



CITY OF ELKO

Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, May 1, 2018 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and beginning at 5:30 P.M., P.D.S.T.

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at <http://www.elkocitynv.gov/>, the State of Nevada's Public Notice Website at <https://notice.nv.gov>, and in the following locations:

ELKO COUNTY COURTHOUSE– 571 Idaho Street, Street, Elko, NV 89801

Date/Time Posted: April 25, 2018 2:10 p.m.

ELKO COUNTY LIBRARY –720 Court Street, Elko, NV 89801

Date/Time Posted: April 25, 2018 2:05 p.m.


ELKO POLICE DEPARTMENT– 1448 Silver Street, Elko NV 89801

Date/Time Posted: April 25, 2018 2:15 p.m.

ELKO CITY HALL– 1751 College Avenue, Elko, NV 89801

Date/Time Posted: April 25, 2018 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician
Name Title


Signature

The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at sarchuleta@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV.

Dated this 25th day of April, 2018.

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.


Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, MAY 1, 2018
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements.

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

APPROVAL OF MINUTES

April 3, 2018 –Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review and consideration of Preliminary Plat No. 3-18, filed by Robert E. Morley on behalf of Riverside Villas Nevada, LLC, for the development of a subdivision entitled Riverside Villas a Condominium Development involving the proposed division of approximately 7.872 acres of property into 97 lots and a common area for residential development within the C (General Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the northwest corner of the intersection of S. 12 Street and Opal Drive (APN 001-630-077).

2. Review, consideration, and possible action on Zoning Ordinance Amendment 1-18, Ordinance No. 829, an amendment to the City Zoning Ordinance, specifically Section 3-2-11 IBP, IC Industrial Districts and matters related thereto. **FOR POSSIBLE ACTION**

3. Review, consideration, and possible recommendation to City Council for Rezone No. 3-18, filed by Gary & Bernice Kimber, for a change in zoning from PQP (Public, Quasi-Public) to R (Single-Family and Multiple-Family Residential), approximately .22 acres of property, to zone the property one zone in conjunction with a parcel map to combine the parcels, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the north side of Chris Avenue approximately 160' east of Sierra Drive. (309 Chris Ave, APN 001-610-083 & Portion of 001-610-031).

4. Review, consideration, and possible recommendation to City Council for Rezone No. 4-18, filed by Lonny Reed of Legend Engineering, on behalf of JoyGlobal Surface Mining, Inc. and Ed and Sharon Netherton, for a change in zoning from AG (General Agriculture) to LI (Light Industrial), approximately 31.16 acres of property, to allow for development, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the north and south side of P&H Drive. (APNs 006-09N-004, 006-09N-007, 006-09N-009 & 001-679-005).

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action to initiate an amendment to the City Zoning Ordinance, specifically Sections 3-3 Subdivisions, and matters related thereto. **FOR POSSIBLE ACTION**

II. REPORTS

- A. Summary of City Council Actions.
- B. Summary of Redevelopment Agency Actions.
- C. Professional articles, publications, etc.
 1. Zoning Bulletin
- D. Preliminary agendas for Planning Commission meetings.
- E. Elko County Agendas and Minutes.
- F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.
- G. Staff.


COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

Respectfully submitted,



Cathy Lugin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.D.S.T., TUESDAY, APRIL 3, 2018
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

David Freistroffer, Chairman of the City of Elko Planning Commission, called the meeting to order at 5:30 p.m.

ROLL CALL

Roll Call.

Present: David Freistroffer
Ian Montgomery
Jeff Dailing
John Anderson
Kevin Hodur
Stefan Beck (*Left at 7:09 p.m.*)
Tera Hooiman

City Staff: Cathy Laughlin, City Planner
Jeremy Draper, Development Manager
Bob Thibault, Civil Engineer
John Holmes, Fire Marshal
Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments at this time.

APPROVAL OF MINUTES

March 6, 2018 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion:** Approve the meeting minutes from March 6, 2018.

Moved by Kevin Hodur, Seconded by Ian Montgomery.

**Motion passed unanimously. (7-0)*

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action of Conditional Use Permit No. 3-18, filed by Jason B. Land on behalf of Blaine Branscomb, which would allow for a professional office within an RO (Residential Office) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the south side of Court Street, approximately 50 feet east of 9th Street (910 Court Street, APN 001-281-002).

Jason Land, 1526 Sustacha Drive Lamoille, Nevada, stated that he was applying for a Conditional Use Permit to move his office into an RO Zone.

Cathy Laughlin, City Planner, went through the City of Elko Staff Report dated March 12, 2018. She recommended approval with the conditions listed in the staff report.

Jeremy Draper, Development Manager, stated the Development Department agreed with the Planning Department presentation. He recommended conditional approval. He then went over the Development Department conditions listed in the staff report.

Bob Thibault, Civil Engineer, said the Engineering Department recommended approval of the Conditional Use Permit with no additional conditions. Mr. Thibault also mentioned he lived across the street at 901 Court Street, and said he was happy to see any interest in the property, because it had been neglected for some time.

John Holmes, Fire Marshal, stated that the applicant needed to make sure everything in the 2012 International Fire Code was being met.

Ms. Laughlin stated that there were no comments from the City Manager's Office.

Commissioner Stefan Beck stated he was also neighbor and happy to see some improvements made to the lot.

Commissioner Kevin Hodur asked if the Fire comments needed to be included in the motion.

Ms. Laughlin suggested they be included as a condition.

*****Motion: Conditionally approve Conditional Use Permit No. 3-18 subject to the conditions in the City of Elko Staff Report dated March 12, 2018 and condition from Fire Department, listed as follows:**

Planning Department:

1. CUP 3-18 shall automatically lapse and be of no effect one (1) year from the date of its issue unless the permit holder is actively engaged in developing the specific property to the use for which the permit was issued.
2. The CUP 3-18 to be recorded with the Elko County Recorder within 90 days after the commencement of the work for the conversion from single family dwelling to professional office.
3. The garage will be demolished to develop off-street parking.

Development Department:

1. The permit is granted to the applicant Jason Land for the use of a professional office.
2. The permit shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
3. The conditions of Variance 1-18 be met prior to occupancy of the building.
4. The conditions of Rezone 2-18 be met prior to occupancy of the building.

City Clerk:

1. A business license must be applied for and obtained prior to conducting business at this location.

Building Department:

1. Building Department conditions listed in Variance 1-18 be completed prior to occupancy.

Fire Department:

1. Must comply with the 2012 International Fire Code.

Commissioner Hodur's findings to support his recommendation are the proposed conditional use under the conditionally approved Residential Office district is consistent with the Land Use Component of the Master Plan. The proposed conditional use permit is consistent with existing land uses in the immediate vicinity. The proposed conditional use permit meets Objectives 2 and 4 of the Land Use Component of the Master Plan. The proposed conditional use is consistent with the Transportation Component of the Master Plan. The proposed use, intensity of use and limitations of intensity of use will not create any significant cumulative issues on the existing transportation system. The proposed conditional use permit and repurposing the property and structure conforms to the Redevelopment Plan. The proposed conditional use is consistent with the City of Elko Wellhead Protection Plan. The proposed use of the property and allowed uses under the RO-Residential Office zoning district do not present hazard to City wells. The proposed use of the property requires a conditional use permit to conform to Section 3-2-3 of City Code. The proposed use based on conditional approval of Variance 1-18 conforms to Section 3-2-4 of City Code. The proposed conditional use is in conformance with Section 3-2-5(F)(3) RO-Residential Office based on conditional approval of Variance 1-18 and conditional approval of Rezone 2-18. The Planning Commission conditionally approved Variance 1-18 on February 6, 2018. The City Council conditionally approved zone amendment 2-18 on February 27, 2018. The property as developed is in conformance with City Code 3-2-17 for the principal permitted use as a single-family residence. Additional parking and ADA access is required for conformance under the proposed conditional use. The parcel is not located within a designated Special Flood Hazard Area. Development under the proposed conditional use will not adversely impact natural systems, or public/federal lands such as

waterways, wetlands, drainages, floodplains, etc. or pose a danger to human health and safety. The proposed conditional use is consistent with surrounding land uses.

Moved by Kevin Hodur, Seconded by Tera Hooiman.

**Motion passed unanimously. (7-0)*

2. Review, consideration, and possible recommendation to City Council for Rezone No. 1-18, filed by The City of Elko, for a change in zoning from R (Single-Family and Multiple-Family Residential) to PQP (Public, Quasi-Public), approximately 1.314 acres of property, to allow for incorporation into the Elko City Parks, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the northwest corner of the intersection of College Avenue and Golf Course Road (1401 College Ave, APN 001-200-002).

Ms. Laughlin went through the City of Elko Staff Report dated March 13, 2018. She recommended conditional approval with the condition listed in the staff report.

Mr. Draper said the Development Department had no additional comments. He recommended approval of the proposed zone change. He reiterated the action required by the Planning Commission to accept the location of the accessory structure as it exists on the property.

Mr. Thibault recommended approval.

Mr. Holmes had no comments.

Ms. Laughlin stated the Assistant City Manager recommended approval as presented by staff with the specific approval for the accessory structure location included in a motion.

Chairman David Freistroffer said he was glad the City was taking the initiative to clean up the zoning in this area. There are many large properties that the use is not correct for the zone.

*****Motion: Approve the location of the existing accessory structure shown on the site plan, and forward a recommendation to City Council to adopt a resolution which conditional approved Rezone No. 1-18 subject to the conditions listed in the City of Elko Staff Report dated March 13, 2018, listed as follows:**

Planning Department:

1. The location of the remaining accessory structure is approved by the Planning Commission under Section 3-2-8 (E)(2) as shown on the site plan included with the application. The approval is included in the motion of the Planning Commission.

Commissioner Hodur's findings to support his recommendation are the proposed zone district is in conformance with the City of Elko Master Plan Land Use Component. The proposed zone district is in conformance with the Master Plan Transportation Component.

The property is not located within the redevelopment area and consideration of the plan is not required. The proposed zone district and allowed uses do not present a hazard to City wells and is therefore in conformance with the City Wellhead Protection Plan. There is not a minimum lot area nor dimensions stipulated for the proposed zone district. The location of the accessory structure requires specific approval by the Planning Commission for the property to be in conformance with City Code 3-2-4(B). With Planning Commission approval of the existing accessory structure location, as shown on the site plan, the proposed rezone is in conformance with Section 3-2-8 of City Code. The current use of the property under the proposed district is in conformance with Section 3-2-17 of City Code. The proposed rezone is consistent with surrounding land uses. Development under the proposed rezone will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety. The parcel is not located within a designated Special Flood Hazard Area.

Moved by Kevin Hodur, Seconded by Stefan Beck.

**Motion passed unanimously. (7-0)*

3. Review, consideration, and possible action on Variance No. 3-18, filed by Daniel Broockmann for a reduction of the required front yard setback from 15' to 11.6', the required interior side yard setback from 7' to 4.8', and the required exterior side yard setback from 12' to 10.7' within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast corner of the intersection of W. Ash Street and A Street. (189 W. Ash St. - APN 001-091-001)

Daniel Broockmann, 189 W. Ash St., stated that he purchased the property in August. The property is interesting. It has had several additions. He's been told it's a cultural relic of a Basque family that lived there. The additions were done over 24 years ago. The property exists as it is. They don't intend to change the footprint. It has an unfinished day lit basement. They would like to make that usable space. They were told they wouldn't be able to pull a Building Permit until a variance is granted, because the additions were built in the setbacks. They are requesting a variance to continue with getting the appropriate permits and developing the basement into a duplex. The property was previously a multi-family use.

Jan Screwcrew, 169 W. Ash, stated she had no objections to the variance.

Ms. Laughlin went through the City of Elko Staff Report dated March 13, 2018. She recommended conditional approval with the conditions listed in the staff report.

Mr. Draper said the Development Department agreed with the Planning Department and had similar findings. He recommend approval with the Development Department conditions listed in the staff report, with a minor change from 15' to 12' on the Exterior Side Yard.

Mr. Thibault recommended approval as presented by staff.

Mr. Holmes had nothing further.

Ms. Laughlin stated that the Assistant City Manager recommended approval as presented by staff.

Chairman Freistroffer asked if it was staying single-family if it still required a variance.

Ms. Laughlin said yes. There are sections of the Code that state that legal non-conforming status is lost when the use is changed, expanded, or enlarged. This parcel was considered a legal non-conforming use, because the structure encroached into the setbacks.

Chairman Freistroffer said Variances are a big deal, so the Planning Commission needs to make sure that this is specific to the property, and that they aren't allowing everybody this kind of variance. They need to think about this carefully. He thought it was appropriate to grant this variance to allow the property owner to use his property. If they don't, they would be depriving him of the use of his property. They have also met all the other application requirements for a Variance.

*****Motion: Conditionally approve Variance No. 3-18 subject to the conditions in the City of Elko Staff Report dated March 13, 2018 listed as follows:**

Planning Department:

1. Compliance with all staff recommendations.
2. Commencement within one year and completion within eighteen (18) months. This includes development of off street parking and completion of the conversion of the basement area to a usable floor space and issuance of the required Certificate of Occupancy. Additional permits are required for certain components of the work.
3. Conformance to plans approved as a part of the variance.
4. Subject to review in two (2) years if determined necessary by the planning commission.

Development Department:

1. A variance is granted for the setbacks of the existing principle structure to be reduced for the following:
 - a. Interior side yard setback from 7' to 4.8'
 - b. Exterior side yard setback from 12' to 10.7'
 - c. Frontsetback from 15' to 11.6'
2. The required off-street parking is to be developed in accordance with Elko City Code 3-2-17.

Building Department:

1. Please see Elko City building code amendments table R302.1 regarding Exterior walls
 - Walls: < 5 feet require 1 hour fire rating
 - Projections: 2 feet to <5 feet require 1 hour on underside. 0 to 2 feet not allowed

- Openings: 3 feet to 5 feet allowed at 25% maximum of wall area or less
- Penetrations : < 5 feet must comply with section R317.3

Public Works Department:

1. Applicant must provide required off street parking.

Commissioner Hodur's findings to support its recommendation are the proposed variance is in conformance with the Land Use Component of the Master Plan is consistent with existing land uses in the immediate vicinity. The proposed variance is consistent with the Transportation Component of the Master Plan. The property is not located within the redevelopment area and consideration of the plan is not required. The proposed variance is consistent with City of Elko Wellhead Protection Plan. The proposed use of the property and allowed uses under the proposed district do not present a hazard to City wells. The property does not conform to Section 3-2-4 of City Code. Approval of the variance application is required to bring the property into conformance with code. The developed property meets the stipulated area and dimensions requirements stipulated in Section 3-2-5(G) R-Single-Family and Multiple-Family Residential. The structure encroaches into all of the stipulated yard areas excepting the rear yard area. Approval of the variance application is required to bring the property into conformance with code. The property does not conform to Section 3-2-17 of City Code. Development of the required parking areas will be required as a condition for variance approval. In accordance with Section 3-2-22, the applicant has demonstrated that the existing structure has been in place for over 24 years and it appears the structure predates the current setbacks stipulated in code and encroaches into the current stipulated setbacks. In accordance with Section 3-2-22, the applicant has demonstrated that this circumstance prevents the applicant from obtaining building permits to finish the basement level of the structure depriving the applicant of full use of the structure. In accordance with section 3-2-22, the applicant has demonstrated that the property has unique circumstances based on the fact that the basement daylight and other developed properties in the immediate area do not offer that potential for usable floor space. Granting of the variance will not result in material damage or prejudice to other properties in the vicinity. This finding is based on the fact the variance request is not for the actual conversion to a duplex use. In the event of that occurrence, the conversion of the structure to a duplex use will have to conform to all code requirements including off-street parking. This finding is also based on the fact the structure was previously converted from a multifamily use to a single-family use. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. Single-family or duplexes are listed as principal uses in the underlying zone. Neither use requires a larger lot size than specified for the district. Granting of the variance will not impair natural resources. The parcel is not located within a designated Special Flood Hazard Area.

Moved by Kevin Hodur, Seconded by Stefan Beck.

**Motion passed unanimously. (7-0)*

4. Review, consideration, and possible action on Variance No. 4-18, filed by Al Latimer on behalf of Kenworth Sales Company, for an increase in the allowable sign

area from 194 square feet to 275 square feet within an IBP (Industrial Business Park) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the corner of the intersection of Ruby Vista Drive and Statice Street. (4224 Ruby Vista Dr. -APN 001-860-110)

Al Latimer, Sales Manager for IG Sign Company, explained that they were asking for an increase in the square footage of the signage to make it possible to use Kenworth's standard freeway sign, which they have used in all their locations. They aren't trying to change any of the zoning laws. If the building were facing the other way, it would be legal per the sign ordinance.

Ms. Laughlin went through City of Elko Staff Report dated March 16, 2018. She recommended conditional approval with the conditions listed in the staff report. She also wanted to make the applicant aware that the sign needed to be located outside of the easement in the front of the property.

Mr. Draper said the Development Department agreed with the Planning Department. He recommended approval for the increase of the square footage of the sign. He pointed out that the City wants to cut down on the blight that might be seen with excessive signs. With the size of the lots in this area, the concerns are not the same as with the downtown area.

Mr. Thibault recommended approval with no additional concerns.

Mr. Holmes had no comments.

Ms. Laughlin stated that the Assistant City Manager recommended approval as presented by staff.

Commissioner Hodur said that this was a unique circumstance forced by the shape of the property.

Commissioner Freistroffer added that the shape of the building was also unique. He stated that building wasn't fitting to the Sign Ordinance.

*****Motion: Conditionally approve Variance No. 4-18 subject to the conditions in the City of Elko Staff Report dated March 16, 2018 listed as follows:**

Planning Department:

- 1. Compliance with all staff recommendations.**
- 2. Commencement within one year and completion within eighteen (18) months. A sign permit is required for the work.**
- 3. Conformance to plans approved as a part of the variance.**
- 4. Subject to review in two (2) years if determined necessary by the Planning Commission.**

Commissioner Hodur's findings to support his recommendation are the proposed variance is in conformance with the Land Use Component of the Master Plan is consistent with existing land uses in the immediate vicinity. The property is not located within the redevelopment area and consideration of the plan is not required. There are no signage regulations stipulated in Section 3-2-11 of the City Code. In accordance with Section 3-2-22, the applicant has demonstrated that the property has unique circumstances based on the fact the building orientation has the shortest length parallel to Ruby Vista and the longest length along Statice Street, therefore, the sign area is calculated on the shortest length of the building. The size and orientation of the parcel would not accommodate a different orientation for the structure. In accordance with Section 3-2-22, the applicant has demonstrated that the allowable sign area equates 196 square feet versus the 275 square feet that is the standard trademark sign for the company. This circumstance would require a custom made sign and associate design for the sign infrastructure. Additionally, visibility from the adjacent freeway is an important consideration for the business. In accordance with Section 3-2-22, the other two parcels in the vicinity, fronting Ruby Vista are already fully developed and the cited conditions therefore do not generally apply to other properties in the area. Granting of the variance will not result in material damage or prejudice to other properties in the vicinity. This finding is based on the distance separation from the proposed sign to the adjacent properties. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. The area as currently developed, in addition to the proposed signage will not result in distractions and obstructions that may adversely affect or conflict with traffic control signs, signals and other traffic control devices. In addition, granting of the variance will not result in visual clutter along streets and roadways and will provide each sign user an opportunity for effective identification and advertising by addressing the quantity, height and area of freestanding signs on all sites. Granting of the variance will not impair natural resources.

Moved by Kevin Hodur, Seconded by Stefan Beck.

**Motion passed unanimously. (7-0)*

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review and consideration of Annexation No. 1-18 filed by Legend Engineering on behalf of Ed and Sharon Netherton and JoyGlobal Surface Mining Inc., consisting of approximately 32.74 acres of property located southwest of the intersection of West Idaho Street and P&H Drive, and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Laughlin went over the City of Elko Staff Report dated March 19, 2018. She recommended conditional approval with the conditions listed in the staff report.

Mr. Draper stated that the Development Department recommended approval. He pointed out that the Development Department had one condition that was listed in the Staff Report. He also mentioned that the Development Department reached out to the property owners in this area as part of the agreement the City has with these properties for providing water to them. They did that several years ago, and requested that they consider annexation. The City had positive

conversations with JoyGlobal at that time, and was considering an expansion to their facility, then were purchased by Komatsu. They have indicated that they will be doing a large building at this location and demolishing the existing building. When you look at the conditions from the Utility Department, those conditions are set up to allow for the construction of the new facility, connection of that facility to the City's water system, and demolition of the old facility prior to the abandonment of the existing well and water system. The vacant properties, as they don't currently have water service, they will connect as they are developed to the City of Elko Water System. In the Agreement with the properties, the City granted them 56-acre feet of water back in the 90's, which allowed them to develop in the County. The agreement was that they would then annex back into the City at the City's request once we were able to provide water to the area. The City has fulfilled their portion of the agreement and the property owners are on their way to fulfill their portion. The City will get back 56-acre feet and with the 32 acres that is 2.4 industrial units according to the Development Plan, which will only require 2.7 acre feet of water. He wanted to discuss the Utility Department Conditions. Stated in the conditions is that the property owners are to be actively constructing the new facility within 180 days. They have two options. One is to connect the old facility to the water system within 180 days, or begin construction of the new facility within 180 days. Mr. Draper spoke with Lonny Reed, of Legend Engineering, today, he indicated that they would have a representative at the meeting from Komatsu; unfortunately they were not able to make it. In his conversation with them, they were confident that they would be able to meet that construction timeline, to be in the new facility. If they are able to do that, they will satisfy the conditions. One of the reasons we pushed this with them is, as this becomes an Ordinance it's difficult to modify the Ordinance once it's approved by the City Council.

Mr. Thibault recommended approval. He had some conditions that didn't make it into the Staff Report. They are technical revisions to the Legal Description and the map, and must be completed prior to Council approval. They are listed as follows:

1. Revisions to legal description to be completed prior to Council Approval:
 - a. Description beings at the northwest corner, not $\frac{1}{4}$ corner.
 - b. State a basis of bearings on the description.
 - c. The description should state who prepared it, and if it is by a licensed surveyor, it must be stamped and signed.
2. Revisions to map to be complete prior to Council approval:
 - a. Show the location of the northwest corner of Section 30 as stated in the description.
 - b. Label the parcels by APN, and the streets by name.

Mr. Holmes had nothing further.

Ms. Laughlin stated that the Assistant City Manager recommended approval as presented by staff.

Chairman Freistroffer said they had discussed that they had a property that was a County island. He asked if Ms. Laughlin could point out the property.

Ms. Laughlin pointed the property out, and explained that the City does not have certified program for annexations. There needs to be a population over 100,000 in order to be required to

have a certified program for annexation. If you did have program it would not allow leaving an island of less than 40 acres, therefore we are not in violation of the NRS by leaving this island.

Chairman Freistroffer asked who Mr. Draper spoke to that stated they would be ok with 180 days.

Mr. Draper stated that he spoke with Lonny Reed, who is the representative from Legend Engineering. He stated that in his conversations with the management of Komatsu that they are confident that they can meet the timeframe stipulated in the conditions.

Commissioner Hodur wished the applicant was present and wanted to see the zone application with the annexation, but stated that if staff was confident in the applicant's intentions with the process then he was all right with it.

Mr. Draper explained that Komatsu was trying to purchase the other two properties from Mr. Netherton. Once that was finalized, they would provide the zone change application.

Chairman Freistroffer pointed out that this annexation was very important, because it was a linchpin for what the City is trying to do at the 298 Exit and Interchange.

*****Motion: Forward a recommendation to City Council to adopt an ordinance, which conditionally approves Annexation No. 1-18 subject to the conditions, listed in the City of Elko Staff Report dated March 19, 2018 listed as follows:**

Development Department:

1. The property owners shall receive approval for a zone designation for the property to be consistent with the Land Use designation in the City of Elko Master Plan.

Utility Department:

1. Joy Global Surface Mining shall extend the water main on P&H Drive the full frontage of the APN 006-09N-004 (Joy), 007 & 009 (Netherton), and make a point of connection in West Idaho Street. Water service (potable and fire protection) shall be extended within 180 days of annexation of the properties and the existing facility shall be connected to the City water system at that time; or, the water main shall be extended in conjunction with development of a new facility provided that Joy Global Surface Mining has applied for and received a Building Permit from the City and is actively engaged in constructing the new facility within the stipulated 180 days. Extension of water service and connection to the City water system may be extended by the length of time required for development of a new facility and will be required to obtain a Certificate of Occupancy for a new facility.
2. Joy Global Surface Mining shall file applications with Nevada Division of Water Resources to transfer all City water rights back to the City as stipulated in its agreement with the City dated November 1, 2013. The total water rights stipulated in the agreement is 58 acre feet. The same point of diversion shall be listed on the application. The application to transfer the water rights shall be filed no later than

- 60 days after extension of the water main in P & H drive and connection to either the existing facility or a newly developed facility.
3. The existing well shall be dedicated to the City of Elko no later than 90 days after the water rights have been transferred to the City. An easement shall be granted to the City of Elko to include access to the well, the wellsite including a 20' perimeter outside of the well house, and also a 20' wide utility easement westerly to the westerly property boundary at the time of well dedication.
 4. Joy Global Surface Mining shall extend dry sewer mains at the time of new facility development or expansion of the existing use.
 5. The City shall not be responsible for operation of the existing water supply system pending the extension of water service by Joy Global Surface Mining as stipulated in Item 1.
 6. Cross connections between the existing water system and the City's water system will not be allowed. All points of cross connection are to be properly abandoned under City approval.

Engineering Department:

1. Revisions to legal description to be completed prior to Council Approval:
 - a. Description begins at the northwest corner, not ¼ corner.
 - b. State a basis of bearings on the description.
 - c. The description should state who prepared it, and if it is by a licensed surveyor, it must be stamped and signed.
2. Revisions to map to be complete prior to Council approval:
 - a. Show the location of the northwest corner of Section 30 as stated in the description.
 - b. Label the parcels by APN, and the streets by name.

Commissioner Hodur's findings to support his recommendation are the petitioner is not requesting an amendment to the Land Use Component of the Master Plan. The existing land use of one of the properties is consistent with the Master Plan. The remaining properties are vacant. The annexation and subsequent zone classification of the properties must conform to the Master Plan. The proposed annexation and existing land uses are compatible with the Transportation Component of the Master Plan. The proposed annexation is consistent with the goals, objectives and supports long range planning as outlined in the Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report dated November 2012. The proposed annexation is in conformance with the City's Airport Master Plan. In conformance with NRS 268.636(1) the property owners have submitted a map showing a boundary contiguous to the City of approximately 35%. In conformance with NRS 268.646(2), inclusive, it has been determined that the proposed annexation satisfies considerations and/or concerns identified as minimum factors for consideration under. In conformance with NRS 268.646(3), it has been determined that the proposed annexation will not have any long-term adverse impacts on adjacent areas nor will the proposed annexation and development of the property have an adverse influence on the local government structure of the County or the City. In conformance with NRS 268.646(4), it has been determined that the proposed annexation will not place a burden on the availability of water, the requirement for water or have a negative impact on other

natural resources in the area. In addition, the City will receive 58 acre feet of water rights upon annexation of the properties. In conformance with NRS 268.646(5), it has been determined that the area proposed for annexation does not fall under the jurisdiction of the Bureau of Land Management. In conformance with NRS 268.646(6), it has been determined that the City of Elko is not required, nor does it have an annexation program adopted and certified pursuant to NRS 268.625. The proposed annexation is consistent with the Land Use Component of the Master Plan and the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report dated November 2012. In conformance with NRS 268.663(3), although not required, it has been determined that all portions of County Roads that provide primary access to the area have been or will be annexed into the City and will become City Streets. The annexation application identifies the zoning classification as Light Industrial District. At this time, a zone application has not been filed in conjunction with the annexation petition. Future zone designation must conform with Section 3-2-4 of City Code. The proposed annexation is in conformance with the City's Wellhead Protection Plan. Annexation of the property provides an immediate accrual to the tax base for the City. Annexation of the property provides an opportunity for expanded Light Industrial Uses. The area proposed for annexation is not localized or isolated. Other, required, utilities will be installed at developer expense to facilitate development of the properties. The topography of the area is well suited for the proposed light industrial land uses. Expanded Uses on the properties will result in a positive economic impact to the community.

Moved by Kevin Hodur, Seconded by Jeff Dalling.

**Motion passed unanimously. (7-0)*

Mr. Draper explained that the reason for the condition regarding the existing well to be dedicated to the City of Elko was that the property adjacent, the County has applied for the BLM to be granted that property for an ATV Track. The idea is if that project goes through the well could be used for dust suppression.

Commissioner Beck left at 7:09 p.m.

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported on March 27th the City Council accepted the annexation petition, and appointed Mr. Montgomery as the new Commissioner. They also held the public hearing for Resolution 10-18, which was for the Master Plan Amendment, and it was approved. The latest and greatest Master Plan is in the Sharefile for reference.

B. Summary of Redevelopment Agency Actions.

Ms. Laughlin reported that there would be an RDA^h meeting on Tuesday, April 10th. There will also be a RAC Meeting on April 26th, they will be reviewing the Storefront Grant Applications.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Preliminary agendas for Planning Commission meetings.

E. Elko County Agendas and Minutes.

F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.

G. Staff.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

ADJOURNMENT

There being no further business, the meeting was adjourned.

David Freistroffer, Chairman

Tera Hooiman, Secretary

**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible approval of Preliminary Plat No. 3-18, filed by Robert E. Morley on behalf of Riverside Villas Nevada LLC., for the development of a subdivision entitled Riverside Villas a Condominium Development involving the proposed division of approximately 7.872 acres of property into 97 lots for residential development within the C (General Commercial) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **May 1, 2018**
3. Agenda Category: ***PUBLIC HEARINGS, NEW BUSINESS***
4. Time Required: **15 Minutes**
5. Background Information: **Subject property is located northwest corner of the intersection of S. 12th Street and Opal Drive. (APN 001-630-077).**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Memo from Development Director, Memo from City Planner**
8. Recommended Motion: **Recommend to City Council to conditionally approve Preliminary Plat 3-18 with conditions listed in City Planner Memo**
9. Findings:
 - **The subdivision is in conformance with the Master Plan Land Use component.**
 - **The subdivision is in conformance with the Master Plan Transportation component.**
 - **The subdivision is in conformance with the Elko City Code sections 3-2-3. Multiple family residential developments which contain five (5) or more units are a permitted conditional use provided for in the Commercial Zoning District. The development has an approved Conditional Use Permit 2-15.**
 - **The subdivision is in conformance with Elko City Code 3-2-4.**
 - **The subdivision is in conformance with Elko City Code 3-2-5(E) and (G).**
 - **The subdivision is in conformance with Elko City Code 3-2-17 for off street parking requirements.**
 - **The subdivision is in conformance with Elko City Code 3-2-10(B) with the approved Conditional Use Permit 2-15.**

Agenda Item # I.A.1

- **The Redevelopment Plan does not apply to the proposed subdivision.**
- **The existing development is in conformance with the City Wellhead Protection Program.**
- **The subdivision will not result in undue water or air pollution.**
- **The proposed development will not cause unreasonable soil erosion or the reduction in the capacity of the land to hold water resulting in dangerous or unhealthy conditions.**
- **The proposed subdivision will not create an unreasonable burden on the exiting water supply.**
- **The existing development is currently served with existing utilities.**
- **The proposed development is not expected to have a negative impact on available public services.**
- **The requirement for a traffic study has been satisfied.**

10. Prepared By: **Cathy Laughlin, City Planner**

11. Agenda Distribution: **Riverside Villas Nevada, LLC**
180 North University Avenue, Suite 200
Provo, UT 84601

High Desert Engineering
Mr. Bob Morley
640 Idaho Street
Elko, NV 89801

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/1

Do not use pencil or red pen, they do not reproduce

Title: Preliminary Plat 3-18 Riverside Villas a Condominium Development
Applicant(s): Riverside Villas Nevada, LLC
Site Location: 1525 Opal Drive
Current Zoning: C Date Received: 2/9-4/10 Date Public Notice: 4/17
COMMENT: This is to convert apartments into condominiums
Involving 7.872 acres divided into 97 lots and a common
area.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/24/18

Recommend conditional approval subject
to verification that Riverside Villas Nevada, LLC
is obligated under the proposed CC&Rs &
Bylaws to meet conditions of CUP 2-15.
Verification is required prior to SAW
Council consideration of the application. Initial

City Manager: Date: 4/25/18

Assuming CUP 2-15 remains intact, or a similar CUP is
approved, not opposed to conversion to condominiums.

Initial

→ A legal opinion, subject to City Review, is
Required

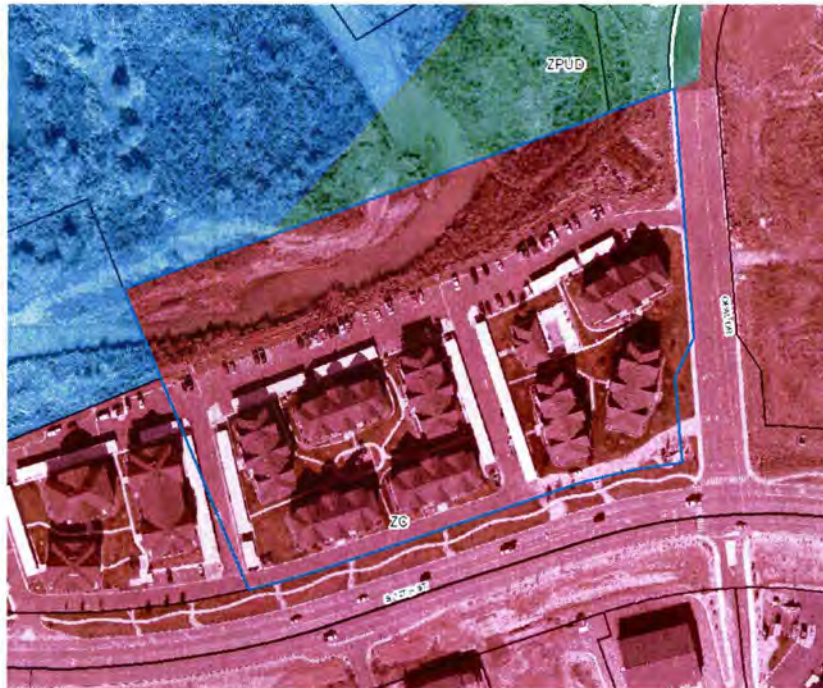


City of Elko
1751 College Avenue
Elko, NV 89801
(775) 777-7160
FAX (775) 777-7119

CITY OF ELKO STAFF REPORT

MEMO DATE:	April 23, 2018
PLANNING COMMISSION DATE:	May 1, 2018
AGENDA ITEM NUMBER:	I.A.1
APPLICATION NUMBER:	Preliminary Plat 3-18
APPLICANT:	Robert Morley on behalf of Riverside Villas Nevada, LLC
ADDITIONAL APPLICATIONS:	N/A

A Preliminary Plat for the proposed division of approximately 7.872 acres of property into 97 lots for conversion of apartment units into condominiums within a C (General Commercial) Zoning District. The conversion is a portion of an apartment complex.



STAFF RECOMMENDATION:

RECOMMEND to CONDITIONALLY APPROVE subject to findings of fact and conditions as stated in this report.

PROJECT INFORMATION

PARCEL NUMBERS: 001-920-079

PARCEL SIZE: 7.972 Acres (97 lots)

EXISTING ZONING: (C) General Commercial

MASTER PLAN DESIGNATION: (RES- HD) Residential High Density

EXISTING LAND USE: Developed

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:
North: PQP & PUD / Undeveloped
East: Commercial (C) / Undeveloped
South: Commercial (C) / Developed
West: Commercial (C) / Developed

PROPERTY CHARACTERISTICS:

The property is currently developed.

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plan Sections, Coordinating Plans, and City Code Sections are:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-3 General Provisions
- City of Elko Zoning – Section 3-2-4 Zoning Districts
- City of Elko Zoning – Section 3-2-10, Commercial Zoning Districts
- City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning– Chapter 3-3 Subdivisions
- City of Elko Zoning– Title 9 Chapter 8 Post Construction Runoff Control and Water Quality Management

BACKGROUND:

- The subdivision application has been filed by Riverside Villas Nevada, LLC
- The property is owned by the applicant.
- The area is approximately 7.872 acres in size.

- The area is identified as APN 001-630-077.
- The Preliminary Plat shows a total of 97 lots which includes 96 condominiums and 1 common area lot. The proposed density is approximately 12.32 units per acre. The preliminary plat does not include the phase 2 of the apartment complex.
- There is no acreage offered for dedication.
- A stage 1 meeting for the proposed subdivision was on January 4, 2018
- The applicant has provided a copy of the CCR's of the subdivision.
- The applicant has provided a copy of the Home Owners Association Bylaws.
- The area is located north of S. 12th Street and west of Opal Drive.
- The area is zoned C- General Commercial.
- The area is fully developed as an apartment complex. The complex includes two separate properties. The initial development was approved as a condominium project and was processed as a subdivision of property under Final Plat 8-07. The final plat (8-07) was approved by the City Council on January 8, 2008.
- The condominium project was converted to an apartment complex under Map of Reversion 3-11. The map of reversion (3-11) was approved by the City Council on November 8, 2011.
- There have been three Conditional Use permits applied for and approved for the multifamily use of the property. The permits are as follows:
 - Conditional Use Permit 3-06, approved on January 3, 2007 for 252 multi-family units (condominiums) in a general commercial district.
 - Conditional Use Permit 13-13, approved on August 6, 2013 for 156 multi-family units (apartments) in a general commercial district.
 - Conditional Use Permit 2-15, approved February 17, 2015 for 156 multi-family units (apartments) in a general commercial and recorded with the Elko County Recorder as file #701327 on August 12, 2015 for multi-family (apartments) adding phase 2 to the project.
- Both properties are responsible for meeting the conditions outlined in the Conditional Use Permit.
- There is a reciprocal easement agreement (686483) of record governing the use and interaction of both properties. The agreement has been amended twice as recorded and on file as 692683 and 701413.

MASTER PLAN:

Land use:

- Land Use is shown as High Density Residential. High Density is identified as having a density of nine (9) units per acre or greater. The density is 12.32 units per acre.
- C – General Commercial is listed as a corresponding district for the High Density Residential Designation in the Master Plan Land Use Component

- Objective 1 under the Land Use component of the Master Plan states “Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.”
 - Best Practice 1.1 – *Plan for and encourage a mix of housing types throughout the community.* The preliminary plat appears to support this best practice.
 - Best Practice 1.3 – *Work toward equitable and even distribution of housing types throughout the community.* The location of the proposed subdivision appears to support the City striving for a blended community by providing a mix of housing types in the neighborhood and is supported by existing infrastructure.
- Objective 8 under the Land use component of the Master Plan states *Encourage new development does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.* Staff believes there will be no negative impacts to natural systems and no issue with regard to human health and safety.

The proposed subdivision is in conformance with the Land Use component of the Master Plan.

Transportation:

- The Master Plan identifies Opal Drive as a Residential Collector.

The proposed subdivision is in conformance with the Transportation Component of the Master Plan.

ELKO REDEVELOPMENT PLAN:

- The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

- The property does not lie within any capture zones for city wells. The existing development does not have a negative impact on city wells.

SECTION 3-2-3 GENERAL PROVISIONS:

Section 3-2-3(C)(1) of City code specifies use restrictions. The following use restrictions shall apply:

Principal Uses: Only those uses and groups of uses specifically designated as "principal uses permitted" in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses.

Conditional Uses: Certain specified uses designated as “conditionally uses permitted” may be permitted as principal uses subject to special conditions of location, design, construction,

operation and maintenance hereinafter specified in this chapter or imposed by the planning commission or city council.

Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.

Other uses may apply under certain conditions with application to the City.

Section 3-2-3(D) states that "No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability."

The proposed development is in conformance with Elko City Code 3-2-3 as multiple family residential developments which contain five (5) or more units are a permitted conditional use provided for in the Commercial Zoning District.

SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS

- Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection:
- Section 3-2-4(B)(4) stipulates that no yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

The proposed subdivision is in conformance with Elko City Code 3-2-4.

SECTION 3-2-5 Residential Zoning District

1. Section 3-2-5(E)6:
 - Minimum Distance Between Buildings On The Same Lot: The minimum distance between the opposing exterior walls of detached buildings, or parts of attached or semi-attached buildings, on the same lot, shall be:
 - If both walls are front walls, or contain main entrances or living room windows: Thirty feet (30');
 - If one wall is a front wall, or contains a main entrance or living room windows, and one wall is a side or rear wall containing no doors or windows: Twenty four feet (24');

- If both walls are side or rear walls containing windows or secondary entrances: Twenty four feet (24');
- If one wall is a side or rear wall containing windows or secondary entrances and one wall contains no doors or windows: Eighteen feet (18');
- If neither wall contains windows or doors: Ten feet (10').

The existing development conforms with Elko City Code 3-2-5(E)6

2. Section 3-2-5(G) Setback Schedule

- Front yard setback= 15'-0", rear yard setback= 20'-0", interior side yard setback = 7'-0", exterior side yard setback= 15'-0".

The existing development conforms with Elko City Code 3-2-5(G)

SECTION 3-2-10(B) Commercial Zoning District

1. Section 3-2-10(B)(4). Conditional Uses Permitted:

- a. Residential uses. Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse or condominium or attached housing developments. Residential uses must meet the setback standards in subsection 3-2-10(B)(G) of this chapter and development standards applicable to multiple-family residential developments set forth in subsection 3-2-10(B)(E)6 of this chapter.

2. Section 3-2-10(B)2 Landscaping:

- The existing development meets the required landscape requirement of a minimum landscape area of 15% of the surface area of the developed portion of the property.

3. Section 3-2-10(8) Commercial zone abutting residential zone:

- The existing development is not abutting a residential zoning district so therefore, a screen wall is not required.

SECTION 3-2-17:

- The existing development is in conformance with Elko City Code 3-2-17 for the required parking per unit as approved in the Conditional Use Permit.

SECTION 3-3-5 PRELIMINARY PLAT STAGE (STAGE 1I):

See Development Department Memo dated April 18, 2018 for a complete review of the application.

SECTION 3-3-7 INFORMATION REQUIRED FOR PRELIMINARY PLAT SUBMITTAL

See Development Department Memo dated April 18, 2018 for a complete review of the application.

FINDINGS

1. The proposed subdivision is in conformance with the Land Use component of the Master Plan.
2. The proposed subdivision is in conformance with the Transportation Component of the Master Plan.
3. The subdivision is in conformance with the Elko City Code sections 3-2-3. Multiple family residential developments which contain five (5) or more units are a permitted conditional use provided for in the Commercial Zoning District. The development has an approved Conditional Use Permit 2-15.
4. The subdivision is in conformance with Elko City Code 3-2-4.
5. The subdivision is in conformance with Elko City Code 3-2-5(E) and (G).
6. The subdivision is in conformance with Elko City Code 3-2-17 for off street parking requirements.
7. The subdivision is in conformance with Elko City Code 3-2-10(B) with the approved Conditional Use Permit 2-15.
8. The Redevelopment Plan does not apply to the proposed subdivision.
9. The existing development is in conformance with the City Wellhead Protection Program.
10. The subdivision will not result in undue water or air pollution.
11. The proposed development will not cause unreasonable soil erosion or the reduction in the capacity of the land to hold water resulting in dangerous or unhealthy conditions.
12. The proposed subdivision will not create an unreasonable burden on the exiting water supply.
13. The existing development is currently served with existing utilities.
14. The proposed development is not expected to have a negative impact on available public services.
15. The requirement for a traffic study has been satisfied.

STAFF RECOMMENDATION:

Staff recommends this item be **APPROVED** subject to the following conditions:

Development Department:

1. The applicant submits an application for Final Plat within a period of four (4) years in accordance with NRS 278.360(1)(a). Approval of the Preliminary Plat will automatically lapse at that time.
2. The applicant shall comply with the requirements of NRS 116. The developer shall provide a copy of any notices required to be provided to the residents pursuant to this section of NRS.

Engineering Department:

1. Show existing flood zones and water way.

Fire Department:

1. D103.6 Signs: Where required by the fire code official, fire apparatus access roads shall be marked with permanent NO PARKING-FIRE LANE signs. Signs shall have a minimum dimensions of 12 inches wide by 18 inches high and have red letters on a white reflective background. Signs shall be posted on one or both side of the fire apparatus road as required by Section D103.6.1 or D103.6.2.
2. Red Fire Lane Curbs will also need to be painted.



CITY OF ELKO
DEVELOPMENT DEPARTMENT
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775)777-7210
(775)777-7219 FAX

To: Elko Planning Commission
From: Jeremy Draper, PE, Development Manager
RE: Preliminary Plat 3-18, Riverside Condominium
Date: April 18, 2018

The City of Elko Development Department has reviewed the preliminary plat for Riverside Condominium to be located within the City of Elko near the intersection of 12th Street and Opal Drive. Applicable Master Plan Section, Coordinating Plans, and City Code Sections are:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-3 General Provisions
- City of Elko Zoning – Section 3-2-4 Zoning Districts
- City of Elko Zoning – Section 3-2-10(B) General Commercial District
- City of Elko Zoning – Section 3-2-5(G) Residential Zoning Districts Area, Setback And Height Schedule For Principal Buildings
- City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning – Section 3-8 Flood Plain Management
- City of Elko Zoning – Chapter 3 Subdivisions
- Nevada Revised Statutes-116, Common-Interest Ownership

Background Information



- The property is identified as Parcel 2A, shown on the Map of Reversion, file number 665925, recorded on December 27, 2012.
- The property is zone C-General Commercial.
- The property was developed as a multi-family apartment complex under CUP 2-15.
- The total area of parcel 2A is 7.872 Acres.
- The preliminary plat shows a total of 96 units being converted to Condominiums, and one parcel as a common area.
- The preliminary plat identifies limited common elements identified as parking for each condominium.
- There is no phasing shown on the preliminary plat
- The property is located near the intersection of 12th Street and Opal Drive.
- The area is currently developed.
- There are no areas being offered for dedication.
- The area is bound by General Commercial to the east, south, and west, and Public, Quasi-Public, and Planned Unit Development to the north.
- The stage 1 for the proposed application was held on January 4, 2018. Items dealing with the transition from a rental unit to a condominium were discussed during this meeting.
- All civil improvements are in place.

Master Plan

Land Use

- The Land Use Component of the Master Plan identifies this area as Residential High Density.
- The applicable objectives of the Master Plan are
 - Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.
 - Objective 8: Ensure that new development does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety. Staff believes there will be no negative impacts to natural systems and no issue with regard to human health and safety.
- The density of High Density Residential is defined as nine (9) or more units per acre, the proposed density of this development is 12.19 units per acre.

Transportation

- The project area is adjacent to 12th Street, a Major Arterial, and Opal Drive, a Collector Roadway.
- A traffic study was provided with the development of the property.
- All public improvements are in place.

The proposed subdivision is in general conformance with the Master Plan.

Elko Redevelopment Plan

- The property is not located within the Redevelopment Area

Elko Wellhead Protection Plan

- A portion of this property is within the 30 year capture zone for City Wells
- Conformance with this plan is required

Section 3-2-3 General Provisions

- Section 3-2-3(C)(1) of City code specifies use restrictions. The following use restrictions shall apply:
 - Principal Uses: Only those uses and groups of uses specifically designated as "principal uses permitted" in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses.
 - Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.
 - Other uses may apply under certain conditions with application to the City.
- Section 3-2-3(D) states that "No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability."

The development is in conformance with this section of code with CUP 2-15.

Section 3-2-4 Establishment Of Zoning Districts

- Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection:
- No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection for the district in which it is located.
- No building or other structure shall hereafter be erected or altered:
 - To exceed the heights required by the current City Airport Master Plan;
 - To accommodate or house a greater number of families than as permitted in this chapter;
 - To occupy a greater percentage of lot area; or
 - To have narrower or smaller rear yards, front yards, side yards or other open spaces, than required in this title; or in any other manner contrary to the provisions of this chapter.

- No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
- No yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

It appears the subdivision is in conformance with this section of code.

Section 3-2-10 (B) C-General Commercial District

- Section 3-2-10 (B)-4-, Conditional Uses Permitted
 - Residential Uses, Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse or condominium or attached housing developments. Residential uses must meet the setback standards in subsection 3-2-5-G of this chapter and development standards applicable to multiple-family residential developments set forth in subsection 3-2-5-E-6 of this chapter.

Conditional use permit 2-15, has been approved for this property as a multiple-family residential development in a C-General Commercial district.

Section 3-2-5 (G)-Residential Zoning District Area, Setback and Height Schedule for Principal and Certain Accessory Use Buildings

- The property as developed is in conformance with this section of code.

Section 3-2-17-Traffic, Access, Parking and Loading Requirements

- The property as developed is in conformance with this section of code.

Section 3-8-Floodplain Management

- The property was removed from the floodplain by a LOMR.

General Comments

- A hydrology report was provided when the property was developed
- A soils report was provided when the property was developed
- All civil improvements have been completed
- All utilities for the properties are in place

Section 3-3-5 Preliminary Plat Stage (Stage II)

The Department finds that the subdivision plat submittal is in general compliance with the City of Elko Master Plan and applicable subdivision codes, Sections 3-3-5 PRELIMINARY PLAT STAGE (STAGE II), 3-3-7 INFORMATION REQUIRED FOR PRELIMINARY PLAT SUBMISSION, and 3-3-20 GENERAL PROVISIONS FOR SUBDIVISION DESIGN with exceptions identified in the following discussion:

Preliminary Plat 3-3-5(A) – A zoning amendment is not required.

Preliminary Plat Approval 3-3-5(E)(2)(a) – Requires findings that the subdivision will not result in undue water or air pollution:

Preliminary Plat Approval (E)(2)(a)(1) – The area is not located within a designated flood zone.

Preliminary Plat Approval (E)(2)(a)(2) – The ability of soils to support waste disposal is not a consideration since the development will utilize sanitary sewer infrastructure.

Preliminary Plat Approval (E)(2)(a)(3) – The property is currently developed, no additional grading will take place.

Preliminary Plat Approval (E)(2)(a)(4) – The property is currently developed, no additional flows are expected.

Preliminary Plat Approval (E)(2)(b) – The City of Engineering Department is required to model the anticipated water consumption of the subdivision. There is no additional impact to the city water system as this is a conversion to a condominium.

Preliminary Plat Approval (E)(2)(c) –Development of the proposed will not cause unreasonable soil erosion. No additional development is proposed.

Preliminary Plat Approval (E)(2)(d) - The proposed subdivision will not create an unreasonable burden on the exiting water supply.

Preliminary Plat Approval (E)(2)(e) – The proposed subdivision completed a traffic study when developed, additional traffic is not expected with the conversion to a condominium.

Preliminary Plat Approval (E)(2)(f) - The Master Plan Land Use Map shows the area as High Density Residential. The surrounding area is characterized by developed multiple-family with the potential for commercial development in the future. The proposed development is in general conformance with the Master Plan.

Preliminary Plat Approval (E)(2)(g) – Utilities are available in the immediate area and the property is connected to them.

Preliminary Plat Approval (E)(2)(h) – The property was developed with a tot lot, community building, and swimming pool.

Section 3-3-7 Information Required For Preliminary Plat Submittal

Identification Data (B)(1) – The subdivision name, location and section, township and range, is shown on Sheet 1 of 3.

Identification Data (B)(2) – The name, address and phone of the subdivider, the address are shown on page 1 of the preliminary plat.

Identification Data (B)(3) – The engineer's contact information is shown on Sheet 1 of 2.

Identification Data (B)(4) – The scale, north point, preparation and revision information is shown on 1 of 3.

Identification Data (B)(5) – The location map is shown on Sheet 1 of 2.

Identification Data (B)(6) – A legal description is shown on Sheet 1 of 2.

Existing Conditions Data (C)(1) – A topographic map is not provided, the area is currently developed.

Existing Conditions Data (C)(2) – There are no significant features or Special Flood Hazards to be shown on the plat, as the area was removed by the filing of a LOMR.

Existing Conditions Data (C)(3) – There area is adjacent to the floodway of the Humboldt River, the northern portion of the parcel is in the floodway, this area is not proposed for development.

Existing Conditions Data (C)(4) – Sheet 1 of the plat identifies all the roadways, easements and corporate limits within and adjacent to the tract.

Existing Conditions Data (C)(5) – Identification data is shown for all of the adjacent properties.

Existing Conditions Data (C)(6) – The zone for the area is shown on Sheet 1 of 2, and is shown incorrectly as R-Single Family and Multiple-Family Residential.

Existing Conditions Data (C)(7) – Dimensions of all tract boundaries, gross and net acreage of tract is shown on Sheet 1 of 2.

Proposed Conditions Data (D)(1) – There are no proposed streets.

Proposed Conditions Data (D)(2) – The lot layout is shown. The area and dimensions for each lot are shown.

Proposed Conditions Data (D)(3) – All existing easements are identified on sheet 1.

Proposed Conditions Data (D)(4) – The required information is Sheets 1 and 2.

Proposed Conditions Data (D)(5) – No zone changes are proposed.

Proposed Conditions Data (D)(6) – CC & R's are proposed, a copy has been provided.

Proposed Conditions Data (D)(7) – No additional grading is proposed for this site.

Proposed Conditions Data (D)(8) – The sub divider will be required to comply with the City of Elko's storm water regulations.

Proposed Utility Methods (E)(1) – The property is currently connected to city utilities.

Proposed Utility Methods (E)(2) – The property is currently connected to city utilities.

Proposed Utility Methods (E)(3) – The property has completed storm drain improvements.

Proposed Utility Methods (E)(4) – All utilities have been completed.

Proposed Utility Methods (E)(5) – The City Utility Department will issue Intent to Serve letters once the City has approved the Preliminary Plat.

NRS 116-Common-Interest Ownership

- The developer shall comply with this section of NRS.
- The developer shall provide a copy of notices given to residents for the conversion of the building per NRS 116.

Other

- The applicant has provided a copy of the bylaws for the Riverside Villas Community Association, Inc.
- The applicant has provided a copy of the Condominium Declaration and Covenants, Conditions and Restrictions for Riverside Villas.

Findings

- The subdivision is in conformance with the Master Plan.
- The subdivision is generally in conformance with the applicable Sections of City Code.
- The Redevelopment Plan does not apply to the proposed subdivision.
- The proposed development is in conformance with the City Wellhead Protection Program.
- The subdivision will not result in undue water or air pollution.
- The City has adequate water supply to meet foreseeable needs of the subdivision.
- The proposed development will not cause unreasonable soil erosion or the reduction in the capacity of the land to hold water resulting in dangerous or unhealthy conditions.
- The proposed subdivision will not create an unreasonable burden on the exiting water supply.
- A requirement for a traffic study has been satisfied
- The proposed development is not expected to have a negative impact on available public services.

Recommendation

The City of Elko Development Department recommends the preliminary plat be approved with the following conditions:

1. The applicant submits an application for Final Plat within a period of four (4) years in accordance with NRS 278.360(1)(a). Approval of the Preliminary Plat will automatically lapse at that time.
2. The applicant shall comply with the requirements of NRS 116. The developer shall provide a copy of any notices required to be provided to the residents pursuant to this section of NRS.



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7119

April 24, 2018

Riverside Villas Nevada, LLC
180 North University Avenue, Suite 200
Provo, UT 84601

Re: Preliminary Plat No. 3-18

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is an item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures

CC: High Desert Engineering, Attn: Bob Morley, 640 Idaho Street, Elko, NV 89801

PP 3-18 Riverside Villa Condos

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001630091	12TH STREET ASSOCIATES LLC	C/O GASTON & WILKERSON MGT	4751 CAUGHLIN PKWY	RENO NV	89519-0924
001630093	12TH STREET ASSOCIATES LLC	C/O GASTON & WILKERSON MGT	4751 CAUGHLIN PKWY	RENO NV	89519-0924
001630094	12TH STREET ASSOCIATES LLC	C/O GASTON & WILKERSON MGT	4751 CAUGHLIN PKWY	RENO NV	89519-0924
001630041	ELKO PACIFIC ASSOCIATES		PO BOX 2688	ELKO NV	89803-2688
001630069	JOSHUA TREE SHELTER		PO BOX 1353	ELKO NV	89803-1353
001630096	PARRADO PARTNERS LP		12257 BUSINESS PARK DR STE 1	TRUCKEE CA	96161-3334
001630078	RIVERSIDE VILLAS II LLC		180 N UNIVERSITY AVE STE 200	PROVO UT	84601-5648
001630056	SIGNATURE DEVELOPERS LC		45 TETON DR	LINDON UT	84042-2272

(6)

Mailed 4/19/18



NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a series of public hearings on Tuesday, May 1, 2018 beginning at 5:30 P.M. P.D.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on these matters under consideration in person, by writing, or by representative.

The specific item to be considered under public hearing format is:

Preliminary Plat No. 3-18, filed by Robert E. Morley on behalf of Riverside Villas Nevada, LLC, for the development of a subdivision entitled Riverside Villas a Condominium Development involving the proposed division of approximately 7.872 acres of property into 97 lots and a common area for residential development within the C (General Commercial) Zoning District, and matters related thereto. The subject property is located generally on the northwest corner of the intersection of S. 12 Street and Opal Drive (APN 001-630-077).

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

ELKO CITY PLANNING COMMISSION



CITY OF ELKO

Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

April 11, 2018

NV Energy
Mr. Robert Lino
4216 Ruby Vista Dr.
Elko, NV 89801-1632

SUBJECT: Preliminary Plat No. 3-18/Riverside Villas a Condominium Development

Dear Mr. Lino:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Riverside Villas a Condominium Development subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their May 1, 2018 meeting.

Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



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Planning Department

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1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

April 11, 2018

Southwest Gas Corporation
Engineering Department
PO Box 1190
Carson City, NV 89702

SUBJECT: Preliminary Plat No. 3-18/Riverside Villas a Condominium Development

To Whom It May Concern:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Riverside Villas a Condominium Development subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their May 1, 2018 meeting.

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Planning Technician

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1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

April 11, 2018

Satview Broadband
Mr. Steve Halliwell
3550 Barron Way, Suite 13A
Reno, NV 89511

SUBJECT: Preliminary Plat No. 3-18/Riverside Villas a Condominium Development

Dear Mr. Halliwell:

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1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

April 11, 2018

Frontier Communications
Mr. William Whitaker
111 W. Front Street
Elko, NV 89801

SUBJECT: Preliminary Plat No. 3-18/Riverside Villas a Condominium Development

Dear Mr. Whitaker:

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1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

April 11, 2018

Elko County School District
Mr. Jeff Zander
PO Box 1012
Elko, NV 89803

SUBJECT: Preliminary Plat No. 3-18/Riverside Villas a Condominium Development

Dear Mr. Zander:

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February 13, 2018

NV Energy
Mr. Robert Lino
4216 Ruby Vista Dr.
Elko, NV 89801-1632

SUBJECT: Preliminary Plat No. 3-18/Riverside Villas a Condominium Development

Dear Mr. Lino:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Riverside Villas a Condominium Development subdivision which is tentatively scheduled for consideration by the Elko City Planning Commission at their March 6, 2018 meeting.

Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Thank you for your attention to this matter.

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Planning Technician

Enclosures



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Engineering Department
PO Box 1190
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Sincerely,

Shelby Archuleta
Planning Technician

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1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

February 13, 2018

Elko County School District
Mr. Jeff Zander
PO Box 1012
Elko, NV 89803

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Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

(775) 777-7160 * (775) 777-7219 fax

APPLICATION FOR PRELIMINARY PLAT (STAGE II) APPROVAL

****PRIOR TO SUBMITTING THIS APPLICATION, PRE-APPLICATION (STAGE I) MUST BE COMPLETE****

APPLICANT(s):	Riverside Villas Nevada, LLC - Contact: Branson Brinton		
MAILING ADDRESS:	180 North University Avenue, Suite 200, Provo, UT 84601		
PHONE NO (Home)		(Business)	(385) 207-7225
NAME OF PROPERTY OWNER (If different):	N A <i>(Property owner consent in writing must be provided)</i>		
MAILING ADDRESS:			
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):			
ASSESSOR'S PARCEL NO.:	001-630-077	Address	1525 Opal Drive
Lot(s), Block(s), & Subdivision			
Or Parcel(s) & File No.	Parcel 2A, Map of Reversion, File No. 665925		
APPLICANT'S REPRESENTATIVE OR ENGINEER:	High Desert Engineering, LLC		

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. Complete applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1st Tuesday of every month), and must include the following:

1. One .pdf of the entire application, and ten (10) 24" x 36" copies of the preliminary plat folded to a size not to exceed 9"x12" provided by a properly licensed surveyor, as well as one (1) set of reproducible plans 8 1/2" x 11" in size and any required supporting data, prepared in accordance with Section 3-3-7 of the Elko City Code (see attached checklist).
2. A Development Master Plan when, in the opinion of the Planning Commission, the proposed subdivision is sufficiently large enough to comprise a major part of a future neighborhood or the tract initially proposed for platting is only a part of a larger land area.
3. A preliminary grading plan for subdivisions involving property characterized by an average slope greater than ten percent (10%).

Fee: \$750.00 + \$25.00 per lot including remainder parcels; non-refundable.

Other Information: The applicant is encouraged to submit other information and documentation to support the request.

RECEIVED

PROJECT DESCRIPTION OR PURPOSE:

The apartments within the buildings shown on the tentative map were at one time converted to condominium units by the Final Map of the Riverside Condominiums - Phase 1 approved by the City of Elko and filed for record on November 5, 2008. These condominium units were subsequently reverted to apartments by the Map of Reversion approved by the City of Elko and filed for record on December 27, 2011. The owners of the project would again like to convert the apartments within the buildings shown to condominium units.

The infrastructure associated with this project is existing. All of the buildings, streets, driveways, curbs, gutters, parking lots, and utilities, etc., associated with the buildings and project are complete and currently serve the units shown.

(Use additional pages if necessary)

Preliminary Plat Checklist 3-3-7

Date	Name
Identification Data	
✓	Subdivision Name
✓	Location and Section, Township and Range
✓	Reference to a Section Corner or Quarter-Section Corner
✓	Name, address and phone number of subdivider
✓	Name, address and phone number of engineer/surveyor
✓	Scale, North Point and Date of Preparation
	Dates of Revisions
✓	Location maps
✓	Legal description of boundaries
Existing Conditions Data	
NA	2' contours on city coordinate system
NA	Location of Water Wells
NA	Location of Streams, private ditches, washes and other features
NONE	Location of Designated flood zones
✓	The Location, widths and Names of all platted Streets, ROW
NA	Municipal Corporation Lines
✓	Name, book and page numbers of all recorded plats
✓	Existing Zoning Classifications
✓	Zoning of Adjacent Properties
✓	Dimensions of all tract boundaries, gross and net acreage
Proposed Conditions Data	
✓	Street Layout, location, widths, easements
NA	Traffic Impact Analysis
✓	Lot Layout, including dimensions of typical lots
NA	Corner Lot Layout
NA	Lot layout on Street Curves
✓	Each lot numbered consecutively
✓	Total number of lots
✓	Location, Width and proposed use of easements
NA	Location, extent and proposed use of all land to be dedicated
NA	Location and boundary of all proposed zoning districts
	Draft of proposed deed restrictions
NA	Preliminary Grading Plan
NA	Conceptual cut and fill
NA	Estimated quality of material to be graded
	SWPPP
Proposed Utilities	
✓	Sewage Disposal, design for sewage disposal
✓	Water Supply, Evidence of adequate volume and quality
✓	Storm Drain, Preliminary Calculations and Layout
✓	Telephone, Power, Gas, Television
	Will Serve Letter by Engineering Department

By My Signature below:

☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant/ Agent

Robert E. Morley, Agent

(Please print or type)

Mailing Address

640 Idaho Street

Street Address or P.O. Box

Elko, NV 89801

City, State, Zip Code

Phone Number:

775-738-4053

Email address:

remorley@frontiernet.net

SIGNATURE:

Robert E. Morley

FOR OFFICE USE ONLY

File No.: 3-18 **Date Filed:** 2/9/18 **Fee Paid:** \$3,175 **Ac#** 13963

96 units + Common Area = 97
97 x \$25 = 2,425
+ 750
\$3,175

Recording Requested By and
When Recorded Return to:
PEG DEVELOPMENT
Attn: Cameron Gunter
180 North University Avenue Suite 200
Provo, Utah 84601

RECEIVED

APR 10 2018

SPACE ABOVE THIS LINE FOR CLERK'S USE ONLY

City of Elko, Elko County, Nevada
Condominium Declaration and
Covenants, Conditions and Restrictions

CONDOMINIUM DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVERSIDE VILLAS

ARTICLE I RECITALS AND CERTAIN DEFINITIONS

Riverside Villas Nevada, LLC, a Delaware limited liability company ("**Declarant**") makes this Condominium Declaration and Covenants, Conditions, and Restrictions for the Project (as defined below) as of this _____ day of _____, 2018, upon the basis of the following facts, understandings and intentions:

Section 1.1 The Declarant; The Real Property. Declarant is the Owner of all that certain real property (the "**Real Property**") located in the City of Elko, Elko County, Nevada, which is more particularly described in Exhibit A attached hereto and made a part hereof. Declarant has complete and unfettered ownership of the Real Property including certain improvements consisting of Apartment Homes known as "Riverside Villas" with landscaped areas, walkways, parking areas and streets (all of said improvements being referred to herein as the "**Improvements**"). The Real Property and the Improvements together constitute the "**Project**."

Section 1.2 Intention of Declarant. Declarant intends (i) to develop the Project providing for separate title to ninety-six (96) living units to be a condominiums as defined in Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes appurtenant to which will be an undivided fractional interest in the Project other than living units and pursuant to a general plan for maintenance care, use, and management of the project; and (ii) to sell the condominiums thus created.

Declarant anticipates that the Project may be further developed through the annexation of one or more additional phases comprised of all or part of the real property described in Exhibit B (the "**Annexable Property**"). There is no guarantee that all phases will be completed or brought into the Project, or that the contemplated number of Units or the recreational facilities that are

described herein will be developed as described above. Notwithstanding the foregoing, the maximum number of Units in the Project shall not exceed two hundred fifty-two (252) Units.

Section 1.3 The Project. The Units are all integral parts of an overall development. The utility and enjoyment of each Unit is dependent upon common elements of the Improvements and requires the establishment of easements and covenants through the Project other than living units for the common and joint government of the Real Property and Improvements in a manner beneficial to all of the Units, all components thereof and all interests therein. Accordingly, Declarant desires to establish and create easements, covenants and restrictions through and upon the Project other than living units to provide for the joint use, management, government and operation of the Units as part of a common plan for the joint use and occupancy of each and every part of the Project and interest therein.

NOW, THEREFORE, incorporating the foregoing Recitals, Declarant hereby creates and establishes easement, covenants and restrictions through the Project other than living units which shall run with the land and be binding upon and inure to the benefit of the successors and assigns of the Owners of the Units and every part thereof and every interest therein as part of a common plan to regulate and govern the joint use and occupancy of the Real Property and Improvements, to enhance the value thereof, and for other beneficial purposes.

ARTICLE II ADDITIONAL DEFINITIONS

The following terms shall have the following meanings when used herein unless the context otherwise requires.

Section 2.1 **"Articles"** shall mean the Articles of Incorporation of the Association, which have been filed in the office of the Secretary of State of the State of Nevada, a copy of which is attached hereto marked as Exhibit C and made a part hereof.

Section 2.2 **"Assessment"** shall mean that portion of the cost of maintaining, improving, operating and managing the Project, which is to be paid by each Owner as determined by the Association.

Section 2.3 **"Association"** shall mean and refer to The Riverside Villas Community Association, Inc. ("RVCA"), a Nevada nonprofit corporation, the Members of which shall be Owners of the Units.

Section 2.4 **"Association Easements"** shall mean easements granted to Owners and the Association for the benefit of its Members.

Section 2.5 **"Association Property"** shall mean all real and personal property now or hereafter owned by or leased to the Association.

Section 2.6 **"Association Rules"** and/or **"Regulations"** shall mean the rules and regulations of the Association as adopted and/or amended from time to time.

Section 2.7 **"Board"** and **"Board of Directors"** shall mean and refer to the governing body of the Association.

Section 2.8 "**Buildings**" shall mean all of those structures located upon the Real Property, comprised of Apartment Homes where the Apartment Homes are in structures with three (3) aboveground stories.

Section 2.9 "**Bylaws**" shall mean or refer to the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto marked as Exhibit D and made a part hereof.

Section 2.10 "**Common Area**" shall mean all Common Areas which are not Limited Common Area.

Section 2.11 "**Capital Improvement Assessment**" shall mean a charge against each Owner and his Unit representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 2.12 "**Common Elements**" shall mean all of the Project, except Units. The definition of Common Elements shall include, without limitation, the following components.

(a) The buildings (including, but not by way of limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, stairs, patios, balconies, entrances and exits, and the mechanical installations of a building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith), except for the Units, and

(b) The sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, parking areas, street lighting, entry features, signage, perimeter walls and fenced, retention ponds, and related facilities upon the Property; and

(c) The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of a building existing for the use of one or more of the Owners; and

(d) Any recreational facility or facilities, in a location or locations within the Property as designated by Declarant, the Improvements on which will or may consist of a pool, clubhouse, barbeque areas and amenities, basketball court, children's play area and/or tot lot, and/or other similar amenities, together with any related facilities; and

(e) The Limited Common Elements and all other parts of the Project designated by Declarant as Common Elements or Limited Common Elements and existing for the use of one or more of the Owners.

The Common Elements shall be owned by the Owners of the Units, each Owner of a Unit having an undivided interest in the Common Elements as provided below.

Section 2.13 "**Common Expenses**" shall mean the expenses or financial liabilities for the operation of the Project together with any allocations to reserves and shall include:

(a) Expenses of administration, insurance, operation, maintenance, repair or replacement of the Common Elements, including, without limitation, the painting and maintenance of the exterior walls of the buildings in which the Units are located and any perimeter walls of the Project, except to the extent such repairs and replacements are the responsibility of an Owner pursuant to the terms of this Declaration;

(b) Expenses declared to be Common Expenses under the Governing Documents or the Act;

(c) Sums lawfully assessed against the Units by the Board of Directors;

(d) Any other expenses agreed upon as Common Expenses by a vote of a Majority of the Members of the Association;

(e) Reserves established by the Association for repair, replacement and restoration of the major components of the Common Elements;

(f) Expenses, fees, and other charges imposed upon the Association by any governmental entity because the Project is a community interest community pursuant to the Act;

(g) Any and all utilities, including, but not limited to, electricity, gas, water and sewer which are not separately metered and billed to individual Units by the entity providing such utility service; and

(h) Expenses incurred by the Association pursuant to its obligations under this Declaration.

Section 2.14 **"Condominium"** shall mean a Unit and the undivided interest therein (expressed as a percentage of the entire ownership interest in the Common Areas appurtenant to such Unit, as set forth in Exhibit E attached hereto and by this reference made a part hereof) as defined in Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes.

Section 2.15 **"Condominium Plan"** shall mean and refer to a diagrammatical floor plan, pursuant to Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes.

Section 2.16 **"Convertible Space"** shall mean the condominium space described in Section 19.2 which may hereafter be converted as a whole or in part to Units, Common Areas, or Limited Common Areas as provided in ARTICLE XXVI.

Section 2.17 **"Declarant"** shall mean and refer to Riverside Villas Nevada, LLC, a Utah limited liability company, together with its successors and assigns.

Section 2.18 **"Declaration"** shall mean and refer to this enabling Declaration.

Section 2.19 **"Eligible Mortgagee"** shall mean the holder of a first Security Interest in a Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Unit. The notice must include the Unit number and address

of the Unit on which it has a security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVII.

Section 2.20 **"Improvements"** shall mean all of the improvements located upon the Real Property including, but not limited to, the Buildings, exterior sidewalks and landscaped areas, and all other improvements referenced in Paragraph A of the Recitals, above.

Section 2.21 **"Limited Common Area"** shall mean any portion of the Common Area allocated by this Declaration or by operation of law for the exclusive use of one or more, but fewer than all, of the Units as provided in Article VI; such portions and components to include, but without limitation, all utility pipes, security and life safety systems, lines, conduits, ducts and flues to the outlets thereof, all structural bearing portions of the Buildings and all columns and girders, regardless of location, and service areas of the Buildings.

Section 2.22 **"Limited Common Elements"** shall mean the portion of the Common Elements allocated for the exclusive use of fewer than all Owners under the Declaration or the Act and that are more particularly addressed in Article VI of this Declaration.

Section 2.23 **"Member"** shall mean and refer to a member in the Association.

Section 2.24 **"Mortgage"** shall mean any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.

Section 2.25 **"Mortgagee"** shall mean any Person, partnership, corporation, trust, bank, savings and loan association, insurance company or other financial institution holding a recorded mortgage or deed of trust which constitutes an encumbrance upon any Unit securing payment of money other than this Agreement and liens for real estate taxes and assessments.

Section 2.26 **"Mortgagor"** shall include the trustor or grantor of a deed of trust as well as a mortgagor.

Section 2.27 **"Occupant"** shall mean the Owner and/or tenant of a Unit or interest therein.

Section 2.28 **"Owner"** or **"Owners"** shall mean or refer to the record holder or holders of title, if more than one, of a Unit, or a portion thereof. This shall include any Person having fee simple title to any Unit, but shall not include contract sellers under a recorded installment land sale contract of any specific Unit. "Owner" shall not include Declarant unless Declarant otherwise qualifies as an "Owner" hereunder, and those Persons or entities having any interest merely as security for the performance of any obligation. If a Unit, or any portion thereof is sold under a recorded installment land sale contract to a purchaser, such purchaser, rather than the fee owner, shall be considered the "Owner" for the purposes hereof.

Section 2.29 **"Parcel Map"** shall mean that certain Condominium or Parcel Map for the Project filed or to be filed for record in the office of the County Clerk of Elko County, Nevada, a reduced copy of which is attached marked as Exhibit F and made a part hereof, consisting of a plat or survey map of the surface of the ground of the Real Property showing a survey and legal description thereof, the location of the Buildings with respect to the boundaries of the Real Property, together with the diagrammatic floor plans of the Buildings showing the boundaries of each Unit, including horizontal and vertical locations and dimensions of all boundaries of each

Unit and the Unit number identifying the Units, together with such other information as may be included therein in the discretion of Declarant.

Section 2.30 "Person" shall mean a natural Person, a corporation, a partnership, a trustee or other legal entity.

Section 2.31 "Project" shall mean the Real Property and Improvements, together with all appurtenant rights and interests.

Section 2.32 "Real Property" shall mean all that certain real property more particularly described and shown on the Parcel Map.

Section 2.33 "Parking Areas" shall mean those areas shown and numbered on the Parcel Map to be filed for record, as Parking Areas.

Section 2.34 "Unit" shall mean the separate interest in a Condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors thereof as shown and numbered on the Parcel Map to be filed for record, together with all fixtures and improvements therein contained, and such other Units that are designated as Units pursuant to an amendment to this Declaration recorded in the office of the County Recorder of Elko County, State of Nevada pursuant to the provisions of ARTICLE XII below. Notwithstanding the foregoing, the following are not part of a "Unit": bearing walls, columns, floors, and roofs (except for the interior surfaces thereof within a Unit), foundations, shafts, central heating systems, reservoirs, tanks, pumps, and other services used by more than one Unit, pipes, vents, ducts, flues, chutes, conduits, and wires, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means at the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Common Area as herein defined

Section 2.35 "User" shall mean all Owners and Occupants of a Unit, and all licensees, invitees, employees and agents thereof.

ARTICLE III STATEMENT OF INTENTION AND PURPOSE; NOTICE OF MASTER DECLARATION AND MASTER ASSOCIATION; AND RESERVATION OF LICENSE

Section 3.1 Declaration. Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied, improved, and otherwise affected in any manner, subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in Article I and are further declared to be for the benefit of the Project and every part thereof and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the Declarant and the Declarant's assigns and to all Persons hereafter acquiring or owning any interest in the Project, however such interest may be obtained.

Section 3.2 Reservation of Rights. Declarant, for itself and its successors and assigns, hereby reserves an irrevocable license for the parking of vehicles over and across those areas adjoining the Units which are designated as "Parking Area" on the Parcel Map, together with the right of ingress and egress thereto over and across the Apartment Homes and the Real Property, as necessary. Declarant hereby covenants and agrees that this license shall be exercised by Declarant to provide specific parking rights only to the Owners, Occupants and their tenants and/or invitees in a manner determined by Declarant in its sole discretion. It is understood and agreed that, subject to this license, the Association shall maintain and operate the Parking Area as designated on the Parcel Map as Common Area as provided in this Declaration. It is furthermore understood and agreed that as long as the Declarant retains an ownership interest in any Unit any action taken by the Association and/or the Board pertaining to the Parking Areas as designated on the Parcel Map shall be subject to the prior approval of the Declarant.

The rights reserved herein and in the Bylaws for the benefit of Declarant are as follows: to maintain signs advertising the Condominium; and to appoint or remove members of the Board until seventy five percent (75%) of all existing Units are sold.

ARTICLE IV NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

Section 4.1 Estates of an Owner. The Project is hereby divided into Condominiums, each consisting of a separate interest in a Unit and the Limited Common Area appurtenant to that Unit. Each Unit shall also consist of an undivided interest in the Common Area in accordance with the Parcel Map. In addition, each Unit includes a share of the Common Area not otherwise allocated above in the proportions set forth in Exhibit E. The percentage of ownership interest in the Common Area, which is to be allocated to each Unit for purposes of tax assessment shall be the same as set forth in Exhibit E. The percentage of ownership interest in the Common Area is based upon the size (square feet of floor space) of each Unit. The percentage of ownership interest in the Common Area is calculated by dividing the number of square feet of floor area of each Unit by the number of square feet of floor area of all Units in the Condominium. Notwithstanding that square feet of floor area may be measured differently, the number of square feet of floor area set forth on Exhibit E shall be conclusive and final for purposes of this Declaration. The percentages appurtenant to each Unit as shown in said Exhibit E shall have a permanent character and shall not be altered (a) except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded, and (b) except to the extent necessary to allow for the conversion of convertible space as provided in ARTICLE XXVI; provided however, that in the event of expansion conversion of convertible space, undivided ownership interests in the Common Areas shall be re-allocated pursuant to this Section 4.1.

Section 4.2 Limited Common Area. In addition to the items set forth in Article VI, Limited Common Area shall consist of patios adjacent to each Apartment Home Unit for the exclusive use of that Unit. The Limited Common Areas shall be used in connection with, and maintained separately by the Owner of such Apartment Home to the exclusion of the use thereof by the other Owners except by invitation.

Section 4.3 Common Area – Parking. The Association shall maintain as part of the Common Area the Parking Areas as shown on the Parcel Map for the use of those Owners and Occupants, and their tenants and/or invitees as designated by the Declarant.

Section 4.4 Title. Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Nevada.

Section 4.5 Inseparability. No part of a Unit or of the legal rights comprising ownership of that Unit may be separated from any other part of that Unit during the period of Condominium ownership prescribed herein, so that each Unit and the undivided interest and/or share in the Common Area appurtenant or allocated to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Unit or any part thereof shall be presumed to be a gift, devise, request, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

Section 4.6 Partition Not Permitted. The Common Area shall be owned in common by all Owners of Units, and no Owner may bring any action for partition thereof.

Section 4.7 Owner's Right to Common Area. Subject to the limitations contained in this Declaration, and to the Association Rules and Regulations, each Owner shall have the nonexclusive right to use and enjoy the Common Area, and shall have the exclusive right to use and enjoy the Limited Common Area designated herein for exclusive use by such Owner.

Section 4.8 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Unit. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against such Owner's Unit or interest therein, or such Owner's interest in the Common Area or any part thereof directly to the County. Each Owner shall pay all taxes, rates, impositions, and assessments levied against the Project or any part of the Common Area in proportion to such Owner's interest in such Common Area as set forth in Exhibit E, and such payment is to be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at the rate of ten percent (10%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien created by Section 15.5 hereof. Notwithstanding the foregoing, taxes, assessments, or other charges attributable to the Common Area shall be apportioned among the Owners as provided in Article XV hereof.

Section 4.9 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, paper, or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors and to clean the interior surfaces of windows, all of which form the boundaries of that Owner's Unit and all walls, ceilings, floors, and doors within such boundaries.

Section 4.10 Windows. The cleaning of exterior surfaces of windows is expressly reserved to the Association. No Owner may, without the consent of the Association, place anything in or on the Unit windows, which is in variance with the general appearance of windows of similar Units.

Section 4.11 Easements for Encroachments. If any part of the Common Area encroaches or shall hereinafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Area or the Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising, or shifting of the earth or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 4.12 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Area or Limited Common Area is or may be located within the Units or may be conveniently accessible only through the Units. The Owners shall have the irrevocable right, to be exercised by the Association as their agent, to have access to all parts of the Project from time to time during such reasonable hours as may be necessary, and with such notice as may be specified in tenant leases, if any, except in cases of emergency, for the maintenance, repair, or replacement of any of the Common Area located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Project. (As used herein "**emergency**" means repair, maintenance, or replacement, which is required to rectify or mitigate any condition that imposes a real and immediate risk of injury to a Person, or serious and irreparable damage to property). The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Area or as a result of emergency repairs within another Unit at the insistence of the Association or of Owners shall be an expense of all of the Owners; provided however, if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article XV below.

Section 4.13 Owner's Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area reasonably necessary for access to such Owner's Unit, any parking space or spaces which such Owner has the right to use and to the Limited Common Area designated for use in connection with such Owner's Unit and shall have the right to the horizontal and lateral support of such Owner's Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

Section 4.14 Association's Right to Use of Common Area. The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Area maintenance and storage facilities for use by the Association.

Section 4.15 Easements and Utilities. In order to adequately serve each Unit, utility facilities may be constructed and may encroach on Common Area or on the Units. An easement for such encroachment and for the maintenance of the same shall and does exist.

Section 4.16 Declarant's Right Incident to Construction. Declarant shall have the right to and does hereby reserve an easement and right-of-way for ingress and egress over, upon, under, through and across the Common Area and the right to store materials thereon and to make

such other use thereof as may be reasonably necessary incident to Declarant's development of the Project.

Section 4.17 Easements Deemed Created. All conveyances of Units, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to this Article IV, even though no specific reference to such easements or to this Article IV is included in any such conveyance.

Section 4.18 Maintenance and Management of Common Areas. The Association may hire an outside building management company or building manager ("Manager"), which shall be instructed to act prudently and diligently to manage and control the Common Area in a manner compatible with good business practices and for the benefit of all Owners. Maintenance of the Common Area shall be an expense of all Owners. Maintenance of the Limited Common Areas shall be an expense of the Owner of the Unit to which such Limited Common Area is appurtenant.

Section 4.19 Allocation of Interests.

(a) Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is equal to one divided by the total number of Units in the Project.

(b) Liability for Common Expenses. The percentage of Liability for Common Expenses allocated to each Unit is equal to one divided by the total number of Units in the Project. Nothing contained in this Section shall prohibit certain Common Expenses from being apportioned to particular Units under this Declaration.

Section 4.19.2 Votes. Each Unit in the Project shall have one (1) equal vote.

Section 4.19.3 Assignment of Allocated Interests Pursuant to Exercise of Development Rights. The effective date for assigning or re-assigning Allocated Interests to Units, in the event of a relevant exercise of a Development Right pursuant to Article VIII of this Declaration, shall be the date on which the amendment creating, withdrawing, or converting such Units is recorded in the Recorder's Office for Elko County, Nevada.

Section 4.20 Separate Conveyance of Common Elements Prohibited. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

Section 4.21 Use Restrictions. Subject to the Special Declarant Rights reserved under Article VIII, the following use restrictions apply to all Units and to the Common Elements:

Section 4.21.1 The use of each Unit is restricted to that of a single-family residence and accessory uses as permitted herein. Except for those activities conducted as a part of the marketing and development program of Declarant, no industry, business, trade or commercial activities shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes. The provisions of this Section shall not preclude a professional or administrative occupation, provided that there is no external evidence of any such occupation, for so long as such occupations are conducted in conformance

with all applicable governmental ordinances and are merely incidental to the use of the Unit as a residential home.

Section 4.21.2 No immoral, improper, offensive or unlawful use may be made of the Property; Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Nevada and all applicable county or city ordinances, rules and regulations. The violating Owner shall hold harmless the Association and other Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance.

Section 4.21.3 Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article VIII, the following occupancy restrictions apply to all Units, Limited Common Elements and to the Common Elements:

Section 4.21.4 No electrical device creating overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Owner who caused such damage. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

Section 4.21.5 Each Owner shall maintain his or her Unit in a clean and well maintained condition. No storage of trash will be permitted in any Unit in a manner which may permit the spread of fire, odors, seepage or encouragement of vermin. Furthermore, no storage of trash will be permitted outside of any Unit except in areas and receptacles designed for such purpose. Without limiting the foregoing, no bicycles, refrigerators, boxes, refuse or debris or other items which may be deemed storage items may be placed on balconies or patio areas where they can be seen and laundry may not be placed to dry on balcony or patio areas.

Section 4.21.6 Any parking spaces designated as visitor parking by the Board of Directors are for the sole use of visitors and guests only and may not be used by Owners. Such parking spaces may be used only for operable vehicles, but specifically excluding oversized trucks, commercial vehicles, motorhomes, boats, personal watercrafts, campers and trailers. Furthermore, no inoperable vehicles, motorhomes, boats, personal watercrafts, campers or trailers may be parked in any parking space within the Project, regardless of whether the parking space is designated for use by visitors or residents.

Section 4.21.7 No noxious, offensive, dangerous or unsafe activity shall be conducted in any Unit, nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants of Units. No Owner or occupant of a Unit shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, comforts or convenience of other Owners or Unit occupants.

Section 4.21.8 No animals, fowls, reptiles, poultry, fish or insects of any kind shall be raised, bred or kept within the Property, except that a reasonable number of dogs, cats or other household pets may be kept within a residence, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of this Declaration and such limitations as may be set forth in the Rules, and further provided that no individual pet (including, without limitation, any dog) may exceed twenty five (25) pounds in weight. As used in this Declaration

"unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners in the Property. Animals belonging to Owners, residents, or their guests within the Property must be either kept within an enclosure or on a leash or other restraint being held by a person capable of controlling the animal, and who then has in his possession a proper or adequate utensil or other means of cleaning up immediately all feces of such animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, residents, their families and guests, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by an Owner or resident or by members of their family or guests; and it shall be the absolute duty and responsibility of each such Owner to clean up immediately after such animals which have used any portion of the Common Elements. The Board of Directors may impose and levy a reasonable pet fee upon all Owners which have dogs and/or cats for the purpose of reimbursing the Association for the costs of additional maintenance of the Common Elements which may be reasonably necessary. Such a fee, if imposed, must be imposed on a per pet basis.

Section 4.21.9 Generally, the portion of the Common Elements outside of the buildings in which the Units are located shall be improved and used only for the following purposes:

(a) Affording vehicular passage and pedestrian movement within the Project, including access to the Units;

(b) Recreational use by the Owners and occupants of Units in the Project and their guests, subject to rules established by the Board of Directors;

(c) Beautification of the Common Elements and providing privacy to the residents of the Project through landscaping and such other means as the Board of Directors (or the Architectural Committee, as applicable) shall deem appropriate; and

(d) Parking of automotive passenger vehicles in areas provided therefor, upon such terms and conditions as may from time to time be determined by the Board of Directors.

Section 4.21.10 The following uses are hereby expressly prohibited:

(a) No garbage or refuse may be placed or left in the Common Elements except in areas and receptacles provided for that use.

(b) No planting may be done in the Common Elements by any Owner, except at the direction of the Board of Directors.

Section 4.21.11 No part of the Common Elements shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Elements be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Elements or in storage areas designated by the Board of Directors), nor in any manner which shall increase the rate at which insurance against loss by fire, or the perils of the extended coverage endorsement to the fire policy form, or bodily injury or property damage liability insurance covering the Common

Elements and the improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

Section 4.21.12 Other than signs placed by Declarant, and other than a single political sign (that is, a sign that expresses support for or opposition to a candidate, political party, or ballot question) not larger than 24 inches by 36 inches, no signs, window displays or advertising visible from outside a Unit or its Limited Common Elements (except for a name plate, door number, or sign not exceeding nine square inches in area, on the main door to each Unit) shall be maintained or permitted in any part of a Unit or its Limited Common Elements.

Section 4.21.13 There will be no changes made to the appearance of any Unit without permission of the Association.

Section 4.21.14 Owners shall strictly adhere to all manufacturer's recommendations for the installation, use, maintenance and repair of any components Owner may install in Owner's Unit. Electrical appliances shall not be used where manufacturer recommendations restrict circuit loads, wattage or other specific rating restrictions.

Section 4.21.15 Storage areas shall be used exclusively for the storage of ordinary household goods, provided that: (a) no flammable, dangerous, hazardous or toxic materials shall be kept, stored, or used in any storage area, and (b) doors to storage areas shall be kept fully closed at all times except for reasonable periods during the removal or entry of vehicles or other items therefrom or thereto. No storage area may be used for a permanent or temporary dwelling, and no animal shall be housed or kept in any storage area.

Section 4.21.16 Parking stalls are to be used for parking of operable vehicles only, and no inoperable or unregistered vehicle shall be allowed within the Project.

Section 4.21.17 All draperies that can be seen from the outside of the Unit must have a white or off-white backing.

Section 4.21.18 Except to the extent permitted by law, no exterior radio antenna, television antenna, "C.B." antenna, satellite dish or other antenna of any type shall be erected or maintained on any portion of the Property except as approved by the Board and the Declarant (so long as the Declarant owns any portion of the Property or holds any Development Right to expand the Project). Notwithstanding the foregoing, a master antenna system or duly franchised cable television service or telecommunication service may, but need not, be provided by the Declarant or the Association for use by, and at the expense of, the Owners. The Declarant reserves the right to grant easements for maintenance of any such master antenna system, cable television service or telecommunication service.

Section 4.22 Laws and Insurance Requirements. Nothing shall be done to or kept on any Unit or improvement thereon that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Unit or any improvement thereon that violates any of the restrictions contained in this Declaration or any law, ordinance, statute, rule, or regulation of any local, county, state or federal body, including, without limitation, local ordinances relating to zoning and building codes.

Section 4.23 Restrictions on Alienation. Except as otherwise provided elsewhere in this Declaration, there are no restrictions on the renting of Units within the Project; provided, however, that (i) the Owner of a Unit which is rented for a period of twenty-eight (28) days or more shall provide to the Association within ten (10) days after renting the same the names, mailing addresses and telephone number of its tenants; (ii) a Unit may not be conveyed or occupied pursuant to a time-sharing plan; (iii) all leases and rental agreements shall be in writing and subject to the requirements of the Governing Documents and the Association; and (iv) all leases of a Unit shall include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Governing Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Section 4.24 Declarant's Rights. As long as Declarant is an Owner, Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by Declarant or any portion of the Common Elements, as model units or sales offices. Declarant may also maintain management offices and signs and displays advertising the Project.

ARTICLE V DESCRIPTION OF A CONDOMINIUM

Section 5.1 Description of Condominium. Every contract for the sale of a Unit and every other instrument affecting title to a Unit shall describe that Unit by the number shown on the Condominium Map or Parcel Map and in this Declaration as each appears on the records of the County Clerk of Elko County, Nevada in the following fashion:

Unit _____ as shown on the Condominium Map for Riverside Villas recorded in the Records of Elko County, Nevada as Instrument No. _____ and as defined and described in that Condominium Declaration for Riverside Villas recorded in the Records of Elko County, Nevada as Instrument No. _____.

Such description shall be construed to describe the Unit together with the appurtenant undivided interest in the appropriate Common Area, Limited Common Area, Common Elements, and Limited Common Elements, and to incorporate all the rights incident to ownership of a Unit and all the limitations on such ownership as described in this Declaration.

ARTICLE VI LIMITED COMMON AREA

Section 6.1 Description. Any Limited Common Elements as well as tanks, pumps, motors, ducts, chutes, flues, pipes, plumbing, wires, conduits, and other utility or life safety system, equipment, installation, or fixture serving only one Unit is Limited Common Area of that Unit. Any patios, and all exterior doors and windows or other fixtures designed to serve a single Unit but which are located outside the appurtenant Unit's boundaries, are Limited Common Areas allocated exclusively to that Unit.

Section 6.2 Assigned Limited Common Elements. The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

Section 6.2.1 If a chute, flue, pipe, duct, wire, conduit, HVAC Unit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

Section 6.2.2 Any shutters, awnings, window boxes, doorsteps, storage areas, entry areas, stoops, porches, balconies, patios and exterior doors and windows or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

Section 6.2.3 Entry areas, stoops, steps and walls above door openings at the entrances to each building which provide access to less than all Units are Limited Common Elements allocated exclusively to the Units to which they provide access and the use of which is limited to the Units to which they provide access.

Section 6.2.4 Exterior surfaces, trim, siding, doors and windows will be Limited Common Elements allocated to the Units sheltered.

Section 6.2.5 Mailboxes, name plates and exterior lighting affixed to the building will be Limited Common Elements allocated to the Units served.

Section 6.2.6 In addition to the foregoing, the Owners of each Unit shall have for so long as this Declaration remains in effect an exclusive easement to the parking space(s) designated for such Unit by Unit number on the parking plan attached as Exhibit G hereto. Such parking space(s) shall be a Limited Common Element for the exclusive use of the Owners or tenants of the Unit to which each such parking space is appurtenant. Declarant reserves a special power of attorney coupled with an interest to execute such documents as are reasonably necessary on behalf of Owners and Eligible Mortgagees to assign and change the assignment of parking spaces for so long as Declarant owns any Unit within the Project.

Section 6.2.7 Subsequently Allocated Limited Common Elements. Those portions of the Common Elements shown as unnumbered or unassigned parking spaces on the Plat and Plans, if any, may be allocated as Limited Common Elements in accordance with this Declaration, or may be assigned or limited to visitor parking only by the Board of Directors through the Rules.

Section 6.3 Reallocation. Limited Common Area may be reallocated between Units or Common Area reallocated as Limited Common Area or Limited Common Area may be incorporated into an existing Unit with the approval of all the Owners. The reallocation or incorporation shall be reflected in an amendment to the Declaration and Parcel Map. The Owner or Owners benefited thereby shall bear all costs associated therewith in proportion to the relative benefits to each such Unit as determined by the Board.

Section 6.4 Use and Access. The Owner of the Unit to which Limited Common Area is allocated shall have the right to the exclusive use of the Limited Common Area, which

right shall extend to the Owner's Occupants, tenants, family members, invitees, guests and other Users authorized by the Owner.

Section 6.5 A Common Element not previously allocated as a Limited Common Element pursuant to Article VI hereof or the Plat and Plans may be so allocated only pursuant to the provisions of this Declaration. All allocations will be made by amendments to the Declaration specifying to which Unit or Units the Limited Common Element is allocated.

Section 6.5.1 Declarant has reserves the right to create Limited Common Elements in the Annexable Property, to convert Units to Limited Common Elements, and to allocate Common Elements as Limited Common Elements. If created, such Limited Common Elements shall be assigned to particular Units by amendment to this Declaration.

Section 6.6 All amendments shall specify to which Unit or Units the Limited Common Element is allocated. Such amendment shall require the approval of all Eligible Mortgagees of the affected Units. Upon executing the amendment, the Persons preparing such amendment shall provide an executed copy of the amendment to the Association, which shall record it, provided that the amendment complies with the provisions of this Declaration and the Act. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Project.

Section 6.6.1 The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable fees and costs in connection with recording the amendment.

ARTICLE VII MAINTENANCE

Section 7.1 Common Elements. The Association shall maintain, repair and replace all of the Common Elements; provided, however, the Association shall not be obligated to perform those maintenance activities assigned to Owners under this Declaration. Without limiting the foregoing, the Association's obligations hereunder shall include the following:

Section 7.2 Painting. Common Elements originally improved with paint shall be periodically repainted, as appropriate, to maintain the original appearance thereof (normal wear and fading excepted);

Section 7.3 Utilities. The Association shall cause to be maintained properly and in good condition and repair all utilities and utility systems in the Common Elements. The Association shall cause any and all necessary or prudent repairs to be undertaken and completed without delay in a manner and to the extent necessary to prevent avoidable deterioration or property damage.

Section 7.4 Drainage; Landscaping; Irrigation. The Association shall cause all drainage systems, landscape installations, and irrigation systems within the Common Elements to be inspected at least quarterly. In particular, the Association shall inspect for any misaligned, malfunctioning or nonfunctional sprinklers, or blocked drainage grates, basins, lines, and systems, which could cause damage to Improvements. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and

maintenance of such drainage and landscape installations, who shall be required to promptly provide a written report to the Board of Directors. The written reports shall identify any items of maintenance or repair that either require current action by the Association, or will need further review and analysis, and shall specifically include a review of all irrigation and drainage systems within the Project. The Board of Directors shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the foregoing, all landscaping shall be maintained as per the following minimum maintenance standards:

Section 7.4.1 lawn and ground cover shall be kept mowed and/or trimmed regularly;

Section 7.4.2 plantings shall be kept in a healthy and growing condition; fertilization, cultivation, spraying and tree pruning shall be performed as part of a regular landscaping program;

Section 7.4.3 stakes, guys and ties on trees shall be checked regularly, to ensure the correct function of each; ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem;

Section 7.4.4 damage to plantings shall be ameliorated within thirty (30) days of occurrence; and

Section 7.4.5 irrigation systems shall be kept in sound working condition; adjustment, replacement of malfunctioning parts, and cleaning of systems, shall be an integral part of the regular landscaping program.

Section 7.5 Hardscape, Private Streets. The Association shall cause all Common Elements hardscape, paved areas, and private streets and drives within the Project to be inspected at least at least once each year (or more frequently as deemed prudent by the Board of Directors) by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such hardscape and paved areas, who shall be required to promptly provide a written report to the Board of Directors. The written reports shall identify any items of maintenance or repair that either require current action by the Association, or will need further review and analysis. The Board of Directors shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the foregoing, the Board of Directors shall cause all Common Element asphalt to be sealed and re-stripped at least as frequently as may be required per City of Elko and/or Elko County standards, or more frequently, if so required, using two coats of a guard top or walk top type sealer.

Section 7.6 Declarant's Rights to Information. From the date of this Declaration until one (1) year after the termination of Declarant's Control Period, Declarant shall be given prior notice of and shall have the right to attend any inspection to be conducted under this Declaration. Furthermore, for of period of ten (10) years after close of escrow of the last Unit to a member of the home buying public, the Board of Directors shall promptly deliver to Declarant informational copies of all written inspections and reports prepared in accordance with this Declaration, without any obligation whatsoever of Declarant to review such documents or to take any action in connection therewith.

Section 7.7 Failure to Maintain. The Association shall be responsible for accomplishing its maintenance and repair obligations fully and timely from time to time, as set forth in this Declaration and the Association Maintenance Manual. Failure of the Association to fully and timely accomplish such maintenance and repair responsibilities may result in deterioration and/or damage to Improvements, and such damage and/or deterioration shall in no event be deemed to constitute a constructional defect. Additionally, failure of the Association to fully and timely accomplish its maintenance and repair responsibilities shall void and render of no effect any warranty as to the Common Elements of which the Association is a beneficiary.

Section 7.8 Units. Each Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except any portion of the Unit required by this Declaration or the Act to be maintained, repaired or replaced by the Association. Any and all gas lines within the Units shall be inspected on a regular basis by a licensed professional or gas company representative at the Unit Owner's expense.

Section 7.9 Limited Common Elements. Except as otherwise specifically set forth herein, each Owner shall be responsible for maintaining in a good and clean condition all Limited Common Elements appurtenant to said Owner's Unit, including, but not limited to, removing leaves and debris, pruning and/or trimming all landscaping, maintenance of patios, balconies, and all fencing fronting enclosed yard areas appurtenant to said Owner's Unit. If any such Limited Common Element is appurtenant to two or more Units, the owners of those Units will be jointly responsible for such maintenance. No additional component or element may be attached to, planted on, or made a part of yards, patios, balconies, exterior surfaces, trim, siding, doors, and windows without consent of the Board of Directors (or the Architectural Committee, as the case may be) in accordance with Article VII. In the event any additional component or element becomes deteriorated or unsightly, or is inconsistent with conditions of installation, it may be removed or repaired by the Association at the Owner's expense as a Violation Assessment under this section, after Notice and Hearing.

Section 7.10 Reserved Easements. Declarant hereby reserves for the Association, and any person authorized by the Board of Directors, a perpetual easement over all portions of the Project for access and all purposes necessary to carry out the Association's activities and obligations under the Governing Documents, including, but not limited to, performing emergency repairs, performing work reasonably necessary for the proper maintenance of the Project, performing installations, alterations, replacements or repairs, and for the purpose of reading, repairing and replacing utility meters and related pipes, valves, wires and equipment, provided that, as to Units, requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

Section 7.11 Right to Grant Easements. The Association is hereby given the right to grant permits, licenses, and easements over the Common Elements for utilities, roads, and other purposes necessary for the proper operation of the Project.

Section 7.12 Repairs Resulting From Negligence. Each Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit or to those Limited Common Elements for which such Owner is responsible under this Declaration. The Association will be responsible for damage to Units which is caused intentionally,

negligently or by its failure to maintain, repair or make replacements to the Common Elements. The Association shall levy a Violation Assessment, following Notice and Hearing, to collect reimbursement under this section.

Section 7.13 Chimneys. Notwithstanding anything else herein to the contrary, each Owner shall be responsible for cleaning, at his or her own expense, the interior area of any chimney serving that Owner's Unit. Any gas line repairs or maintenance within the chimney shall be performed by a licensed professional or gas company representative.

ARTICLE VIII DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 8.1 Reservation of Development Rights. Declarant reserves the following Development Rights:

Section 8.1.1 The right, but not the obligation, by amendment to expand the Property and the Project to include all or part of the Annexable Property. Declarant shall have the unilateral right to transfer to any other person the right to expand which is herein reserved. Declarant shall pay all taxes and other governmental assessments relating to the Annexable Property owned by Declarant until expansion. Such expansion may be accomplished by recording a supplemental declaration or annexation amendment (collectively, "Supplemental Declaration") in the records of the County Recorder of Elko County, Nevada, describing the portion of the Annexable Property to be annexed, submitting it to the covenants, conditions, and restrictions contained herein, and providing for the readjustment of voting rights, undivided interests in Common Elements, and assessment allocations provided for herein on the basis of formulas provided herein, to the extent additional Units are created in such portion of the Annexable Property. Such Supplemental Declaration shall not require the consent of the Owners. Any such expansion shall be effective upon the filing for record of such Supplemental Declaration except as provided therein. The expansion may be accomplished in stages or in a single step. Upon the recordation of any such Supplemental Declaration, the definitions used in this Declaration shall automatically encompass and refer to the Property as expanded. Such Supplemental Declaration may add, delete, or modify provisions of this Declaration as it applies to all or any portion of the Annexable Property then being subjected to the Declaration, provided, however, that this Declaration may not be modified with respect to the Property previously subject to the Declaration, except as provided herein for amendment.

Section 8.1.2 The right, but not the obligation, to create Units, Common Elements and Limited Common Elements upon all or part of the Annexable Property.

Section 8.1.3 The right, but not the obligation, to convert Units owned by Declarant into Common Elements or Limited Common Elements, and to allocate Common Elements as Limited Common Elements in accordance with this Declaration.

Section 8.1.4 The right, but not the obligation, to construct underground utility lines, pipes, wires, ducts, conduits and other facilities upon the real property in the Project, for the purpose of furnishing utility and other services to buildings and Improvements to be constructed in the Project. Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Project not occupied by buildings, for the purposes mentioned above.

Section 8.1.5 The right, but not the obligation, to withdraw any Unit from this Declaration at any time prior to the sale or conveyance of that Unit by Declarant. Such withdrawal shall be accomplished by recording a declaration of withdrawal in the records of the Recorder of Elko County, Nevada, describing the real property to be withdrawn, and providing for the readjustment of voting rights and assessment allocations provided for herein. Such declaration of withdrawal shall not require the consent of the Owners. Any such withdrawal shall be effective upon the filing for record of such declaration of withdrawal except as provided therein. The withdrawal may be accomplished in stages by successive declarations or in one declaration of withdrawal.

Section 8.1.6 The right, but not the obligation, to unilaterally amend, rescind or terminate this Declaration at any time prior to the close of the first sale of a Unit.

Section 8.1.7 The right, but not the obligation, to create sub-associations and supplemental declarations for the operation thereof.

Section 8.1.8 As to each portion of the Project, the right, but not the obligation, to withdraw such portion of the Project from this Declaration at any time prior to the sale or conveyance of a Unit created by the Plat and Plan covering that portion of the Project.

Section 8.2 Limitations on Development Rights. The Development Rights reserved in Section 8.1 are limited as follows:

Section 8.2.1 The Development Rights may be exercised at any time within ten (10) years after the recording of the initial Declaration.

Section 8.2.2 The construction of any buildings and Improvements to be built and annexed into the Project shall be consistent with the quality of those buildings and Improvements constructed in Phase 1 (this limitation shall not prevent Declarant from having the right to substitute materials of like durability and strength);

Section 8.2.3 All Units and Common Elements created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Units created under this Declaration as initially recorded;

Section 8.2.4 All taxes, assessments, mechanic's liens and other charges affecting the Project arising in connection with Declarant's ownership of, and construction of Improvements upon, the Annexable Property which may adversely affect the rights of existing Owners, or the priority of any Eligible Mortgagee on Units in the Project, are to be paid or otherwise satisfactorily provided for by Declarant;

Section 8.2.5 Improvements to be constructed on portions of the Annexable Property annexed into the Project shall be substantially completed prior to annexation; and

Section 8.3 Special Declarant Rights. Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Project:

Section 8.3.1 To complete any Improvements indicated on the Plat and Plans;

Section 8.3.2 To exercise any Development Right reserved in this Declaration;

Section 8.3.3 To maintain sales offices, management offices, signs advertising the Project and models which are reasonably necessary to market the Units or any other real property owned by Declarant regardless of whether such real property is part of the Project;

Section 8.3.4 To use easements through the Common Elements for the purpose of making improvements within the Project or within real estate which may be added to the Project or any other real property owned by Declarant regardless of whether such real property is part of the Project;

Section 8.3.5 To make the Project subject to a master association;

Section 8.3.6 To merge or consolidate the Project with another common interest community of the same form of ownership; and

Section 8.3.7 To appoint or remove any officer of the Association or any member of the Board of Directors during the Declarant Control Period.

Section 8.4 Models, Sales Offices and Management Offices. For so long as Declarant is an Owner, Declarant, its duly authorized agents, representatives and employees reserves the right to use a portion of any "clubhouse" facility in the Common Elements for sales offices and/or management offices. Declarant further reserves the right to maintain any Unit owned by Declarant or any portion of the Common Elements as a model Unit, sales office or management office.

Section 8.5 Construction; Declarant's Easement. Declarant reserves the right to perform warranty work, repairs and construction work in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed by Declarant without the consent or approval of the Board of Directors. Declarant has an easement through the Common Elements (including but not limited to that portion of the Common Elements consisting of the private streets and entry gates) as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners or upland owners to fulfill the plan of development. Such power to convey easements over the Common Elements shall pass to the Association at such time as Declarant no longer owns any portion of the Property or the Annexable Property.

Section 8.6 Signs and Marketing. Declarant reserves the right to post signs and displays in the Common Elements in order to promote sales of Units. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

Section 8.7 Declarant's Personal Property. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Project that has not been represented as property of the Association. Declarant reserves the right to remove from the Project (promptly after the sale and close of escrow of the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 8.8 Declarant Control of the Association.

Section 8.8.1 Subject to this Section 8.8, there shall be a Declarant Control Period during which the Declarant, or persons designated by Declarant, may appoint and remove the officers of the Association and members of the Board of Directors. The Declarant Control Period terminates no later than the earlier of:

(a) Sixty (60) days after conveyance of 75% of the Units that may be created to Owners other than a declarant (as defined in the Act); or

(b) Five (5) years after the first Unit is conveyed by Declarant; or

(c) Five (5) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

Section 8.8.2 Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before the termination of the Declarant Control Period. In that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 8.8.3 Not later than sixty (60) days after conveyance of 25% of the Units that may be created to Owners other than a declarant (as defined in the Act), at least one member and not less than 25% of the members of the Board of Directors shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of 50% of the Units that may be created to Owners other than a declarant (as defined in the Act), not less than 33-1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.

Section 8.8.4 Not later than the termination of the Declarant Control Period, each member of the Board of Directors must have been elected by the Owners as provided in the Bylaws.

Section 8.8.5 Notwithstanding any provision of this Declaration to the contrary, the termination of the Declarant Control Period shall not affect Declarant's rights as an Owner to exercise the votes allocated to Units which Declarant owns.

Section 8.9 Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant until the later of the following: as long as Declarant (a) is obligated under any warranty or obligation, (b) holds a Development Right, (c) owns any Unit; (d) owns any Security Interest in any Units; or (e) fifteen (15) years have elapsed after the recording of this Declaration. Earlier termination of certain rights may occur by statute.

Section 8.10 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

Section 8.11 Declarant's Rights to Complete Development. No provision of this Declaration shall be construed to prevent or limit Declarant's rights, hereby reserved, to complete the development, construction, promotion, marketing, sale and leasing of Units within the boundaries of the area comprised of the Property and the Annexable Property; to construct or alter Improvements on any property owned by Declarant within such boundaries; to maintain

model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within such boundaries; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within such boundaries. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approval to: (a) excavate, cut, fill or grade on any property owned by Declarant, or to construct, alter, remodel, demolish or replace any Improvements on any property owned by Declarant; (b) use any structure on any part of the Property or any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within such boundaries; or (c) require Declarant to seek or obtain the approval of the Board of Directors, the Architectural Committee or the Association for any such activity or Improvement to property by Declarant on any part of the Property or any property owned by Declarant. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provide in this Declaration. In exercising Declarant's rights under this Article VIII, Declarant shall not unreasonably interfere with any non-Declarant Owner's use and enjoyment of his or her Unit.

Section 8.12 Priority of Declarant's Rights and Reservations. Declarant shall have, and hereby retains and reserves, certain rights as set forth in this Declaration with respect to the Association and the Project. The rights and reservations of Declarant set forth in this Declaration shall be deemed excepted and reserved in each recorded supplemental declaration or annexation amendment, in each conveyance of property by Declarant to the Association and in each deed or other instrument by which any property encumbered hereby is conveyed by Declarant, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in this Declaration shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration, including any amendment of this Section. Declarant's consent to anyone such amendment shall not be construed as consent to any other or subsequent amendment.

Section 8.13 Assignment of Declarant's Rights and Duties. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any Person which will assume any or all of the duties of Declarant hereunder, and upon any such Person's evidencing consent in writing to accept such assignment (and recordation of the same in the Office of the Elko County Recorder), said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties hereunder.

Section 8.14 Phasing of Development Rights. Declarant may exercise its Development Rights with respect to different portion of the Project and Annexable Property at different times. No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such portions of the Project or Annexable Property will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise its Development Rights as to other portions.

ARTICLE IX ADDITIONS, ALTERATIONS, AND IMPROVEMENTS

Section 9.1 Requisite Approvals and Procedures for Owner Alteration. No Owner may (i) alter the exterior appearance of any Unit or Common Elements, or (ii) alter, in any way, the originally installed condition of any component contained within the framing of a structure, or (iii) make or commence any structural addition, structural alteration or Improvement in the Project—including without limitation, the alteration or construction of a building, fence, wall or structure or the placement, erection or alteration of any Limited Common Element—without the prior written consent of the Board of Directors or if an architectural committee is appointed by the Board of Directors ("Architectural Committee"), then by the Architectural Committee. The Architectural Committee may have not less than one (1) nor more than three (3) members who need not be Members of the Association.

Section 9.1.1 Any request for approval of anything prohibited under this Declaration must be submitted in writing to the Board of Directors or the Architectural Committee, as applicable. The Board of Directors or the Architectural Committee shall answer any written request for approval within sixty (60) days after the request. Failure to answer the request within this time shall not constitute a consent or approval by the Board of Directors or the Architectural Committee to the proposed action. Any such request shall be reviewed in accordance with any Architectural Committee Rules then in effect.

Section 9.1.2 Any applications to any department or governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. This execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of the addition, alteration or improvement or to any person because of any claim for injury to person or damage to property arising from the permit.

Section 9.1.3 Any member or authorized consultant of the Board of Directors or the Architectural Committee, or any authorized officer, Manager, employee or other agent of the Association may enter upon any Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect any structural addition, alteration or Improvement constructed or under construction in the Unit to determine whether the work has been or is being built in compliance with the plans and specifications approved by the Board of Directors or the Architectural Committee. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

Section 9.1.4 All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Board of Directors, cause any increase in the premiums of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

Section 9.2 Limitation on Liability of Architectural Committee. Provided that the Architectural Committee or a particular member of the Architectural Committee has acted in good faith on the basis of the information as may be possessed by the Architectural Committee or the member, as the case may be, then neither the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner, or any other person for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans,

drawings, and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property subject to this Declaration. Without limiting the generality of the foregoing, the Architectural Committee and any member thereof may, but it is not required to, consult with knowledgeable outsiders with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

Section 9.3 Architectural Committee Rules. The Architectural Committee shall, upon request of the Board of Directors and subject to the approval of the Board of Directors, prepare and promulgate Architectural Committee Rules containing guidelines and review procedures on behalf of the Association. The Architectural Committee Rules shall be those of the Association, and the Architectural Committee shall have sole and full authority to prepare and to amend the Architectural Committee Rules, provided the Architectural Committee Rules are otherwise in compliance with the Act, the Articles, the Bylaws and this Declaration. The Architectural Committee shall make Architectural Committee Rules available to Owners.

Section 9.4 Board of Directors and Architectural Committee Discretion. Except as may be expressly provided in this Declaration (and subject to the limitations of Nevada law), any consent or approval of the Board of Directors, Architectural Committee, that is required under the provisions hereof may be granted or withheld in the sole and absolute discretion of the Board of Directors, Architectural Committee, as applicable. In that regard, the granting or withholding of such consent or approval shall not be subject to any objective standards of "reasonableness" or otherwise. Further, the approval of or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

Section 9.5 No Applicability to Construction by Declarant. The provisions of this Article IX shall not apply to the initial construction by Declarant in the Project, and neither the Board of Directors nor any Architectural Committee appointed by the Board of Directors shall have any authority or right to approve or disapprove the initial construction by Declarant in the Project.

Section 9.6 No Applicability to Board of Directors. Subject to the limitations of this Declaration, the Board of Directors may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

ARTICLE X BOUNDARIES

Section 10.1 Application and Amendment. The boundaries between adjoining Units may not be relocated without the approval of the Board of Directors or the Architectural Committee, as applicable, under Article IX. In addition to the plans and specifications required for approval under Article IX, a request for a boundary adjustment must be accompanied by the written consent of all Owners of the Units affected by the relocation. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocation. In the event that the Board of Directors or the Architectural Committee approves the request for boundary adjustment, the Association shall prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent (the consent of a Majority of Owners shall not be required). The amendment

must be executed by those Unit Owners affected and contain words of conveyance between them. The approval of all holders of Security Interests in the affected Units shall be endorsed on the conveyance. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 10.2 Recording Amendments. The Association shall prepare and record an amendment to the Plat and Plans as necessary to show the altered boundaries between adjoining Units, along with the Units' dimensions and identifying numbers. The applicants will pay for the costs of preparation of the amendment and its recording, as well as any reasonable consultant fees incurred by the Association.

ARTICLE XI MECHANIC'S LIEN RIGHTS

Section 11.1 Condominium Labor. No labor performed or services or materials furnished with the consent or at the request of an Owner or such Owner's agent, contractor, or subcontractor shall be the basis for the filing of a lien against the Unit of any other Owner or against any part thereof or against any other property of any other Owner unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Unit in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove such Owner's Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien, which is attributable to such Owner's Unit.

ARTICLE XII AMENDMENTS TO DECLARATION

Section 12.1 In General. Except in cases of amendments that may be executed (i) by Declarant in the exercise of its Development Rights or (ii) by the Association under this Declaration and NRS 116.1107, this Declaration, including the Plat and Plans, may be amended only by vote or agreement of a Majority of Owners. The procedure for amendment must follow the procedures set forth in NRS 116.2117.

Section 12.2 Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 12.3 Recordation of Amendments. Each amendment to this Declaration must be recorded in the Elko County Recorder's Office, and the amendment is effective only upon recording.

Section 12.4 Unanimous Consent. Except to the extent expressly permitted or required by other provisions of this Declaration or the Act, an amendment may not increase the number of Units, change the boundaries of any Unit, change the Allocated Interests of a Unit or

change the uses to which any Unit is restricted, except by unanimous consent of the Owners affected and the consent of a Majority of Owners.

Section 12.5 Execution of Amendments. An amendment to this Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 12.6 Special Declarant Rights. Provisions in this Declaration creating or relating to Special Declarant Rights (including, without limitation, Development Rights) may not be amended without the consent of Declarant.

Section 12.7 Amendments Related to Development Rights. To exercise any Development Right reserved under Article VIII of this Declaration, Declarant shall prepare, execute and record an amendment to this Declaration (which amendment may be an annexation amendment, if applicable). Said amendment shall comply with applicable provisions of the Act. Declarant shall also record new Plat and Plans to the extent necessary to conform to the requirements of NRS 116.2109(1), (2) and (4). An amendment pursuant to which Units are created shall assign an identifying number to each new Unit created and state the reallocation of Allocated Interests among all Units. Such an amendment shall also describe any Common Elements and any Limited Common Elements created and designate the Unit to which each Limited Common Element is allocated to the extent required by NRS 116.2108(a).

Section 12.8 No Limitation. Nothing herein shall limit or expand any of the rights or duties arising under NRS 116.

ARTICLE XIII THE ASSOCIATION

Section 13.1 Membership. The Articles of Incorporation and Bylaws of the Association copies of which are attached hereto are made a part of this Declaration. Every Owner shall be entitled and required to be a Member of the Association. If title to a Unit is held by more than one Person, the membership related to that Unit shall be shared by all such Persons in the same proportionate interests and by the same type of tenancy in which the title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by that Owner. No Person or entity other than an Owner may be a Member of the Association and the memberships in the Association may not be transferred except in connection with the transfer of a Unit; provided, however, the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Unit.

Section 13.2 One Membership per Unit. One membership in the Association ("Membership") shall be appurtenant to each Unit. No Membership may be transferred separate and apart from the Unit.

Section 13.3 Duties. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the

Articles or Bylaws, then such provision shall be construed as consistent with the provisions of this Declaration.

Section 13.4 Initial Voting Rights. Initially there shall be two (2) classes of voting Members, Class A and Class B.

Section 13.4.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant until the Class B Membership, as defined below, has been converted to Class A Membership, and after such conversion all Owners shall be Class A Members. Each Class A Member's voting right shall be based upon a percentage basis. The percentage basis to which each Class A Member is entitled shall be equal to the number of Units owned by that Person. The Association may, but shall not be obligated to recognize the vote or written consent of any co-Owner except the vote or consent of the co-Owner designated in writing executed by all such co-Owners and delivered to the Association.

Section 13.4.2 Class B Members. The Class B Member shall be the Declarant. The Class B Member's voting rights shall be based upon a percentage basis multiplied by three (3). The percentage basis to which the Class B Member is entitled shall be the percentage basis which is set forth in Exhibit E attached hereto. The Class B Membership shall cease and be converted to Class A Membership when Declarant owns less than twenty five percent (25%) of the total of all Units.

Section 13.5 Voting Rights without Class B Membership. Upon the termination of the Class B Membership pursuant to Sections 13.4 and 13.5 and except as otherwise provided in the Articles, Bylaws, this Declaration, the Act or other appropriate Chapters of the Nevada Revised Statutes, all matters requiring the approval of Members shall be deemed approved if a Majority of Members assent to them by written consent as provided in the Bylaws or, if approved by a majority vote of a quorum (as set forth in the Bylaws) of Members at any regular or special meeting held in accordance with the Bylaws.

Section 13.6 Election of Directors. Upon the termination of the Class B Membership pursuant to Sections 13.4 and 13.5, the Board of Directors of the Association shall be elected in accordance with the Bylaws.

Section 13.7 Transfer. Except as otherwise expressly stated herein, any of the rights, interests, and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other Person or entity; provided, however, no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owner as set forth herein.

Section 13.8 Amplification. The provisions of this Article are amplified by the Articles of Incorporation of the Association and by the Bylaws of the Association; provided, however, no present or future provision of such Articles of Incorporation or Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

Section 13.9 Voting and Approvals. No action requiring a vote, the consent or the approval of the Members, with the exception of the election of the Board of Directors as set forth in this Article XIII, shall be deemed passed or approved except upon the affirmative vote of seventy-five (75%) of the Members based upon the percentage basis to which each Member is

entitled as set forth in Section 13.4 and 13.5, including the affirmative vote, consent or approval of seventy-five (75%) of the Members owning Units based upon the percentage basis to which each Member is entitled as set forth in Section 13.4 and 13.5.

Section 13.10 Open Meetings.

Section 13.10.1 Access. All meetings of the Board of Directors will be open to the Owners, except as hereinafter provided.

Section 13.10.2 Executive Sessions. Meetings of the Board of Directors may be held in executive session, without giving notice and without the requirement that they be open to Owners, only if the action taken at the executive session involves (a) consultation with the attorney for the Association on matters relating to proposed or pending litigation, if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.35 to 49.115, inclusive, or entering into, renewing, modifying, terminating or taking any other action regarding a contract between the Association and the attorney; (b) discussion of the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association; (c) discussion of a violation of the Governing Documents, including, without limitation, the failure to pay an assessment, subject to the rights of the person who may be sanctioned for the alleged violation (as set forth in the Bylaws); (d) discussion the alleged failure of an Owner to adhere to a construction schedule established pursuant to the Declaration; or (e) any other matter permitted by law to be discussed in an executive session.

Section 13.11 The Associations Power to Bring Suit. To protect the Association and the Owners from being subjected to potentially costly or prolonged controversies without full disclosure, analysis and consent; to protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, the Board, in seeking the assent of a Majority of Members to commence an action or maintain an action pursuant to this Section 13.11, shall take the steps set forth below. Any action that may be commenced or maintained only upon the assent of a Majority of Members is referred to in this Article as a "Major Controversy".

Section 13.11.1 Negotiation. The Board shall first endeavor to resolve any Major Controversy by good faith negotiations with the adverse party or parties.

Section 13.11.2 Alternative Dispute Resolution. In the event that good faith negotiations fail to reasonably resolve the Major Controversy, the Board shall then endeavor in good faith to resolve such controversy by mediation, provided that the Board shall not incur liability for or spend more than Two Thousand Dollars (\$2,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a Majority of the Members for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Major Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Major Controversy until the Board has fully complied with the following procedures:

(a) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Major Controversy, and shall obtain, if reasonably available, the written opinions of each and every one of: (1) a licensed Nevada attorney in Northern Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Major Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); and (2) a reputable appraiser and/or real estate consultant regularly conducting business in Northern Nevada, expressly opining how the marketability and market value of Units will likely be affected by such Major Controversy ("Appraiser's Opinion"). (The Legal Opinion and Appraiser's Opinion are sometimes collectively referred to herein as the "Opinions"). The Board shall be authorized to spend up to an aggregate of Two Thousand Dollars (\$2,000.00) to obtain such Opinions, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$2,000.00 limit, with the express consent of seventy-five percent (75%) or more of all of the Members of the Association, at a special meeting called for such purpose.

(b) The Legal Opinion shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including without limitation court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Major Controversy. Said Legal Opinion shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written Legal Opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(c) Upon receipt and review of the Attorney Letter and the Appraiser's Opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, intervention in, or maintenance of the Major Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, and the Appraiser's Opinion together with a written report ("Special Assessment Report") prepared by the Board: (1) itemizing the amount necessary to be assessed to each Member, on a monthly basis, to fund the Quoted Litigation Costs ("Special Litigation Assessment"), and (2) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, the Appraiser's Opinion, and Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Major Controversy against the desirability of accepting any settlement proposals from the adverse party or parties, the Board shall call for a vote of the Members, whereupon: (i) if less than Majority of the Members vote in favor of pursuing such Major Controversy and levying the Special Litigation Assessment, then the Major Controversy shall not be pursued further, but (ii) if a Majority of the Members affirmatively vote in favor of pursuing such Major Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report,

then the Board shall be authorized to proceed to institute, prosecute, maintain, and/or intervene in the Major Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (x) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred ten percent (110%) of the Quoted Litigation Costs, and (y) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than monthly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Major Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

Section 13.11.3 Settlement. In the event of any bona fide settlement offer from the adverse party or parties in the Major Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of a Majority of the Members. If any civil action in which the Association is a party is settled (whether or not a Major Controversy), the Board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting of the Board after the settlement has been reached.

Section 13.11.4 Failure to Comply. Any provision in this Declaration notwithstanding other than as set forth in this Article, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Major Controversy Proceeding. Any institution, prosecution, or maintenance of, or intervention in, a Major Controversy by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Article, shall be unauthorized and ultra vires as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Article to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Major Controversy. This Article may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors; and any purported amendment or deletion of this Article, or any portion hereof, without both of such express prior written approvals shall be void.

ARTICLE XIV CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 14.1 The Management Body. The Association is hereby designated to be the "**Management Body**" and shall administer the Project in accordance the Articles of Incorporation and Bylaws of the Association, and the provisions of this Declaration.

Section 14.2 The Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment

related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair; however, each Owner of a Unit shall keep the Limited Common Area designated for use in connection with such Owner's Unit in a clean, sanitary, and attractive condition and shall maintain and repair the heating equipment and hot water heater, and/or any other equipment servicing such Owner's Unit exclusively. The Association shall be responsible for the maintenance and repair of exterior surfaces of Buildings and Improvements located on the Project including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the landscaping and the care of the grounds, the maintenance and repair of roofs, and the maintenance and repair of other Common Area, including utility lines and all other improvements or materials located within or used in connection with the Common Area. The Association shall be responsible for the removal and disposal of all snow and ice so as to maintain clear access, and ingress and egress, to all driveways, parking areas, and pedestrian pathways and sidewalks. The specification of duties of the Association with respect to particular Common Area shall not be construed to limit the Association's duties with respect to other Common Area, as set forth in the first sentence in this section. For all other duties as set forth in this section, the Manager hired by the Association under Section 4.18 shall attend to the same, and the Association shall oversee the Manager in the performance of these duties. The cost of such management, maintenance, and repair by the Association shall be borne as provided in Article XV.

The Association by and through the Association's officers shall have the right to grant easements for utility purposes over, upon, across, under, or through any portion of the Common Area, and each Owner hereby irrevocably appoints the Association and the Association's officers as attorney-in-fact for such purposes.

Section 14.3 Miscellaneous Services. From time to time, the Association may obtain and pay for the services of any Person or entity to manage the Association's affairs, or any part thereof, to the extent the Association deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any Person or entity with whom or which the Association contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish electrical, water, sewer, trash collection, and other common services to each Unit.

Section 14.4 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as the Owner's respective voting interests. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under the foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

Section 14.5 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units and of the Common Area, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. Such Rules and Regulations may include, without limitation, assignment of particular portions of garage

areas and parking areas within the Common Area for exclusive use by Owners of particular Units. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner or such Owner's Users fail to comply with such Rules and Regulations or with any other obligations of such Owner under this Declaration. The Association may also take judicial action, including, without limitation, injunctive action against any Owner to enforce compliance with such Rules, Regulations, or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

The Association is hereby appointed as the Owners' representative for the purpose of enforcing compliance with such Rules and Regulations. If a Manager is hired by the Association under Section 4.18 it may also be appointed by the Association to serve as such Owner's representative, so long as the Association provides adequate supervision of the activities of such Manager.

Section 14.6 Implied Rights. The Association may exercise any other right or privilege given to the Association expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association herein or reasonably necessary to effectuate any such right or privilege.

Section 14.7 Association Property. The Association may accept and exercise jurisdiction over all property, real and personal, conveyed free and clear of all liens and encumbrances to the Association by Declarant, including (a) easements for operation and maintenance purposes over any portion of the Project and (b) The Association Easements. For purposes of this section, a nonexclusive easement, license or other contractual right to use in favor of the permitted users or any of them shall not be deemed a lien or encumbrance.

Section 14.8 Title to Property Upon Dissolution. The Association may convey, upon dissolution of the Association, the assets of the Association to an appropriate public agency or agencies to be used for purposes similar to those for which the Association was created, or to a nonprofit corporation, association, trust or other organization organized and operated for such similar purposes.

Section 14.9 Arbitration.

Section 14.9.1 Arbitration of Disputes. Any claim, controversy, cause of action, claim for relief, liability or dispute ("Claims") between the Association and Declarant arising out of or relating in any way to the Project, including, without limitation, claims for breach of contract, express or implied, breach of warranty, strict liability, negligence, nuisance, statutory violation, misrepresentation and fraud (including claims in any manner relating to or arising out of a construction defect as defined in NRS 40.615 which have not been resolved as provided in NRS 40.680(2) (mediation)) shall be resolved by binding arbitration pursuant to NRS Chapter 38.

Section 14.9.2 Rules for the Arbitration Proceeding. Claims shall be resolved in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"), the AAA's supplementary procedures for consumer/residential construction disputes (collectively, the "Construction Industry Rules") and the terms of this Article. In the event the provisions of this Article are inconsistent with the Construction Industry Rules, the Construction Industry Rules shall control. If the matter proceeds to arbitration, discovery shall be allowed pursuant to the Nevada Rules of Civil Procedure ("NRCP"). In the event any provision of NRCP pertaining to discovery is inconsistent with the Construction Industry Rules, such

provisions of NRCP shall prevail. Arbitration of any matter pursuant to this clause shall not be deemed a waiver of the attorney/client or attorney/work product privilege in any manner.

Section 14.9.3 Right to Repair. Nothing set forth in this Article is intended to affect the rights of Declarant, contractors or subcontractors under NRS Chapter 40 or any other Nevada law to repair any constructional defect.

Section 14.9.4 Arbitrator. The dispute constituting a claim shall be heard and determined by a single neutral arbitrator who has expertise in the area of the dispute. The arbitrator shall be appointed within a period of time, which in no event shall be more than sixty (60) days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of the Construction Industry Rules shall apply.

Section 14.9.5 Joinder of Parties. The parties may join other parties as provided in the Construction Industry Rules. For example, Declarant may include its contractor and any and all subcontractors and suppliers or other parties in the arbitration.

Section 14.9.6 Location of Arbitration. The venue of the arbitration shall be Elko County, Nevada. Unless the parties agree otherwise, the arbitration shall commence, be conducted, and conclude promptly in accordance with the Construction Industry Rules.

Section 14.9.7 Award. The arbitrator is authorized to provide all recognized remedies available in law or in equity for the claims. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Any award rendered by the arbitrator may be confirmed, entered and enforced in any court having jurisdiction over the matter.

Section 14.9.8 Strict Confidentiality. Except as may be required by law or for confirmation of the award, neither of the parties nor the arbitrator may disclose the existence, content or results of the arbitration hearing without the prior written consent of both parties and such content and results are strictly confidential.

Section 14.9.9 Arbitration Costs and Attorneys Fees. Any costs to initiate arbitration shall be advanced by the party initiating the arbitration, but the costs of arbitration shall ultimately be borne by the losing party and, if there is more than one losing party, in such proportions as the arbitrator may determine. The prevailing party or parties in such arbitration shall be entitled to recover reasonable attorneys' fees from the losing party or parties in such amounts as the arbitrator shall determine.

Section 14.9.10 Statutes of Limitation. The arbitration must be filed within the statute of limitations applicable to the claim.

Section 14.10 Effect of Article. Nothing in this Article shall be construed so as to waive, alleviate, or otherwise modify the Association's obligations under other sections of this Declaration.

ARTICLE XV ASSESSMENTS

Section 15.1 Agreement to Pay Assessment. Declarant, for each Unit owned by Declarant within the Project and for and as the Owner of the Project and every part thereof, hereby covenants, and each Owner of any Unit by the acceptance of a deed, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association periodic assessments made by the Association for the purposes provided in this Declaration and special assessments for capital improvements and other matters as provided in this Declaration. In the case of joint or co-ownerships this liability shall be joint and several. Such assessments shall be fixed, established, and collected from time to time in the manner provided in this Article XV.

Section 15.2 Amount of Total Periodic Assessments. The total periodic assessments against all Units shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses connected with the maintenance and operating of the Common Area and the Parking Areas, or the furnishing of electrical, water, sewer, trash collection, and other common services to each Unit to the extent not separately metered and/or billed to a specific Unit, which estimates may include, among other things, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, landscaping and care of grounds, common lighting and heating, water charges, trash collection, sewer service charges, repairs and maintenance, wages for Association employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus, and /or sinking fund, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

Section 15.3 Notice of Periodic Assessments and Time Payment Thereof. The Association shall make periodic assessments, which assessments shall be annually, quarterly, or monthly, as the Association shall from time to time determine. The Association may, in the Association's discretion, send notice of assessments to each Owner, which notice shall specify the amount of the assessment and the date or dates of payment of the same. No payment shall be due less than fifteen (15) days after the said written notice has been given. Each periodic assessment shall bear interest at the rate equal to the then current Wells Fargo Bank, N.A. prime rate plus five percent (5%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date and shall be subject to an automatic late charge of Fifty Dollars (\$50.00). Failure of the Association to give notice of the assessment shall not affect the liability of any Owner for such assessment, but the date when payment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given.

Section 15.4 Special Assessments. In addition to the annual assessments authorized by this Article XV, the Association may, at any time, levy a special assessment payable over such a period as the Association may determine for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or any other expense incurred or to be incurred as provided in this Declaration. This section shall not be construed as an independent source of authority for the Association to incur expenses, but this section shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof that shall make specific reference to this Article XV. Any amounts assessed pursuant hereto shall be assessed to Owners in the same manner as provided in Section 15.3 of this Article XV. Notice in writing of the amount of such

special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. The Association shall have the power to incur expenses for maintenance and repair of any Unit if such maintenance or repair is necessary, in the opinion of the Board of Directors of the Association to protect the Common Area and the Parking Areas or any other portion of the Project and if the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board of Directors to said Owner or Owners, the Board of Directors shall levy a special assessment against the Owner or Owners or Occupant or User of any such Unit to pay for the cost of such maintenance and repair and any other costs or expenses arising out of or incident to such maintenance and repair and the assessment therefor. A special assessment shall bear interest at the rate equal to the then current Wells Fargo Bank, N.A. prime rate plus five percent (5%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date and shall be subject to an automatic late charge of Fifty Dollars (\$50.00).

Section 15.5 Lien for Assessments. All sums assessed to any Unit pursuant to this Article XV, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association upon recordation of a notice of assessment lien as herein provided. Such lien shall be superior to all other liens and encumbrances on such Unit except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; (b) a lien for all sums unpaid on any Mortgage which encumbers such Unit and which has been duly recorded in Sweetwater County, Wyoming, real estate records, including all unpaid obligatory advances to be made pursuant to such Mortgages and secured by the lien thereof in accordance with the terms of such instrument; and (c) labor or materialmen's liens, to the extent required by law. All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior liens to future liens for assessments as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To create a lien for sums assessed pursuant to this Article XV, the Association may prepare a written notice of the assessment lien setting forth the amount of the assessment, giving rise to the lien, the date due, the amount remaining unpaid, and the name of the record Owner of the Unit and a description of the Unit. Such notice shall be signed by the Association and may be recorded in the office of the County Clerk of Elko County, Nevada. No notice of an assessment lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale by the Association after failure of the Owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner permitted by law in Nevada for the exercise of power of sale in deeds of trust or in any other manner permitted by law, including, without limitation, judicial foreclosure. The Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of assessment lien and all costs and expenses related thereto, including, without limitation, reasonable attorney fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Unit, which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner thereof.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded in the Elko County, Nevada real estate records upon payment of all sums secured by a lien, which has been made the subject of a recorded notice of assessment.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

Without imposing any liability upon the Association for its failure to do so, the Association shall be entitled to report any unpaid assessment remaining unpaid for longer than ninety (90) days after the same shall have become due to any encumbrancer of a Unit; provided, however, such encumbrancer first shall have furnished written notice of such encumbrance to the Association.

Section 15.6 Personal Obligation of Owner. The amount of any periodic or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. If permitted under applicable law, suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of the Owner's Unit.

Section 15.7 Statement of Account. Upon payment of a reasonable fee, not to exceed Fifty Dollars (\$50.00), and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment, the date that such assessment becomes or became due, and credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of Persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments, which became due prior to the date of making such request, shall be subordinate to the lien of a Mortgagee that acquired such Mortgagee's interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) day period provided herein and if thereafter an additional written request is made by such purchaser, is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

Section 15.8 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 15.8, a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

ARTICLE XVI USE OF UNITS

Section 16.1 Units. Each Unit shall be used for residential purposes, in accordance with this Declaration, and the applicable laws, ordinances, rules, regulations and other requirements of all governmental authorities, public bodies and other authorities having jurisdiction over the project. No trade or business of any kind may be carried on therein. Notwithstanding anything to the contrary stated in this Section 16.1, the leasing or rental of a Unit for lodging or residential purposes for any length of time shall not be considered to be a violation

of this Section 16.1 and the Declarant shall have the right to use any portion of the Project, including any Unit owned by Declarant, for a model condominium site and display and sales office during the sale periods.

Section 16.2 Parking Areas. The Parking Areas shall be used exclusively for the purposes of providing parking to the Owners or Occupants or the general public and other lawful uses as permitted by the applicable zoning and other land use plans and regulations (but excluding use as a dwelling unit) in compliance with all applicable laws and regulations.

Section 16.3 Use of Common Area. Except as specifically set forth with respect to Limited Common Area, there shall be no obstruction of the Common Area, nor shall anything be stored on any part of the Common Area without the prior written consent of the Association.

Section 16.4 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any part of the Project which would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of insurance on the Project or any part thereof over what the Association or any Occupant but for such activity, would pay, without the prior written consent of the Association and each Occupant. Nothing shall be done or kept in any part of the Project that would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to or waste of the Common Area or any part thereof shall be committed by any Owner or any of Owner's Occupants or Users, and each Owner shall release the Association and indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or such Owner's Occupants or Users. No noxious, destructive, or offensive activity shall be carried on in any part of the Project nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any Person at any time lawfully residing in or operating a business in the Project. Provided, however, that notwithstanding the foregoing no use or activity otherwise permitted by the Covenants, Conditions, and Restrictions of Riverside Villas shall be prohibited within the Project.

Section 16.5 Rules and Regulations. No Owner shall violate the Rules and Regulations for the use of that portion of the Project to which such Rules and Regulations apply as adopted from time to time by the Association. Except as otherwise provided herein, any Owner shall have the right to enforce any or all of the provisions of any restriction contained in this Declaration or any Rule or Regulation adopted by the Association. Any violation of any state, municipal or local law, ordinance or regulation pertaining to ownership, occupation or use of any property within the Project is hereby declared to be a violation of a restriction in this Declaration and subject to any or all of the enforcement procedures set forth below.

Section 16.6 Maintenance of Interiors. Consistent with Article VII, above, each Owner or Occupant shall keep the interior of such Owner's or Occupant's Unit including, without limitations interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, if any, in a clean, sanitary, and attractive condition and good state of repair; shall keep the Limited Common Area designated for use in connection with such Owner's Unit; and shall keep the heating equipment and water heater servicing such Owner's Unit exclusively in a good state of maintenance and repair.

Section 16.7 Structural Alterations. No structural alterations or modification to any interior walls shall be made to any Unit and no plumbing, electrical, or similar work within the Common Area shall be done by any Owner without the prior written consent of the Association,

except that an Owner may do such work as may be appropriate to maintain and repair Limited Common Area appurtenant to such Owner's Unit.

Section 16.8 Construction Work Generally.

(a) All construction, alteration, replacement or repair work undertaken upon any portion of a Unit or the Project ("**Construction Work**"), shall be accomplished in the most expeditious, diligent and speedy manner possible. Any Person undertaking Construction Work shall take all necessary measures to minimize any damage, disruption or inconvenience caused by the Construction Work to the Occupants or Users of any affected Unit or the Project, and shall make adequate provisions for the safety and convenience of all Occupants and Users of the Project. Specifically, from and after the initial occupancy of any Unit, any Construction Work shall be conducted in a manner and during restricted hours so as to avoid interference with ingress and egress to and the quiet use and enjoyment of the Occupants and Users of the Project.

(b) Any Occupant or User undertaking Construction Work shall promptly repair, at its own cost and expense, any and all damage caused thereby and shall restore the affected portion of the improvements upon which the Construction Work is performed to a condition equal or superior to the condition existing prior to beginning the Construction Work and shall pay all costs and expenses associated therewith and shall indemnify and hold all Occupants and Users harmless from any and all loss, cost, damages, liability, injury or expense (including, but without limitation, claims of lien for work or labor performed, and materials or supplies furnished in connection with Construction Work or the voiding or terminating of any existing warranty applicable to any item or element installed in the Project) caused by or arising out of the performance of the Construction Work.

(c) Except in the event of an emergency, Construction Work shall be undertaken only after giving the Board thirty (30) days' prior written notice of the Construction Work to be undertaken, the scope, nature and extent of the Construction Work, the duration of the work period, and the area in which the Construction Work is to be performed. Such notice shall include copies of any plans and specifications for the Construction Work to be undertaken.

Section 16.9 Compliance with Plans, Laws and Rules. All Construction Work shall comply with the plans and specifications therefor approved under this Declaration, and with all applicable laws, ordinances, rules, regulations and other requirements of all governmental authorities, public bodies and other authorities having jurisdiction (such as public utilities), including, without limitation, environmental and zoning laws and building codes. The Person performing the Construction Work shall also secure all licenses and permits required therefor by said authorities. All Construction Work shall be performed in accordance with rules and regulations from time to time promulgated by the Board.

Section 16.10 Emergency Work. Notwithstanding any requirement for prior notice or approval contained in this Declaration, in the event of an emergency condition, any Occupant or User may undertake the necessary Construction Work to remedy any emergency condition, provided that such Occupant or User does so in good faith, gives notice thereof to the Board upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable provisions of this Article XVI, to the extent feasible under the circumstances.

Section 16.11 Enforcement Responsibility. Without limitation upon its general powers, the Association shall be responsible for enforcement of all of the covenants of this Article XVI with respect to all Construction Work performed within the Project.

Section 16.12 Parking Restrictions. No vehicle shall be parked or left on the property subject to this Declaration other than on the designated parking area. The parking area shall be used for parking operable vehicles only and shall not be converted for living, recreational or business purposes, nor shall anything be stored in any parking area so as to prevent the parking of an automobile thereon. No exposed storage shall be permitted anywhere on the property. Camper, boat and other recreational vehicle storage on the Common Area shall not be permitted.

Section 16.13 Signs. Except for signs as may be used by Declarant in connection with the sale of Units, no sign of any kind shall be displayed to the public view by Owners of Units without the approval of the Board of Directors, which approval shall not be unreasonably withheld.

Section 16.14 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate, and no odors shall be permitted to arise from the Project or any Unit so as to render any portion of the Project unsanitary, unsightly, offensive, or detrimental to any other portion of the Project, any Unit, or to any Occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Project or any Unit so as to be offensive or detrimental to any other portion of the Project, any Unit or any Occupants. Without limiting the generality of any of the following provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than security systems used exclusively for security purposes) shall be located, used, or placed on any such portion of the Project or any Unit without the prior written approval of the Board of Directors. Provided, however, that notwithstanding the foregoing no use or activity otherwise permitted by this Declaration, the Master Declaration or the applicable laws, ordinances, rules, regulations and other requirements of all governmental authorities, public bodies and other authorities having jurisdiction over the project shall be deemed to be a nuisance or shall be prohibited within the Project.

Section 16.15 Outside Installations. No clotheslines, television antennas, satellite dishes, wiring, or installation of air conditioners, or other machines, unless properly screened from view or contained within roof wells as part of the original construction of the Project, shall be installed on the exterior of the Building for the use of any Unit or be allowed to protrude through the walls, windows, or roof of the Building for the use of any Unit unless the prior written approval of the Board of Directors, which approval shall not be unreasonably withheld, is secured.

Section 16.16 Enforcement of Violations. No violation of any Association Rule or Regulation shall be allowed. If any Owner, Owner's Occupants, tenants, family members, invitees, guests and other users authorized by the Owner commits such violation, the Board may, in addition to any other legal remedies it may have, impose a Special Assessment upon such Owner of not more than Fifty Dollars (\$50.00) for each such violation for each day that such violation continues. Before invoking such assessment, the Board shall give such Owner sixty (60) days' written notice to cure such violation and/or to be heard by the Board regarding the Violation and any potential assessment. If such violation is of a nature that it cannot be remedied within sixty (60) days, no assessment shall be invoked so long as the Owner submits a remediation plan to the Board to remedy the violation within a reasonable time and such Owner diligently pursues such plan to completion. If an Owner violates any Rule or Regulation more than twice within any three (3) year period, regardless of whether the Rule or Regulation that has been violated is the same, the accrual of such assessment shall begin three (3) days after the Board gives notice of

such violation rather than sixty (60) days after such notice. Such additional assessments may be collected and enforced in the same manner as any other assessment under Article XV. Each remedy provided in this Declaration or by law shall be cumulative and not exclusive. The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right to enforce such provision thereafter.

Section 16.17 Owner's Responsibility for Acts of Others. Each Owner shall be responsible for compliance with, and any violation of, the provisions of this Declaration, the Association Rules and Regulations, or the resolutions of the Board, by his contract purchasers, lessees or tenants, and invites and licensees.

Section 16.18 Indemnification. Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area or the Units of the other Owners that may be sustained by reason of the negligence or willful misconduct of the Owner, his contract purchasers, lessees or tenants, and their invitees or licensees, to the extent any such damage is not covered by insurance. Each Owner shall indemnify each of the other Owners against, and hold him harmless from, and defend him against, any claim of any person for personal injury or property damage occurring within the Unit of the indemnifying Owner, unless the injury or damage to which such indemnity would apply occurred by reason of the active negligence or willful misconduct of the party claiming indemnification.

Section 16.19 Required Maintenance. The Association will perform all necessary routine maintenance, maintenance inspections and other necessary repairs and maintenance called for as a result of the maintenance inspections as recommended in the maintenance manual provided by the architect of the Project, except as may be delegated to the Owner of each Unit as provided in this Agreement. The Association and its Board, Owners, and any entity acting for or on behalf of any Owner or group of Owners shall, to the fullest extent permitted by law, indemnify and hold harmless the architect, the Declarant, and the general contractor, against all claims for damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with defects or damage resulting from the failure of the Association and/or individual Owners to perform the maintenance recommendations as contained in the maintenance manual. The Association shall provide a copy of the maintenance manual to each Owner at the time any Unit is sold or otherwise changes ownership.

Section 16.20 Construction Defects. Any defect in construction must be reported in writing to the architect, the Declarant, and the general contractor within 90 days of the defect's discovery, and the architect, the Declarant, and the general contractor, severally and jointly, have the right to initiate correction of any defect within 120 days of the defect's having been reported. No legal or equitable proceedings, nor alternative dispute resolution may be initiated regarding any alleged defect unless such defect has been reported to the architect, the Declarant, and the general contractor, or their successors and assigns, within the established time period and they have been allowed not less than 120 days to initiate corrective work.

ARTICLE XVII MORTGAGEE PROTECTION

Section 17.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This

Article is supplemental to, not a substitution for, any other provisions of the Governing Documents, but in the case of conflict, this Article shall control.

Section 17.2 Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them that specified percentage of votes as compared to the total votes allocated to all Units in the Association then subject to Security Interests held by all Eligible Mortgagees.

Section 17.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

Section 17.3.1 Any condemnation loss or any Casualty loss that affects a material portion of the Project or any Unit in which there is a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

Section 17.3.2 Any delinquency in the payment of Annual Assessments owed by an Owner which remains uncured for a period of sixty (60) days and whose Unit is subject to a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

Section 17.3.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

Section 17.3.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 17.4 of the Declaration; and

Section 17.3.5 Any judgment rendered against the Association.

Section 17.4 Consent and Notice Required.

Section 17.4.1 Document Changes. Notwithstanding anything else in the Governing Documents to the contrary, amendments to the Governing Documents of a material, adverse nature to Eligible Mortgagees will not be effective without (1) notice to all Eligible Mortgagees, as required by Section 17.3 above, (2) approval by at least 51% of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration) and (3) satisfaction of all other voting and approval requirements for amendment set forth in such Governing Document. By way of clarification, the foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right.

Section 17.4.2 Termination. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not terminate the common interest community within the Project after the occurrence of substantial destruction or condemnation without (1) notice to all Eligible Mortgagees, as required by Section 17.3 above, (2) approval of at least fifty one percent (51%) of the Eligible Mortgagees and (3) approval of Owners representing at least eighty percent (80%) of the total voting power of the Association.

Section 17.4.3 Implied Approval. The failure of an Eligible Mortgagee to respond within sixty (60) days to any written request for approval of an addition or amendment to the Document wherever Eligible Mortgagee approval is required, when such request is delivered by

certified or registered mail, return receipt requested, shall constitute an implied approval of the addition or amendment.

Section 17.5 Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules, the Articles of Incorporation, books, records and financial statements of the Association. The Association shall permit Declarant, any Eligible Mortgagee or other first mortgagee of Units, to inspect the books and records of the Association during normal business hours.

Section 17.6 Financial Statements. The Association shall provide any Eligible Mortgagee who submits a written request with a copy of an annual financial statement. It shall be provided within one hundred twenty (120) days following the end of each fiscal year of the Association. This financial statement shall be audited by an independent certified public accountant, and the cost of the audit shall be a Common Expense. Any additional audit requested by any Eligible Mortgagee or Eligible Insurer shall be at the sole cost of the Eligible Mortgagee or Eligible Insurer requesting such audit.

Section 17.7 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law or in equity.

Section 17.8 Attendance at Meetings. Any representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

Section 17.9 Appointment of Trustee. In the event of damage or destruction under Article XXII or condemnation of all or a portion of the Project, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to this Declaration. This Trustee may be required to be a corporate trustee licensed by the State of Nevada. Proceeds will then be distributed pursuant to Article XXII or pursuant to a condemnation award. Unless otherwise required, the members of the Board of Directors, acting by majority vote through the president, may act as Trustee.

ARTICLE XVIII TERMINATION

Section 18.1 Termination of the Project may be accomplished only upon the approval of the Owners of eighty percent (80%) of the total number of Units within the Project, and then in accordance with the provisions of Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes and the Declaration (to the extent the Declaration is applicable). The Association is hereby designated to represent the Owners in all proceedings (including negotiations and settlements) related to any termination, and each Owner appoints the Association as attorney-in-fact for this purpose. The proceeds of any settlement related to the termination of the Project shall be paid to the Association for the benefit of the Owners and Eligible Mortgagees, as their interests may appear.

ARTICLE XIX INSURANCE

Section 19.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the insurance coverage provided by companies duly authorized to do business in Nevada in accordance with the insurance required by Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes. The provisions of this Article XIX shall not be construed to limit the power of authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time. In order to facilitate the providing and maintaining of adequate and proper insurance, it is contemplated that Declarant may contract for blanket insurance coverage covering the Project as contemplated by this Article XIX prior to or concurrently with the first conveyance of a Unit. Any obligation or commitment for the payment of premiums or expenses otherwise incurred by Declarant under any such blanket policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of any Unit, shall become an obligation of the Association and shall be paid for out of Association funds.

(a) Master Property Insurance. The Association shall obtain and maintain a "master" or "blanket" multi-peril policy of property insurance equal to a full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Project (including all building service equipment and the like and any fixtures or equipment within the Unit which are financed under the mortgage) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement. Such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and such other risks as are customarily covered in similar projects or as are commonly required by private institutional mortgage investors for projects similar in construction, location and use. All policies or property insurance shall provide that, despite any provisions giving the insurance carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party, or any requirement bylaw. Any blanket policy of property insurance shall contain or have attached a standard mortgagee clause (without contribution) customarily used in the area in which the Project is located which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of the Owners and their respective Mortgagees, as their interests may appear.

(b) Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas in the Project, with a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association, such Owner, or another Owner, with limits of not less than \$2,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and such other risks as are customarily covered in similar projects. The scope of coverage also includes all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

(c) Directors and Officers Insurance. The Association may obtain and maintain liability insurance affording coverage for the acts, errors and omissions of its directors and officers, and other committees as may be appointed from time to time by the Board of Directors.

(d) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board of Directors, and employees and all others who are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

1. all shall name the Association as an obligee;
2. all shall be written in an amount which shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, but in no event less than the sum of three (3) months aggregate assessments on all Units plus reserves;
3. all shall contain waivers of any defenses based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;
4. all shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any Insurance Trustee.

(e) Governmental Requirements. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association and Government National Mortgage Association so long as either is a mortgagee or owner of a Unit within the Project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

Section 19.2 Insurance Policy Requirements. The Master Multi-Peril Property, Public Liability and Flood Insurance policies obtained by the Association pursuant to Section 19.1 above shall be subject to the following additional requirements:

(a) the named insured under any such policies shall be the Association, as a trustee for the Owners, or its authorized representative, including any trustee with which such Association may enter into any Insurance Trust Agreement, or any successor trusts, each of which shall be referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under these policies;

(b) insurance coverage obtained and maintained pursuant to the requirements of Sections 19.1(a) and 19.2(b) shall not be brought into contribution with any insurance purchased by any Owner or such Owner's mortgagee;

(c) coverage must not be prejudiced by (1) any act or neglect of the Association, any employee or agent of the Association, or any Owner, or (2) any failure of the

Association to comply with any warranty or condition regarding any portion of the promises over which the Association has no control;

(d) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds, including each Mortgagee scheduled as a holder of a first mortgage in the applicable policy, except in the case of non-payment of premiums where cancellation may occur upon ten (10) days prior notice given in the manner specified in this Section 19.2(d);

(e) all policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owners and/or their respective agents, employees or tenants, and of any defenses based on coinsurance or on invalidism arising from the acts of the insured;

(f) each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better;

(g) policies shall be deemed unacceptable where (1) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against a Unit Owner, such Owner's Mortgagee or any Mortgagee's designee or such designee's designee; (2) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Unit Owner, his Mortgagee or any Mortgagee's designee or such designee's designee from collecting insurance proceeds;

(h) all policies of hazard insurance shall contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located.

Section 19.3 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

Section 19.4 Owner's Own Insurance.

(a) Unit Owners. Each Unit Owner, at his own expense, shall procure and maintain at all times fire and extended coverage insurance covering personal property of such owner and additional fixtures and improvements added by such Owner and covering all windows appurtenant to such Owner's Unit, whether or not such windows are part of the Unit or a Limited Common Area appurtenant to said Unit, against loss by fire and other casualties, including without limitation vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this ARTICLE XIX.

(b) Owner's Additional Insurance. Notwithstanding the provisions of this Section 19.4, each Owner may obtain insurance at his own expense providing such other coverage upon such Owner's Unit, such Owner's personal property, such Owner's personal liability, and covering such other risks as such Owner may deem appropriate provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability

arising under insurance policies obtained by the Association pursuant to this ARTICLE XIX. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners, and their respective servants, agents and guests.

Section 19.5 Annual Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project or by such other qualified appraisers as the Association may select.

ARTICLE XX CASUALTY DAMAGE OR DESTRUCTION

Section 20.1 Affects Title. Title to each Unit is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent Owners, whether or not it is so expressed in the deed by which any Owner acquires such Owner's Unit.

Section 20.2 Association as Agent. All of the Owners irrevocably constitute and appoint the Association by and through the Association's elected officers as the Owners' true and lawful attorney-in-fact in the Owner's name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

Section 20.3 General Authority of the Association. As attorney-in-fact, the Association by and through the Association's elected officers shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of a Unit Owner which may be necessary or appropriate to exercise the powers herein granted to the Association. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners representing an aggregate of eighty percent (80%) or more of the total square footage of the Project and said Owner's first Mortgagees, if any, agree not to rebuild in accordance with the provisions set forth hereinafter.

Section 20.4 Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain estimates that the Association deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

Section 20.5 Repair or Reconstruction. As soon as practicable after receiving the estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve;

provided, however, in such latter event in the absence of the consent of each affected Owner, the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit, as originally constructed pursuant to such original plans and specifications, and the location of the Building shall be substantially the same as prior to damage or destruction.

Section 20.6 Funds for Reconstruction. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article XV hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article XV. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

Section 20.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 20.6 constitute a fund for the payment of cost or repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Association under Section 20.6 of this Declaration.

Section 20.8 Decision Not to Rebuild. If the record Owners, as reflected on the real estate records of Elko County, Nevada, representing an aggregate ownership interest of eighty percent (80%) or more of the total square footage of the Project and said Owners' first Mortgagees, if any, agree not to rebuild, as provided herein, the Project shall be sold and the proceeds distributed to the Owners according to their respective percentage ownerships.

ARTICLE XXI OBSELESCENCE

Section 21.1 Adoption of a Plan. The record Owners, as reflected on the real estate record of Elko County, Nevada, representing an aggregate record ownership interest of eighty percent (80%) of total square footage of the Project may agree that the Project is obsolete and adopt a written plan for renewal and reconstruction, which plan has the unanimous approval of all first Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such plan shall be given to all Owners. Such plan shall be recorded in the Elko County, Nevada, real estate records.

Section 21.2 Payment of Renewal and Reconstruction. The expense of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Units. These assessments shall be levied in advance pursuant to Article XV hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

Section 21.3 Sale of Obsolete Units. The Owners representing an aggregate ownership interest of eighty percent (80%) or more of the total square footage of the Project may

agree that the Units are obsolete and that the Project should be sold. Such an agreement must have the unanimous approval of every first Mortgagee of record at the time the agreement is made. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold by the Association as attorney-in-fact for all the Owners free and clear of the provisions contained in this Declaration, the Parcel Map and the Bylaws. The sale proceeds shall be apportioned among the Owners in proportion to the respective amounts originally paid to Declarant for the purchase of the Unit exclusive of the amounts paid for personal property, and such apportioned proceeds shall be paid into separate accounts, each account representing one (1) Unit. Each such account shall remain in the name of the Association and shall be further identified by the Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and other liens, and the balance remaining to each respective Owner.

Section 21.4 Distribution of Excess. In the event amounts collected pursuant to Section 21.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

ARTICLE XXII CONDEMNATION

Section 22.1 Consequences of Condemnation. If, at any time or times during the continuance of the Unit ownership pursuant to this Declaration, or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 22.2 Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "**condemnation award**," shall be payable to the Association.

Section 22.3 Complete Taking. In the event that the entire Project is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the Unit ownership pursuant hereto shall terminate. The condemnation award shall be apportioned among the Owners in proportion to the respective amounts paid to Declarant for the purchase of the Unit exclusive of the amounts paid for personal property; provided that if a standard different from the value of the Project as a whole is employed to measure the condemnation award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principal set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 21.4 of this Declaration.

Section 22.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the Unit ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined in the following manner: as soon as practicable, the Association shall,

reasonably and in good faith, allocate the condemnation award between compensation, damages or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Common Area shall be apportioned equally among the Owners; (b) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved; and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determined to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, juridical decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made in the same manner provided in Section 21.4 of this Declaration.

Section 22.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a Member of the Association. Thereafter, the Association shall reallocate the Ownership, voting rights and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners of remaining units for amendment of this Declaration as provided herein.

Section 22.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XX above.

ARTICLE XXIII NOTICE AND HEARING

Section 23.1 Right to Notice and Comment. Before the Board of Directors amends the Bylaws or the Rules, whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Board of Directors determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Owner in writing, delivered personally or by mail to all Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The notice shall be given not less than five days before the proposed action is to be taken. It shall invite comment to the Board of Directors orally or in writing before the scheduled time of the meeting.

Section 23.2 Right to Notice and Hearing. Whenever the Governing Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in

making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 23.3 Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Board of Directors from a decision of persons other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE XXIV PERIOD OF CONDOMINIUM OWNERSHIP

Section 24.1 Duration. The Condominium ownership created by this Declarant and the Parcel Map shall continue until this Declaration is revoked in the manner provided in Section 25.11 of this Declaration.

ARTICLE XXV MISCELLANEOUS

Section 25.1 Compliance with Provisions of Declaration and Bylaws of the Association. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, Association Rules and Regulations, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the Association on behalf of the Owners, in a proper case, by an aggrieved Owner.

Section 25.2 Registration of Mailing Address. Each Owner shall register such Owner's mailing address with the Association. All notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association. All notices or demands to be served on Mortgagees pursuant thereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for in this section.

Section 25.3 Transfer of Declarant's Rights. Any right or any interest reserved hereby to the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any Person or entity.

Section 25.4 Mediation/Waiver of Jury Trial. The Association and all Owners agree to and shall mediate any controversy, dispute, or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Declaration or

such rules and regulations as the Association may promulgate under its responsibilities as set forth in this Declaration. The mediation shall be held prior to any court action or arbitration. The mediation shall be confidential. In the event the parties are not able to agree on a mediator within thirty (30) days, a judicial and/or mediation service mutually acceptable to the parties shall appoint a mediator. In the event the mediator determines that a second mediation session is necessary, it shall be conducted in accordance with this section. Should the prevailing party attempt an arbitration or a court action before attempting to mediate, THE PREVAILING PARTY SHALL NOT BE ENTITLED TO ATTORNEYS FEES THAT MIGHT OTHERWISE BE AVAILABLE TO THEM IN A COURT ACTION OR ARBITRATION, AND IN ADDITION THEREOF, THE PARTY WHO IS DETERMINED BY THE ARBITRATOR TO HAVE RESISTED MEDIATION SHALL BE SANCTIONED BY THE ARBITRATOR OR JUDGE. With respect to any matter not resolved by the mediation process given above, the Association and each Owner hereby expressly waive any right to trial by jury of any claim, demand, action or cause of action either arising under this Agreement or any other instrument, document, rules, regulations or agreement in any way connected with or related to or incidental to this Agreement now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and the Association and each Owner hereby agree and consent that any such claim, demand, action or cause of action shall be determined by court trial without a jury.

Section 25.5 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may have leased or rented said interest as provided herein, but the Owner of a Unit shall have no obligation for expenses or other obligations accruing after the Owner conveys such Unit.

Section 25.6 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 25.7 Severability. If any of the provisions of this Declaration or any clause, paragraph, sentence, phrase, or word or the application thereof in any circumstance shall be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

Section 25.8 The Governing Documents are intended to comply with the requirements of Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes applicable to common interest communities and the Governing Documents shall be interpreted, if at all possible, so as to be consistent with the Act. If there is any conflict between the Governing Documents and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

Section 25.9 Unilateral Amendment By Declarant. Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) otherwise necessary to satisfy the requirements of any governmental

agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as Declarant still owns any portion of any property described in Exhibit A, B, or F for development as part of the Project, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon right of any Owner.

Section 25.10 Declarant's Continuing Rights. Notwithstanding anything else in the Governing Documents to the contrary, following Declarant's Control Period, the Association shall provide to Declarant, at such address as Declarant may designate from time to time and within ten (10) days of the Association's creation or possession thereof, the following documents: (1) minutes of any meeting of the Members, Board of Directors, or committee of the Board; (2) any complaints filed with the Association by any Member; (3) any claims for maintenance filed with the Association by any Member; and (4) any records generated in relation to the Association Maintenance Manual. Throughout the term of this Declaration, Declarant shall have the right to attend Association meetings, on a non-voting basis, and shall have the right to attend all inspections of the Project (for which the Association shall provide Declarant at least five (5) days advance notice).

Section 25.11 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run with and bind the Property for a term of thirty (30) years from the date this Declaration is recorded. After such time, the covenants, conditions and restrictions contained herein, shall be automatically extended for successive periods of ten (10) years, unless an instrument is signed by the Owner of at least two-thirds (2/3) of the total number of Units in the Project and recorded in the Elko County, Nevada Recorder's Office within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the terms of this Declaration, in whole or in part, or to terminate the same (in which case the instrument must be signed by the Owner(s) of at least 80% of the total number of Units in the Project and the provisions of 17.4(b), to the extent applicable, must be met); in which case this Declaration shall be modified or terminated as specified herein.

Section 25.12 Security Disclaimer. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Project, nor shall either of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken, if any. No representation or warranty is made that any fire protection or security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its occupants that the Association, the Board and Declarant, are not insurers or liable to persons living in or visiting the Project for conduct resulting from acts of third parties.

Section 25.13 Nonliability for Mold Development. Molds, mildew, toxins and fungi may exist and/or develop within the Unit and/or the Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Declarant from any and all liability resulting from the same.

Section 25.14 School Disclosure. There are schools operated nearby the Project, some of which are operated by the Elko County School District ("School District"). The School

District is solely responsible for the timing of any new public school construction and whether or not new schools are built. No representation or warranty is given by Declarant that the School District will construct new schools in the future in the vicinity of the Project. Similarly, the School District is solely responsible for and controls attendance zoning for all schools, and the Association and Declarant make no representation, warranty or guaranty that the children living in the Project will be allowed to attend any particular school. Furthermore, Owner hereby acknowledges that students within the Project may not be zoned for the closes elementary, middle, or high school and may be bused to the nearest school with the capacity to accept new students. All potential buyers should contact the School District for the latest attendance zoning information before purchasing a Unit within the Project.

Section 25.15 Airport Disclosure. The Project is located in the vicinity of a flight path commonly used by aircraft taking off from and landing at the Elko Regional Airport ("Airport"). Ownership of property near an airport has special considerations and risks attached to it. Airport proximity may have an effect on the livability, value, and suitability of residential property. Communities located in close proximity to an airport may be exposed to jet noise in addition to small aircraft noise. Neither Declarant nor the Association has any obligation to provide insurance, indemnity or other protection to homeowners or residents within the Project, or their guests and pets, from any such light, noise, damage or injury. Each Owner, by acceptance of a deed to a Unit, expressly assumes the risk of damage from air traffic using the Airports. Each Owner agrees to hold harmless Declarant and affiliated companies, officers, directors, employees and agents or any of them, from any liability for all injury, damage, costs or expenses caused by any activity on or in connection with the Airport causing injury or damage to Owner and Owner's family, guests, property and pets.

Section 25.16 Adjacent Properties Disclosure. Each Owner, by acceptance of a deed to a Unit, acknowledges that certain properties within the vicinity of the Project are presently zoned and/or used for commercial and multi-family. Each Owner hereby further acknowledges that land uses are always subject to change and zoning classifications do not necessarily indicate how land will be developed and used over time (for example, lower density uses around the Project may be re-zoned to allow for development of additional industrial uses, which may add to the traffic, density, and noise of the area). Declarant makes no representations or warranties as to how the nearby property not owned by Declarant will be used or developed in the future. For further information regarding present and future land use possibilities in the area surrounding the Project, interested parties should contact planning staff at the City of Reno.

Section 25.17 Detention Pond Disclosure. Each Owner acknowledges, by acceptance of a deed to a Unit, the existence of detention pond(s) either within or in the vicinity of the Project. Some of these facilities may be under the control and maintenance of the Association, and some of these facilities may be under the control and maintenance of governmental entities. Each Owner covenants for himself and his family, relatives, guests, and invitees not to interfere with such facilities, and covenants not to make any active use of such facilities, including, without limitation, swimming, wading, or any other entry upon or into the detention ponds. Each Owner shall indemnify, defend and hold harmless Declarant and the Association on any claims arising from any breach of this covenant by that Owner, his family, relatives, guests, or invitees.

Section 25.18 Flood Zone Disclosure. The Project may be located within a 500-year flood area. In addition, the Project is located near an area designated by the Federal Emergency Management Agency ("FEMA") as a Special Flood Hazard Area ("SFHA"). SFHAs are areas

located within the 100-year floodplain, which means they are subject to a one percent (1%) or greater chance of annual flooding. Federal regulations require flood insurance for property located within SFHAs if the acquisition of such property is being made with the assistance of federal loan programs or federally regulated lending institutions, and government authorities may regulate development and construction in SFHAs. It is possible that Owner's lender may require that Owner obtain flood insurance due to the location of the property or as a part of its standard business practices. Declarant and the Association shall have no responsibility for any flood insurance requirements of Owner's lender. Declarant recommends Owner consider obtaining flood insurance for the property and that Owner always exercise appropriate flood precautions. For more information on how to mitigate the risks of floods, Owner is encouraged to review FEMA's publication, Avoiding Flood Damage: A Checklist for Homeowners.

ARTICLE XXVI CONVERTIBLE SPACE

Section 26.1 Reservation of Right to Convert. The Declarant hereby expressly reserves the option and right, from time to time, to convert into one or more Units or into Common Areas and Facilities, or Limited Common Areas and Facilities, subject to the provisions of this ARTICLE XXVI, the Convertible Space of Riverside Villas Condominiums as described in Section 26.2 herein.

Section 26.2 Description of Convertible Space. The Convertible Space which may, at the option of Declarant, be converted into one or more Units or Common and Limited Common Areas and Facilities is located in Elko County, State of Nevada and is more particularly described on Exhibit H attached hereto. Proposed Unit boundaries have been depicted within the areas designated as Convertible Space on Exhibit H. Except to the extent provided in Section 26.3 herein, such depictions of proposed boundaries are proposals only and shall not be construed to be an indication, commitment, or guarantee of the location of Unit boundaries within the Convertible Space.

Section 26.3 Consent of Owners Not Required. The consent of the Owners in the Project shall not be required for such conversion and the Declarant may proceed with such conversion at its sole option and as its sole action. However, the Declarant shall not create any Unit which has more or less than twenty-five percent (25%) of the square footage such Unit is proposed to contain, as depicted on Exhibit H.

Section 26.4 Preparation and Recording of Supplemental Plat Map and Amendment. Prior to converting any portion or all of the Convertible Space in the Project, the Declarant shall

Section 26.4.1 record, with regard to the Convertible Space or any portion thereof that is being converted, a supplemental plat map (the "Supplemental Plat Map") which shall describe the Convertible Space or any portion thereof to be converted, showing the location, horizontal and vertical boundaries, and the dimensions of any Unit formed from such space and shall comply in all respects with Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes. Each such Supplemental Plat Map shall be certified as to its accuracy and compliance with the requirements of Chapter 116 "Common-Interest Ownership (Uniform Act)" of The Nevada Revised Statutes by the land surveyor who prepared or supervised the preparation thereof; and

Section 26.4.2 prepare, execute and record simultaneously with each Supplemental Plat Map an amendment to the Declaration (hereinafter the "Amendment") which shall describe each conversion and shall reallocate individual interests in the Common Areas so that the Units created from the Convertible Space or any portion thereof to be converted shall be allocated undivided interests in the Common Areas on the same basis as Units initially constructed in the Project. Each such Amendment shall assign an identifying number to each Unit, if any, formed out of a Convertible Space. Each such Amendment shall describe or delineate the Limited Common Areas and Limited Common Facilities, if any, formed out of the Convertible Space or any portion thereof to be converted.

Section 26.5 Notwithstanding the depiction on the Map of any proposed Unit boundaries as described in Section 26.2 above, any portion of Convertible Space not converted in accordance with this ARTICLE XXVI, or any portion of it not so converted, shall be treated for all purposes as a single Unit until and unless it is so converted and shall be allocated its proportionate share of the undivided interest in the Common Areas.

This Declaration is executed on this _____ day of _____, 2018.

Riverside Villas Nevada, LLC, a
Delaware limited liability company

By: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Riverside Villas, LLC, a Utah limited liability company that subscribed said company name to the foregoing instrument, and acknowledged to me that ___he executed the same in said company name.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

Notary Public
Residing at _____
My Commission Expires _____

Exhibits: To be attached

- Exhibit A - Description of Real Property
- Exhibit B - Annexable Property
- Exhibit C - Copy of the Articles of Incorporation
- Exhibit D - Copy of the Bylaws
- Exhibit E - Table of Allocated Interests
- Exhibit F - Reduced copy of Parcel Map
- Exhibit G - Convertible Space

Exhibit A
Description of Real Property

Riverside Villas Condominiums is situated in the City of Elko, County of Elko, State of Nevada, and is described as follows:

Lot 2A, including all common areas, limited common areas, units and Buildings A, B, C, D, E, F, G and H located thereon, as shown on the Final Map for Riverside Villas Condominiums- Phase I, filed in the office of the County Recorder of Elko County, State of Nevada, on _____, 2018, as File No. _____.

Exhibit B
Annexable Property

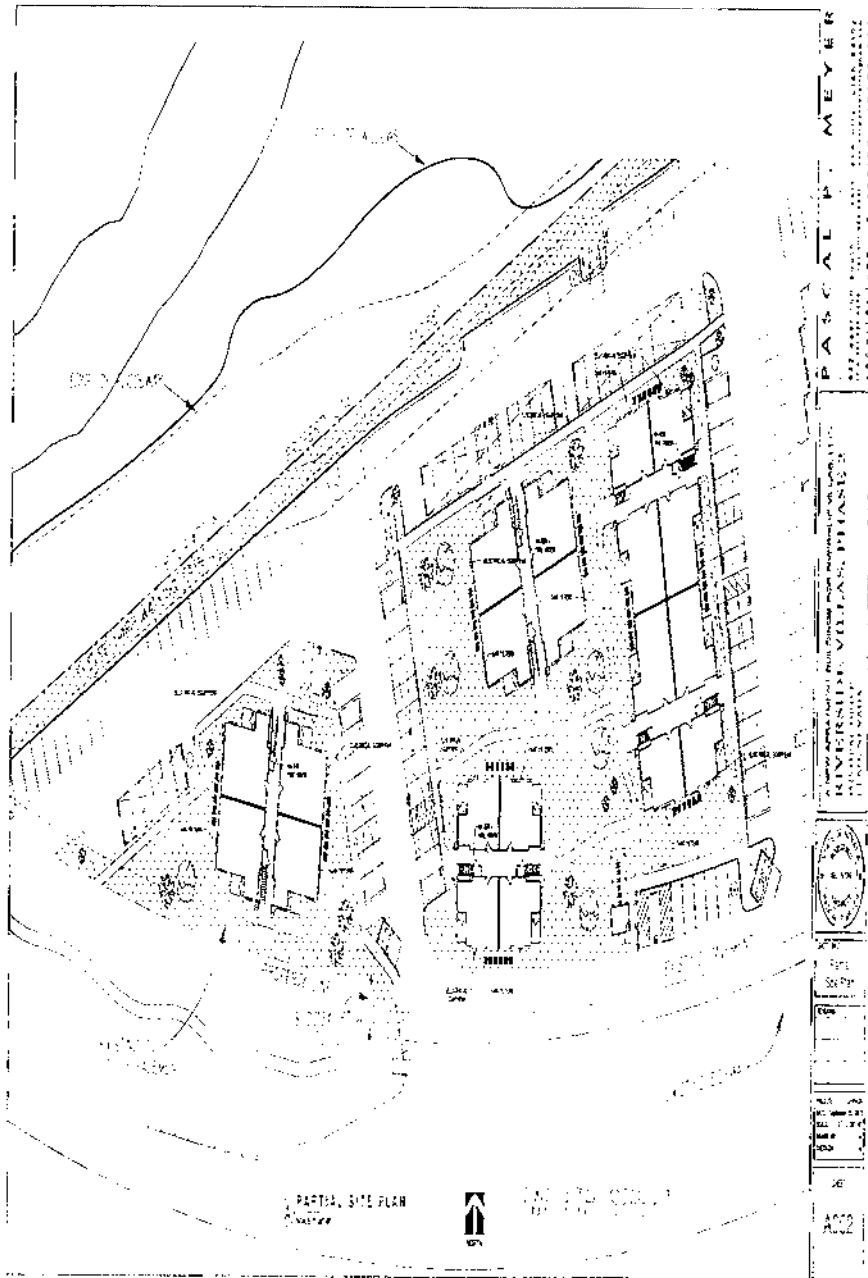


Exhibit C

Articles of Incorporation



BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775)684-5708
Website: www.nvssos.gov



Nonprofit Articles of Incorporation (PURSUANT TO NRS CHAPTER 92)

USE BLACK INK ONLY - DO NOT FOLD		LEAVE SPACE IS FOR OFFICE USE ONLY	
1. Name of Corporation:	Riverside Villas Community Association		
2. Registered Agent for Service of Process: (check only one box)	<input checked="" type="checkbox"/> Commercial Registered Agent: InCorp Services, Inc. Name: _____ <input type="checkbox"/> Individual: (check only one box) <input type="checkbox"/> Agent: (check only one box) <u>OR</u> <input type="checkbox"/> Office of Location with Entity (name and address below)		
3. Names and Addresses of the Board of Directors/Trustees (each Director/Trustee must be a natural person at least 18 years of age at the time of incorporation (not a minor))	Name of Nonprofit and Registered Agent OR Name of Director/Trustee (check position with Entity) Street Address: _____ City: _____ Nevada Zip Code: _____ Mailing Address (if different from street address): _____ City: _____ Nevada Zip Code: _____ 1) Cameron Gunter Name: _____ 3773 Howard Hughes Pkwy, Suite 500S Las Vegas NV 89169-6014 Street Address: _____ City: _____ State: _____ Zip Code: _____ 2) Michael Bingham Name: _____ 3773 Howard Hughes Pkwy, Suite 500S Las Vegas NV 89169-6014 Street Address: _____ City: _____ State: _____ Zip Code: _____ 3) _____ Name: _____ Street Address: _____ City: _____ State: _____ Zip Code: _____ 4) _____ Name: _____ Street Address: _____ City: _____ State: _____ Zip Code: _____		
4. Purpose: (purpose for the formation of the corporation)	The purpose of the corporation shall be: Other Activities Related to Real Estate		
5. Name, Address and Signature of Incorporator (name address and signature of each incorporator)	I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 215.030, it is a category C felony to knowingly offer any false or false information to the Secretary of State. Cameron Gunter Name: _____ 3773 Howard Hughes Pkwy, Suite 500S Las Vegas NV 89169-6014 Address: _____ City: _____ State: _____ Zip Code: _____ Incorporated Signature: _____		
6. Certificate of Acceptance of Appointment of Registered Agent:	I hereby certify appointment of Registered Agent for use above named Entity. If the registered agent is not the incorporator, the incorporator must sign and provide the Registered Agent Acceptance form. <input checked="" type="checkbox"/> Authorized Signature of Registered Agent or On Behalf of Registered Agent Billly _____ Date: _____		

This form must be accompanied by appropriate fees.

Revised Form 100-1 (Rev. 10/01)
Revised 10/01/02

CONDOMINIUM DECLARATION AND
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR RIVERSIDE VILLAS - 60

Exhibit D
Bylaws
[See Attached]

Exhibit E
Table of Allocated Interests

For each Unit within the Property, including any and all Units subsequently annexed to the Property, the allocated interests will be as follows:

Undivided Interest in Common Elements	Liability for Common Expenses	Votes
One divided by the total number of Units in the Project	One divided by the total number of Units in the Project	1 per Unit

Exhibit F
Reduced Copy of Parcel Map
[See Attached]

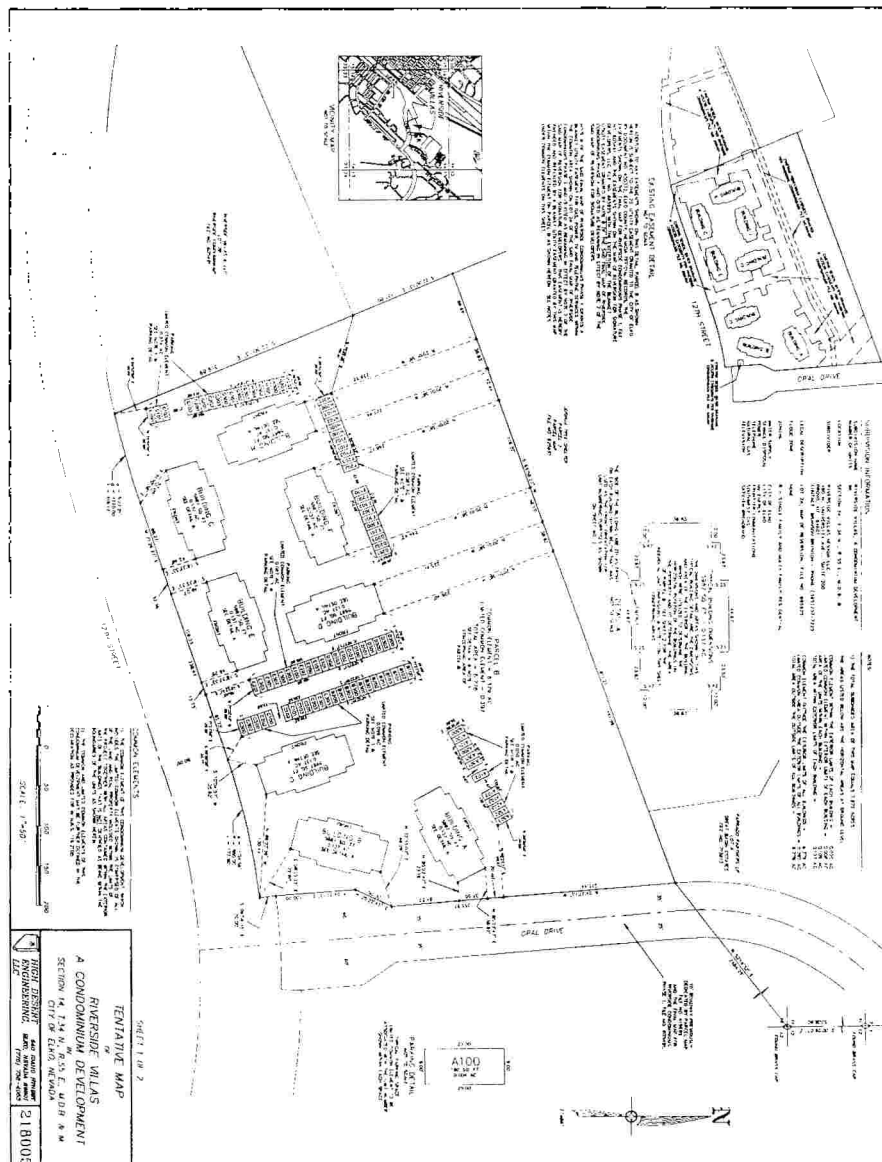


Exhibit G
Convertible Space

APR 10 2018

BYLAWS OF
THE RIVERSIDE VILLAS COMMUNITY ASSOCIATION, INC.

A Nevada Nonprofit Corporation

Pursuant to the provisions of the Nevada Revised Statute Chapter 82- Nonprofit Corporations, the Board of Directors of The Riverside Villas Community Association, Inc., a Nevada nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

ARTICLE 1: NAME AND PRINCIPAL OFFICE

1.1 Name. The name of the nonprofit corporation is The Riverside Villas Community Association, Inc., hereinafter referred to as the "Association."

1.2 Offices. The principal office of the Association shall be at 180 North University Avenue Suite 200, Provo, Utah 84601.

ARTICLE 2: DEFINITIONS

2.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration of Covenants, Conditions and Restrictions of Riverside Villas, a Nevada Condominium Project, hereinafter referred to as the "Declaration", shall have such defined meanings when used in these Bylaws.

ARTICLE 3: MEMBERS

3.1 Annual Meetings. The annual meeting of Members shall be held on the first Saturday in February of each year at the hours of 10:00 o'clock a.m., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Directors and transacting such other business as may come before the meeting. If the election of Directors shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Members to be convened as soon thereafter as may be convenient. The Board of Directors may from time to time by resolution change the date and time for the annual meeting of the Members.

3.2 Special Meetings. Special meetings of the Members may be called by the Board of Directors, the President, or upon the written request of Members holding not less than ten percent (10%) of the Total Votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Directors or the President.

3.3 Place of Meetings. The Board of Directors may designate any place in Elko County, State of Nevada as the place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all of the Members may designate any place, either within or without the State of Nevada, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

3.4 Notice of Meetings. The Board of Directors shall cause written or printed notice of the time, place, and purposes of all meetings of the Members (whether annual or special) to be delivered, not more than fifty (50) nor less than ten (10) days prior to the

meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at his registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Unit address shall be deemed to be his registered address for purposes of notice hereunder.

3.5 Members of Record. Upon purchasing a Condominium in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Condominium has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, the Board of Directors may designate a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to the meeting, for determining Members entitled to notice of or to vote at any meeting of the Members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Condominiums in the Project shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

3.6 Quorum. At any meeting of the Members, the presence of Members holding, or holders of proxies entitled to cast, more than fifty percent (50%) of the Total Votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the Members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the Members as provided above. At the reconvened meeting, the Members and proxy holders present shall constitute a quorum for the transaction of business.

3.7 Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing. If a Membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such Membership or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.8 Votes. With respect to each mailer submitted to a vote of the members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Condominium of such Member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the

Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Nevada law. The election of Directors shall be by secret ballot. If a membership is jointly held, all or any holders thereof may attend each meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint Membership.

3.9 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting form of proxies, and method of ascertaining Members present shall be deemed waived if no objection thereto is made at the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

ARTICLE 4: BOARD OF DIRECTORS

4.1 General Powers. The property, affairs, and business of the Association shall be managed by its Board of Directors. The Board of Directors may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the Members. The Board of Directors may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable.

4.2 Number, Tenure and Qualifications. The number of Directors of the Association shall be three (3). The initial Board of Directors specified in the Articles of Incorporation shall serve until the first annual meeting of the Members. At the first annual meeting of the Members held after the Declarant turns over to the members responsibility for electing Directors, the Members shall elect three (3) Directors to serve for the following respective terms: one (1) Director to serve for a term of three (3) years; one (1) Director to serve for a term of two (2) years; and one (1) Director to serve for a term of one (1) year. At each annual meeting thereafter, the Members shall elect for terms of three (3) years each the appropriate number of Directors to fill all vacancies created by expiring terms of Directors. All Directors except Directors nominated by the Declarant shall be Members of the Association.

4.3 Regular Meetings. The regular annual meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of the Members. The Board of Directors may provide by resolution the time and place, within Elko County, State of Nevada, for the holding of additional regular meetings without other notice than such resolution.

4.4 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of any Director. The person or persons authorized to call special meetings of the Board of Directors may fix any place, within Elko County, State of Nevada, as the place for holding any special meeting of the Board of Directors called by such person or persons. Notice of any special meeting shall be given at least five (5)

days prior thereto by written notice delivered personally, or mailed to each Director at his registered address, or by facsimile. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first class postage thereon prepaid. If notice is given by facsimile, such notice shall be deemed to have been delivered when the facsimile is transmitted and the facsimile machine used to transmit such notice produces a receipt that the target destination was contacted and that such transmission was made. Any Director may waive notice of a meeting.

4.5 Quorum and Manner of Acting. A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. The Directors shall act only as a Board, and individual Directors shall have no powers as such.

4.6 Compensation. No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that a Director may be reimbursed for expenses incurred in performance of his duties as a Director to the extent such expenses are approved by the Board of Directors and (except as otherwise provided in these Bylaws) may he compensated for services rendered to the Association other than in his capacity as a Director.

4.7 Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time, for or without cause, by the affirmative vote of seventy-five percent (75%) of the Total Votes of the Association at a special meeting of the Members duly called for such purpose.

4.8 Vacancies and Newly Created Directorships. If vacancies shall occur in the Board of Directors by reason of the death, resignation or disqualification of a Director (other than a Director appointed by Declarant), or if the authorized number of Directors shall be increased, the Directors then in office shall continue to act, and such vacancies or newly created Directorships shall be filled by a vote of the Directors then in office, though less than a quorum, in any way approved by such Directors at the meeting. Any vacancy in the Board of Directors occurring by reason of removal of a Director by the Members may be filled by election at the meeting at which such Director is removed, If vacancies shall occur in the Board of Directors by reason of death, resignation or removal of a director appointed by the Declarant, such vacancies shall be filled by appointments to be made by the Declarant. Any Director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Directorship, as the case may be.

4.9 Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

ARTICLE 5: OFFICERS

5.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as may from time to time be appointed by the Board of Directors.

5.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board of Directors annually at the regular annual meeting of the Board of Directors. In the event of failure to choose officers at such regular annual meeting of the Board of Directors, officers may be chosen at any regular or special meeting of the Board of Directors. Each such officer (whether chosen at a regular annual meeting of the Board of Directors or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Directors and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. No officer need be a Director.

5.3 Subordinate Officers. The Board of Directors may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine. The Board of Directors may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate officers need not be Members or Directors of the Association.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Directors at any time, for or without cause.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Directors at any regular or special meeting.

5.6 The President. The President shall preside at meetings of the Board of Directors and at meetings of the Members. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board of Directors may require of him.

5.7 The Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

5.8 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Directors may require him to keep. The Secretary shall also act in the place and stead of the President in the event of the President's absence or inability

or refusal to act. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board of Directors may require of him.

5.9 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Directors, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Board of Directors. He shall perform such other duties as the Board of Directors may require of him.

5.10 Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Board of Directors and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer.

ARTICLE 6: COMMITTEES

6.1 Designation of Committees. The Board of Directors may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one (1) Director. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board of Directors and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

6.2 Proceedings of Committees. Each committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Directors.

6.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Directors hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.4 Resignation and Removal. Any member of any committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation to the President, the Board of Directors, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation

shall take effect upon delivery. The Board of Directors may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.5 Vacancies. If any vacancy shall occur in any committee designated by the Board of Directors hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Directors.

ARTICLE 7: INDEMNIFICATION

7.1 Indemnification -- Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.2 Indemnification -- Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Director or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.3 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 7.1 or 7.2 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 7.1 or 7.2 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.1 or 7.2 hereof. Such determination shall be made either (i) by the Board of Directors by a majority vote of disinterested Directors or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least fifty percent (50%) of the Total Votes of the Association at any meeting duly called for such purpose.

7.4 Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this ARTICLE 7 may be paid by the Association in advance of the final disposition for such action, suit, or proceeding upon a majority vote of a quorum of the Board of Directors and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this ARTICLE 7 or otherwise.

7.5 Scope of Indemnification. The indemnification provided for by this ARTICLE 7 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested Members or Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this ARTICLE 7 shall apply to all present and future Directors, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition, to all, other rights to which such persons may be entitled as a matter of law.

7.6 Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Director, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), as may be required by Article 10 of the Declaration.

7.7 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained pursuant to this ARTICLE 7 shall constitute expenses of the Association and shall be paid with the funds from the Common Expense Fund referred to in the Declaration.

ARTICLE 8: FISCAL YEAR AND SEAL

8.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the 31st day of December next following except that the first fiscal year shall begin on the date of incorporation.

8.2 Seal. The Board of Directors may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal".

ARTICLE 9: RULES AND REGULATIONS

9.1 Rules and Regulations. The Board of Directors may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The Members shall be provided with copies of all rules and regulations adopted by the Board of Directors, and with copies of all amendments and revisions thereof.

ARTICLE 10: AMENDMENTS

10.1 Amendments. Except as otherwise provided by law, by the Articles of incorporation, by the Declaration (e.g., Article 14), or by these Bylaws, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the Members upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the Total Votes of the Association, shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Elko County, State of Nevada.

IN WITNESS WHEREOF the undersigned, constituting all of the Directors of The Riverside Villas Community Association, Inc., have executed these Bylaws as of the _____ day of _____, 2018.

By: _____
Cameron Gunter
180 North University Avenue Suite 200
Provo, Utah 84601

By: _____
Michael Bingham
180 North University Avenue Suite 250
Provo, Utah 84601

DOC# 686483

05/19/2014

04:05PM

Official Record

Requested By
FIRST AMERICAN TITLE INSURANCE CO

Elko County - NV

D Mike Smales - Recorder

Page: 1 of 13

Fee: \$26.00

Recorded By ST

RPTT: \$0.00

Recording Requested By:

First American Title Insurance Company

560 South 300 East

Salt Lake City, Utah 84111

Return Recorded Document to:

Law Office of Steven W. Farnsworth, P.C.

180 North University Avenue, Suite 260

Provo, Utah 84601



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**RECIPROCAL EASEMENT
AGREEMENT
WITH
COVENANTS, CONDITIONS
AND
RESTRICTIONS**



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RETURN RECORDED DOCUMENT TO:

Law Office of Steven W. Farnsworth, P.C.
Zions Bank Financial Center
180 N. University Ave., Ste. 260
Provo, UT 84601

RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS

THIS RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (the "Agreement") is executed this 9th day of May, 2014, by RIVERSIDE VILLAS, LLC, a Utah limited liability company ("Owner #1), and RIVERSIDE VILLAS II, LLC, a Utah limited liability company ("Owner #2"). Owner #1 and Owner #2 shall sometimes hereinafter be referred to individually as a "Party," and collectively as the "Parties."

A. Owner #1 is the owner of certain real property situated in the City of Elko, Elko County, State of Nevada ("Property #1") (Property #1 is more particularly described on Exhibit "A," which is attached hereto and incorporated herein by this reference).

B. Owner #2 is the owner of certain real property situated in the City of Elko, Elko County, State of Nevada ("Property #2") (Property #2 is more particularly described on Exhibit "B," which is attached hereto and incorporated herein by this reference).

C. Each Owner has installed or intends to install amenities that may include a playground, green space, pool and clubhouse that will be available for use of tenants and their guests of both Property #1 and Property #2 (the "Amenities").

D. Even though Property #1 and Property #2 (individually a "Property" and collectively the "Properties") are separate parcels, the Parties desire that the Properties be utilized by tenants and their guests for ingress and egress and for use of the Amenities.

E. The Parties desire to establish non-exclusive easements over, across and upon all driveways, drive aisles and access ways located from time to time on the Properties (collectively, the "Common Areas") for the mutual and reciprocal benefit of the Properties and the present and future owners, tenants and invitees thereof.

F. The Parties also desire to establish certain covenants, conditions and restrictions with respect to the use of the Properties now and in the future pursuant to this Agreement and in addition to the Master Covenants.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Parties covenant and agree that the Properties and all present and future owners, occupants and invitees of the Properties shall be and hereby are subject to the terms, easements, covenants, conditions and restrictions as follows:

1. **DEFINITIONS.** For purposes hereof:

1.1 The term "Owner" or "Owners" shall mean Owner #1, Owner #2 and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any



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portion of the Properties, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Properties or any portion thereof.

1.2 The term "Permittees" shall mean the tenant(s) or occupant(s) of the Properties, and the respective invitees and licensees of (a) the Owners of such Properties, and/or (b) such tenant(s) or occupant(s).

2. EASEMENTS

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, each Owner hereby grants, establishes, covenants and agrees that the Properties, and all Owners and Permittees of the Properties, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Properties and all present and future Owners and Permittees of the Properties:

(a) An easement for reasonable access, ingress and egress to from, upon, over and across all of the Common Areas now and from time to time existing on the Properties for the purpose of vehicular and pedestrian ingress and egress between all portions of the Common Areas, and to and from all abutting streets or rights of way furnishing access to the Properties. This access easement shall not prohibit the right of the Owners to reconfigure or construct roadways and vehicular passageways, driveways, and driving lanes, or to construct and maintain, within the area affected by this easement, traffic and parking control islands and other such facilities, on their respective portion of the Properties, so long as any such action does not unreasonably prevent the passage by motor vehicles and service and delivery vehicles between each of the Properties, and to the public roads, as appropriate. No person shall be permitted to construct or maintain any building, barrier or sign of any sort, which would limit or otherwise interfere with the traversing of vehicular and/or pedestrian traffic within the Properties upon the Common Areas.

(b) A use easement granted by each Owner to the other Owner for the use and enjoyment of the Amenities located on the other Property.

2.2 Reasonable Use of Easements.

(a) The easements granted herein shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Property including, without limitation, public access to and from said Property.

(b) Once commenced, any construction, maintenance, repair or replacement undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Property of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Property if the same interferes with easements of ingress, egress or access to or in favor of another Owner's Property, shall be undertaken only in such a manner so as to minimize any interference with other Owner and its Permittees, and only following reasonable notice under the circumstances to the other Owner and its



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Permittees. The Owner performing any such construction, maintenance, repair or replacement shall have the obligation at its own expense (except as set forth in Section 3.3) to promptly restore the other Owner's Property to the same condition as was present prior to such construction, maintenance, repair or replacement.

(c) Each Owner shall have the right to alter, modify, reconfigure, and/or relocate the Common Areas on its Property, subject to the following conditions: (i) the reciprocal easements between the Properties pursuant to Section 2.1(a) shall not be closed or materially impaired, and (ii) the access ways, driveways and passageways, and ingress and egress thereto, and to and from the Properties and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Owners, which consent shall not be unreasonably withheld.

3. INSTALLATION, MAINTENANCE AND REPAIR.

3.1 Amenities. With respect to proposed Amenities, notwithstanding anything to the contrary in this Agreement, neither Owner is obligated to install any certain type of Amenity whatsoever. Provided, however, once an Amenity has been installed, then such Amenity shall be made available for the use and enjoyment of all Permittees.

3.2 Maintenance of Common Areas, Amenities and Easements. Each Owner shall at all times be responsible for the regular maintenance, repair and replacement of the Common Areas and Amenities and all of the easements located on its own Property including, without limitation, all of the physical improvements associated with such easements. Such obligations shall include, without limitation: maintaining and repairing all sidewalks and the surface of the roadway areas; removing all papers, debris and other refuse from and periodically sweeping all sidewalk areas to the extent necessary to maintain the same in a clean, safe and orderly condition; maintaining appropriate lighting fixtures for the roadways; maintaining marking, directional signs, lines and striping as needed; maintaining signage in good condition and repair; and performing any and all such other duties as are necessary to maintain such Common Areas, Amenities and easements in a clean, safe and orderly condition. Notwithstanding the foregoing, any damage to any easement, which is caused by intentional or negligent acts of one of the Owners or its Permittees, shall be promptly repaired at the sole cost of such Owner. Also notwithstanding the foregoing, each Owner shall pay a proportionate share based on unit count of the expenses related to the maintenance and operations of (1) the swimming pool, (2) the playground, and (3) the clubhouse. Owner #2 shall promptly reimburse expenses paid by Owner #1 within fifteen (15) days of receipt of an invoice for its proportionate share of said expenses.

3.3 Failure to Maintain the Common Areas, Amenities and Easements. If any Owner defaults under its regular maintenance, repair and replacement obligations as described in Section 3.2 above, the other Owner(s) shall give such defaulting Owner written notice of the claimed default, and such defaulting Owner shall have ten (10) days following the receipt of such written notice to cure such default. If the default remains uncured following the ten (10) day period, or if such default is not curable within the ten (10) day period and the defaulting Owner has failed to begin to cure such default within the ten (10) day period, the other Owner(s) may, but shall not be required to, cure the default itself, and then bill the defaulting Owner for the reasonable costs incurred in curing such default. Each such bill shall contain an itemized description of the work performed and the total costs and expenses incurred for such work. The defaulting Owner shall pay all such bills within thirty (30) days after receipt of the bill. In the event the defaulting Owner fails to timely pay any bill,



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the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full.

4. COVENANTS, CONDITIONS AND RESTRICTIONS.

4.1 Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Elko County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of all of the Properties in accordance with Section 6.2 hereof.

4.2 Use Restrictions. Each Property shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Property that is illegal.

4.3 No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Properties. No easements, except those expressly set forth in Section 2, shall be implied by this Agreement.

4.4 Right of First Offer.

(a) The following Right of First Offer and Second Offer shall not be applicable in the case of a first position lien holder exercising its rights to ensure performance of the obligations secured by its first position deed of trust including, but not limited, to a foreclosure sale, a deed in lieu of foreclosure, or other remedies, whether arising under its deed of trust, applicable law, principles of equity or otherwise. For the avoidance of doubt, each of the deeds of trust (each, as amended from time to time, a "KeyBank Deed of Trust") granted to KeyBank National Association ("Lender") by Owner #1 and Owner #2 in connection with the financing Lender has provided (or shall hereafter provide) to Owner #1 and Owner #2, as the case may be, for the construction of certain improvements on the Properties, which improvements include (but are not limited to) the Amenities, is "a first position deed of trust" and creates "a first position lien," as contemplated by this Section 4.4(a), such that the exercise by Lender (or Lender's successor in interest) of any rights under or relating to any KeyBank Deed of Trust shall not be subject to the following Right of First Offer and Second Offer.

(b) Neither Party shall sell or agree to sell (the "Selling Party") its Property without first offering to sell it to the non-selling Party (the "Non-Selling Party"). The word "sell" shall include any transfer, conveyance, or assignment, except for a lease, hypothecation, or pledge of all or any portion of such Property or the Selling Party's interest in such Property.

(c) Prior to the Selling Party entering into an agreement for the marketing of its Property or otherwise selling or agreeing to sell its Property, the Selling Party shall offer in writing ("First Offer") to sell the Property to the Non-Selling Party on the same terms and conditions that the Selling Party would then be willing to offer to a third party. The First Offer shall, at a minimum, include the following information:



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- (i) the purchase price;
- (ii) the method of payment of the purchase price;
- (iii) the amount and terms of any Selling Party financing;
- (iv) the amount of the required earnest money deposit; and
- (v) the time and location for the close of escrow.

(d) The Non-Selling Party shall have fifteen (15) days from the date of the First Offer to accept the First Offer ("Acceptance Period") by delivering to the Selling Party acceptance on or before 5:00 p.m. Mountain Time on the last day of the Acceptance Period. If the Non-Selling Party fails to accept the First Offer before the Acceptance Period ends, the First Offer shall be deemed rejected.

(e) If the Non-Selling Party responds to the First Offer with anything other than an unequivocal, unconditional acceptance or rejection, the right of first offer shall terminate and the response shall be deemed an offer to purchase the Property on the terms and conditions in the response ("Counter Offer"). The Selling Party shall be entitled to accept or reject the Counter Offer at the Selling Party's sole discretion, and if the Selling Party rejects the Counter Offer, the Selling Party shall have no further obligations under this Agreement.

(f) If the Non-Selling Party accepts the First Offer, the Non-Selling Party shall have thirty (30) days following acceptance of the First Offer ("Closing Period") to consummate the purchase of the Property pursuant to the terms and conditions of the First Offer. If the Non-Selling Party fails to consummate the purchase of the Property within the Closing Period, any earnest money paid by the Non-Selling Party pursuant to the acceptance shall be paid to the Selling Party as the Selling Party's liquidated damages, and the agreement to purchase the Property together with this Agreement shall be terminated. After the termination, the Selling Party shall be free to enter into an agreement for the sale of the Property with a third party on whatever terms the Selling Party may choose to offer without further obligation under this Agreement.

(g) If after the Non-Selling Party rejects the First Offer, the Selling Party negotiates with a third party and is otherwise willing to enter into an agreement with that party on terms substantially less favorable to the Selling Party than those contained in the First Offer, the Selling Party shall offer to sell the Property to the Non-Selling Party on those new terms by giving the Non-Selling Party written notice ("Second Offer"). The Non-Selling Party shall have five (5) business days from receipt of the Second Offer to accept the new terms. If the Non-Selling Party fails to accept the new terms or rejects the new terms in writing, the Selling Party shall be free to consummate the transaction with the third party without any liability to the Non-Selling Party. If the Non-Selling Party accepts the new terms, the Non-Selling Party shall then immediately consummate the transaction with the Selling Party on the terms and conditions in the Second Offer on the later of:

- (i) the time for consummation in the Second Offer, or
- (ii) fifteen (15) days following the date of the Second Offer.



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(h) Termination. This Agreement shall automatically terminate and have no further effect upon the first of the following events to occur (each, a "Termination Event"):

(i) the Non-Selling Party, in contravention of this Agreement, assigns or attempts to assign the Non-Selling Party's rights under this Agreement;

(ii) the Non-Selling Party rejects a First Offer or a Second Offer and the Selling Party subsequently consummates a sale of the Property to a third party pursuant to the terms of this Agreement; or

(iii) The purchase of the Property by the Non-Selling Party.

Notwithstanding the foregoing, in the event Lender (or its successor in interest) shall ever hold a fee simple interest in and to either of the Properties, this Agreement shall be fully enforceable in accordance with its terms against the other of the two Properties (i.e., the Property not owned in fee simple by Lender or its successor in interest), such that Lender (or its successor in interest) shall be entitled to all of the rights and benefits of this Agreement, the same as though no Termination Event had occurred. The intent of the foregoing exception being to ensure that, in the event Lender shall ever exercise any of its rights in and to either of the Properties, Lender and its successors in interest shall be able to operate and use such Property in accordance with the rights and remedies provided to the Parties hereunder, notwithstanding the occurrence of any Termination Event.

5. REMEDIES AND ENFORCEMENT.

5.1 All Legal and Equitable Remedies Available. In the event of a default or threatened default by any Owner or its Permittees of any of the terms, easements, covenants, conditions or restrictions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

5.2 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

5.3 No Termination for Default. Notwithstanding the foregoing to the contrary, no default hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Property made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Property covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

6. MISCELLANEOUS.

6.1 Attorneys' Fees. In the event a Party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing Party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.



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6.2 Amendment. The Parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Properties, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Elko County Recorder.

6.3 No Waiver. No waiver of any default of any obligation by any Party shall be implied from any omission by the other Party to take any action with respect to such default.

6.4 No Agency. Nothing in this Agreement shall be deemed or construed by any person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between any persons.

6.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the Properties and create equitable servitudes in favor of the Property(ies) benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the Parties and their respective successors, assigns, heirs, and personal representatives.

6.6 Grantee's Acceptance. The grantee of any of the Properties, or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Owner or from any subsequent Owner of such Properties, or any portion thereof, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions, duties and obligations contained herein. By such acceptance, any such grantee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other affected persons, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the portion of the Properties so acquired by such grantee.

6.7 Severability. Each provision of this Agreement and the application thereof to the Properties are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all of the Properties by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

6.8 Time of Essence. Time is of the essence of this Agreement.

6.9 Entire Agreement. This Agreement contains the complete understanding and agreement of the Parties with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

6.10 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery at the Party's last known address. Notice shall be deemed given



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upon receipt or refusal to accept delivery. Each Party may change from time to time their respective address for notice hereunder by like notice to the Other Parties.

6.11 Governing Law. The laws of the State of Utah shall govern the interpretation, validity, performance, and enforcement of this Agreement.

6.12 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Property, this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the affecting Property(ies) land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

6.13 Benefits to Permittees. Notwithstanding anything contained herein to the contrary, any provision creating a right or benefit for an Owner shall be deemed to also create a similar right or benefit for such Owner's tenants and subtenants.

[SIGNATURES FOLLOW ON NEXT PAGES]



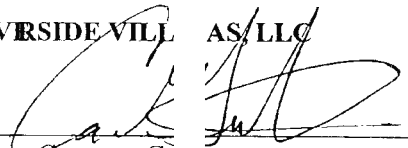
686483

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

“OWNER #1”

RIVERSIDE VILLAS, LLC


By: 
Its: Cameron Gunter
Manager

STATE OF UTAH)

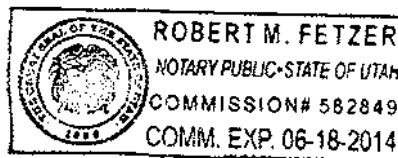
: ss

COUNTY OF UTAH)

On the 9th day of May 2014, personally appeared before me Cameron Gunter, the Manager of RIVERSIDE VILLAS, LLC, a Utah limited liability company and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.


Notary Public of the State of Utah

Commission Expires: 6-18-14



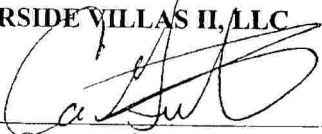


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"OWNER #2"

RIVERSIDE VILLAS II, LLC

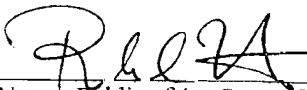
By: 
Its: Cameron Gunter
Manager

STATE OF UTAH)

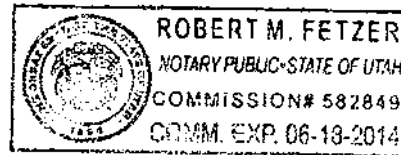
: ss

COUNTY OF UTAH)

On the 9th day of May 2014, personally appeared before me Cameron Gunter, the Manager of RIVERSIDE VILLAS II, LLC, a Utah limited liability company and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.


Notary Public of the State of Utah

Commission Expires: 6-18-14





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EXHIBIT 'A'

File No.: **NCS-666150-SLC1 (ami)**
Property: **1525 Opal Drive, Elko, NV**

04/22/2014

**ALL OF THAT PORTION LOCATED IN THE EXTERIOR BOUNDARIES OF MAP OF REVERSION
RECORDED DECEMBER 27, 2012 IN FILE NO. 665925 IN THE OFFICIAL RECORDS OF THE COUNTY
RECORDER, ELKO COUNTY, NEVADA.
A.P.N. 001-630-077**

Initials: _____



686483

05/19/2014
13 of 13

EXHIBIT 'B'

File No.: **NCS-665968-SLC1 (ami)**
Property: **1525 Opal Drive, Elko, NV**

04/21/2014

PARCEL 1:

REMAINDER (LOT 2B) AS SHOWN ON THE FINAL MAP OF RIVERSIDE CONDOMINIUMS - PHASE 1 FILED IN THE OFFICE OF THE COUNTY RECORDER OF ELKO COUNTY, STATE OF NEVADA ON NOVEMBER 5, 2008 AS FILE NO. 605491 AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED JANUARY 13, 2009 AS DOCUMENT NO. 608344 OF OFFICIAL RECORDS.

PARCEL 2:

**PARCEL 4 AS SHOWN ON THAT CERTAIN PARCEL MAP FOR DAVID G. KENYON AND KAREN L. KENYON FILED IN THE OFFICE OF THE COUNTY RECORDER OF ELKO COUNTY, STATE OF NEVADA, ON DECEMBER 19, 1997, AS FILE NO. 419689, BEING A PORTION OF SECTIONS 11 AND 14, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.B.&M.
A.P.N. 001-630-078**

Initials: _____

DOC# 692683

11/25/2014

01:26PM

Official Record

Requested By
FIRST AMERICAN TITLE INSURANCE CO

Elko County - NV

D Mike Smales - Recorder

Page: 1 of 5

Fee: \$18.00

Recorded By MS

RPTT: \$0.00

Recording Requested by, and
after recording return to:

Law Office of Steven W. Farnsworth, P.C.
Zions Bank Financial Center
180 N. University Ave., Ste. 260
Provo, UT 84601



692683

**AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT
WITH COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT is made as of November 25, 2014, between **RIVERSIDE VILLAS NEVADA, LLC**, a Delaware limited liability company ("**Owner #1**"), and **RIVERSIDE VILLAS II, LLC**, a Utah limited liability company ("**Owner #2**" and together with Owner #1, the "**Parties**").

A. Owner #2 and Riverside Villas, LLC, a Utah limited liability company ("**Villas**"), are parties to a certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions dated as of May 9, 2014, recorded in the land records of Elko County, Nevada on May 19, 2014 as Document No. 686483 (the "**REA**"), affecting the real property described in Exhibit A hereto.

B. Villas conveyed the real property described in the REA as "Property #1" to Owner #1.

C. The Parties desire to amend the REA as set forth below. Capitalized terms used in this Amendment and not defined herein have the meanings given to those terms in the REA.

THEREFORE, the Parties agree as follows:

1. In the event that the owner of Property #1 and the owner of Property #2 are not affiliates with common ownership, and in the event Amenities on Property #1 include a leasing office, any right on the part of Owner #2, its successors, and assigns to utilize any portion of the leasing office pursuant to the REA for purposes of leasing units at Property #2 shall be by revocable license only. In the event that the owner of Property #1 and the owner of Property #2 are not affiliates with common ownership, and in the event that Amenities on Property #2 include a leasing office, any right on the part of Owner #1, its successors, and assigns to utilize any portion of the leasing office pursuant to the REA for purposes of leasing units at Property #1 shall be by revocable license only. Each of Owner #1, Owner #2, and their respective successors and assigns may revoke and terminate the licenses referred to in this paragraph 1 upon 120 days' notice to the other party, and such notice may be given at any time.

2. Paragraph 4.4 of the REA is hereby deleted in its entirety. Owner #1, its successors, and assigns do not have any right of refusal or right of offer to purchase Property #2. Owner #2, its successors, and assigns do not have any right of refusal or right of offer to purchase Property #1.

IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the date first set forth above.

<Signature Pages Follow>

Amendment to Reciprocal Easement Agreement



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Owner #1:

RIVERSIDE VILLAS NEVADA, LLC, a
Delaware limited liability company

By: Riverside Villas, LLC, a Utah limited liability
company, its Sole Member

By: [Signature]
Cameron S. Gunter
Manager

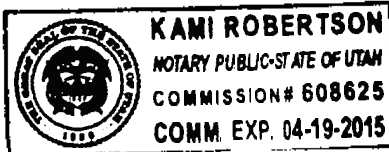
By: [Signature]
Michael C. Bingham
Manager

STATE OF Utah , Utah Countyss:

On this 24 day of November, 2014, personally appeared before me, a Notary Public in and for the County and State aforesaid, Cameron S. Gunter, Manager of Riverside Villas, LLC, a Utah limited liability company, Sole Member of Riverside Villas Nevada, LLC, a Delaware limited liability company, who acknowledged that he executed the foregoing instrument on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of Utah , the day and year in this Certificate first above written.

My Commission Expires:



[Signature]
Notary Public

County of Utah , State of Utah

STATE OF Utah , Utah County ss:

On this 24 day of November, 2014, personally appeared before me, a Notary Public in and for the County and State aforesaid, Michael C. Bingham, Manager of Riverside Villas, LLC, a Utah limited liability company, Sole Member of Riverside Villas Nevada, LLC, a Delaware limited liability company, who acknowledged that he executed the foregoing instrument on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of Utah , the day and year in this Certificate first above written.

My Commission Expires:



[Signature]
Notary Public

County of Utah , State of Utah

Amendment to Reciprocal Easement Agreement



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Owner #2:

RIVERSIDE VILLAS II, LLC, a
Utah limited liability company

By: 

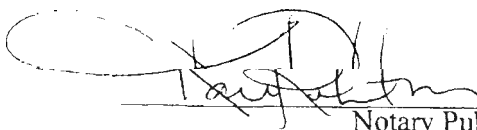
Cameron S. Gunter
Manager

STATE OF Utah . Utah Countyss:

On this 24 day of November, 2014, personally appeared before me, a Notary Public in and for the County and State aforesaid, Cameron S. Gunter, Manager of Riverside Villas II, LLC, a Utah limited liability company, who acknowledged that he executed the foregoing instrument on behalf of said limited liability company.

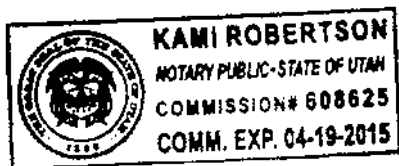
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of Utah, the day and year in this Certificate first above written.

My Commission Expires:



Notary Public

County of Utah, State of Utah



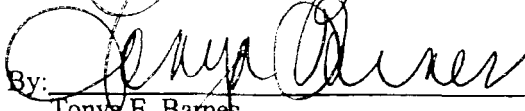


692683

11/25/2014
4 of 5

Consented to by:

KEYBANK NATIONAL ASSOCIATION, a
national banking association

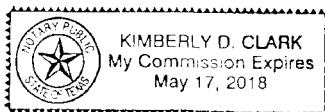
By: 
Tonya E. Barnes
Vice President

STATE OF Texas, Dallas County ss:

On this 24th day of November, 2014, personally appeared before me, a Notary Public in and for the County and State aforesaid, Tonya E. Barnes, Vice President of KeyBank National Association, a national banking association, who acknowledged that she executed the foregoing instrument on behalf of said national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of Dallas, the day and year in this Certificate first above written.

My Commission Expires: May 17, 2018




Notary Public

County of Dallas, State of Texas



692683

11/25/2014
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EXHIBIT 'A'

Phase I Legal

All of that portion located in the exterior boundaries of map of reversion recorded December 27, 2012 in File No. 665925 in the official records of the County Recorder, Elko County, Nevada.

Phase II Legal

All that certain real property situate in the County of Elko, State of Nevada, described as follows:
A portion of the Southeast quarter and a portion of the West half of Section 14, Township 34 North, Range 55 East, Mount Diablo Base and Meridian.

The land referred in the City of Elko, County of Elko, State of Nevada.

Parcel 1:

Remainder (Lot 2B) as shown on the final map of Riverside Condominiums – Phase I filed in the office of the County Recorder of Elko County, State of Nevada on November 5, 2008, as File No. 605491 and amended by that certain Certificate of Amendment recorded January 13, 2009, as Document No. 608344 of Official Records.

DOC# 701413

08/14/2015

01:30PM

Official Record

Requested By

FIRST AMERICAN TITLE INSURANCE CO

Elko County - NV

D Mike Smales - Recorder

Page: 1 of 6

Fee: \$19.00

Recorded By MS

RPTT: \$0.00

Recording Requested by, and
after recording return to:

Law Office of Steven W. Farnsworth, P.C.
Zions Bank Financial Center
180 N. University Ave., Ste. 260
Provo, UT 84601



701413

**SECOND AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT
WITH COVENANTS, CONDITIONS AND RESTRICTIONS**

August
THIS SECOND AMENDMENT is made as of ~~June 4~~, 2015, between **RIVERSIDE VILLAS NEVADA, LLC**, a Delaware limited liability company (Owner #1), and **RIVERSIDE VILLAS II, LLC**, a Utah limited liability company ("Owner #2" and together with Owner #1, the "Parties").

A. Owner #2 and Riverside Villas, LLC ("Villas") are parties to a certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions dated as of May 9, 2014, and recorded in the land records of Elko County, Nevada on May 19, 2014, as Document # 686483 (the "Original REA").

B. Villas conveyed the real property described in the Original REA as "Property #1 to Owner #1.

C. Owner #1 and Owner #2 amended the Original REA by executing that certain Amendment to Reciprocal Easement Agreement with Covenants, Conditions and Restrictions dated as of November 25, 2014, and recorded in the land records of Elko County, Nevada on November 25, 2014, as Document #692683 (the "First Amendment").

D. The Original REA amended by the First Amendment is hereafter the "REA".

E. The Parties desire to further amend the REA as set forth below. Capitalized terms used in this Second Amendment and not defined herein have the meanings given to those terms in the REA.

THEREFORE, the Parties agree as follows:

1. The Properties are both subject to Conditional Use Permit No. 2-15 (the "CUP") from the City of Elko ("City") to allow Multiple family residential development within a C (General Commercial) Zoning District. Owner #1 and Owner #2 each agree to comply with the CUP in all respects. Notwithstanding the foregoing, Owner #2 covenants to the City to guaranty compliance of the CUP in the event that Owner #1 does not comply.

2. Owner #1 shall maintain landscaping on the 12th Street and Opal Drive rights of way in a manner reasonably acceptable to the City at all times. To the extent that Owner #2 has any ownership and obligation for the foregoing landscaping, Owner #2 shall either install and maintain its landscaping obligations, or promptly reimburse Owner #1 for any cost and expenditures Owner #1 has made for Owner #2.

3. Water and sewer utilities throughout the Properties will be dedicated to the City by recording of a separate utility easement.

Amendment to Reciprocal Easement Agreement

4. Section 6.2 of the Original Agreement amended and restated as follows:

Amendment. The Parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Properties and the City, evidenced by a document that has been fully executed and acknowledged by all such record Owners and the City and recorded in the official records of the Elko County Recorder.

5. Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the Properties and create equitable servitudes in favor of the Property(ies) benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the Parties and their respective successors, assigns, heirs, and personal representatives.

IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the date first set forth above.

<Signature Pages Follow>

Owner #1:

RIVERSIDE VILLAS NEVADA, LLC, a
Delaware limited liability company

By: Riverside Villas, LLC, a Utah limited liability
company, its Sole Member

By: [Signature]
Cameron S. Gunter
Manager

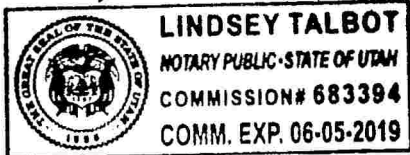
By: [Signature]
Michael C. Bingham
Manager

STATE OF Utah Utah County ss:

On this 4 day of August, 2015, personally appeared before me, a Notary Public in and
for the County and State aforesaid, Cameron S. Gunter, Manager of Riverside Villas ~~LLC~~ LLC, a
Utah limited liability company, who acknowledged that he executed the foregoing instrument on
behalf of said limited liability company. Nevada

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at
my office in said County of Utah, the day and year in this Certificate first above
written.

My Commission Expires: 6/5/19



[Signature]
Notary Public

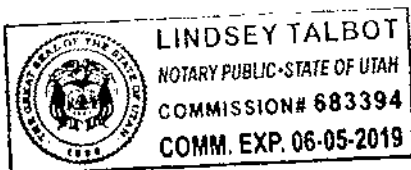
County of Utah, State of Utah

STATE OF Utah Utah County ss:

On this 4 day of August, 2015, personally appeared before me, a Notary Public in and
for the County and State aforesaid, ~~Cameron S. Gunter~~, Manager of Riverside Villas ~~LLC~~ LLC, a
Utah limited liability company, who acknowledged that he executed the foregoing instrument on
behalf of said limited liability company. Michael C. Bingham Nevada

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at
my office in said County of Utah, the day and year in this Certificate first above
written.

My Commission Expires: 6/5/19



[Signature]
Notary Public

County of Utah, State of Utah

Amendment to Reciprocal Easement Agreement

Owner #2:

RIVERSIDE VILLAS II, LLC, a
Utah limited liability company

By: [Signature]
Cameron S. Gunter
Manager

STATE OF Utah, Utah County ss:

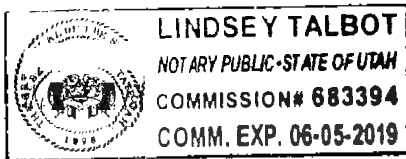
On this 4 day of August, 2015, personally appeared before me, a Notary Public in and for the County and State aforesaid, Cameron S. Gunter, Manager of Riverside Villas II LLC, a Utah limited liability company, who acknowledged that he executed the foregoing instrument on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of Utah, the day and year in this Certificate first above written.

My Commission Expires: 6/5/19


[Signature]
Notary Public

County of Utah, State of Utah



Consented to by Lender to Owner #1:

**FEDERAL HOME LOAN MORTGAGE
CORPORATION**

By: 

Name: **David J. Goozman**
Title: **Manager**
Multifamily Asset Management

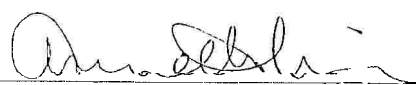
STATE OF Virginia, Fairfax County ss:

On this 26th day of June, 2015, personally appeared before me, a Notary Public in and for the County and State aforesaid, David J. Goozman [NAME], Manager [TITLE] of FEDERAL HOME LOAN MORTGAGE CORPORATION, who acknowledged that he/she executed the foregoing instrument on behalf of said national banking association.

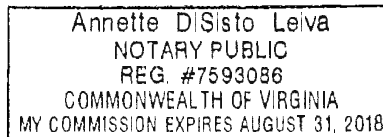
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of Fairfax, the day and year in this Certificate first above written.

My Commission Expires:

August 31, 2018

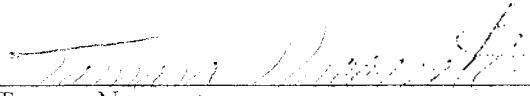

Notary Public

County of Fairfax, State of Virginia



Consented to by Lender to Owner #2:

KEYBANK NATIONAL ASSOCIATION, a
national banking association

By: 
Tamara Naccarato
Vice President


STATE OF COLORADO, DENVER County ss:

On this 3rd day of August, 2015, personally appeared before me, a Notary Public in and for the County and State aforesaid, Tamara Naccarato, Vice President of KeyBank National Association, a national banking association, who acknowledged that she executed the foregoing instrument on behalf of said national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of Denver, the day and year in this Certificate first above written.

My Commission Expires: June 13, 2016




Notary Public

County of Denver, State of Colorado

Amendment to Reciprocal Easement Agreement



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7119

CITY OF ELKO PLANNING COMMISSION ACTION REPORT Regular Meeting of February 17, 2015

WHEREAS, the following item was reviewed and considered by the Elko City Planning Commission on February 17, 2015 under Public Hearing format, in accordance with notification requirements contained in Section 3-2-18 F. of the City Code:

Conditional Use Permit No. 2-15, filed by Riverside Villas Nevada LLC, to allow for a multiple family residential development consisting of 156 units within a C (General Commercial) Zoning District, and matters related thereto.

The subject property is located generally on the easterly side of 12th Street near its intersection with Opal Drive (1525 Opal Drive).

WHEREAS, the Planning Commission, upon review and consideration of the application, supporting data, public input and testimony, conditionally approve Conditional Use Permit No. 2-15 subject to the following conditions:

1. Conditions in the Elko City Staff Report dated February 17, 2015 listed as follows:
 - 1) That conditions of this Conditional Use Permit will replace any conditions and/or requirements of Conditional Use Permit 13-13.
 - 2) That Conditional Use Permit No. 2-15 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.
 - 3) The Conditional Use Permit will expire within one (1) year of the date of approval if the Applicant is not actively engaged in developing the property.
 - 4) The complex shall comply with the development standards as outlined in City Code Section 3-2-5 E. 6.
 - 5) The public improvements shall be installed, completed, and accepted prior to a certificate of occupancy for buildings currently under construction as well as future buildings.
 - 6) That the development shall comply with City Code Section 3-2-17.
 - 7) Exterior lighting for the complex shall be shielded and cutoff with minimal lighting spilling over into the neighboring properties.
 - 8) That the trash enclosures shall accommodate for the collection and storage of separate recycling and solid waste receptacles.
 - 9) There shall not be any placement of any mail gang boxes or kiosks in association with this complex placed in the city's right of way and shall remain internal to the complex.

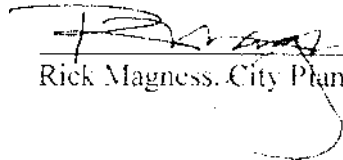
- 10) Architecture and building materials shall be equal to and be compatible with the existing structures.
 - 11) A Landscaping Plan showing locations and quantities of all landscape materials has been submitted and approved during building permit submittal. Applicant will complete landscaping on or before May 15, 2015.
 - 12) Conditions as outlined in the Development Department's, Engineering Department, Fire Department and Public Works Department memorandums as included in the review package.
 - 13) Construction and other temporary materials will be removed from site and adjacent easterly site (Opal Drive and 12th Street) before final Certificate of Occupancy can be approved.
2. Conditions in the Community Development Manager's report dated January 27, 2015 striking condition 11 and modifying condition 13 listed as follows:
- 1) The conditional use permit is granted to Riverside Villas, LLC for a 156 multi-family unit and related accessory use to be located on the describe properties in accordance with the submitted site plan and elevations.
 - 2) The permit shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
 - 3) The Conditional Use Permit shall expire within one year unless the permit holder is actively engaged in development of the property.
 - 4) A screen wall is not required under Section 3-2-3(J) of City code.
 - 5) A traffic study is not required.
 - 6) All parking area and access lighting is to be shielded or cut-off design.
 - 7) A landscape plan will be required for submittal and approval. The landscape plan is to include the 12th Street frontage west of the existing right- in/right-out access on 12th Street.
 - 8) The landscaping on the 12th Street right-of-way shall be maintained in an acceptable manner at all times.
 - 9) The property shall be maintained in an acceptable condition at all times.
 - 10) It is expected the water and sewer throughout the development will be dedicated to the City. Recordation of proper utility easements is required. City utilities require a 20 foot wide easement centered of the main utilities. A blanket utility easement would be best suited for this circumstance.
 - 12) All site amenities are to be completed prior to issuance of a Certificate of Occupancy for the last 3 bedroom building.
 - 13) **The parcels are to be merged**, in the event the parcels cannot be merged a document shall be recorded against both properties guaranteeing the use of all amenities that shall be binding to the land and cannot be modified by either owner

in the event of sale of one of the properties to a third party. The document shall be acceptable to the City of Elko and Riverside Villas Nevada, LLC shall pay for all legal fees associated with the review of the document.

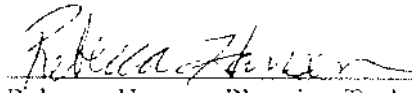
- 14) Record a public utility easement over all utilities on the property in the event the parcel map merging the properties is not recorded.
- 15) Conditional Use Permit 13-13 is no longer valid.
- 16) The Conditional Use Permit is to be recorded as a condition of Certificate of Occupancy.

- 3. This be reviewed and approved by the City attorney in regards to the multiple owner reciprocal use for the project.

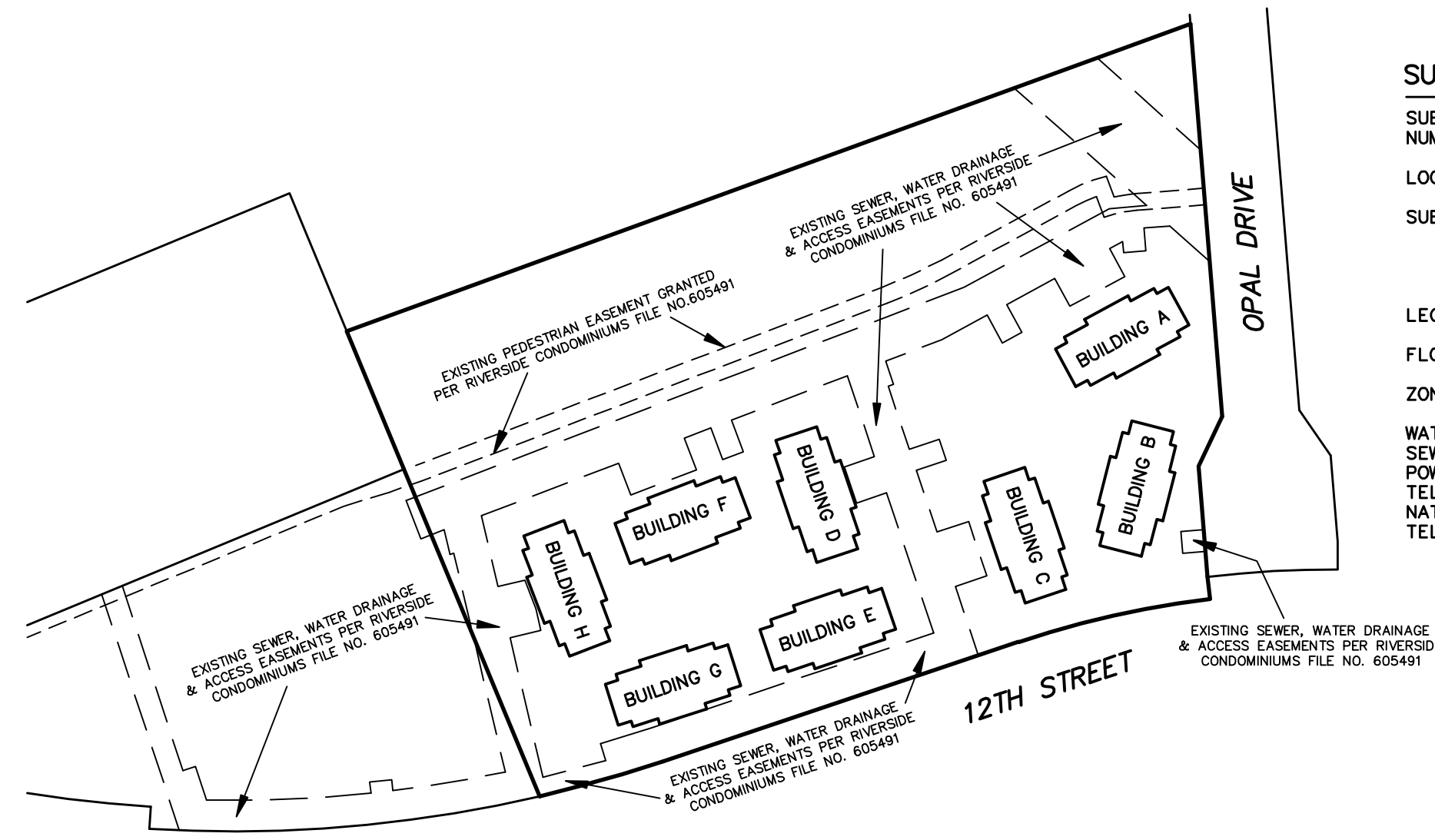
The applicant is advised of the right to appeal this decision to the City Council within 10 days of the date of approval as stated above.


Rick Magness, City Planner

Attest:


Rebecca Hansen, Planning Technician

CC: Applicant
Jeremy Draper, Development Manager (via email)
Shanell Owen, City Clerk



IN ADDITION TO ANY EASEMENTS SHOWN ON THIS DETAIL, PARCEL B AS SHOWN HEREON IS SUBJECT TO THE 20' UTILITY EASEMENT GRANTED TO THE CITY OF ELKO BY DOCUMENT NO. 455372, ELKO COUNTY, NEVADA OFFICIAL RECORDS. THE EASEMENTS SHOWN ON THE FINAL MAP FOR RIVERSIDE CONDOMINIUMS PHASE 1, FILE NO. 605491 AND THE EASEMENTS SHOWN ON THE MAP OF REVERSION FOR SIGNATURE DEVELOPERS, LLC, FILE NO. 665925 WITH THE EXCEPTION OF THE BLANKET UTILITY EASEMENT GRANTED BY NOTE 6 OF THE SAID FINAL MAP OF RIVERSIDE CONDOMINIUMS PHASE 1 AND CITED AS REMAINING IN EFFECT BY NOTE 7 OF THE SAID MAP OF REVERSION FOR SIGNATURE DEVELOPERS.

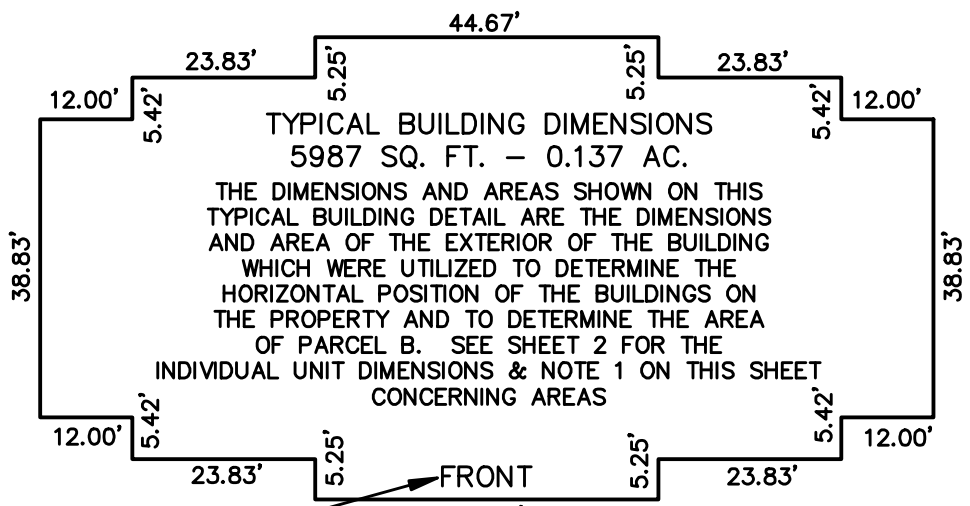
NOTE 6 OF THE SAID FINAL MAP OF RIVERSIDE CONDOMINIUMS PHASE 1 GRANTS A BLANKET UTILITY EASEMENT FOR GAS, POWER, TV AND TELEPHONE SERVICES WITHIN THE COMMON AREA SHOWN ON LOT 2A OF THE SAID FINAL MAP OF RIVERSIDE CONDOMINIUMS PHASE 1 AND IS CITED AS REMAINING IN EFFECT BY NOTE 7 OF THE SAID MAP OF REVERSION FOR SIGNATURE DEVELOPERS. THIS EASEMENT IS HEREBY AMENDED AND REPLACED BY A BLANKET UTILITY EASEMENT GRANTED BY THIS MAP WITHIN THE COMMON ELEMENT ON PARCEL B AS SHOWN HEREON. SEE NOTES UNDER COMMON ELEMENTS ON THIS SHEET.

SUBDIVISION INFORMATION

SUBDIVISION NAME: RIVERSIDE VILLAS, A CONDOMINIUM DEVELOPMENT
NUMBER OF UNITS: 96
LOCATION: SECTION 14, T.34 N., R.55 E., M.D.B. & .
SUBDIVIDER: RIVERSIDE VILLAS NEVADA, LLC
180 N. UNIVERSITY AVE., SUITE 200
PROVO, UT 84601
CONTACT: BRANSON BRINTON - PHONE: (385) 207-7225
LEGAL DESCRIPTION: LOT 2A, MAP OF REVERSION, FILE NO. 665925
FLOOD ZONE: NONE
ZONING: R - SINGLE FAMILY AND MULTI-FAMILY RESIDENTIAL
WATER SUPPLY: CITY OF ELKO
SEWAGE DISPOSAL: CITY OF ELKO
POWER: NV ENERGY
TELEPHONE: FRONTIER COMMUNICATIONS
NATURAL GAS: SOUTHWEST GAS
TELEVISION: SATVIEW BROADBAND

NOTES:

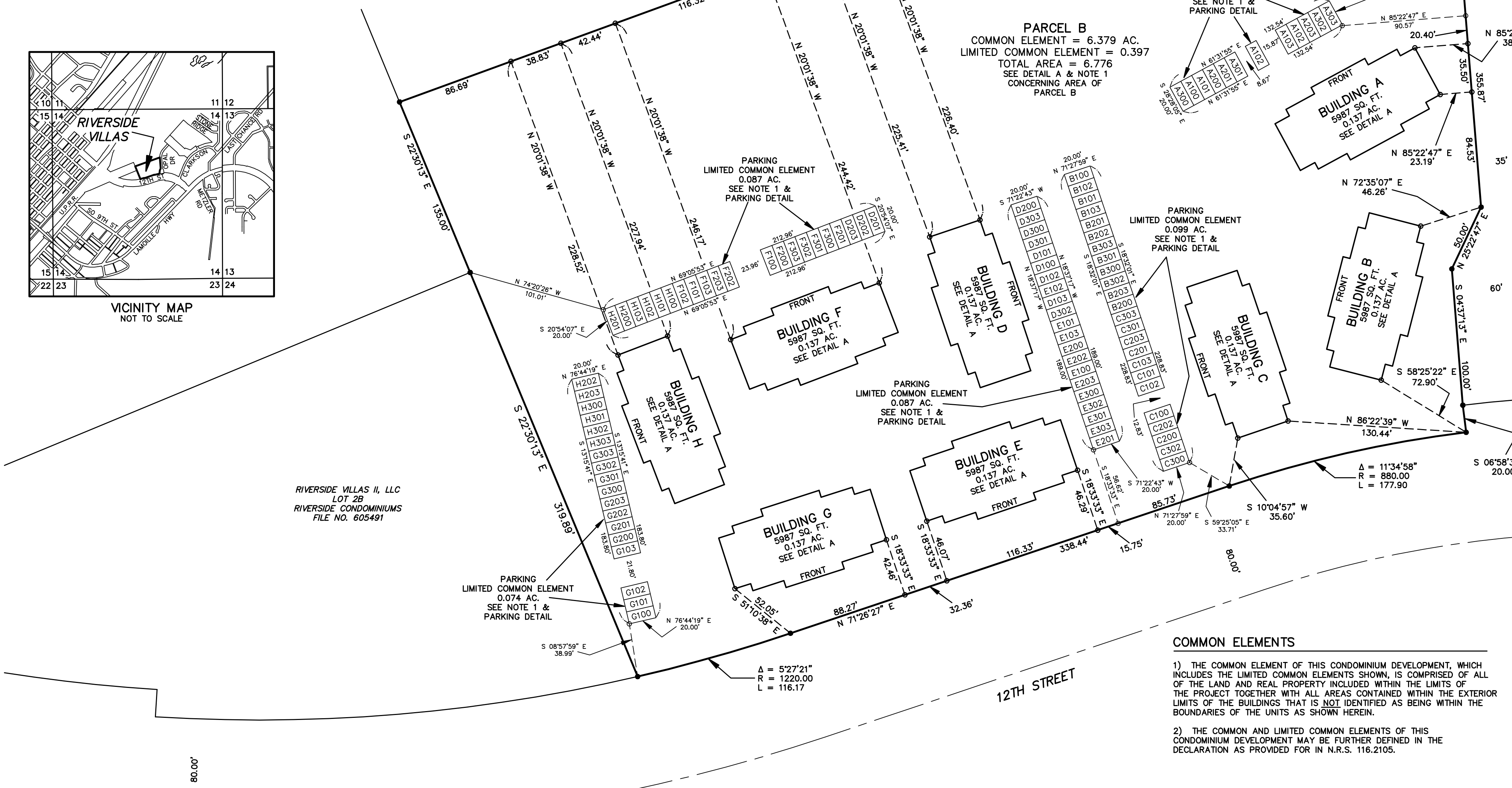
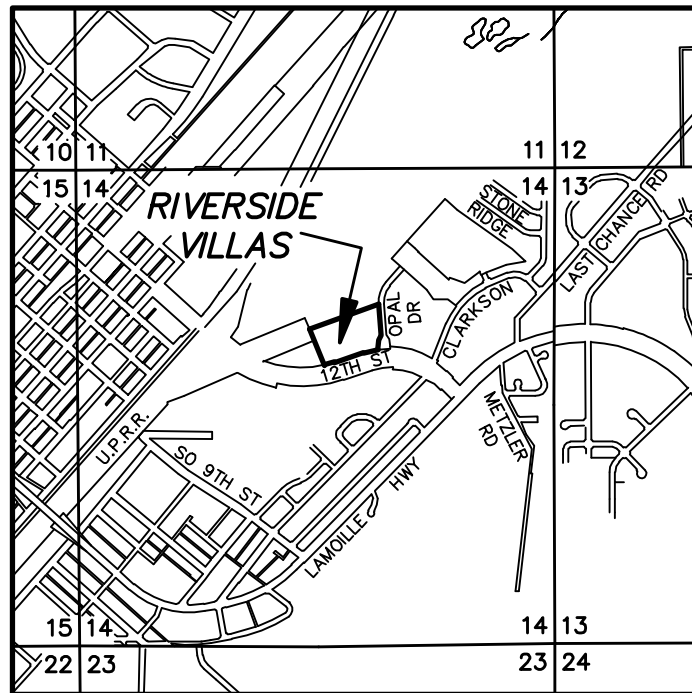
- 1) THE TOTAL SUBDIVIDED AREA OF THIS MAP EQUALS 7.872 ACRES.
THE AREAS LISTED BELOW ARE THE HORIZONTAL AREAS AT GROUND LEVEL:
COMMON ELEMENT WITHIN THE EXTERIOR LIMITS OF EACH BUILDING = 0.020 AC.
LIMITED COMMON ELEMENT WITHIN EXTERIOR LIMITS OF EACH BUILDING = 0.008 AC.
AREA OF THE UNITS WITHIN EACH BUILDING = 0.109 AC.
TOTAL AREA WITHIN EXTERIOR LIMITS OF EACH BUILDING = 0.137 AC.
COMMON ELEMENT OUTSIDE THE EXTERIOR LIMITS OF ALL BUILDINGS = 6.379 AC.
LIMITED COMMON AREA OUTSIDE THE EXTERIOR LIMITS OF ALL BUILDINGS = 0.397 AC.
TOTAL AREA OUTSIDE THE EXTERIOR LIMITS OF ALL BUILDINGS = 6.776 AC.



THE SIDE OF THE BUILDING LABELED AS FRONT ON EACH BUILDING SHOWN BELOW THAT WAS USED AS THE FRONT ORIENTATION FOR UNIT NUMBERING PURPOSES AS SHOWN ON SHEET NO. 2

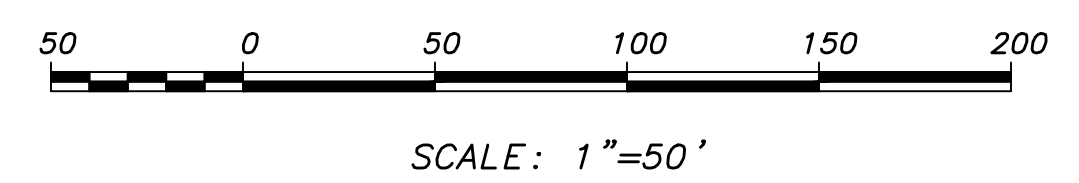
DETAIL A NOT TO SCALE

JOSHUA TREE SHELTER
PARCEL 3
PARCEL MAP
FILE NO. 625691



COMMON ELEMENTS

- 1) THE COMMON ELEMENT OF THIS CONDOMINIUM DEVELOPMENT, WHICH INCLUDES THE LIMITED COMMON ELEMENTS SHOWN, IS COMPRISED OF ALL OF THE LAND AND REAL PROPERTY INCLUDED WITHIN THE LIMITS OF THE PROJECT TOGETHER WITH ALL AREAS CONTAINED WITHIN THE EXTERIOR LIMITS OF THE BUILDINGS THAT IS NOT IDENTIFIED AS BEING WITHIN THE BOUNDARIES OF THE UNITS AS SHOWN HEREIN.
- 2) THE COMMON AND LIMITED COMMON ELEMENTS OF THIS CONDOMINIUM DEVELOPMENT MAY BE FURTHER DEFINED IN THE DECLARATION AS PROVIDED FOR IN N.R.S. 116.2105.

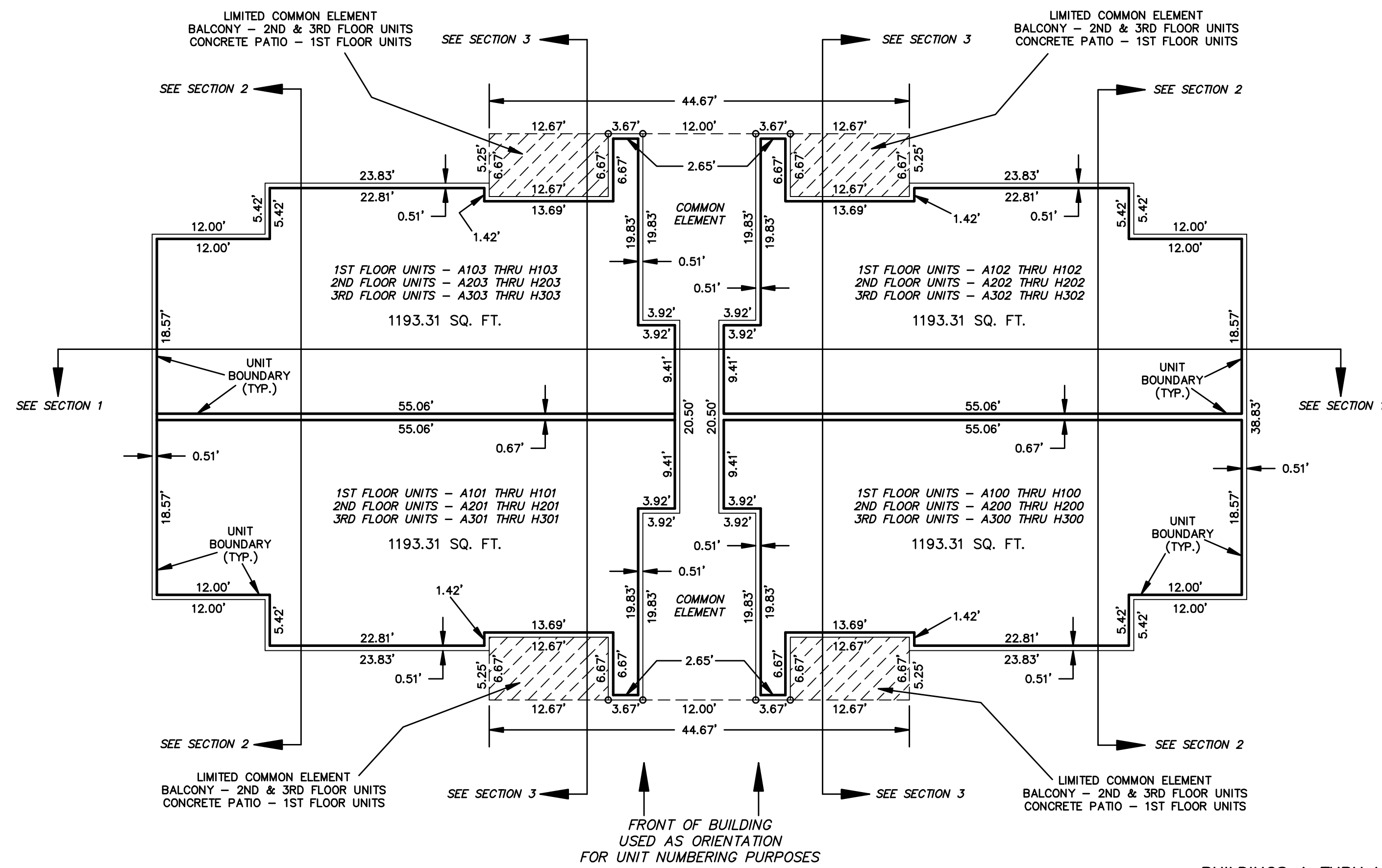


SHEET 1 OF 2

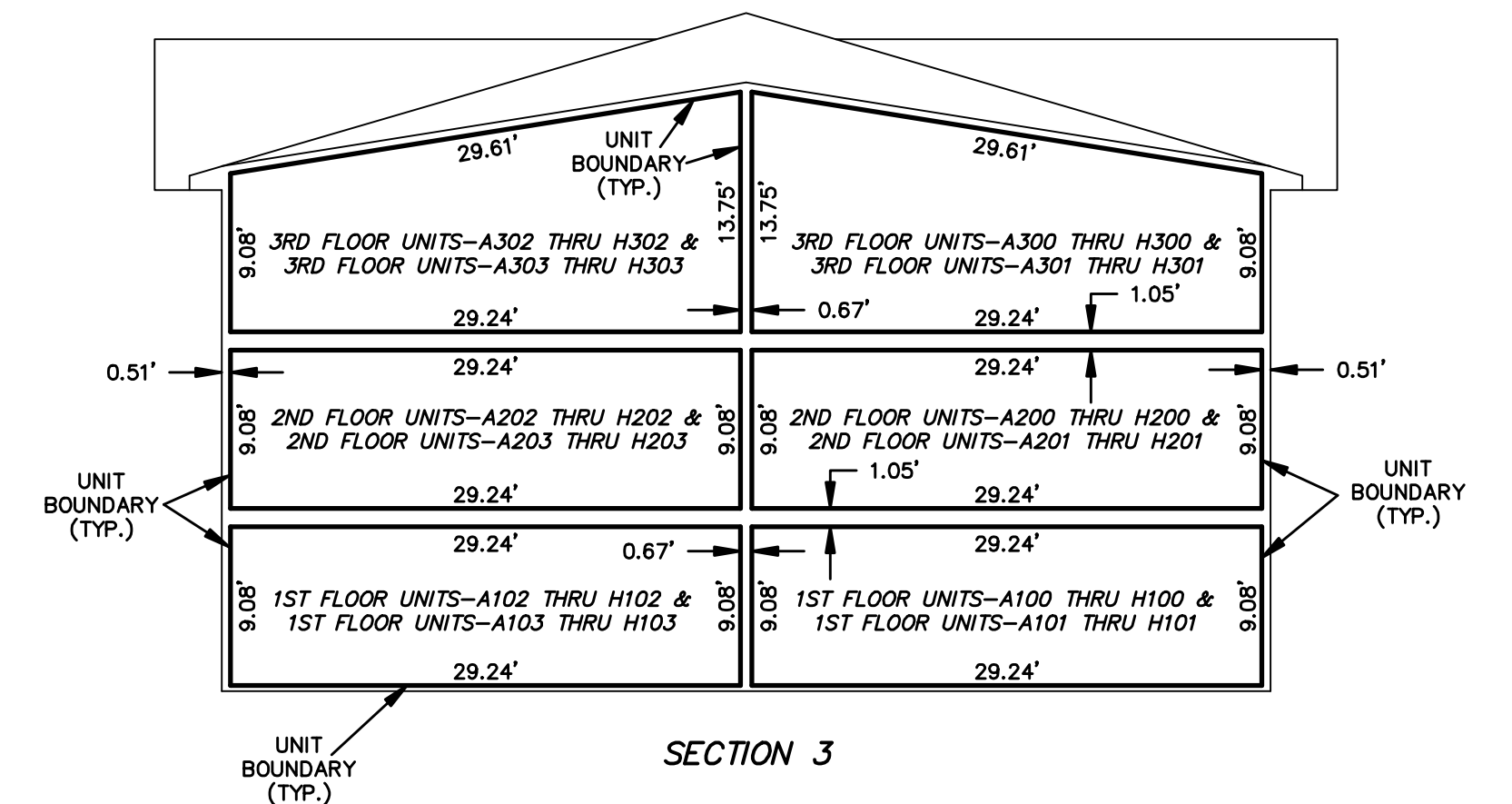
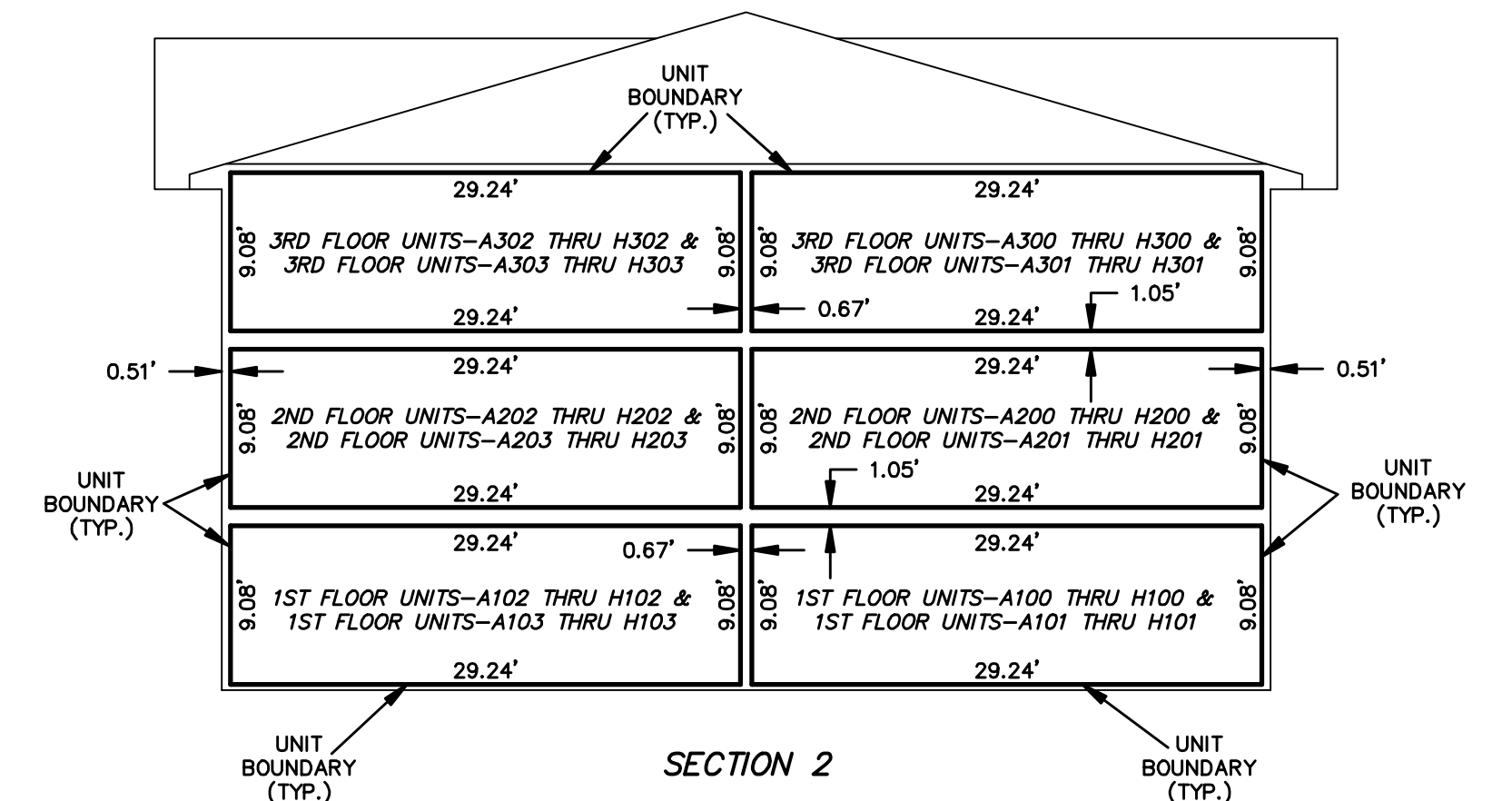
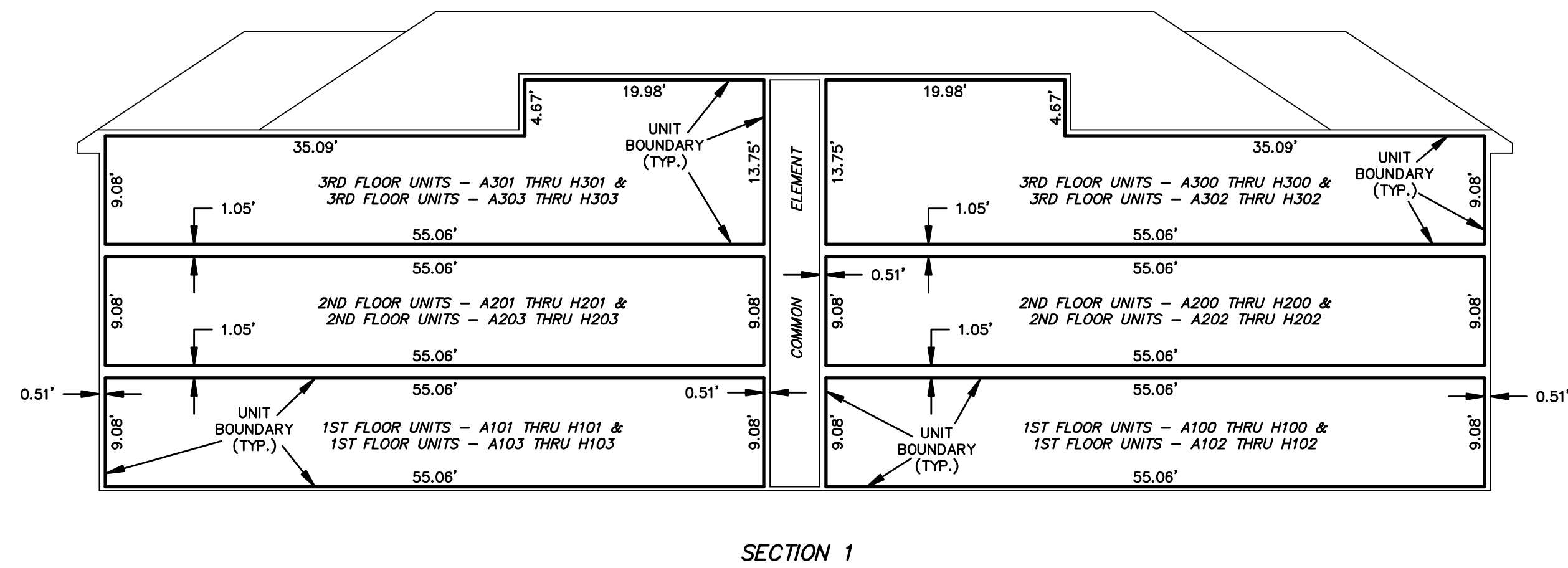
TENTATIVE MAP
OF
RIVERSIDE VILLAS
A CONDOMINIUM DEVELOPMENT
IN
SECTION 14, T.34 N., R.55 E., M.D.B. & M.
CITY OF ELKO, NEVADA

HIGH DESERT ENGINEERING, LLC
640 IDAHO STREET
ELKO, NEVADA 89801
(775) 738-4053

218005



**BUILDINGS A THRU H
TYPICAL UNIT DIMENSIONS**
ALL AREAS CONTAINED WITHIN THE EXTERIOR LIMITS
OF THE BUILDINGS NOT IDENTIFIED AS BEING WITHIN THE
BOUNDARY OF THE UNITS AS SHOWN HEREON, ARE TO BE PART OF
THE COMMON ELEMENT OF THIS CONDOMINIUM DEVELOPMENT
WHICH INCLUDES THE LIMITED COMMON ELEMENTS SHOWN



SHEET 2 OF 2

TENTATIVE MAP
OF
RIVERSIDE VILLAS
A CONDOMINIUM DEVELOPMENT
IN
SECTION 14, T.34 N., R.55 E., M.D.B. & M.
CITY OF ELKO, NEVADA

10 0 10 20 30 40
SCALE: 1"=10'

HIGH DESERT 640 IDAHO STREET
ENGINEERING, ELKO, NEVADA 89801
LLC (775) 738-4053 **218005**

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Zoning Ordinance Amendment 1-18, Ordinance No. 829, an amendment to the City Zoning Ordinance, specifically Section 3-2-11 IBP, IC Industrial Districts, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **May 1, 2018**
3. Agenda Category: ***NEW BUSINESS, PUBLIC HEARINGS***
4. Time Required: **20 Minutes**
5. Background Information: **At the March 6, 2018 meeting, Planning Commission took action to initiate an amendment to the City Zoning Ordinance Title 3, Chapter 2, Section 11; IBP, IC Industrial Districts.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Ordinance 829**
8. Recommended Motion: **Forward a recommendation to City Council to adopt an ordinance which approves Zoning Ordinance Amendment 1-18 of the Elko City Code specifically Section 3-2-11.**
9. Findings:
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:

****Do not use pencil or red pen, they do not reproduce****

COMMENT: This is to update the setback requirements in the IC District.

[initial

CITY OF ELKO
ORDINANCE NO. 829

**AN ORDINANCE AMENDING TITLE 3, CHAPTER 2, OF THE ELKO CITY CODE
ENTITLED "GENERAL ZONING ORDINANCE" BY ADDING NEW DEVELOPMENT
STANDARDS, AND MATTERS RELATED THERETO.**

WHEREAS, the City of Elko desires to amend the City Code to provide clarification within the General Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKO, NEVADA

For amendment purposes, words which are in bold and underlined are additions to the Ordinance, and words which are lined through and bold are deleted from the Ordinance.

Section 1: Title 3, Chapter 2, Section 11 is hereby amended to read as follows:

3-2-11: IBP, IC INDUSTRIAL DISTRICTS:

A. IBP Industrial Business Park District:

1. Intent: The purpose of the IBP zoning district is to provide and preserve high profile areas appropriate for corporate office, research and development facilities, office parks and compatible light industrial uses with emphasis on special site design features that strengthen the city's economic base and contribute to a higher quality of appearance and standard of land use, and to preclude residential uses and also extensive commercial uses and development that may be detrimental to the character or quality of the business/industrial park environment.
2. Principal Uses Permitted: The primary permitted uses in the IBP zoning district are listed as follows, plus other uses of a similar nature:

Advertising distribution.

Bakery.

Bottling plants.

Business schools, vocational and trade schools.

Catering services.

Childcare center.

Communication facilities.

Corporate and professional office, offices subordinate to and related to the principal industrial use.

Electronic manufacturing and assembly.

Financial institutions.

Indoor light manufacturing, processing, assembly, fabricating or storage of certain specified products and materials.

Laboratories, medical experimental and research.

Machine shops.

Newspaper and publishing plants.

Office supply stores.

Printing, blueprinting, photostating, and photo finishing facilities.

Recording studios.

Recreation and fitness centers.

Warehousing and distribution center.

Other commercial uses which are supportive and complementary to IBP uses and the intent of the district as determined by the planning commission.

3. Conditions:

- a. Conditional Use Permit Required: Issuance of a conditional use permit following review by the planning commission and in accordance with this chapter is required for all fully integrated and planned IBP developments as part of a concept master plan or for individual IBP uses not part of an approved master plan.
- b. Outside Storage: Any outside storage shall be suitably screened from the surrounding area by walls, planting, or other barrier to the satisfaction of the planning commission.
- c. Signs: Advertising signs shall be reviewed as part of the plans submitted for conditional use permit review. The planning commission may require the reduction of any height or size of sign suggested by the developer, if the planning commission finds such reduction to be in keeping with the intent of this section.
- d. Height Limitation: No structure may be allowed to exceed the elevation indicated in the current airport master plan of the city.

e. Required Area And Width: Five (5) acre minimum development area with ten thousand (10,000) square feet minimum lot area within the development, one hundred fifty feet (150') average width, unless otherwise permitted by the planning commission.

f. Yards: Yards shall be set as follows:

(1) Rear yard: Twenty foot (20') minimum setback unless the structure borders on an alley, in which event no setback is required.

(2) Interior side yard: Ten foot (10') minimum setback.

(3) Exterior side yard: Fifteen foot (15') minimum setback.

(4) Front yard: Twenty foot (20') minimum setback.

g. Front And Exterior Side Yards: Required front yards and exterior side yards shall be limited exclusively for landscaping, driveways, internal circulation, walkways, parking, signs and other related streetscape features. Materials storage within such yards shall be prohibited.

h. Landscaping:

(1) Provisions for landscaping shall be included in the development master plan to be submitted for conditional use permit approval. These shall include, but are not limited to, screen planting, lawn areas, trees, shrubs, fences and walls. Drought tolerant, low maintenance species in conjunction with decorative "hard surface" materials, such as, but not limited to, volcanic rock, gravel or stone are encouraged and may be utilized to fulfill landscape surface requirements.

(2) Minimum landscape area shall be provided equal to twenty five percent (25%) of the required front yard and exterior side yard equal to two and one-half ($2\frac{1}{2}$) square feet per linear foot of street frontage.

(3) It shall be the responsibility of the owner or developer to carry out this program and to provide such maintenance and care as is required to obtain the effect intended by the original plan. All landscaping shall be planned and maintained to the satisfaction of the planning commission. A screen wall as set forth in subsection 3-2-3J of this chapter is required for all IBP uses within one hundred fifty feet (150') of an R district.

B. IC Industrial Commercial District:

1. Intent: The purpose of the IC zoning district is to provide and preserve transitional areas characterized by surrounding commercial and industrial districts appropriate for a mixture of commercial uses and small scale industrial uses which are not associated with excessive levels of noise, dust, odor, vibration or smoke.

2. Principal Uses Permitted:

All general commercial principal permitted uses listed in subsection 3-2-10B of this chapter.

All light industrial principal permitted uses listed in subsection 3-2-12A of this chapter.

3. Conditional Uses Permitted: Any of the following uses may be permitted upon approval of a conditional use permit in accordance with provisions of this subsection and as set forth in section 3-2-18 of this chapter:

Gas service stations.

Mixed uses. Structures containing one or more residential dwelling units in which a significant portion of the space within the structure includes one or more principal commercial permitted uses.

Recreational vehicle parks.

4. Development Standards:

~~a. For industrial uses, the area and setback requirements set forth in subsection 3-2-12A2 of this chapter shall apply.~~

~~b. For commercial uses, all standards set forth in section 3-2-10 of this chapter shall apply.~~

~~c. For an unspecified use at the time of development, the stricter of the two (2) standards set forth in subsection 3-2-12A2 or section 3-2-10 of this chapter shall apply.~~

a. Minimum Area: There is no required minimum lot area.

b. Minimum Lot Width: There is no required minimum lot width.

c. Minimum Front and Rear Yard Setback: Required minimum front and rear yard setback shall be five feet (5').

d. Minimum Side Yard Setback: Required minimum side yard setback shall be five feet (5').

5. Height Restrictions: In addition to all other applicable requirements, all structures within the IC industrial commercial zoning district must comply with the height and other requirements of the current city airport master plan, to the extent the plan applies to that location.

6. IC Industrial Commercial Zone Abutting Residential Zone: A conditional use permit pursuant to section 3-2-18 of this chapter is required for every new development on a lot or parcel in the IC industrial commercial zoning district which abuts a residential zoning district. All such developments are subject to the screen wall requirements set forth in subsection 3-2-3.J of this chapter.
7. Outside Storage: Any outside storage of materials shall be suitably screened from surrounding area by fencing, walls, planting, or other comparable barrier.
8. Landscaping:
 - a. For every new construction in the IC industrial commercial zoning district which is outside of the central business district (CBD), minimum landscape area shall be provided in an amount equal to fifteen percent (15%) of the surface area of the developed portion of the property for lot sizes one acre or greater and ten percent (10%) of the surface area of the developed portion of the property for lot sizes smaller than one acre, to include property consisting of multiple parcels which form a single development. Additionally, the city may, at its discretion, require that landscaped areas be distributed throughout the development, including yard areas between buildings, structures and the adjacent street right of way line. The landscaping may include, but is not limited to, screen planting, lawns, trees, shrubs, fences and walls. Drought tolerant, low maintenance species, in conjunction with decorative hard surface materials such as, but not limited to, volcanic rock, gravel or stone, are encouraged and may, where appropriate, be utilized to fulfill landscape surface requirements.
 - b. It shall be the responsibility of the owner or developer to carry out the requirements of this section and to provide proper maintenance and care of the landscaping. (Ord. 805, 12-13-2016)

Section 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict

Section 3: If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, the invalidity, unenforceability or provision shall not affect any remaining provisions of this ordinance.

Section 4: Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper of general circulation within the time established by law, for at least one publication.

Section 5: This Ordinance shall be effective upon the publication mentioned in Section 4.

PASSED AND ADOPTED this --th day of -, 2018 by the following vote of the Elko City Council.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this --th day of--, 2018.

CITY OF ELKO

BY: _____
CHRIS JOHNSON, Mayor

ATTEST:

SHANELL OWEN, City Clerk

**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible recommendation to City Council for Rezone No. 3-18, filed by Gary and Bernice Kimber, for a change in zoning from PQP (Public, Quasi-Public) to R (Single Family and Multiple Family Residential), approximately .22 acres of property located generally north side of Chris Avenue, approximately 160 feet east of Sierra Drive, FOR POSSIBLE ACTION**
2. Meeting Date: **May 1, 2018**
3. Agenda Category: ***PUBLIC HEARINGS***
4. Time Required: **15 Minutes**
5. Background Information: **The applicant purchased a parcel of land from the City of Elko in 1996 and another 5,376 sq. ft., a portion of Mountain View Park, was purchased from the City of Elko in December 2017. Both City of Elko parcels are zoned PQP, Public, Quasi-Public.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Memo from Development Director, Memo from City Planner**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which conditionally approves Rezone No. 3-18**
9. Findings:
 - **The proposed rezone is in conformance with the Master Plan Land Use component.**
 - **The proposed rezone is consistent with the Transportation component of the Master Plan. The proposed zone district and existing use will not create any significant cumulative issues on the existing transportation system.**
 - **The proposed rezone is consistent with City of Elko Wellhead Protection Plan. The proposed use of the property and allowed uses under the proposed district do not present a hazard to City wells.**
 - **The proposed rezone is in conformance with Section 3-2-4 of city code for lot area, lot width and depth and setback requirements.**
 - **The proposed rezone is in conformance with Section 3-2-5(R) Single Family and Multiple Family Residential.**
 - **The property as developed is in conformance with City Code 3-2-17 for the principal permitted use as a single family residence.**

Agenda Item# I.A.3.

- **The parcel is not located within a designated Special Flood Hazard Area.**
- **Development under the proposed rezone will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.**
- **The proposed rezone is consistent with surrounding land uses.**

10. Prepared By: **Cathy Laughlin, City Planner**

11. Agenda Distribution: **Gary and Bernice Kimber
309 Chris Avenue
Elko, NV 89801**

**High Desert Engineering
640 Idaho Street
Elko, NV 89801**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/1

Do not use pencil or red pen, they do not reproduce

Title: Rezone 3-18

Applicant(s): Gary + Bernice Kimber

Site Location: 309 Chris Ave - APNs 001-610-031 + 001-610-083

Current Zoning: PAP Date Received: 4/4/18 Date Public Notice: 4/17

COMMENT: This is to rezone APN 001-610-083 and a portion of
APN 001-610-031 from PAP to R, to have one zone over the
entire parcels once combined.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/23/18

Recommend approval as presented

Initial

City Manager: Date: 4/24/18

No comments/concerns.


Initial



City of Elko
1751 College Avenue
Elko, NV 89801
(775) 777-7160
FAX (775) 777-7119

CITY OF ELKO STAFF REPORT

MEMO DATE: April 11, 2018
PLANNING COMMISSION DATE: May 1, 2018
APPLICATION NUMBER: REZONE 3-18
APPLICANT: Gary and Bernice Kimber
PROJECT DESCRIPTION:

A rezone from (R) Single Family and Multiple Family Residential and PQP – Public, Quasi-Public (R) Single Family and Multiple Family Residential.



STAFF RECOMMENDATION:

RECOMMEND APPROVAL, subject to facts, findings, and conditions.

PROJECT INFORMATION

PARCEL NUMBER: A portion of 001-610-031 & all of 001-610-083

PARCEL SIZE: .0866 acres for lots combined as shown on Parcel Map application 2-18, pending recordation.

EXISTING ZONING: (R) Single Family and Multiple Family Residential & PQP Public, Quasi-Public

MASTER PLAN DESIGNATION: (RES MD) Residential Medium Density

EXISTING LAND USE: Developed with a single family dwelling on APN 001-061-031, APN 001-061-083 is vacant

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

- North: (PQP) Public-Quasi, Public / Undeveloped
- West: (R) Single and Multiple Family / Developed
- East: (PQP) Public-Quasi, Public / Undeveloped
- South: (PQP) Public-Quasi, Public / Undeveloped

PROPERTY CHARACTERISTICS:

- The property is developed.
- The property fronts Chris Avenue.
- Access to the property is off Chris Avenue.

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plans and City Code Sections are:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Zoning – Section 3-2-5(E) – Single Family and Multiple Family Residential District
- City of Elko Zoning – Section 3-2-8 PQP – Public, Quasi Public District
- City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning – Section 3-2-21 Amendments
- City of Elko Zoning – Section 3-8 Flood Plain Management

BACKGROUND:

1. The parcels are identified as APN 001-610-031 & 001-610-083.
2. The applicant owns both properties.
3. The property is located approximately 125 feet northeast of the intersection of Chris Avenue and Sierra Drive.
4. With combined parcels as shown in Parcel Map application 2-18, the area is approximately .866 acres, 37,377 square feet.
5. The parcel is irregular shaped with approximately 230 feet of Chris Avenue frontage.

6. The parcel is much larger than the residential zoned properties in the immediate vicinity.
7. APN 001-610-083 was acquired by Gary and Bernice Kimber from the City of Elko on June 26, 1996. It was zoned PQP at the time of purchase. It has remained undeveloped.
8. The City of Elko sold Gary and Bernice Kimber 5,376 sq. ft. of land adjacent to their property which was previously part of Mountain View Park. It was recorded as a deed and boundary line adjustment File 735026 recorded 12/22/17. The 5,376 sq. ft. is referred to as a portion of APN 001-610-031. The portion is zoned PQP and therefore the application is only for the 5,376 sq.ft. of APN 001-610-031. The remainder of the APN is already zoned R – Single family and multiple family residential and not part of the zone amendment.

MASTER PLAN:

Land use

1. The Master Plan Land Use Atlas shows a portion of the area as Medium Density Residential.
2. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.
3. Residential – Medium Density ~ This designation describes areas where residential development densities are four (4) to eight (8) units per acre. These areas will be made up of single-family homes, but may include townhomes, row houses duplexes and other types of multi-family land uses. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, the Master Plan's goals and policies.
4. R- Single Family and Multiple Family Residential zoning district is listed as a corresponding zoning district for Medium Density Residential. The proposed R district is consistent with current residential uses in the immediate vicinity.

The proposed zone district is in conformance with the City of Elko Master Plan Land Use.

Transportation

1. The property fronts Chris Avenue.
2. Off street parking is provided on the property.

The proposed zone district and existing use will not create any significant cumulative issues on the existing transportation system.

ELKO REDEVELOPMENT PLAN:

1. The property is not located within the redevelopment area.

The Elko Redevelopment Plan was not considered in the evaluation of this zone amendment.

ELKO WELLHEAD PROTECTION PLAN:

1. The property is located within the 5 year capture zone for several City wells.
2. Conformance with the Wellhead Protection Plan is required.

The proposed use of the property and allowed uses under the proposed district do not present a hazard to City wells.

SECTION 3-2-4 Establishment of Zoning Districts:

1. The minimum lot area required is 6,000 square feet. The parcel area meets criteria stipulated for the lot area in Section 3-2-5 of city code with approval of Parcel Map 2-18.
2. The required lot dimensions for the proposed district in this area of the community would be 60 feet in width by 100 feet in depth as stipulated in Section 3-2-5 of city code with approval of Parcel Map 2-18.
3. The property is developed and the structure does meet the setback requirements stipulated in Section 3-2-5 of city code.

The proposed zone district is in conformance with Section 3-2-4 for lot area, lot width and depth and setback requirements.

SECTION 3-2-5 (R) Single Family and Multiple Family Residential:

1. As noted in the evaluation under Section 3-2-4 the property conforms with lot area, lot dimensions and setback requirements stipulated for the district.

The proposed zone district is in conformance with Elko City Code Section 3-2-5

SECTION 3-2-17 Traffic, Access, Parking and Loading Regulations:

1. There is off street parking that meets the 2 off street required per Elko City Code Section 3-2-17.

The property as developed as a single family residence is in conformance with Elko City Code Section 3-2-17.

SECTION 3-2-21 Amendments:

1. The applicant has conformed to this section of code with the filing of the application.

SECTION 3-8 Flood Plain Management:

1. This parcel is not located in a designated Special Flood Hazard Area (SFHA).

FINDINGS:

1. The proposed rezone is in conformance with the Master Plan Land Use component.
2. The proposed rezone is consistent with the Transportation component of the Master Plan. The proposed zone district and existing use will not create any significant cumulative issues on the existing transportation system.
3. The proposed rezone is consistent with City of Elko Wellhead Protection Plan. The proposed use of the property and allowed uses under the proposed district do not present a hazard to City wells.
4. The proposed rezone is in conformance with Section 3-2-4 of city code for lot area, lot width and depth and setback requirements.
5. The proposed rezone is in conformance with Section 3-2-5(R) Single Family and Multiple Family Residential.

6. The property as developed is in conformance with City Code 3-2-17 for the principal permitted use as a single family residence.
7. The parcel is not located within a designated Special Flood Hazard Area.
8. Development under the proposed rezone will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.
9. The proposed rezone is consistent with surrounding land uses.

STAFF RECOMMENDATION:

Staff recommends this item be **conditionally approved** with the following conditions:

Planning and Development Department:

1. Parcel Map 2-18 merging the two parcels is recorded prior to the mayor signing the resolution for the rezone.

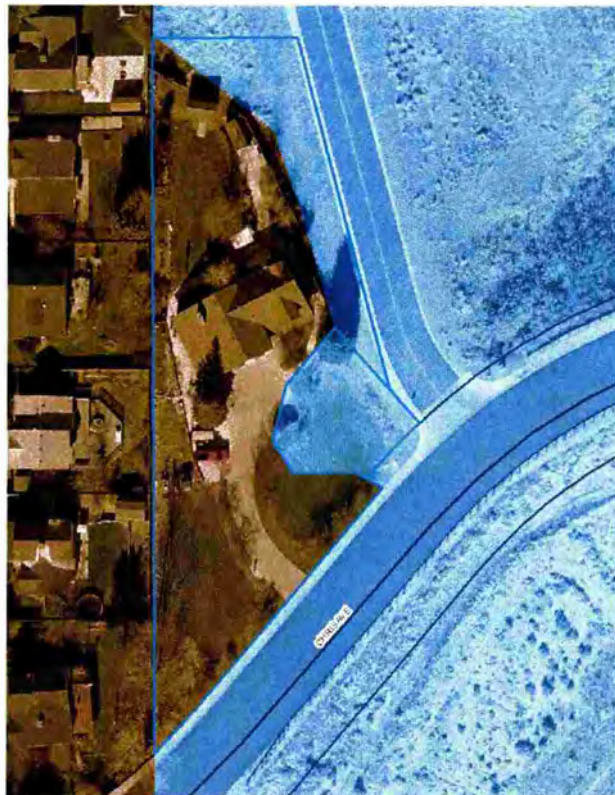


CITY OF ELKO
DEVELOPMENT DEPARTMENT
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775)777-7210
(775)777-7219 FAX

To: Elko City Planning Commission
From: Jeremy Draper, Development Manager
RE: Rezone 3-18, Kimber, Chris Ave
Date: April 11, 2018

The City of Elko Development Department is providing this correspondence to aid the Planning Commission's review of Rezone Application 3-18.

Project Information



- The property is located generally 250 ft east of the intersection of Chris Ave and Sierra Drive
- The rezone is for property is identified as portion of APN 001-610-031 and -083, and is proposed to be merged into a single parcel with application parcel map 2-18.
- The parcel is currently developed.

- The parcel is currently zoned R-Single Family and Multiple Family Residential and POP-Public-Quasi-Public.
- The proposed rezone would result in a rezone of proposed parcel being rezoned to R-Single-Family and Multiple-Family Residential.
- The property is bound by Single Family and Multiple Family Residential, to the north and west, and PQP to the south and east.
- The property is not located within a FEMA Floodzone
- The City of Elko recently sold a portion of this land to the property owners along the entrance to the parking area for Mountain View Park.

Master Plan

Land Use:

- The Land Use component of the Master Plan identifies this area as Residential Medium Density
- Objective 1-Provide a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes and age groups.
- Corresponding zoning districts for Residential Medium Density are:
 - R-Single Family and Multiple Family Residential
 - R1-Single-Family Residential
 - R2-Two-Family Residential
 - PUD-Planned Unit Development
 - RO-Residential Office
 - RB-Residential Business
 - RMH-2-Mobile Home Subdivision
 - RMH-3-Manufactured Home Subdivision

Elko Wellhead Protection Plan

- The property is located within the 5-year capture zone.
- Conformance with the Wellhead Protection Plan is required.

Section 3-2-4-Establishment of Zoning Districts

- Conformance with this section is required
- Parcel 001-610-083, does not meet the area requirements for the R-zoning district, but is proposed to be merged with parcel 001-610-031. The portion of 001-610-031 to be rezoned from PQP to R is that portion that was recently purchased from the City of Elko.
- With the recordation of Parcel Map 2-18, all lot areas will be met

Section 3-2-5-(E)-(R) Single-Family and Multiple-Family Residential

- The property consists of a single family residence with small accessory structures, all appear to be in conformance with this section.
- Conformance with this section is required

Section 3-2-17-Traffic, Access, Parking and Loading Regulations

- The property provides the required off street parking for a single family residence.
- Conformance with this section is required

Section 3-2-21-Amendments

- Conformance with this section is required

Findings

1. The proposed rezone does not appear to frustrate the goals and policies of the Land Use Component of the Master Plan.
2. Single-Family and Multiple-Family Residential is a corresponding district of Residential Medium Density.
3. The proposed rezone is in conformance with City Code 3-2-4-B and C, with the recordation of parcel map 2-18.
4. The proposed rezone is in conformance with City Code 3-2-5-E.
5. The proposed rezone is in conformance with City Code 3-2-17.
6. The proposed rezone is in conformance with the City of Elko Wellhead Protection Plan.
7. Development under the proposed rezone will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.

Recommendation

The City of Elko **Development Department** recommends that the proposed zone changes be approved with the following condition.

1. Parcel map 2-18 merging the two parcels be recorded prior to the mayor signing the resolution for the rezone.



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7119

April 24, 2018

Gary & Bernice Kimber
309 Chris Avenue
Elko, NV 89801

Re: Rezone No. 3-18

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is an item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures

CC: High Desert Engineering, Attn: Bob Morely, 640 Idaho Street, Elko, NV 89801

Zone 3-18 Kimber

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001980044	AGEE, LESTER VARL & KAREN D		2308 SIERRA DR	ELKO NV	89801-4488
001980028	ANKOMAH, JERRY & SAMELIA M		2309 SIERRA DR	ELKO NV	89801-4489
001980032	ASHLEY, DANE T		2325 SIERRA DR	ELKO NV	89801-4489
001980031	BADILLA, CARLOS O SIERRA ET AL		2321 SIERRA DR	ELKO NV	89801-4489
001980019	BATES, RORY W & KARIANNE W		2328 VIRGINIA WAY	ELKO NV	89801-4484
001980029	BORKOSKI, BRIAN & CASSIE		2313 SIERRA DR	ELKO NV	89801-4489
001980039	CAMARENA-CASILLAS, CELSO		2328 SIERRA DR	ELKO NV	89801-4488
001980045	CHACON, PHILLIP HERSON		2222 SIERRA DR	ELKO NV	89801-4498
001980040	COPE, GREGORY L		2324 SIERRA DR	ELKO NV	89801-4488
001980022	DAVIS, AUSTIN S & ALICIA M		2316 VIRGINIA WAY	ELKO NV	89801-4484
001610074	ELKO, CITY OF	} N.O.P.C.	1755 COLLEGE AVE	ELKO NV	89801
001610075	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801
001980034	ESPINOZA, JESUS JR		2346 RODEO CT	ELKO NV	89801-4486
001980027	GOUDY, JONATHAN DWANE ET AL		2305 SIERRA DR	ELKO NV	89801-4489
001980046	HAMBLIN, ROSS J & SONJA L		2218 SIERRA DR	ELKO NV	89801-4498
001980021	HENDRIX, RICK L		2320 VIRGINIA WAY	ELKO NV	89801-4484
001980037	KOPPE, MARK C SR & LOLA M		2336 SIERRA DR	ELKO NV	89801-4488
001980041	KURT, ARNOLD R & JULIE A		2320 SIERRA DR	ELKO NV	89801-4488
001980023	LUND, TAYLOR & LORI AJT		2314 VIRGINIA WAY	ELKO NV	89801-4484
001980024	MERKLEY, JOSEPH R		2310 VIRGINIA WAY	ELKO NV	89801-4484
001980036	MILLER, PEGGY L TR	C/O MCQUEARY, KRISTIN & NEIL	2338 RODEO CT	ELKO NV	89801-4486
001980035	MOORE, CHAD J & CHANTEL L		2342 RODEO CT	ELKO NV	89801-4486
001980042	NGUYEN, WILLIAM & MA, LAN HUE		9591 AMON CT	ELK GROVE CA	95758-7821
001980025	PENNELL, DAVID R & JULIE A		201 CHRIS AVE	ELKO NV	89801-4483
001980038	ROBLES, JAVIER L & KRYSTAL L		2332 SIERRA DR	ELKO NV	89801-4488
001980075	ROSALES, MANUEL & YOLANDA		2215 SIERRA DR	ELKO NV	89801-4499
001980026	SCHULTZ HOLDINGS LLC SERIES C		9140 MOHAWK ST	LAS VEGAS NV	89139-7508
001610049	SONORA LLC		PO BOX 1597	ELKO NV	89803-1597
001980047	SULLIVAN, CHRISTINA LYNNE		2216 SIERRA DR	ELKO NV	89801-4498
001980020	TOMTEN, TAMMY J ET AL		2324 VIRGINIA WAY	ELKO NV	89801-4484
001980043	VINDIOLA, RONALD ET AL		2312 SIERRA DR	ELKO NV	89801-4488
001980030	WILSON, KEVIN & SUZANNE		2317 SIERRA DR	ELKO NV	89801-4489

30

Mailed 4/19/18

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, May 1, 2018 beginning at 5:30 P.M. P.D.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

The specific items to be considered under public hearing format are:

- Rezone 3-18, filed by Gary and Bernice Kimber for a change in zoning from PQP (Public, Quasi Public) to R (Single-Family and Multiple-Family Residential), approximately 0.22 acres of property, specifically APN 001-610-083 and a portion of APN 001-610-031, located generally on the north side of Chris Avenue approximately 160 feet east of Sierra Drive, more particularly described as:

Parcel 1: A parcel of land located in Section 9, T.34 N., R.55 E., M.D.B. & M., City of Elko, Nevada, being a portion of Parcel No. 1, as shown on the Parcel Map for the City of Elko, on file in the Office of the Elko County Recorder, Elko, Nevada, as File No. 394240, more particularly described as follows:

Commencing at the most Southerly Corner of said Parcel No. 1, File No. 394240, thence N41°50'55" W, 24.60 feet along the boundary line of said Parcel No. 1, File No. 394240 to Corner No. 1, the True Point of Beginning;

Thence continuing N 41°50'55" W, 46.65 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 2;

Thence N 16°19'25" W, 46.65 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 3;

Thence N 19°25'44" W, 44.19 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 4;

Thence N 51°30'04" W, 82.10 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 5;

Thence N 89°41'29" E, 77.72 feet to Corner No. 6;

Thence S 14°55'59" E, 202.33 feet to Corner No. 1, the point of beginning, containing 5676 square feet, more or less.

Parcel 1 described is the same parcel as described in the Deed and Boundary Line Adjustment from the City of Elko to Gary M. Kimber and Bernice K. Kimber recorded in the office of the Elko County Recorder, Elko, Nevada as Document No. 735026.

Parcel 2: A parcel of land located in Section 9, T.34 N., R.55 E., M.D.B. & M., City of Elko, Nevada, being all of Parcel No. 2, as shown on the Parcel map for the City of Elko, on File in the Office of the Elko County Recorder, Elko, Nevada, as File No. 394240, containing 4101 square feet, more or less. Reference is hereby made to Exhibit B, Map of Zone Change for Gary M. Kimber and Bernice K. Kimber attached hereto and made a part hereof.

The intent of the zone change is to zone the Kimber's entire property one zone.

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue* Elko* Nevada* 89801

(775) 777-7160 phone* (775) 777-7219 fax

RECEIVED

APR 04 2018

APPLICATION FOR ZONE CHANGE

APPLICANT(s): Gary M. Kimber & Bernice K. Kimber

MAILING ADDRESS: 309 Chris Avenue, Elko, Nevada 89801

PHONE NO (Home): (775) 738-2298

(Business)

NAME OF PROPERTY OWNER (If different, Same as Applicant)

(Property owner's consent in writing must be provided.)

MAILING ADDRESS:

LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):

ASSESSOR'S PARCEL NO.: 001-610-031 & 001-610-083 Address: 309 Chris Avenue

Lot(s), Block(s), & Subdivision:

Or Parcel(s) & File No. Parcel No. 2, File No. 394240 & Adjusted Parcel No. 1, File No. 735027

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. Complete applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1st Tuesday of every month).

Fee: A \$500.00 non-refundable filing fee.

Area Map: A map of the area proposed for this zone change must be provided.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information must be provided.

Legal Description: A complete legal description of the boundary of the proposed zone change must be provided as well as a map depicting the area to be changed stating the wording: area to be changed from "X" to "X"; (LI to R, for example).

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Rezone Application.

1. Identify the existing zoning classification of the property: PQP-Public, Quasi Public

2. Identify the zoning Classification being proposed/requested: R-Residentia

3. Explain in detail the type and nature of the use anticipated on the property:

The lands being requested for rezoning from PQP to Residential were acquired from the City of Elko.

They are adjacent to lands owned by the applicant that are currently zoned Residential. We are in the process of combining the adjacent separate parcels owned by the applicant into one legal parcel and it is our desire to have the resulting parcel zoned all the same zoning being Residential. This resulting parcel will be utilized for a single family residence and associated residential uses.

4. Explain how the proposed zoning classification relates with other zoning classifications in the area: This parcel is adjacent to existing residential uses within Mountain View Estates Subdivision

5. Identify any unique physical features or characteristics associated with the property:

None

(Use additional pages if necessary to address questions 3 through 5)

By My Signature below:

- ☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant/Agent

Robert E. Morley, PLS

(Please print or type)

Mailing Address

640 Idaho Street

Street Address or P.O. Box

Elko, Nevada 89801

City, State, Zip Code

Phone Number:

738-4053

Email address:

remorley@frontiernet.net

SIGNATURE:

Robert E. Morley, PLS

FOR OFFICE USE ONLY

File No.: 318 Date Filed: 4/4/18 Fee Paid: \$500 or #14084

APR 04 2018

EXHIBIT A
ZONING CHANGE
PUBLIC QUASI PUBLIC TO RESIDENTIAL FOR
GARY M. KIMBER AND BERNICE K. KIMBER
April 4, 2018

PARCEL 1

A parcel of land located in Section 9, T.34 N., R.55 E., M.D.B. & M., City of Elko, Nevada, being a portion of Parcel No. 1, as shown on the Parcel Map for the City of Elko, on file in the Office of the Elko County Recorder, Elko, Nevada, as File No. 394240, more particularly described as follows:

Commencing at the most Southerly Corner of said Parcel No. 1, File No. 394240, thence N 41° 50' 55" W, 24.60 feet along the boundary line of said Parcel No. 1, File No. 394240 to Corner No. 1, the True Point of Beginning;

Thence continuing N 41° 50' 55" W, 46.65 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 2;

Thence N 16° 19' 25" W, 70.39 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 3;

Thence N 19° 25' 44" W, 44.19 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 4;

Thence N 51° 30' 04" W, 82.10 feet along the said boundary line of Parcel No. 1, File No. 394240 to Corner No. 5;

Thence N 89° 41' 29" E, 77.72 feet to Corner No. 6;

Thence S 14° 55' 59" E, 202.33 feet to Corner No. 1, the point of beginning, containing 5676 square feet, more or less.

Parcel 1 described above is the same parcel as described in the Deed and Boundary Line Adjustment from the City of Elko to Gary M. Kimber and Bernice K. Kimber recorded in the office of the Elko County Recorder, Elko, Nevada as Document No. 735026

Continued on Page 2

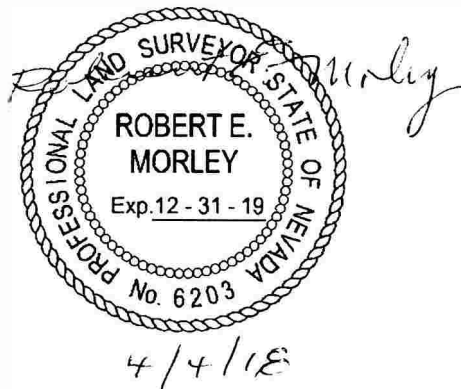
APR 04 2018

Zone Change
Public Quasi Public to Residential for
Gary M. Kimber and Bernice K. Kimber
Continued from Page 1

PARCEL2

A parcel of land located in Section 9, T.34 N., R.55 E., M.D.B. & M., City of Elko, Nevada, being all of Parcel No. 2, as shown on the Parcel Map for the City of Elko, on file in the Office of the Elko County Recorder, Elko, Nevada, as File No. 394240, containing 4101 square feet, more or less.

Reference is hereby made to Exhibit B, Map of Zone Change for Gary M. Kimber and Bernice K. Kimber attached hereto and made a part hereof.



APR 04 2018

CITY OF ELKO
PARCEL NO. 1
FILE NO. 394240
APN 001-610-075

AREA TO BE CHANGED FROM
PQP-PUBLIC, QUASI PUBLIC ZONING
TO R-RESIDENTIAL ZONING

EXHIBIT B
MAP OF ZONE CHANGE
FOR
GARY M. KIMBER
AND BERNICE K. KIMBER

CITY OF ELKO
TO KIMBER
5,676 S.F.
DOCUMENT NO. 735026 &
BOUNDARY LINE ADJUSTMENT
RECORD OF SURVEY
FILE NO. 735027

KIMBER
PARCEL 1
PARCEL MAP
FILE NO. 273652
APN 001-610-031

KIMBER
PARCEL NO. 2
PARCEL MAP
FILE NO. 394240
4,101 S.F.
APN 001-610-083



1"=40'

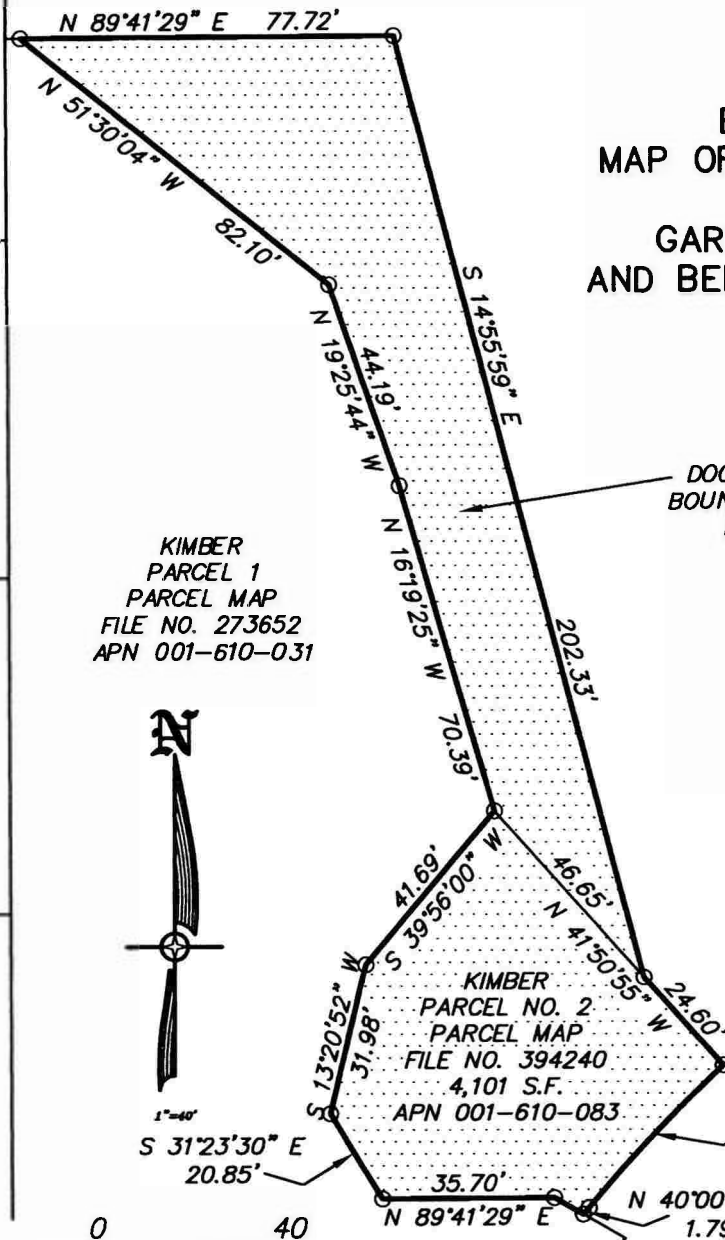
S 31°23'30" E
20.85'



SCALE: 1"=40'

$\Delta = 6'29.35"$
 $R = 360.00$
 $L = 40.80$

CHRIS AVENUE



**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible recommendation to City Council for Rezone No. 4-18, filed by Lonny Reed of Legend Engineering, on behalf of JoyGlobal Surface Mining Inc. and Ed and Sharon Netherton, for a change in zoning from AG (General Agriculture) to LI (Light Industrial), approximately 30.857 acres of property located generally on the north and south side of P & H Drive, FOR POSSIBLE ACTION**
2. Meeting Date: **May 1, 2018**
3. Agenda Category: **PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The applicant has requested parcels APN 006-09N-004, 007, & 009 be annexed into the City of Elko. With that process, the parcels default to AG – General Agriculture zoning district upon annexation. They are requesting a zone consistent with the existing use.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Memo from City Planner**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which conditionally approves Rezone No. 4-18**
9. Findings:
 - **The proposed rezone is in conformance with the Master Plan Land Use Component.**
 - **The proposed rezone is compatible with the Master Plan Transportation Component and is consistent with the existing transportation infrastructure.**
 - **The properties are not located in the Redevelopment Area.**
 - **The proposed zone district is consistent with City of Elko Wellhead Protection Plan.**
 - **The proposed zone district is in conformance with City Code 3-2-4(B)(C) & (D).**
 - **The proposed zone district is in conformance with Section 3-2-12(A) LI, GI Industrial Districts.**
 - **Existing development meets the requirements under 3-2-17 or will be considered a legal non-conforming use upon annexation and zoning of the properties.**

Agenda Item #I.A.4

- The proposed zone district is consistent with surrounding land uses.
- The proposed zone district provides an opportunity for expanded Light Industrial uses.
- Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

10. Prepared By: **Cathy Laughlin, City Planner**

1. Agenda Distribution: **Ed and Sharon Netherton**

1072 Kahaapo Loop

Kihei, HI 96753

Email: ednetherton@gmail.com

Legend Engineering

Lonny Reed

52 West 100 North

Heber City, UT 84032

lonny@legendengineering.com

JoyGlobal Surface Mining Inc.

4450 P&H Drive

Elko, NV 89801

Robert.richens@mining.komatsu

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/1

Do not use pencil or red pen, they do not reproduce

Title: Rezone 4-18
Applicant(s): Jay Global Surface Mining Inc. / Ed + Sharon Metherton
Site Location: N + S of RTH Drive - APNs 006-09N-004, 007, + 009
Current Zoning: AG (upon annex) Date Received: 4/9 Date Public Notice: 4/17
COMMENT: This is to rezone APNs 006-09N-004, 007 + 009
from AGs to L1 upon Annexation.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/23/18
Recommend approval as presented by
Staff

SPW

Initial

City Manager: Date: 4/24/18
No comments/concerns.

CC

Initial



City of Elko
1751 College Avenue
Elko, NV 89801
(775) 777-7160
FAX (775) 777-7119

CITY OF ELKO STAFF REPORT

DATE:	April 23, 2018
PLANNING COMMISSION DATE:	May 1, 2018
APPLICATION NUMBER:	REZONE 4-18
APPLICANT:	Legend Engineering on behalf of JoyGlobal Surface Mining Inc. & Ed and Sharon Netherton
PROJECT DESCRIPTION:	Zone Designation for Proposed Annexation
ADDITIONAL APPLICATION:	Annexation Application 1-18

A zone designation upon annexation of property to Light Industrial (LI).



STAFF RECOMMENDATION:

RECOMMEND APPROVAL, subject to findings of fact, and conditions as stated in this report.

PROJECT INFORMATION

PARCEL NUMBER: 006-09N-004, 007, 009 & 001-679-005; will be issued a new APN upon finalization of the annexation for the three parcels located in Elko County.

PARCEL SIZE: 31.16 acres

EXISTING ZONING: 3 parcels currently in Elko County, 1 parcel currently located within the City of Elko; (AG) General Agriculture zoning with final approval of the annexation application. Petition of the annexation was accepted by City Council on 3-27-18.

MASTER PLAN DESIGNATION: (IND-BS PARK) Industrial Business Park

EXISTING LAND USE: Partially developed land consistent with Light Industrial Principal Permitted Use

NEIGHBORHOOD CHARACTERISTICS:

- The property is surrounded by:
 - North: Light Industrial (LI) / Developed
 - West: General Agriculture (AG) / Undeveloped
 - South: General Agriculture (AG) / Undeveloped
 - East: General Agriculture (AG) / Undeveloped

PROPERTY CHARACTERISTICS:

- The area is currently undeveloped on parcels 006-09N-007, 006-09N-009 & 001-679-005 and developed on parcel 006-09N-004 with a light industrial land use.
- The area is generally flat.
- The area is accessed from West Idaho Street and P & H Drive.

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plans and City Code Sections are:

- City of Elko Master Plan – Land Use Component
 - City of Elko Airport Master Plan
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Zoning – Section 3-2-12 LI, GI Industrial Districts
- City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning – Section 3-2-21 Amendments

- City of Elko Zoning – Section 3-8 Flood Plain Management

BACKGROUND:

1. The petition for annexation has been filed by Legend Engineering on behalf of the property owners. The petition for annexation was accepted by City Council on March 27, 2018. The petition was reviewed by the Planning Commission on April 3, 2018. The Planning Commission has recommended a conditional approval for annexation of the properties to the City Council. One of the conditions was a zone classification of the properties to a zone designation in conformance with the Master Plan.
2. The annexation Ordinance 830 is scheduled for first reading on April 24, 2018.
3. In accordance with the annexation petition, there are two separate property owners requesting a rezone of the properties.
4. The properties are owned by Harnischfeger, the parent company to Joy Global Surface Mining, (APN 006-09N-004) and Ed and Sharon Netherton (APN 006-09N-007, -009 and 001-679-005).
5. The rezone includes all of APN 006-09N-004 (JoyGlobal), 007 & 009 and 001-679-005 (Netherton). The properties are located west of the 298 interchange on I-80 at the intersection of P & H Drive and West Idaho Street.
6. The area fronts West Idaho Street and P & H Drive.
7. The applicant has requested annexation of APN 006-09N-004, 007 & 009. City utilities have not been extended to the properties.
8. The developed property is served by a water well intended to serve several properties in the immediate vicinity. Currently Joy Global and Coach USA facilities are utilizing the well for water service. The City of Elko provided water rights for development of the well under an agreement that requires relinquishment of the water rights to the City upon annexation of the properties. The agreement is between Joy Global and the City.
9. In 2016, The City of Elko extended the water line down Cattle Drive to a location near the properties.
10. Sewer has not been extended to the area. Existing facilities in the area utilize septic for sanitary sewer.
11. Other non-city utilities are located in the immediate area.
12. Elko County was notified of the proposed zone designation on April 12, 2018.

MASTER PLAN:

Land use:

1. Land Use is shown as Industrial Business Park.
2. Supporting zone districts for Industrial Business Park are Industrial Business Park, Light Industrial and Industrial Commercial.
3. The petitioner is not proposing any amendments to the Land Use Component of the Master Plan as a result of the annexation petition as provided for under Section 3-2-4(D) of City code.
4. The existing land use of one of the properties is consistent with the designated land use and the remaining properties are vacant.
5. Zone classification of the properties are required to conform to the Master Plan.

6. Objective 7: Promote high quality and visually appealing industrial uses, where appropriate, to promote economic sustainability and strengthen the community's image.
7. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

The proposed zone district is in conformance with the Master Plan Land Use Component.

Transportation:

1. The area will be accessed from West Idaho Street.
2. West Idaho Street is classified as a Minor Collector.
3. The area is near the Exit 298 and I-80 interchange.

The proposed zone district is compatible with the Master Plan Transportation Component and is consistent with the existing transportation infrastructure.

AIRPORT MASTER PLAN

1. The area is partially located within the defined runway approach airspace area delineated in the airport master plan.
2. Development within the area will be restricted in accordance with 14 CFR Part 77.9.
3. The restrictions stipulated in the federal code are not expected to have a significant, if any, impact on property development under the allowable land use stipulated in city which are in conformance with the City Master Plan.

The proposed rezone is in conformance with the City's Airport Master Plan.

ELKO REDEVELOPMENT PLAN:

1. The property is not located within the redevelopment area.

ELKO WELLHEAD PROTECTION PLAN:

1. A proposed well (test hole/monitoring well currently exists) approximately 240 feet from the property is expected to be installed as development occurs in the area. At that time, it could be expected that this property will be located within the 2 year capture zones. The City of Elko may complete the installation of a sewer main and lift station prior to the installation of the proposed well to eliminate a number of septic systems and leach fields in the area.

SECTION 3-2-4 Establishment of Zoning Districts:

1. The Planning Commission can recommend to the City Council a zone classification for annexed territory other than the default Agriculture District. The applicant has filed this application in conformance with the code requesting the Light Industrial Zoning District. The proposed district is in conformance with the Master Plan.
2. The property meets the area requirements for the proposed zone district.

The proposed zone change is in conformance with Elko City Code Section 3-2-4.

SECTION 3-2-12(A) – Light Industrial District–LI:

1. The existing development meets the requirements under 3-2-12 for minimum area, minimum lot width, front and rear yard setbacks, side yard setback and maximum building height.
2. The existing development is consistent with the listed principal uses permitted.
3. The existing development does not abut a residential zoning district therefore; a conditional use permit is not required.

The proposed zone change is in conformance with Elko City Code Section 3-2-12.

SECTION 3-2-17:

1. Existing development meets the requirements under 3-2-17 or will be considered a legal non-conforming use upon annexation and zoning of the properties.

SECTION 3-2-21:

1. The applicant has conformed to this section of code with the filing of the application.

SECTION 3-8:

1. This parcel is not designated in a Special Flood Hazard Area (SFHA).

FINDINGS:

1. The proposed rezone is in conformance with the Master Plan Land Use Component including the Airport Master Plan.
2. The proposed rezone is compatible with the Master Plan Transportation Component and is consistent with the existing transportation infrastructure.
3. The properties are not located in the Redevelopment Area.
4. The proposed zone district is consistent with City of Elko Wellhead Protection Plan.
5. The proposed zone district is in conformance with City Code 3-2-4(B)(C) & (D).
6. The proposed zone district is in conformance with Section 3-2-12(A) LI, GI Industrial Districts.
7. Existing development meets the requirements under 3-2-17 or will be considered a legal non-conforming use upon annexation and zoning of the properties.
8. The proposed zone district is consistent with surrounding land uses.
9. The proposed zone district provides an opportunity for expanded Light Industrial uses.

10. Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

STAFF RECOMMENDATION:

Staff recommends this item be **conditionally approved** with the following conditions:

Planning Department:

1. Annexation 1-18 is of record.



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7119

April 24, 2018

Legend Engineering
Attn: Lonny Reed
52 W 100 N
Heber, UT 84032

Re: Rezone No. 4-18

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is an item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures

CC: JoyGlobal Surface Mining Inc., 4450 P&H Drive, Elko, NV 89801
Email: Robert.richens@mining.komatsu
Ed & Sharon Netherton, 1072 Kahaapo Loop, Kehei, HI 96753
Email: ednetherton@gmail.com

Rezone 4-18 JoyGlobal/Netherton

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP	
006090006*	BAR L RANCH ET AL		PO BOX 1478	ELKO NV	89803-1478	
001679009	BAR L RANCH ET AL		PO BOX 1478	ELKO NV	89803-1478	
001679002	BAR L RANCH ET AL		PO BOX 1478	ELKO NV	89803-1478	
001679006	BAR L RANCH ET AL		PO BOX 1478	ELKO NV	89803-1478	
001679008	BAR L RANCH ET AL		PO BOX 1478	ELKO NV	89803-1478	
} 1 p.c.						
00609G037*	BARRICK GOLDSTRIKE MINES INC A	ATTN: REGIONAL LAND DEPT	460 W 50 N STE 500	SALT LAKE CITY UT	84101-1240	
00609G003*	BOGUE, CLARENCE E ET AL	COS SUTHERLAND, JAMES ETAL	PO BOX 1731	ELKO NV	89803-1731	
064001007*	DELMORE, JAMES M & TIFFANY		403 W BULLION RD UNIT 14	ELKO NV	89801-7632	
001679010	ELKO INC	C/O COACH USA INC	4105 W IDAHO ST	ELKO NV	89801-9410	
00609G009*	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801	
00609G008*	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801	
00609G005*	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801	
00609G027*	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801	
006090059*	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801	
001679007	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801	
005510009*	ELKO, COUNTY OF		540 COURT ST	ELKO NV	89801-3515	
00609G004*	ESM 2 LLC		PO BOX 2347	ELKO NV	89803-2347	
00609G002*	ESM 2 LLC		3250 SUNDANCE DR	ELKO NV	89801-7909	
001679011*	GOLDEN GATE PETROLEUM OF NEVADA		16580 WEDGE PKWY STE 300	RENO NV	89511-3258	
005510007*	HEGUY RANCHES INC		PO BOX 570	ELKO NV	89803-0570	
005510002*	HEGUY RANCHES INC		PO BOX 570	ELKO NV	89803-0570	
006090023*	HEGUY RANCHES INC		PO BOX 570	ELKO NV	89803-0570	
00609G025*	JPL INVESTMENTS LLC		1764 W 2900 S	OGDEN UT	84401-3255	
001679012*	MILLER, BRUCE & SIDNIE ET AL	Under Bar L. Ranch NO p.c.		PO BOX 1478	ELKO NV	89803-1478
001679004	MILLER, BRUCE & SIDNIE TR		PO BOX 1478	ELKO NV	89803-1478	
001679005	NETHERTON, ED & SHARON		34 CAMP CREEK RD	TROY MT	59935-9694	
00609G039*	PETE'S TRAILER PARK LLC		6366 RIO VISTA LN	CARSON CITY NV	89701-9348	
00609G038*	PETE'S TRAILER PARK LLC		6366 RIO VISTA LN	CARSON CITY NV	89701-9348	
00609N008	PINNACLE INVESTMENTS PART ET AL		20 S SANTA CRUZ AVE STE 320	LOS GATOS CA	95030-6834	
064002001*	ROMERO, CONSUELO		2362 WILDWOOD WAY	ELKO NV	89801-4945	
064001006*	SALAZAR, SAMUEL & YESENIA		698 LAST CHANCE RD UNIT 8	ELKO NV	89801-8745	
} 1 p.c.						

064002002* SILVA, ISIDRO
001679013* SWIRE PACIFIC HOLDINGS INC

005510900 USA

C/O BLM-SUPPORT
SERVICES AP

935 LYON AVE SPC 9
12634 S 265 W

ELKO NV
DRAPER UT

89801-4902
84020-7930

3900 E IDAHO ST

ELKO NV

89801-4692

(19)

Mailed 4/19/18

* = Different Property Owners from
the original 300 ft radius to
achieve 30 parcels.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, May 1, 2018 beginning at 5:30 P.M. P.D.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

The specific items to be considered under public hearing format are:

- Rezone No. 4-18, filed by Lonny Reed of Legend Engineering, on behalf of JoyGlobal Surface Mining, Inc. and Ed and Sharon Netherton, for a change in zoning from AG (General Agriculture) to LI (Light Industrial), approximately 31.16 acres of property, specifically APNs 006-09N-004, 006-09N-007, 006-09N-009 & 001-679-005, located generally on the north and south side of P&H Drive, more particularly described as:

Beginning at the found northwest corner of Section 30, Township 34 North, Range 55 East, Mount Diablo Base and Meridian, basis of bearings being south $01^{\circ}02'00''$ west measured between said northwest corner and the west quarter corner of said Section;
And running thence North $89^{\circ}58'16''$ East 446.33 feet;
Thence South $00^{\circ}01'36''$ East 255.00 feet;
Thence North $89^{\circ}58'22''$ East 482.63 feet;
Thence South $00^{\circ}01'38''$ East 53.00 feet;
Thence North $89^{\circ}58'22''$ East 219.40 feet;
Thence South $32^{\circ}04'58''$ West 291.46 to a point on a 160.00 foot curve to the right;
Thence 161.79 feet along said curve (chord bears South $61^{\circ}00'14''$ West 154.99 feet);
Thence South $89^{\circ}58'29''$ West 411.51 feet;
Thence South $00^{\circ}01'38''$ West 80.00 feet;
Thence North $89^{\circ}58'29''$ East 411.51 feet to a point on a 240.00 foot radius curve to the left;
Thence along said curve 242.69 feet (chord bears North $61^{\circ}00'14''$ East 232.48 feet);
Thence North $32^{\circ}02'04''$ East 507.82 feet to a point on a 20.00 foot radius curve to the right;
Thence along said curve 30.40 feet (chord bears North $75^{\circ}34'45''$ East 27.56 feet) to a point on a 1160.00 foot radius curve to the left;
Thence along said curve 233.10 feet (chord bears South $66^{\circ}37'58''$ East 116.95 feet);
Thence South $32^{\circ}02'04''$ West 1017.73 feet;
Thence South $89^{\circ}58'22''$ West 98.20 feet;
Thence South $20^{\circ}44'31''$ West 223.89 feet;
Thence North $89^{\circ}59'20''$ West 877.75 feet;
Thence North $01^{\circ}02'00''$ East 1323.99 feet to the point of beginning.
Area = 31.16 acres

The intent of the zone change is to change the zoning upon annexation to be consistent with the existing use.

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

ELKO CITY PLANNING COMMISSION

From: Sharon Netherton [mailto:ssnetherton@yahoo.com]
Sent: Tuesday, April 17, 2018 10:09 AM
To: Cathy Laughlin <claughlin@elkocitynv.gov>
Subject: RE: Netherton Annexation

Lonnie Reed from Legend has my permission to act as my agent for the rezone project.
Sharon Netherton

Sent from Yahoo Mail on Android

Shelby Archuleta

From: Cathy Laughlin
Sent: Thursday, April 12, 2018 8:05 AM
To: Shelby Archuleta
Subject: FW: Permission to act as agent

Cathy Laughlin
City Planner

(775)777-7160 ph
(775)777-7219 fax
claughlin@elkocitynv.gov

City of Elko
1751 College Avenue
Elko, NV 89801

From: Lindzi Bell [mailto:lindzi@legendengineering.com]
Sent: Thursday, April 12, 2018 7:39 AM
To: Cathy Laughlin <claughlin@elkocitynv.gov>; Jeremy Draper <jdraper@elkocitynv.gov>
Cc: Lonny Reed <lonny@legendengineering.com>
Subject: Fwd: Permission to act as agent

Hi Cathy,

Here is the authorization from Robert on behalf of JoyGlobal for the Komatsu re-zone application. I am working on the other outstanding items in hopes of having everything to you by tomorrow to stay on schedule.

Thanks for all your help,

Lindzi Bell, P.E.
Legend Engineering
lindzi@legendengineering.com
Office (435) 654-4828
Cell (801) 455-7536



Begin forwarded message:

From: Robert Richens <robert.richens@mining.komatsu>
Subject: RE: Permission to act as agent
Date: April 11, 2018 at 1:49:21 PM MDT
To: Lonny Reed <lonny@legendengineering.com>, Ed Netherton <ednetherton@gmail.com>

Cc: Lindzi Bell <lindzi@legendengineering.com>, "johnp@komatsueq.com" <johnp@komatsueq.com>

Lonny,

Please use this email as authorization for JoyGlobal Surface Inc (P&H) to act as our agent in the zone change application in Elko Nevada.

Thanks
Robert

Robert Richens
Executive Vice President – KEC Operations

Office: +1 801 952 4739
Mobile: +1 435 650 0774

KOMATSU

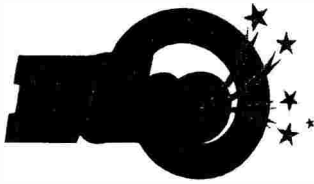
From: Lonny Reed [mailto:lonny@legendengineering.com]
Sent: Wednesday, April 11, 2018 11:37 AM
To: Ed Netherton <ednetherton@gmail.com>; Robert Richens <robert.richens@mining.komatsu>
Cc: Lindzi Bell <lindzi@legendengineering.com>
Subject: Permission to act as agent

Hi Ed and Robert,
As part of the annexation, we are being asked to submit a zone change application so that at annexation time, the property is zoned within the city as Light Industrial.
Cathy at the City of Elko is asking that we provide an email (just like we did for the annexation) giving Legend Engineering permission to act as agent for the application.
Please reply to this email with your permission and I will forward to Cathy.
Thank you and feel free to call me if there are any questions.
Thanks
Lonny

Lonny Reed, P.E.
Legend Engineering
lonny@legendengineering.com
www.legendengineering.com
Tel 435 654-4828
Mobile 801 633-0444
52 West 100 North
Heber City, UT 84032



This electronic mail transmission contains information from Joy Global Inc. which is confidential, and is intended only for the use of the proper Addressee. If you are not the intended recipient, please notify us immediately at the return address on this transmission, and delete this message and any attachments from your system. Unauthorized use, copying, disclosing, distributing, or taking any action in reliance on the contents of this transmission is strictly prohibited and may be unlawful. Privacy-JGI



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@elkocitynv.gov

1751 College Avenue • Elko, Nevada 89801 • (775)777-7160 • Fax (775)777-7219

April 12, 2018

Elko County Planning and Zoning
540 Court Street, Suite 104
Elko, NV 89801

Re: Rezone No. 4-18

In accordance with the Communication Policy between the City of Elko and Elko County, the City of Elko hereby notices and advises the Board of County Commissioners of the County of Elko of the City's intention to consider Rezone No. 4-18, filed by Legend Engineering, on behalf of JoyGlobal Surface Mining, Inc. and Ed & Sharon Netherton. Please find enclosed a double-sided copy of the application and related site plan for your review and comment.

The subject property consists of approximately 30.86 acres and is located on the north and south side of P & H Drive, as shown on the enclosed map.

Review by the Elko City Planning Commission is scheduled for May 1, 2018.

Please submit written comments to the City of Elko Planning Department as soon as possible. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Please feel free to contact me if you have any questions concerning this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

(775) 777-7160 phone * (775) 777-7219 fax

RECEIVED

APPLICATION FOR ZONE CHANGE

APR 09 2018

APPLICANT(s): Lonny Reed, Legend Engineering
MAILING ADDRESS: 52 West 100 North, Heber, UT 84032
PHONE NO (Home): (Business) 435-654-4828
NAME OF PROPERTY OWNER (If different): JoyGlobal Surface Mining (Robert Richins) / Ed and Sharon Netherton
(Property owner's consent in writing must be provided.)
MAILING ADDRESS: 1275 West Ridge Rd. Wellington, UT 84542 / CAMP CREEK RD TROY MT 59935-9694
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 00609N004, 00609N009, 00609N007 Address: 4450 P&H Dr, 4303 P&H Dr.
Lot(s), Block(s), & Subdivision
Or Parcel(s) & File No.

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. Complete applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1st Tuesday of every month).

Fee: A \$500.00 non-refundable filing fee.

Area Map: A map of the area proposed for this zone change must be provided.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information must be provided.

Legal Description: A complete legal description of the boundary of the proposed zone change must be provided as well as a map depicting the area to be changed stating the wording: area to be changed from "x" to "x"; (LI to R, for example).

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Rezone Application.

1. Identify the existing zoning classification of the property: ZA

2. Identify the zoning Classification being proposed/requested: ZLI

3. Explain in detail the type and nature of the use anticipated on the property: Approximately 180,000 S.F. heavy equipment rental, repair and parts facility.

4. Explain how the proposed zoning classification relates with other zoning classifications in the area: The proposed zoning is consistent with the area. Two adjacent parcels north of the area and one parcel south of the area are zoned ZLI.

5. Identify any unique physical features or characteristics associated with the property: The property is currently occupied by a 40,000 S.F. repair facility.

(Use additional pages if necessary to address questions 3 through 5)

By My Signature below:

☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.

☒ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.


Applicant / Agent Lonny Reed
(Please print or type)

Mailing Address 52 W 100 N
Street Address or P.O. Box

Heber, UT 84032
City, State, Zip Code

Phone Number: 435-654-4828

Email address: lonny@legendengineering.com

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 4-18 **Date Filed:** 4/9/18 **Fee Paid:** \$500 CL# 7431

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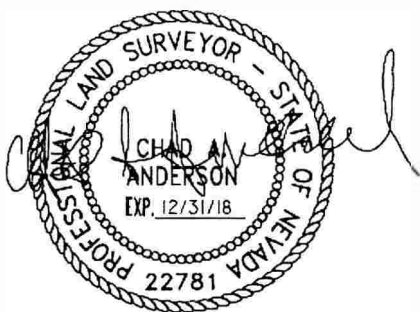
APR 18 2018

ELKO ZONE CHANGE DESCRIPTION

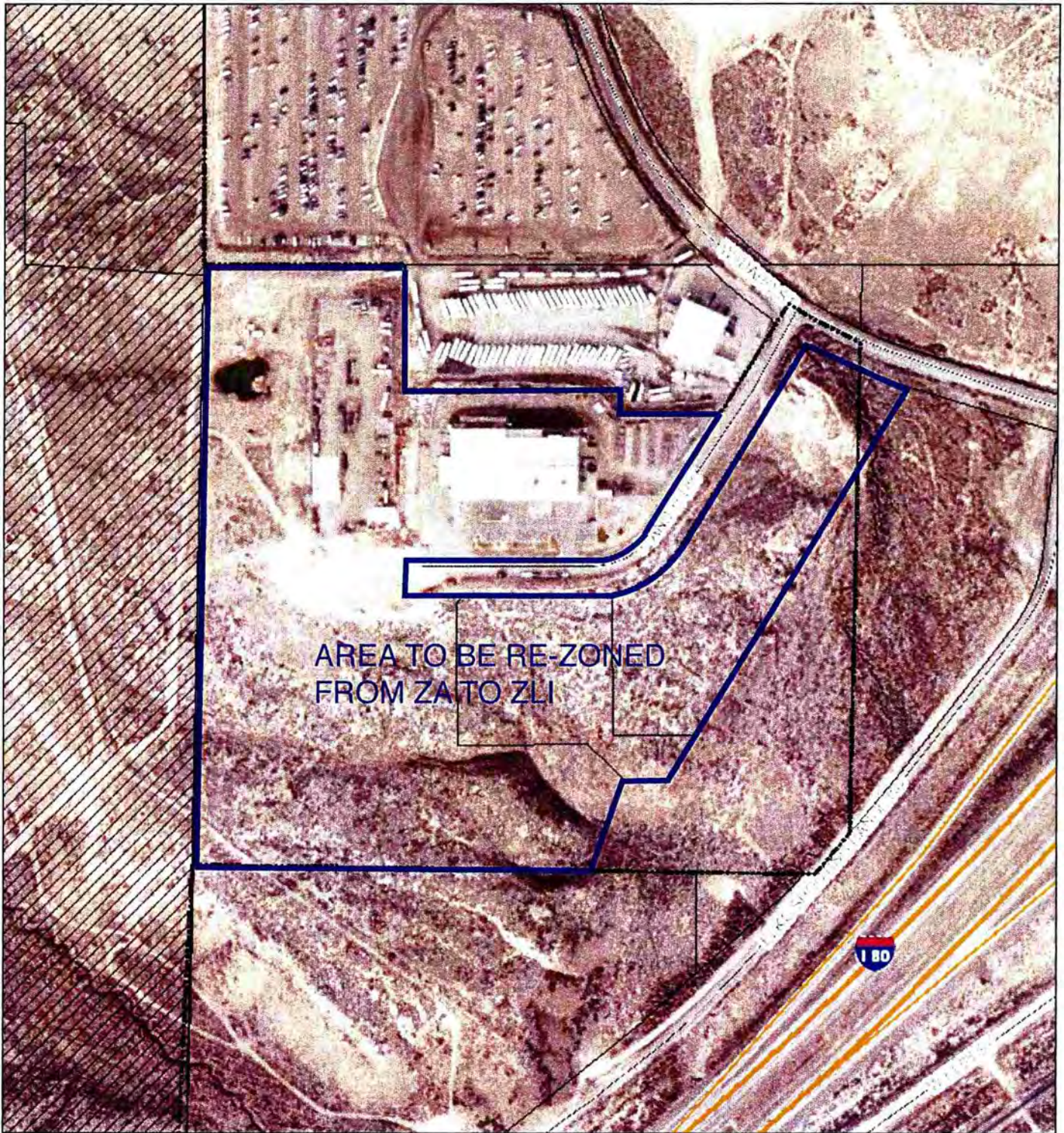
BEGINNING AT THE FOUND NORTHWEST CORNER OF SECTION 30, TOWNSHIP 34 NORTH, RANGE 55 EAST, MOUNT DIABLO BASE AND MERIDIAN, BASIS OF BEARINGS BEING SOUTH 01°02'00" WEST MEASURED BETWEEN SAID NORTHWEST CORNER AND THE WEST QUARTER CORNER OF SAID SECTION; AND RUNNING THENCE NORTH 89°58'16" EAST 446.33 FEET; THENCE SOUTH 00°01'36" EAST 255.00 FEET; THENCE NORTH 89°58'22" EAST 482.63 FEET; THENCE SOUTH 00°01'38" EAST 53.00 FEET; THENCE NORTH 89°58'22" EAST 219.40 FEET; THENCE SOUTH 32°04'58" WEST 291.46 TO A POINT ON A 160.00 FOOT CURVE TO THE RIGHT; THENCE 161.79 FEET ALONG SAID CURVE (CHORD BEARS SOUTH 61°00'14" WEST 154.99 FEET); THENCE SOUTH 89°58'29" WEST 411.51 FEET; THENCE SOUTH 00°01'38" WEST 80.00 FEET; THENCE NORTH 89°58'29" EAST 411.51 FEET TO A POINT ON A 240.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID CURVE 242.69 FEET (CHORD BEARS NORTH 61°00'14" EAST 232.48 FEET); THENCE NORTH 32°02'04" EAST 507.82 FEET TO A POINT ON A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE 30.40 FEET (CHORD BEARS NORTH 75°34'45" EAST 27.56 FEET) TO A POINT ON A 1160.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID CURVE 233.10 FEET (CHORD BEARS SOUTH 66°37'58" EAST 116.95 FEET); THENCE SOUTH 32°02'04" WEST 1017.73 FEET; THENCE SOUTH 89°58'22" WEST 98.20 FEET; THENCE SOUTH 20°44'31" WEST 223.89 FEET; THENCE NORTH 89°59'20" WEST 877.75 FEET; THENCE NORTH 01°02'00" EAST 1323.99 FEET TO THE POINT OF BEGINNING.

AREA= 31.16 ACRES

Prepared by Chad A Anderson P.L.S.



Komatsu Zone Change Exhibit



Printed 4/9/18

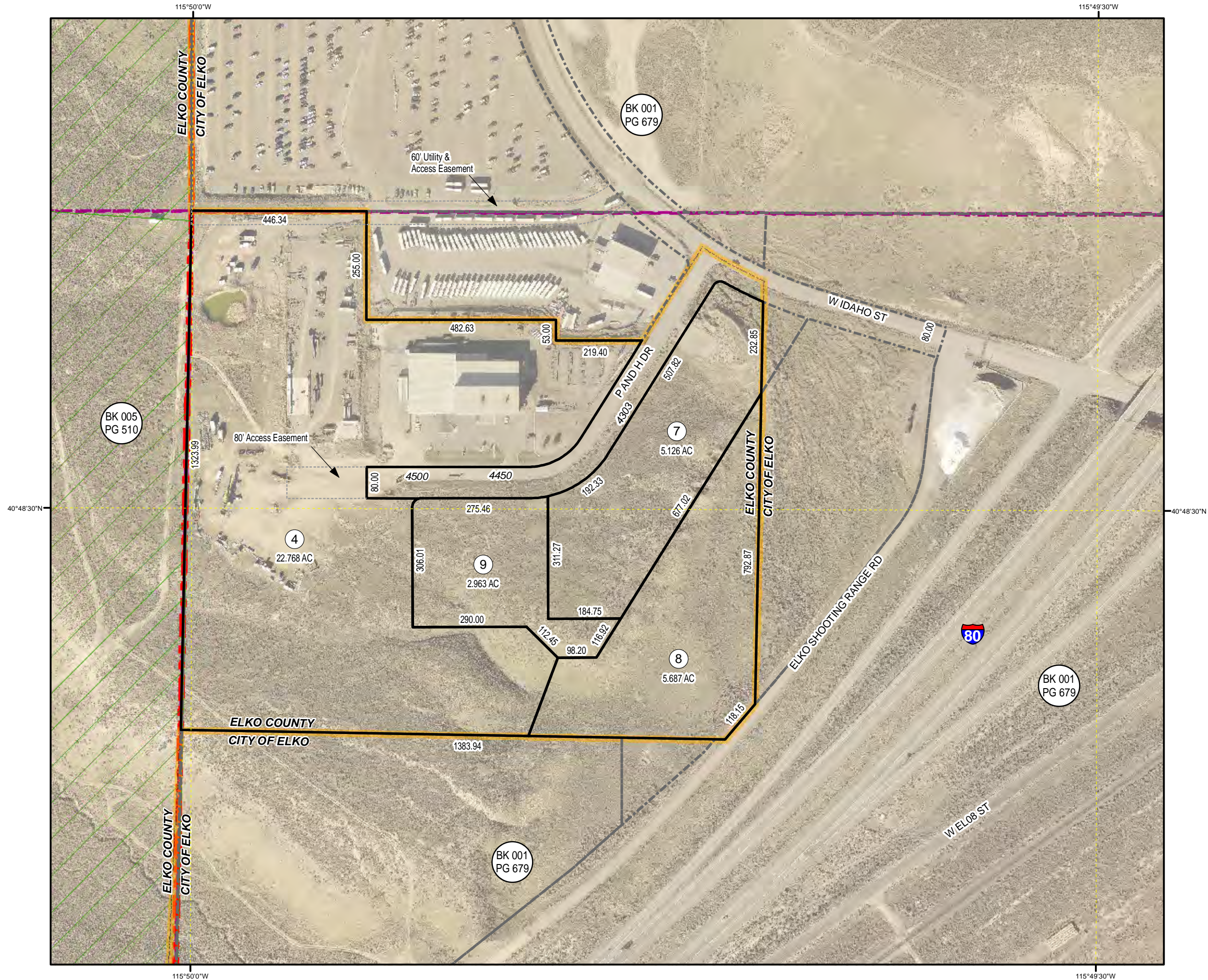
1 : 4482

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APR 09 2018

200m
900ft

Elko County Assessor



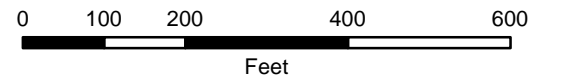
006-09N
Portion of the NW 1/4
Section 30, Township 34N Range 55E
of the Mount Diablo Meridian, Nevada



Legend

- Subject Parcel
- Parcel
- City Limit
- Public Land
- Section

LATITUDE AND LONGITUDE ARE APPROXIMATE



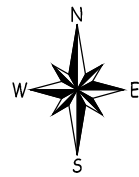
Reference Documents:
Map # 452341, 536866, 549501

This map does NOT represent a survey.
It is compiled from official records, including
surveys and deeds. Recorded documents
should be used for detailed legal information.
Unless approved by Elko County Assessor,
other uses are forbidden.

FOR ASSESSMENT USE ONLY

Background image - 2014 Pictometry Flyover
Product of GIS
Last Update 03/03/2017 JLS





FOUND NW CORNER
SECTION 30

ZONE = ZLI

001-679-005
ZONE = ZA

006-09N-004

006-09N-009

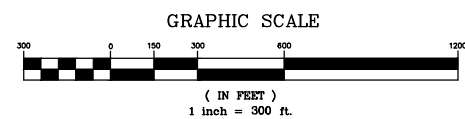
006-09N-027

ZONE = ZA

CURRENT ELKO CITY BOUNDARY

LINE TABLE		
LILNE	LENGTH	DIRECTION
L1	255.00'	S00°01'36"E
L2	53.00'	S00°01'38"E
L3	219.40'	N89°58'22"E
L4	80.00'	S00°01'38"E
L7	98.20'	S89°58'22"W
L8	223.89'	S20°44'31"W

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING	TANGENT
C1	161.79'	160.00'	57°56'19"	154.99'	S61°00'14"W	88.58'
C2	242.69'	240.00'	57°56'19"	232.48'	N61°00'14"E	132.86'
C3	30.40'	20.00'	87°05'23"	27.56'	N75°34'45"E	19.01'
C4	233.10'	1160.00'	11°30'49"	232.71'	S66°37'58"E	116.95'



ZONE CHANGE EXHIBIT

ELKO COUNTY
LOCATED IN THE NW QUARTER OF SEC 30,
T34N, R55E, MDB&M

PREPARED FOR:

PROJECT NO.

17-12-274

PROJECT:

SHEET

1 OF 1

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to initiate an amendment to the City Zoning Ordinance, specifically Sections 3-3 Subdivisions, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **May 1, 2018**
3. Agenda Category: *MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS*
4. Time Required: **10 Minutes**
5. Background Information:
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information:
8. Recommended Motion: **Move to initiate an amendment to the City Zoning Ordinance, specifically Section 3-3 Subdivisions and direct staff to bring the item back as a public hearing.**
9. Prepared By: **Cathy Laughlin, City Planner**
10. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/1

Do not use pencil or red pen, they do not reproduce

Title: Initiate Changes to Subdivision Code

Applicant(s): City staff & KO 1

Site Location: _____

Current Zoning: N/A Date Received: N/A Date Public Notice: N/A

COMMENT: This is to update the Subdivision Code.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: _____

Initial

City Manager: Date: 4/25/18

The Subdivision Code requires multiple revisions throughout.
This is a big process which requires staff & public input to
ensure a quality outcome.

W
Initial

Chapter 3 SUBDIVISIONS

[3-3-1: PURPOSE AND INTENT:](#)

[3-3-2: DEFINITIONS:](#)

[3-3-3: OUTLINE OF PROCEDURES:](#)

[3-3-4: PREAPPLICATION \(CONFERENCE\) STAGE \(STAGE I\):](#)

[3-3-5: PRELIMINARY PLAT STAGE \(STAGE II\):](#)

[3-3-6: FINAL PLAT STAGE \(STAGE III\):](#)

[3-3-7: INFORMATION REQUIRED FOR PRELIMINARY PLAT SUBMISSION:](#)

[3-3-8: INFORMATION REQUIRED FOR FINAL PLAT SUBMISSION:](#)

[3-3-20: GENERAL PROVISIONS FOR SUBDIVISION DESIGN:](#)

[3-3-21: STREET LOCATION AND ARRANGEMENT:](#)

[3-3-22: STREET DESIGN:](#)

[3-3-23: BLOCK DESIGN:](#)

[3-3-24: LOT PLANNING:](#)

[3-3-25: EASEMENT PLANNING:](#)

[3-3-26: STREET NAMING:](#)

[3-3-27: STREET LIGHTING DESIGN STANDARDS:](#)

[3-3-40: RESPONSIBILITY FOR IMPROVEMENTS:](#)

[3-3-41: ENGINEERING PLANS:](#)

[3-3-42: CONSTRUCTION AND INSPECTION:](#)

[3-3-43: REQUIRED IMPROVEMENTS:](#)

[3-3-44: AGREEMENT TO INSTALL **PUBLIC** IMPROVEMENTS:](#)

[3-3-45: PERFORMANCE GUARANTEE:](#)

[3-3-50: PARK LAND DEDICATIONS:](#)

[3-3-60: PARCEL MAPS:](#)

[3-3-70: MODIFICATION OF STANDARDS:](#)

[3-3-75: REVERSIONS TO ACREAGE:](#)

[3-3-80: PROHIBITION AGAINST SALE IN VIOLATION:](#)

[3-3-85: MERGERS AND RESUBDIVISION OF LAND:](#)

[3-3-90: VIOLATIONS AND PENALTIES:](#)

3-3-1: PURPOSE AND INTENT:  

The purpose of this chapter is to provide for the orderly growth and harmonious development of the city; to ensure adequate traffic circulation through coordinated subdivision street system with relation to major thoroughfares, adjoining subdivisions, and public facilities to achieve individual property lots of optimum utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to facilitate reservation of adequate sites for schools, recreation areas, and other public facilities; to promote the conveyance of land by accurate legal description and to provide logical procedures for the achievement of this purpose; safeguard the public health, safety and general welfare; and to ensure development in conformance with the city master plan. In its interpretation and application, the provisions of this chapter are intended to provide a common ground of understanding and a sound and equitable working relationship

between public and private interests to the end that both independent and mutual objectives can be achieved in the subdivision of the land. (Ord. 624, 10-26-2004)

3-3-2: DEFINITIONS:

For purposes of this chapter, certain words, terms and phrases are defined as follows:

AGREEMENT TO INSTALL PUBLIC IMPROVEMENTS: *An Agreement required prior to Final Plat approval and prior to commencement of construction activities. An agreement developed in accordance with [sections 3-3-44 and 3-3-45 of this chapter](#).*

BLOCK: A piece or parcel of land, or group of lots, entirely surrounded by public rights of way, streams, railroads or parks, or a combination thereof.

BUILDING LINE: A line between which and the street right of way line no building or structure or portion thereof, shall be erected, constructed, or otherwise established.

CITY COUNCIL: The ~~C~~city ~~C~~council of the ~~C~~city of Elko.

COMMISSION: The ~~C~~city of Elko ~~P~~lanning ~~C~~ommission.

CONDITIONAL APPROVAL: An affirmative action by the commission or ~~city council~~[City Council](#) indicating the approval of preliminary plat will be forthcoming upon compliance with certain specified stipulations.

CONSTRUCTION PLANS: *Plans, profiles, cross sections and other required details for the construction of public improvements, prepared in conjunction with the plat and in compliance with standards of design and construction approved by the city.*

DEVELOPMENT MASTER PLAN: A ~~plan prepared and approved prior to preparation and consideration of a preliminary plat in accordance with 3-3-4 of this chapter~~ preliminary map showing the tentative layout of streets and arrangements of land uses, including the location of schools, recreation areas and other community facilities for the entirety of a large landholding of which a portion is to be submitted as a preliminary plat; a map meeting the requirements of ~~section 3-3-4 of this chapter~~.

EASEMENT: A grant by the owner of the use of ~~a strip of~~ land by the public, a corporation, or persons for specific and designated uses and purposes.

ENGINEERS ESTIMATE: *A cost estimate provide to the City, by the subdivider's engineer, for the entire cost of the public improvements to be based on NRS 338 and local rates to be used as a basis for the required PERFORMANCE GUARANTEE as approved by the City.*

ENGINEERING PLANS: Plans, profiles, cross sections and other required details for the construction of public improvements, prepared in conjunction with the plat and in compliance with standards of design and construction approved by the ~~city council~~[City Council](#).

EXCEPTIONS: Any parcel of land located within the perimeter of the subdivision but which is not included in the plat.

FINAL PLAT APPROVAL: Unconditional approval of the final plat by the ~~city council~~[City Council](#) as

Commented [BT1]: This reads that the preliminary plat is in accordance with (section) 3-3-4. Consider "A plan prepared in accordance with section 3-3-4 of this chapter, approved prior to preparation and consideration of a preliminary plat."

Commented [BT2]: Do we want to establish the rates and have the developer provide only the quantities? This would allow us more consistency between developers.

evidenced by certification on the plat by the ~~M~~mayor of the ~~C~~city of Elko. Final approval constitutes authorization to record the plat.

FULL FRONTAGE: All lot lines of any lot, parcel or tract of property adjacent to a road, street, alley or right of way, to include lots, parcels or tracts containing multiple borders or edges, such as corner lots.

GRADING LAND-DISTURBANCE: The removal of the vegetative cover from the surface of any land, parcel, lot or construction site that exceeds one acre of disturbed surface area and, most probably, is a result of grading activity associated with new construction.

LOT: A distinct part or parcel of land separated from other pieces or parcels by description, identified as such in a subdivision or on a recorded ed survey map, or described as such by metes and bounds, with the intention or for the purpose of sale, lease, separate use or for the purpose of building, including the following types of lots: ~~development~~ building.

A. Corner Lot: A lot abutting on two (2) or more intersecting streets.

B. Double Frontage Lot: A lot abutting two (2) parallel or approximately parallel streets.

C. Interior Lot: A lot having but one side abutting on a street.

D. Key Lot: An interior lot, one (1) side of which is contiguous to the rear line of a corner lot.

LOT DEPTH: The shortest distance, measured on a line parallel to the axis of the lot, between points on the front and rear lot lines.

LOT LINE: A line bounding a lot, including the following types of lot lines:-

A. Front Lot Line: The lot line coinciding with the street line; or, in the case of a corner lot, the shortest-shorter of two (2) lot lines coinciding with street lines; or, in the case of a double frontage lot, both lot lines coinciding with street lines.

B. Rear Lot Line: The lot line opposite and farthest from the front lot line; for a pointed or irregular lot, the rear lot line shall be an imaginary line, parallel to and farthest from the front lot line, not less than ten feet (10') long and wholly within the lot.

C. Side Lot Line: Any lot line other than a front or rear lot line; in the case of a corner lot, the lot line abutting the side street is designated as the exterior side lot line; all other side lot lines are designated as interior side lot lines.

LOT WIDTH:

A. In the case of a rectangular lot or a lot abutting on the outside of a street curve, the distance between side lot lines measured parallel to the street or to the street chord and measured on the street chord.

B. In the case of a lot abutting on the inside of a street curve, the distance between the side lot lines measured parallel to the street or the street chord at the rear line of the dwelling, or, where there is no dwelling, thirty feet (30') behind the minimum front setback line.

Commented [BT3]: Should not use a word in its own definition. I think that read better as Land Disturbance. If we need a definition for Grading, we should create one.

Commented [BT4]: I remember trying to determine if a side lot line along an alley was an exterior. It was not clear in the definitions of side lot line, street, or alley. I think this should be clarified one way or another.

Commented [CL5R4]: This matches what we have in our 3-2-2 definitions

Commented [BT6]: Should this be measured at the minimum front setback line to be consistent with the inside of the curve situation below? We often allow narrower frontages around cul-de-sacs for this reason, but do not have the actual minimum well defined.

MASTER PLAN: The adopted plan or parts thereof, providing for the future growth and improvement of the city of Elko and for the general location and coordination of streets and highways, schools and recreation areas, public building sites, and other physical development which shall have been duly adopted by the ~~planning-commission~~Planning Commission and ~~city-council~~City Council.

NEIGHBORHOOD PLAN: A plan prepared by the city to guide the platting of remaining undeveloped parcels in a partially built up neighborhood so as to make reasonable use of all land, correlate street patterns, and achieve the best possible land use relationships.

OFFICIAL STREET CLASSIFICATION AND HIGHWAY PLAN COMPONENT OF THE MASTER PLAN: A plan adopted by the ~~planning-commission~~Planning Commission and ~~city-council~~City Council which provides for development of a system of major streets and highways.

OWNER: The person or persons holding title by deed to land, or holding title as vendees under land contract, or holding any other title or record.

PARCEL MAP: As defined in the Nevada Revised Statutes.

PEDESTRIANWAY: A public or private walk through a block from street to street or from a street to a school, park, recreation area or other public facility.

PLAT: A map of a subdivision; the same as "map" as defined in the Nevada Revised Statutes.

A. Final Plat: A plat of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with provisions of section 3-3-8 of this chapter.

B. Preliminary Plat: A preliminary tentative map, including supporting data, indicating a proposed subdivision development, prepared in accordance with section 3-3-7 of this chapter.

C. Recorded Plat: A final plat bearing all of the certificates of approval required by this chapter and duly recorded in the Elko County recorder's office.

PRELIMINARY **PLAT** APPROVAL: Approval of a preliminary plat by the ~~P~~planning ~~C~~ommission and the ~~City Council~~City Council. Preliminary approval constitutes authorization to proceed with preparation of ~~engineering~~ **construction** plans and ~~the~~ final plat.

PERFORMANCE GUARANTEE: The financial security required to guarantee the AGREEMENT TO INSTALL PUBLIC IMPROVEMENTS in accordance with 3-3-45 of this chapter.

PUBLIC IMPROVEMENTS: Improvements installed in accordance with **CONSTRUCTION PLANS which include dedicated and non-dedicated improvements necessary for development of subdivisions or areas developed under parcel maps.**

PUBLIC IMPROVEMENT STANDARDS: A set of standards approved by the ~~city-council~~City Council regulating the design and construction of public improvements in the city of Elko. These standards are the "Standard Specifications For Public Works Construction", latest edition, as distributed to the cities and counties of northern Nevada by the regional transportation commission of Washoe County.

PUBLIC UTILITIES: Underground, aboveground or overhead facilities furnishing to the public, electricity, gas, steam, communications, water, drainage, sewage disposal, flood control, irrigation or refuse disposal, owned and operated by any person, firm, corporation, municipal department or

Commented [BT7]: Should this be in all caps as below?

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board duly authorized by state or municipal regulations. "Public utilities", as used herein, may also refer to such persons, firms, corporation, departments or boards, as the context indicates.

STREET: Any existing or proposed street, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement for public vehicular access; or, a street shown in a plat heretofore approved pursuant to law; or, a street in a plat duly filed and recorded in the county recorder's office. A street includes all land within the street right of way, whether improved or unimproved, and includes such improvements as pavement, shoulder, curbs, gutters, sidewalks, parking space, bridges, viaducts, lawns and trees.

A. Alley: A public way providing secondary vehicular access and service to properties which also abut a street.

B. Arterial And Minor Arterial Streets: A general term describing large major streets, including freeways, expressways and interstate roadways, and state and/or county highways having city and regional continuity.

C. Collector Residential And Local Residential Streets: City streets serving the primary function of providing access to abutting property:

1. Cul-De-Sac Street: A short collector residential and local residential street having one end permanently terminating in and including a vehicular turning area.

2. Marginal Access Street: A collector residential and local residential street parallel to and abutting an arterial street which provides access to abutting property, intercepts other collector residential and local residential streets, and controls access to the arterial street.

D. Collector Street: A street generally with limited continuity serving the primary function of moving traffic between arterial streets and local residential streets, and the secondary function of providing access to abutting properties.

~~E. Private Street~~STREET, PRIVATE: A nondedicated, privately owned right-of-way or limited public way that affords the principal means of emergency and limited vehicular access and connection from the public street system to properties created through the division or subdivision of land.

~~STREET, PUBLIC~~Public Street: A dedicated public right-of-way that is part of the public street system and which affords the principal means of emergency and general vehicular access to abutting property.

~~G. Street Line~~STREET LINE: A line describing the limits of a street right of way.

SUBDIVIDER: The person, firm, corporation, partnership, association, syndicate, trust, or other legal entity that files application and initiates proceedings for the subdivision of land in accordance with the provisions of this chapter; provided, that an individual serving as agent for such legal entity shall not be deemed the subdivider.

SUBDIVISION: As defined in the Nevada Revised Statutes.

SUBDIVISION REVIEW COMMITTEE: A committee consisting of the representative from the City's Manager's Office, representative from the City's Engineering Department, representative from the City's Utility Department, representative from the City's Planning Department, representative from the City's Development Department, city engineer, city

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~~planner, representative for the City's Public Works Department, representative from the City's Fire Department, public works director, fire chief or fire marshal, and Planning Commission Chair or Vice Chair formed~~ for the purpose of conducting a subdivision preapplication (stage I) review prior to preliminary plat submittal. (Ord. 739, 8-9-2011)

3-3-3: OUTLINE OF PROCEDURES:

The preparation, submission, review and official action concerning all subdivision plats located within the city shall proceed through the following progressive stages:

A. Stage I - preapplication (conference) stage;

B. Stage II - preliminary plat stage;

C. Stage III - final plat stage. (Ord. 548, 11-28-2000)

3-3-4: PREAPPLICATION (CONFERENCE) STAGE (STAGE I):

The preapplication stage of subdivision planning comprises an investigatory period preceding actual preparation of the preliminary plat by the subdivider. During this stage, the subdivider shall make known his intentions to the subdivision review committee and be advised of specific public objectives related to the subject tract and other details regarding platting procedures and requirements. During this stage, it shall be determined whether a change in zoning will be required for the subject tract or any part thereof, and, if such change is required, the subdivider shall initiate the necessary application for zoning amendment in conjunction with submission of the preliminary plat. In carrying out the purposes of the preapplication stage, the subdivider and the subdivision review committee shall be responsible for the following sections:

A. Actions By Subdivider: The subdivider shall meet with the subdivision review committee and present a general outline of his proposal, including, but not limited to:

1. Sketch plans and ideas regarding land use, street and lot arrangement, and tentative lot sizes.
2. Tentative proposals regarding water supply, sewage disposal, storm drainage and street improvements, and any additional information required by this code and the subdivision review committee.

B. Actions By Subdivision Review Committee: The subdivision review committee may advise the subdivider of procedural steps, design and improvement standards, and general plat requirements. The subdivision review committee may then proceed with the following investigations, and report its recommendations in writing to the subdivider, ~~planning commission~~ Planning Commission and ~~city council~~ City Council:

1. Check existing zoning of the tract and of abutting properties, and determine whether a zoning amendment is necessary or desirable.
2. Examine the adequacy of parks and other public facilities.
3. Determine the relationship of the site to major streets, utility systems and adjacent land uses, and determine whether there are any potential problems related to topography, utilities, drainage or flooding.
4. Determine whether a development master plan shall be prepared and approved prior to preparation and consideration of a preliminary plat.

C. Development Master Plan: Whenever, in the opinion of the ~~planning commission~~[Planning Commission](#), the proposed subdivision is sufficiently large to comprise a major part of a future neighborhood, or, the tract initially proposed for platting is only a part of a larger land area the development of which is complicated by unusual topographic, utility, land use, land ownership problems or other conditions, the subdivider shall be required to prepare a development master plan for the larger area which must be submitted to the commission for approval and must be filed with the city ~~engineer~~ at least ~~twenty-one fifteen (2115)~~ days prior to the meeting date at which the commission will be reviewing the plan.

1. Preparation: The plan shall be prepared on a sheet twenty four inches by thirty six inches (24" x 36"), shall be accurate commensurate with its purpose, and shall include:

- a. General street pattern with particular attention to the location and general alignment of collector streets and to convenient circulation throughout the neighborhood.
- b. General location and size of school, park and other public facility sites.
- c. Location of shopping center, multi-family residential and other proposed land uses.
- d. Methods proposed for sewage disposal, water supply and storm drainage.

2. Approval: When the ~~Development Master p~~Plan has been approved by the ~~planning commission~~[Planning Commission](#), it shall constitute the general design approach to be followed in the preparation of all preliminary plats within its limits. If development is proposed to take place in several stages, the plan shall be submitted as supporting data for each preliminary plat. The plan shall be kept up to date by the subdivider as modifications occur or become necessary. (Ord. 624, 10-26-2004)

3-3-5: PRELIMINARY PLAT STAGE (STAGE II):

The preliminary plat stage includes preparation, submission, review and ~~planning commission~~[Planning Commission](#) action on the preliminary plat. Processing of the preliminary plat will be expedited by submission of all information essential to determining the intended character and general acceptability of the proposal.

Commented [SAW8]: all subdivision applications are processed through the planning department

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A. Zoning Amendments: The preliminary plat shall be designed to meet the specific requirements of the zoning district in which it is located; however, in the event that an amendment of zoning is necessary, an application for such amendment shall be submitted and processed in conjunction with the preliminary plat. The ~~planning-commission~~Planning Commission shall not proceed with processing of the plat unless and until said application is submitted. The application for zoning amendment ~~shall should~~ be heard by the ~~planning-commission~~Planning Commission at the same meeting as the preliminary plat, but shall be acted upon separately. When a preliminary plat constitutes only one unit of a larger development intended for progressive platting, ~~the~~ zoning amendment shall ~~usually~~ be limited to the area contained in ~~preliminary plat application, and abutting the initial plat. In any event, Any~~ required zoning amendment shall have been approved by the ~~planning-commission~~Planning Commission prior to the preliminary plat approval. Zoning amendments must conform with the master plan, adopted by the ~~planning-commission~~Planning Commission and ~~city-council~~City Council.

Commented [BT9]: Why would we not allow a larger area to be rezoned all at once.

B. **Public improvements:** Sanitary Sewerage, Water Supply, Storm Drainage And Garbage Disposal: As a prerequisite of preliminary plat review by the ~~planning-commission~~Planning Commission, the subdivider shall ~~have informed the commission, health department and the city engineer of the tentative plans and shall~~ provide adequate information to determine ~~conformance to city code and the general~~ requirements for **public improvements, such as but not limited to, property grading**, sewage disposal, water supply, storm drainage, ~~garbage disposal~~ and other public utilities as applied to the subject tract.

C. Preliminary Plat Submission:

1. Documents; Scheduling: ~~Eighteen-Three (183)~~ copies of the preliminary plat and any required supporting ~~information and/or~~ data, prepared in accordance with the requirements of this chapter, shall be filed with the planning department at least twenty one (21) days prior to the ~~planning commission~~Planning Commission meeting at which the subdivider desires to be heard. Scheduling of the case for ~~planning-commission~~Planning Commission hearing shall be dependent upon submission of adequate data and completion of processing. If additional copies of the submittal are needed for proper review of the proposal, they shall be furnished by the subdivider.

Commented [SAW10]: Correct???

2. Submittal To Be Checked: The submittal shall be checked by the ~~city subdivision review committee~~ for completeness, and, if it meets with all requirements of section ~~3-3-7~~ of this chapter, it shall be assigned a file number; if incomplete, it shall be rejected and the subdivider notified as to its deficiencies.

Commented [SAW11]: 21 days does not provide time to schedule a meeting with the subdivision review committee and advertise the meeting. Review by committee is not appropriate either. This is however necessary for staff to complete.

3. Filing Fee: The subdivider shall, at the time of filing, pay to the city a filing fee based upon the number of lots in the plat. If preliminary approval subsequently expires prior to application for final approval, the plat shall be resubmitted for preliminary approval as a new case, and the subdivider shall pay the required fee in accordance with the adopted schedule. The filing fee shall be set by resolution by the ~~city-council~~City Council.

4. Incomplete applications not acted upon by the subdivider shall expire within 90 days of receipt of the application.

Commented [BT12]: If incomplete applications are rejected, as stated above, this is contradictory.

Commented [CL13R12]: I agree with Bob, maybe just state applications no acted upon....

D. Preliminary Plat Review:

1. Upon receipt of the ~~final~~ preliminary plat submittal, the city planning department shall record receipt and date of filing, and transmit all copies of the preliminary plat to the city engineering, utility, public works, fire and development departments for checking the submittal for completeness. If incomplete, the filing date shall be voided and the subdivider so notified. If complete, and if the preliminary plat substantially conforms to the Stage I submittal, the city Planning department shall transmit copies of the submittal to the Nevada Department of Transportation, where applicable, who shall make known their recommendations in writing addressed to the city.

12. Copy Distribution: The subdivider shall provide ~~additional copies~~ a readable pdf file of the preliminary plat to the city for distribution to:

~~a. The city engineer;~~

~~a. b.~~ School district superintendent, board of trustees of Elko County;

~~b. c.~~ Utility companies;

c. Elko County Planning Department, if property is adjacent to any parcel located in Elko County

~~c. d.~~ Division of water resources, department of conservation and natural resources;

~~d. e.~~ Division of environmental protection, department of conservation and natural resources; and

~~e. f.~~ Health ~~department~~, department of human resources.

23. ~~Planning Commission~~ Planning Commission Shall Review: The ~~planning commission~~ Planning Commission shall review the preliminary plat submitted for compliance with the provisions of this chapter and the zoning requirements, and shall consult with and seek the advice of appropriate city departments and agencies on any matters of design or improvement. It shall be the responsibility of the subdivider to provide any necessary data and any information necessary for the Planning Commission Planning Commission to conduct a comprehensive review of the subdivision.

34. Public Hearing Required: In reviewing and considering preliminary plats, the ~~planning commission~~ Planning Commission shall first hold a public hearing prior to taking any action on a preliminary plat. Upon the filing of an application for preliminary plat, the city staff shall set the matter for hearing not later than forty five (45) days thereafter. After the time and place have been established by the city staff, notice of the hearing shall be sent by mail at least ten (10) days before the hearing to all property owners adjoining or adjacent to the area proposed to be subdivided as shown by the latest assessment rolls of the ~~city~~ County. Notice by mail to the last known address of the real property owners as shown by the ~~assessor's~~ Assessor's records shall be sufficient. Legal notice shall be placed in a newspaper of general circulation within the city at least ten (10) days prior to the date of the public hearing.

45. Modifications: In the event the ~~planning commission~~ Planning Commission requires modifications of the plat as submitted, the commission shall so inform the subdivider and may provide him advice in overcoming deficiencies prior to the commission hearing. A recommendation

Commented [SAW14]: not sure this is required any more unless septs are involved

Commented [CL15R14]: We don't send to the division of water resources, NDEP or Health Department.

Commented [BT16]: The County keeps the Assessment rolls, not the City.

for modification or change may be sufficiently important to warrant postponement of the ~~planning commission~~Planning Commission hearing until the matter has been resolved with the subdivider.

E. Preliminary Plat Approval:

1. The ~~planning commission~~Planning Commission shall consider the preliminary plat within forty five (45) days after a complete application for the plat has been filed. The ~~planning commission~~Planning Commission shall report, ~~through the planning department,~~ to the ~~city council~~City Council within ~~forty-five thirty~~ (45) days after review of the preliminary plat. The report shall approve or disapprove the map or maps of the subdivision. If conditionally approved or disapproved, the report shall state the conditions under which the ~~plat map~~ would have been approved or that approval was withheld because the land proposed to be subdivided was not suitable for such development. If approval is withheld, the report shall state the reasons why the land was not considered suitable. The ~~city council~~City Council shall approve or disapprove a tentative map within ~~sixty forty five~~ (60) days after receipt of the ~~planning commission~~Planning Commission's recommendations, after first holding a public hearing as set forth in subsection D3 of this section.

Commented [SAW17]: This all occurs at once rather two separate meetings

2. Before approving a ~~preliminary tentative~~ plat, the ~~planning commission~~Planning Commission and ~~city council~~City Council shall make such findings as are not inconsistent with the provisions of Nevada Revised Statutes sections 278.010 through 278.630, inclusive, or local ordinances adopted pursuant thereto, including, but not limited to, findings that the subdivision:

a. Will not result in undue water or air pollution. In making this determination it shall consider:

- (1) The topography of the land and its relation to the floodplains or areas subject to flooding or water damage;
- (2) The nature of soils and subsoils and their ability adequately to support waste disposal;
- (3) The slope of the land and its effect on effluents;
- (4) The effectiveness of sewerage plans and solid waste disposal; and
- (5) The applicable environmental and health laws and regulations.

b. Has sufficient water meeting applicable health standards for the reasonably foreseeable needs of the subdivision.

c. Will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

d. Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

e. Will not cause unreasonable street or highway congestion or unsafe conditions with respect to use of the streets or highways existing or proposed and addresses for the new streets or highways to serve the subdivisions.

f. Is in conformance with the duly adopted master plan and zoning ordinances, except in cases of inconsistency between the two, the zoning ordinance takes precedence. No provision of this chapter shall be constructed to prevent a governing body from disapproving a **preliminary tentative** map if such disapproval is in the best interests of the public health, safety or welfare, and such disapproval is made by a majority vote of its members and made within the time limit provided.

g. Availability and accessibility of utilities.

h. Availability and accessibility of public services, such as schools, police and fire protection, recreation and parks.

3. ~~If~~ satisfied that the preliminary plat meets all requirements of this chapter, the **planning commission****Planning Commission** may grant preliminary **plat** approval. ~~whereupon the secretary shall note such approval on three (3) copies of the plat, return one copy to the subdivider, retain one copy in the permanent commission file, and give one copy to the city engineer.~~

Commented [SAW18]: Review process

4. If the **preliminary** plat is generally acceptable but requires minor revision, the **planning commission****Planning Commission** may find conditional approval, and the required conditions and revisions shall be noted in the meeting minutes. Thereafter, at the discretion of the **planning commission****Planning Commission**, the **preliminary** plat may **approve the revised conditions and revisions to be corrected and the preliminary plat forwarded to the City Council****City Council** **without further consideration by the Planning Commission****Planning Commission**. ~~be given preliminary approval when it has been satisfactorily revised in accordance with the commission's stated conditions.~~

Commented [CL19]: This doesn't make sense...not sure if we are just stating that the Planning Commission may approve revisions to be corrected prior to being forwarded to the City Council.

5. If the **preliminary** plat is disapproved by the **planning commission****Planning Commission**, any new filing of a plat for the same tract, or any part thereof, shall follow the aforesaid procedure and be subject to payment of a new filing fee. The subdivider may **appeal** the **planning commission****Planning Commission**'s decision to the governing body within fifteen (15) days **in accordance with Elko City Code 3-2-25**. The **city council****City Council** may overrule any ruling of the **planning commission****Planning Commission** in regard to the **preliminary tentative** plat **in conformance with the findings required under 3-3-5(E)(2)**.

Commented [SAW20]: What is the process.

6. ~~Upon preliminary **plat** approval, the planning department shall notify the utility companies of such approval.~~

Commented [CL21]: We don't do this and haven't done it in the past. Looking at NRS to see if required.

F. Significance ~~Of~~ Preliminary Approval: Preliminary approval constitutes authorization for a subdivider to proceed with preparation of the final plat and **engineering construction** plans. Preliminary approval is based upon the following terms:

1. Basic conditions under which preliminary approval is granted shall not be changed prior to expiration date.

2. Unless the time is extended consistent with the requirements of Nevada Revised Statutes 278.360, the subdivider shall present to the **planning commission****Planning Commission** within four (4) years:

a. A final map, prepared in accordance with the tentative map, for the entire area for which a tentative map has been approved, or

b. One of a series of final maps, each covering a portion of the approved tentative map.

3. If the subdivider fails to ~~record~~ present a final map for any portion of the tentative map ~~to the city~~ within four (4) years after the date of approval of the tentative map by the ~~city council~~ City Council, or within two (2) years after the ~~recording~~ date of approval by the city council City Council of the most recently ~~recorded~~ final map, all proceedings concerning the subdivision are terminated.

4. The ~~city council~~ City Council, after referral to the ~~planning commission~~ Planning Commission for review and comment, may grant an extension of not more than two (2) years for the presentation of the next final map in a series of final maps covering a portion of the approved tentative map after the two (2) year period for presenting the entire final map or next successive final map has expired.

5. Preliminary Plat approval does not constitute an authorization to proceed with subdivision site improvements prior to approval by the city ~~engineer~~ of submitted construction engineering plans. Preliminary Plat approval does not constitute authorization to proceed with subdivision improvements prior to obtaining any required Federal or State approvals.

Commented [BT22]: NRS 278.360.1.a requires that a final plat be "presented to the governing body" within 4 years, not recorded.

Commented [BT23]: NRS 278.360.2 requires that a subsequent final map be submitted to the city within 2 years of RECORDING of the previous map, not council approval.

What I don't see in NRS is any requirement that the final maps be recorded within a certain time from submittal to the City, or Council Approval.

Commented [SAW24]: This either needs to state from approval or the performance agreement time needs to be amended to allow for four years with no extension.

G. Expiration Of Preliminary Approval: If preliminary approval expires prior to filing of a request for an extension or the time given in an extension expires, the preliminary plat, if resubmitted, shall be processed as a new case, and a new fee paid. Extensions of time shall be granted under provisions stipulated in an agreement consistent with the requirements of NRS 278.0201 and 3-2-26. ~~If planning commission~~ Planning Commission review of a resubmitted plat reveals no significant change from the previously approved preliminary plat and conditions under which previous approval was granted have not changed, the filing fee shall be as set by the city council City Council and the resubmitted plat scheduled for hearing by the commission at its first regular scheduled meeting thereafter. (Ord. 785, 7-8-2014)

3-3-6: FINAL PLAT STAGE (STAGE III):

The final plat stage includes the final design and final engineering of the subdivision, and the preparation, submission, review and action on the final plat and construction engineering plans.

A. Presubmission Requirements:

1. Zoning: The final plat shall meet all requirements of the zoning district in which located, and any necessary zoning amendments shall have been adopted by the ~~city council~~ City Council prior to filing of the final plat.
2. Preparation ~~Of~~ Final Plat: The final plat shall conform closely to the approved preliminary plat and be prepared in accordance with the provisions of this chapter.
3. Easements: The final plat submittal shall include a letter signifying approval of utility easements by all public utilities involved, and shall be so indicated by an affidavit on the map.

B. Final Plat Submission:

1. Three (3) copies of the final plat and any required supporting **information and/or** data, prepared in accordance with the requirements of this chapter, shall be filed with the planning department at least twenty one (21) days prior to the Planning Commission meeting at which the subdivider desires to be heard.

2. The ~~planning commission~~Planning Commission shall review the final plat for conformity with the preliminary plat and conformity with the ~~city's engineer's~~ approval of final plat and construction drawings.

2. The subdivider shall file with the city ~~planning department~~ clerk the final plat and four (4) true copies thereof, together with the recordation fee, at least fifteen (15) days prior to the city councilCity Council meeting date at which the subdivider desires to be heard.

C. Final Plat Review:

1. Upon receipt of the final plat submittal, the city ~~planning department~~ clerk shall record receipt and date of filing, and transmit all copies of the final plat to the city ~~engineering, utility, public works, fire and development departments~~ engineer for checking the submittal for completeness. If incomplete, the filing dated shall be voided and the subdivider so notified. If complete, and if the final plat substantially conforms to the approved preliminary plat, the city ~~planning department~~ engineer shall transmit copies of the submittal to the Nevada ~~Highway~~ Department of Transportation, where applicable, who shall make known their recommendations in writing addressed to the city ~~engineer~~.

2. The city ~~planning department~~ engineer shall assemble the recommendations of the various reviewing offices, including the ~~planning commission~~Planning Commission findings and recommendations, and submit same to the ~~city council~~City Council.

3. ~~In the event that the city engineer finds that the final plat does not substantially conform to the approved preliminary plat, as approved by the planning commission~~Planning Commission, then the final plat shall be submitted to the commission for review and recommendations prior to consideration by the city councilCity Council.

D. Final Plat Approval And Recordation:

1. Upon notification from the city ~~engineer~~ that the plat is in order, the city ~~clerk~~ shall place the ~~item~~ case on the agenda of the next regular meeting, at which time the ~~city council~~City Council shall approve or deny the plat.

2. If the ~~city council~~City Council denies approval of the plat for any reason whatever, such reasons shall be recorded in the minutes and the subdivider so notified. If the ~~city council~~City Council gives final approval of the plat, the city clerk shall transcribe upon the plat a certificate of approval signed by the mayor and the city clerk, first making sure that all other required certifications have been duly signed, and that ~~construction engineering~~ plans have been approved by the city ~~and the subdivider~~ has entered into the required agreement to install public improvements and provided the required performance guarantee engineer.

Commented [CL25]: This doesn't make sense. Are we referring to City Staff approval?

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Commented [CL26]: We take all Final Plats to PC before City Council

Commented [CL27]: This doesn't make sense. Should we just delete this paragraph as we already discussed above the plat review.

3. ~~The subdivider shall then cause signed prints of the plat to be provided to the city engineering department engineer, the county recorder, the county assessor, and the planning department commission, the city clerk, all at the expense of the subdivider.~~

43. The subdivider shall then record the plat in the county recorder's office and pay the recordation fee. (Ord. 548, 11-28-2000)

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Commented [BT28]: The subdivider should just cause the signed plat to be recorded. Copies of the recorded plat are distributed by the Recorder's office. This whole paragraph can be removed.

3-3-7: INFORMATION REQUIRED FOR PRELIMINARY PLAT SUBMISSION:

A. Form And and Scale: Preliminary plat information hereinafter required shall be shown graphically on one or more plan sheets with written data either entered directly thereon or attached thereto. All mapped data for the same plat shall be drawn at the same standard engineering scale, such scale having not more than one hundred feet (100') to the inch. Whenever practicable, the plan scale shall be selected to produce an overall sheet measuring twenty four inches by thirty six inches (24" x 36").

B. Identification Data:

1. Proposed subdivision name, location and section, township and range; reference by dimension and bearing to a section corner or quarter-section corner.
2. Name, address and phone number of subdivider(s).
3. Name, address and phone number of engineer or surveyor preparing plat, together with the registration number issued to such engineer or surveyor by the Nevada registering board.
4. Scale, north point and date of preparation, including dates of any subsequent revisions.
5. A small scale location map showing the relationship of the tract to existing community facilities which serve or influence it, including: arterial streets, railroads, shopping centers, parks and playgrounds, and churches.
6. Legal description defining the boundaries of the subdivision.

C. Existing Conditions Data:

1. Topography by one foot (1') or two foot (2') contour intervals related to the city current coordinate system shown on the same map as the proposed subdivision layout. Topographic data shall be adequate to show the character and drainage of the land.
2. Location of water wells, streams, private ditches, washes and other water features, including direction of flow; location and extent of areas subject to frequent periodic or occasional inundation.
3. The location of designated flood zones and/or special flood hazard areas.

4. Within or adjacent to the tract, the location, widths and names of all platted streets, railroads, utility rights of way of public record, public areas, permanent structures to remain, and municipal corporation lines.
5. Name, book and page numbers of all recorded plats abutting the tract or across a boundary street from the tract.
6. Existing zoning classification of the tract and adjacent properties.
7. Dimensions of all tract boundaries; gross and net acreage of tract.

D. Proposed Conditions Data:

1. Street layout, including location and width of streets, alleys, ***sidewalks***, pedestrianways and easements, including connections to adjoining platted subdivisions and through unsubdivided tracts, proposed names of all streets and approximate grade of all rights-of-way. A traffic impact analysis may be required where additional traffic in the area may exceed city roadway capacities and warrant traffic signal improvements, additional travel lanes or impact state highways.
2. Lot layout, including dimensions of ***typical each*** lots; ***and the dimensions of all corner lots and lots on street curves***; each lot numbered consecutively; total number of lots.
3. Location, width and proposed use of easements.
4. Location, extent and proposed use of all land to be dedicated or reserved for public use, including school sites or parks.
5. Location and boundary of all proposed zoning districts.
6. Draft of proposed deed restrictions.
7. The subdivider and/or subdivision engineer shall provide a preliminary or conceptual grading plan; including conceptual depiction of areas proposed for cut and fill; estimated quality of material to be graded; estimated finished grades adequate to establish general grading trend; proposed methods of erosion control; general location and specifications of any manufactured (cut or fill) slopes.
8. The subdivider shall comply with all applicable provisions of the city national pollutant discharge elimination system general permit for discharges from small municipal separate storm sewer systems, permit no. NV040000.

E. Proposed Utility Methods:

1. Sewage Disposal: It shall be the responsibility of the subdivider to furnish information as to design for sewage disposal connecting to the city system.

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2. Water Supply: Evidence of adequate volume and quality satisfactory to the city ~~engineer~~ from the city system.
3. Storm Drainage: Preliminary drainage calculations and layout of proposed storm drainage system, including locations of outlets, shall be submitted. Storm drainage shall comply with the ~~City of~~ NPDES permit requirements and current regulations.
4. Telephone, Power, Gas, ~~Television and Television~~: Design and location shall be shown.
5. Will Serve Letters: The ~~engineering Utility Department~~ Director shall provide a water, ~~and sewer and solid waste disposal~~ "will serve" letter to the applicable state agencies. (Ord. 624, 10-26-2004)

3-3-8: INFORMATION REQUIRED FOR FINAL PLAT SUBMISSION:

A. Form ~~And~~ Content: The final map shall be clearly and legibly drawn with black, waterproof India ink upon good ~~tracing cloth or~~ Mylar, including affidavits, certificates and acknowledgments. Each sheet shall be twenty four inches by thirty ~~six-two~~ inches (24" x ~~36~~32") in size. A marginal line shall be drawn completely around each sheet showing an entirely blank margin of one inch (1") at bottom, top and right edge, and two inches (2") on the left edge on the twenty four inch (24") dimension. The scale of the map shall be not less than one inch equals one hundred feet (1" = 100'). The particular number of the sheet and the total number of sheets comprising the map shall be so stated on each of the sheets and the number in relation to each adjoining sheet shall be clearly shown. The title sheet shall contain the location of the property being divided with references to maps which have been previously recorded or by reference to the plat of the United States survey. Copies of the final plat shall be reproduced in the form of blue line or black line prints on the white background.

Commented [BT29]: Per NRS 278.372.2

B. Identification Data:

1. Name of subdivision and location by section, township, range and county.
2. Name, address and registration number of the registered land surveyor preparing the plat. The land surveyor preparing the plat must be registered in the state of Nevada.
3. Scale, north point and date of plat preparation.

C. Survey Data (Required):

1. Boundaries of the tract fully balanced and closed, showing all bearings and distances, determined by an accurate survey in the field; all dimensions expressed in feet and decimals thereof.
2. Any exceptions within the plat boundaries located by bearings and distances expressed in feet and decimals thereof, determined by an accurate survey in the field.

3. Location and description of cardinal points to which all dimensions, angles, bearings and similar data on the plat shall be referenced; the subdivision traverse shall be tied by course and distance to a section corner or quarter-section corners.

4. Location and description of all physical encroachments upon the boundaries of the tract.

D. Descriptive Data:

1. Name, right-of-way lines, courses, lengths and widths of all streets, alleys, pedestrianways and utility easements; radii, points of tangency and central angles of all curvilinear streets and alleys; radii of all rounded street line intersections.

2. All drainageways, designated as such.

3. All utility and public service easements, including designation whether for public access or utilities.

4. Location and dimensions of all lots, parcels and exceptions.

5. All residential lots shall be numbered consecutively throughout blocks.

6. Location, dimensions, bearings, radii, arcs, and central angles of boundaries of all sites to be dedicated to the public, including designation of proposed use.

7. Location of all adjoining subdivisions with name, date, [book and book](#) and page number of recordation noted, or if unrecorded, so noted, along with names of adjoining landowners of unsubdivided property.

8. Any private deed restrictions to be imposed upon the plat, or any part hereof, written on or attached to the plat and each copy thereof.

E. Dedication [Andand](#) Acknowledgment:

1. Statement of dedication of all streets, alleys, pedestrianways, and easements for public purposes by the person holding title of record, by persons holding title as vendees under land contract, and by [wives-spouses](#) of such persons. If lands to be dedicated are mortgaged, the mortgagee shall also sign the plat. Dedication shall include a written description by section, township and range of the tract. If the plat contains private streets, public utilities shall be reserved the right to install and maintain utilities in such street rights-of-way.

2. Execution of dedication acknowledged and certified by a notary public.

F. Additional Information:

1. Where the centerline has been established for any street, highway, alley or public way within an adjoining subdivision, all monuments along said street, highway, alley or public way within the proposed subdivision shall be located with reference to that centerline which shall be shown on the map.
2. The centerline of each highway, street, alley or way within the proposed subdivision and width on each side of the centerline, and showing the width to be dedicated and there shall be designated on all centerlines the bearing thereof and length of each radius, central angle and length of each curve within the proposed subdivision.
3. The location of monuments or other evidence formed upon the ground and used in determining the boundaries of the subdivision. If other subdivisions adjoin, the map shall show sufficient corners of such adjoining subdivisions, sufficiently identified to locate precisely the limits of the proposed subdivision.
4. The length and bearing of each block line, lot line and boundary line; the length, radius and central angle of each curve or the length of curve and that portion of the central angle lying within each lot. Such data shall be shown in a manner satisfactory to the city ~~Engineering department engineer~~.
5. Each city boundary line crossing or adjoining the subdivision with adequate ties to monuments set or found within the subdivision.
6. Section lines, one-quarter ($\frac{1}{4}$) section lines and one-sixteenth ($\frac{1}{16}$) section lines crossing or adjoining the subdivision boundaries.

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G. City ~~Engineering Department Engineer~~ ~~Toto~~ Check:

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1. The city ~~engineer~~ shall check said final map as to accuracy of dimensions, the placing of monuments, the establishment of survey records shown on said map, and the conformance of said map with the preliminary map. The final map shall be accompanied by:
 - a. A worksheet showing the closure of the exterior boundaries of the proposed subdivision and of the closure of lots and blocks therein;
 - b. A complete set of construction plans are required by the city ~~engineer~~ showing site grading, lot grading, typical street sections, centerline and curb grades, water infrastructure, water meters, sanitary sewer and storm drain locations and invert grades and elevations, street lighting and other private or public improvements determined to be required by the City. The construction drawings must be stamped and dated by a civil engineer registered in the state;
 - c. Construction plans for manholes, catch basins and other appurtenant structure; and
 - d. An engineer's estimate of quantities and costs required to complete the improvements. Costs are to be based on prevailing wage, as applicable, in accordance with the requirements of NRS 338 and local rates. The city will check the engineer's estimate and approve the engineer's estimate. The approved engineer's estimate is to be the basis for the required performance agreement guarantee in accordance with 3-3-45.

2. The minimum allowable error of closure shall be one per-ten thousandth ($1/10,000$). ~~Temperature and tension correction shall be applied to all measured distances in conformance with the standard adopted by the federal board of surveys and maps in May, 1925.~~

H. Required Certifications: The following certifications shall appear on the final map:

1. A certificate signed and acknowledged by all parties having any record title interest in the land subdivided, consenting to the preparation and recordation of the map. A lien for state, county, municipal or local taxes and for special assessments or beneficial interest under trust deeds or trust interests under bond indentures shall not be deemed to be an interest in land for the purpose of this section. Any map including territory originally patented by the United States or the state, under patent reserving interest to either or both of the entities, may be recorded under the provisions of Nevada Revised Statutes sections 278.010 through 278.730 inclusive, without the consent of the United States or the state thereto, or to dedications made thereon. Signatures required by this section of parties owning rights ~~of way~~, easements or reversions which, by reason of changed conditions, long disuse or laches appear to be no longer of practical use or value, and which signatures it is impossible or impracticable to obtain, may be omitted if the names of such parties and the nature of their interest is endorsed on the map, together with a reasonable statement of the circumstances preventing the procurement of such signatures.
2. A certificate, signed and acknowledged as above, offering for dedication for certain specified public uses (subject to such reservations as may be contained in any such offer of dedication) those certain parcels of land which the parties desire so to dedicate. The certificate may state that any certain parcel or parcels are not offered for dedication; but a local ordinance may require as a condition precedent to the approval of any final map that any or all of the parcels of land shown thereon and intended for any public use shall be offered for dedication for public use, except those parcels other than streets intended for the exclusive use of the lot owners in such subdivision, their licensees, visitors, tenants and servants.
3. A certificate for execution by the clerk of each approving governing body stating that the body approved the map and accepted or rejected on behalf of the public any parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication.
4. A certificate signed and acknowledged by all parties having any record title in the land subdivided, evidencing their grant of permanent easements for utility installations and access, as designated on the map, together with a statement approving such easements, signed by each public utility company or agency in whose favor the easements are created or whose utility services are to be required for the platted parcels.
5. A certificate by the ~~engineer~~ or surveyor responsible for the survey and final map, which certificate must be in the following form:

SURVEYOR'S CERTIFICATE

I (name of surveyor), a registered land surveyor in the state of Nevada, certify that:

1. *This is a true and accurate representation of the lands surveyed under my supervision at the instance of (owner, trustee, etc.);*

Commented [SAW30]: Can an engineer even do this and if so why does the NRS requires a surveyor certificate.

Commented [BT31R30]: Correct, an engineer cannot do a final plat.

2. The lands surveyed lie within (sections, township, range, meridian, and, if required by the governing body, a description by metes and bounds for any subdivision which is divided into lots containing 5 acres in area or less) and the survey was completed on (date);

3. This plat complies with the applicable state statutes and any local ordinances;

4. The monuments are of the character shown and occupy the positions indicated by (a day certain) and that an appropriate performance bond has been or will be posted with the governing body to assure their installation.

(date, name of surveyor, registration number and seal)

6. A certificate by the city engineer or city surveyor stating that he has examined the final map, that the subdivision as shown thereon is substantially the same as it appeared on the tentative map, and any approved alterations thereof, that all provisions of Nevada Revised Statutes sections 270.010 through 278.630, inclusive, and of any local ordinance applicable at the time of approval of the tentative map have been complied with, and that he is satisfied that the map is technically correct and that the monuments as shown are of the character and occupy the positions indicated or that the monuments have not been set and that a proper performance bond has been deposited guaranteeing their setting on or before a day certain. The certificate shall be dated and signed and certified by a registered land surveyor or a registered civil engineer.

7. A certificate by the state health division reading:

This final map is approved by the health division of the department of human resources concerning sewage disposal, water pollution, water quality and water supply facilities in accordance with the Nevada Revised Statutes. This approval predicates (community, individual) water supply and (community, individual) sewage disposal.

8. A copy of the review by the state engineer required by subsection H7 of this section shall be furnished to the subdivider who in turn shall provide a copy of such review to each purchaser of land prior to the time the sale is completed. No statement of approval or review as required in subsection H7 of this section is a warranty or representation in favor of any person as to the safety or quantity of such water.

9. The final subdivision map shall contain the following certificate:

Division of Water Resource Certificate: This final map is approved by the division of water resources of the department of conservation and natural resources concerning water quantity subject to the review of approval on file in this office.

10. The city council **City Council** shall not approve any final map for a subdivision served by the city water system unless the subdivider has submitted plans which provide for the installation of water meters or other devices which will measure water delivered to each water user in the subdivision. (Ord. 624, 10-26-2004)

Commented [SAW32]: NDEP?

3-3-20: GENERAL PROVISIONS FOR SUBDIVISION DESIGN:

A. Conformance With Master Plan: Every subdivision shall conform to requirements and objectives of the city master plan, to the city zoning ordinance, to other ordinances and regulations of the city and to the statutes of the state, except as otherwise provided in this chapter.

B. Provision Of Public Facility Sites: Whenever the statutes of the state permit the dedication of school sites or parks, the ~~city council~~City Council may require the subdivider to dedicate such sites.

C. Land Unsuitability: No land shall be subdivided which is determined by the ~~planning commission~~Planning Commission to be unsuitable for use by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, erosion susceptibility or similar conditions which are likely to prove harmful to the health, safety and general welfare of the community or the future property owners. The ~~planning commission~~Planning Commission, in applying the provisions of this section, shall state the particular facts upon which its conclusions are based, and shall also define the conditions under which the land may, in its opinion, become suitable for the proposed development. Land located within any floodway as designated on the city flood insurance rate maps shall be deemed unsuitable for development by local, state and federal regulation. Any subdivider proposing development of such land shall have the right to present evidence to the ~~city council~~City Council contesting such determination of unsuitability, whereupon the ~~city council~~City Council may affirm, modify or withdraw the restriction. (Ord. 768, 1-22-2013)

3-3-21: STREET LOCATION AND ARRANGEMENT:

A. Conformance With Plan: Whenever a tract to be subdivided embraces part of a street designated in a city official street and highway plan, such street shall be platted in conformance therewith.

B. Layout: Street layout shall provide for the continuation of such streets as ~~necessary to provide traffic and pedestrian access throughout the community and as~~ the ~~planning commission~~Planning Commission may designate.

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C. Neighborhood Plan: Whenever the tract is located within an area for which a neighborhood plan has been approved by the ~~planning commission~~Planning Commission, the street arrangement shall conform to such plan.

D. Extensions: Certain proposed streets, as designated by the ~~planning commission~~Planning Commission, shall be extended to the tract boundary to provide future connection with adjoining unplatted lands. Such extensions shall generally not be farther apart than the maximum permitted length of a block, as hereinafter provided.

- E. Arrangement Of Residential Streets: Residential streets shall be so arranged as to discourage their use by traffic originating outside the immediate neighborhood.
- F. Protection Of Residential Properties: Lots intended for single-family residential use shall not normally front or have access from arterial streets. Where a proposed subdivision abuts an existing or proposed arterial street, the ~~planning-commission~~[Planning Commission](#) may require marginal access streets or reverse property frontage with nonaccess easements abutting the arterial street, or such other treatment as may be justified for protection of residential properties from the nuisance and hazard of high volume traffic, and for protection of the traffic function of the arterial street.
- G. Parallel Streets: Where a residential subdivision abuts the right of way of a railroad, a limited access highway, or a commercial or industrial land use, the ~~planning-commission~~[Planning Commission](#) may require location of a street approximately parallel to such right of way or use at a distance being determined with due regard for approach grades, drainage, bridges and future grade separation.
- H. Topography: Streets shall be so arranged in relation to topography as to produce desirable lots or maximum utility and streets of reasonable gradient, and to facilitate adequate surface drainage.
- I. Alleys: Where alleys are platted, their alignment and arrangement shall be such as to minimize backtracking and single tier service by trash collection forces and to avoid the facing of residences directly into alley openings.
- J. Half Streets: Half streets shall be prohibited unless approved by the ~~planning-commission~~[Planning Commission](#), and conditions which will be considered for approval are: where necessary to provide right of way indicated on the official street and highway plan, to complete a street pattern already begun, or to ensure reasonable development of an adjoining unplatted parcel. Where a platted half street exists abutting to residential lots, the remaining half street shall be platted within the tract.
- K. Dead End Streets: Dead end streets in excess of six hundred eighty feet (680') in length shall be prohibited unless a modification is granted by the ~~planning-commission~~[Planning Commission](#) in locations designated by the commission as necessary for future street connection to adjacent unplatted lands. This shall include cul-de-sacs.

L. Intersection Design: Whenever any street or highway is proposed requiring a separation of grades or requiring any special form of intersection design at its intersection with any street, highway or railway, the subdivision shall be so designed to conform to any plan adopted by the city for the intersection design and all lots within the subdivision shall, when necessary, be provided with suitable access from another public way. Any street or highway intersecting with other street or highway shall intersect it at any angle as nearly a right angle as shall be practicable. (Ord. 548, 11-28-2000)

3-3-22: STREET DESIGN:

A. Required Right-~~of-way~~ Way Widths:

1. Arterial Streets: One hundred feet (100').
2. Minor Arterial Streets: Eighty feet (80').
3. Collector Streets: Seventy feet (70').
4. Collector Residential Streets: Sixty feet (60').
5. Local Residential Streets: Fifty feet (50').
6. Collector Rural Residential Streets: Seventy feet (70').
7. Local Rural Residential Streets: Sixty feet (60').
8. Hillside Rural Residential Streets: Sixty feet (60').
9. Rural Streets ~~And~~ Roads: All rural streets and roads shall conform with the following provisions:
 - a. **All infrastructure associated with the rural road shall be constructed at the time on road development; including but not limited to; culvert installation and pedestrian way, sidewalk or pathway construction.**
 - b. All rural road standards shall include a minimum ten foot (10') wide public utility ~~easement~~ and slope easement on one or both sides of the street ~~right-of-way~~. The city ~~engineer~~ shall have the **authority to require an** ~~ability to~~ increase **in** the width of the easement in special circumstances ~~and when warranted~~.
 - c. Rural roads which are projected by traffic study or analysis to serve more than six hundred (600) average daily vehicle trips shall utilize the collector rural residential street design standard.
 - d. **Pedestrian ways,** ~~Sidewalks or pathways associated with rural roads may be constructed of concrete-cement, asphalt or comparable material subject to the approval of the city-engineer.~~ **Sidewalks or pathways shall be constructed on both sides of the street. Pedestrian ways, sidewalks or pathways shall not be constructed within the required ten foot (10') public utility and slope easement.**

ed. On street parking on rural roads shall be prohibited except for temporary/emergency purposes and shall be appropriately signed.

fe. To minimize excessive culvert installation and associated maintenance, access approaches for rural roads shall be limited to one driveway, not to exceed thirty feet (30') in width or two (2) separated driveways, each of which is not to exceed twenty feet (20') in width. Culvert installation is required at the time of roadway construction and shall not be deferred.

g. Rural roads are prohibited in subdivisions not meeting the criteria stipulated in Section 3-2-5(A)(5)(b).

h. Rural roads are prohibited in areas within capture zones as delineated in the City's Wellhead Protection Plan.

10. Private Streets: Development and use of private streets is limited to local type streets with a local street classification, function and characteristics. Private streets are intended to serve self-contained projects, and shall access the public street system at an intersection subject to the review and approval of the city engineer. All private streets shall conform with the following provisions:

- a. Minimum total width for private streets: Fifty feet (50').
- b. Minimum total width for private streets accessing four (4) or fewer lots: Thirty two feet (32').
- c. Minimum paved section for private streets: Forty feet (40').
- d. Minimum paved section for private streets accessing four (4) or fewer lots: Twenty six feet (26').
- e. All residential private streets accessing twenty (20) or fewer lots shall have a four foot (4') wide sidewalk on at least one side of the street.
- f. All residential private streets accessing more than twenty (20) lots shall have a four foot (4') wide sidewalk on both sides of the street.
- g. All commercial and industrial private streets accessing four (4) or fewer lots shall have a five foot (5') wide sidewalk on at least one side of the street, or as otherwise determined as part of an approved concept development plan.
- h. All commercial and industrial private streets accessing more than four (4) lots shall have a five foot (5') wide sidewalk on both sides of the street, or as otherwise determined as part of an approved concept development plan.
- i. All private streets shall provide for adequate storm drainage and employ use of curb and gutter sections to convey runoff subject to the review and approval of the city ~~engineer~~.
- j. Parking spaces, inclusive of back up area, as required by section [3-2-17](#) of this title, shall not be located within a private street, or as otherwise waived or determined as part of an approved concept development plan.
- k. Design and construction of improvements associated with private streets shall be subject to a standard guarantee of performance to ensure completion of required improvements and a

maintenance agreement to ensure that improvements are maintained to an acceptable standard over time as set forth in sections [3-3-44](#) and [3-3-45](#) of this chapter.

11. Cul-De-Sacs: Cul-de-sac streets shall terminate in a circular right-of-way not less than fifty feet (50') in radius with an improved turning circle at least forty five feet (45') in radius. The ~~planning commission~~[Planning Commission](#) may approve an equally convenient form of turning space where justified by unusual conditions. Maximum length of cul-de-sac streets, as measured along the centerline of the street and between the centerline of the intersecting street and the center point of the cul-de-sac, shall not exceed six hundred eighty feet (680').
 - a. Length ~~For~~ Rural Roads: Maximum cul-de-sac length for rural roads may be increased in dimension to serve no more than twenty (20) residential dwelling units, but under no circumstance shall exceed a length of one thousand three hundred sixty feet (1,360').
 - b. Marginal Access Streets: As required by adopted current city standards.
12. Alleys: Where permitted or required, ~~shall be a minimum of~~ twenty feet (20') ~~wide.~~
~~where there is residential property on both sides, and twenty feet (20') where abutting commercial or industrial property.~~
 - a. Alley intersections and sharp changes in alignment shall be avoided, but, where necessary, corners shall be cut off ten feet (10') on each side to permit safe vehicular movement.
 - b. Dead end alleys shall be prohibited.
 - c. "Half" alleys shall be prohibited.
13. Dead End Streets: Where permitted, a dead end street shall provide by easements, a temporary turning circle with a fifty foot (50') radius or other approved and acceptable design to accomplish the same purpose.
14. All Streets: The design and construction of all streets, including private streets, within the city shall conform to the public improvement standards established by the city ~~engineer~~ and approved by the ~~city council~~[City Council](#) as set forth in section [3-3-40](#) of this chapter.
15. Fire Code: All streets shall conform to current adopted fire codes.

B. Street Grades:

1. Maximum Grades:
 - a. Arterial and minor arterial streets: As determined by the city ~~engineer~~[Engineering department](#).
 - b. Collector streets: Seven percent (7%).
 - c. Collector residential and local residential streets: Nine percent (9%).

2. Minimum Grades: Asphalt streets with concrete gutters shall have a minimum longitudinal slope of 0.50%~~for all new streets, and as approved by the City for rehabilitation of existing streets.~~
3. Exceptions: Where rigid adherence to these standards causes unreasonable or unwarranted hardship in design or cost without commensurate public benefit, exceptions may be made by the ~~planning commission~~[Planning Commission](#).

C. Vertical Curves:

1. Arterial and minor arterial streets: As determined by the city ~~engineer~~[Engineering department](#).
2. Collection and local streets: Minimum ~~length, one hundred feet (100')~~[k value of 30 for crests and 40 for sag curves. Vertical curves are not required when the algebraic difference in the two slopes is less than 2%](#)

D. Horizontal Alignment:

1. Arterial and minor arterial streets shall be as determined by the city ~~engineer~~[Engineering department](#).
2. When tangent centerlines deflect from each other by more than ten degrees (10°) and less than ninety degrees (90°), they shall be connected by a curve having a minimum centerline radius of two hundred feet (200') for collector streets, or one hundred feet (100') for collector residential and local residential streets.
3. Between reverse curves, there shall be a tangent section of centerline not less than one hundred feet (100') long.
4. Streets intersecting an arterial street shall do so at a ninety degree (90°) angle. Intersecting collector streets, collector residential streets and local residential streets shall typically intersect at ninety degree (90°) angles, but in no case at less than seventy five degree (75°) angles.
5. Street jogs shall be avoided, except where justified by unusual existing conditions, and approved by the city ~~engineer~~[Engineering department](#).
6. Local residential streets or collector residential streets intersecting a collector street or arterial street shall have a tangent section of centerline at least one hundred fifty feet (150') in length measured from the right of way line of the more major street, except that no such tangent shall be required when the local residential or collector residential street curve has a centerline radius greater than four hundred feet (400') measured from a center located on the more major street right of way line.
7. Street intersections with more than four (4) legs, and Y-type intersections with legs meeting at acute angles, shall be prohibited.
8. Intersections of street lines shall be rounded by a circular arc having a minimum tangent length of fifteen feet (15'). (Ord. 624, 10-26-2004)

3-3-23: BLOCK DESIGN:

- A. Maximum Length ~~Of~~ Blocks: Within the following maximums, blocks shall be as long as reasonably possible, in order to achieve all possible street economy and to reduce the expense and safety hazard arising from excessive street intersections. Maximum block length, measured along the centerline of the street and between intersecting street centerlines, shall not exceed one thousand three hundred sixty feet (1,360').
- B. ~~Sidewalks or~~ Pedestrianways: ~~Sidewalks or~~ Pedestrianways with a right-of-way width of eight feet (8') may be required where, in the opinion of the ~~planning commission~~ Planning Commission, they are essential for pedestrian circulation within the subdivision or access to schools, playgrounds or other community facilities. ~~Sidewalks or~~ Pedestrianways may be used for utility purposes. (Ord. 624, 10-26-2004)

Commented [BT33]: I don't think this paragraph should be about sidewalks. It is more about the platted right-of-way that is used as a pedestrianway, not the actual hard surface. Especially in the last sentence, sidewalks are not used for utility purposes, it is the plated way that may contain the utilities.
These 8' wide pedestrian ways would be required to have sidewalks that are only 4 or 5 feet wide. If we want to have a statement that allows us to require 8' wide sidewalks when necessary, that should be said differently.

3-3-24: LOT PLANNING:

- A. Lot Width, Depth ~~And~~ Area: Lot width, depth and area shall comply with requirements of the zoning requirements appropriate for the location and character of development proposed, ~~including the requirements stipulated in 3-2-26,~~ and for the type and extent of ~~urban-street and utility public~~ improvements being installed. ~~"Urban-improvements" is interpreted to mean paved and curb streets, sidewalks, local storm drainage system, public water supply and public sanitary-sewage.~~ However, where steep topography, unusual soil conditions or drainage problems exist or prevail, the ~~planning commission~~ Planning Commission may require increased lot width, depth and/or area exceeding the minimum requirements of the particular zoning district.
- B. Lot Depth ~~and Width~~: Generally, lot depths shall be at least one hundred feet (100') and widths at least sixty feet (60'); provided, however, that the ~~planning commission~~ Planning Commission may allow narrower widths on cul-de-sacs.
- C. Building Setback: Minimum ~~front and exterior side~~ building setbacks shall conform to the applicable provisions of this code.
- D. Side Lot Lines: Side lot lines shall be substantially at right angles or radial to street lines, except where, in the opinion of the ~~planning commission~~ Planning Commission, other alignment may be justified.

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E. Accessibility: Every lot shall abut a public street or private street connecting with the public street system.

F. Prohibitions: Double frontage lots intended for single-family residences shall be prohibited; provided, that, subject to the approval of the ~~planning commission~~[Planning Commission](#), such lots may be platted abutting an arterial street so long as dwellings front on local or collector streets and all access from the arterial street is prohibited. (Ord. 557, 2-13-2001)

3-3-25: EASEMENT PLANNING:

Utilities shall be placed underground unless a modification is approved to permit overhead utilities by the ~~planning commission~~[Planning Commission](#) and only where overhead utilities are determined acceptable by the commission:

A. Utility Easements:

1. Where alleys are platted, utility easements four feet (4') wide on each side of alley for aerial overhang shall be provided by dedication. Where alleys are not platted, utility easements six feet (6') wide on each side of rear lot lines shall be provided and delineated on the plat. In addition, guy and anchor easements shall be provided one foot (1') wide on each side of a side lot line and thirty five feet (35') in length measured from the rear lot line, in locations selected by the utility committee, or as required by the utility company.
2. Along side lot lines where required for distribution facilities, utility easements five feet (5') wide on each side of side lot lines; where service to street lighting is required: one foot (1') on each side of such lot lines, or as required by the utility company.

B. Underground Utilities: Where all utilities are underground:

1. Rear Lot Lines: Where alleys are platted, easements as required by serving utilities. [Where alleys are not platted, five feet \(5'\) wide along each side of rear lot lines.](#)
2. Side Lot Lines: All utility service lines, including gas, electric, telephone and street lighting, shall be channeled in easements ~~four-five~~ [four feet \(4'\) wide](#) on each side of the lot line separating pairs of lots, as required by the utilities for service.
3. [Street Rights-of-way: Seven and one half foot \(7.5'\) wide utility easements are required along all street rights-of-way.](#)

C. Lots Facing Curvilinear Streets: For lots facing on curvilinear streets, alleys and easements for overhead utilities shall usually consist of a series of straight lines with points of deflection not

less than one hundred twenty feet (120') apart, such points of deflection always occurring at the junction of side and rear lot lines on the side of the exterior angle; however, curvilinear easements or alleys may be employed, providing that the minimum radii of centerlines shall be not less than eight hundred feet (800').

D. Public Drainage Easement: Where a stream or major surface drainage course abuts or crosses the tract, dedication of a public drainage easement which is sufficient to permit widening, deepening, relocating or protecting such drainage course shall be required. Information shall be prepared by subdivider's engineer. Additionally, five foot (5') wide drainage easements are required along all side and rear lot lines, and seven and one half foot (7.5') wide drainage easements are required along all street rights-of-way.

E. Land Not Considered Minimum Lot Area: Land within a public street or drainage easement, or land within a utility easement for major power transmission lines or pipelines, shall not be considered a part of the minimum required lot area; provided, however, that this provision shall not be applicable to land included in utility easements to be used for distribution or service purposes. nor shall it be applicable to the five foot (5') wide and seven and one half foot (7.5') wide drainage easements along the lot lines and street right-s-of-way.

F. Lots Backing Onto Arterial Streets: Lots arranged to back of arterial streets, railroads, canals or commercial or industrial districts, as provided in this chapter, shall have a minimum depth of one hundred ten feet (110'), the rear one foot (1') of which shall be recorded as a nonaccess private easement.

G. Water And Sewer Utility Lines: Municipal water and sewer utility line shall be installed within the city street right-of-way at all times, unless otherwise approved by the planning commission Planning Commission and/or city council City Council. (Ord. 624, 10-26-2004)

3-3-26: STREET NAMING:

At the preliminary plat stage, the subdivider shall propose names for all streets, ~~which, n~~Names shall be subject to ~~be approved~~ approval by the ~~planning commission~~ Planning Commission. (Ord. 226, 12-9-1975)

3-3-27: STREET LIGHTING DESIGN STANDARDS:

A. Requirements: Street lighting shall be installed within any division/development of land project in accordance with the following requirements:

1. The subdivider, developer or property owner is responsible for complying with the requirement to install street lighting and shall make all necessary arrangements with the utility company involved for the installation of streetlights and bear all costs relating to the purchase and placement of

streetlights. Installation of street lighting materials shall be performed by a state licensed contractor also having a city business license prior to commencing any work.

2. Street lighting plans are to be prepared by the utility company involved and shall be submitted by the subdivider, developer or property owner with the improvement plans to the city for review. Such plans shall show the location of each light, power source and size of luminaries in watts or lumens.
3. All street lighting within each construction phase shall be complete and operational prior to acceptance of subdivision public improvements or an issuance of any certificate of occupancy.
4. Requests for street lighting in previously developed areas must be approved by the city-engineer for location and installation prior to being submitted to the utility company for design engineering.
5. Once the street lighting has been installed and operational, approval by the city-engineer-willcity will constitute acceptance of the street lighting and the city will then be responsible for the energy costs and maintenance thereafter.

B. Design Standards: All streetlight installations shall be designed in accordance with the following minimum design standards:

1. All luminaries shall be a minimum of one hundred (100) watt high pressure sodium for residential areas and minimum two hundred (200) watt high pressure sodium for commercial/industrial areas or approved equal.
2. A streetlight shall be placed at each street intersection and shall be situated to properly illuminate the intersection.
3. A streetlight shall be placed at any proposed U.S. postal-Postal service-Service gang box location.
4. Streetlights shall be placed between intersections at midblock locations such that a minimum spacing of three hundred fifty feet (350') and maximum of five hundred feet (500') is maintained between all lights.
5. A streetlight shall be placed at the end of each cul-de-sac. (Ord. 624, 10-26-2004)

3-3-40: RESPONSIBILITY FOR **PUBLIC IMPROVEMENTS**:

The design, construction and financing of all required **public improvements, such as but not limited to**, grading, sidewalks, curbs, streetlights, gutters, pavements, sanitary sewers, storm sewers, water mains, fire hydrants, drainage structures and monuments shall be the responsibility of the subdivider and shall conform to public improvement standards established by the city engineer and approved by the city-councilCity Council; provided, however, that the subdivider may meet such requirements by participation in an improvement district approved by the city. (Ord. 624, 10-26-2004)

3-3-41: **CONSTRUCTION ENGINEERING PLANS**:

It shall be the responsibility of the subdivider to have prepared by an engineer registered in the state, a complete set of **construction engineering** plans, satisfactory to the city-cityengineer, for

Commented [BT34]: We don't often see these, and should start enforcing this more.

Commented [BT35]: Is this a good time to consider changing to LED for new lights?

Commented [BT36]: This does not work for a 600' long block.

construction of all required ~~public street and utility~~ improvements. Such plans shall be based on and be prepared in conjunction with the final plat. Construction Engineering plans shall have been approved by the city ~~engineer~~ prior to recordation of the final plat. (Ord. 226, 12-9-1975)

3-3-42: CONSTRUCTION AND INSPECTION:

A. Permits Required: All improvements in the public right-of-way shall be constructed under the inspection and approval of the city ~~engineer~~. Construction shall not commence until the subdivider has entered into a performance Agreement in accordance with 3-3-44 and 3-3-45. Construction shall not be commenced until all federal, state, and local permits have been issued for such construction, and if work has been discontinued for any reason, it shall not be resumed until after notifying in advance the department having jurisdiction.

B. Underground Utilities: All underground utilities to be installed in streets shall be constructed prior to the surfacing of such streets. Service stubs to platted lots within the subdivision for underground utilities shall be placed to such length as to avoid disturbance of street improvements when service connections are made. (Ord. 624, 10-26-2004)

3-3-43: REQUIRED IMPROVEMENTS:

A. Streets ~~Andand~~ Alleys: All streets and alleys within the subdivision shall be graded, drained and surfaced to cross sections, grades and standards, and profile approved by the city ~~engineer~~. Where there are existing streets adjacent to the subdivision, proposed streets shall be fully improved to the intercepting paving line of such existing streets. Temporary dead end streets serving more than four (4) lots shall be provided a graded ~~asphalt all weathersurfaced~~, temporary turning circle. Construct adequate permanent culverts and bridges at all points within the subdivision where watercourses are crossed by streets or alleys, said construction to be in conformity with the specifications of the city ~~engineer~~ for such structures, and said structures shall be constructed to the full width of the dedicated street or alley.

Commented [BT37]: We have allowed gravel turning circles for temporary dead ends on many recent subdivisions. We should either make this change, or start enforcing the asphalt requirement. I vote for making the change.

B. Curbs: Curbs shall be ~~portland~~Portland cement concrete. Curbs and gutters and valley gutters shall be constructed as designated by the city ~~engineer~~.

C. Sidewalks: Four feet (4') wide in residential ~~or local streets areas~~ and five feet (5') wide on all streets classified as collector, minor arterial, arterial, or major arterial within the City's jurisdiction. Sidewalks on streets outside the City's jurisdiction will be determined by the governing agency. Sidewalks in commercial-zoned areas shall be constructed on both sides of all streets with fifty foot (50') pavement width. In subdivisions where lots average one-half (1/2) acre or more, the planning commission may waive this requirement.

D. Pedestrianways: Portland cement concrete or approved paving of walks shall be constructed to a width, line and grade approved by the city ~~engineer~~. Fencing on both sides with a four foot (4'), maintenance free fence with posts set in concrete may be required.

E. Street Name Signs: Street name signs shall have been installed at all street intersections by the time the street pavement is ready for use. Design, construction, location and installation shall conform to approved city standards.

F. Storm Drainage: The design and construction of public streets and alleys, and the grading of private properties shall provide for adequate disposal of stormwaters. Existing major drainage courses shall be maintained and dedicated as public drainageways. The type, extent, location and capacity of drainage facilities shall be planned by subdivider's engineer and approved by city ~~engineer~~. Install to the grade and in the locations and to the depth and of the materials shown on plans and specifications approved by the city ~~engineer~~, storm and surface water drain pipes and mains, together with catch basins and to provide discharge from the same in a manner and at a place to be approved by the city ~~engineer~~.

G. Sanitary Sewerage:

1. Public sanitary sewers shall be installed in all subdivisions ~~which are accessible~~ to an existing or planned and programmed public sewer system, as determined by the city ~~engineer~~. Sewers shall be constructed to plans, profiles, and specifications approved by the Nevada Division of Environmental Protection, the City and in accordance with approved City standards and NRS requirements, health department and city engineer. The subdivider shall install to the grade and in the locations and to the depth and of the material shown on the plans and specifications approved by the city ~~engineer~~, sanitary sewer mains with connections therefrom to each lot in said subdivision, said mains to be connected to the sewer system of the city at a point to be specified by the city ~~engineer~~.
2. Install all necessary manholes in connection with the installation of sanitary sewer mains, said manholes to be installed at the points and in the manner and according to the specifications approved by the city ~~engineer~~.

H. Water Supply:

1. Each lot shall be supplied with safe, pure and potable water in sufficient volume and pressure for domestic use and fire protection, in accordance with approved city standards and NRS requirements. The subdivider shall install, to grade, all water mains and lines of the materials shown on plans and specifications approved by the city ~~engineer~~; Connections from said mains and lines to be installed to each lot in said subdivision. Construction plans ~~Maps and plats~~ shall show location of shutoff valves to each block and lot. All proposed water systems shall connect to the city system.

Commented [BT38]: Sentence fragment. What is your intention here Scott?

2. Water meter boxes and water meters shall be installed on all lots in conformance with adopted city specifications and subject to the review and approval of the city ~~engineering department~~.

I. Fire Hydrants: Fire hydrants shall be installed in all subdivisions in accordance with approved city standards as set by the fire department, and current adopted fire codes and standards.

J. Power, Communications ~~And and~~ Gas Utilities: Subdivision required improvements shall include electric power, natural gas, telephone and cable television. These utilities shall be installed in all subdivisions. All electric distribution facilities shall be installed underground, except in unusual situations involving short extensions of overhead facilities existing on abutting subdivisions wherein such extensions may be approved by the ~~city council~~ City Council. All such underground electric distribution lines and telephone lines shall be installed in accordance with ~~G~~ general ~~Order No.~~ 9 as issued by the public service commission of the state.

K. Survey Monuments: Permanent monuments shall be installed in accordance with approved city standards at all corners, angle points, points ~~of~~ curve, and at all street intersections. After all improvements have been installed, the subdivider shall have a registered land surveyor check the location of monuments and certify their accuracy. Monuments shall be at or near boundary corners. Monuments shall be set at intermediate points of approximately one thousand feet (1,000') or at such lesser distances as may be necessary by reason of topography or culture to ensure accuracy in the reestablishment of any point or line without unreasonable difficulty. All monuments shall be permanently and visibly marked with the registration or license number of the registered land surveyor under whose supervision the survey was made, and a description of such monument shall be shown on the final map. The subdivider shall set monuments at street intersections and at the beginning and ending of each curve, unless the intersection of tangents of said centerline falls within the street right of way in which event the city ~~engineer~~ may permit the subdivider to establish a monument at such intersection in lieu of monuments at said beginning and end of curve.

L. Lot Corner Staking: Five-eighths inch ($\frac{5}{8}$ ") reinforcing steel with a cap having a mark for the exact point and stamped "PLS" followed by the number of the professional land surveyor's license shall be set at all corners, angle points and points of curve for each subdivision lot prior to final acceptance of the subdivision. The cost for lot corner staking, under the direction of a professional land surveyor, shall be included as part of the public improvements and shall be a line item on the "engineer's estimate of the costs of the public improvements".

M. Street Lighting: Street lighting shall be required on all streets within the subdivision as required in section 3-3-27 of this chapter and shall be placed at locations designated by the city ~~engineer~~ and to the specifications with respect to materials, design and construction as set forth by the city ~~engineer~~. The subdivider will bear all costs relating to the purchase and placement of the streetlights; ~~provided, however, if the city and the power company can reach an agreement whereby the city is reimbursed for costs, the city may participate in the installation of the lights.~~

N. Stormwater Discharge ~~And~~ Land Disturbance: All construction activities that may create a land disturbance of greater than one acre shall comply with state construction site stormwater general permit requirements and the city national pollutant discharge elimination system general permit for discharges from small municipal separate storm sewer systems. This requires developers and/or contractors to obtain a state stormwater discharge permit and city grading permit for these projects. Construction site stormwater erosion protection shall be provided on all projects. Permanent stormwater erosion measures meeting the minimum requirements of the city stormwater management plan will be enforced.

O. Full Frontage: Public utility construction and installation is required across the full frontage of property at time of development. (Ord. 739, 8-9-2011)

P. Site Grading: Sufficient site grading to achieve the required improvements, ensure buildable lot area and ensure adequate site drainage control.

3-3-44: PERFORMANCE AGREEMENTS:

A. Provisions of Performance Agreement: Except as otherwise provided in this Section 3-3-44, prior to approval of the final plat by the City Council, the subdivider/developer shall enter into and have on file with the City a performance agreement, fully executed by the subdivider/developer and the City, containing the following provisions and requirements:

1. That all subdivision improvements identified in the performance agreement shall be completed within a specified period, not to exceed two (2) years, to the satisfaction of the City;

2. That in the event the required subdivision improvements are not completed within the specified period, the City may, at its option, complete or cause to be completed the improvements and thereafter recover from the subdivider/developer the full cost and expenses therefor;

3. That the subdivider/developer shall provide the City with engineering plans for all improvements;

4. That the engineering plans and all required improvements shall be approved by the City prior to the commencement of construction; and

5. That a performance guarantee given in the form of a bond or irrevocable letter of credit shall not expire or be released prior to completion all required subdivision improvements and written authorization by the City permitting the performance guarantee to expire or be released.

B. Additional Provisions: Notwithstanding any other requirements set forth in Subsection 3-3-44(A), the performance agreement may, in the discretion of the City, also contain any of the following provisions and requirements:

1. That the construction of improvements shall take place in specified stages.

2. That the subdivider/developer shall, at its own expense, perform all testing of materials and the inspection of improvements to ensure that the improvements meet the City's construction standards.

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3. That the time to complete construction may be extended by the City, in its discretion, under certain specified conditions.

4. That, notwithstanding any other provision in the City Code and without in any manner diminishing the subcontractor/developer's obligation to provide a maintenance bond pursuant to section 3-3-45 of this Code, the City may, in its discretion, suspend the time for the subdivider/developer to provide a performance guarantee to the City, subject to the following:

a. The subdivider/developer must demonstrate that it has the capacity to complete the subdivision improvements through the use of its own resources and without the use of subcontractors;

b. The subdivider/developer must agree to construct all subdivision improvements with its own resources and without the use of subcontractors according to a schedule established by the City; provided, the total time to complete improvements shall be equal to the time that would be required under a performance agreement;

c. The subdivider/developer must, immediately upon demand, provide to the City and the City may thereafter utilize as needed a performance guarantee in accordance with Section 3-3-45 of this Code.

d. In the event the subdivider/developer fails to construct all required subdivision improvements according to the schedule established by the City, then, the City may thereafter complete the subdivision improvements at its own expense and to recover an amount equal to the cost thereof, together with all reasonable attorney fees and costs incurred in the enforcement of this Subsection.

e. The City may utilize a performance guarantee provided under this subsection to reimburse itself for any costs incurred in completing subdivision improvements as provided in the preceding subsection or for any other purpose allowed under Section 3-3-45 of this Code.

C. Modifications, Extensions: At the written request of the subdivider/developer, the terms and conditions, to include time frames, contained in an executed performance agreement may be modified by the City Council upon demonstration of just cause by the subdivider/developer, so long as the modification does not frustrate the purposes of the City Code or relieve the subdivider/developer of the requirement to construct or compensate the City for constructing the required subdivision improvements. The subdivider/developer shall, at the time of filing the written request, pay a filing fee to the City in an amount established by resolution of the City Council.

D. Inspection Costs: The subdivider/developer shall pay the cost of inspection, testing and surveying of all subdivision improvements. If the City determines that the subdivider/developer is not providing adequate inspection and testing through a qualified engineer and/or surveyor licensed to work in the State of Nevada, then the City may, in its discretion, order the subdivider/developer to immediately stop work and thereafter the City may hire a qualified engineer, surveyor or firm to perform the remaining surveying, inspection and/or testing. The subdivider/developer shall promptly reimburse the City for the cost of hiring a qualified engineer, surveyor or firm to perform the remaining surveying, inspection and/or testing upon written demand and prior to final acceptance of subdivision improvements.

E. As-Built Drawings: The subdivider/developer, or the subdivider/developer's engineer, shall provide as-built drawings of all subdivision improvements to the City. The as-built drawings shall be submitted in digital format with a paper copy. All paper copies shall be "wet stamped" by the

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Commented [JD41]: Most of the developers in the city utilize one or more subcontractors in completing their improvements. I think its ok if we state that they are required to complete all of the improvements through the use of its own resources.

Commented [DMS 242]: I'm open on this one, but it seems like if they are going to use subcontractors, we might as well do it the normal way.

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Commented [JD43]: Does this allow us to have a shorter timeframe for the improvements, say 18 months instead of 24 allowed in other sections of this code?

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Commented [DMS 244]: Maybe a happy medium?

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Commented [JD45]: I see this as being the hardest part of this section, if we don't have a bond in place, this may require legal action to recover the funds required for these improvements.

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subdivision engineer or surveyor prior to being submitted to the City.

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F. Qualified Contractors: All public improvements shall be constructed by contractors that are qualified and appropriately licensed by the State of Nevada to perform the work.

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3-3-45: PERFORMANCE GUARANTEE:

A. Forms of Guarantee: Prior to execution of a performance agreement pursuant to Section 3-3-45 and prior to approval of the final map by the City Council, the subdivider/developer shall provide the City with a performance guarantee for the completion of all required subdivision improvements in one of the following forms, subject to approval by the City:

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1. Performance Bond: A performance or surety bond in an amount deemed sufficient by the City to cover, but in no event less than, the full cost of the required improvements, engineering inspections, and incidental expenses, and the replacement and repair of any existing streets, utilities or other improvements which may be damaged during the construction of required subdivision improvements. A bond submitted to the City pursuant to this Subsection shall be executed by a surety company authorized to do business in the State of Nevada, shall be approved by the City Attorney as to form, and shall have a length of term not exceeding twenty-four (24) months from the date of final plat recordation.

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2. Deposit of Funds: A deposit of cash with the City, or a certified check or negotiable bonds made payable to and deposited with the City of Elko or to an escrow agent or trust company approved by the City Attorney, in an amount deemed sufficient by the City to cover, but in no event less than, the full cost of the required improvements, engineering inspections, and incidental expenses, and the replacement and repair of any existing streets, utilities or other improvements which may be damaged during the construction of required subdivision improvements.

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3. Irrevocable Letter of Credit: An irrevocable letter of credit in favor of the City issued by a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) in an amount deemed sufficient by the City to cover, but in no event less than, the full cost of the required improvements, engineering inspections, and incidental expenses, and the replacement and repair of any existing streets, utilities or other improvements which may be damaged during the construction of the subdivision improvements.

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4. Combinations: A subdivider/developer may, at the sole discretion of the City, provide the City with a performance guarantee consisting of a combination of the forms of guarantee listed in this subsection, so long as the combination provides the City with at least the same level of protection against default as one of the listed forms of guarantee.

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B. No Release of Funds from or Reduction of Performance Guarantee: Once a performance guarantee has been delivered to the City, the City shall not thereafter release any funds from or reduce the amount of the performance guarantee except upon written certification by the City that all required subdivision improvements have been completed in conformance with the performance agreement; provided, in no event shall the release of funds exceed the amount of the performance guarantee.

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C. Penalty in Case of Default: In the event the subdivider/developer fails to complete all required subdivision improvements in accordance with terms of the performance agreement, the City may, in its sole discretion, complete the work at its own expense and thereafter reimburse itself for the cost and expense thereof from the performance guarantee.

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D. Maintenance Guarantee: In addition to the performance guarantee, the subdivider/developer shall

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provide the City with a maintenance guarantee to ensure the maintenance, adequacy and condition of all improvements required by the performance agreement for a period of not less than one (1) year. The maintenance guarantee may be in any form permitted in Section 3-3-44(A) for a performance guarantee and shall be in an amount equal to not less than ten percent (10%) of the total cost of the required subdivision improvements.

E. Improvement District Financing Through Special Assessments: If not all of the properties abutting a public street within any given block are under the control of the subdivider/developer, and the street abutting those properties is not fully improved in accordance with the requirements of this Chapter, the subdivider/developer may petition the City CouncilCity Council for the creation of an improvement district for the construction of the required improvements and for the special assessment of the cost thereof against abutting properties in accordance with Chapter 268 of the Nevada Revised Statutes; provided, however, that the subdivider/developer shall thereupon enter into an agreement with the City pursuant to which it agrees to be responsible for any difference between the cost of such improvements and the maximum amount which the City can specially assess against the property to be subdivided, and to furnish any necessary waivers to permit assessment of the entire cost of such improvements. Any such agreement pursuant to the preceding sentence shall be in a form approved by the City Attorney.

3-3-44: AGREEMENT TO INSTALL IMPROVEMENTS:

A. Provisions ~~Of~~ Agreement: Prior to certification of final plat approval by the mayor, the subdivider shall have executed and filed an agreement between himself and the city providing that:

1. All required subdivision improvements will be completed within a specified period of time to the satisfaction of the city. The specified period of time shall not exceed two (2) years.
2. In the event that such improvements are not completed within the specified period, the city may, at their option, complete or cause to be completed such work and recover from the subdivider full cost and expenses therefor.
3. The subdivider/developer shall provide engineering plans for all improvements.
4. The engineering plans and all required improvements shall be approved by the city engineering department.

B. Additional Provisions: The aforesaid agreement may also provide for:

1. Construction of improvements in predetermined stages.
2. The testing of materials and the inspection of improvements to ensure these improvements meet the city construction standards. The cost of inspection testing and quality control shall be paid by the developer.
3. An extension of construction period under certain specified conditions.

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4. Progress payments to the subdivider from any deposit which the subdivider may have made, or reduction in bonds, not exceeding ninety percent (90%) of the value of improvements completed and approved, as determined by the city ~~engineer~~.

C. Modifications, Extensions: At the written request of the subdivider, terms, provisions and time frames associated with an executed agreement to install required subdivision improvements may be modified or extended by the ~~city council~~City Council upon demonstration of just cause pursuant to applicable policies as adopted by resolution of the ~~city council~~City Council. The subdivider shall, at the time of filing the written request, pay a filing fee to the city in an amount established by resolution of the ~~city council~~City Council.

D. Inspection Costs: The subdivider is responsible for providing and paying the cost of inspection, testing and surveying of subdivision improvements. If it is determined that the subdivider is not providing adequate inspection and testing through a qualified engineer licensed to work in the state, then the city shall have the right to stop work and/or hire a qualified engineer or firm to provide adequate inspection and testing. The subdivider shall be responsible for reimbursing the city for these costs upon demand and prior to final acceptance of subdivision improvements.

E. As Built Drawings: The subdivider, or the subdivider's engineer, shall provide as built drawings of all subdivision improvements to the city engineering department. The as built drawings shall be in both digital and ~~paper~~mylar form. All ~~mylars~~paper copies shall be "wet stamped" by the subdivision engineer, or surveyor, prior to being submitted to the city.

F. Qualified Contractors: All public improvements shall be constructed by licensed contractors qualified to construct the work. Contractors shall be licensed in the state. (Ord. 624, 10-26-2004)

3-3-45: PERFORMANCE GUARANTEE:

A. Forms ~~Of-of~~ Guarantee: Prior to certification of final plat approval by the mayor, the subdivider shall have provided the city a financial guarantee of performance for the completion of required subdivision improvements, in one or a combination of the following forms as determined by the city:

1. Performance Bond: Performance or surety bond in an amount deemed sufficient by the city ~~engineer~~ to cover, but in no case be less than, the full cost of required improvements, engineering inspections, incidental expenses and replacement and repair of any existing streets and utilities or other improvements which may be damaged during construction of required improvements. Such bond shall be executed by a surety company authorized to do business in the state, must be approved by the city attorney as to form, and have a length of term not exceeding twenty four (24) months from the date of final plat recordation.

2. Deposit Of Funds: Deposit of cash, certified check or negotiable bonds, made payable to the city finance director, or to a responsible escrow agent or trust company approved by the city attorney, in the same amount and for the same purpose as heretofore provided for a performance bond.

3. Irrevocable Letter Of Credit: Irrevocable letter of credit issued by a financial institution insured under the federal deposit insurance corporation (FDIC) establishing funds for the construction of the subdivision improvements from which the city may draw. An agreement to install public improvements as required in section [3-3-44](#) of this chapter shall be executed by the city, the developer and the financial institution prior to the city's acceptance of an irrevocable letter of credit as a form of security. The irrevocable letter of credit shall be in the same amount and for the same purpose as heretofore provided for the performance bond.

4. Improvement District Financing: In cases where all properties abutting a public street within any given block are not under the control of the subdivider, and the street abutting such properties is not fully improved in accordance with the requirements of this chapter, the subdivider may petition the city to construct the required improvements and to assess the cost thereof against abutting properties in accordance with local practice pertaining to special assessments; provided, however, that the subdivider shall be responsible for any differences between the cost of such improvements and the amount which can be legally assessed by the city against the property to be subdivided, and shall furnish any necessary waivers to permit assessment of the entire cost of such improvements. Any such agreement shall be in a form approved by the city attorney.

B. Penalty In Case Of Default: In the event that the subdivider fails to complete all required subdivision improvements in accordance with terms of his agreement with the city, the city may have such work completed and, in order to reimburse itself for the cost and expense thereof, may appropriate the deposit of cash, funds established by an irrevocable letter of credit or negotiable bonds, or take such steps as may be necessary to secure performance under the bond.

C. One Year Maintenance: The subdivider shall guarantee the adequacy of street and utility improvements for a period of not less than one year.

1. Payments: No job progress payments from cash, funds established by an irrevocable letter of credit or negotiable bond deposits, nor any release of performance bonds, shall be made by the city except upon certification by the city ~~engineer~~ and approval by the ~~city council~~[City Council](#).

2. Amount: The subdivider shall provide the city with a maintenance bond, funds established by an irrevocable letter of credit or a deposit of funds in an amount not less than ten percent (10%) of the total cost of the required public improvements as a one year maintenance guarantee. (Ord. 745, 4-24-2012)

3-3-50: PARK LAND DEDICATIONS:

In accordance with the statutes of the state to provide for the acquisition and development of park, playground and recreational facilities as are reasonably necessary to serve the residents of new subdivisions and development within the jurisdiction of the city, the ~~planning commission~~[Planning Commission](#) and ~~city council~~[City Council](#) may require the dedication of land, payment in lieu of

dedication, or residential tax, in accordance with the recreation and open space element of the duly adopted general plan of the city. (Ord. 226, 12-9-1975)

3-3-60: PARCEL MAPS:

A. Required: A person who proposes to divide any land into four (4) or fewer lots, shall file a parcel map application with the City and upon approval by the City with in the office of the county recorder, unless this requirement is not required pursuant to NRS, waived. No survey may be required if the requirement of a parcel map is waived.

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B. For any parcel map, any public improvement may be required, but not more than would be required if the proposed property division were a subdivision. See section 3-3-43 of this chapter, required public improvements.

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Lot Design: For parcel maps, the governing body shall may require such street public improvements grading and drainage provisions as are reasonably necessary for lot access and drainage needs. It may also require such lot design as is determined necessary by the city to ensure, reasonably necessary and such as, but not limited to, off site grading, parcel ingress/egress site access, street alignment, surfacing and width, water quality and water drainage, water supply and sewerage provisions, and off-site public improvements as are reasonably necessary and consistent with the existing use property use and surrounding of any land uses, zoned for similar use which is within six hundred sixty feet (660') of the proposed parcel. If the proposed parcels are less than one acre, the governing body may require additional improvements which are reasonably necessary and consistent with the use of the land if it is developed as proposed.

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If the proposed parcels are located in areas where public improvements do not exist, the governing body may require public improvements necessary for the health and safety of the community and require dedication of rights-of-ways and/or easements necessary to achieve specific public objectives related to the subject tract and other details regarding the proposed parcels.

Lot width, depth and area shall comply with requirements of the zoning requirements appropriate for the location and character of development proposed, including the requirements stipulated in 3-2-26, and for the type and extent of public improvements being installed. However, where steep topography, unusual soil conditions or drainage problems exist or prevail, the planning commissionPlanning Commission may require increased lot width, depth and/or area exceeding the minimum requirements of the particular zoning district.

It shall be the responsibility of the subdivider to have prepared by an engineer registered in the state, a complete set of construction plans, satisfactory to the city, for construction of all required public improvements. Such plans shall be based on and be prepared in conjunction with the final plat. Construction plans shall have been approved by the city prior to recordation of the final plat.

C. Second Or-or Subsequent Parcel Maps: When considering whether to approve, conditionally approve or disapprove a second or subsequent parcel map involving land that has been divided

by a parcel map which was recorded within the five (5) years immediately preceding the acceptance of the second or subsequent parcel map as a complete application, the following criteria shall be considered:

1. Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal;
2. The availability of water which meets applicable health standards and is sufficient in quantity for the reasonably foreseeable needs of the subdivision;
3. The availability and accessibility of utilities;
4. The availability and accessibility of public services, such as schools, police protection, transportation, recreation and parks;
5. Conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;
6. General conformity with the governing body's master plan of streets and highways;
7. The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
8. Physical characteristics of the land such as floodplain, slope and soil;
9. The recommendations and comments of those entities reviewing the tentative map pursuant to Nevada Revised Statutes sections 278.330 through 278.348, inclusive; and
10. The availability and accessibility of fire protection, including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires, including fires in wild lands.

For any other second or subsequent parcel map, any reasonable public improvement may be required, but not more than would be required if the parcel were a subdivision. See section [3-3-43](#) of this chapter, required public improvements.

D. Review:

1. The ~~city council~~[City Council](#) may give the city planning personnel the authority to approve a parcel map, or waive the requirement of a parcel map or survey for a parcel map, without further action by the ~~planning commission~~[Planning Commission](#) or ~~city council~~[City Council](#), unless the parcel map includes an offer of dedication of street right-of-way to the city or is associated with the request to modify subdivision ordinance standards or regulations. The planning personnel shall review the parcel map, if required, and ~~within forty five (45) days after filing, shall approve, conditionally~~ approve or disapprove such map.
2. A parcel map which includes an offer of dedication of street right-of-way to the city or a modification of subdivision ordinance standards or regulations shall be referred to the ~~planning~~

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~~commission~~Planning Commission and the ~~city council~~City Council for review, consideration and formal acceptance of the offer of dedication and/or any modification of standards or regulations. The commission shall consider the parcel map within forty five (45) days after filing. The ~~city council~~City Council shall consider the parcel map no later than thirty (30) days after action by the ~~planning~~Planning Commission.

E. Appeal: If the applicant disagrees with any decision of the planning personnel concerning the parcel map, or if the parcel map is disapproved, the applicant has thirty (30) days in which to file an appeal with the ~~planning commission~~Planning Commission. The ~~planning~~Planning Commission shall make a determination within forty five (45) days from the date the appeal was filed. If the ~~planning commission~~Planning Commission denies the appeal, the applicant may appeal to the ~~city council~~City Council within thirty (30) days of such denial and the ~~city council~~City Council shall render its decision within forty five (45) days after the filing of this appeal with the city clerk.

F. Exceptions: A parcel map is not required when the land division is for the express purpose of:

1. Creation or realignment of a public right-of-way by a public agency;
2. Creation or realignment of an easement;
3. Adjustment of the boundary line or the transfer of land between two (2) adjacent property owners which does not result in the creation of any additional parcels;
4. Purchase, transfer or development of space within an apartment building or an industrial or commercial building;
5. An order of any court dividing land as a result of an operation of law;
6. Creation of a lien, mortgage, deed, trust or any other security instrument;
7. Creation of a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity;
8. Convey an interest in oil, gas, minerals or building materials which are severed from surface ownership of real property;
9. Filing a certificate of amendment for the correction of an error or omission on a plat, survey or map, or if the correction does not change the location of a survey monument or property line.

G. Survey Not Required: If a survey is not required for the preparation of a parcel map, the map must be prepared by a registered land surveyor, but ~~the his~~ certificate upon the map may include substantially the following:

This map was prepared from existing information (identifying it and stating where filed or

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recorded), and the undersigned assumes no responsibility for the existence of monuments or corrections of other information shown on or copied from any such prior document.

H. Fee: The applicant shall, at the time of filing the parcel map, pay a filing fee to the city in an amount established by resolution of the ~~city council~~City Council ~~and included in the appendix to this code.~~

I. Information Required: The parcel map shall ~~oult~~contain the following information and meet the following requirements:

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1. The parcel map shall be legibly drawn in black, waterproof India ink on tracing cloth or produced by the use of other materials of a permanent nature generally used for such purpose in the engineering profession. The size of each sheet shall be twenty four inches by thirty two inches (24" x 32"). A marginal line shall be completely drawn around each sheet leaving an entirely blank margin of one inch (1") at the top, bottom and right edges, and of two inches (2") at the left edge along the twenty four inch (24") dimension.
2. A parcel map shall indicate the owner of any adjoining land or right ~~of~~ way if owned by the person dividing the land.
3. If a survey is required, the parcel map shall also show:
 - a. All monuments found, set, reset, replaced or removed, describing the claim, size and location and other data relating thereto;
 - b. Bearing or witness monuments, basis of bearings, bearing and length of line and scale of map;
 - c. Name and legal description of tract or grant in which the survey is located and ties to adjoining tracts;
 - d. Memorandum of oaths;
 - e. Signature of surveyor;
 - f. Date of survey;
 - g. Signature of the owner or owners of the land to be divided;
 - h. Any easements granted or dedications made;
 - i. Any other data necessary for the intelligent interpretation of various items in the location of the points, lines and areas shown; and
 - j. Provision and date for installation of all required improvements.
4. The following certificates shall appear on a parcel map before it can be recorded:

- a. A certificate for execution by the clerk of each approving governing body stating that the body approved the map;
 - b. A certificate by the surveyor responsible for the parcel map giving the date of the survey on which the map is based and stating that the survey was made by him or under his direction and setting forth the name of the owner who authorized him to make the survey, and that the parcel map is true and complete as shown. The certificate shall also state that the monuments are of the character and occupy the positions indicated or that they will be set in such positions at such time as agreed upon under the provisions of Nevada Revised Statutes chapter 278. The certificate shall also state that monuments are or will be sufficient to enable the survey to be retraced;
 - c. A certificate signed and acknowledged by all parties having any record title in the land subdivided, evidencing their grant of permanent easements for utilities installations and access, as designated on the map;
 - d. A statement approving such easements, signed by each public utility company or agency in whose favor the easements are created or whose utility services are to be required for the platted parcel;
 - e. It shall be the responsibility of the applicant to obtain approval of serving utility companies as to the location of any utility easements which are to be shown on the parcel map.
5. The following data shall accompany a parcel map at the time it is submitted:
- a. Name, address and telephone number of the persons requesting approval of the parcel map and the owner or owners of the land;
 - b. Name, address and telephone number of the person who prepared the map;
 - c. Legal description of the original parcel. It shall be sufficient to give recorders book and page of deed and assessor's parcel number;
 - d. Proposed use of each parcel;
 - e. Source of water supply and proposed method of sewage disposal for each parcel;
 - f. A copy of all survey computations shall accompany the parcel map;
 - g. A vicinity map.
6. The subdivider shall file six (6) copies of the parcel map with the city at the time of filing. (Ord. 293, 8-26-1980)
- J. Recording: A parcel map approved pursuant to this section and section 3-3-70 of this chapter, shall be recorded in the office of the county recorder within two (2) years after the date when the map was approved or deemed approved. (Ord. 624, 10-26-2004)

K. Prohibitions of Parcels:

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1. Proposed parcels that are determined to be undevelopable by the city.
2. Proposed parcels determined by the city as an attempt eliminate frontage and required public improvements.
- 4.3. Proposed parcels determine detrimental to the health, safety and welfare of the community.

3-3-70: MODIFICATION OF STANDARDS:

- A. Permitted: Where, in the opinion of the ~~planning commission~~Planning Commission, there exists extraordinary conditions of topography, land ownership, or adjacent development, or other circumstances not provided for in this chapter, the ~~city council~~City Council may modify the provisions of this chapter, or any other provision in this code, in such manner and to the minimum extent necessary to carry out the intent of this chapter.
- B. Complete Neighborhood Plan: In the case of a plan and program for a complete neighborhood, the ~~city council~~City Council may modify the provisions of this chapter in such manner as it deems necessary and desirable to provide adequate space and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and may require such legal provisions as may be necessary to assure conformity to and achievement of such plan.
- C. Additional Necessary Requirements: In modifying the standards or requirements of this chapter, as outlined heretofore, the ~~city council~~City Council may make such additional requirements as are necessary in its judgment to secure substantially the objectives of the standards or requirements so modified. (Ord. 768, 1-22-2013)

3-3-75: REVERSIONS TO ACREAGE:

- A. Application: Except as otherwise provided in Nevada Revised Statutes section 278.4925, an owner or governing body desiring to revert any recorded subdivision map, parcel map, map of division into large parcels, or part thereof, to acreage or to revert the map or portion thereof, or to revert more than one map recorded under the same tentative map if the parcels to be reverted are contiguous, shall submit a written application accompanied by a map of the proposed reversion which contains the same survey dimensions as the recorded maps or maps to the ~~planning~~Planning department. The application must describe the requested change.
- B. Review: At its next meeting, or within a period of not more than thirty (30) days after the filing of the map of reversion, whichever occurs later, the ~~city council~~City Council shall review the map of reversion and approve, conditionally approve or disapprove the map.

C. Applicability Of Fees: Except for the provisions of this section, Nevada Revised Statutes sections 278.4955, 278.496 and 278.4965, and any provision or local ordinance relating to the payment of fees in conjunction with filing, recordation or checking of a map of the kind offered, no other provision of Nevada Revised Statutes sections 278.010 through 278.630, inclusive, applies to a map made solely for the purpose of reversion of a former map or for reversion of any division of land to acreage.

D. Recording: Upon approval of the map of reversion, it must be recorded in the office of the county recorder. The county recorder shall make a written notation of the fact on each sheet of the previously recorded map affected by the later recording, if the county recorder does not maintain a cumulative index for such maps and amendments. If such an index is maintained, the county recorder shall direct an appropriate entry for the amendment.

Commented [BT51]: I know this is straight from NRS, but city code should probably not be setting requirements of county staff.

E. Street ~~or~~ Easement Included: Requirement for submitting a map of reversion and for presenting a map of reversion for recording must conform with provisions of Nevada Revised Statutes sections 278.4955, 278.496 and 278.4965. If the map included the reversion of any street or easement owned by a city, a county or the state, the provisions of Nevada Revised Statutes section 279.480 must be followed before approval of the map.

F. Fee: The owner shall, at the time of filing the map of reversion, pay a filing fee to the city in an amount established by resolution of the ~~city council~~ City Council. (Ord. 548, 11-28-2000)

3-3-80: PROHIBITION AGAINST SALE IN VIOLATION:

No person, firm, corporation or other legal entity shall hereafter sell or offer for sale any lot, piece or parcel of land which is within a "subdivision", as defined in this chapter, until after a plat thereof has been recorded in accordance with provisions of this chapter. (Ord. 226, 12-9-1975)

3-3-85: MERGERS AND RESUBDIVISION OF LAND:

A. Permitted: An owner or governing body that owns two (2) or more contiguous parcels may merge and resubdivide the land into new parcels or lots without reverting the preexisting parcels to acreage pursuant to Nevada Revised Statutes section 278.490.

B. Recording Required: Parcels merged without reversion to acreage pursuant to this section must be resubdivided and recorded on a final map, parcel map or map of division into large parcels, as appropriate, in accordance with Nevada Revised Statutes sections 278.320 through 278.4725, inclusive, and any applicable local ordinances. The recording of the resubdivided parcels or lots on a final map, parcel map or map of division into large parcels, as appropriate, constitutes the merging of the preexisting parcels into a single parcel and the simultaneous resubdivision of that single parcel into parcels or lots of a size and description set forth in the final map, parcel map or map of division into large parcels, as appropriate.

C. Street Easements ~~And and~~ Utility Easements: With respect to a merger and resubdivision of parcels pursuant to this section, the owner or governing body conducting the merger and resubdivision shall ensure that street easements and utility easements, whether public or private, that will remain in effect after the merger and resubdivision, are delineated clearly on the final map, parcel map or map of division into large parcels, as appropriate, on which the merger and resubdivision is recorded.

D. Security Credit: If a governing body required an owner or governing body to post security to secure the completion of improvements to two (2) or more contiguous parcels and those improvements will not be completed because of a merger and resubdivision, conducted pursuant to this section, the governing body shall credit on a pro rata basis the security posted by the owner or governing body toward the same purposes with respect to the parcels as merged and resubdivided. (Ord. 548, 11-28-2000)

3-3-90: VIOLATIONS AND PENALTIES:

Any person, firm, corporation or other legal entity who violates any of the provisions of this chapter shall, upon conviction ~~therefor~~therefore, be punished as provided in title 1, chapter 3 of this code. Each day that a violation is permitted to exist shall constitute a separate offense and shall be punishable as such hereunder. The imposition of any sentence shall not exempt the offender from compliance with all requirements of this chapter. (Ord. 261, 6-27-1978)

Zoning Bulletin

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Preemption/Marijuana—Township zoning ordinance prohibits outdoor cultivation of medical marijuana

Cultivators of medical marijuana argue that ordinance is preempted by the Michigan Medical Marihuana Act

Citation: *Charter Township of York v. Miller*, 2018 WL472187 (Mich. Ct. App. 2018)

Contributors

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MICHIGAN (01/18/18)—This case addressed the issue of whether the Michigan Medical Marihuana Act (MCL §§ 333.26421 to 333.26430) permitted outdoor medical marijuana growing, and, if so, whether it preempted a township’s zoning regulation prohibiting outdoor growing in residential areas.

The Background/Facts: David Miller and Donald Miller resided at Donald’s home in a residential zoning district in York Township (the “Township”). Both were qualified medical marijuana patients under Michigan law. Katherine Null (“Null”) had formerly been in a long-term relationship with David. Null was David’s registered medical marijuana primary caregiver under Michigan law. In 2014, at Null’s direction, David constructed a medical marijuana structure in Donald’s backyard “for containing the cultivation of medical marijuana” for patients connected to Null through registration under the Michigan Medical Marihuana Act (“MMMA”), MCL §§ 333.26421 to 333.26430.

At some point, the Township learned that the Millers and Null (collectively, the “Defendants”) had built their medical marijuana facility outdoors, and that the Defendants had failed to comply with Township zoning and construction regulations in doing so. In the Township, medical marijuana caregivers were required to comply with the Township’s Zoning Ordinance § 40.204, which restricted home occupations and home-based businesses. Zoning Ordinance § 40.204 permitted medical marijuana caregivers to operate as a “home occupation” if they complied with the MMMA and certain specified restrictions. Among other things, § 40.204 required that all medical marijuana be contained inside the house in residential zoned areas, and prohibited medical marijuana caregivers from having or growing any medical marijuana outside the house on properties zoned residential. The ordinance also required permits for modification of any portion of the house for cultivation, growing, or harvesting of marijuana.

The Defendants failed to comply with the Township’s Zoning Ordinance § 40.204 because they grew medical marijuana outside and not entirely within Donald’s house. The Defendants also failed to obtain a construction permit for the medical marijuana outdoor growing facility, and failed to get permits before installing related electrical and watering systems.

Instead of enforcing the Zoning Ordinance regulations against the Defendants, the Township filed a declaratory judgment action. The Township asked the trial court to determine the validity of its zoning regulations as applied “to the cultivation and use of medical marijuana in zoned residential locations and subdivisions.” Specifically, the court was asked to determine whether the MMMA permitted outdoor medical marijuana growing, and, if so, whether the MMMA preempted the

Township's zoning regulation prohibiting outdoor growing in residential areas.

The MMMA governs medical marijuana use in Michigan. It allows the "medical use" of marijuana, including its "cultivation." Specifically, it permits registered caregivers to cultivate 12 marijuana plants for each qualifying patient in an "enclosed, locked facility" including outdoor growing, as specified in MCL 333.26423(d).

The trial court ruled that the Township's Zoning Ordinance's restriction on outdoor growing of marijuana directly conflicted with the MMMA's specific permission of outdoor marijuana cultivation. The trial court ruled that the Township could not exclude outdoor marijuana cultivation because the MMMA permitted doing so.

The Township appealed. On appeal, the Township argued that it had broad zoning authority under Michigan's Zoning Enabling Act ("MZEA") to adopt ordinances to regulate medical marijuana and restrict registered caregiver's marijuana growing to indoors in areas zoned residential.

DECISION: Judgment of Circuit court affirmed.

The Court of Appeals of Michigan disagreed with the Township, and held that the Township's Zoning Ordinance's restriction on outdoor growing of marijuana could not be enforced because it directly conflicted with the MMMA's specific permission of outdoor marijuana cultivation.

The court explained that a municipal "ordinance that purports to prohibit what a state statute permits is void." In other words, when a local regulation directly conflicts with a state statute by prohibiting what the state statute permits, the state statute preempts the local regulation, said the court. Furthermore, the court explained that contrary to the Township's argument, the zoning authority given to municipalities under the MZEA did not save the Township's ordinance from preemption.

Again, the court noted that the MMMA "permit[ted] and thereby authorize[d] registered caregivers to grow medical marijuana for their patients both indoors and outdoors without fear of imposition of penalties by a local government." Thus, the court found that the Township's home occupation Zoning Ordinance § 40.204 "plainly purport[ed] to prohibit the outdoor growing of medical marijuana that the MMMA otherwise permit[ted]." Consequently, the court concluded that the Township's Zoning Ordinance § 40.204 was preempted by the MMMA and void.

See also: *Ter Beek v. City of Wyoming*, 297 Mich. App. 446, 823 N.W.2d 864 (2012), judgment aff'd, 495 Mich. 1, 846 N.W.2d 531 (2014).

Case Note:

The trial court had also held that the Defendant's enclosed, locked facility must comply with the MMMA (MCL § 333.26423(d)), construction regulations, and the Township's construction permit requirements. The Court of Appeals of Michigan agreed.

Case Note:

In its decision, the Court of Appeals of Michigan made note that although municipalities did not have the authority under the MMMA to adopt ordinances that restrict registered caregivers' MMMA-given rights and privileges, Michigan's Medical Marijuana Facilities Licensing Act does specifically grant municipalities "authority to adopt local ordinances including zoning regulations that restrict the location, number, and type of facilities within its boundaries." (See MCL 333.27205.)

Use/Constitutionality of Regulation/ Second Amendment—Individual is convicted of possessing a firearm within 1000 feet of a public park, which is prohibited under state statute

Individual challenges the statutory firearm restriction as unconstitutional under the Second Amendment

Citation: *People v. Chairez*, 2018 IL 121417 (Ill., Feb. 1, 2018)

ILLINOIS (02/1/18)—This case addressed the issue of whether a provision of an Illinois statute governing unlawful use of a weapon (720 ILCS 5/24-1(a)(4), (c)(1.5)), prohibiting possession of a firearm within 1000 feet of a public park was unconstitutional under the Second Amendment.

The Background/Facts: In April 2013, Julio Chairez ("Chairez") pled guilty in circuit court to possessing a firearm within 1000 feet of a

public park. Section 24-1(a)(4), (c)(1.5) of Illinois' unlawful use of a weapon ("U UW") statute (720 ILCS 5/24-1(a)(4), (c)(1.5)) prohibited an individual from carrying or possessing a firearm within 1000 feet of a public park. In November 2015, Chairez filed a post-conviction petition, seeking to vacate his conviction on the basis that the statute was unconstitutional under the Second Amendment to the United States Constitution (U.S. Const., amend. II).

The Second Amendment to the United States Constitution provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed." (U.S. Const., amend. II.) That right is "fully applicable to the States" through the Fourteenth Amendment to the United States Constitution (U.S. Const., amend. XIV).

In his petition, Chairez argued that an individual who is barred from carrying a firearm within 1000 feet of the many locations listed in section 24-1(c)(1.5) of the U UW statute (including public parks) is essentially barred from carrying a firearm in public. As such, he argued that section 24-1(c)(1.5) was essentially a blanket prohibition on carrying a gun in public, in violation of the Second Amendment.

The circuit court agreed, holding that section 24-1(a)(4), (c)(1.5) of Illinois' U UW statute was unconstitutional because a 1000-foot firearm restriction was "not a reasonable regulation of the [S]econd [A]mendment," but rather was effectively a "near comprehensive ban" on carrying a firearm in public.

The State of Illinois (the "State") appealed. The State argued that the restriction on carrying a firearm within 1000 feet of a public park was not an unconstitutional blanket prohibition, but rather was a reasonable regulation that prevented people from carrying firearms only in certain proscribed areas.

DECISION: Judgment of circuit court affirmed in relevant part.

The Supreme Court of Illinois held that section 24-1(a)(4), (c)(1.5) of Illinois' U UW statute, which prohibited possession of a firearm within 1000 feet of a public park was facially (i.e., on its face; based on the language of the statute alone and not just its applicability) unconstitutional in violation of the Second Amendment to the United States Constitution.

In so holding, the court: (1) conducted "a textual and historical analysis of the [S]econd [A]mendment 'to determine whether the challenged law impose[d] a burden on conduct that was understood to be within the scope of the [S]econd [A]mendment's protection at the time of ratification;" " and (2) having found that the 1000-foot prohibition was within the scope of the Second Amendment's protection, applied "the appropriate level of heightened means-ends scrutiny and consider[ed] the strength of the government's justification for restricting or regulating the exercise of [S]econd [A]mendment rights."

Applying the first step of its analysis, the court explained that the United States Supreme Court had determined that there is an “individual right to possess and carry weapons on the case of confrontation,” based on the Second Amendment, but that such a right is “not unlimited.” The court also explained that the United States Court of Appeals, Seventh Circuit, (which has jurisdiction over Illinois) had found a blanket prohibition on carrying firearms in public in Illinois was unconstitutional under the Second Amendment, but had also stated that state bans on guns “merely in particular places” might be constitutional if the weight of analysis showed a great public benefit on such a ban. The Supreme Court of Illinois, itself, had held that the Second Amendment “protects an individual’s right to carry a ready-to-use gun outside the home, subject to certain regulations.”

To determine whether the offense of possessing a firearm within 1000 feet of a public park (as set forth under section 24-1(a)(4), (c)(1.5) of the UYW statute) “impermissibly encroache[d] on conduct at the core of the [S]econd [A]mendment,” the court applied a “sliding” scrutiny scale. Under such scrutiny, explained the court, “the closer in proximity the restricted activity is to the core of the [S]econd [A]mendment right and the more people affected by the restriction, the more rigorous the means-end review.”

Applying that scrutiny here, the court found that the 1000-foot firearm restriction “directly implicate[d] the core right” to the “carriage of weapons in public for self-defense, thereby reaching the core of the [S]econd [A]mendment.” The court found that the firearm restriction here not only “cover[ed] a vast number of public areas across the state, it encompass[ed] areas . . . where an individual enjoys [S]econd [A]mendment protection, *i.e.*, public ways.” Moreover, the court found that the restriction at issue affected the “entire law-abiding population of Illinois.” All of that, concluded the court, required an “elevated intermediate scrutiny,” under which the State bore the “burden of showing a very strong public-interest justification and a close fit between the government’s means and its end, as well as proving that the ‘public’s interests are strong enough to justify so substantial an encumbrance on individual Second Amendment rights.’”

Here, the State claimed a compelling interest in public safety was served by reducing firearm possession within 1000 feet of a public park. Specifically, the State noted the large number of children who frequent public parks, and contended that a 1000-foot firearm restriction around public parks would extend the distance where a shooter might fire a weapon, thus protecting children and others.

While the court acknowledged that preventing crime and protecting children were “important public concerns,” the court found that the State failed to provide evidentiary support for its claims that prohibit-

ing firearms within 1000 feet of a public park would reduce the risks to children and others. In other words, the court found that the State had “speculated” that the proximity of firearms within 1000 feet threatened the health and safety of those in public parks, but had failed to provide “a valid explanation for how the law actually achieves its goal of protecting children and vulnerable populations from gun violence.” With such failure to justify the restriction on gun possession within 1000 feet of a public park, the court concluded that the State failed to bear its “burden” of justifying such a “substantial an encumbrance on individual Second Amendment rights”—and that therefore the restriction was facially unconstitutional.

Having found the UUW provision under which Chairez was convicted to be unconstitutional, the court affirmed the circuit court’s judgment vacating Chairez’s Class 3 felony conviction.

See also: *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

See also: *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012).

See also: *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011).

Case Note:

The Supreme Court of Illinois also concluded that the unconstitutional provision of the UUW, prohibiting possession of a firearm within 1000 feet of a public park, was severable from the remaining portions of the UUW. The statute had also identified several other specific locations from which possession of a firearm within 1000 feet of such locations was prohibited (e.g. “on any public way within 1,000 feet of the real property comprising any school, . . . courthouse, public transportation facility, or residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed-income development.” (720 Ill. Comp. Stat. § 24-1(c)(1.5))). Having found the unconstitutional portion of the statute (i.e., prohibiting possession of a firearm within 1000 feet of a public park) severable from the rest of the statute (which had not also been challenged as unconstitutional), the court held that the remaining specific location-regulations were capable of being executed.

Preemption/Manufactured Home Park—City enforces zoning code in manufactured home park

Park residence contends federal and state law preempts zoning code enforcement in manufactured home parks

Citation: *Eich v. City of Burnsville*, 2018 WL 313087 (Minn. Ct. App. 2018)

MINNESOTA (01/8/18)—This case addressed the issue of whether a city's enforcement of its zoning code within a manufactured home park was preempted by the federal National Manufactured Housing Construction and Safety Standards Act and/or Minnesota's Manufactured Home Building Code.

The Background/Facts: In May 2015, the City Code Inspector for the City of Burnsville (the "City") inspected a manufactured home park, Rambush Estates. The City Code Inspector thereafter issued zoning code violation notices related to nonconforming structure setbacks, awnings, and location of trash containers. In response, Kathryn Eich ("Eich"), a resident of Rambush Estates commenced a class action against the City seeking damages and injunctive relief. Among other things, Eich argued that the City's enforcement of its zoning code within Rambush Estates was preempted by federal and state law.

Eich pointed to the federal National Manufactured Construction and Safety Standards Act (the "Act") and Minnesota's Manufactured Home Building Code (the "MHBC"). The federal Act preempts states and political subdivisions—like the City, here—from enacting "any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard." Standards promulgated under the Act by the Department of Housing and Urban Development ("HUD") prohibit local regulations that "impair[] the Federal superintendence of the manufactured home industry as established by the Act." In other words, the Act expressly prohibits states and municipalities from regulating the "construction or safety" of manufactured homes in any manner that is not identical to federal HUD standards. The MHBC incorporates those identical federal standards concerning the safety and construction of manufactured homes.

Ultimately, the district court concluded that the City's zoning code enforcement within Rambush Estates was: (1) expressly preempted by

the Act; and (2) was expressly and field preempted by the MHBC. The district court ruled that the enforcement of the City code in manufactured home parks was preempted and that the City was permanently enjoined from enforcing any City code within Rambush estates.

The City appealed, seeking the ability to enforce its City code within Rambush Estates. On appeal, the City argued that it was expressly authorized by state law to enforce its codes within manufactured home parks when the codes were not inconsistent with federal or state laws.

The Court's DECISION: Judgment of district court reversed.

Reversing the district court, and agreeing with the City, the Court of Appeals of Minnesota held that neither federal nor state laws (i.e., the Act and the MHBC) preempted the City zoning code within Rambush Estates.

In so holding, the appellate court explained that federal or state laws may preempt local laws in three ways: “(1) express preemption, where a federal or state statute explicitly defines the extent to which it preempts local law; (2) field preemption, where a local law attempts to regulate conduct in a field that the federal or state legislature intended federal or state law to exclusively occupy; and (3) conflict preemption, where a local law permits what a federal or state statute forbids or vice versa.”

Here, the appellate court found that the district court had failed to explain why particular City code provisions were found to be inconsistent with the federal Act. The appellate court noted that the district court had stated that the City’s “code enforcement conflicts . . . [by] imposing fines inconsistent with Congress’s objective to maintain affordability of this vital form of housing as expressed in [the Act] and adopted by the State of Minnesota.” The appellate court disagreed, finding the district court “erred in its interpretation of the Act.” The appellate court noted that the federal Act did not preempt enforcement of all codes, but only preempted enforcement of codes that attempted to regulate construction or safety standards that were inconsistent with the Act’s standards. In other words, the appellate court found that the Act did “not preempt the [C]ity from enforcing its [C]ity code within Rambush Estates because the Act [was] limited to consumer protection, and the [C]ity code [did] not purport to regulate within that construction or safety standards context.” In fact, the appellate court found that none of the City’s regulated items—of carports, awnings, zoning setbacks, trash screening, and exterior storage—within a manufactured home park related to the construction or safety of the manufactured home itself. Therefore, the appellate court concluded that the Act did not expressly preempt the relevant City code provisions, of which Eich had challenged enforcement.

Since the MHBC adopted the identical federal standards of the Act,

the appellate court concluded that, “[f]or the same reasons that federal law does not expressly preempt the [C]ity from enforcing its zoning and property maintenance codes within Rambush Estates, the MHBC does not expressly preempt the [C]ity’s zoning and property maintenance codes from being enforced within Rambush Estates.” Moreover, the appellate court found that a provision in the code-compliance section of the MHBC expressly authorized local code enforcement that is outside the context of construction and safety. Specifically, that provision provides: “Nothing in this section shall be construed to inhibit the application of zoning, subdivision, architectural, or [a]esthetic requirements” (See Minn. Stat. § 327.32, subd. 5.)

The appellate court further found that, contrary to the district court’s holding, Minnesota statutes did not field preempt the City’s zoning code enforcement in manufactured home parks. Rather, noted the appellate court, Minnesota statutes explicitly protect city authority within manufactured home parks: Minn. Stat. § 327.32, subd. 5, specifies that a city is permitted to apply “zoning, subdivision, architectural, or [a]esthetic requirements” within a manufactured home park, and Minn. Stat. § 327.26, subd. 2 (2016), explicitly permits cities to enforce ordinances relating to the safety and protection of people within a manufactured home park. Thus, the court concluded that since state law explicitly authorizes municipalities to regulate within manufactured home parks, state law has not fully occupied the field of manufactured-home-park regulation, and the district court erred in holding the contrary and concluding that the City could not enforce its zoning and property maintenance codes within Rambush Estates.

Case Note:

Eich had also brought as-applied due-process claims. However, the court found that those claims were “moot with respect to injunctive relief.”

Zoning News from Around the Nation

CALIFORNIA

In an effort to meet the “current housing crisis,” California State Senator Scott Wiener has introduced the Transit Zoning Bill, SB 827. The bill “would allow new housing near major transit hubs to be built up to eight stories tall, overriding local zoning restrictions.” The bill would “set statewide standards for height, density and eliminate any

mandates for required parking when it comes to future projects built in the state near transit stops.” Wiener argues that “linking denser development with transit” will “add more affordable, sustainable units to a state desperately in need.”

Source: *Curbed*; www.curbed.com

Source: *Long Beach Post*; <https://lbpost.com>

INDIANA

In early February, the Indiana House of Representatives passed House Bill 1289. The bill would limit local bans and regulations of “natural resources development,” including mining and timber harvesting. The bill is now pending before the Senate Committee on Natural Resources.

Source: *Courier & Press*; www.courierpress.com

TENNESSEE

Pending in the Tennessee General Assembly, Senate Bill 1086 would “prohibit local governments from using zoning powers to determine the extent to which short-term rentals should be allowed in their communities.” Among other things, the bill would prohibit municipalities from: prohibiting the use of property as a short-term rental unit; and restricting the use of or otherwise regulating a short-term rental unit based on the short-term rental unit’s classification, use, or occupancy.

Source: *Brentwood Home Page*; <https://brentwoodhomepage.com>

Source: *Senate Bill 1086*; www.capitol.tn.gov