs charged by the company handling the Closing, which shall be Developer's sole responsibility.
- f. Title shall transfer from County to Developer at Closing by special warranty deed, subject to the following permitted encumbrances: The Deed Restriction and matters shown on the Land Title Guarantee Company title commitment for Order No. _____ dated _____.
- g. Developer shall be responsible for the cost of the title insurance policy, any closing fee charged by the closing agent, and the cost of recording any documents to be recorded at Closing.
- h. The County shall not cause or allow additional exceptions to title to affect the Property prior to Closing without the Developer's prior written consent.
- i. At any time prior to Closing and during regular business hours, Developer shall be entitled to enter upon the Property to conduct any review or inspection thereof at the Developer's sole cost and assuming all risk. Developer hereby waives any claims against County that may arise from Developer, or any of Developer's agents, entering the Property.

3. DEVELOPMENT OF THE PROJECT.

- a. Developer shall develop the Project, in accordance with the plans finalized and approvals obtained pursuant to the Project Documents, and in accordance with all applicable laws, regulations, and codes.

b. Except for the obligations of the County expressly set forth herein, the management, conduct, and operation of the Project shall be at the expense and risk of the Developer, and the County shall have no obligations hereunder to facilitate or otherwise promote the completion of the Project.

c. The Developer shall use good faith efforts to solicit and obtain bids from local business concerns which are located in, or owned in substantial part by persons residing within, Gunnison County (a "Local Business") for the completion of the Project by making available to local contractors all plans for the improvements, in the manner reasonably selected by the Developer, which may include, without limitation, publication of solicitations for bids in a newspaper of general circulation in Gunnison County. To the extent the Developer reasonably determines it is feasible, contracts for work to be performed in connection with the construction of the improvements shall be awarded to Local Businesses, provided, however, the Developer shall not be required to award contracts to the lowest bidder, and may award contracts in accordance with the Developer's normal contracting and purchasing policies based upon criteria such as the experience, financial strength, and dependability of the contractors and subcontractors submitting bids.

d. In connection with the foregoing, Developer shall utilize Local Businesses for no less than 50% of the cost of completing the Project. Costs of completing the Project shall include planning and design costs in addition to actual construction costs. Materials purchased directly by Developer from a supplier with a physical presence in Gunnison County and materials purchased by a general contractor or sub-contractor that is a Local Business shall count towards achieving this requirement. The Developer may request a variance from the requirements of this paragraph, and consent shall not be unreasonably withheld by the County, if the Developer demonstrates that the Developer has used reasonable and good faith efforts to procure labor or materials from Local Businesses, but due to market conditions no Local Businesses are able to provide the labor or materials at a cost that allows the project to be completed in a timely and cost-effective manner.

4. INSPECTIONS.

a. The County has the right to inspect the Project upon reasonable notice to the Developer to ensure compliance with this Agreement and to ensure throughout construction that materials, installation and workmanship are of good quality as considered acceptable by industry standards. The inspections may include a review of all construction and other documents applicable to confirming compliance with this Agreement (other than the construction contract); site visits; problem identification and resolution; and provision of reports verifying compliance with this Agreement.

b. The County shall promptly notify Developer of any concerns that the County has regarding the Project.

5. TERM; TERMINATION.

a. The term of this Agreement shall commence on mutual execution of the Agreement and shall continue in full force and effect until terminated in accordance with

paragraph 57.c below. Unless expressly and mutually agreed to by the Parties, termination of the Agreement shall have no effect on any provision of this Agreement that is expressly stated to survive termination.

- b. The following terms and conditions shall survive termination:
 - i. The terms of the County Deed Restriction and County Deed of Trust;
 - ii. Developer's obligation to indemnify and hold the County harmless from any claims or causes of action that arise out of any damage caused by the Developer Parties to the Property during the term of the license described in paragraph 6.a.
- c. This Agreement shall terminate upon the any of the following events:
 - i. The date of issuance of a Certificate of Occupancy for the entire Project; or
 - ii. The express mutual agreement of the Parties.

6. Breach; Cure; Default; Enforcement.

- a. Breach; Cure. If one party breaches any of the terms, obligations, covenants, representations or warranties under this Agreement, the non-breaching Party shall notify the breaching Party of such breach. The breaching party shall have 42 days after written notice from the non-breaching party to cure the breach, or if the breach by its nature cannot be cured within 42 days, the breaching party shall have 42 days to commence a cure and shall act diligently and in good faith to complete the cure in a timely manner.
- b. It will not be a breach of this Agreement if a Party is unable to perform its obligations under this Agreement if such inability is caused by acts or omissions of the other Party or its officers, employees, agents, or contractors or is caused by a Force Majeure Event. A "Force Majeure Event" is an Act of God (e.g., fire, flood, inclement weather, epidemic, earthquake); war or act of terrorism; governmental acts, orders, or restrictions; or any other reason where failure to perform is beyond the reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the Party or the Party's officers, employees, agents, or contractors; provided, however, an event of Force Majeure shall not relieve any Party of its obligation to make timely payments of any amounts due hereunder.
- c. "Event of Default" means the occurrence of any one of the following events during the term of this Agreement:
 - i. A breach that is not cured pursuant to paragraph 8.a above;
 - ii. The dissolution, liquidation, or event of bankruptcy of Developer;
 - iii. The voluntary or involuntary transfer of ownership of the Property by Developer to any third party without the County's prior written consent.

d. Waiver of breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party of either the same or any other provision of this Agreement.

e. Remedies in Event of Default.

i. The Parties agree that damages may not be an adequate remedy for an Event of Default under this Agreement. Therefore, the remedy of specific performance will be available to either party as well as any other remedy available at law or at equity.

7. GENERAL PROVISIONS.

a. Notice. All notices and demands required or allowed to be given hereunder shall be given in writing and delivered by U.S. certified mail, postage prepaid, and return receipt requested, by personal delivery, or by electronic mail, to the address provided below, or to such other address as a Party made provide in writing pursuant to this paragraph. Notices shall be considered given upon the earlier of (a) three business days after deposit in the United States mail, postage prepaid, certified or registered, return receipt requested; (b) personal delivery; or (c) transmission to the electronic mail address provided.

If to County:

Matthew Birnie
MBirnie@gunnisoncounty.org

with a copy to:
Matthew Hoyt
MHoyt@gunnisoncounty.org

John Cattles
JCattles@gunnisoncounty.org

Cathie Pagano
CPagano@gunnisoncounty.org

If to Developer:

Sean Caffrey
scaffrey@cbfpd.org

with a copy to:
Lyons Gaddis, PC
Attn: John Chmil
PO Box 978
Longmont, CO 80502

b. Nature of Relationship. This Agreement creates a contractual relationship. The parties do not intend for this Agreement to create a joint venture, fiduciary, partnership, or principal/agent relationship in any respect, either between the Parties or between one or both of them and any third party. Each party shall be solely responsible for its own acts and omissions in the performance of this Agreement.

c. Amendment. This Agreement may be amended only by a written document duly authorized and executed by the Parties hereto.

d. Effect of Invalidity. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is a conflict between any

provision contained herein and any present or future law or regulation, the latter shall prevail, but the provisions of this Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such law. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, the Parties will immediately negotiate valid alternative portion(s) that as nearly as possible give effect to any stricken portion(s).

e. Assignability. Neither Party may assign its rights or delegate its duties hereunder without the prior written consent of the other, except that either Party may assign its rights or delegate its duties hereunder to an enterprise or other legal entity wholly owned and controlled by such Party without prior notice or consent of the other Party. Any assignment or transfer of this Agreement without the requisite prior written approval shall be void.

f. Successors and Assigns. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns in the event assignment is allowed.

g. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any claim or right of action by any other person or entity. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

h. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to define, limit, or describe the scope of intent of any provision of this Agreement.

i. Governing Law; Venue. This Agreement and its application shall be construed in accordance with the laws of the State of Colorado. Venue for the trial of any action arising out of any dispute hereunder shall be exclusively in the District Court, Gunnison County, Colorado.

j. Fees / Costs. Should either Party hereto commence any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement or for declaratory relief, the prevailing Party shall be entitled to recover from the losing party or parties the costs of such action, including such amount as the court may adjudge to be reasonable attorney fees for services rendered to the prevailing party in such action.

k. Indemnification. Developer, to the extent permitted by law, agrees to indemnify, defend and hold harmless County, its Commissioners, agents and employees of and from

any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Developer or its employees, subcontractors or agents in connection with this Agreement.

l. No Waiver of Governmental Immunity. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by the County or Developer of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

m. Joint Draft. The Parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this Agreement shall not be construed for or against a Party on the basis of authorship.

n. Other Interests. Each Party may have other business interests and may engage in any other business, trade, professions, or employment whatsoever, on its own account, or partnership or joint venture with any other person, firm, or corporation, or any other capacity, including, without limitation, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of any real property whether or not in the vicinity of the Property.

o. Time of the Essence. Time is of the essence of this Agreement and of each provision hereof.

p. Additional Acts and Further Assurances. The Parties agree to cooperate as required to carry out the intent of this Agreement. Each Party agrees to execute and deliver whatever additional documents and to perform such additional acts as may be necessary or appropriate to effectuate and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement.

q. Authority. The signatories below represent and affirm they are legally authorized to bind their respective Parties by this Agreement.

r. Counterparts; Facsimile / Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. The Parties will accept facsimile signatures or electronic signatures as original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

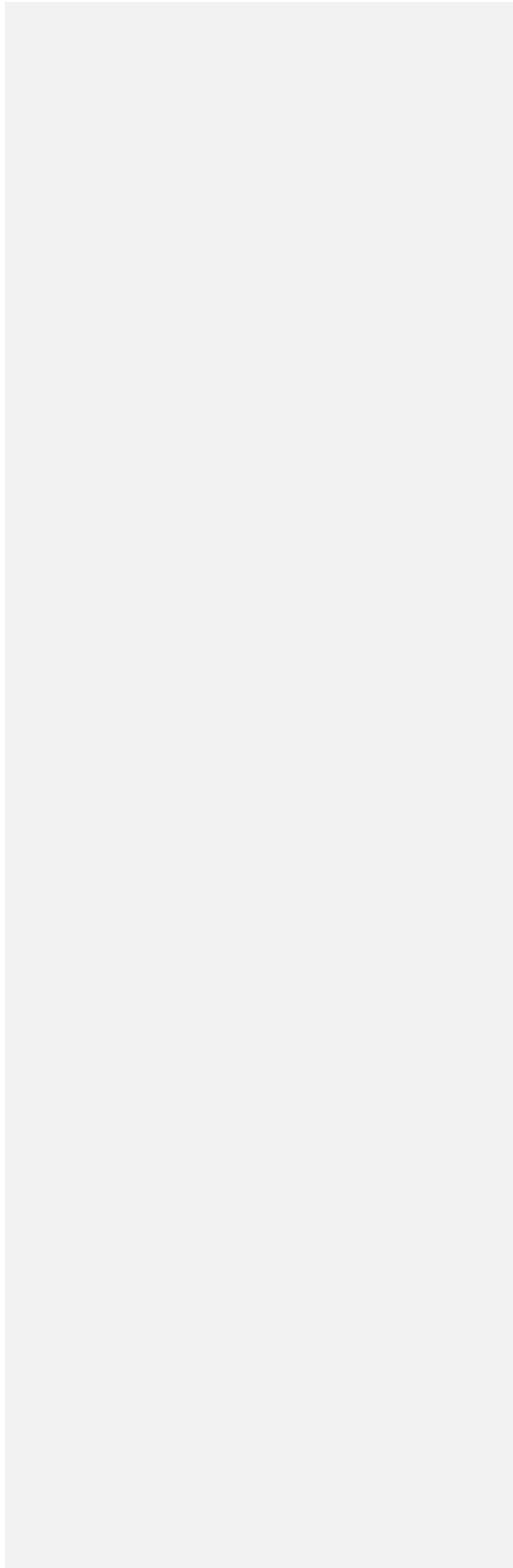
The Crested Butte Fire Protection District, a political subdivision of Colorado

By: _____ Date _____
Name: Chris McCann
Title: Chairman

The Board of County Commissioners of the County of Gunnison, Colorado

By: _____
Name: Matthew Birnie
Title: County Manager

_____ Date





CITY OF GUNNISON MASTER DEED RESTRICTION

THIS CITY OF GUNNISON MASTER DEED RESTRICTION (“Restriction” or “Restrictions”) is entered into this 3 day of June, 2021 by the City of Gunnison, a Colorado home-rule municipality (the Grantor), and each the Gunnison Valley Regional Housing Authority of Gunnison, Colorado, and the City of Gunnison (the “Beneficiaries”) which are duly organized under and by virtue of the laws of the State of Colorado. The Owner and Beneficiaries are sometimes referred to herein collectively as the “Parties.”

1. Property Subject to Deed Restriction. The following real property (the “Property”) is hereby made subject to these Restrictions:

Lots 1-5, 8-12, 15, 16, 17B, 19-22, Lazy K Subdivision, according to the Plat thereof recorded on April 28, 2021, at Reception No. 675479 in the Gunnison County public records, County of Gunnison, State of Colorado.

WHEREAS, the Grantor, acting as the declarant, intend to create a valid and enforceable covenant running with the land that assures that all of the Improvements hereby existing or to be developed on the Property will be used solely by individuals who are either Qualified Owners or Qualified Occupants (as such terms are hereinafter defined), subject to limited exceptions provided for herein; and

WHEREAS, both the Grantor and the Beneficiaries recognize the public need for attainable and affordable housing for the workforce and working families in the City of Gunnison; and

WHEREAS, under this Restriction the Grantor and Beneficiaries intend, declare, and covenant that the regulatory and restrictive covenants set forth herein governing the use of the Property described and provided for herein shall be and are hereby made covenants running with the land and are intended to be and shall be binding upon the Beneficiaries and Grantor, and all subsequent owners of such Property for the stated term of this Restriction, unless and until this Restriction is released and terminated in the manner hereafter described.

2. Definitions

i. AREA MEDIAN INCOME (AMI) means the median income for County of Gunnison adjusted for household size, as established and defined in the most recent annual schedule published by the U.S. Department of Housing and Urban Development (HUD).

ii. CAPITAL IMPROVEMENT means any fixture erected as a permanent improvement to the Property excluding repair, replacement, maintenance costs, and sweat equity.

iii. DEPENDENT means a person, including a spouse of, a child of, a step-child of, a child in the permanent legal custody of or a parent of, a Qualified Owner or Qualified Occupant, in each case whose sole place of residence is in the same household as such Qualified Owner or Qualified Occupant, and who is financially dependent upon the support of the Qualified Owner



or Qualified Occupant. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as that act shall from time to time be amended.

- iv. CITY shall mean the City of Gunnison, Colorado.
- v. FIRST MORTGAGE means a deed of trust or mortgage that is recorded senior to any other deeds of trust or liens against the Property to secure a loan used to purchase the Property by a Mortgagee.
- vi. GUIDELINES mean the most current Gunnison Valley Regional Housing Authority Housing Guidelines in effect at the time of closing on a sale or transfer of the Property or at the commencement date of a lease or other occupation agreement, or its successor document, as amended from time to time.
- vii. HOUSEHOLD means one or more persons who intend to live together in a Unit on the Property as a single housekeeping property.
- viii. HOUSING AUTHORITY means the Gunnison Valley Regional Housing Authority. Unless expressly stated otherwise in this Deed Restriction, "Housing Authority" shall refer to the Gunnison Valley Regional Housing Authority, except that if the Gunnison Valley Regional Housing Authority ceases to exist or is replaced by some other entity, "Housing Authority" shall refer to the City of Gunnison.
- ix. MAXIMUM RESALE PRICE means the maximum Purchase Price that shall be paid by any purchaser of a Unit within the Property, other than the initial purchaser who acquires a Unit from the Owner that is determined in accordance with the provisions of Section 6.iii of this Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of a Unit.
- x. MORTGAGEE means any bank, savings and loan association, or any other institutional lender that is licensed to engage in the business of providing purchase money mortgage financing for residential real property and that is the beneficiary of a deed of trust or the mortgagee under a mortgage encumbering a Unit or the Property.
- xi. NON-QUALIFIED OWNER or NON-QUALIFIED TRANSFEREE means an Owner that is not a Qualified Owner.
- xii. NET WORTH means the estimated sum of the assets of the Qualified Owner or Qualified Occupant. The term *Asset* refers to liquid assets such as cash in savings, checking or other forms of bank accounts and stocks, bonds or other instruments that can readily be converted to cash. The most recent Assessed Value as provided by the applicable Assessor's Office will be used to determine the value of real estate holdings, regardless of set-offs by encumbrances, costs of sale or holding, or percent of ownership interest. Assets in a qualified retirement plan and other non-liquid assets such as personal belongings or intangible assets will not be included in the asset limitations for each income category.



xiii. OWNER means the City of Gunnison, Lazy K Development, LLC, and any subsequent buyer, heir, devisee, transferee, grantee, owner or holder of title to a Unit, or any portion of the Property.

xiv. PURCHASE PRICE means all consideration paid by the purchaser to the seller for a Unit.

xv. A QUALIFIED EMPLOYER is an employer in Gunnison County whose business address is located within Gunnison County, employs persons within Gunnison County, employees perform work in Gunnison County, and/or whose business taxes are paid in Gunnison County.

xvi. QUALIFIED OWNER means a natural person who meets the following requirements at the time that he/she takes initial ownership interest or transfer of interest in a Unit as qualified by the Housing Authority:

- a. Earns his/her primary (80% or more) source of income working a minimum of 30 hours average per week on an annual basis, as documented with the United States Internal Revenue Service, within the County of Gunnison, and has provided evidence of such to the Housing Authority, or has a bona fide employment contract with an employer in the County of Gunnison that has been accepted by the Housing Authority; and
- b. Except as provided for in Section 4.i.a., does not own any interest in other improved residential property(s). A purchaser who owns improved residential real estate must convey all interest in said residential property(s) prior to taking initial ownership or transfer of an interest of a Unit; and
- c. A qualified household shall not have a net worth that exceeds three (3) times the income based on the AMI applicable to actual household size of a prospective purchaser; and
- d. Income restrictions are applicable at the time of qualification and shall be verified by the Housing Authority. Income guidelines are based on the Area Median Income (AMI). At the time of initial occupancy, the combined household income shall not exceed 80% or 120% of AMI – to be established per the contract between Lazy K Development, LLC and the City for each Unit and notice of which shall be attached to and recorded against each unit; and
- e. Earns at least 75% of the income required to qualify to purchase the property from employment meeting the requirements of Section 2.xvi.b. of this Restriction.



- f. Shall occupy the Property as his/her sole and exclusive primary residence at all times during the ownership of a Unit.
- g. A reasonable accommodation as defined by Americans with Disabilities Act may be requested from the Housing Authority for the employment requirements.

xvii. QUALIFIED OCCUPANT means a person who meets the following requirements at the time he or she takes initial occupancy of a Unit as qualified by the Housing Authority:

- a. Has earned his/her primary (80% or more) source of income working a minimum of 30 hours average per week on an annual basis, as documented with the United States Internal Revenue Service, within the County of Gunnison, and has demonstrated such to the Housing Authority, or has a qualified employment contract with an employer in the County of Gunnison that has been accepted by the Housing Authority; and
- b. Except as provided for in Section 4.i.a., does not own any interest in other improved residential property(ies). An occupant who owns improved residential real estate must convey all interest in said residential property(ies) prior to taking initial occupancy of a Unit; and
- c. A qualified household shall not have a net worth that exceeds three (3) times the income based on the AMI applicable to actual household size of a prospective purchaser, such AMI; and
- d. Income restrictions are only applicable at the time of purchase and shall be verified by the Housing Authority. Income guidelines are based on the Area Median Income (AMI). At the time of initial occupancy, the combined household income shall not exceed 80% or 120% of AMI – to be established per the contract between Lazy K Development, LLC and the City for each Unit and notice of which shall be attached to and recorded against each unit; and
- e. Shall occupy the Unit as his/her sole and exclusive primary residence.
- h. A reasonable accommodation as defined by Americans with Disabilities Act may be requested from the Housing Authority for the employment requirements.

xviii. TRANSFER means an act of a party, or of the law, by which the title to a Unit is wholly or partially transferred to another; including but not limited to the sale, assignment voluntary or involuntary transfer, or transfer by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in a Unit, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest or any interest evidenced by a land contract by which possession of the Unit is transferred and Owner retains title, except that, this definition does not include any transfer of an interest by the Housing Authority.



If reviewed and approved in writing by the Housing Authority prior to occurrence the following transfer(s) are exceptions to the definition of Transfer, provided that the new Owner, other than an estate, shall use the Unit as his/her principal residence:

- a. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner who is also a Qualified Owner.
- b. A transfer resulting from a decree of dissolution of marriage or legal separation of from a settlement incidental to such a decree by which a transfer is made to a spouse who is also a Qualified Owner.

xix. UNIT means the constructed improvement for purposes of residential use only and to be created as a separate legal interest in a portion of the Property

3. Restriction Runs with the Land. This Restriction shall constitute covenants running with title to the Property and all Units located thereon as a burden thereon, for benefit of, and enforceable by, each of the Beneficiaries, and their successors and assigns, and this Restriction shall bind the Beneficiaries and all subsequent Owners and occupants of Units. Each Owner and Qualified Occupant, upon acceptance of a deed or lease to a Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions, and restrictions contained herein during the Owner's period of ownership or Qualified Occupant's tenancy, as may be appropriate. Each and every Transfer or lease of a Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction in any document of conveyance. The Beneficiaries shall hold their interest as tenants in common, except that neither Beneficiary may sell, transfer or assign their interest in the Restriction without the express written permission of the other, and neither beneficiary shall agree to relieve any Owner or Qualified Occupant of their obligations under the Restriction without the express written consent of the other. If one of the Beneficiaries ceases to exist, that Beneficiary's interest in the Restriction shall be deemed to be assigned to the remaining Beneficiary.

4. Ownership, Use, Occupancy and Rentals.

i. Ownership. The ownership of Units is hereby, and shall henceforth be, limited exclusively to Qualified Owner(s). In the event that a Unit is occupied without compliance with this Restriction, the Housing Authority shall have the remedies set forth herein, including but not limited to the rights under Section 8 herein.

- a. Upon the written consent of the Housing Authority, for 120% AMI units only, a Qualified Employer that owns or operates a business located in and serving the County may purchase a Unit, provided, however, that by taking title to a Unit, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not meet the definitions of either a Qualified Owner or Qualified Occupant shall rent the Unit to a natural person(s) that does meet the definitions of a Qualified



Occupant, and shall not occupy or use the Unit for such Owner's own use or leave the Unit vacant for more than three months, except as otherwise provided herein. Any occupancy of a Unit pursuant to this Section 4.i.a. shall not exceed two persons per bedroom, unless the Housing Authority approves otherwise. 80% AMI units may not be owned or rented by a Qualified Employer.

- ii. Use and Occupancy. The use and occupancy of Units is hereby, and shall henceforth be, limited exclusively to Qualified Owners or Qualified Occupant(s), and Dependents.
- iii. Rental of Property. Owner may not, except with prior written approval of the Housing Authority, and subject to the Housing Authority's conditions of approval, rent a Unit for any period of time. All renters must be Qualified Occupants. Except as provided for in Section 4.i.a. herein, a rental shall be for no less than six (6) months and no more than one year and shall occur not more than once every five (5) years. All rentals must comply with the then current Housing Authority's Guidelines.
- iv. Roommates. The requirements of this Restriction shall not preclude the Qualified Owner from sharing occupancy of a Unit with non-owners on a rental basis provided Qualified Owner continues to occupy a Unit as his/her sole and primary residence and meets the obligations contained in this Restriction, including the definition of Qualified Owner or Qualified Occupant. Short-term rentals/roommates are strictly prohibited.
- v. No Indemnification or Waiver of Immunity. Nothing herein shall be construed to require either of the Beneficiaries to protect or indemnify the Owner against any losses attributable to a rental including, but not limited to, non-payment of rent or damages to a Unit; nor to require either of the Beneficiaries to obtain a Qualified Occupant for the Owner in the event that none is found by the Owner. In addition, nothing herein shall be construed as a waiver by either of the Beneficiaries' governmental immunity provided by the Colorado Governmental Immunity Act or other applicable law.
- vi. Initial Finance and Refinance Restriction.
 - a. At the time of the purchase of a Unit the original principal amount of any indebtedness secured by a First Mortgage shall not exceed an amount equal to one hundred percent (100%) of the Purchase Price paid for the Unit by that Owner, subject to the Housing Authority's Guidelines.
 - b. An Owner may refinance a First Mortgage that encumbers a Unit with the consent of the Housing Authority; provided, however, that the original principal amount of any refinanced indebtedness secured by a First Mortgage shall not exceed an amount equal to ninety-seven percent (97%) of the then current Maximum Resale Price limit.
- vii. Ownership Interest in Other Residential Property. Except with respect to a Non-Qualified Owner permitted to purchase a Unit as set forth in Section 4.i.a, if at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property in or out of the County, the Owner shall immediately list such other



property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Owner within one hundred twenty (120) days of its listing required hereunder, then the Owner shall immediately list his or her Unit for sale pursuant to Section 8.v. of this Restriction. In the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties that constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Section 4.vii.

viii. Compliance. Any Owner of a Unit is required to comply with annual deed restriction monitoring certifying to the Housing Authority that they are in compliance with the requirements of this Restriction. The Housing Authority acknowledges and recognizes that the income and net worth of a Qualified Owner or Qualified Occupant may increase over time, however, such increases over the maximum income and net worth requirements at initial purchase or occupancy shall not constitute a default of this Restriction.

ix. Any owner or prospective buyer must agree to and execute the Notice of Lien form attached hereto as Exhibit A.

5. Initial Purchase Price. Each unit constructed on the Property shall be sold to a Qualified Owner, except as provided for in Section 4.i.a of this Restriction, at an affordable Purchase Price as approved by the City of Gunnison in accordance with the terms and conditions provided for in the development agreement or Contract between the City and Lazy K Development, LLC.

6. Transfer of Property.

i. Resale. No Transfer of the Property or any Unit thereon shall occur subsequent to the original by the City to Lazy K Development, LLC, and any initial sale by Lazy K Development, LLC to a Qualified Owner or Qualified Employer , except upon full compliance with the procedures set forth in this Section 6. In the event the Property or a Unit is sold and/or conveyed without compliance with this Restriction, such sale and/or transfer shall be wholly null and void and shall confer no title whatsoever upon the purported buyer.

ii. Notice of Intent. No Unit shall not be sold or transferred without prior submission by the Qualified Owner or Qualified Employer as authorized by 4.i.a to the Housing Authority of a written Notice of Intent to Sell as set forth in Exhibit B attached hereto.

iii. Maximum Resale Price.

a. The initial purchase price of the Unit shall be the basis for calculating the Maximum Resale Price in accordance with this Restriction and the Housing Authority guidelines in effect at the time of listing the Unit for re-sale.

b. The Maximum Resale Price of a Unit shall be limited to be no more than the following calculation:



The Maximum Resale Price may not exceed the sum of: (i) the Purchase Price paid by the Owner for the Unit, plus: (ii) an increase of two percent (2%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month, but not compounded annually) from the date of the Owner's purchase of the Unit to the date of the Owner's Notice of Intent to sell the Unit; plus (iii) an amount equal to any special improvement district assessments, if applicable and not transferable, paid by the seller during the seller's ownership of the Unit; (iv) the cost of Permitted Capital Improvements made to the Unit by the Owner as set forth in Section 6.iii.c. of this Restriction.

- c. Permitted Capital Improvements. The amount for Permitted Capital Improvements shall not exceed ten per cent (10%) of the original purchase price for an initial ten (10) year period. For every ten (10) year period from the date of the original purchase and Covenant, another ten (10) per cent of the purchase price may be added to the value of the Unit for Capital Improvements. In calculating such amount, only those Permitted Capital Improvements identified in the most recently approved GVRHA Housing Guidelines in effect at the time of resale calculation shall qualify for inclusion. Seller's contributed labor or "sweat equity" shall not be part of the cost of an eligible improvement.
- d. Pursuant to the Housing Authority Guidelines, each Owner shall be responsible for ensuring that at the Transfer of his or her Unit, the same is clean, the appliances are in working order, and that there are no health or safety violations regarding the Unit. Prior to the sale of the Unit, the Housing Authority is authorized to take necessary actions and incur necessary expenses for bringing the Unit into saleable condition. Such actions and expenses include, but are not limited to, cleaning the Unit and making necessary repairs to or replacements of appliances and/or Unit fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting fixtures, and/or correcting any health or safety violations on the Unit. Expenses incurred by the Housing Authority to bring the Unit into a saleable condition shall be itemized and documented by the Housing Authority and deducted from the Owner's proceeds at closing of the Transfer of the Unit.
- e. No Owner shall permit any prospective purchaser to assume any or all of the Owner's closing costs. No Owner shall accept anything of value from a prospective purchaser except for the Maximum Resale Price before, during or after closing of the Transfer of the Unit.
- f. Nothing in this Restriction represents or guarantees that the Unit will be re-sold at an amount equal to the Maximum Resale Price. Depending upon conditions affecting the real estate market, the Unit may be re-sold for less than the Maximum Resale Price.



- iv. Housing Authority Made Whole. No transfer of a Unit shall occur unless and until each and every encumbrance, debt or liability owed by the Owner to each and both of the Beneficiaries is fully satisfied.

7. Foreclosure

- i. It shall be a breach of these Restrictions for an Owner to default in the payments or other obligations due or to be performed under a promissory note secured by deed of trust encumbering a Unit. The Owner hereby agrees to notify the Beneficiaries, in writing, of any notification Owner receives from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, within five (5) calendar days of Owner's notification from lender, or its assigns, of said default or past due payments.
- ii. Upon receipt of notice as provided herein, the Beneficiaries shall have the right, in its sole discretion, to cure the default or any portion thereof. ("Curing Party"). In such event, the Owner shall be personally liable to the Curing Party for past due payments made by the Curing Party, together with interest thereon at the rate specified in the promissory note secured by the deed of trust, plus one (1) per cent, and all actual expenses of the Curing Party incurred in curing the default. In the event the Owner does not repay the Curing Party within sixty (60) days of notice that the Curing Party has cured the Owner's default, the Owner agrees that the Curing Party shall be entitled to a lien against the Unit to secure payment of such amounts. Such a lien may be evidenced by a notice of lien setting the amounts due and rate of interest accruing thereon, and such notice of lien may be recorded in the real property records of City of Gunnison, Colorado, until such lien is paid and discharged. The Curing Party shall have the additional right to bring an action to foreclose on the Unit for the payment of the lien set forth in this section 7.ii.
- iii. In the event of a foreclosure on a promissory note secured by a first deed of trust on the Unit, and the issuance of a public trustee's deed by the holder of such note and deed of trust ("Holder"), or the acceptance by Holder of such note and deed of trust of a deed in lieu of foreclosure of the Unit, and Holder's subsequent recordation of the same in the Office of the City of Gunnison Clerk and Recorder, the Beneficiaries may acquire the Unit by exercising that certain "Option to Purchase," a copy of which is attached hereto as Exhibit C. In the event that the Option is not exercised by the Beneficiaries, this Deed Restriction shall be released and shall be of no further force or effect.

8. Default/Breach

- i. In the event either of the Beneficiaries has reasonable cause to believe an Owner is violating the provisions of these Restrictions, that entity, through its authorized representatives, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, after providing the Owner with no less than 24 hours written notice.
- ii. The respective Beneficiary shall send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to determine the merits of the



allegations, or to correct the violation. In the event the Owner disagrees with the allegation of violation of these Restrictions, the Owner may request, in writing, a hearing before the Housing Authority Grievance and Appeals Committee. If the Owner does not request a hearing and the violation is not cured within the fifteen-day period, the Owner shall be considered in violation of these Restrictions.

iii. Whenever these Restrictions provide for a hearing before the Housing Authority, such hearing shall be scheduled by the Housing Authority within ten (10) days of the date of receipt of a written request for a hearing. At any such hearing, the Owner or other aggrieved party may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made, and the decision of the Housing Authority shall be a final decision, subject to judicial review.

iv. There is hereby reserved to the parties hereto any and all remedies provided by law for breach of these Restrictions or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of these Restrictions, the prevailing party shall be awarded its damages, expenses and costs, including reasonable attorney's fees.

v. In the event the Unit is sold and/or conveyed without compliance with the terms of these Restrictions, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, even without reference therein to these Restrictions.

vi. In the event an owner fails to cure any breach of these Restrictions, each of the Beneficiaries may resort to any and all available legal or equitable actions, including but not limited to specific performance of these Restrictions, an injunction against future sale(s) in violation of these Restrictions.

vii. Eliminating Resale Gain. In the event of a breach of any of the terms or conditions contained herein by an Owner, his or her heirs, successors or assigns, the Owner's initial purchase price of the Property shall, upon the date of such breach as determined by either of the Beneficiaries, automatically cease to increase as set out in Section 6.iii. of this Restriction and shall remain fixed until the date of cure of said breach.

9. In the event of a dispute between the Beneficiaries regarding interpretation, enforcement or otherwise of this Restriction or any portion of it, the position of City of Gunnison shall prevail.

10. General Provisions

i. These Restrictions shall constitute covenants running with the Real Property and any Unit located thereon as a burden thereon, for the benefit of, and shall be specifically enforceable by each of the Beneficiaries and/or its respective successors and assigns, as applicable. Enforcement by any appropriate legal action may include, but is not limited to specific performance injunction, reversion, or eviction of noncomplying owners and/or occupants.



- ii. Equal Housing Opportunity. Pursuant to the Fair Housing Act and public policy, the Housing Authority shall not discriminate on the basis of race, creed, color, sex, national origin, familial status, disability, sexual orientation, or gender identity in the lease, sale, use or occupancy of the Property.
- iii. Waiver of Exemptions. Every Owner, by taking title to a Unit, shall be deemed to have subordinated to this Restriction any and all right of homestead and any other exemption in, or with respect to, such Unit under state or federal law presently existing or hereafter enacted.
- iv. Any notice, consent, approval, or request which is required to be given by any party hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the address provided herein or to the address of the owner. The owner shall advise the Housing Agency of any change in address, in writing. Said notices, consents, and approvals, shall be sent to the parties hereto at the following addresses, unless otherwise notified in writing:

To Beneficiaries: Gunnison Valley Regional Housing Authority
 Executive Director
 202 E. Georgia Avenue
 Gunnison, Colorado 81230
 Telephone: 970-641-7900
 Fax: 888-406-1360

OR

City of Gunnison City Manager
201 W. Virginia Avenue
Gunnison, Colorado 81230
Telephone: 970-641-8000

To Owner: _____

To Subsequent Owners: At the address maintained in the records of the
County of Gunnison Assessor's office

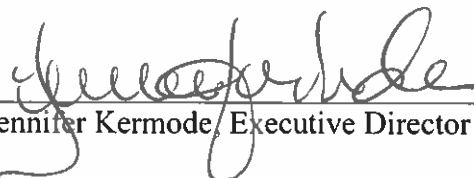
- v. Whenever possible, each provision of these Restrictions and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of these Restrictions shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remaining provisions of these Restrictions.



- vi. These Restrictions and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado.
- vii. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the parties.
- viii. Owners and subsequent owners agree that he or she shall be personally liable for their participation in any of the transactions contemplated herein and that he or she will execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of these Restrictions or any agreement or document relating hereto or entered into in connection herewith.
- ix. Any modifications of these Restrictions shall be effective only when made by a duly executed instrument by the Housing Agency and an owner, with the written consent of both of the Beneficiaries, and recorded with the Clerk and Recorder of City of Gunnison, Colorado. Notwithstanding the foregoing, the Parties agree that the Beneficiaries may unilaterally amend these Restrictions where deemed necessary to effectuate the purpose and intent of these Restrictions, so long as both Beneficiaries agree to such amendments.

EXECUTED, this 30th day of June, 2021.

GUNNISON VALLEY REGIONAL HOUSING AUTHORITY

By: 
Jennifer Kermode, Executive Director

State of Colorado)

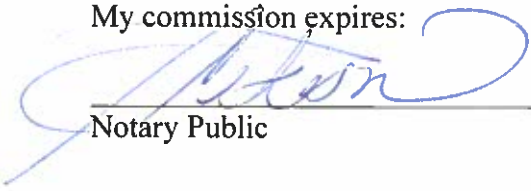
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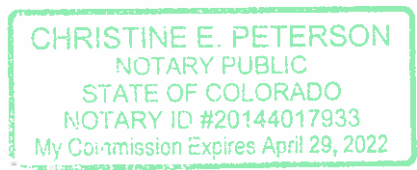
County of Gunnison)

The foregoing Gunnison Valley Regional Housing Authority Affordable Housing Deed Restriction for been acknowledged before me this 30th day of June, 2021 by Jennifer Kermode, Executive Director of the Gunnison Valley Regional Housing Authority

Witness my hand and official seal.

My commission expires:


Notary Public





CITY OF GUNNISON

By:



Jim Gelwicks, Mayor

ATTEST:



City Clerk



RETURN TO:
GVRHA
202 E. Georgia Avenue
Gunnison, CO 81230

EXHIBIT A

NOTICE OF LIEN
AND MEMORANDUM OF ACCEPTANCE OF CITY
OF GUNNISON MASTER DEED RESTRICTION FOR
_____, GUNNISON COUNTY,
COLORADO

WHEREAS, _____, the "Buyer" is purchasing _____, the
"Seller" at a price of \$ _____ the real property described as:

(insert legal description here)

known as the "Property"; and

WHEREAS, the Seller of the Property is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitle "City of Gunnison Master Deed Restriction" for the Property, recorded on (insert recording date of deed restriction here) under Reception No. (insert Reception No. here), in the real property records of the County of Gunnison, Colorado (the "Deed Restriction").

NOW, THEREFORE, as an inducement to the Seller to sell the Property, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Deed Restriction, has had the opportunity to consult with legal and financial counsel concerning the Deed Restriction and fully understands the terms, conditions, provisions, and restrictions contained in the Deed Restriction.
2. States that any Notice to Buyer should be sent to:
(insert Buyer mailing address here)
3. Directs any Notice to The City of Gunnison and the Gunnison Valley Regional Housing Authority be sent to:

Gunnison Valley Regional Housing Authority
Attn: Executive Director



EXHIBIT B

**AFFORDABLE HOUSING DEED RESTRICTION
OPTION TO PURCHASE**

This Option to Purchase is hereby granted to the City of Gunnison Colorado, a Colorado home rule municipality, and Gunnison Valley Regional Housing Authority, a Colorado Multijurisdictional Housing Authority ("**Beneficiaries**") by _____, its successors and/or assigns who is the "**Holder**" of a promissory note ("**Promissory Note**") secured by a first deed of trust on the Unit (defined below), and _____, Owner of the Unit and borrower under the Promissory Note ("**Owner**"). Beneficiaries, Holder, and Owner are collectively referenced herein as the "**Parties**".

Recitals

WHEREAS, Owner is currently vested in title to the real property, which is more particularly described as follows:

[INSERT LEGAL]

Also known as _____, Gunnison, CO ("Unit"); and

WHEREAS, the Unit is subject to that certain Amended and Restated Affordable Housing Deed Restriction (the "**Deed Restriction**"), recorded at reception number _____ in the Office of the Gunnison County Clerk and Recorder; and

WHEREAS, the Parties desire to enter into this Option regarding the purchase of the Unit, as set forth herein.

Agreement

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

A. Definitions. Capitalized terms not otherwise defined herein shall have the meaning given to them in Amended and Restated Deed Restriction.

B. Grant of Option. In the event of (i) a foreclosure by Holder of the Promissory Note and the issuance of a public trustee's deed in and to the Unit to Holder following the expiration of all statutory redemption rights; or (ii) the acceptance by Holder of a deed in lieu of foreclosure of the Unit and Holder's subsequent recordation of the same in the Office of the Gunnison County Clerk and Recorder, Beneficiary shall have the option to purchase the Unit ("**Option**"), which Option shall be exercised as set forth herein.

C. Notice. Upon Holder's receipt of a public trustee's deed to the Unit, or upon



recording the deed in lieu of foreclosure, Holder shall provide written notice to Beneficiary of the commencement of the option period ("**Notice of Option Period**"), which Notice of Option Period shall be sent by email and certified mail, return receipt requested, and addressed as follows:

To Beneficiaries:

Gunnison Valley Regional Housing Authority
Executive Director
202 E. Georgia Avenue
Gunnison, Colorado 81230
Telephone: 970-641-7900
Fax: 888-406-1360

OR

City of Gunnison City Manager
201 W. Virginia Avenue
Gunnison, Colorado 81230
Telephone: 970-641-8000

D. Exercise of Option. Beneficiary shall have thirty (30) days after receipt of the above-described notice ("**Option Period**") within which to exercise this Option to purchase by delivering to Holder a "Notice of Exercise of Option" substantially in the form attached hereto as **Exhibit B-1**. The Notice of Exercise of Option shall be sent by email and certified mail, return receipt requested, and addressed as follows:

HOLDER:

Email: _____

E. Title and Closing. Closing shall occur no later than ninety (90) days from the exercise of the Option. At closing, and in exchange for the Option Price (as defined below), Holder shall deliver to Beneficiary a special warranty deed conveying the Unit to Beneficiary, and also shall deliver possession of the Unit. Holder shall convey only such title as it received through the public trustee's deed or deed in lieu of foreclosure and will not create or participate in the creation of any additional liens or encumbrances against the Unit following issuance of the public trustee's deed or deed in lieu of foreclosure to Holder. Holder shall not be liable for any of the costs of conveyance to Beneficiary. At closing, and in exchange for the special warranty deed described above, Beneficiary shall tender to Holder in cash or certified funds, the following option price ("**Option Price**");



(1) if a public trustee's deed in and to the Unit has been issued, an amount equal to the amount paid or bid at the public trustee's sale (plus any bid deficiency); plus any additional reasonable costs directly related to the foreclosure or the ownership of the Unit subsequent to the public trustee's sale up to the conveyance of the Unit to Beneficiary; OR

(2) if a deed in lieu of foreclosure has been recorded, (i) an amount equal to the amount due to Holder with respect to the Unit on the date the deed in lieu of foreclosure was recorded; plus (ii) any additional reasonable costs related to the deed in lieu of foreclosure or the ownership of the Unit incurred by Holder subsequent to the date the deed in lieu of foreclosure was recorded up to the conveyance of the Unit to Beneficiary, less (iii) any unpaid amounts secured by any other lien, deed of trust or other encumbrance on the Unit (*provided*, however, that if any such other lien, deed of trust or other encumbrance which is subordinate to Holder's deed of trust was removed by Holder, the amounts paid by Holder to obtain such removal shall also be added to the Option Price).

F. Time is of the essence / remedies. Time is of the essence hereof; provided, however, that the term of this Option shall be extended in a manner deemed reasonable by the Parties hereto in order to account for any circumstances beyond the reasonable control of a Party that prevent or impede the due performance of this Option. If Holder is in default, after written notice of such default is given and Holder has not cured the same within a reasonable period thereafter, Beneficiary may elect to treat this Option as being in full force and effect and shall have the right to specific performance or damages, or both.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Option Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected members of the Town Council of Beneficiary, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Successors and Assigns. The provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the Parties.

I. Modifications. The Parties agree that any modification to this Option Agreement shall be effective only when made by a writing signed by all Parties and recorded in the Office of the Gunnison County Clerk and Recorder.

IN WITNESS WHEREOF, the Parties have executed this instrument on this ____ day of _____, 20____.



***[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY;
SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]***



HOLDER

By: _____

Name: _____

Title: _____

Mailing Address: _____

STATE OF _____)
County of _____) ss.

The foregoing Option to Purchase has been acknowledged before me this _____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

OWNER:

Name: _____

Mailing Address: _____

STATE OF _____)
County of _____) ss.

The foregoing Option to Purchase has been acknowledged before me this _____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

BENEFICIARIES:



GUNNISON VALLEY REGIONAL HOUSING AUTHORITY

By: _____
Jennifer Kermode, Executive Director

State of Colorado)
) ss.
County of Gunnison)

The foregoing Gunnison Valley Regional Housing Authority Affordable Housing Deed Restriction for been acknowledged before me this _____ day of _____, 20__, by Jennifer Kermode, Executive Director of the Gunnison Valley Regional Housing Authority

Witness my hand and official seal.
My commission expires:

Notary Public

CITY OF GUNNISON

By: _____
Jim Gelwicks, Mayor

ATTEST:

City Clerk



**EXHIBIT B-1
FORM OF NOTICE OF EXERCISE OF OPTION**

To HOLDER:

Please take notice that pursuant to paragraph D of that certain Option to Purchase dated, _____, _____, 20____, and recorded at reception number _____ in the Office of the Gunnison County Clerk and Recorder, the undersigned Beneficiary hereby exercises its option to purchase the Unit described therein.

By:

BENEFICIARY:

TOWN OF MT. CRESTED BUTTE, COLORADO,
A Colorado home rule municipality

By: _____
_____, Mayor

Attest:

_____, its Town Clerk

EXHIBIT C

The City of Gunnison will be responsible for:

April 14, 2021 Infrastructure Bid Items for Deed Restricted and Free Market Lots adjacent to Tomichi Avenue:
• General Conditions/Mobilization
• Roads Parking Side walk
• Drainage improvements
• Extension of Water
• Extension of Sewer
• Other Utilities-Elec/Gas/Comms
• DOLA/Davis-Bacon/Buy-America
• Sidewalk on Tomichi
April 14, 2021 Infrastructure Bid Items for Free Market Lots adjacent to Gunnison Avenue:
• Relocate Water Line on Gunnison Ave (Water and Sewer Taps not included)
Other Negotiated Cost Share Items:
• Sewer Tap Fees – for all Deed Restricted Lots
• Water Tap Fees – for all Deed Restricted Lots
• Building Permit Fees – for all Deed Restricted Lots
• Final survey
• Soft Costs Contribution of to \$113,000 for architecture and engineering
• 50% of Bonding/LOC Cost, if cash escrow is not pursued
• All park improvements

Lazy K Development LLC will be responsible for:

Landscaping - on Deed Restricted and Market Rate Lots
Sewer Tap Fees - for all Market Rate Lots
Water Tap Fees – for all Market Rate Lots
Building Permit Fees – for all Market Rate Lots
April 14, 2021 Infrastructure Bid Items for Free Market Lots adjacent to Gunnison Avenue:
• Sewer Extension on Gunnison Avenue
All other costs to complete construction not covered by City of Gunnison

Colorado Division of Housing Grant will be applied towards City of Gunnison responsibilities.

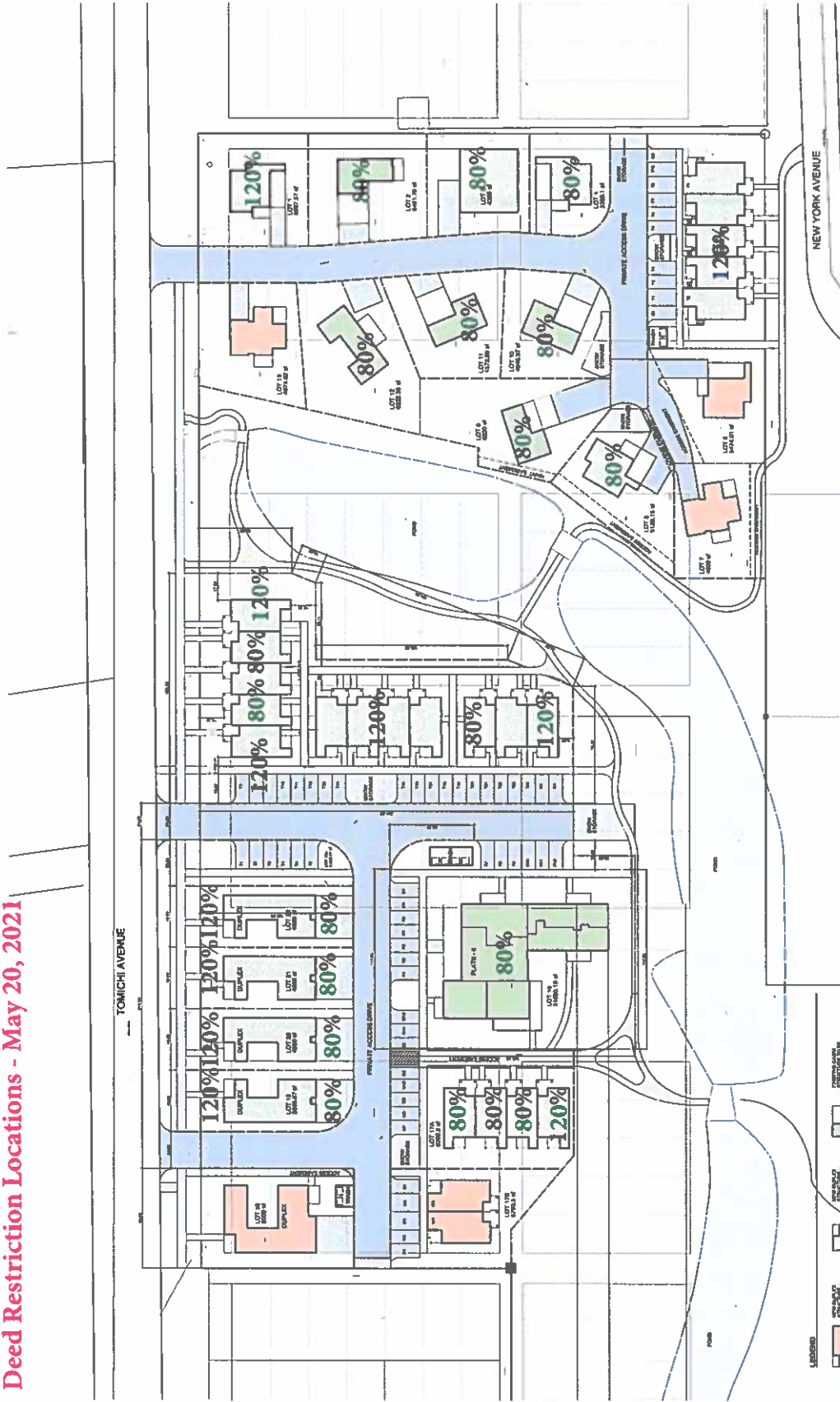
Valley Housing Fund Grant 2021 Increment (\$139,000) will be applied to architectural services provided by Jv DeSousa Architects.

Valley Housing Fund Grant 2022 Increment (\$139,000) will be applied to Lazy K Development LLC construction costs that exceed sales prices on Restricted units.



Deed Restriction Locations - May 20, 2021

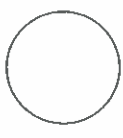
Exhibit D - AMI Mix



Blue - 9 Units to offer to Qualified Employers
Green - Offered to Qualified Buyers

Unit type, size, AMI restriction and location may be altered within the site, as long as the overall mix remains as follows:

AMI Mix	26	59%
80% AMI	18	41%
120% AMI	44	100%
Total		



Lazy K subdivision plan

Project: SUBDIVISION PLAN 2021 10228
 Revision:

Project: Lazy K
 City of Gunnison

Drawing scale: 1"=30'-0"
 Drawing number:

A3a





AMENDMENT TO CITY OF GUNNISON MASTER DEED RESTRICTION

THIS AMENDMENT TO CITY OF GUNNISON MASTER DEED RESTRICTION is entered into this 8th day of March, 2022 by the City of Gunnison, a Colorado home-rule municipality (“Grantor”) and each the Gunnison Valley Regional Housing Authority of Gunnison, Colorado and the City of Gunnison, which are duly organized under and by virtue of the laws of the State of Colorado.

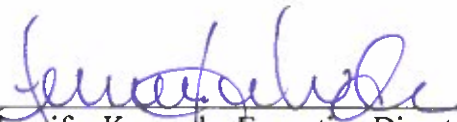
Paragraph 1 of the City of Gunnison Master Deed Restriction dated June 3, 2021 and recorded on June 10, 2021 in the Gunnison County records at Reception No. 676691 (“City of Gunnison Master Deed Restriction”) is amended to state the following:

1. Property Subject to Deed Restriction. The following real property (“Property”) is hereby made subject to these Restrictions:

Lots 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 15, 16, 17B, 19, 20, 21, 22, Lazy K Subdivision, according to the Plat thereof recorded on April 28, 2021 at Reception No. 675479 in the Gunnison County public records, County of Gunnison, State of Colorado.

Except as amended by this instrument, all terms and conditions of the City of Gunnison Master Deed Restriction remain in full force and effect.


GUNNISON VALLEY REGIONAL HOUSING AUTHORITY

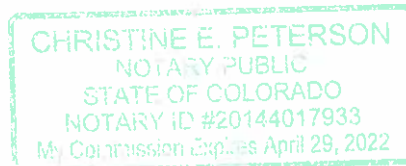
By: 
Jennifer Kermode, Executive Director

State of Colorado)
) ss.
County of Gunnison)

The foregoing Amendment to City of Gunnison Master Deed Restriction has been acknowledged before me this 8th day of March, 2022 by Jennifer Kermode, Executive Director of the Gunnison Valley Regional Housing Authority

Witness my hand and official seal.
My commission expires: 4/29/2022


Notary Public





CITY OF GUNNISON

By: 
Diego Plata, Mayor

ATTEST:

By: 
Erica Boucher, City Clerk



**SECOND AMENDMENT TO
CITY OF GUNNISON MASTER DEED RESTRICTION**

THIS SECOND AMENDMENT TO CITY OF GUNNISON MASTER DEED RESTRICTION is entered into this 30 day of June, 2022 by the City of Gunnison, a Colorado home-rule municipality (“Grantor”) and each the Gunnison Valley Regional Housing Authority of Gunnison, Colorado, the City of Gunnison, and Lazy K Development, LLC, a Colorado limited liability company as to Lot 5, LAZY K SUBDIVISION, according to the plat recorded April 28, 2021 as Reception No. 675479, which are duly organized under and by virtue of the laws of the State of Colorado.

Paragraph 2. Definitions, xvi. QUALIFIED OWNER, d. is amended to read as follows:

d. Income restrictions are applicable at the time of qualification and shall be verified by the Housing Authority. Income guidelines are based on the Area Median Income (AMI). At the time of initial occupancy, the combined household income shall not exceed 80% or 140% of AMI – to be established per the contract between Lazy K Development, LLC and the City for each Unit and notice of which shall be attached to and recorded against each unit; and

Paragraph 2. Definitions, xvi. QUALIFIED OCCUPANT, d. is amended to read as follows:

d. Income restrictions are only applicable at the time of purchase and shall be verified by the Housing Authority. Income guidelines are based on the Area Median Income (AMI). At the time of initial occupancy, the combined household income shall not exceed 80% or 140% of AMI – to be established per the contract between Lazy K Development, LLC and the City for each Unit and notice of which shall be attached to and recorded against each unit; and


Paragraph 4. Ownership, Use, Occupancy and Rentals, i.a., is hereby amended to read as follows:

a. Upon the written consent of the Housing Authority, for 140% AMI units only, a Qualified Employer that owns or operates a business located in and serving the County may purchase a Unit, provided, however, that by taking title to a Unit, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not meet the definitions of either a Qualified Owner or Qualified Occupant shall rent the Unit to a natural person(s) that does meet the definitions of a Qualified Occupant, and shall not occupy or use the Unit for such Owner's own use or leave the Unit vacant for more than three months, except as otherwise provided herein. Any occupancy of a Unit pursuant to this Section 4.i.a. shall not exceed two persons per bedroom, unless the Housing Authority approves otherwise. 80% AMI units may not be owned or rented by a Qualified Employer.

Except as amended by this instrument, all terms and conditions of the City of Gunnison Master Deed Restriction remain in full force and effect.



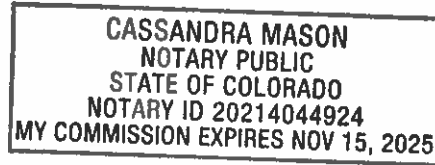
GUNNISON VALLEY REGIONAL HOUSING AUTHORITY

By: 
Chris Peterson, Interim Executive Director

State of Colorado)
) ss.
County of Gunnison)

The foregoing Amendment to City of Gunnison Master Deed Restriction has been acknowledged before me this 13 day of June, 2022 by Chris Peterson, Interim Executive Director of the Gunnison Valley Regional Housing Authority

Witness my hand and official seal.
My commission expires: Nov. 15 2025





Notary Public


CITY OF GUNNISON

By: 
Diego Plata, Mayor

ATTEST:

By: 
~~Erica Boucher, City Clerk~~
Cassandra Mason, Deputy City Clerk

LAZY K DEVELOPMENT, LLC, a
Colorado limited liability company

By: 
John Stock, Managing Member

Attest:

By: 
Karen Stock, Secretary



ivD LLC
 1910 7th Street, Third Floor
 Boulder, Colorado 80302
 720.301.0500
 iv@ivdesousa.com

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seal & signature

Lot 16
 Lazy K
 Gunnison CO 81230

issue date:
 XX/XX/23

revisions:

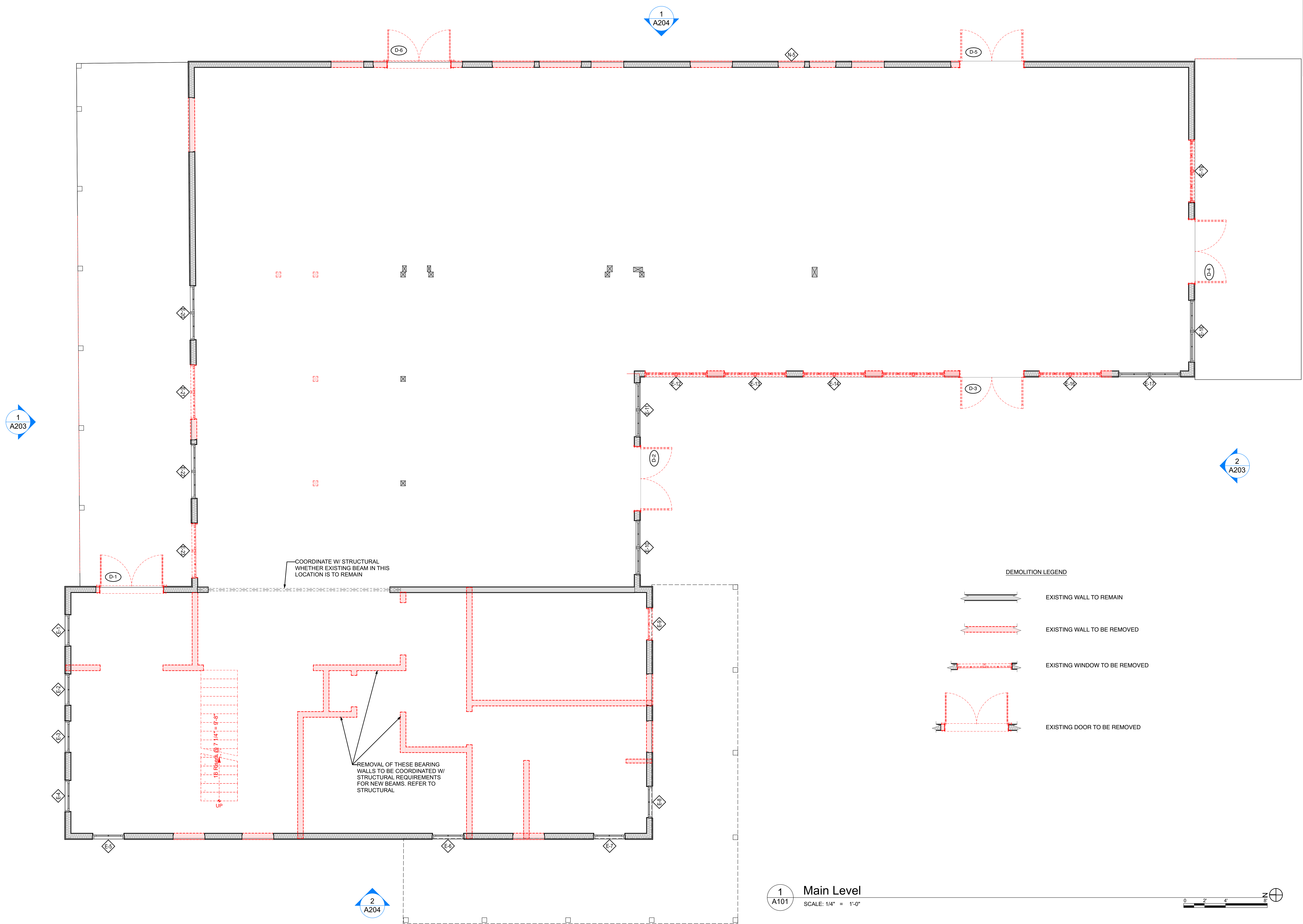
project
 Lot 16

XX/XX/2020 - Issue Description
 drawing title
 Demolition - Main Level Plan

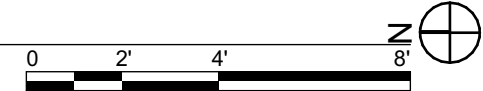
drawing scale AS NOTED

drawing number

A101



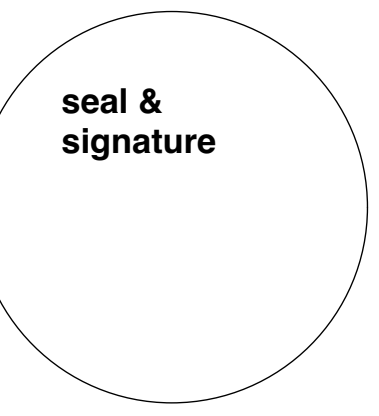
1 Main Level
 A101 SCALE: 1/4" = 1'-0"





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Lot 16
 Lazy K
 Gunnison CO 81230

issue date:
 XX/XX/23

revisions:

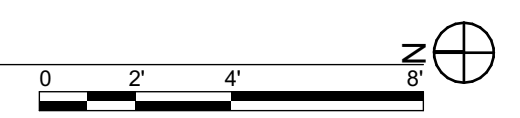
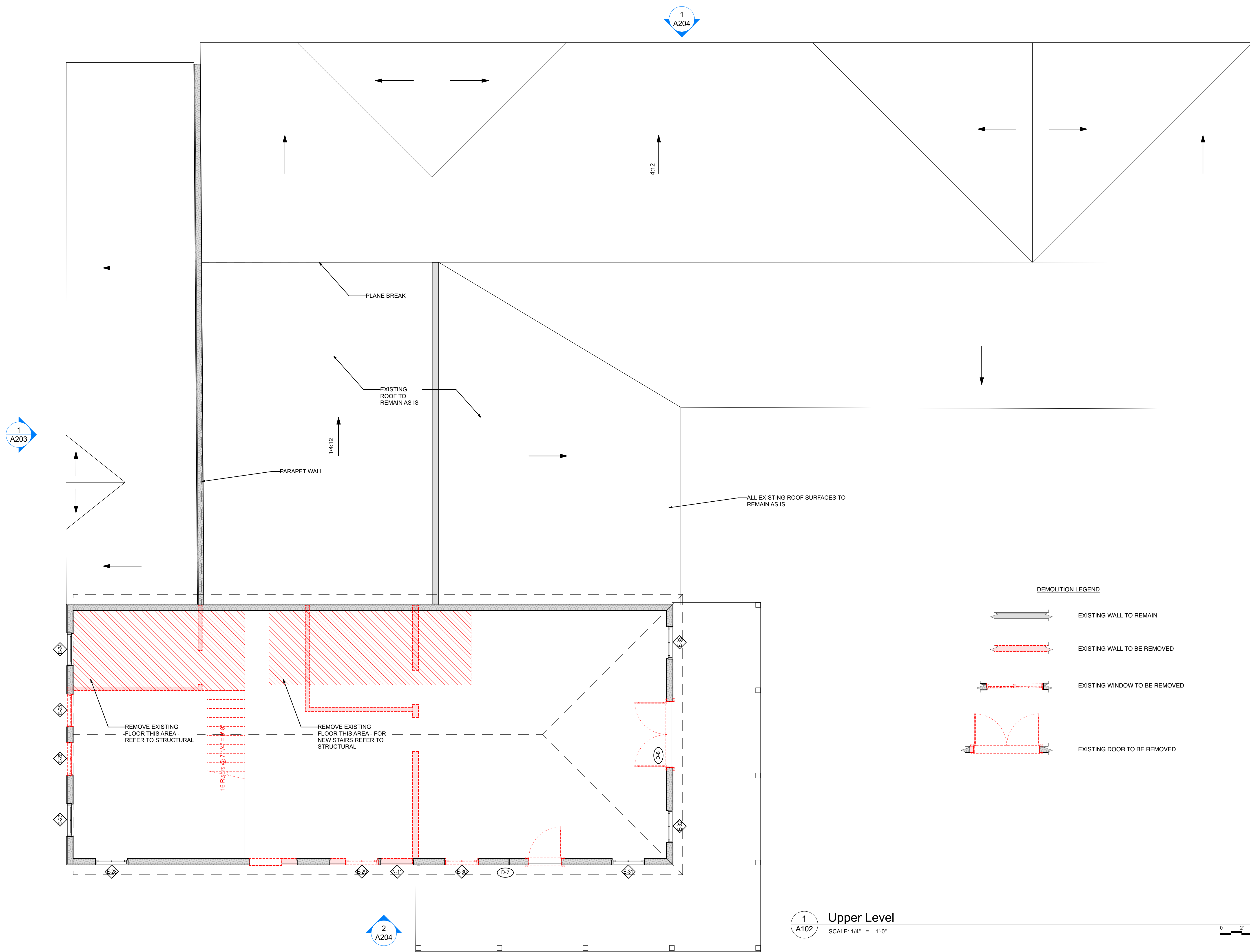
project
 Lot 16

XX/XX/2020 - Issue Description
 drawing title
 Demolition - Upper Level Plan

drawing scale AS NOTED

drawing number

A102



2
 A203

1
 A204

2
 A204

1
 A203



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seal & signature

Lot 16
 Lazy K
 Gunnison CO 81230

issue date:

XX/XX/23

revisions:

project
 Lot 16

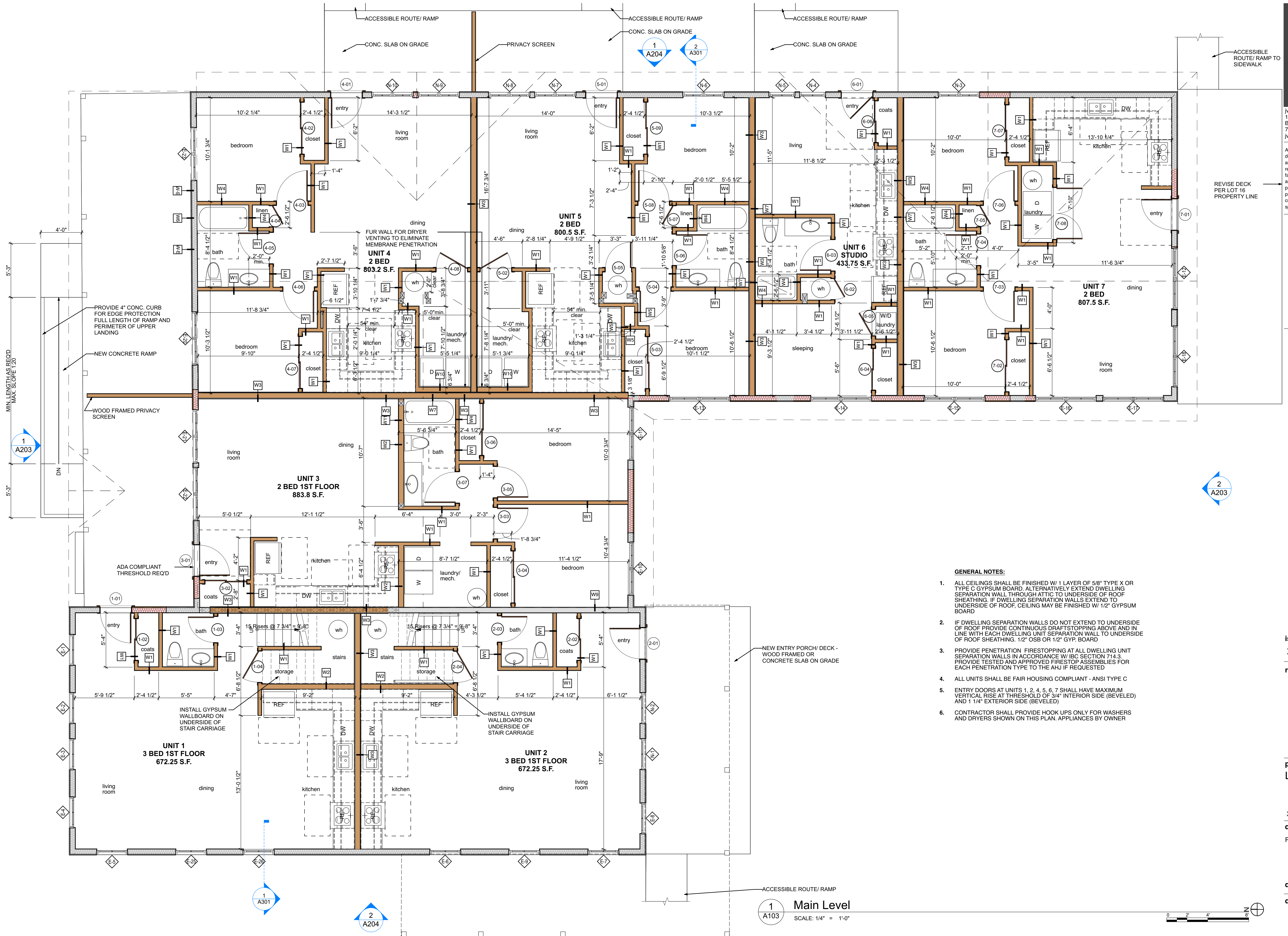
XX/XX/2020 - Issue Description

drawing title
 Proposed - Main Level Plan

drawing scale AS NOTED

drawing number

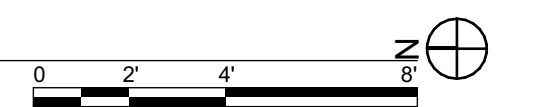
A103



GENERAL NOTES:

- ALL CEILINGS SHALL BE FINISHED W/ 1 LAYER OF 5/8" TYPE X OR TYPE C GYPSUM BOARD. ALTERNATIVELY EXTEND DWELLING SEPARATION WALL THROUGH ATTIC TO UNDERSIDE OF ROOF SHEATHING. IF DWELLING SEPARATION WALLS EXTEND TO UNDERSIDE OF ROOF, CEILING MAY BE FINISHED W/ 1/2" GYPSUM BOARD.
- IF DWELLING SEPARATION WALLS DO NOT EXTEND TO UNDERSIDE OF ROOF PROVIDE CONTINUOUS DRAFTSTOPPING ABOVE AND IN LINE WITH EACH DWELLING UNIT SEPARATION WALL TO UNDERSIDE OF ROOF SHEATHING. 1/2" OSB OR 1/2" GYP. BOARD
- PROVIDE PENETRATION FIRESTOPPING AT ALL DWELLING UNIT SEPARATION WALLS IN ACCORDANCE W/ IBC SECTION 714.3. PROVIDE TESTED AND APPROVED FIRESTOP ASSEMBLIES FOR EACH PENETRATION TYPE TO THE AHJ IF REQUESTED
- ALL UNITS SHALL BE FAIR HOUSING COMPLIANT - ANSI TYPE C
- ENTRY DOORS AT UNITS 1, 2, 4, 5, 6, 7 SHALL HAVE MAXIMUM VERTICAL RISE AT THRESHOLD OF 3/4" INTERIOR SIDE (BEVELED) AND 1 1/4" EXTERIOR SIDE (BEVELED)
- CONTRACTOR SHALL PROVIDE HOOK UPS ONLY FOR WASHERS AND DRYERS SHOWN ON THIS PLAN. APPLIANCES BY OWNER

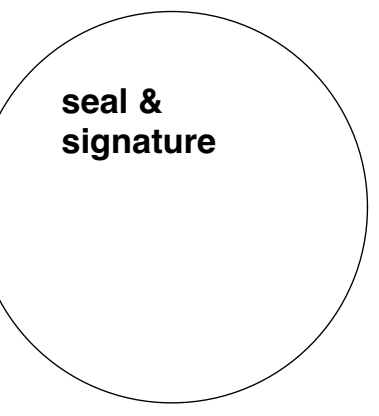
1 Main Level
 SCALE: 1/4" = 1'-0"



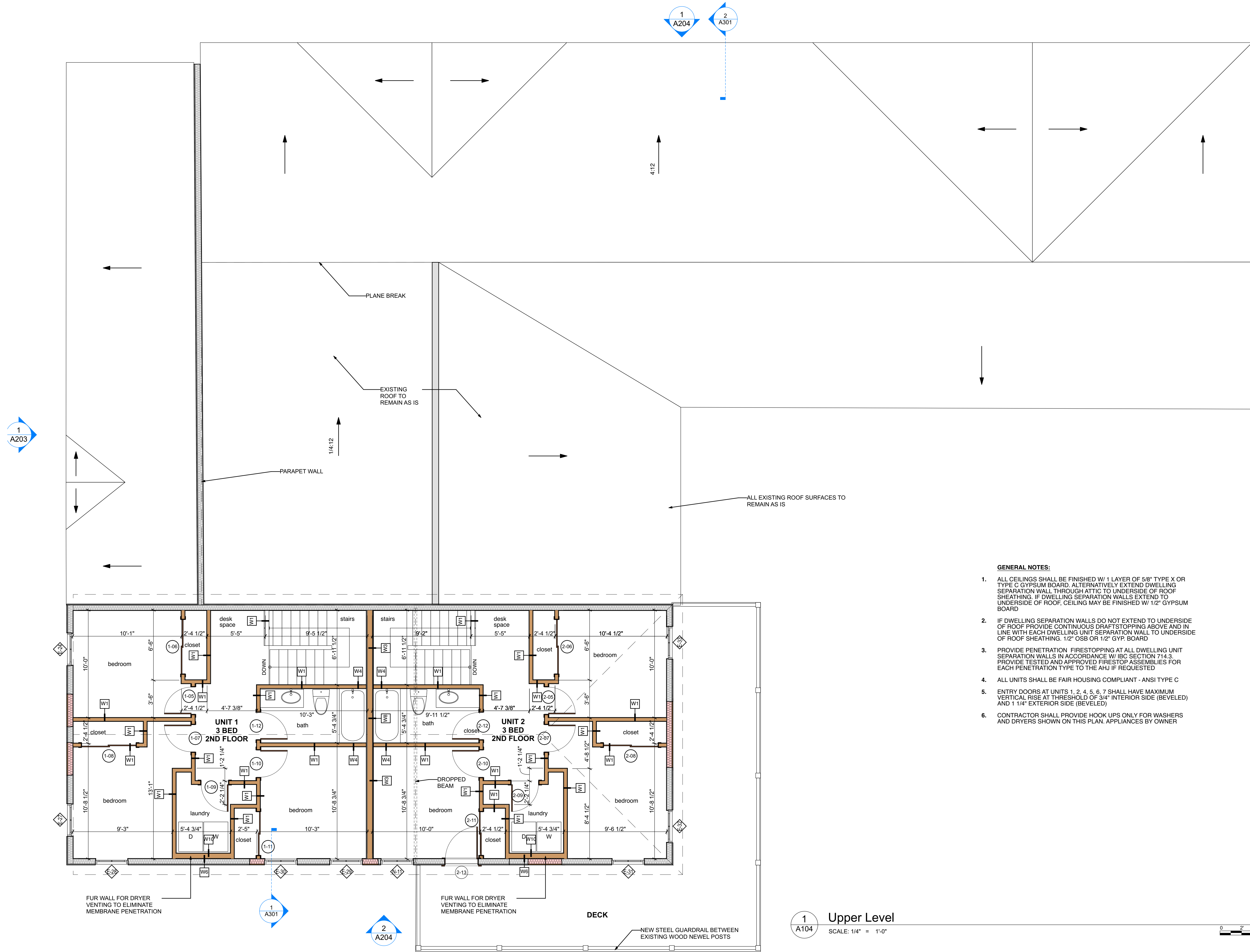


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Boulder, Colorado 80302
720.301.0500
iv@ivdesousa.com

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Lot 16
Lazy K
Gunnison CO 81230



- GENERAL NOTES:**
- ALL CEILINGS SHALL BE FINISHED W/ 1 LAYER OF 5/8" TYPE X OR TYPE C GYPSUM BOARD. ALTERNATIVELY EXTEND DWELLING SEPARATION WALL THROUGH ATTIC TO UNDERSIDE OF ROOF SHEATHING. IF DWELLING SEPARATION WALLS EXTEND TO UNDERSIDE OF ROOF, CEILING MAY BE FINISHED W/ 1/2" GYPSUM BOARD.
 - IF DWELLING SEPARATION WALLS DO NOT EXTEND TO UNDERSIDE OF ROOF PROVIDE CONTINUOUS DRAFTSTOPPING ABOVE AND IN LINE WITH EACH DWELLING UNIT SEPARATION WALL TO UNDERSIDE OF ROOF SHEATHING. 1/2" OSB OR 1/2" GYP. BOARD
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 - CONTRACTOR SHALL PROVIDE HOOK UPS ONLY FOR WASHERS AND DRYERS SHOWN ON THIS PLAN. APPLIANCES BY OWNER

1 Upper Level
A104 SCALE: 1/4" = 1'-0"



issue date:

XX/XX/23

revisions:

project
Lot 16

XX/XX/2020 - Issue Description

drawing title
Proposed - Upper Level Plan

drawing scale AS NOTED

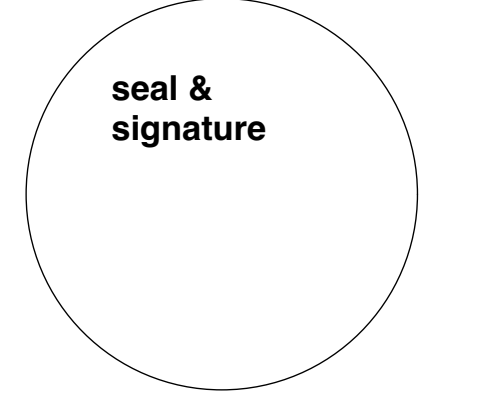
drawing number

A104



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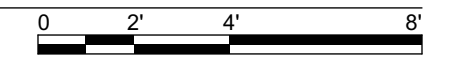
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seal & signature



1 North Elevation
 A201 SCALE: 1/4" = 1'-0"



GENERAL NOTES
 COORDINATE ALL DEMOLITION WITH ARCHITECTURAL AND STRUCTURAL PLANS FOR NEW CONSTRUCTION

DEMOLITION LEGEND

Lot 16
 Lazy K
 Gunnison CO 81230

issue date:
 XX/XX/23

revisions:

project
 Lot 16

XX/XX/2020 - Issue Description

drawing title
 Demolition - North & South Elevations

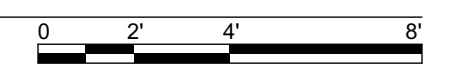
drawing scale AS NOTED

drawing number

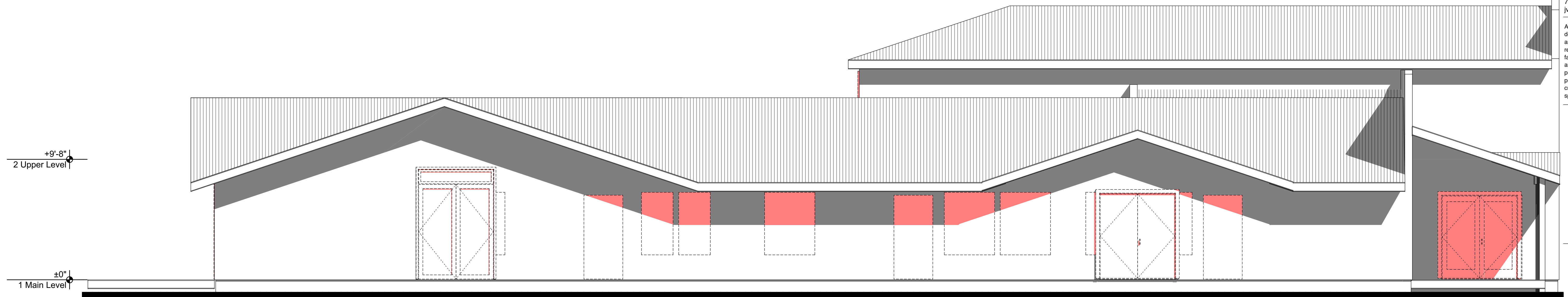
A201



2 South Elevation
 A201 SCALE: 1/4" = 1'-0"

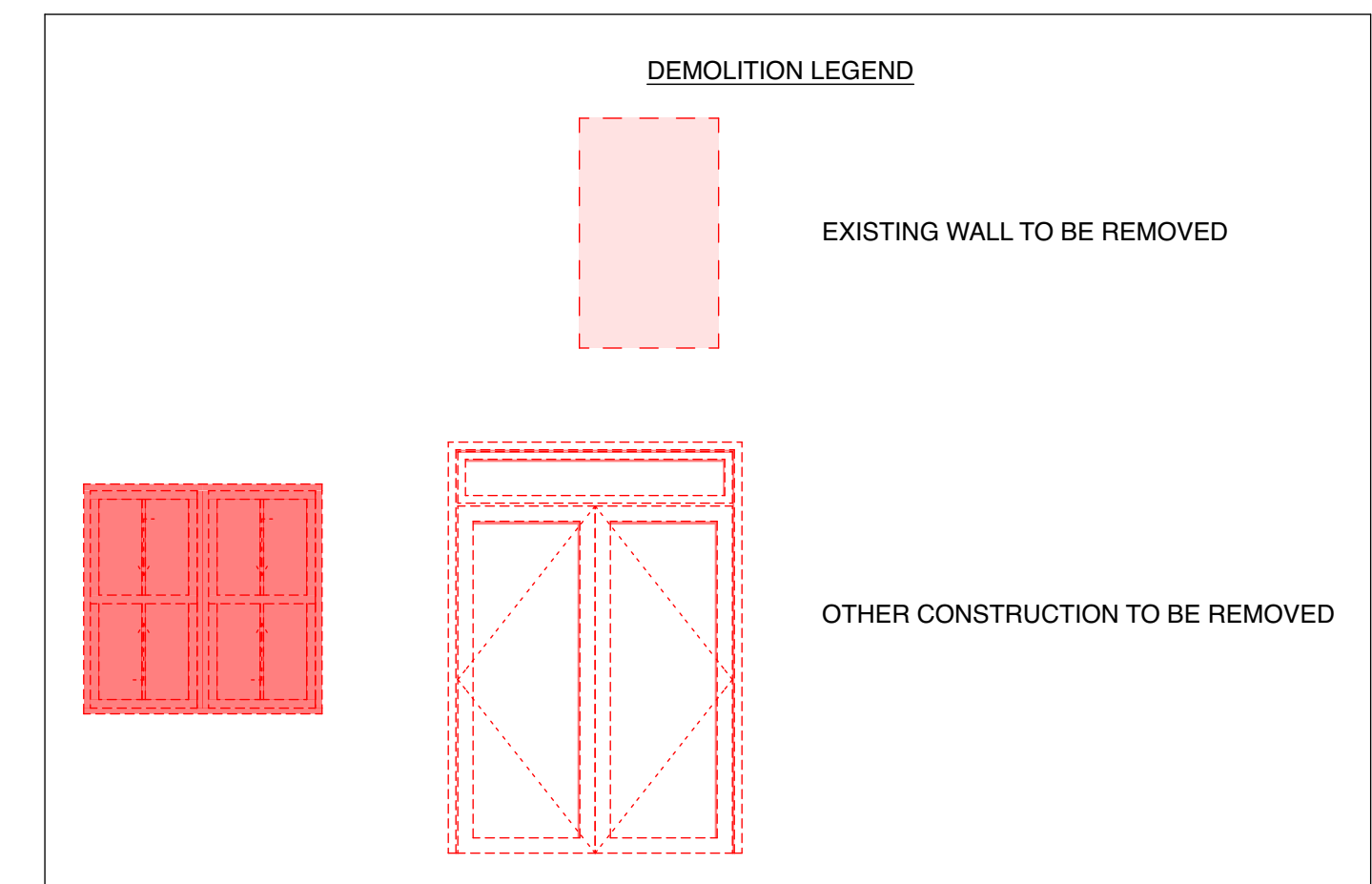


seal & signature



1 East Elevation
A202 SCALE: 1/4" = 1'-0"

GENERAL NOTES
COORDINATE ALL DEMOLITION WITH ARCHITECTURAL AND STRUCTURAL PLANS FOR NEW CONSTRUCTION



Lot 16
Lazy K
Gunnison CO 81230

issue date:
XX/XX/23

revisions:

project
Lot 16

XX/XX/2020 - Issue Description
drawing title
Demolition - East & West Elevations

drawing scale AS NOTED
drawing number



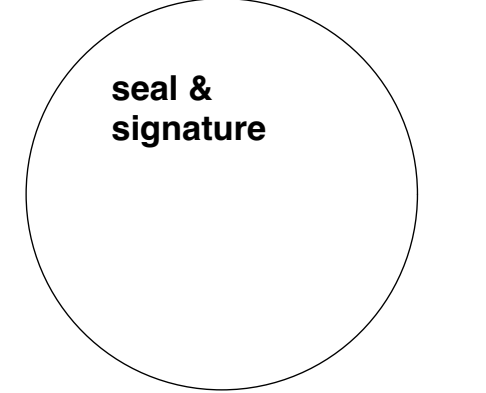
2 West Elevation
A202 SCALE: 1/4" = 1'-0"

A202

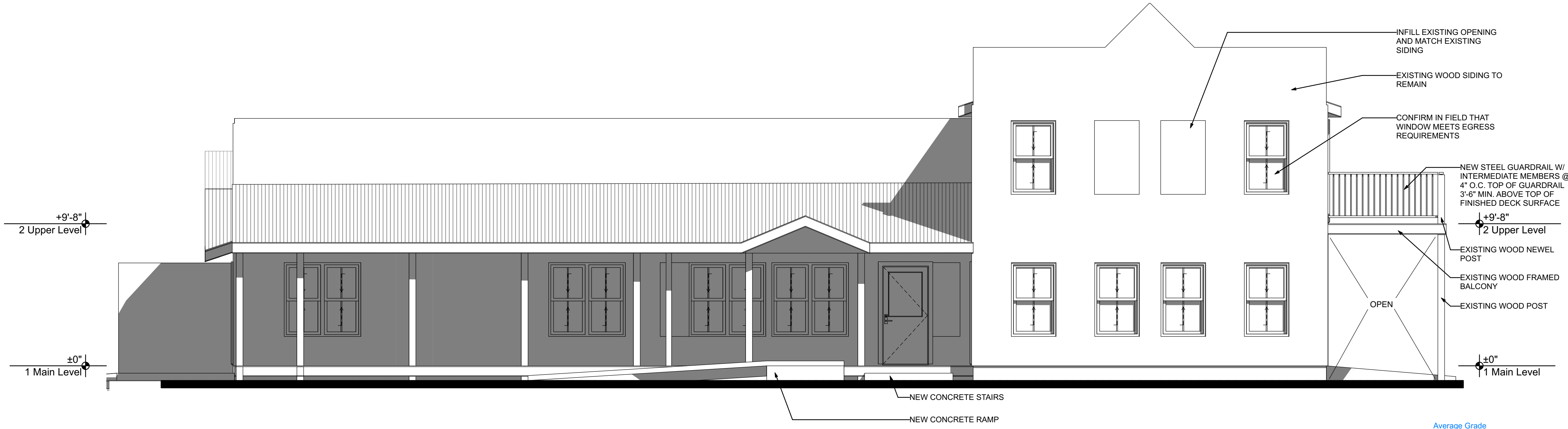


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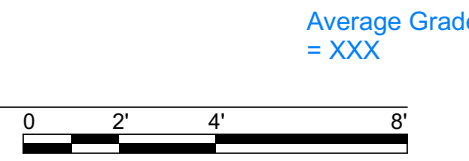
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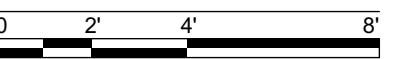
Lot 16
 Lazy K
 Gunnison CO 81230



1 North Elevation
 A203 SCALE: 1/4" = 1'-0"



2 South Elevation
 A203 SCALE: 1/4" = 1'-0"



issue date:
 XX/XX/23

revisions:

project
 Lot 16

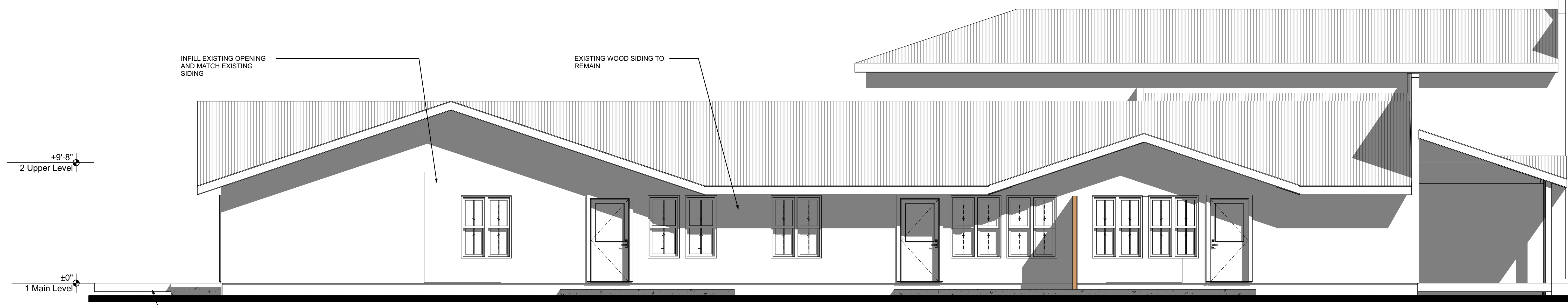
XX/XX/2020 - Issue Description
 drawing title
 Proposed - North & South Elevations

drawing scale AS NOTED

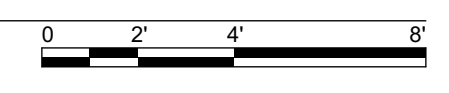
drawing number

A203

seal & signature



1 East Elevation
A204 SCALE: 1/4" = 1'-0"



Lot 16
Lazy K
Gunnison CO 81230



2 West Elevation
A204 SCALE: 1/4" = 1'-0"



issue date:
XX/XX/23

revisions:

project
Lot 16

XX/XX/2020 - Issue Description
drawing title
Proposed - East & West Elevations

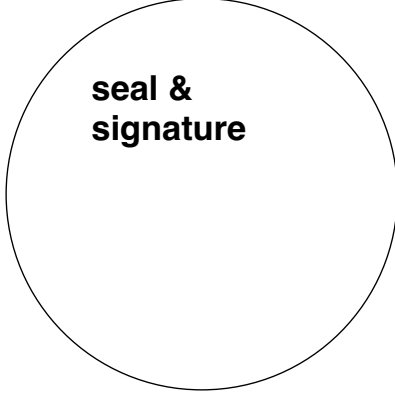
drawing scale AS NOTED
drawing number

A204

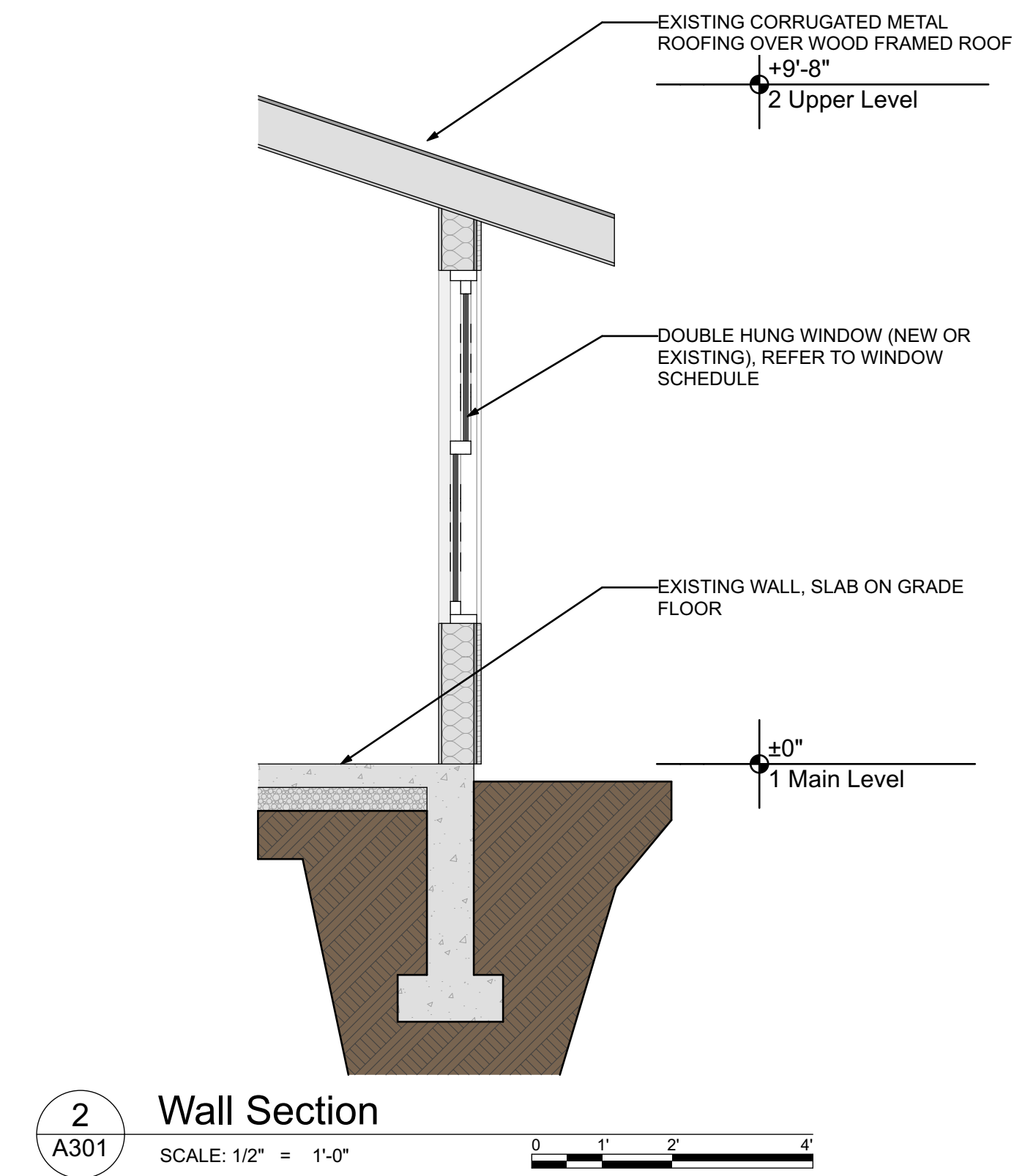
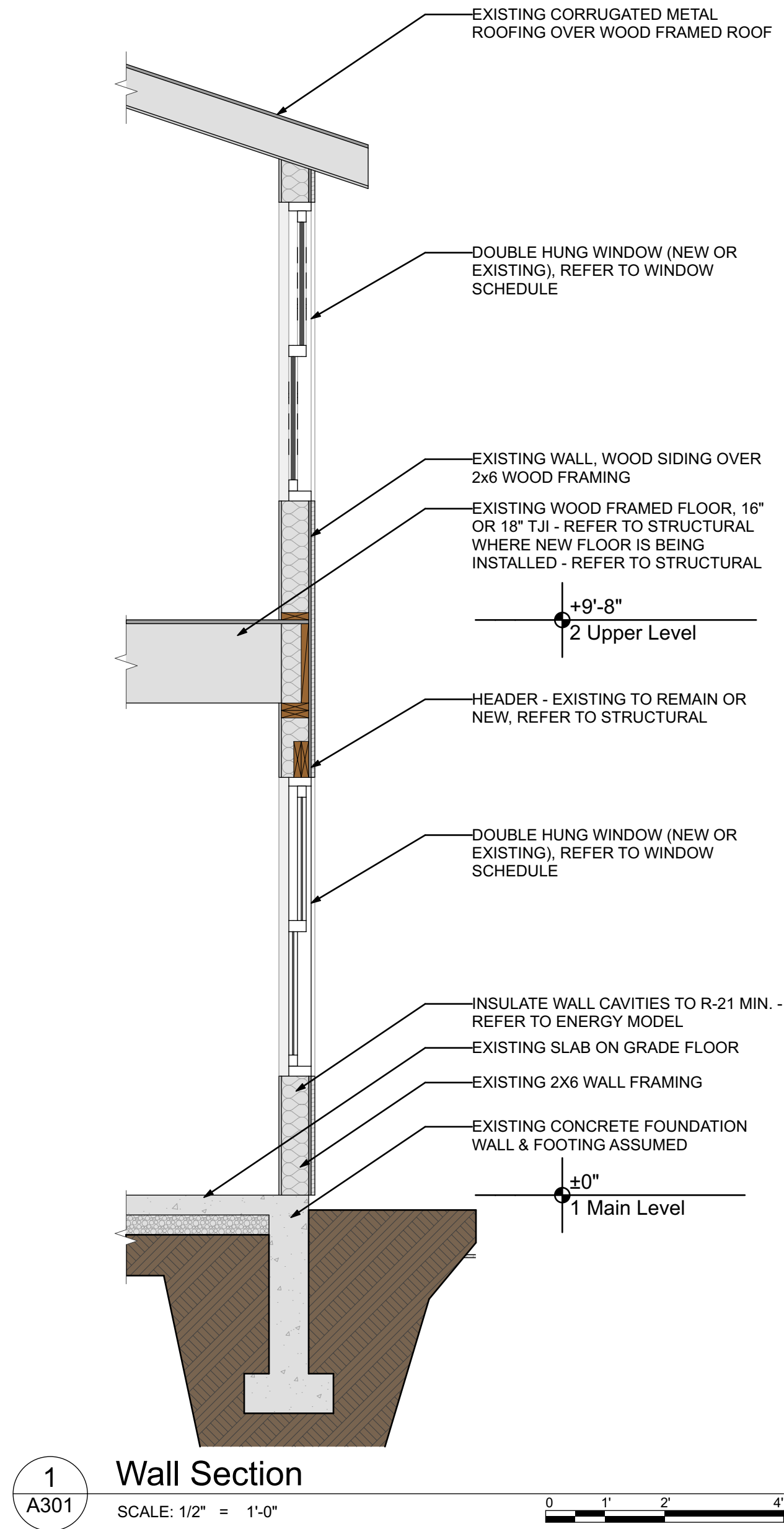


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 Boulder, Colorado 80302
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 iv@ivdesousa.com

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seal & signature



Lot 16
 Lazy K
 Gunnison CO 81230

issue date:
 XX/XX/23

revisions:

project
 Lot 16

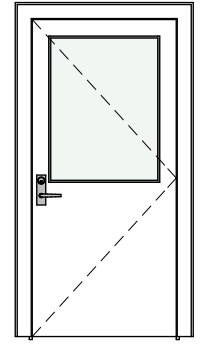
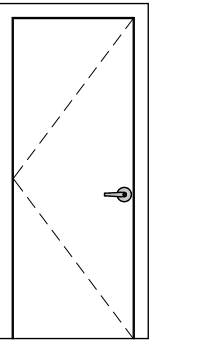
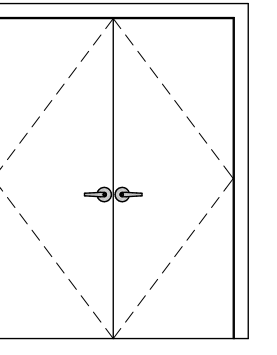
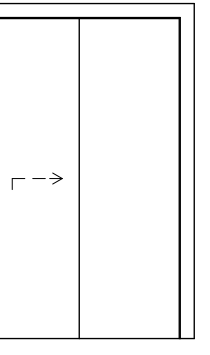
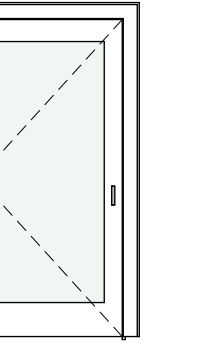
XX/XX/2020 - Issue Description
 drawing title
 Sections

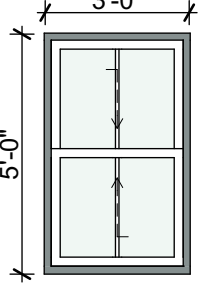
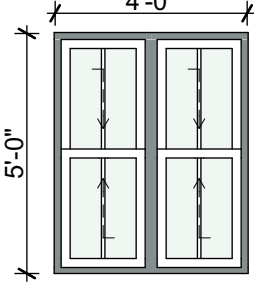
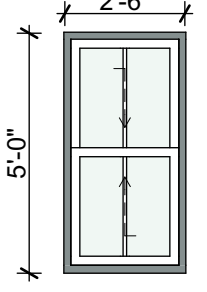
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 drawing number

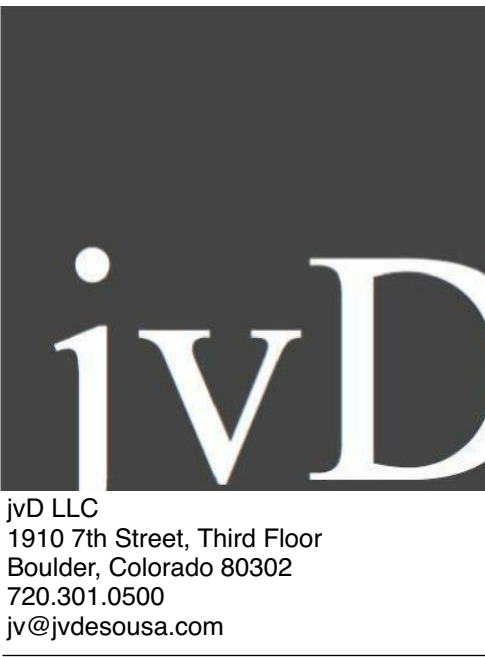
A301

Door Schedule					
Label	Door Type	Operation Type	Width	Height	Note
1-01	A	Inswing Door	3'-0"	6'-8"	Half Lite Entry Door
1-02	D	Sliding Door	4'-0"	6'-8"	
1-03	B	Inswing Door	2'-6"	6'-8"	
1-04	B	Inswing Door	3'-0"	6'-8"	
1-05	B	Inswing Door	2'-6"	6'-8"	
1-06	D	Sliding Door	5'-0"	6'-8"	
1-07	B	Inswing Door	2'-6"	6'-8"	
1-08	D	Sliding Door	5'-0"	6'-8"	
1-09	B	Inswing Door	2'-6"	6'-8"	
1-10	B	Inswing Door	2'-6"	6'-8"	
1-11	D	Sliding Door	4'-0"	6'-8"	
1-12	B	Inswing Door	2'-6"	6'-8"	
2-01	A	Inswing Door	3'-0"	6'-8"	Half Lite Entry Door
2-02	D	Sliding Door	4'-0"	6'-8"	
2-03	B	Inswing Door	2'-6"	6'-8"	
2-04	B	Inswing Door	3'-0"	6'-8"	
2-05	B	Inswing Door	2'-6"	6'-8"	
2-06	D	Sliding Door	5'-0"	6'-8"	
2-07	B	Inswing Door	2'-6"	6'-8"	
2-08	D	Sliding Door	5'-0"	6'-8"	
2-09	B	Inswing Door	2'-6"	6'-8"	
2-10	B	Inswing Door	2'-6"	6'-8"	
2-11	D	Sliding Door	4'-0"	6'-8"	
2-12	B	Inswing Door	2'-6"	6'-8"	
2-13	E	Inswing Door	3'-0"	6'-8"	Full Lite Door
3-01	A	Inswing Door	3'-0"	6'-8"	Half Lite Entry Door
3-02	D	Sliding Door	4'-0"	6'-8"	
3-03	B	Inswing Door	3'-0"	6'-8"	
3-04	D	Sliding Door	5'-0"	6'-8"	
3-05	B	Inswing Door	3'-0"	6'-8"	
3-06	D	Sliding Door	5'-0"	6'-8"	
3-07	B	Inswing Door	3'-0"	6'-8"	
4-01	A	Inswing Door	3'-0"	6'-8"	Half Lite Entry Door
4-02	D	Sliding Door	5'-0"	6'-8"	
4-03	B	Inswing Door	3'-0"	6'-8"	

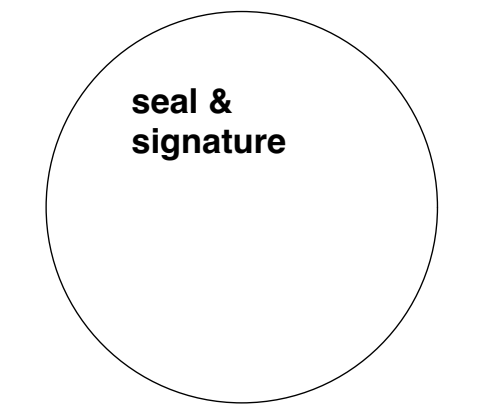
Door Schedule					
Label	Door Type	Operation Type	Width	Height	Note
4-04	B	Inswing Door	2'-0"	6'-8"	
4-05	B	Inswing Door	3'-0"	6'-8"	
4-06	B	Inswing Door	3'-0"	6'-8"	
4-07	D	Sliding Door	5'-0"	6'-8"	
4-08	B	Inswing Door	3'-0"	6'-8"	
5-01	A	Inswing Door	3'-0"	6'-8"	Half Lite Entry Door
5-02	B	Inswing Door	3'-0"	6'-8"	
5-03	D	Sliding Door	5'-0"	6'-8"	
5-04	B	Inswing Door	3'-0"	6'-8"	
5-05	B	Inswing Door	2'-6"	6'-8"	
5-06	B	Inswing Door	3'-0"	6'-8"	
5-07	B	Inswing Door	2'-0"	6'-8"	
5-08	B	Inswing Door	3'-0"	6'-8"	
5-09	D	Sliding Door	5'-0"	6'-8"	
6-01	A	Inswing Door	3'-0"	6'-8"	Half Lite Entry Door
6-02	B	Inswing Door	2'-0"	6'-8"	
6-03	B	Inswing Door	3'-0"	6'-8"	
6-04	D	Sliding Door	4'-0"	6'-8"	
6-05	B	Inswing Door	2'-6"	6'-8"	
6-06	D	Sliding Door	4'-0"	6'-8"	
7-01	A	Inswing Door	3'-0"	6'-8"	Half Lite Entry Door
7-02	D	Sliding Door	5'-0"	6'-8"	
7-03	B	Inswing Door	3'-0"	6'-8"	
7-04	B	Inswing Door	3'-0"	6'-8"	
7-05	B	Inswing Door	2'-0"	6'-8"	
7-06	B	Inswing Door	3'-0"	6'-8"	
7-07	D	Sliding Door	5'-0"	6'-8"	
7-08	C	Inswing Double Door	5'-0"	6'-8"	

Door Types					
Door Type	A	B	C	D	E
View					
Note	Half Lite Entry Door				Full Lite Door

Window Schedule			
WINDOW ELEVATION VIEW			
ID	N-1, N-2, N-11	N-3, N-6, N-7, N-8, N-9, N-10	N-4, N-5
Note			
Nominal W x H Size	3'-0" x 5'-0"	4'-0" x 5'-0"	2'-6" x 5'-0"



All contents of this document expresses design intent only. Final engineering and fabrication shall remain the responsibility of the contractor or fabricator. All ideas, designs, arrangements and plans indicated or presented by these drawings are the property of the Architect, and were created for use in connection with the specified project.



Lot 16
 Lazy K
 Gunnison CO 81230

issue date:
 XX/XX/23
revisions:

project
 Lot 16

XX/XX/2020 - Issue Description
drawing title
 Door & Window Schedule

drawing scale AS NOTED
drawing number

A601

EXTERIOR WALL TYPES (NON-RATED)		
TAG	WALL TYPE/PLAN VIEW	ASSEMBLY
EXTERIOR WALL SIDING		
W2		EXTERIOR SIDING: WOOD SIDING TO MATCH EXISTING. OVER WEATHER RESISTANT BARRIER OVER 1/2" OSB SHEATHING (RE: STRUCT.) ON WOOD STUDS (SEE STRUCT. FOR SPACING) W/ BLOWN FIBERGLASS INSULATION (R-21 MIN.) SUBJECT TO ENERGY ANALYSIS CONFIRMATION; (1) LAYER OF 1/2" GYPSUM WALL BOARD @ INTERIOR SIDE OF WALL.
W6		EXTERIOR SIDING: WOOD SIDING TO MATCH EXISTING. OVER WEATHER RESISTANT BARRIER OVER 1/2" OSB SHEATHING (RE: STRUCT.) ON WOOD STUDS (SEE STRUCT. FOR SPACING) W/ BLOWN FIBERGLASS INSULATION (R-21 MIN.) SUBJECT TO ENERGY ANALYSIS CONFIRMATION; (1) 1/2" LAYER FIBERGLASS FACED GYP. BD. BATHROOM SIDE

INTERIOR PARTITION TYPES (NON-RATED)		
TAG	WALL TYPE/PLAN VIEW	ASSEMBLY
W1		1/2" GYP. BOARD (BOTH SIDES) OVER 2x4 FRAMING
W2		1/2" GYP. BOARD (BOTH SIDES) OVER 2x6 FRAMING
W4	 BATHROOM	(1) LAYER OF 1/2" GYP. BD. (ONE SIDE) ON 2x4 WOOD STUDS @ 16" O.C., (1) 1/2" LAYER FIBERGLASS FACED GYP. BD. BATHROOM SIDE
W5	 CHASE	(1) LAYER OF 1/2" GYP. BD. ON 2x4 WOOD STUDS @ 16" O.C.
W10		(1) LAYER OF 1/2" GYP. BD. ON 2x6 WOOD STUDS @ 16" O.C.
W11	 BATHROOM	(1) LAYER OF 1/2" GYP. BD. (ONE SIDE) ON 2x6 WOOD STUDS @ 16" O.C., (1) 1/2" LAYER FIBERGLASS FACED GYP. BD. BATHROOM SIDE

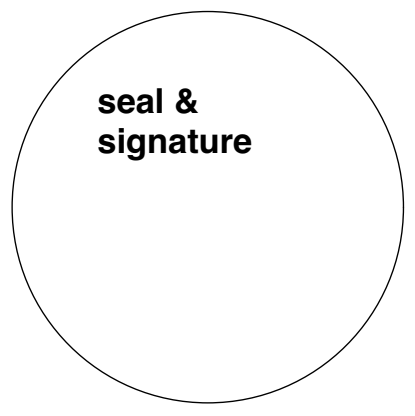
INTERIOR WALL TYPES (FIRE-RATED)							
TAG	WALL TYPE	ASSEMBLY	FIRE RTG.	STC RTG.	GA/UL NO.	GA/UL DESCRIPTION	NOTES
W3	 DWELLING UNIT SEPARATION	(2) LAYERS OF 5/8" TYPE X GYP. BD. (EA. SIDE) 2x4 WOOD STUDS STAGGERED ON 2x6 PLATE @ 8" O.C.	1 HOUR	55-59	GA WP 3111 PROPRIETARY	FIRE DESIGN: ONE LAYER 5/8" PROPRIETARY TYPE X GYPSUM WALLBOARD APPLIED PARALLEL OR AT RIGHT ANGLES TO EACH SIDE OF 2x4 WOOD STUDS 16" O.C. STAGGERED 8" O.C. ON 2x6 WOOD PLATES WITH 1 1/4" SCREWS 8" O.C. JOINTS STAGGERED 24" ON OPPOSITE SIDES. (LOAD BEARING) MINIMUM 3 1/2" GLASS FIBER INSULATION WOVEN IN CAVITY SOUND DESIGN: SOUND TESTED WITH RESILIENT CHANNELS ON ONE SIDE AND 3 1/2" GLASS FIBER INSULATION IN STUD CAVITY ON BOTH SIDES PROPRIETARY GYPSUM BOARD AMERICAN GYPSUM COMPANY LLC - 5/8" FIRELOC TYPE X GYPSUM BOARD	
W7	 DWELLING UNIT SEPARATION BATHROOM	(2) LAYERS OF 5/8" TYPE X GYP. BD. (ONE. SIDE), (2) LAYERS OF 5/8" TYPE X FIBERGLASS FACED GYP. BD. (BATHROOM SIDE) 2x4 WOOD STUDS STAGGERED ON 2x6 PLATE @ 8" O.C.	2 HOUR	50-54	GA WP 3910	ONE LAYER 5/8" GYPSUM WALLBOARD OR GYPSUM VENEER BASE APPLIED AT PARALLEL OR AT RIGHT ANGLES TO EACH SIDE OF DOUBLE ROW OF 2x4 WOOD STUDS 16" O.C. ON SEPARATE PLATES 1" APART WITH 2" TYPE W SCREWS 7" O.C. TWO LAYERS OF 3.5" UNFACED GLASS FIBER INSULATION FRICTION FIT ON BOTH SIDES OF CAVITY. JOINTS STAGGERED 16" ON OPPOSITE HORIZONTAL BRACING REQUIRED AT MID-HEIGHT. (LOAD BEARING)	
W8	 DWELLING UNIT SEPARATION BATHROOM	(2) LAYERS OF 5/8" TYPE X FIBERGLASS FACED GYP. BD. (EA. SIDE) 2x4 WOOD STUDS STAGGERED ON 2x6 PLATE @ 8" O.C.	2 HOUR	50-54	GA WP 3910	ONE LAYER 5/8" GYPSUM WALLBOARD OR GYPSUM VENEER BASE APPLIED AT PARALLEL OR AT RIGHT ANGLES TO EACH SIDE OF DOUBLE ROW OF 2x4 WOOD STUDS 16" O.C. ON SEPARATE PLATES 1" APART WITH 2" TYPE W SCREWS 7" O.C. TWO LAYERS OF 3.5" UNFACED GLASS FIBER INSULATION FRICTION FIT ON BOTH SIDES OF CAVITY. JOINTS STAGGERED 16" ON OPPOSITE HORIZONTAL BRACING REQUIRED AT MID-HEIGHT. (LOAD BEARING)	
W9	 EXISTING WALL - DWELLING UNIT SEPARATION	5/8" TYPE X 2x6 WOOD STUDS @ 16" O.C. 3" BATT MINERAL WOOL INSULATION RESILIENT CHANNEL 5/8" TYPE X	1 HOUR	50-54	GA WP 3242 GENERIC	FIRE DESIGN: RESILIENT CHANNELS 16" O.C. ATTACHED AT RIGHT ANGLES TO ONE SIDE OF 2x4 WOOD STUDS 24" O.C. WITH 1 1/4" TYPE S SCREWS. ONE LAYER 5/8" TYPE X GYPSUM WALLBOARD OR GYPSUM VENEER BASE APPLIED AT RIGHT ANGLES TO CHANNELS WITH 1" TYPE S SCREWS 8" O.C. WITH VERTICAL JOINTS LOCATED MIDWAY BETWEEN STUDS. 3" MINERAL OR GLASS FIBER INSULATION IN STUD CAVITY OPPOSITE SIDE: ONE LAYER 5/8" TYPE X GYPSUM WALLBOARD OR GYPSUM VENEER BASE APPLIED PARALLEL OR AT RIGHT ANGLES TO STUDS WITH 6d CEMENT COATED NAILS, 1 7/8" LONG, 0.0915" SHANK, 15/64" HEADS, 7" O.C. VERTICAL JOINTS STAGGERED 24" ON OPPOSITE SIDE. (LOAD BEARING) SOUND DESIGN: SOUND TESTED AS CONSTRUCTED FOR FIRE	

1 HOUR GA FILE: WP 3111, STC 55
 FIRE TEST: UL R14196, 4787112870, 10-14-15
 UL DESIGN U340
 SOUND TEST: RAL TL11-165, 7-13-11



ivD LLC
 1910 7th Street, Third Floor
 Boulder, Colorado 80302
 720.301.0500
 iv@ivdesousa.com

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Lot 16
 Lazy K
 Gunnison CO 81230

issue date:
 XX/XX/23

revisions:

project
 Lot 16

XX/XX/2020 - Issue Description

drawing title
 Wall Assemblies

drawing scale AS NOTED

drawing number

A603



THIRD AMENDMENT TO
CITY OF GUNNISON MASTER DEED RESTRICTION

THIS THIRD AMENDMENT TO CITY OF GUNNISON MASTER DEED RESTRICTION is entered into this 6 day of January, 2023 by the **City of Gunnison, a Colorado home-rule municipality** (“Grantor”) and each the **Gunnison Valley Regional Housing Authority of Gunnison, Colorado**, the **City of Gunnison, Lazy K Development, LLC, a Colorado limited liability company** as to Lot 1, according to the plat recorded April 28, 2021 as Reception No. 675479¹; Units A and E, Building 100; Units A, B, C, D, Building 102; and Unit C, Building 104, according to the Plat of Lazy K Townhomes Buildings 100, 102, 104 Within Lots 15 and 15A, Lazy K Subdivision, recorded on December 9, 2022 at reception No. 688973, and Unit A, Building 107, according to the Plat of Lazy K Townhomes, Building 107 Within Lot 17B, Lazy K Subdivision, recorded on December 9, 2022 at reception No. 688974 and **Gunnison Valley Transportation Authority** as to Lot 5, LAZY K SUBDIVISION, according to the plat recorded April 28, 2021 as Reception No. 675479, which are duly organized under and by virtue of the laws of the State of Colorado. The Lots and Units identified in this paragraph are collectively referred to herein as the “Applicable Units”.

Recitals:

1. The Applicable Units are subject to the City of Gunnison Master Deed Restriction as recorded as Reception No. 676691 (the “Original MDR”) as amended by that certain Amendment to City of Gunnison Master Deed Restriction as recorded at Reception No. 683483 (the “First Amendment”) and the Second Amendment to City of Gunnison Master Deed Restriction as recorded as Reception No. 685664 (the “Second Amendment” and together with the Original MDR and First Amendment, the “MDR”).
2. This Third Amendment to City of Gunnison Master Deed Restriction is intended to address impediments to the sale and purchase of the 140% AMI deed restricted Applicable Units.
3. Impediments include higher interest rates, increased sales prices due to an increase in the AMI calculations, and terms within the MDR that prevent business or entities from utilizing the Applicable Units to the benefit of their business model.
4. The amendments set forth below apply only to the Applicable Units.
5. The amendments as set forth below remove income limitations for renters if the Applicable Unit is owned by a Qualified Employer and remove the six-month requirement for a lease. The amendments also specifically define Qualified Employer for purposes of the MDR. The amendments do not affect an individual owner of an Applicable Unit.

Amendment

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including the recitals set forth above and the amendments set forth below, the parties agree as follows:

¹ All references to recorded documents are to documents recorded in the real property records of Gunnison County, Colorado.



1. Paragraph 2. Definitions, xvi. Qualified Owner of the MDR is amended by the addition of the following sentence:

A QUALIFIED EMPLOYER shall also be deemed a QUALIFIED OWNER for 140% AMI units only.

2. Paragraph 4. Ownership, Use, Occupancy and Rentals, i., ii. and iii. of the MDR are hereby amended to read as follows:

- i. Ownership. The ownership of Units is hereby, and shall henceforth be, limited exclusively to Qualified Owner(s). In the event that a Unit is occupied without compliance with this Restriction, the Housing Authority shall have the remedies set forth herein, including but not limited to the rights under Section 8 herein.

- ii. Use and Occupancy. The use and occupancy of Units is hereby, and shall henceforth be, limited exclusively to Qualified Owners or Qualified Occupant(s), and Dependents.

- iii. Rental of Property. An owner who is not a Qualified Employer may not rent a unit, except with prior written approval of the Housing Authority, and subject to the Housing Authority's conditions of approval. All renters must be Qualified Occupants. A rental shall be for no less than six (6) months and no more than one year and shall occur not more than once every five (5) years. All rentals must comply with the then current Housing Authority's Guidelines. Any occupancy of a Unit pursuant to this Section 4.iii. shall not exceed two persons per bedroom, unless the Housing Authority approves otherwise.

For 140% AMI units only, a Qualified Employer that owns a Unit may rent to a Qualified Occupant that meets only conditions a, e, and h (if applicable). Any rental of a unit must exceed thirty (30) days. Except as specifically set forth in this paragraph, all rentals must comply with the then current Housing Authority's Guidelines. Any occupancy of a Unit pursuant to this Section 4.iii. shall not exceed two persons per bedroom, unless the Housing Authority approves otherwise.

3. The First Amendment and the Second Amendment as amended by this Third Amendment are hereby affirmed and ratified and shall apply to each and all the Applicable Units.

Except as amended by this instrument, all terms and conditions of the MDR remain in full force and effect.



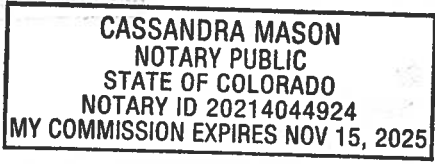
GUNNISON VALLEY REGIONAL HOUSING AUTHORITY

By:
Andy Kadlec, Executive Director

State of Colorado)
) ss.
County of Gunnison)

The foregoing Third Amendment to City of Gunnison Master Deed Restriction has been acknowledged before me this 28 day of December, 2022 by Andy Kadlec, Executive Director of the Gunnison Valley Regional Housing Authority.

Witness my hand and official seal.
My commission expires: Nov 15, 2025



Notary Public

CITY OF GUNNISON, a Colorado home-rule municipality

By:
Diego Plata, Mayor

Attest:
By:
Erica Boucher, City Clerk

LAZY K DEVELOPMENT, LLC, a Colorado limited liability company

By:
John Stock, Managing Member

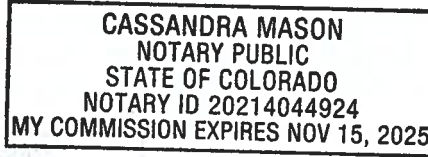
Attest:
By:
Karen Stock, Secretary



State of Colorado)
) ss.
County of Gunnison)

The foregoing Third Amendment to City of Gunnison Master Deed Restriction has been acknowledged before me this 4 day of ~~December, 2022~~ January 2023 by John Stock, Managing Member of Lazy K Development, LLC.

Witness my hand and official seal.
My commission expires: 11-15-25



Cassandra Mason
Notary Public

GUNNISON VALLEY TRANSPORTATION AUTHORITY

By: _____
 Janet Farmer, Chair

Attest:

By: _____
 Roland Mason, Secretary



Attest:

By: _____
Karen Stock, Secretary

State of Colorado)
) ss.
County of Gunnison)

The foregoing Third Amendment to City of Gunnison Master Deed Restriction has been acknowledged before me this _____ day of December, 2022 by John Stock, Managing Member of Lazy K Development, LLC.

Witness my hand and official seal.
My commission expires:

Notary Public

GUNNISON VALLEY TRANSPORTATION AUTHORITY

By: Janet R. Farmer
Janet Farmer, Chair

Attest:

By: Roland Mason
Roland Mason, Secretary



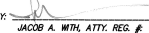
PLAT OF LAZY K TOWNHOMES, BUILDING 105,
 WITHIN LOT 16, LAZY K SUBDIVISION
 CITY OF GUNNISON
 GUNNISON COUNTY, COLORADO

ATTORNEY'S OPINION

I, JACOB A. WITK, AN ATTORNEY AT LAW DULY LICENSED TO PRACTICE BEFORE THE COURTS OF RECORD IN THE STATE OF COLORADO, CERTIFY THAT I HAVE EXAMINED TITLE TO ALL LANDS HEREIN DEDICATED AND SHOWN UPON THIS PLAT, AND TITLE TO SUCH LANDS IS IN THE DEDICATOR FREE AND CLEAR OF ALL LIENS, TAXES, AND ENCUMBRANCES EXCEPT AS FOLLOWS:

1. REAL PROPERTY TAXES FOR THE CURRENT AND FUTURE YEARS, A LIEN NOT YET DUE AND PAYABLE.
2. ALL MATTERS SHOWN ON THIS PLAT.
3. INCLUSION OF THE PROPERTY WITHIN ANY SPECIAL TAXING DISTRICT.
4. ALL MATTERS AS SHOWN ON THE PLAT OF LAZY K SUBDIVISION AS RECORDED IN THE REAL PROPERTY RECORDS OF GUNNISON COUNTY, COLORADO AT RECEPTION NUMBER 675479, INCLUDING ALL DOCUMENTS, EXCEPTIONS AND OTHER MATTERS IDENTIFIED IN THE ATTORNEY'S OPINION THEREON.
5. TERMS AND CONDITIONS OF THE CONTRACT, INCLUDING ITS EXHIBITS AND AMENDMENTS AND OTHER MATTERS SET FORTH IN INSTRUMENTS RECORDED AT RECEPTION NUMBER 676690, 677312, 681831, 682509, 685665, AND 689705 IN THE REAL PROPERTY RECORDS OF GUNNISON COUNTY, COLORADO.
6. COVENANTS, CONDITIONS, RESTRICTIONS AND OTHER MATTERS SET FORTH IN CITY OF GUNNISON MASTER DEED RESTRICTION AND THE AMENDMENTS THEREOF AND OTHER MATTERS SET FORTH IN INSTRUMENTS RECORDED AT RECEPTION NUMBERS 678691, 683483, 685644, AND 689287 IN THE REAL PROPERTY RECORDS OF GUNNISON COUNTY, COLORADO.
7. COVENANTS, CONDITIONS, RESTRICTIONS AND OTHER MATTERS SET FORTH IN COLORADO DEPARTMENT OF LOCAL AFFAIRS USE COVENANT AGREEMENT AND ALL AMENDMENTS AND ADDENDUMS THEREOF AND OTHER MATTERS AS RECORDED AT RECEPTION NUMBERS 677040, 684688, 686029, 688975, 688821, AND 690541 IN THE REAL PROPERTY RECORDS OF GUNNISON COUNTY, COLORADO.

SIGNED THIS 21st DAY OF June, 2023.

BY: 
 JACOB A. WITK, ATTY. REG. # 40546

CERTIFICATE OF DEDICATION AND OWNERSHIP:

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED BEING ALL THE OWNERS, MORTGAGEES AND LEIN HOLDERS OF CERTAIN LANDS IN THE CITY OF GUNNISON, GUNNISON COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

LOT 16, LAZY K SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 28TH, 2021 BEARING RECEPTION NO. 675479, COUNTY OF GUNNISON, STATE OF COLORADO

HAVE BY THESE PRESENTS LAID OUT, PLATTED AND SUBDIVIDED THE SAME INTO TOWNHOME UNITS, AS SHOWN ON THIS MAP, UNDER THE NAME AND STYLE OF LAZY K TOWNHOMES, BUILDING 105, THE UNDERSIGNED HEREBY FURTHER DEDICATE TO THE PUBLIC ALL UTILITY EASEMENTS.

THE UNDERSIGNED HEREBY FURTHER DEDICATE TO THE PUBLIC UTILITIES THE RIGHT TO INSTALL, MAINTAIN AND OPERATE MAINS, TRANSMISSION LINES, SERVICE LINES AND APPURTENANCES TO PROVIDE SUCH UTILITY SERVICES WITH LAZY K TOWNHOMES, BUILDING 105 OF PROPERTY CONTIGUOUS THERETO, UNDER, ALONG AND ACROSS PUBLIC ROADS AS SHOWN ON THIS MAP AND ALSO UNDER ALONG AND ACROSS UTILITY EASEMENTS AS SHOWN HEREON.

EXECUTED THIS 21st DAY OF JUNE, 2023

OWNERS:

CITY OF GUNNISON 

STATE OF COLORADO)
) SS.
 COUNTY OF GUNNISON)

THE FOREGOING CERTIFICATE OF DEDICATION AND OWNERSHIP WAS ACKNOWLEDGED

BEFORE ME THIS 21st DAY OF JUNE, 2023

BY: Ben Cowan

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES 04-14-2023

Rose Elizabeth Musick
 NOTARY PUBLIC



SURVEYOR'S CERTIFICATION:

I, JOSEPH S. REASE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE SURVEY REPRESENTED BY THIS PLAT WAS MADE UNDER MY RESPONSIBLE CHARGE, THAT THE MONUMENTS SHOWN THEREON ACTUALLY EXIST AND THAT THIS PLAT ACCURATELY REFLECTS SAID SURVEY.



JOSEPH S. REASE, PLS 36067

6/19/23
 DATE

COMMUNITY DEVELOPMENT DIRECTOR APPROVAL:

THIS PLAT OF LAZY K TOWNHOMES, BUILDING 105 IS DETERMINED TO MEET ALL DEVELOPMENT STANDARDS OF THE CITY OF GUNNISON LAND DEVELOPMENT CODE.

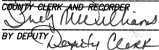
DATED THIS 21st DAY OF JUNE, 2023


 COMMUNITY DEVELOPMENT DIRECTOR
 CITY OF GUNNISON, COLORADO

RECORDER'S CERTIFICATION:

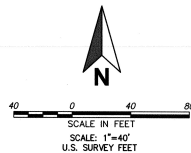
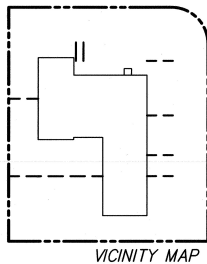
THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF GUNNISON COUNTY AT 9:05 A.M. ON THE 21st DAY OF JUNE, 2023

RECEPTION NO. 691282


CITY CLERK AND RECORDER:

 BY DEPUTY Deputy Clerk



Gunnison County, CO
 4/23/2023 8:08:30 AM
 305
 691282
 Page 1 of 2
 R 23.00 D [fee:60c]

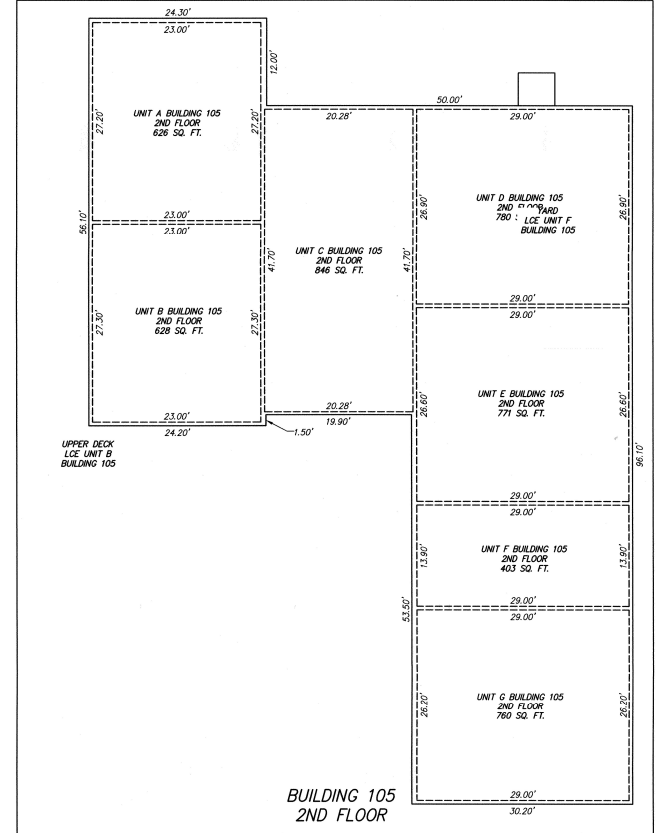
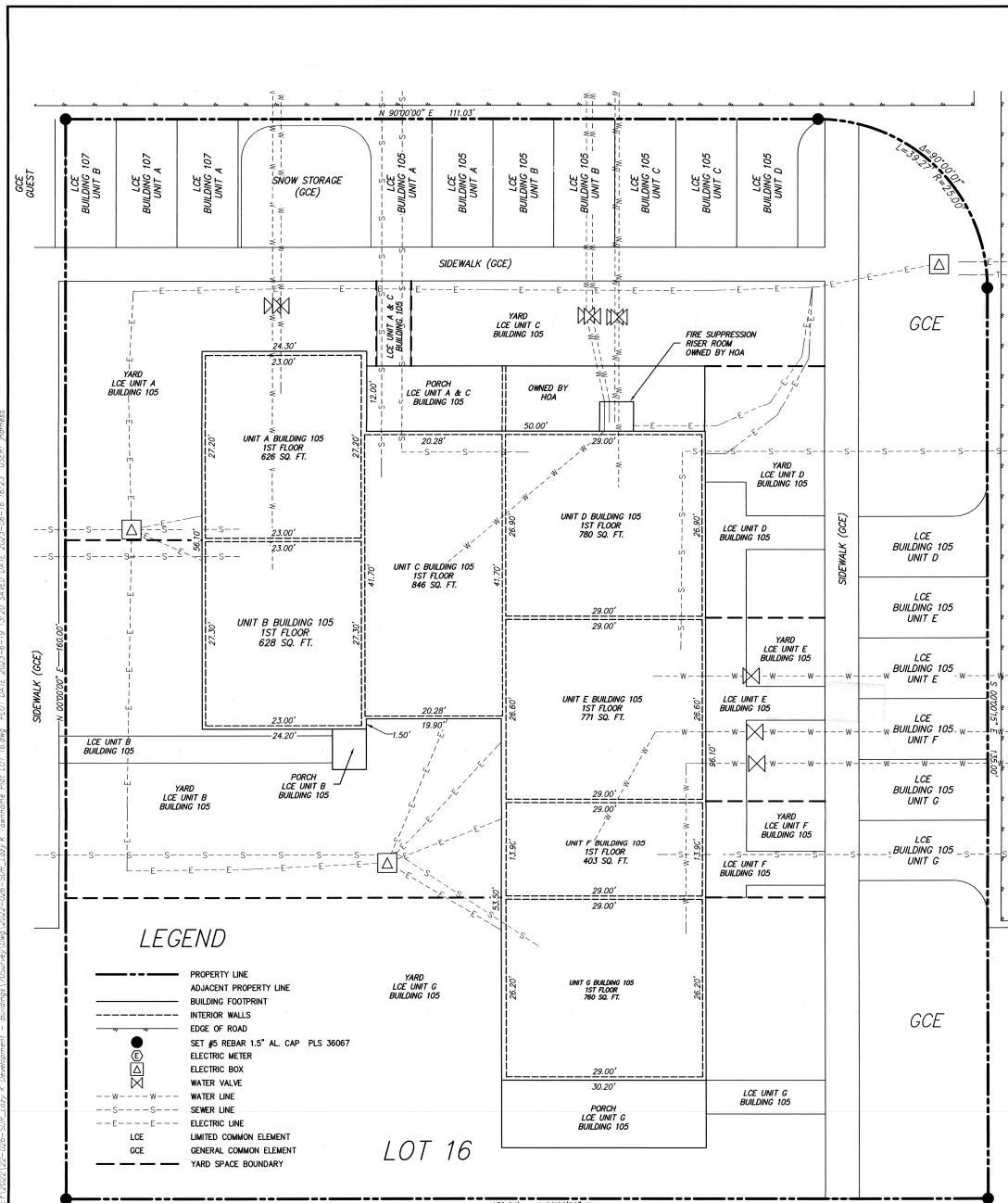


Notice 13-80-105 C.R.S., as amended:
 According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown herein.

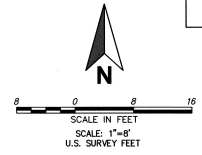
PLAT OF LAZY K TOWNHOMES BUILDING 105, WITHIN LOT 16, LAZY K SUBDIVISION CITY OF GUNNISON COUNTY OF GUNNISON, STATE OF COLORADO	
PLAT DATE: 6/16/2023 PROJ. #: 2022-026-SUR CAD FILE: 2022-026-SUR_Lazy K Townhomes Plat LOT 16.dwg DRAFTER: JH FIELD DATE: 4/11/2023 FIELD CREW: JSR, DJT AREA: CLOSURE:	 BUCKHORN ENGINEERING WWW.BUCKHORNENGINEERING.COM 222 South Park Avenue Montrose, Colorado 81401 970-249-6828
CLIENT: CITY OF GUNNISON P.O. BOX 239 GUNNISON, CO 81401-0239 LOT 16, LAZY K SUBDIVISION PLAT REC. NO. 675479	DRAWING NUMBER V-1 1 OF 2

F:\GIS\Projects\2023\12-026-SUR_Lazy K Townhomes - Building 105-survey\Draw\2022-026-SUR_Lazy K Townhomes Plat LOT 16.dwg PLOT DATE: 2023-06-16 10:28:30 AM SAVED DATE: 2023-06-16 16:23:05 USFS - Progress

PLAT OF LAZY K TOWNHOMES, BUILDING 105,
 WITHIN LOT 16, LAZY K SUBDIVISION
 CITY OF GUNNISON
 GUNNISON COUNTY, COLORADO



- LEGEND**
- PROPERTY LINE
 - - - ADJACENT PROPERTY LINE
 - ▭ BUILDING FOOTPRINT
 - INTERIOR WALLS
 - EDGE OF ROAD
 - SET #5 REBAR 1.5" AL. CAP PLS 36067
 - ⊕ ELECTRIC METER
 - ⊖ ELECTRIC BOX
 - WATER VALVE
 - WATER LINE
 - SEWER LINE
 - ELECTRIC LINE
 - LCE LIMITED COMMON ELEMENT
 - GCE GENERAL COMMON ELEMENT
 - YARD SPACE BOUNDARY



NOTE:
 UTILITIES SHOWN ON PLAT WERE FIELD MEASURED IF FOUND OR TAKEN FROM "LAZY K HOUSING PROJECT" PLAN SHEETS IF NOT FOUND IN THE FIELD. SIDEWALKS WERE UNDER CONSTRUCTION AT TIME OF SURVEY, LOCATIONS ARE APPROXIMATE.
 Notice 13-80-105 C.R.S. as amended:
 According to Colorado law you must commence any legal action based 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 herein.

PLAT OF LAZY K TOWNHOMES BUILDING 105, WITHIN LOT 16, LAZY K SUBDIVISION CITY OF GUNNISON COUNTY OF GUNNISON, STATE OF COLORADO	
PLAT DATE: 6/16/2023 PROJ # 2022-026-SUR CAD FILE: 2022-026-SUR_Lazy K Townhomes Plat LOT 16.dwg DRAFTER: JSH FIELD DATE: 4/11/2023 FIELD CREW: JSR, DJT AREA: CLOSURE:	BUCKHORN ENGINEERING WWW.BUCKHORNENGINEERING.COM jstigler@buckhornengineering.com 222 South Park Avenue Montrose, Colorado 81401 970-249-6528 CLIENT: CITY OF GUNNISON PO BOX 236 GUNNISON, CO 81030-0236 LOT 16, LAZY K SUBDIVISION PLAT REC. NO. 951419 DRAWING NUMBER V-2 2 OF 2