



**TOWN OF MILLIKEN  
PLANNING & ZONING COMMISSION  
AGENDA MEMORANDUM**

<b>To:</b> Chairman Woodcock and Planning Commissioners <b>From:</b> Martha Perkins, Community Development Director <b>Via:</b> Kent Brown, Town Administrator	<b>Application Date:</b> Monday, August 24, 2015 <b>Resubmittal Date:</b> Tuesday, October 13, 2015 <b>Public Hearing Date:</b> Wednesday, October 21, 2015		
<b>Agenda Item #</b>	<b>Action:</b> X	<b>Discussion:</b>	<b>Information:</b>
<b>Agenda Title:</b> Public Hearing to Split approximately 24.025 acres through a Minor Subdivision Process into Two Parcels Consisting of Approximately 11.621 Acres and 12.404 Acres for the Brookstone Multi-Family Housing Project			
<b>Attachments:</b> Application/Petition with Proposed Subdivision Replat			

**PURPOSE**

To consider a request to split approximately 24.025 acres through a minor subdivision process into two parcels consisting of approximately 11.621 acres and 12.404 acres. The parcel is legally known as the Brookstone Subdivision, a Replat of Lot 2, Block 2 Settlers Village Subdivision 5<sup>th</sup> Filing recorded June 8, 2009 under Reception Number 3628109, located in the Northeast Quarter of Section 12, Township 4 North, Range 67 West of the 6<sup>th</sup> P.M., Town of Milliken, Weld County, Colorado. The parcel is owned by Lot Holding Investments LLC.

**BACKGROUND**

<b>Type of Application:</b>	Lot Split – Minor Subdivision
<b>Location:</b>	Replat of Lot 2, Block 2, Settlers Village Subdivision, Fifth Filing, located in the Northeast Quarter of Section 12, Township 4 North, Range 67 West of the 6 TH P.M., Town of Milliken, Weld County, Colorado
<b>Applicant:</b>	Lot Holding Investments, LLC.
<b>Existing Land Use:</b>	Vacant
<b>Surrounding Land Use:</b>	North: Agricultural and Commercial West: Single Family Residential - Recreational South: Planned Unit Development - Residential East: Planned Unit Development – Office/Commercial

	West: Single Family Residential - Recreational
	South: Planned Unit Development - Residential
	East: Planned Unit Development – Office/Commercial
<b>Zoning:</b>	Centennial Master Plan Planned Unit Development (PUD) High Density Residential (Hacienda Villas)
<b>Comprehensive Plan:</b>	The Comprehensive Plan designates the site neighborhood as Planned Unit Development – high density residential
<b>Notice:</b>	Notice was mailed to Surrounding Property Owners within 300’ of the proposed development on August 28, 2015. The hearing was published in the <i>Johnstown Breeze</i> on August 28, 2015. Referral notices were mailed/emailed on February 28, 2015. A Planning Commissioner requested that the case be heard in a public hearing with the proposed commercial site plan for the first phase of the Brookstone multi-family development. The meeting was scheduled for the October 7, 2015 Commission hearing and was then continued to October 21, 2015.



**STAFF RECOMMENDATION**

Staff recommends approval of the petition to split approximately 24.025 acres through a minor subdivision process into two parcels consisting of approximately 11.621 acres and 12.404 acres. The lot split was scheduled for a public hearing before the Planning & Zoning Commission on October 7, 2015, but it was continued to October 21, 2015.

**COMPLIANCE WITH THE LAND USE CODE**

Lot Holdings Investments, LLC requested this lot be split to build townhouses or condominiums. The area was originally planned for multi-family or high density housing under the Centennial Master Plan Planned Unit Development (PUD) as Hacienda Villas. A

Commissioner requested and staff recommended that this lot split request be reviewed along with a commercial site plan for two four-plexes for Brookstone Development Phase I submittal, instead of reviewing and possibly approving the request administratively.

The Brookstone Subdivision consists of approximately 24.025 acres after being replatted on June 8, 2009 as a Replat of Lot 2, Block 2, Settlers Village Subdivision, Fifth Filing, located in the Northeast Quarter of Section 12, Township 4 North, Range 67 West of the 6 TH P.M., Town of Milliken, Weld County, Colorado. Lot Holding Investments LLC plans after the subdivision is approved to build Brookstone Phase I consisting of two four-plexes on the ~11.821 acres parcel.

Staff has pulled out the most relevant sections of the Code for the Planning and Zoning Commission's review of this application. The Planning & Zoning Commission is asked to review this application based on Section 16-4-130 "Minor Subdivision" which allows a parcel to be subdivided. Recently, this Section was amended with Ordinance No. 699.

### **APPLICABLE LAND USE CODE SECTIONS**

#### **Sec. 16-1-50. Purpose.**

The purpose of this Code is to create a vital, cohesive, well-designed community in order to enhance the Town of Milliken's character and further the citizens' goals as identified in the Comprehensive Plan. This Code is designed to:

- (1) Encourage the most appropriate use of land through the Town;
- (2) Encourage innovative, quality site design, architecture and landscaping;
- (3) Encourage new developments to relate to Milliken's historic development pattern;
- (4) Promote compact, well-defined, sustainable neighborhoods that enhance Milliken's character;
- (5) Create livable neighborhoods that foster a sense of community and reduce dependency on private vehicles;
- (6) Encourage the proper arrangement of streets in relation to existing and planned streets and ensure that streets facilitate safe, efficient and pleasant walking, biking and driving;
- (7) Provide a variety of lot sizes and housing types in every neighborhood;
- (8) Protect sensitive natural and historic areas and Milliken's environmental quality;
- (9) Integrate a high-quality natural environment into the developed portions of the community;
- (10) Facilitate the adequate and efficient provision of transportation, water, sewage, schools, parks and other public requirements;
- (11) Provide protection from geologic, flood and fire hazards and other dangers; and
- (12) Promote the health, safety, morals and general welfare of Milliken residents. (Ord. 480 §1.5, 2003)

#### **Sec. 16-1-60. Interpretation.**

In their interpretation and application, the provisions of this Code shall be held to be minimum requirements for the promotion of the public health, safety and welfare. Whenever the requirements of this Code are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or that imposing the higher standards shall govern. (Ord. 480 §1.6, 2003)

**Sec. 16-1-150. Definitions.**

Terms used in this Code are defined as follows:

*Easement* means a right to land generally established in a real estate deed or on a recorded plat to permit the use of land by the public, a corporation or particular persons for specified uses.

*Lot* means a designated parcel, tract or area of land established by plat or subdivision of at least a sufficient size to meet minimum requirements for use, street frontage coverage and area, and to provide required yards and other open spaces in the zoning district in which the lot is located, and which has direct access onto a public or private street.

*Parcel* means a tract or plot of land.

*Plat* means a map of certain described land prepared in accordance with the requirements of this Code and Section 38-51-106, C.R.S., as an instrument for recording of real estate interests with the County Clerk and Recorder.

*Principal use* means the main use of land or of a structure as distinguished from a subordinate or accessory use.

*Property* means all real property subject to land use regulation by the Town of Milliken.

*Property line* means the boundary of any lot, parcel or tract as the same is described in the conveyance of such property to the owner; and does not include the streets or alleys upon which said lot, parcel or tract abuts.

*Public* means (when used as modifying a structure, activity or purpose) a structure, activity or purpose owned or operated by a government agency or by a nonprofit corporation with tax-exempt status under the Federal Internal Revenue Code, if the nonprofit corporation makes the structure or facility available for the use of all the members of the public without regard to membership status.

*Public areas* mean streets, parks, open spaces and other property designated or described as for public use on a map or plat of the Town of Milliken and fee title is vested in the Town of Milliken, other public body or a special district as defined in Section 32-1-103, C.R.S.

*Public facilities* mean those constructed facilities, including but not limited to transportation systems or facilities, water systems or facilities, wastewater systems or facilities, storm drainage systems or facilities, fire, police and emergency systems or facilities, electric, gas, telecommunication utilities or facilities, and publicly owned buildings or facilities.

*Right-of-way* means a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main or for another special use. The usage of the term *right-of-way* for land platting purposes shall mean that every right-of-way established and shown on a final plat is to be

separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains or any other use involving maintenance by a public agency shall be dedicated to public use on the plat on which such right-of-way is established.

**Sec. 16-3-460. PUD Planned Unit Development District.**

**(a) Intent.**

- (1) The intent and purpose of the Planned Unit Development (PUD) District is to permit and encourage innovative design and high quality, master-planned developments. This district is created to allow and encourage compatible uses to be developed in accordance with a unified development plan in harmony with the environment and surrounding neighborhood. The PUD District is intended to permit greater flexibility in the application of zoning and development standards and greater freedom in providing a mix of land uses in the development of a balanced community. PUDs are expected to preserve critical environmental resources, provide above-average open space and recreational amenities, include exceptional design and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure.
- (2) This Article is intended to supersede the provisions of, and prevent the application in this Town of, the Planned Unit Development Act of 1972 (Title 24, Article 67, C.R.S.), except that this Article shall not be deemed to supersede the Planned Unit Development Act of 1972, appearing as Article 67 of Title 24, C.R.S., with respect to the provisions of that act pertaining to the continued maintenance and upkeep of open space and other commonly owned areas and the consequences of failing to maintain such areas.

**(b) Permitted Uses.**

- (1) Any combination of uses may be permitted in a PUD District so long as the Board of Trustees determines that such uses are compatible with one another and with any property that could reasonably be impacted by the development of any proposed PUD. Compatibility shall be determined based on the extent to which any proposed use of land within the PUD would unreasonably interfere with the use and enjoyment of any other use of land within the PUD. Factors which may be considered include the type and intensity of uses, the extent to which uses complement one another, the bulk of structures associated with use, and the noise, light, traffic, vibrations and other similar external impacts associated with each use.
- (2) The density and/or intensity of development shall be based on the capacity of the land proposed for development to support the PUD as well as the impact of the proposed development on Town services and facilities and on neighboring property that reasonably could be impacted by the proposed development. Capacity of the land shall be determined based on the size, topography and geological and environmental limitations of the land proposed for development. Notwithstanding the foregoing, residential development shall not exceed a gross density of twelve (12) units per acre; commercial development shall not exceed a floor area ratio of 0.5; office development shall not exceed a floor area ratio of 4.0; industrial development shall not exceed a floor area ratio of 1.0. In a mixed-

use PUD, the gross density shall be calculated based on the gross land area devoted to each type of use.

- (c) PUD Restrictions and General Requirements. Properties utilizing the PUD District shall be subject to the following:
- (1) All PUD applications shall include a gross land area of not less than two (2) acres, except in the R-M and R-MH Districts, where the gross land area shall not be less than six (6) acres. Upon the specific request of the landowner or upon the recommendation of the Board of Trustees, the two-acre requirement set forth in this Section may be waived if, after considering the land use requested, the Board of Trustees finds that such waiver would be beneficial to the Town and foster the objectives of this Code.
  - (2) The area of land for the PUD may be controlled by one (1) or more landowners and must be developed under unified control or a unified plan of development.
  - (3) Areas designated as private streets and/or common open space including land, an area of water or a combination of land and water within the site designated for a PUD shall be designed and intended primarily for the use or enjoyment of residents, occupants and owners of the PUD; and provisions shall be made for the establishment of an organization for the ownership and maintenance of such private streets and/or common open space areas unless other adequate arrangements for the ownership and maintenance thereof are provided in a manner acceptable to the Town.
  - (4) All requirements set forth in this Code otherwise applicable to the area of land proposed for a PUD shall govern, except to the extent that the unified plan of development for residential, commercial, educational, recreational or industrial uses or any combination thereof may propose exceptions in lot size, bulk, type of use, density, lot coverage, open space or other standards within the existing land use regulations, except those development standards that are not open to modification (see Section 16-4-530 of this Code).
  - (5) No PUD may be approved by the Town without the written consent of the landowner whose property is included within the PUD.
- (d) PUD Approval Procedure.
- (1) All PUD District applications shall be submitted and processed simultaneously with the processing of subdivision applications for the property. The processes set forth in Sections 16-4-160 through 16-4-190 of this Code for major subdivisions shall be followed, including all preapplication conferences, Planning Commission visioning meetings, sketch plan, preliminary plat and final plat applications, and all required public hearings. Scheduling requirements for PUD applications shall match those specified for sketch plans and preliminary and final plats. In addition, an application for a PUD District amendment to the official zoning map shall be processed and subject to public hearings in the same manner as for other amendments to the official zoning map, as outlined in Section 16-3- 540 of this Code.
  - (2) Rezoning to a PUD District shall occur concurrently with a preliminary plat/ preliminary PUD development plan. Public hearings for the zoning of a property as a PUD District and for Preliminary PUD development plan approval may be combined or can occur separately. Development within a PUD District cannot

- occur unless and until a final plat for the portion of the property to be developed has been approved and recorded as provided in Article IV of this Chapter.
- (3) Upon approval of a final PUD development plan, the Town, through its Board of Trustees, shall adopt an ordinance establishing the PUD District for the property in accordance with that plan.
  - (4) In addition to all of the information required as part of the sketch plan, preliminary plat and final plat application packages (as specified in Sections 16-4-160 through 16-4-190 of this Code), applications for a PUD development plan and PUD District shall include additional information as outlined below.
- (e) Sketch PUD Development Plan Application Submittal Requirements.
- (1) PUD application fee.
  - (2) Written PUD description as part of the general development information which includes:
    - a. List all subdivision regulation and community design and development standards exceptions proposed for the PUD and how the PUD complies with Section 16-2-20 of this Chapter.
    - b. Identify the underlying zoning districts for the property and describe any proposed modifications and/or restrictions to the allowed uses and/or standards within the districts. If any conditional uses are requested, explain how the conditional use review criteria (refer to Section 16- 3-500 of this Article) will be addressed.
    - c. Identify and explain the benefits which will be provided by the PUD to offset the impact of the modifications requested (i.e., if the minimum lot size is decreased, additional functional, centrally located common open space will be provided; or if the width of the local street right-of- way is decreased by eliminating on-street parking, then there will be designated parking areas within five hundred (500) feet of all residences, etc.). All proposed benefits must offset the proposed modifications.
    - d. Explain how the proposed PUD will be compatible with adjacent neighborhoods that now exist or are proposed in the future. Describe any proposed buffering techniques that serve to achieve such compatibility.
    - e. Provide any additional relevant information that the Town may deem necessary. Preliminary PUD Development Plan Application Submittal Requirements.
- (1) PUD application fee.
  - (2) Written PUD description as part of the general development information which includes:
    - a. List all subdivision regulations, community design and development standards and community design principle exceptions being proposed for the PUD and explain why such exceptions are justified.
    - b. Identify the underlying zoning districts for the property and describe any proposed modifications and/or restrictions to the allowed uses and/or standards within the districts. Provide a comparison between the proposed preliminary PUD plan to the elements and standards of the underlying zone districts as contained in this Code. If any conditional uses are requested, explain how the conditional use review criteria (refer to Section 16-3-530 of this Article) will be addressed.

- c. Describe how the proposed PUD rezoning satisfies one or more of the criteria for amendments to the official zoning map (Section 16-3-530 of this Code).
  - d. Identify and explain the benefits that will be provided by the PUD to offset the impact of the modifications requested. The proposed benefits must offset the proposed modifications.
  - e. Explain how the proposed PUD will be compatible with adjacent neighborhoods that now exist or are proposed in the future. Describe buffering techniques that serve to achieve such compatibility.
  - f. An explanation of how the preliminary PUD development plan is consistent with the sketch PUD development plan, or if there are differences, the rationale for the changes.
  - g. Draft copies of owners' association documents (covenants, conditions, restrictions and any architectural design guidelines) that provide an acceptable program for the continuing maintenance of open space, recreational areas, walkways and private streets within the PUD; that detail the type of organizational structure responsible for such ongoing maintenance; and that provide for architectural review based on the design guidelines.
  - h. Provide any additional relevant information that the Town may deem necessary.
- (3) Preliminary PUD Development Plan Map. Prepare the preliminary PUD development plan map using the preliminary plat map as the base. Refer to Section 16-4-170 of this Code for drawing standards and format. Include on the base a clear graphic and/or written representation of:
- a. All principal, conditional and accessory uses within each land use category within the PUD; i.e., single-family, multi-family, commercial, etc., either listed specifically or by reference to the zoning districts within the Town. In particular, note any modifications to the principal, conditional and accessory uses of the underlying zone districts.
  - b. Standards for principal and accessory uses within each land use category to include:
    - 1. Minimum lot area.
    - 2. Maximum lot coverage.
    - 3. Maximum floor area ratio (total floor area to total lot area).
    - 4. Maximum building height.
    - 5. Parking requirements for principal, accessory and conditional uses.
    - 6. Provide any additional relevant information that the Town may deem necessary.
- (4) Proposed phasing for the development.
- (g) Final PUD Development Plan Application Submittal Requirements.
- (1) PUD application fee.
  - (2) Written PUD description as part of the general development information, based on the materials submitted for the preliminary PUD development plan and on comments received from the Town at the time of preliminary plan review. Include all of the items listed above for the preliminary PUD development plan, in finalized form. Also include an explanation of how the final PUD development

- plan is consistent with the preliminary PUD development plan, or if there are differences, the rationale for the changes.
- (3) Final PUD Development Plan Map. Prepare the final PUD development plan map using the final plat map as the base. Refer to Section 16-4-180 of this Code for drawing standards and format. See the Workbook for sample certificates for the owner, Planning Commission, Board of Trustees and Clerk and Recorder. Include on the base a clear graphic and written representation of all of the information/items required for a preliminary PUD development plan as listed above, in finalized form.
  - (4) Provide any additional relevant information that the Town may deem necessary.
- (h) PUD Review Criteria.
- (1) Sketch PUD Development Plan Review Criteria. The following review criteria will be used by the Staff, Planning Commission and Board of Trustees to evaluate all PUD applications at the time of sketch PUD plan/sketch plan review:
    - a. The proposed benefits offset the proposed exceptions to the zoning and subdivision standards, and that such exceptions are in the best interest of the public health, safety and welfare.
    - b. The proposed PUD conforms to the PUD restrictions, and the proposed zoning is compatible with the surrounding land uses.
    - c. The PUD proposes creative and innovative design and high quality development, thereby protecting and promoting public safety, convenience, health and general welfare.
    - d. The uses and densities in the proposed PUD are compatible, and will be effectively integrated with adjacent neighborhoods that now exist or are proposed in the future.
    - e. The proposed PUD is in general conformance with the Comprehensive Plan, Community Design and Development Standards and the Johnstown/Milliken Parks, Trails, Recreation and Open Space Master Plan and the criteria as set forth in Section 16-2-20 of this Code.
    - f. One (1) or more of the criteria for amendment of the official zoning map has been satisfied.
  - (2) Preliminary PUD Development Plan Review Criteria. In addition to all of the review criteria for a sketch PUD development plan, the following review criteria will be used by the Town Staff and Board of Trustees to evaluate all PUD applications at the time of preliminary PUD plan/preliminary plat:
    - a. The preliminary PUD development plan is substantially consistent with the sketch development plan as approved by the Board of Trustees.
    - b. All sketch PUD development plan conditions of approval have been adequately addressed on the preliminary PUD development plan.
  - (3) Final PUD Development Plan Review Criteria. In addition to all of the review criteria for a preliminary PUD development plan, the following review criteria will be used by the Town Staff and Board of Trustees to evaluate all PUD applications at the time of final PUD plan/final plat:
    - a. The final PUD development plan is substantially consistent with the preliminary PUD development plan as approved by the Board of Trustees.
    - b. All preliminary PUD development plan conditions of approval have been adequately addressed on the final PUD development plan.

- (i) Compliance with PUD District/Final Development Plan. The Board of Trustees may initiate the process to repeal the ordinance establishing the PUD District if:
  - (1) The project for which the PUD zone was established is not carried out pursuant to the approved final PUD development plan; provided, however, that the Board of Trustees may approve appropriate modifications to the final PUD development plan from time to time prior to completion of the proposed development; or
  - (2) Building activity for the PUD District has not commenced within a period of one (1) year after the effective date of the creating ordinance, unless otherwise approved by the Board of Trustees.
- (j) Land Previously Zoned PUD. Any land previously zoned PUD, and partially developed prior to the date of adoption of this Code, may continue and complete such development under the terms and conditions of approval for that PUD; subject, however, to the provision that any major modifications, as determined by the Town, to that PUD shall require review and approval under the new requirements of this Code. (Ord. 480 §3.4, 2003)

**Sec. 16-3-540. Amendments.**

- (a) Initiation of Amendments to Text or Official Zoning Map. The Board of Trustees may from time to time amend, supplement, change or repeal the regulations and provisions of this Article. Amendments to the text of this Code may be initiated by the Board of Trustees, Town Staff or Planning Commission, or by written application of any property owner or resident of the Town. Amendments to the zoning district map may be initiated by the Board of Trustees, Town Staff or the Planning Commission, or by a real property owner in the area to be included in the proposed amendment.
- (b) General Rezoning of the Town. Whenever the zoning district map is in any way to be changed or amended incidental to or as part of a general revision of this Code, whether such revision is made by repeal of the existing zoning code and enactment of a new zoning code or otherwise, the requirement of an accurate survey map or other sufficient legal description of, and the notice to and listing of names and addresses of owners of real property in, the area of the proposed change, shall be waived. However, the proposed zoning map shall be available for public inspection in the Town Hall during regular business hours for fifteen (15) days prior to the public hearing on such amendments.
- (c) Zoning Amendment Application Process.
  - (1) Step 1: Optional Preapplication Conference. The applicant may attend a preapplication conference with a representative from the Town. The purpose of the meeting is to discuss the zoning amendment, submittal requirements and review process.
  - (2) Step 2: Zoning Amendment Application Submittal. The applicant shall submit one (1) copy of the complete zoning amendment application package to the Town Clerk and shall request that the application be reviewed by the Planning Commission and Board of Trustees. Note: In the case of text amendments, only Items a and b are required.
    - a. Completed Land Use Application Form, Zoning Amendment – Technical Criteria Form (see Workbook), application fee and fee agreement.
    - b. Application Fee and Fee Agreement. A nonrefundable fee is collected to cover the cost of review by the Town Attorney, Town Engineer, Town Planner and

any other expert whom the Town may wish to employ; and notice and publication expenses. Actual costs may exceed the deposit; in this case, the applicant is liable for costs in excess of the deposit. The Town shall provide the applicant with a copy of the most current fee schedule and fee agreement form.

- c. Legal Notice Form. The applicant shall prepare the legal notice form and return it to the Town with an electronic copy of the legal description in MSWord™ format.
- d. Mineral Rights Affidavit. The mineral rights affidavit must be current and must be dated no more than thirty (30) days before the date of the sketch plan application submittal.
- e. A written description of the proposed change to the text of this Article, including the citation of the portion of the Article to be changed and the wording of the proposed change. The description must provide the rationale for the proposed change, citing specific difficulties with the existing text and similar provisions in zoning codes of other jurisdictions that support the rational of the proposed change. Particular attention should be given to addressing the criteria listed in Subsection (d) below.
- f. A legal description for all property to be considered for rezoning.
- g. Current proof of ownership in the form of title insurance issued with thirty (30) days of submission of the application (for zoning map amendments only).
- h. A zoning amendment map of the area included in the proposed change, twenty-four (24) inches high by thirty-six (36) inches wide, with the following information:
  1. North arrow, scale 1" = 100' or 1" = 200', and date of preparation.
  2. The subdivision or block and lot name of the area to be zoned (if applicable) at the top of each sheet.
  3. Legal description of the area to be zoned (entire area and individual zoning districts). In unsubdivided property, zone boundaries shall be determined by a metes and bounds description.
  4. Location and boundaries, including dimensions, of the property proposed for rezoning. Note: Zone boundaries are to be the centerlines of physical streets, roads, highways, alleys, railroad rights-of-way and channelized waterways, or such lines extended.
  5. The acreage or square footage contained within the property proposed for rezoning.
  6. All existing land uses in the proposed rezoning area.
  7. Zoning and existing land uses on all lands adjacent to the proposed rezoning.
  8. The location and dimensions for all existing public rights-of-way, including streets, and centerlines of watercourses within and adjacent to the rezoning.
  9. The names of all adjoining subdivisions with lines of abutting lots, and departing property lines of adjoining properties not subdivided.
  10. Certificate blocks for the Surveyor, Planning Commission, Board of Trustees, and County Clerk and Recorder (see Workbook for examples).

11. An AutoCAD™ drawing file (Release 12 or higher) of the zoning amendment map on 3½" IBM-formatted disk or by other acceptable electronic transfer shall also be provided.
  - i. A written statement describing the proposal and addressing the following points:
    1. Need for the proposed rezoning.
    2. Present and future impacts on the existing adjacent zone districts, uses and physical character of the surrounding area.
    3. Impact of the proposed zone on area accesses and traffic patterns.
    4. Availability of utilities for any potential development.
    5. Present and future impacts on public facilities and services, including but not limited to fire, police, water, sanitation, roadways, parks, schools and transit.
    6. The relationship between the proposal and the Comprehensive Plan.
    7. Public benefits arising from the proposal.
  - j. Surrounding and Interested Property Ownership Report. Provide the Town Clerk with a current list (not more than thirty [30] days old) of the names and addresses of the surrounding property owners (within three hundred (300) feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
  - k. Public Hearing Notification Envelopes. Two (2) sets of stamped, addressed, certified (return receipt requested) envelopes. The envelopes shall have the Town's address as the mailing address and return address and the envelopes shall be addressed to the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, oil and gas lessees for the property and the appropriate referral agencies.
    - l. It is the applicant's responsibility to ensure that accurate and complete information is provided.
- (3) Step 3: Zoning Amendment Application Certification of Completion. Within a reasonable period of time, Staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application (as specified in the Zoning Amendment Technical Criteria form) to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink.
  - (4) Step 4: Final Staff Review and Report to Planning Commission. Staff shall complete a final review of the resubmitted materials and prepare a report to the Planning Commission explaining how the application is or is not consistent with the Criteria for Amendments to the Official Zoning Map or Criteria for Amendments to the Text of the Zoning Code.
  - (5) Step 5: Set Zoning Amendment Public Hearing and Complete Public Notification Process. The Town Clerk shall send notice of public hearing to the applicant, all property owners of record within three hundred (300) feet of the property in question, all mineral interest owners of record, oil and gas lessees for the property and the appropriate referral agencies no less than twenty-one (21) days before the

initial Planning Commission public hearing. Such notice shall not be required for text amendments. The Town Clerk shall also publish notice in a newspaper of general circulation. For zoning map amendments, the Town Clerk shall prepare a public hearing notification sign to be posted on the property by the applicant. The applicant shall furnish to the Town an affidavit of posting on a form provided by the Town Clerk. The hearing may be held no less than thirty (30) days from the date of property posting and newspaper publication. If the zoning amendment request is accompanying another application that is scheduled for public hearings before the Planning Commission and Board of Trustees, one (1) public hearing may be held on both applications.

- (6) Step 6: Planning Commission Public Meeting and Action on the Zoning Amendment. The Planning Commission shall hold a public hearing to review the zoning amendment based on the Criteria for Amendments to the Official Zoning Map or the Criteria for Text Amendments to the Zoning Code. The Planning Commission shall then make a recommendation to the Board of Trustees to approve, conditionally approve or deny the zoning amendment application.
- (7) Step 7: Finalize Zoning Amendment Based on Planning Commission Comments. The applicant shall revise the zoning amendment application based on the Planning Commission's comments and submit it to the Town.
- (8) Step 8: Notify Parties of Interest. Not less than twenty-one (21) days before the date scheduled for the initial Board of Trustees public hearing, Staff shall notify surrounding property owners within three hundred (300) feet, mineral interest owners of record, mineral and oil and gas lessees for the property and other interested parties. The notice shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property and the applicant's name. Such notice shall not be required for text amendments.
- (9) Step 9: Set Board of Trustees Public Hearing and Complete Public Notification Process. The Board of Trustees shall schedule a public hearing for the purpose of taking action on the zoning amendment. The Town Clerk shall publish notice in a newspaper of general circulation. The hearing may be held no less than thirty (30) days from the date of advertising.
- (10) Step 10: Board of Trustees Public Hearing and Action on the Zoning Amendment. The Board of Trustees shall, after receiving the report and recommendations from the Planning Commission, hold a public hearing and act upon the proposed amendment. Following the required hearing, the Board of Trustees shall consider the comments and evidence presented at the hearing, evaluate the application in accordance with the criteria listed below and approve, approve with conditions or deny the application, in whole or in part. No petition for rezoning shall be granted where, within one (1) year preceding the date of filing of such petition with the Town Clerk, a petition for the same changes of the zoning district on the property described in such petition has been denied.
- (11) Step 11: Post Approval Actions.
  - a. Upon approval of an amendment to the official zoning map by the Board of Trustees, the Town Clerk shall cause an appropriate revision of the official zoning map to be prepared for recording with the County Clerk and Recorder. In the event the zoning amendment was initiated by an interested party, the

- petitioner shall pay the Town's cost for the preparation of the revision to the official zoning map.
- b. Upon approval of an ordinance amending, changing or repealing part of the text of this Article, the Town Clerk shall certify a copy of the ordinance and place it in the official records of the Town and make appropriate supplements to this Article.
  - c. The applicant initiating the official zoning map amendment shall have thirty (30) days after approval of the amendment by the Board of Trustees to submit to the Town Clerk two (2) Mylar copies and three (3) blue-line copies of the approved zoning amendment map for recording, along with the recording fees and all other costs billed by the Town relative to the zoning amendment. A licensed surveyor or engineer shall prepare the zoning amendment map. Inaccurate, incomplete or poorly drawn plans shall be rejected. In addition, the petitioner shall submit one (1) eleven (11) inch by seventeen (17) inch Mylar reduction of the zoning amendment map and an AutoCAD™ drawing file (Release 12 or higher) of the zoning amendment map on 3½" IBM-formatted disk, or by other acceptable electronic transfer.
  - d. Within thirty (30) days of receipt of the zoning amendment map, the Town Clerk shall review the documents for compliance with the Board of Trustees' approval, obtain the Town officials' signatures and submit the approved zoning amendment map and the ordinance amending the official zoning map to the County Clerk and Recorder's Office for recordation.
- (d) Criteria for Amendments to Official Zoning Map. For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the official zoning map shall not be amended except:
- (1) To correct a manifest error in an ordinance establishing the zoning for a specific property;
  - (2) To rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the Town generally;
  - (3) The land to be rezoned was zoned in error and as presently zoned in inconsistent with the policies and goals of the Comprehensive Plan;
  - (4) To further the implementation of the goals and objectives of the Comprehensive Plan.
- (f) Map – Amendment upon Zoning Establishment or Modification. Upon enactment of any ordinance annexing and establishing zoning or modifying existing zoning for any property, and upon final passage thereof, the Town shall amend the prior existing official maps to include the annexed area with the proper zoning classification or show the amended classification, as the case may be. Such updated, current official map shall contain, in table form, the date and number of the ordinance amending it, the date the map was amended to reflect each amendment and the initials of the person who checked and approved the change to the map. (Ord. 480 §3.11, 2003; Ord. 522, 2005)

## **ARTICLE IV**

### **Subdivision Regulations**

#### *Division 1 General*

#### **Sec. 16-4-10. General provisions.**

- (a) The provisions of this Article, in conjunction with Article III, Zoning, of this Chapter, shall apply to any and all development of land within the municipal boundaries of the Town, unless expressly and specifically exempted or provided otherwise in these Regulations. No development shall be undertaken without prior and proper approval or authorization pursuant to the terms of these Regulations in conjunction with the Zoning Code. All development shall comply with the applicable terms, conditions, requirements, standards and procedures established in these Regulations in conjunction with the Zoning Code.
- (b) Except as herein provided, no building, structure or land shall be used and no building or structure or part thereof shall be erected, constructed, reconstructed, altered, repaired, moved or structurally altered except in conformance with the regulations herein specified, nor shall a yard, lot or open space be reduced in dimensions or area to an amount less than the minimum requirements set forth herein.
- (c) These Regulations, in conjunction with the Zoning Code, establish procedural and substantive rules for obtaining the necessary approval to develop land and construct buildings and structures. Development applications will be reviewed for compliance with the Comprehensive Plan and with adopted regulations, policies, plans, standards and other guidelines. (Ord. 480 §4.1, 2003; Ord. 620 §1, 2010)

#### **Sec. 16-4-20. Intent.**

This Article is designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the Town by:

- (1) Encouraging new subdivision developments to relate to the Town's historic development pattern.
- (2) Promoting compact, well-defined, sustainable neighborhoods that enhance the Town's character.
- (3) Creating livable neighborhoods that foster a sense of community and reduce dependency on private vehicles.
- (4) Encouraging the proper arrangement of streets in relation to existing or planned streets and ensuring streets are safe, efficient and pleasant for walking, biking and driving.
- (5) Providing a variety of lot sizes and housing types in every neighborhood.
- (6) Protecting sensitive natural and historic areas and the Town's environmental quality.
- (7) Providing for adequate and convenient open space for traffic, utilities, access of fire apparatus, recreation, light, air and for the avoidance of congestion of population.
- (8) Providing open spaces for adequate storm water management.
- (9) Providing adequate spaces for educational facilities.
- (10) Providing protection from geologic hazards and flood-prone areas.
- (11) Ensuring compliance with the Zoning Code, the Comprehensive Plan and all other adopted plans, and the community design principles and development standards contained in Article II of this Chapter.

- (12) Encouraging development to utilize green building techniques and ideas and alternative sources of energy.
- (13) Regulating such other matters as the Board of Trustees may deem necessary in order to protect the best interest of the public. (Ord. 480 §4.2, 2003; Ord. 620 §1, 2010)

**Sec. 16-4-30. Administration.**

- (a) All plans of streets or highways for public use, and all plans, plats, plots and replats of land laid out in subdivision or building lots, and the streets, highways, alleys or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the Planning Commission and/or Board of Trustees for review and subsequent approval, conditional approval or disapproval. No plat shall be recorded in any public office unless the same shall bear thereon, by endorsement or otherwise, the approval of the Planning Commission and/or Board of Trustees. Acceptance of proposed dedications by the public shall be given by separate action of the Board of Trustees.
- (b) If final approval of a land use application is done by the Planning Commission, the Planning Commission may forward the application to the Board of Trustees if they deem necessary or the Board of Trustees so requests. (Ord. 480 §4.3, 2003; Ord. 620 §1, 2010)

**Sec. 16-4-550. Subdivision improvements and development agreements.**

- (a) A subdivision improvement agreement stating the developer agrees to construct any required public improvements shown in the final plat documents, together with collateral which is sufficient, in the judgment of the Board of Trustees, to make reasonable provision for the completion of said improvements in accordance with design and time specifications, will be required. No subdivision plat shall be signed by the Town or recorded at the office of the County Clerk and Recorder, and no building permit shall be issued for development until a subdivision improvement agreement between the Town and the developer has been executed. Such agreement shall include a list of all agreed-upon improvements, an estimate of the cost of such improvements, the form of guarantee for the improvements and any other provisions or conditions deemed necessary by the Board of Trustees to ensure that all improvements will be completed in a timely, quality and cost-effective manner. A subdivision improvement agreement shall run with and be a burden upon the land described in the agreement.
- (b) Other agreements or contracts setting forth the plan, method and parties responsible for the construction of any required public improvements shown in the final plat documents may also be required.
- (c) As improvements are completed, the subdivider shall apply to the Board of Trustees for inspection of improvements. Upon inspection and approval, the Board of Trustees shall notify the subdivider that there is a two-year guarantee period before release of funds. If the Board of Trustees or respective special district determines that any of the required improvements are not constructed in compliance with specifications, it shall furnish the subdivider with a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure such compliance. If the Board of Trustees determines that the subdivider will not construct any or all of the improvements or remedy the deficiencies in accordance with all the specifications, the Board of Trustees may withdraw and employ from the deposit of collateral such funds as may be necessary to construct the improvements or remedy deficiencies in accordance with the specifications.

- (d) The following improvements shall be constructed unless waived by the Board of Trustees:
- (1) Road grading and surfacing.
  - (2) Curbs.
  - (3) Streetlights.
  - (4) Sidewalks.
  - (5) Sanitary sewer collection system.
  - (6) Storm sewers or storm drainage system, as required.
  - (7) Potable water distribution, including fire hydrants.
  - (8) Utility distribution system for public parks and open space.
  - (9) Street signs at all street intersections.
  - (10) Permanent reference monuments and monument boxes.
  - (11) Underground telephone, electricity and gas lines.
  - (12) Berm or fence along major arterial and collector streets.
  - (13) Required landscaping.
  - (14) Street trees.
  - (15) Underdrains.
  - (16) Required floodway improvements.
  - (17) Required irrigation ditch improvements.
- (e) Time for Completion. The required time for the completion of all required improvements shall be two (2) years from the recording date of the final map or plat. However, the Board of Trustees may extend such time for completion upon request from the subdivider. Upon completion of such improvements within the required time and approval thereof by the Board of Trustees, the Town shall cause the cash or letter of credit to be released within thirty (30) days of the Town's acceptance of such improvements and receipt of the required as-built drawings. When such improvements are not completed within the required time, the Town may cause the proceeds of the cash or letter of credit to be used to complete the required improvements.
- (f) Warranty. All workmanship and materials for all required improvements shall be warranted by the subdivider for a period of two (2) years from the date of the Town's acceptance of the required improvement; provided that any defects which are the result of public abuse, misuse or acts of God are not the responsibility of said subdivider. For perimeter fences that abut collector and arterial streets, the warranty period shall be two (2) years. The total amount of the guarantee shall be calculated as ten percent (10%) of the total estimated cost, including labor and materials, of all public improvements to be constructed. The Town shall not release the improvement guarantee until the Town has granted final acceptance of the improvements. In the event that any other provision of this Code or specifications adopted pursuant thereto requires a warranty of workmanship or materials for a different period of time, that provision requiring the longer period shall govern. The inspection or acceptance of any required improvement by the Town shall not relieve the subdivider of his or her warranty of workmanship and materials. (Ord. 480 §4.17, 2003; Ord. 620 §1, 2010)

**Sec. 16-4-130. Minor subdivision.**

(a) Definition. A minor subdivision is permitted under the following circumstances:

(1) Option 1:

- a. The property has previously been platted within the Town;
- b. There is no public right-of-way dedication;
- c. The resulting subdivision will produce five (5) or fewer lots; and
- d. There will be no exceptions to the Subdivision Design Standards.

(2) Option 2:

- a. The creation of a minor subdivision will be either consistent with the surrounding land uses and lot sizes; or
- b. The creation of a minor subdivision has become an appropriate land use based upon changed circumstances which, in conformance with applicable best planning practices, would dictate that this minor subdivision would create a significantly improved land usage.
- c. Upon compliance with Section 16-4-410(c)(1), the pre-application conference, the planning staff shall make its written recommendation as to the approval or denial of the minor subdivision. The Town Administrator shall, generally within ten (10) business days, accept or reject the recommendation of the Town's planning staff by the approval or rejection of the minor subdivision plat.
- d. The recommendation of the planning staff and the Town Administrator shall be provided in summary form to both the Board of Trustees and the Planning Commission within five (5) business days after approval or rejection. In order to ensure that the creation of minor subdivisions is public knowledge, each of these bodies shall have twenty (20) business days in which to provide any written objection to the determination made by the Town Administrator. If neither the Board of Trustees, nor the Planning Commission makes any written objection to staff's approval or denial, the applicant, if approval has been given, shall submit documentation to comply with Section 16-4-410(c)(2) through (6), as deemed applicable by staff.

(b) Process. The minor subdivision process is as follows (for more details refer to Section 16-4-410 of this Article):

- (1) Preapplication conference.
- (2) Technical Advisory Committee meeting.
- (3) Application submittal.
- (4) Staff certifies application is complete.
- (5) Staff refers application to parties of interest.
- (6) Staff reviews application and prepares comments.
- (7) Applicant responds to Staff comments.
- (8) Town schedules Planning Commission public meeting and completes public notification process.
- (9) Planning Commission public meeting.
- (10) Applicant addresses Planning Commission conditions.
- (11) Final Staff review.
- (12) Board of Trustees action.
- (13) Record minor subdivision plat. (Ord. 480 §1.6, 2003)

**Sec. 16-4-410. Minor subdivision plat.**

- (a) Purpose. The purpose of the minor subdivision plat is to complete the subdivision of land consistent with the technical standards when:
- (1) The resulting subdivision will produce five (5) or fewer lots, or
  - (2) The resulting subdivision is less than fifteen (15) acres.
- (b) Intent. The intent of the minor subdivision plat is to simplify the permitting process for creating five (5) or fewer lots. For example, if a property had been platted for a large commercial use and the landowner wishes to create several lots for smaller commercial users, the applicant could utilize this process. The minor subdivision process is not meant for consecutive minor subdivisions. For example, if a landowner divides a 100-acre property into five (5) lots, he or she may not use this process to continue to divide the property in the future to avoid having to comply with the major subdivision process.
- (c) Application Process
- (1) Step 1: Preapplication Conference. A preapplication conference with a representative from the Town is required before the applicant may submit a minor subdivision plat application. Topics to be discussed will include:
    - a. Town regulations and standards.
    - b. The application and review process.
    - c. Submittal requirements.
    - d. Schedule.
  - (2) Step 2: Minor Subdivision Plat Application Submittal. The applicant shall submit one (1) copy of the complete minor subdivision plat application package to the Town and shall request that the application be reviewed by the Planning Commission and Board of Trustees. The minor subdivision plat application shall include:
    - a. Land Use Application Form.
    - b. Minor Subdivisions - Technical Criteria Form (from Workbook).
    - c. Application Fee and Fee Agreement. A nonrefundable fee is collected to cover the cost of review by the Town Staff and notice and publication expenses. A deposit and fee agreement is necessary to cover costs for review of any other expert whom the Town may wish to employ. Actual costs may exceed the deposit; in this case, the applicant is liable for costs in excess of the deposit. The Town shall provide the applicant with a copy of the most current fee schedule and fee agreement form.
    - d. Title Commitment. The title commitment must be current and dated no more than thirty (30) days from the date of minor subdivision plat application submittal.
    - e. Mineral, Oil and Gas Rights Documentation. Evidence that the applicant has contacted all mineral rights owners and all lessees of mineral, oil and gas rights associated with the site by certified mail and is working towards resolution. Included in the evidence must be the name of the current contact person, his or her phone number and mailing address and a description of the issues. The mineral rights affidavit must be current and must be dated no more than thirty (30) days before the date of the sketch plan application submittal.
    - f. Legal Notice Form. The legal notice form will be provided by the Town and

filled out by the applicant and returned to the Town with an electronic copy of the legal description in MSWord™ format.

- g. Minor Subdivision Plat. The minor subdivision plat drawing shall comply with the following standards:
1. The plat shall be prepared by or under the direct supervision of a registered land surveyor and meet applicable State requirements.
  2. Noncontiguous parcels shall not be included in one (1) plat, nor shall more than one (1) plat be made on the same sheet. Contiguous parcels owned by different parties may be included on one (1) plat, provided that all owners join in the dedication and acknowledgment.
  3. Lengths shall be shown to the nearest hundredth of a foot and bearings shall be shown in degrees, minutes and seconds.
  4. The perimeter survey description of the proposed subdivision shall include at least one (1) tie to an existing section monument of record and a description of monuments. The survey shown shall not have an error greater than one (1) part in ten thousand (10,000).
  5. Bearings, distances and curve data of all perimeter boundary lines shall be indicated outside the boundary line, not inside, with the lot dimensions.
  6. The minor subdivision plat shall be twenty-four (24) inches high by thirty-six (36) inches wide and shall provide the following information:
    - a) Title of project.
    - b) North arrow, scale (not greater than 1" = 100') and date of preparation.
    - c) Vicinity map.
    - d) Legal description.
    - e) Basis for establishing bearing.
    - f) Names and addresses of owners, applicant, designers, engineers and surveyors.
    - g) Total acreage of subdivision.
    - h) Bearings, distances, chords, radii, central angles and tangent links for the perimeter, and all lots, blocks, rights-of-way and easements.
    - i) Lot and block numbers, numbered in consecutive order, and square footage of each lot or tract.
    - j) Excepted parcels from inclusion noted as "not included in this subdivision" and the boundary completely indicated by bearings and distances.
    - k) Existing and proposed rights-of-way in and adjacent to the subject property (labeled and dimensioned).
    - l) Existing and proposed street names for all streets on and adjacent to the property.
    - m) Existing easements and their type in and adjacent to subject property (labeled and dimensioned).
    - n) Location and description of monuments.
    - o) Floodplain boundary with a note regarding source of information (if a floodplain does not exist on the property, please state this on the plat).
    - p) Signature block for the registered land surveyor certifying to accuracy of boundary survey and plat. Town will provide format.

- q) Signature block for certification of approval by the Board of Trustees with a signature for the Mayor and Town Clerk. Town will provide format.
- r) Signature blocks for utility providers. Town will provide format.
- s) Certification of ownership and dedication of streets, rights-of-way, easements and public sites. Town will provide format.
- h. General Development Information. Provide a written description addressing how the proposed development conforms to this Land Use Code (including the community design principles and development standards, the Zoning Code and the subdivision regulations), the Johnstown/Milliken Parks, Trails, Recreation and Open Space Master Plan, the Transportation Plan and the Comprehensive Plan.
- i. Surrounding and Interested Property Ownership Report. Provide the Town Clerk with a copy of a current (not more than thirty [30] days old) list of the names and addresses of the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
- j. Block Diversity Plan. Refer to Section 16-2-40 of this Chapter for the plan requirements.
- k. Public Hearing Notification Envelopes. Provide the Town Clerk with two (2) sets of stamped, addressed envelopes. The envelopes shall have the Town's address as the mailing address and return address, and the envelopes shall be addressed to the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property and the appropriate referral agencies (as discussed in the preapplication conference).
- (3) Step 3: Application Certification of Completion. Within a reasonable period of time, Town staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application (as specified in the Minor Subdivision Plat Technical Criteria form) to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink.
- (4) Step 4: Application Certification of Completion. Within a reasonable period of time, Staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town. The original application and all documents requiring a signature shall be signed in blue ink.

- (5) Step 5: Refer Application to Parties of Interest. Not less than thirty (30) days before the date scheduled for public hearing or Staff decision, Staff shall send information about the application by regular mail to: adjacent municipalities, Weld County, mineral interest owners of record, mineral and oil and gas lessees for the property, ditch companies and other parties of interest. The referral information shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property and the applicant's name.
  - (6) Step 6: Staff Reviews Application and Prepares Comments. Staff will complete a review of the minor subdivision plat based on the Town's minor subdivision plat review criteria. Staff will then prepare a report identifying any issues of concern that the applicant shall address and forward it to the applicant.
  - (7) Step 7: Applicant Addresses Staff Comments. The applicant shall address the Staff's comments then submit the following to the Town:
    - a. Letter explaining how all of the comments have been addressed; and
    - b. Revised maps and other documents.
  - (8) Step 8: Schedule Minor Subdivision Public Meeting and Complete Public Notification Process. The Planning Commission shall schedule a public meeting for the purpose of making a recommendation on the minor subdivision plat. The Town Clerk shall publish notice in a newspaper of general circulation and send notice to neighboring property owners within three hundred (300) feet. The meeting may be held no less than twelve (12) days from the date of advertising.
  - (9) Step 9: Staff Review. Staff will complete a review of the resubmitted materials and then prepare a report to the Planning Commission explaining how the application is or is not consistent with the final plat review criteria.
  - (10) Step 10: Planning Commission Public Meeting and Decision. The Planning Commission shall hold a public meeting to review the application based on the minor subdivision plat review criteria. The Planning Commission shall then approve, deny or approve with conditions the application. If approved, the Town shall request two (2) original Mylars of the final plat ready for the Mayor and Clerk to sign and then record. Please note the Planning Commission may forward an application to the Town Board of Trustees if they deem it necessary.
  - (11) Step 11: Record Minor Subdivision Plat. One (1) original Mylar of the minor subdivision plat shall be recorded by the Town in the office of the County Clerk and Recorder. The recording fee shall be paid by the developer.
    - a. Prior to recording the plat, the applicant must demonstrate that all conditions of approval have been met.
    - b. The applicant must also present evidence that all review fees have been paid to the Town in the form of a final invoice that is marked paid in full by the Town.
    - c. Notice of approval of the Minor Subdivision Plat shall be submitted to the Town Board.
- (d) Minor Subdivision Plat Review Criteria. The Town shall use the following criteria to evaluate the applicant's request:
- (1) The land use mix within the project conforms to the zoning district map and furthers the goals and policies of the Comprehensive Plan, including:
    - a. The proposed development promotes the Town's small-town rural character;
    - b. Proposed residential development adds diversity to the Town's housing supply;
    - c. Proposed commercial development will benefit the Town's economic base;
    - d. Parks and open space are incorporated into the site design;
    - e. The proposed project protects the Town's environmental quality; and

- f. The development enhances cultural, historical, educational and/or human service opportunities.
- (2) The minor subdivision plat represents a functional system of land use and is consistent with the rationale and criteria set forth in this Code, the Milliken Comprehensive Plan, the Transportation Plan, the Johnstown/Milliken Parks, Trails, Recreation and Open Space Master Plan and the Community Design Principles and Development Standards in Division 2 of the Milliken Land Use Code.
  - (3) The utility and transportation design is adequate, given existing and planned capacities of those systems.
  - (4) Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.
  - (5) There is a need or desirability within the community for the applicant's development and the development will help achieve a balance of land use and/or housing types within the Town, according to the Town's goals. (Ord. 480 §4.10, 2003; Ord. 620 §1, 2010)

**Sec. 16-4-510. Amendments to recorded plats.**

- (a) Minor amendments which are filed with the County Clerk and Recorder to correct minor survey or drafting errors on a recorded plat shall be prepared in the form of an affidavit or, where deemed necessary for clarity, a revised plat certified by a land surveyor licensed with the State. All affidavits or corrected plats shall be reviewed and may be approved by the Town Staff. Notice of the minor amendment shall be given to the Planning Commission and Board of Trustees.
- (b) Amendments to a recorded plat which do not increase the number of lots or relocate or add roads or do not create more than five (5) total lots shall be submitted as a minor subdivision plat. The minor subdivision plat shall be prepared and submitted in compliance with the minor subdivision plat requirements at Section 16-4-410 of this Article. (Ord. 480 §4.13, 2003; Ord. 620 §1, 2010)

**Sec. 16-4-520. Resubdivision.**

The resubdivision of any lots, tracts or parcels, or the relocation or addition of streets within a subdivision, shall be considered a resubdivision (also known as a "replat") and shall be prepared and submitted in compliance with the requirements for a minor subdivision as set forth in this Article. In the event any dedicated streets are relocated as a result of a resubdivision, it is necessary for the Town to first vacate those existing streets, with said vacation to be effective prior to the approval of the final plat. Vacation of right-of-way shall conform to the requirements of Section 16-4-540 of this Article. (Ord. 480 §4.14, 2003; Ord. 620 §1, 2010)

**COMPREHENSIVE PLAN GOALS IMPLEMENTED**

The Town of Milliken 2009 Envision Framework Plan/2009 Comprehensive Plan Update states that the Town of Milliken's composition of land uses will ensure existing and future residents have a place to live, work and play. The Plan foresees the Town capitalizing on regional market opportunities to strengthen the demand for new employment and create new neighborhoods that integrate with the existing Town while providing a balance of housing types. New development and redevelopment will be located in areas where adequate public services and facilities exist or are planned to be provided. A variety in housing types, including multi-family housing, support employee recruitment, retention, economic development, and the ability for Milliken to become more of a full-service community. Most of the current housing stock is single-family residential starter homes or empty-nester higher-end housing. There is a need for more diversity.

## REVIEW CRITERIA

Lot Holding Investments LLC requested approval of the lot split and a commercial site plan for the two four-plexes in high density residential housing called Hacienda Villas in the Centennial Master Plan for the Planned Unit Development (PUD) zoning. The Town of Millken's 2009 Envision Framework Plan, which is part of the Comprehensive Plan, shows this area as high density residential housing too.

Lot Holding Investments provided a site specific plan for the proposed 11.621 acre parcel as the Brookstone Condominium/Townhouse Development. The market will determine what the other 12.404 acre parcel will be used for. Lot Holding Investments is contemplating uses such as patio homes, a community center to complement the multi-family housing, and/or a combination of multi-family housing units that are compatible with the high density residential PUD zoning originally proposed for the Brookstone Subdivision within the Centennial Master Plan and the Settlers Village PUD.

The Planning & Zoning Commission and the Board of Trustees is asked to review this application based on Section 16-4-130 "Minor Subdivision" which allows a parcel to be subdivided. Recently, this Section was amended with Ordinance No. 699. The Ordinance references Section 16-4-410(c) (2) through (6), which does not include the minor subdivision plat review criteria. It does say that:

- a. the creation of a minor subdivision will be either consistent with the surrounding land uses and lot sizes; or
- b. the creation of a minor subdivision has become an appropriate land use based upon a changed circumstances which, in conformance with applicable best planning practices, would dictate that this minor subdivision would create a significantly improved land usage.

Lot Holding Investments, LCC has been actively building single family residential housing in Settlers Village. The developer would like to see what the market absorption rate will be for multi-family housing by building 2 four-plexes, Brookstone Development Phase I, as part of a large development consisting of 12 three-plexes, 10 four-plexes, and 9 five-plexes totaling 31 units or 121 dwelling units on 11.62 acres with a density of approximately 10.4 dwelling units per acre. The 121 units will be condominiums on the proposed 11.62 acres after splitting the existing 24 acres with this requested lot split.

The site plan submittal shows the first four-plexes to be constructed along the proposed new lot line, which contains landscaping, drainage, and a regional 8 foot trail. This proposed trail links the existing sidewalk from Stage Coach Drive to the 50 foot State Highway buffer, which is reserved for landscaping and a trail along Highway 60 and provides a break in the high density housing proposed for the total 24 acres.

Staff talked with the applicant, Bret Hall, on October 13, 2015. He stated that the planned Centennial Master Plan Hacienda Villas, whose name changed to Brookstone later (referenced for example in the Housing Authority September 2012 minutes), shall still remain high density residential as originally proposed for the Centennial Master Plan and the Settlers Village PUD. The Centennial Master Plan shows high density residential housing as 25 dwelling units per acre on a total of 50 acres, which includes additional land within the Centennial Master Plan, including Fairfield Acres, Pheasant Hills, Trappers Village, and Homestead Hills.

Notices were sent to the property owners within 300 feet. The neighbors that came in to talk with staff seemed pleased that something was finally going to be developed on the land across the street, Stagecoach Drive, from them. Apparently, the tumbleweeds blow into people yards and cars drive very fast on Stagecoach without anything there except empty land. These neighbors think the new development will be an asset to their neighborhood.

Thus, the staff recommends the Commission approve the proposed lot split with the site plan review and approval. The proposed lot split for a condominium development consisting of 121 dwelling units conforms to the Town's Official Zoning Map and the Comprehensive Plan. The minor subdivision plat represents a functional system of land use and is consistent with the rationale and criteria set forth in the Code. There is a need or desirability within the community for the applicant's development of multi-family housing and the proposed lot line will allow the Lot Holding Investments, LLC to construct these units as part of a condominium development. The development will help achieve a balance of land use and/or housing types within the Town, according to the Town's goals.

### **FINDINGS OF FACT**

1. Lot Holding Investments LLC is requesting approval to administrative split approximately 24.025 acres into two parcels consisting of approximately 11.621 acres and 12.404 acres.
2. The ~24.025 acre parcel is referred to currently as the Brookstone Subdivision, which was previously known as Hacienda Villas within the Centennial Master Plan and Settlers Village Planned Unit Development site specific plans.
3. The Brookstone Subdivision was replatted on June 8, 2009 as a Replat of Lot 2, Block 2, Settlers Village Subdivision, Fifth Filing, located in the Northeast Quarter of Section 12, Township 4 North, Range 67 West of the 6 TH P.M., Town of Milliken, Weld County, Colorado.
4. The Planning & Zoning Commission and the Board of Trustees are asked to review this application based on Ordinance 699, amending the Town of Milliken's Land Use Code Section 16-4-130(2) allowing for the split lot.
5. The lot split is being reviewed by the Planning & Zoning Commission on the same date as the site plan to ensure that the proposal meets the Town's Comprehensive Plan, the Official Zoning Map, and the Centennial Master Plan and Settlers Village Planned Unit Development site specific plans as approved with the existing PUD zoning.

### **STAFF RECOMMENDATION**

Staff recommends approval of the petition to split approximately 24.025 acres through a minor subdivision process into two parcels consisting of approximately 11.621 acres and 12.404 acres be contingent upon the Commissioners and Trustees approval of the site plan submitted for the 11.621 acres as part of a phased development high density residential housing, known as Brookstone and Hacienda Villas, within the Centennial Master Plan and Settlers Village Planned Unit Development site specific planned PUD zoning.

## PLANNING AND ZONING COMMISSION APPROVAL

\_\_\_\_\_The Planning & Zoning Commission after hearing testimony, examination of the documents presented and the findings of fact finds the application MEETS the provisions of the Town of Milliken's Land Use Development Code (LUDC) Chapter 16 Sections et. seq. and APPROVES the request to split approximately 24.025 acres through a minor subdivision process into two parcels consisting of approximately 11.621 acres and 12.404 acres contingent upon the Commissioners and Trustees approval of the site plan submitted for the 11.621 acres as part of a phased development high density residential housing, known as Brookstone and Hacienda Villas, within the Centennial Master Plan and Settlers Village Planned Unit Development site specific planned PUD zoning for property located in Milliken, Colorado;

or:

\_\_\_\_\_The Planning & Zoning Commission after hearing testimony, examination of the documents presented and the findings of fact finds the application DOES NOT MEET the provisions of the Town of Milliken's Land Use Development Code (LUDC) Chapter 16 Sections et. seq. and DENIES the request to split approximately 24.025 acres through a minor subdivision process into two parcels consisting of approximately 11.621 acres and 12.404 acres contingent upon the Commissioners and Trustees approval of the site plan submitted for the 11.621 acres as part of a phased development high density residential housing, known as Brookstone and Hacienda Villas, within the Centennial Master Plan and Settlers Village Planned Unit Development site specific planned PUD zoning for property located in Milliken, Colorado.



## Town of Milliken Land Use Application Form

PROJECT NAME: Brookstone Phase 1		
DATE SUBMITTED: 8-14-2015	APPLICATION FEE: \$1,000	APPLICATION DEPOSIT: \$3,500
TYPE OF APPLICATION:		
<input type="checkbox"/> ANNEXATION <input type="checkbox"/> SITE PLAN REVIEW <input type="checkbox"/> VARIANCE <input type="checkbox"/> SKETCH PLAN <input type="checkbox"/> USE BY SPECIAL REVIEW – MAJOR <input type="checkbox"/> WAIVER <input type="checkbox"/> PRELIMINARY PLAT <input type="checkbox"/> USE BY SPECIAL REVIEW – MINOR <input type="checkbox"/> AMEND TO REC. PLAT <input type="checkbox"/> FINAL PLAT <input type="checkbox"/> USE BY SPECAIL REVIEW – GRAVEL <input type="checkbox"/> FLOOD PLAIN DEV. PERMIT <input type="checkbox"/> PLANNED UNIT DEVELOPMENT <input type="checkbox"/> USE BY SPECAIL REVIEW – OIL & GAS <input type="checkbox"/> COMP PLAN AMENDMENT <input type="checkbox"/> MAJOR SUBDIVISION <input type="checkbox"/> CHANGE OF ZONE <input type="checkbox"/> HOME OCCUPATION <input checked="" type="checkbox"/> MINOR SUBDIVISION/RE-SUBDIVISION <input type="checkbox"/> RURAL SUBDIVISION <input type="checkbox"/> OTHER: _____		
PRE-APPLICATION CONFERENCE WAS HELD WITH:		Date:
PROJECT INFORMATION		
Applicant's Name: Lot Holding Investments, LLC		Project Location: Settler's Villiage PUD
Address: P.O. Box 309, Milliken, CO 80543		Existing Use: High Density Residential
		Proposed Use: High Density Residential
Phone/Fax: 970-587-6904		Existing Zoning: PUD
Relation to Property Owner: Consultant		Proposed Zoning: PUD
Is site within Flood Plain? <input type="checkbox"/> FEMA <input type="checkbox"/> TOWN <input checked="" type="checkbox"/> NO		
Is site within Milliken's Planning Area? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
Legal Description of Property (location within section, section, township and range): See attached		
Total Acreage of Property under Consideration: 24.025		
Number of Existing Residential Lots: 1		Number of Proposed Residential Lots: 2
Number of Existing Commercial Lots:		Number of Proposed Commercial Lots:
Number of Existing Industrial Lots:		Number of Proposed Industrial Lots:
ADDITIONAL CONTACTS		Consultant: Ripley Design Inc.
Property Owner: Lot Holding Investments, LLC		Address: 419 Canyon Avenue, Suite 200
Address: P.O. Box 309		City/State/Zip: Fort Collins, CO
City/State/Zip: Milliken, CO 80543		Phone/Fax: 970-224-5828
Phone/Fax: 970-587-6904		Consultant:
Property Owner:		Address:
Address:		City/State/Zip:
City/State/Zip:		Phone/Fax:
Phone/Fax:		



# Town of Milliken Land Use Application Form

COMPREHENSIVE PLAN MAP DESIGNATIONS: High Density Residential

### LAND USE & PUBLIC FACILITIES

Land Use Designations: PUD Existing / PUD Proposed

Public Facilities:

### IMAGE AND DESIGN

Gateway:  YES  NO

Important Connection:  YES  NO

### TRANSPORTATION

Street Connections: The development will use the existing Settlers Village street system, adding street extensions off Stage Coach Drive.

### UTILITY AND SPECIAL DISTRICTS

Water: Town of Milliken

Sewer: Town of Milliken

Fire Protection: Johnstown Milliken Fire District

Other:

### PARKS, OPEN SPACE AND RECREATION

Proposed park and/or trail: The development will add the first portion of a trail linking to the future regional trail along Hwy 60.

### ENVIRONMENTAL ISSUES

Property in floodplain:  YES  NO

Sensitive wildlife habitat area:  YES  NO

Soil Type:

### OIL AND GAS

Oil and/or gas wells:  YES  NO

### CERTIFICATION

I certify that I am the lawful owner of the parcel(s) of land which this application concerns and consent to this action.

Owner: [Signature] Date: 8-14-15

I certify that the information and exhibits I have submitted are true and correct to the best of my knowledge. In filing this application I am acting with the knowledge and consent of the property owners. I understand that all materials and fees required by the Town of Milliken must be submitted prior to having this application processed. **(Please fill out an Owner's Affidavit form if you wish to have someone act on your behalf for this application.)**

Applicant: [Signature] Date: 8-14-15

### STAFF USE ONLY

APPLICATION ACCEPTED:

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

By: \_\_\_\_\_

Fee: \_\_\_\_\_



7251 West 20th Street, Building L, Suite 100  
Greeley, CO 80634  
Phone: (970) 330-4522  
Fax: (866) 828-0844

DATE: August 13, 2015  
FILE NUMBER: 459-H0412176-084-MG4, Amendment No. 1  
PROPERTY ADDRESS: vacant land, Milliken, CO 80543  
BUYER/BORROWER: To Be Determined  
OWNER(S): Lot Holding Investments, LLC  
YOUR REFERENCE NUMBER:  
ASSESSOR PARCEL NUMBER: R6777716

PLEASE TAKE NOTE OF THE FOLLOWING REVISED TERMS CONTAINED HEREIN:

None.

**WIRED FUNDS ARE REQUIRED ON ALL CASH PURCHASE TRANSACTIONS. FOR WIRING INSTRUCTIONS, PLEASE CONTACT YOUR ESCROW OFFICE AS NOTED ON THE TRANSMITTAL PAGE OF THIS COMMITMENT.**

---

TO: Heritage Title Company, Inc.  
7251 West 20th Street  
Building L, Suite 100  
Greeley, CO 80634

ATTN: Melinda Gualandri  
PHONE: (970) 324-2058  
FAX: (866) 828-0844  
E-MAIL: mgualandri@heritagetco.com

---

TO: Lot Holding Investments, LLC  
P.O. Box 309  
Milliken, CO 80543

ATTN: Pete Ziemke  
PHONE: (970) 587-6904  
FAX: (000) 000-0000  
E-MAIL: pziemke@hall-irwin.com

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TO: Greeley Escrow  
7251 West 20th Street  
Building L, Suite 100  
Greeley, CO 80634

ATTN: Melinda Gualandri  
PHONE: (970) 330-4522  
FAX: (866) 828-0844  
E-MAIL: mgualandri@heritagetco.com

END OF TRANSMITTAL

**Commonwealth Land Title Insurance Company  
COMMITMENT  
SCHEDULE A**

**Commitment No:** 459-H0412176-084-MG4, Amendment No. 1

**1. Effective Date:** August 6, 2015 at 7:00 A.M.

**2. Policy or policies to be issued:**

<b>Proposed Insured</b>	<b>Policy Amount</b>
<b>(a) ALTA Owners Policy 6-17-06</b>	<b>\$TBD</b>
<b>To Be Determined</b>	
<b>(b) None</b>	<b>\$0.00</b>

**3. The estate or interest in the land described or referred to in this Commitment is:**

**A Fee Simple**

**4. Title to the estate or interest in the land is at the Effective Date vested in:**

**Lot Holding Investments, LLC, a Colorado limited liability company**

**5. The land referred to in this Commitment is described as follows:**

**See Attached Legal Description**

(for informational purposes only) vacant land, Milliken, CO 80543

**PREMIUMS:**

**\$TBD**

## Attached Legal Description

Lot 2, Block 2, SETTLERS VILLAGE FIFTH FILING, according to the plat recorded May 14, 2012 at Reception Number 3845685, County of Weld, State of Colorado.

**SCHEDULE B – Section 1  
Requirements**

The following requirements must be met:

- a. Pay the agreed amounts for the interest in the land and/or for the mortgage to be insured.
- b. Pay us the premiums, fees and charges for the policy.
- c. Obtain a certificate of taxes due from the county treasurer or the county treasurer's authorized agent.
- d. Evidence that any and all assessments for common expenses, if any, have been paid.
- e. The Company will require that an Affidavit and Indemnity Agreement be completed by the party(s) named below before the issuance of any policy of title insurance.

Party(s): Lot Holding Investments, LLC

The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.

- f. Deed sufficient to convey the fee simple estate or interest in the Land described or referred to herein, to the Proposed Insured Purchaser.

NOTE: Statement of Authority for Lot Holding Investments, LLC recorded March 29, 2010 at Reception Number 3683489 discloses the following person(s) authorized to sign on behalf of the entity, pursuant to Colorado Revised Statutes:

Bret Hall, Manager.

- g. Furnish for recordation a partial release of deed of trust:

Amount: \$25,000,000.00  
 Trustor/Grantor: Lot Holding Investments LLC  
 Trustee: Public Trustee of Weld County  
 Beneficiary: First National Bank  
 Recording Date: February 26, 2008  
 Recording No: Reception No. 3537412  
 Modification of Deed of Trust recorded August 4, 2010 at Reception No. 3709745.

- h. Payment of fees disclosed by Agreement with Robert E. Ehrlich as disclosed by Notice of Agreement recorded August 7, 2006 at Reception Number 3409770.
- i. This commitment is subject to such further exceptions and/or requirements as may appear necessary when the name of the proposed insured has been disclosed.

NOTE: Exception number 5 will be removed from the policy provided the company conducts the closing.

END OF REQUIREMENTS



**SCHEDULE B – Section 2****Exceptions**

**Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction:**

1. Any facts, rights, interests or claims that are not shown by the Public Records but which could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachments, encumbrances, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by Public Records.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for the value the estate or interest or mortgage thereon covered by this Commitment.
6. Water rights, claims of title to water, whether or not these matters are shown by the Public Records.
7. All taxes and assessments, now or heretofore assessed, due or payable.
8. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded on May 4, 1910 in Book 132 at Page 290, and any and all assignments thereof or interest therein.
9. Terms, conditions, provisions, agreements and obligations specified under the Agreement by and between Edward H. Sappington, Matilda Sappington, Everett Sappington and Samuel D. Griffith recorded on July 16, 1942 in Book 1096 at Page 414.
10. An easement for waterline and incidental purposes granted to Little Thompson Valley Water District by the instrument recorded on February 5, 1964 in Book 506 at Reception Number 1428316.
11. An easement for pipeline and incidental purposes as evidenced in the instrument recorded June 19, 1975 at Reception Number 1663252.
12. An easement for waterline and incidental purposes as evidenced in the instrument recorded July 15, 1983 in Book 1002 at Reception Number 1933660.
13. An Oil and Gas Lease, from Ehrlich Feedlot, Inc. as Lessor(s) to T. S. Pace as Lessee(s) dated April 23, 1970, recorded on June 25, 1970 in Book 628 at Reception Number 1549950 and any and all assignments thereof or interests therein.
14. Terms, conditions, provisions, agreements and obligations contained in the Agreement by Milliken Sanitation District recorded on December 12, 1997 in Book 1637 at Reception Number 2584062.

15. Notices of Oil and Gas Interests and Surface Use by HS Resources recorded December 6, 2000 at Reception Numbers 2811307 and Reception No. 2811308.
  16. Terms, conditions, provisions, agreements and obligations contained in the Development Agreement recorded on March 5, 2001 at Reception Number 2830068.
  17. All matters shown on the plat of Settlers Village recorded March 20, 2001 at Reception Number 2833840.
  18. Terms, conditions, provisions, agreements and obligations contained in the Final PUD Site Plan recorded on March 20, 2001 at Reception Number 2833841.
  19. Ratification and Correction to Settlers Village Final Plat and PUD Site Plat recorded April 26, 2001 at Reception Number 2843814, correcting Lot 2, Block 2 as located at the intersection of Traders Lane and State Highway 60 to read Lot 1, Block 2.
  20. Ratification and Correction to Settlers Village Final Plat recorded August 1, 2001 at Reception Number 2870641, correcting 50 foot wide State Highway buffer along the North boundary of the plat to read 50 foot wide buffer, drainage and utility easement.
  21. Covenants, conditions and restrictions, which do not include a forfeiture or reverter clause, set forth in the instrument recorded on August 27, 2001 at Reception Number 2877827, Amendment thereto recorded October 26, 2009 at Reception Number 3655914. Annexation of Land recorded December 18, 2001 at Reception No. 2910142 and any and all amendments or supplements thereto. Provisions regarding race, color, creed, and national origin, if any, are deleted.
- NOTE: The subject property is listed in Exhibit C – Property Subject to Annexation but has not been annexed.
22. Terms, conditions, provisions, agreements and obligations contained in the Notice of Agreement recorded on August 7, 2006 at Reception Number 3409770.
  23. Order and Decree Organizing Centennial Crossing Metropolitan District No. 2 recorded January 5, 2007 at Reception Number 3445728.
  24. Any assessment or lien of Centennial Crossing Metropolitan District Nos. 1-8, as disclosed by the instrument recorded on March 2, 2007 at Reception Number 3459416.
  25. Terms, conditions, provisions, agreements and obligations contained in the Corporate Easement of Qwest Facilities as set forth below:
 

Recording Date:           October 14, 2003  
Recording No.:           Reception No. 3116711
  26. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat(s) of said subdivision set forth below:
 

Recording Date:           June 8, 2009

08/13/2015 11:04:01 AM

Commitment No.: **459-H0412176-084-MG4, Amendment No. 1**

Recording No: 3628109.  
Recording Date: May 14, 2012  
Recording No: Reception No. 3845685.

END OF EXCEPTIONS

**AFFIDAVIT AND INDEMNITY AGREEMENT**

**TO Heritage Title Company, Inc.** a Colorado Corporation and Commonwealth Land Title Insurance Company, a Nebraska Corporation.

- 1. This is written evidence to you that there are no unpaid bills, and to the extent there may be unpaid bills, that the undersigned undertakes and agrees to cause the same to be paid such that there shall be no mechanics or materialmen's liens affecting the property for materials or labor furnished for construction and erection, repairs or improvements contracted by or on behalf of the undersigned on property:

legally described as:

**See Attached Affidavit and Indemnity Agreement Legal Description**

Property Address: vacant land, Milliken, CO 80543

- 2. We further represent that to the actual knowledge and belief of the undersigned there are no public improvements affecting the property prior to the date of closing that would give rise to a special property tax assessment against the property after the date of closing.
- 3. We further represent that to the actual knowledge and belief of the undersigned there are no pending proceedings or unsatisfied judgments of record, in any Court, State, or Federal, nor any tax liens filed or taxes assessed against us which may result in liens, and that if there are judgments, bankruptcies, probate proceedings, state or federal tax liens of record against parties with same or similar names, that they are not against us.
- 4. We further represent that there are no unrecorded contracts, leases, easements, or other agreements or interests relating to said premises of which we have knowledge.
- 5. We further represent that to the actual knowledge and belief of the undersigned we are in sole possession of the real property described herein other than leasehold estates reflected as recorded items under the subject commitment for title insurance.
- 6. We further represent that there are no unpaid charges and assessments that could result in a lien in favor of any association of homeowners which are provided for in any document referred to in Schedule B of Commitment referenced above.
- 7. We further understand that any payoff figures shown on the settlement statement have been supplied to Heritage Title Company, Inc. as settlement agent by the seller's/borrower's lender and are subject to confirmation upon tender of the payoff to the lender. If the payoff figures are inaccurate, we hereby agree to immediately pay any shortage(s) that may exist. If applicable as disclosed or referred to on Schedule A of Commitment referenced above.

The undersigned affiant(s) know the matters herein stated are true and indemnifies **Heritage Title Company, Inc.**, a Colorado Corporation and Commonwealth Land Title Insurance Company, a Nebraska Corporation against loss, costs, damages and expenses of every kind incurred by it by reason of its reliance on the statements made herein.

This agreement is executed with and forms a part of the sale and/or financing of the above described premises, and is given in addition to the conveyance and/or financing of the premises in consideration for the conveyance and/or financing, and forms a complete agreement by itself for any action thereon.

**SELLER:**

**SELLER:**

\_\_\_\_\_  
Lot Holding Investments, LLC

State of Colorado  
County of **Weld**

}ss:

The foregoing instrument was acknowledged, subscribed, and sworn to before me on \_\_\_\_\_ by Lot Holding Investments, LLC.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

08/13/2015 11:04:01 AM

Commitment No.: **459-H0412176-084-MG4, Amendment No. 1**

**ATTACHED AFFIDAVIT AND INDEMNITY AGREEMENT  
LEGAL DESCRIPTION**

Lot 2, Block 2, SETTLERS VILLAGE FIFTH FILING, according to the plat recorded May 14, 2012 at Reception Number 3845685,  
County of Weld, State of Colorado.



# Commonwealth<sup>TM</sup>

LAND TITLE INSURANCE COMPANY

## COMMITMENT FOR TITLE INSURANCE

Issued by

**Heritage Title Company, Inc.**

**AS AGENT FOR**

**Commonwealth Land Title Insurance Company**

Commonwealth Land Title Insurance Company, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedule A and B and to the Conditions of this Commitment.

The Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not fault of the Company.

The Company will **provide** a sample of the policy form upon request.

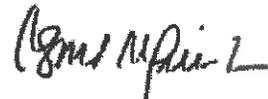
IN WITNESS WHEREOF, Commonwealth Land Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Attest:

  
Secretary



By:

  
President

### CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policies or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org>.

### DISCLOSURE STATEMENT

- Pursuant to Section 38-35-125 of Colorado Revised Statutes and Colorado Division of Insurance Regulation 3-5-1 (Section 7), if the parties to the subject transaction request us to provide escrow-settlement and disbursement services to facilitate the closing of the transaction, then all funds submitted for disbursement must be available for immediate withdrawal.
- Colorado Division of Insurance Regulation 3-5-1, Paragraph G of Section VII, requires that "Every title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all matters which appear of record prior to the time of recording whenever the title insurance company, or its agent, conducts the closing and settlement service that is in conjunction with its issuance of an owners policy of title insurance and is responsible for the recording and filing of legal documents resulting from the transaction which was closed". Provided that Heritage Title Company, Inc. conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception No. 5 in Schedule B-2 will not appear in the Owner's Title Policy and Lender's Title Policy when issued.
- If the sales price of the subject property exceeds \$100,000.00 the seller shall be required to comply with the Disclosure of Withholding Provisions of C.R.S. 39-22-604.5 (Nonresident Withholding).
- Section 39-14-102 of Colorado Revised Statutes requires that a Real Property Transfer Declaration accompany any conveyance document presented for recordation in the State of Colorado. Said Declaration shall be completed and signed by either the grantor or grantee.
- Recording statutes contained in Section 30-10-406(3)(a) of the Colorado Revised Statutes require that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right, and bottom margin of at least one-half of an inch. The clerk and recorder may refuse to record or file a document that does not conform to requirements of this paragraph.
- Section 38-35-109 (2) of the Colorado Revised Statutes, 1973, requires that a notation of the purchasers legal address, (not necessarily the same as the property address) be included on the face of the deed to be recorded.
- Regulations of County Clerk and Recorder's offices require that all documents submitted for recording must contain a return address on the front page of every document being recorded.
- Pursuant to Section 10-11-122 of the Colorado Revised Statutes, 1987 the Company is required to disclose the following information:
  - The subject property may be located in a special taxing district.
  - A Certificate of Taxes Due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent.
  - Information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder or the County Assessor.
- Pursuant to Section 10-11-123 of the Colorado Revised Statutes, when it is determined that a mineral estate has been severed from the surface estate, the Company is required to disclose the following information: that there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and that such mineral estate may include the right to enter and use the property without the surface owner's permission.
- Note: Notwithstanding anything to the contrary in this Commitment, if the policy to be issued is other than an ALTA Owner's Policy (6/17/06), the policy may not contain an arbitration clause, or the terms of the arbitration clause may be different from those set forth in this Commitment. If the policy does contain an arbitration clause, and the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

## FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE

Fidelity National Financial, Inc. and its majority-owned subsidiary companies providing real estate- and loan-related services (collectively, "FNF", "our" or "we") respect and are committed to protecting your privacy. This Privacy Notice lets you know how and for what purposes your Personal Information (as defined herein) is being collected, processed and used by FNF. We pledge that we will take reasonable steps to ensure that your Personal Information will only be used in ways that are in compliance with this Privacy Notice.

This Privacy Notice is only in effect for any generic information and Personal Information collected and/or owned by FNF, including collection through any FNF website and any online features, services and/or programs offered by FNF (collectively, the "Website"). This Privacy Notice is not applicable to any other web pages, mobile applications, social media sites, email lists, generic information or Personal Information collected and/or owned by any entity other than FNF.

### Collection and Use of Information

The types of personal information FNF collects may include, among other things (collectively, "Personal Information"): (1) contact information (e.g., name, address, phone number, email address); (2) demographic information (e.g., date of birth, gender marital status); (3) Internet protocol (or IP) address or device ID/UDID; (4) social security number (SSN), student ID (SIN), driver's license, passport, and other government ID numbers; (5) financial account information; and (6) information related to offenses or criminal convictions.

In the course of our business, we may collect Personal Information about you from the following sources:

- Applications or other forms we receive from you or your authorized representative;
- Information we receive from you through the Website;
- Information about your transactions with or services performed by us, our affiliates, or others; and
- From consumer or other reporting agencies and public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others.

Information collected by FNF is used for three main purposes:

- To provide products and services to you or one or more third party service providers (collectively, "Third Parties") who are obtaining services on your behalf or in connection with a transaction involving you.
- To improve our products and services that we perform for you or for Third Parties.
- To communicate with you and to inform you about FNF's, FNF's affiliates and third parties' products and services.

### Additional Ways Information is Collected Through the Website

**Browser Log Files.** Our servers automatically log each visitor to the Website and collect and record certain information about each visitor. This information may include IP address, browser language, browser type, operating system, domain names, browsing history (including time spent at a domain, time and date of your visit), referring/exit web pages and URLs, and number of clicks. The domain name and IP address reveal nothing personal about the user other than the IP address from which the user has accessed the Website.

**Cookies.** From time to time, FNF or other third parties may send a "cookie" to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive and that can be re-sent to the serving website on subsequent visits. A cookie, by itself, cannot read other data from your

hard disk or read other cookie files already on your computer. A cookie, by itself, does not damage your system. We, our advertisers and other third parties may use cookies to identify and keep track of, among other things, those areas of the Website and third party websites that you have visited in the past in order to enhance your next visit to the Website. You can choose whether or not to accept cookies by changing the settings of your Internet browser, but some functionality of the Website may be impaired or not function as intended. See the Third Party Opt Out section below.

**Web Beacons.** Some of our web pages and electronic communications may contain images, which may or may not be visible to you, known as Web Beacons (sometimes referred to as "clear gifs"). Web Beacons collect only limited information that includes a cookie number; time and date of a page view; and a description of the page on which the Web Beacon resides. We may also carry Web Beacons placed by third party advertisers. These Web Beacons do not carry any Personal Information and are only used to track usage of the Website and activities associated with the Website. See the Third Party Opt Out section below.

**Unique Identifier.** We may assign you a unique internal identifier to help keep track of your future visits. We may use this information to gather aggregate demographic information about our visitors, and we may use it to personalize the information you see on the Website and some of the electronic communications you receive from us. We keep this information for our internal use, and this information is not shared with others.

**Third Party Opt Out.** Although we do not presently, in the future we may allow third-party companies to serve advertisements and/or collect certain anonymous information when you visit the Website. These companies may use non-personally identifiable information (e.g., click stream information, browser type, time and date, subject of advertisements clicked or scrolled over) during your visits to the Website in order to provide advertisements about products and services likely to be of greater interest to you. These companies typically use a cookie or third party Web Beacon to collect this information, as further described above. Through these technologies, the third party may have access to and use non-personalized information about your online usage activity.

You can opt-out of online behavioral services through any one of the ways described below. After you opt-out, you may continue to receive advertisements, but those advertisements will no longer be as relevant to you.

- You can opt-out via the Network Advertising Initiative industry opt-out at <http://www.networkadvertising.org/>.
- You can opt-out via the Consumer Choice Page at [www.aboutads.info](http://www.aboutads.info).
- For those in the U.K., you can opt-out via the IAB UK's industry opt-out at [www.youronlinechoices.com](http://www.youronlinechoices.com).
- You can configure your web browser (Chrome, Firefox, Internet Explorer, Safari, etc.) to delete and/or control the use of cookies.

More information can be found in the Help system of your browser. Note: If you opt-out as described above, you should not delete your cookies. If you delete your cookies, you will need to opt-out again.

### When Information Is Disclosed By FNF

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To agents, brokers, representatives, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers who provide services or perform marketing services or other functions on our behalf;
- To law enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoenas or court orders; and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

In addition to the other times when we might disclose information about you, we might also disclose information when required by law or in the good-faith belief that such disclosure is necessary to: (1) comply with a legal process or applicable laws; (2) enforce this Privacy Notice; (3) respond to claims that any materials, documents, images, graphics, logos, designs, audio, video and any other information provided by you violates the rights of third parties; or (4) protect the rights, property or personal safety of FNF, its users or the public.

We maintain reasonable safeguards to keep the Personal Information that is disclosed to us secure. We provide Personal Information and non-Personal Information to our subsidiaries, affiliated companies, and other businesses or persons for the purposes of processing such information on our behalf and promoting the services of our trusted business partners, some or all of which may store your information on servers outside of the United States. We require that these parties agree to process such information in compliance with our Privacy Notice or in a similar, industry-standard manner, and we use reasonable efforts to limit their use of such information and to use other appropriate confidentiality and security measures. The use of your information by one of our trusted business partners may be subject to that party's own Privacy Notice. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

We also reserve the right to disclose Personal Information and/or non-Personal Information to take precautions against liability, investigate and defend against any third-party claims or allegations, assist government enforcement agencies, protect the security or integrity of the Website, and protect the rights, property, or personal safety of FNF, our users or others.

We reserve the right to transfer your Personal Information, as well as any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets. We also cannot make any representations regarding the use or transfer of your Personal Information or other information that we may have in the event of our bankruptcy, reorganization, insolvency, receivership or an assignment for the benefit of creditors, and you expressly agree and consent to the use and/or transfer of your Personal Information or other information in connection with a sale or transfer of some or all of our assets in any of the above described proceedings. Furthermore, we cannot and will not be responsible for any breach of security by any third parties or for any actions of any third parties that receive any of the information that is disclosed to us.

#### Information from Children

We do not collect Personal Information from any person that we know to be under the age of thirteen (13). Specifically, the Website is not intended or designed to attract children under the age of thirteen (13). You affirm that you are either more than 18 years of age, or an

emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Privacy Notice, and to abide by and comply with this Privacy Notice. In any case, you affirm that you are over the age of 13, as **THE WEBSITE IS NOT INTENDED FOR CHILDREN UNDER 13 THAT ARE UNACCOMPANIED BY HIS OR HER PARENT OR LEGAL GUARDIAN.**

Parents should be aware that FNF's Privacy Notice will govern our use of Personal Information, but also that information that is voluntarily given by children – or others – in email exchanges, bulletin boards or the like may be used by other parties to generate unsolicited communications. FNF encourages all parents to instruct their children in the safe and responsible use of their Personal Information while using the Internet.

#### Privacy Outside the Website

The Website may contain various links to other websites, including links to various third party service providers. FNF is not and cannot be responsible for the privacy practices or the content of any of those other websites. Other than under agreements with certain reputable organizations and companies, and except for third party service providers whose services either we use or you voluntarily elect to utilize, we do not share any of the Personal Information that you provide to us with any of the websites to which the Website links, although we may share aggregate, non-Personal Information with those other third parties. Please check with those websites in order to determine their privacy policies and your rights under them.

#### European Union Users

If you are a citizen of the European Union, please note that we may transfer your Personal Information outside the European Union for use for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information, you consent to both our collection and such transfer of your Personal Information in accordance with this Privacy Notice.

#### Choices with Your Personal Information

Whether you submit Personal Information to FNF is entirely up to you. You may decide not to submit Personal Information, in which case FNF may not be able to provide certain services or products to you.

You may choose to prevent FNF from disclosing or using your Personal Information under certain circumstances ("opt out"). You may opt out of any disclosure or use of your Personal Information for purposes that are incompatible with the purpose(s) for which it was originally collected or for which you subsequently gave authorization by notifying us by one of the methods at the end of this Privacy Notice. Furthermore, even where your Personal Information is to be disclosed and used in accordance with the stated purposes in this Privacy Notice, you may elect to opt out of such disclosure to and use by a third party that is not acting as an agent of FNF. As described above, there are some uses from which you cannot opt-out.

Please note that opting out of the disclosure and use of your Personal Information as a prospective employee may prevent you from being hired as an employee by FNF to the extent that provision of your Personal Information is required to apply for an open position.

If FNF collects Personal Information from you, such information will not be disclosed or used by FNF for purposes that are incompatible with the purpose(s) for which it was originally collected or for which you subsequently gave authorization unless you affirmatively consent to such disclosure and use.

You may opt out of online behavioral advertising by following the instructions set forth above under the above section "Additional Ways That Information Is Collected Through the Website," subsection "Third Party Opt Out."

#### Access and Correction

To access your Personal Information in the possession of FNF and correct inaccuracies of that information in our records, please contact us in the manner specified at the end of this Privacy Notice. We ask individuals to identify themselves and the information requested to be accessed and amended before processing such requests, and we may decline to process requests in limited circumstances as permitted by applicable privacy legislation.

#### Your California Privacy Rights

Under California's "Shine the Light" law, California residents who provide certain personally identifiable information in connection with obtaining products or services for personal, family or household use are entitled to request and obtain from us once a calendar year information about the customer information we shared, if any, with other businesses for their own direct marketing uses. If applicable, this information would include the categories of customer information and the names and addresses of those businesses with which we shared customer information for the immediately prior calendar year (e.g., requests made in 2013 will receive information regarding 2012 sharing activities).

To obtain this information on behalf of FNF, please send an email message to [privacy@fnf.com](mailto:privacy@fnf.com) with "Request for California Privacy Information" in the subject line and in the body of your message. We will provide the requested information to you at your email address in response.

Please be aware that not all information sharing is covered by the "Shine the Light" requirements and only information on covered sharing will be included in our response.

Additionally, because we may collect your Personal Information from time to time, California's Online Privacy Protection Act requires us to disclose how we respond to "do not track" requests and other similar mechanisms. Currently, our policy is that we do not recognize "do not track" requests from Internet browsers and similar devices.

#### Your Consent to This Privacy Notice

By submitting Personal Information to FNF, you consent to the collection and use of information by us as specified above or as we otherwise see fit, in compliance with this Privacy Notice, unless you inform us otherwise by means of the procedure identified below. If we decide to change this Privacy Notice, we will make an effort to post those changes on the Website. Each time we collect information from you following any amendment of this Privacy Notice will signify your assent to and acceptance of its revised terms for all previously collected information and information collected from you in the future. We may use comments, information or feedback that you may submit in any manner that we may choose without notice or compensation to you.

If you have additional questions or comments, please let us know by sending your comments or requests to:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer  
(888) 934-3354  
[privacy@fnf.com](mailto:privacy@fnf.com)

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