



**TOWN OF MILLIKEN
PLANNING COMMISSION
AGENDA MEMORANDUM**

To: Chairman Woodcock and Planning Commissioners From: Martha Perkins, Community Development Director Via: Kent Brown, Town Administrator		Public Hearing Date: November 18, 2015	
Agenda Item #	Action: x	Discussion:	Information:
Agenda Title: Public Hearing for review and approval of a commercial site plan for the Town of Milliken's Water Tank on approximately 2 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6 th P.M. Town of Milliken, Weld County Colorado.			
Staff Recommendation: Staff recommends approval by the Planning & Zoning Commission.			

PURPOSE

To consider a request from the Town of Milliken for site plan approval for the construction of a water tank and related utility infrastructure on approximately 2 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6th P.M. Town of Milliken, Weld County Colorado.

BACKGROUND INFORMATION

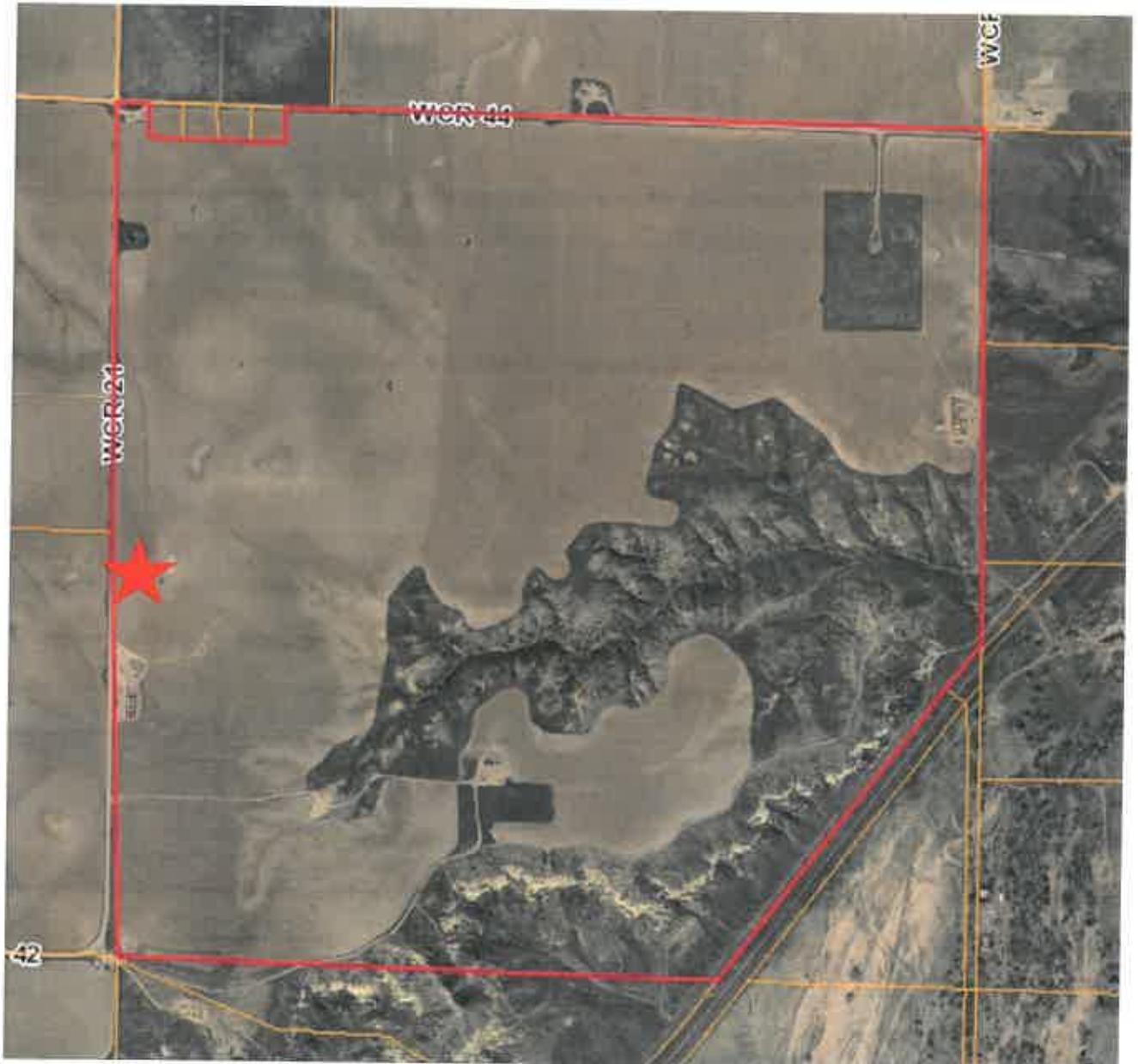
Type of Application:	Site Plan
Location:	Approximately 2 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6 th P.M. Town of Milliken, Weld County Colorado
Applicant/Property Owner:	Town of Milliken and Lot Holding Investments, LLC.
Existing Land Use:	Agricultural/ zoned PUD "Planned Unit Development"/
Surrounding Land Use:	North: zoned PUD "Planned Unit Development"/ agricultural use West: zoned PUD "Planned Unit Development" / agricultural use South: zoned PUD "Planned Unit Development" / agricultural use East: zoned PUD "Planned Unit Development" / agricultural use

Comprehensive Plan

The Comprehensive Plan designates the site area as Planned Unit Development with a golf course

Notice

Notice was mailed to Surrounding Property Owners within 300' of the proposed development via mail on October 15, 2015. The hearing was published in the *Johnstown Breeze* on October 22, 2015. Referral notices were mailed/emailed on October 15, 2015.



COMPLIANCE WITH TOWN LAND USE CODE

This staff memorandum is prepared in accordance with the Land Use Code as outlined below. Staff complied the most relevant sections of the Code for the Planning and Zoning Commission's and Town Board's review of the application. The applicable Code sections are included at the end of the staff report after the suggested motions for approval or denial of the request. This should enable a Commissioner or Board Trustee to look up relevant sections of the Code, but still allow he/or she to read through staff's review of the case more easily.

COMPREHENSIVE PLAN GOALS IMPLEMENTED

The 2009 Comprehensive Envision Milliken Framework Plan states under one of its guiding principles that the Town provide adequate water, sewer, and related utility services to meet the demand of existing and future residents and commercial and industrial growth. The Plan supplements this principle by recommending the Town find ways to become sustainable and less reliant on others to provide services, while still establishing agreements with utility providers in those areas where the Town is unable to provide service. It directs the Town to use the capital improvement program for planning utility extensions to guide the development of Milliken. Utility models should be used to evaluate new development to ensure that adequate facilities are available or can be made available in a timely and cost effective manner before the development can begin. Development patterns should be planned with consideration of the alignment and location of existing and future public facilities and infrastructure. This planning for adequate provision of public facilities should promote planned, rational, and affordable growth providing all residents equal, adequate services.

The Town of Milliken Land Use Code, Section 16-2-15 "Vision and Intent" under Subsection 3 "Public Facilities" requires adequate water and wastewater facilities exist prior to approval of new development. Water storage should be achieved without causing unnecessary negative visual impact. There must be adequate capacity in water and wastewater facilities prior to approval of new development. Thus, this proposed Milliken Water Tank project supports the Comprehensive Plan, by planning for the adequate provision of water necessary for the planned growth of Milliken.

REVIEW CRITERIA

The Town of Milliken, with Lot Holding Investments LLC as the current property owner, requests the approval of a minor subdivision. The minor subdivision will carve out approximately 2 acres out of approximately 593 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6th P.M. Town of Milliken, Weld County Colorado. Following this request is a commercial site plan request for the water tank on the resulting 2 acres.

Many municipal land use codes include exceptions for water tanks, wastewater treatment plants, and other large facilities that are required to provide basic local government services. The Town's Code requires site plan approval for all commercial and industrial developments, including public facilities, pursuant to Section 16-4-430 "Site Plan". The site plan shows how

the lot will be developed so that the Town can make sure that the site design will be in compliance with all Town regulations. Staff has tried to include the relevant, primary code regulations that apply to this particular case for the Commission and the Board to use in their review of the application.

The site plan must meet the following review criteria:

1. All of the information required on a site plan is shown.
2. The lot size and lot dimensions are consistent with what is shown on the approved final plat.
3. No buildings or structures infringe on any easements.
4. The proposed site grading is consistent with the requirements of the current Town Master Drainage Plan, on file at the Town Hall.
5. The density and dimensions shown conform to the density and dimensional standards at Section 16-3-490 of this Chapter or to the approved PUD requirements.
6. The applicable community design principles and development standards have been adequately addressed and the proposed improvements will conform with Article II of this Chapter.

The water tank site plan, utility plan, details, and grading plan is shown to scale on the drawings submitted and stamped by a professional engineer. The land will be transferred to the Town in the near future through a contract to buy and sell real estate (land) with Lot Holding Investments and the Town of Milliken. In the interim, a temporary construction and access easement exists to allow the Town to use the two acres for the construction of the water tank after obtaining the required governmental approvals.

Thus, the lot size and lot dimensions are correct and will match the plat that will be recorded if the minor subdivision is approved. The parcel is approximately 2 acres just off County Road 21's right of way along the Section line.

The Town made sure that no buildings or structures infringe upon any of the easements and that no utilities or pipelines will be affected. The Public Works department requested two separate locates to make sure that no underground structures, utilities, and/or pipelines existed in unexpected areas. Several pipelines were found, which the Town did not know about. Most of the utilities and pipelines run inside the right of way or alongside County Road 21, but on the opposite side of the road.

As part of the site plan submittal, a grading and storm drainage plan was included. All of the stormwater prevention requirements will be place before any land is disturbed and all of the silt fences and other stormwater prevention measures will be maintained. Disturbed areas will be seeded with native grasses as the project is constructed to control erosion and provide natural, low-water and maintenance landscaping.

The water tank will be located on land zoned Planned Unit Development (PUD). Ordinance 418, zoned this parcel PUD using the Centennial Conceptual Master Plan as the master site specific plan. The Plan encompassed several large parcels of land with a wide range of uses including single and multi-family housing, open space, recreation facilities, public infrastructure, schools, commercial/industrial developments, and public improvements/infrastructure. The proposed

water tank sits in Centennial Master Plan's Orchard Mesa Subdivision in the Bison Ridge Golf Course area. Water tanks are often found in golf courses.

In addition, the Centennial Master Plan supports the development of public improvements, including the development of water utility infrastructure. With the development of the Centennial Master Plan to date, public amenities include the non-potable water system, lakes, well rights, and water shares.

The neighbors within 300 feet, utilities, agencies, districts, mineral right owners and lessees, and Weld County were all notified. None of these entities voiced any concerns. The contractor shall provide the Town 3 days notice before commencing work and 2 days before disturbing any dirt, so the Town can make sure that all local, state, and federal regulations are followed and notice is given, if needed, to nearby property owners or users of the property, such as the farmer in the field adjacent to the tank.

Finally, the request needs to meet the applicable community design principles and design standards in Article II "Community Design Principles and Development Standards" given the use of the property. The water tank once built will not have a large impact on the surrounding area. It will not create any noise nor light. No buildings will exist. Currently, no buffering will be provided between the tank and the adjacent property, since it is being farmed.

The water tank will be accessible from County Road 21 on road base with a vehicle tracking control pad to prevent the mud or other debris from being tracked onto the public roadway. The asphalt base will be Colorado Department of Transportation Class 5 or 6 and 8 inches thick to allow for parking around the tank. The parking will not be striped nor will any American with Disabilities Act or bicycle parking be provided as required by Code due to the uniqueness of the site. In the future, if the need for such parking and accessibility exists then it will be provided.

The elevations show the tank as approximately 33 feet tall. The tank will be blue due to the cost to paint it tan or brown. The blue should blend into the horizon more than any other color available at the lower price.

Landscape improvements shall be grass, which should enhance the overall appearance of the development and integrate the project with adjacent agricultural land uses and the surrounding neighborhood. The landscaping will promote efficient use of water and reduce water runoff.

The water tank site plan application drawings notes state that all areas disturbed by construction activities shall receive 4 inches of top soil and be seeded. Soil preparation, fertilizer, seeding and mulching will be used. Between May 1 and July 1, the site shall be seeded with millet or sorghum at the rate of 40 pounds per acre with fertilizer consisting of 40 pounds per acre of nitrogen and 40 pounds per acre of phosphorus. Permanent seeding shall occur between December 1 and May 1 and between August 1 and September 1. The permanent planting will be with a grass seed drill at a depth of $\frac{1}{2}$ to $\frac{3}{4}$ of an inch with straw or hay mulch and crimped into the soil at a rate of 4,000 pounds per acre. Hydroseeding and hydromulching may be used instead. All seed will be free from noxious weeds. The plans note that the soil will be amended with compost at a rate of 1 cubic yard of compost per 1000 square feet of area planted.

The Code requirements are stricter. The Code requires organic industry-accepted, certified weed-free soil amendment (such as compost, peat or aged manure) thoroughly incorporated into the soil at a rate of at least four (4) cubic yards per one thousand (1,000) square feet of area to be planted, to a depth of at least six (6) inches. In addition, prior to installation of any turf grass and/or other planted area, all foreign waste materials, including concrete, plastic, wire and the like, along with rocks larger than three (3) inches, shall be removed from the top six (6) inches of soil. Also, wood-base mulch at a minimum of 4 inches must be used, rather than straw or hay. The developer shall affirm and certify, in writing, that the turf grass and/or planted areas have been installed according to these standards or that legally binding commitments have been made to install such soil amendments prior to installation of such turf grass and/or other plant materials pursuant to Section 16-2-422. Staff is not sure these Code requirements are reasonable given the use of the property, but this is for the Commission to determine.

Stormwater protection devices, temporary grass seeding, and permanent grass plantings should prevent any silt from flowing into the land being farmed next door. All landscaping and drainage facilities will be owned and maintained by the Town.

The Code requires parking lots to be screened through the use of dense shrubbery, low walls, berms or a combination of these methods at a minimum of 3 feet high so that at least 50% of the light from headlights of vehicles is screened from view beyond the parking lot pursuant to Section 16-2-463. The site may need a berm or landscaping around the parking on the sides adjacent to residential uses when the master site specific plan for the Centennial Master Plan PUD is built out. Currently, the adjacent property is being used for agriculture without any large residential or commercial development nearby.

The Code states that landscape improvements shall be an integral part of the overall site design for each property. All improvements shall consider the people who will use the site, travel through or by the site and adjacent land uses. A minimum of fifteen percent of the site shall be landscaped with a minimum of 50% of the landscaping between the front of the building and the street. Native grass seeds shall be certified weed-free. One tree must be planted per 1,000 square feet of landscaped area, distributed on the site. A minimum of one shrub per 150 square feet of landscaped area must be provided. Trees may be substituted for to ½ of the required of the required shrubs at the rate of 1 tree for every 10 shrubs. The Code encourages parking lots to be located in the back of the building with additional landscaping, including a minimum of 1 tree per 5 parking spaces. The use of landscaping is intended to break up the large expanses of pavement and create a tree canopy for summer shade. At this time, this seems like a bit too much to require.

If Town decides to chlorinate Town water at this site and construct a building, then the site plan will be modified to include lighting, parking, a fence, additional landscaping, and buffering from adjacent properties.

The Code allows the Planning Commission and Board of Trustees under Section 16-2-20 “Application of Community Design Principles” to evaluate each proposal based on these Article II design principles in the context within which a project is located. The principles are intended to be specific enough to guide development, but not to preclude creative design solutions.

Applicants must substantially conform to the design principles unless it can be demonstrated that an acceptable alternative meets one (1) or more of the following conditions:

1. The alternative better achieves the stated intent;
2. The intent will not be achieved by application of the principle in this circumstance;
3. The effect of other principles will be improved by not applying the principle; and/or
4. Strict application or unique site features make the principle impractical.

Because this request is for a Town water tank, staff believes the normal site plan requirements do not apply since the existing uses of the surrounding property are agricultural. Thus, the Town is asking for an exemption from the design principles for architecture, parking lot, and landscaping/buffering requirements. The strict site amenity requirements in the Code do not fit into the existing vast agricultural land nearby. Thus, the strict application or unique site features of this application make strict adherence to the design standards impractical. Thus, staff recommends approval with the condition that if a new building is added or more than 10% of the site is changed, then the Town must present the site plan to the Commission to make sure the required design principles for architecture, parking lot, and landscaping/buffering are met.

FINDINGS OF FACT

1. The Town of Milliken requests approval of a commercial site plan for the Town of Milliken's Water Tank on approximately 2 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6th P.M. Town of Milliken, Weld County Colorado.
2. The site plan approval is contingent upon the approval of a minor subdivision, which will carve out approximately 2 acres out of approximately 593 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6th P.M. Town of Milliken, Weld County Colorado.
3. Lot Holding Investments LLC's is the current property owner and is allowing the Town use of the property through a written agreement providing a temporary construction and access easement for the construction of the water tank.
4. The Town of Milliken's water tank site plan request varies from a typical commercial site plan.
5. The current adjacent land uses are primarily agricultural.

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission approve the site plan for the Town of Milliken's water tank with the condition that when the Centennial Master Plan Planned Unit Development golf course and/or single-family housing residential portion of the PUD is built or if the water tank site plan changes more than 10% then the Code's architecture/design standards must be met with additional buffering/landscaping, parking lot improvements, lighting, and possibly a trail connection to County Road 21.

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 for a commercial site plan for the construction of a water tank on approximately 2 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6th P.M. Town of Milliken, Weld County Colorado.

With/without conditions:

1. That when the Centennial Master Plan Planned Unit Development golf course and/or single-family housing is built or if the water tank site plan changes more than 10% then the Code's architecture/design standards must be met with additional buffering/landscaping, parking lot improvements, lighting, and possibly a trail connection to County Road 21;

And/or:

2. That the Town add buffering from adjacent properties and additional landscaping be provided with the soil augmentation ratios required by the Land Use Code at this phase of site development for the Town's water tank;

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 for a commercial site plan for the construction of a water tank and related utility infrastructure on approximately 2 acres off of County Road 21 in the Southwest Quarter of Section 23, Township 4, North Range 67, West of the 6th P.M. Town of Milliken, Weld County Colorado.

Town Code Sections of Relevance

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:

Character means those attributes, qualities and features that make up and distinguish a development project and give such project a sense of purpose, function, definition and uniqueness.

Commercial storage facility means cold storage plants and other such establishments renting storage space commercially.

Community Design Principles and Development Standards means the standards in the Town of Milliken *Land Use Code* set forth in Article II of this Chapter.

Compatibility means the characteristics of different uses, activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility

include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts. Other important characteristics that affect compatibility are landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, *compatibility* refers to the sensitivity of development proposals in maintaining the character of existing development.

Design standards means the standards that set forth specific improvements requirements.

Detention basin means a manmade or natural water collector facility designed to collect surface and subsurface water in order to impede its flow and to release the same gradually at a rate not greater than that prior to the development of property, into natural or manmade outlets.

Developer means any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

Development means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into two (2) or more parcels. When appropriate in context, *development* shall also mean the act of developing or the result of development. *Development* shall also include:

- a. Any construction, placement, reconstruction, alteration of the size or material change in the external appearance of a structure on land;
- b. Any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land or a material increase in the intensity and impacts of the development;
- c. Any change in use of land or a structure;
- d. Any alteration of a shore or bank of a river, stream, lake, pond, reservoir or wetland;
- e. The commencement of drilling oil or gas wells, mining, stockpiling of fill materials, filling or excavation on a parcel of land;
- f. The demolition of a structure;
- g. The clearing of land as an adjunct of construction;
- h. The deposit of refuse, solid or liquid waste, or fill on a parcel of land;
- i. The installation of landscaping within the public right-of-way, when installed in connection with the development of adjacent property; and
- j. The construction of a roadway through or adjoining an area that qualifies for protection as a wildlife or natural area.

Development shall not include:

- a. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way;
- b. Work by any public utility for the purpose of inspecting, repairing, renewing or constructing, on established rights-of-way, any mains, pipes, cables, utility tunnels, power lines, towers, poles or the like; provided, however, that this exemption shall not include work by a public entity in constructing or enlarging mass transit or fixed guide way mass transit depots or terminals or any similar traffic-generating activity;

- c. The maintenance, renewal, improvement or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure;
- d. The use of any land for an *agricultural activity* as defined in this Section.
- e. A change in the ownership or form of ownership of any parcel or structure; or
- f. The creation or termination of rights in land.

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.

Employees means the total number of persons to be employed in a building during normal periods of use.

Floodplain or flood hazard area means areas that have been designated by the Board of Trustees, the Colorado Water Conservation Board or FEMA as susceptible to flooding.

Flood-prone means areas subject to flooding that have not been designated by the Board of Trustees, the Colorado Water Conservancy Board or FEMA.

Floor area, also called *gross floor area*, means the total square footage of the building measured along the outside walls of the building and including each floor level, but not including open balconies, garages or other enclosed automobile parking areas and basement storage areas, and not including one-half (1/2) of all storage and display areas for durable goods

Freestanding sign means a sign which is not attached to any building and which is supported by a structure extending from the ground, or from an object on or in the ground.

Grade means:

- a. The lowest point of elevation of the finished surface of the ground, pavement or sidewalk within the area between the building and the property line, or when the property line is more than five (5) feet from the building, between the building and a line five (5) feet from the building.
- b. The degree of rise or descent of a sloping surface.

Grade, finished means the final elevation of the ground surface after development.

Grade, natural means the elevation of the ground surface in its natural state, before manmade alterations.

Ground or monument sign means a type of freestanding sign in which the entire bottom of the sign or the bottom of the sign support structure is in contact with or is close to the ground and is independent of any other structure.

Industrial, medium means a variety of uses, including warehousing and distributing, indoor and outdoor storage and a wide range of commercial and industrial operations, establishments for food and beverage processing, for the sale and repair of farm machinery and diesel trucks and buses, lumberyards and builders supply facilities (with outdoor storage), machine shops, mini-

storage facilities, outside storage facilities, railroad yards and stations, recycling facilities, transportation headquarters with incidental repair and servicing facilities, and utility service facilities with buildings and/or storage structures.

Infrastructure means those manmade structures which serve the common needs of the population, such as: potable water systems; wastewater disposal systems; solid waste disposal sites or retention areas; storm drainage systems; electric, gas or other utilities; bridges; roadways; bicycle paths or trails; pedestrian sidewalks, paths or trails; and transit stops.

Landscaping means any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, works of art, reflective pools, fountains or the like. *Landscaping* shall also include irrigation systems, mulches, topsoil use, soil preparation, revegetation or the preservation, protection and replacement of existing trees.

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.

Lot size means the total horizontal area within the lot lines of a lot; synonymous with *area of lot*.

Oil and gas operation means any structure, facility or activity which is constructed on or disturbs land in association with oil or gas drilling, production or waste treatment and disposal, including but not necessarily limited to wells, tanks or tank batteries, pits, access roads for ingress and egress and pipelines.

Outdoor storage means the keeping, in an unroofed area, of any equipment, goods, junk, material, merchandise or vehicles in the same place for more than twenty-four (24) hours. Containers and semi-trailers may not be used for residential or storage uses except on construction sites.

Owner means the person or entity that owns the property under consideration.

Parcel means a tract or plot of land.

Parking lot means an off-street parking area or vehicular use area.

Plan means the map and supporting documentation for a development that includes but is not limited to lots, blocks, easements, rights-of-way, pedestrian ways, park and school sites, open space areas and conservation areas in accordance with the requirements of this Code.

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.

Professional office means an office for professionals such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants and others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise exists, except as accessory to the professional services.

Proof of ownership means ownership as specified in a current title insurance commitment or policy, or certification of title, issued by a title insurance company licensed by the State of Colorado.

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 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.

Public hearing means a meeting called by a public body for which public notice has been given and which is held in a place at which the general public may attend to hear issues and to express their opinions.

Public improvement means any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree lawn, landscaped open space, off-street parking area, lot improvement or other facility that benefits the public.

Public utility means a common carrier supplying electricity, wire telephone service, natural gas, water, wastewater or storm water service or similar public services, but shall not include railroads or other forms of rail mass transit or depots or terminals supporting the same, or wireless telecommunication facilities.

Raw water means water rights acceptable to the Town of Milliken for domestic purposes, or water rights acceptable to the Town that may be used for irrigation of public facilities.

Replat (resubdivision) means the changing of any existing lot or lots, street rights-of-way or easements of a subdivision plat previously recorded with the County Clerk and Recorder.

Retention basin means a pond, pool or basin used for permanent storage of water runoff.

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.

Setback means the required unoccupied open space between the nearest wall of a structure and the property line of the lot on which the structure is located.

Setback, front means the distance between the front lot line and the front wall of the main structure.

Setback, rear means the distance between the rear lot line and the back wall of the main structure.

Setback, side means the distance between any wall and the lot line other than the front and rear setbacks.

Sign permit means a permit issued by the Town Building Official and which is required for any sign specified in this Code.

Site-built dwelling means a dwelling that is predominately constructed on-site and is not a factory built home or dwelling.

Site plan means a scale drawing of a lot, showing the actual measurements, the size and location of any existing or proposed buildings, the location of the lot in relation to abutting streets, and other details such as parking areas, access points, landscaped area, building areas, setbacks from lot lines, building heights, floor areas, densities, utility locations and easements.

Structure means anything constructed or erected on the ground, the use of which requires a more or less permanent location on the ground, but not including earthwork, ditches, canals, dams, reservoirs, pipelines, telephone, telegraph or electrical power poles, and public walks or curbs.

Subdivider or developer means any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

Subdivision means the platting of a lot or the division of a lot, tract or parcel of land into two (2) or more lots, plots or sites.

Title commitment means formal documentation from a title company listing the name of the owner of the property under consideration, the legal description of the property and any legal holdings on the property such as easements, rights-of-way or liens.

Town means the Town of Milliken located in Weld County, Colorado.

Town of Milliken Comprehensive Plan means the plan which was adopted by the Planning Commission and Board of Trustees in accordance with Section 31-23-206, C.R.S., to guide the future growth, protection and development of the Town of Milliken, affording adequate facilities for housing, transportation, comfort, convenience, public health, safety and general welfare of its population.

Transportation headquarters means headquarters and parking areas for ambulance services, taxi services, bus services and other services involving the transportation of persons but not property.

Utility service facilities mean utilities substations and public lift-up pumping stations for domestic water and sanitary sewer service, microwave towers and other such installations; does not include any such installations which contain buildings or storage structures; and does not include transportation headquarters.

Vacant land means land that does not have development on it.

Vegetation means plants growing in a place, including but not limited to trees, shrubs, vines, grasses and groundcover.

Warehouse and distribution means a use engaged in storage, wholesale and distribution of manufactured products, supplies or equipment, including accessory offices or showrooms, including incidental retail sales, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.

Warehousing means a business that stores or stocks merchandise or commodities.

Wholesale merchandise establishment means establishments for the sale of merchandise at the wholesale level, including those that warehouse merchandise in covered buildings.

Yard, front means a yard extending across the full width of the lot between the front lot line and the nearest line or point of the building.

Yard, front setback means the distance a building or structure must be placed from the back of the front property line.

Yard, rear means a yard extending across the full width of the lot between the rear lot line and the nearest line or point of the building.

Yard, rear setback means the distance a building or structure must be placed from the back of the rear property line.

Yard, side means a yard extending from the front yard to the rear yard between the side lot line and the nearest line or point of the building.

Yard, side setback means the distance a building or structure must be placed from the back of the side property line.

Zone district means a zone district of the Town of Milliken as established in Article III of this Chapter, unless the term is used in a context that clearly indicates that the term is meant to include both the zone districts of the Town of Milliken and the zone districts of an adjoining governmental jurisdiction. Also referred to as *zoning district*.

ARTICLE II

Community Design Principles and Development Standards

Division I General

Sec. 16-2-10. General provisions.

- (a) Applicability. All development applications and building permit applications shall comply with the applicable standards contained in this Article.
- (b) Relation to Zone District Standards (Section 16-3-490 of this Code). In the event of a conflict between a standard or requirement contained in Section 16-3-490 and this Article, the standard in Section 16-3-490 shall prevail. (Ord. 480 §2.1, 2003)

Sec. 16-2-15. Vision and intent.

- (a) The intention of the Town of Milliken in enacting this Article is to clearly describe the Town's vision and to create a vital, cohesive, well-designed community in order to enhance its small-town character and further the citizens' goals as identified in the *Milliken Comprehensive Plan* ("Comprehensive Plan").

... Visions for Community is an attempt to bring into the city a new form of urban design, one which predicts a shift in the ways a community attempts to consider its physical city, its environment, its traditions, ritual life and mores and how they all cohere into patterns we call city. This "new" form of urban design is in truth quite old. It reflects one of humankind's most primordial activities – the making of "space" into "place." It is considered new in this particular time because it is counter to the way cities have evolved during the twentieth century, by responding to the marketplace. It is considered new because it emphasizes "community" as its guiding imperative instead of economic gain, and "vision" as its principal operative rather than opportunism.

— Dallas Visions for Community, Dr. Gail Thomas

- (b) The Town has many attributes, but its greatest source of pride is its small-town character. This character is readily apparent and forms the foundation of the community. As the Town grows, the elements that contribute to this character must be strengthened and nurtured. As part of the comprehensive planning process, the citizens of the Town described these elements and their collective intentions for development of the community. Their vision and intentions are outlined below:
 - (1) Community.
 - a. The Town will continue to be peaceful, quiet and safe with citizens who know, respect and care for each other and have a general concern for the community as a whole.
 - b. Milliken will continue to be a wonderful place to raise a family. Residents will represent a broad diversity of people in terms of age, income, interests and

activities. Special attention will be given to the youth and seniors of the community.

- c. The Town's western and cultural heritage needs to be preserved through historic preservation efforts of its significant buildings and cultural events.
- d. The architectural styles used for new businesses will provide interesting, high-quality buildings while maintaining the small-town charm of Milliken.
- e. The development of new schools in the Town, as demand warrants, will be an important component of providing exceptional educational opportunities to the youth in the community.
- f. A spirit of cooperation will be fostered with the surrounding communities and the County.

(2) Housing.

- a. Neighborhoods will each have unique character and will be designed with pedestrian access and linkages to parks, schools, public facilities, downtown, commercial areas and the Milliken trail system.
- b. Additional variety of housing types will be available to reflect the diversity within the community. New development will include varying housing types, such as: single-family homes, row houses, small clusters of multi-family units and apartments, terraced town homes, senior housing and some manufactured homes. The diversity of product types available will accommodate a variety of lifestyles and income levels.
- c. New residential developments will reflect the diversity of existing neighborhoods and incorporate a variety of housing styles and types. Large-scale, "cookie-cutter" developments will not be allowed.
- d. Affordable housing will be dispersed among the mixture.
- e. Incentives will be investigated in order to upgrade existing housing that is in need of repair.

(3) Public facilities.

- a. Educational opportunities for all ages will be provided in many of the parks and public facilities throughout the community.
- b. The development of a new Community Center will be pursued to provide a pool, recreation and cultural center, fine arts theater and outdoor concert facility.
- c. The Thompson River corridor will be developed as a primary greenway over time, in order to highlight the scenic corridor and provide recreational opportunities.
- d. New development will pay for its infrastructure costs and required services.
- e. There must be adequate capacity in water and wastewater facilities prior to approval of new development. Water storage will be achieved without causing unnecessary negative visual impact.
- f. Convenient public transit will ultimately be made available to nearby urban areas. This includes the possibility of a connection to the commuter rail system that may one day be built between Fort Collins and Denver.

(4) Environment.

- a. The natural environment, the Town's most distinguishing feature, will be preserved and integrated into all aspects of community design. Special attention

will be given to the design of the Town's entryways, as well as open space preservation at the outskirts of the Town limits.

- b. Development will not be allowed on the bluffs, which are located north of the Big Thompson River and along ridgelines.
 - c. New developments will be built in harmony with the natural environment and take into consideration the physical constraints of the site, as well as aesthetic and ecological values of the land. Steep hillsides, drainageways and riparian areas will be protected.
- (5) Economic vitality.
- a. Downtown redevelopment will be an ongoing process to continue to strengthen the core community as an activity center and economic base.
 - b. Incentives will be investigated to encourage the development and expansion of local businesses in order to continue to create jobs within the community so that people can work and live in Town.
 - c. The Town's economic vitality will be achieved by allowing appropriate new development that enhances the community as a visitor destination and encourages small local businesses to thrive. A strong economy, combined with creative funding strategies, will enable the Town to invest in a number of desired amenities.
- (c) Overall, Milliken will continue to be a wonderful place to call "home," with an unsurpassed quality of life. (Ord. 480 §2.2, 2003)

Sec. 16-2-20. Application of community design principles.

- (a) The community design principles as set forth in this Article are to be considered in every development proposal. The Town's goal is to expedite the planning review process by clearly outlining the Town's expectations for new development. To this end, the Planning Commission invites applicants to participate in a visioning meeting prior to preparing the sketch plan application (refer to Section 16-4- 160 of this Code. The visioning meeting is an initial meeting between the developer and the Planning Commission. It is intended to begin a collaborative process to ensure that new development is consistent with the community's goals and that issues are identified early in the process.
- (b) The Planning Commission and Board of Trustees will evaluate each proposal based on these principles and the context within which a project is located. The principles are intended to be specific enough to guide development, but not to preclude creative design solutions. **Applicants must substantially conform to the design principles unless it can be demonstrated that an acceptable alternative meets one (1) or more of the following conditions:**
 - (1) The alternative better achieves the stated intent;
 - (2) The intent will not be achieved by application of the principle in this circumstance;
 - (3) The effect of other principles will be improved by not applying the principle; and/or
 - (4) Strict application or unique site features make the principle impractical. (Ord. 480 §2.3, 2003)

Community Design Principles and Development Standards

Division 3 Parking

The intent of this Division is to provide adequate parking for motor vehicles while minimizing the visual impact of parking lots and structures. (Ord. 480 §2.9, 2003)

Sec. 16-2-215. General provisions.

- (a) Provide off-street parking. In all zone districts, off-street parking facilities for the storage of self-propelled motor vehicles for the use of occupants, employees and patrons of the building or structures hereafter erected, altered or extended shall be provided and maintained as herein prescribed.
- (b) Provide adequate parking. If the use contemplated is not described in the required parking tables, the applicant must demonstrate that the parking as planned will be adequate to serve the needs of the proposed development.
- (c) Provide additional parking. At the time a property changes use, the applicant must demonstrate that the existing parking is adequate to serve the proposed use. It shall be the responsibility of the new user to provide additional parking if the existing parking does not meet the needs of the proposed use.
- (d) Surface. All parking and driveway areas and primary access to parking facilities shall be surfaced with asphalt, concrete or similar materials. The Board of Trustees, on a case-by-case basis, may consider grass-crete or similar porous pavement.
- (e) Integrate parking lots with surroundings. Parking lots shall not dominate the frontage of pedestrian-oriented streets, interfere with designated pedestrian routes or negatively impact surrounding neighborhoods. The pedestrian character of streets and buildings shall be maximized through continuity of buildings and landscape frontage.
- (f) Location. Parking lots shall be located to the rear or side of buildings or in the interior of a block whenever possible.
- (g) Landscaping. Parking lots shall be landscaped, screened and buffered as provided in Sections Division 5 and 6 of this Article.
- (h) Share-access. Where feasible, parking lots shall share access drives with adjacent property with similar land uses.
- (i) Off-street parking design. Any off-street parking area shall be designed so that vehicles may exit without backing onto a public street unless no other practical alternative is available. Off-street parking areas shall be designed so that parked vehicles do not encroach upon or extend onto public rights-of-way or sidewalks or strike against or damage any wall, vegetation, utility or other structure.
- (j) Circulation area design. Circulation areas shall be designed to facilitate the safe movement of vehicles without posing a danger to pedestrians or impeding the function of the parking area.
- (k) Lighting. All parking area lighting shall be full cut-off type fixtures. Any light used to illuminate parking areas or for any other purpose shall be so arranged as to reflect the light away from nearby residential properties and away from the vision of passing motorists.
- (l) Shared off-street parking. When there are opportunities to support parking demand through shared off-street parking for compatible uses (such as a movie theater and an office building), a parking study and shared parking agreements shall be used to demonstrate the adequacy of the parking supply as a substitute for standard parking requirements.

- (m) Adjacent on-street parking in MU-C-D Mixed-Use District. In order to promote a pedestrian scale and encourage a perception of safety in the MU-C-D, Mixed Use District, parking may be satisfied using adjacent on-street parking or shared rear-lot parking areas. A parking study and shared parking agreements shall be used to demonstrate the adequacy of the parking supply as a substitute for standard parking requirements. (Ord. 480 §2.9, 2003)

Sec. 16-2-220. Paved off-street parking requirements.

- (a) Paved off-street parking in nonresidential zones shall be provided according to the minimum requirements as specified below:

Nonresidential Off-Street Parking Minimum Requirements	
Land Use Type	Number of Parking Spaces Required
Industrial uses	.75 space per employee
Lodging uses	1 space per unit
Long-term care uses	.33 space per bed
Medical offices	4 spaces per 1,000 sq. ft.
Offices	3 spaces per 1,000 sq. ft.
Personal service uses	4 spaces per 1,000 sq. ft.
Restaurants	15 spaces per 1,000 sq. ft.
Fast food Standard	10 spaces per 1,000 sq. ft.
Retail	4 spaces per 1,000 sq. ft.
Theaters, places of assembly	1 space per 3 seats

Off-street parking for commercial uses shall be sufficient to provide parking for employees of all proposed uses, as well as long-term customer parking. Spaces reserved for employees shall be designated as such by means of striping and signage. Parking shall be located at the rear and sides of buildings to the greatest extent possible and screened from the view of streets as provided by Section 16-2-480 of this Article.

- (b) Parking for nonresidential land uses shall generally be required in the downtown area as shown in the following chart, but may be waived or reduced, depending on the nature of the proposed land use(s):

Nonresidential Off-Street Parking Standards	
Land Use Type	Number of Parking Spaces Required
Auto repair, low intensity retail, work shops	2 spaces per 1,000 sq. ft.
Banks, financial institutions	3 spaces per 1,000 sq. ft.
Bars, taverns, nightclubs	10 spaces per 1,000 sq. ft.
Grocery, supermarket	6 spaces per 1,000 sq. ft.
Child care	1 space per 8 students + 1 space per employee
Churches	1 space per 4 seats

Nonresidential Off-Street Parking Standards	
Land Use Type	Number of Parking Spaces Required
Convenience store with gasoline sales	1 space per island + 1 space per 150 sq. ft.
Hospitals	1 space per bed
Industrial uses	.75 space per employee
Lodging uses	1 space per unit
Long-term care uses	.33 space per bed
Medical offices	4 spaces per 1,000 sq. ft.
Offices	3 spaces per 1,000 sq. ft.
Personal service uses	4 spaces per 1,000 sq. ft.
Restaurants Fast food Standard	15 spaces per 1,000 sq. ft. 10 spaces per 1,000 sq. ft.
Retail	4 spaces per 1,000 sq. ft.
Theaters, places of assembly	1 space per 3 seats

Note: Square footage is based upon gross floor area of the related buildings.

Note: If the number of parking spaces required results in a fractional space, any fraction shall be counted as one (1) additional parking space.

Parking for residential land uses shall be required as follows:

Residential Off-Street Parking Standards	
Unit Type	Number of Parking Spaces Required
Single-family, town home and two-family unit	2.00 spaces per unit (in driveway)
Multi-family studio or efficiency unit	1.25 spaces per unit
Multi-family one-bedroom unit	1.50 spaces per unit
Multi-Family two-bedroom unit	1.75 spaces per unit
Multi-family three-bedroom unit	2.00 spaces per unit
Multi-family four + bedroom unit	3.00 spaces per unit
Guest parking for multi-family units, in addition to required resident parking	1 space per 5 units

(Ord. 480 §2.9, 2003)

Sec. 16-2-230. Handicap parking spaces.

Parking for the disabled shall be provided for multi-family and nonresidential land uses as required by the Americans with Disabilities Act (ADA) and shall be identified by an upright sign at least four and one-half (4 1/2) feet in height. (Ord. 480 §2.9, 2003)

Sec. 16-2-240. Bicycle parking spaces.

Commercial, industrial, civic, employment, multi-family and recreational uses shall provide bicycle facilities to meet the following standards:

- (1) A minimum number of bicycle parking spaces shall be provided, equal in number to two percent (2%) of the total number of automobile parking spaces provided by the development, but not less than one (1) space.
- (2) For convenience and security, bicycle parking facilities shall be located near building entrances. Within downtown commercial areas, however, a grouping of spaces shall be utilized as directed by the Town.
- (3) Bicycle parking facilities shall be designed to allow the bicycle frame and both wheels to be securely locked to a parking structure which is permanently attached to the pavement.
- (4) Bicycle parking facilities shall be designed so that they do not obstruct the flow of pedestrian, bicycle or vehicular traffic within the public way. (Ord. 480 §2.9, 2003)

Community Design Principles and Development Standards

Division 3 Public Property

Sec. 16-2-315. Easement and utility standards.

- (a) **Utility Easement Width.** Utility easements shall measure ten (10) feet on each side of abutting rear lot lines. On subdivision perimeter rear lot lines adjacent to unsubdivided property, utility easements shall measure ten (10) feet in width. In the event that the location of utility easements adjacent to rear property lines is unsuitable for use by utility companies due to drainage, irrigation ditches or other obstructions, the subdivider shall provide like-width easements adjacent to said areas of obstruction. Side lot line easements, where necessary, shall measure ten (10) feet in full width; five (5) feet either side of a lot line is acceptable. Front lot line easements shall measure thirteen (13) feet in width. Easements may be more or less than widths stated if the specific utility indicates in writing a width other than those required by this Code. Utility easements shall be subject to the approval of the Town or applicable utility company.
- (b) **Multiple Installations Within Easements.** Easements shall be designed so as to provide efficient installation of utilities. Public utility installations shall be located as to permit multiple installations within the easements. The developer will establish final utility grades prior to utility installations.
- (c) **Underground Utilities.** Telephone lines, electric lines, cable television lines and other like utility services shall be placed underground. Pedestals and transformers shall not be located in the front yard setback adjacent to public streets, unless they are underground and/or not visible to the traveling public. The subdivider shall be responsible for complying with the requirements of this Section and shall make the necessary arrangements, including any construction or installation charges, with each utility provider for the installation of such facilities. Transformers, switching boxes, meter cabinets, pedestals, ducts and other facilities necessarily appurtenant to such underground utilities shall be placed underground. **Screening or fencing is required to the satisfaction of the Board of Trustees.** Electric transmission and distribution feeder lines and necessary appurtenances thereto may not be placed above ground unless they are carrying greater than 115 kV. Such facilities shall be placed within easements or public streets, as therein provided, or upon private easements or rights-of-way provided for particular facilities. (Refer to Division 2, Street Standards of this Article. Utility easements have been identified outside the right-of-way in order to accommodate the location of street trees.)
- (d) **Street Lighting.** Street lighting and associated underground street lighting supply circuits shall be installed. The minimum requirement shall be two-hundred-fifty-watt sodium vapor

lamps at a maximum spacing of four hundred (400) feet for local streets. Arterial streets and commercial areas shall have a higher level of lighting as determined by the Board of Trustees. Street lighting shall also comply with Section 16-2-810 of this Article and be approved by the Town prior to installation. (Ord. 480 §2.11, 2003)

Community Design Principles and Development Standards

Division 5 Landscaping Standards

To exist as a nation, to prosper as a state, and to live as a people, we must have trees. – Theodore Roosevelt

Sec. 16-2-410. Intent.

- (a) The purpose of this Division is to protect and enhance the community's environmental, economic, recreational and aesthetic resources by promoting efficient use of water in the community's public and private landscape, reducing water waste and establishing procedures for the design, installation and maintenance of water-efficient landscapes throughout the jurisdiction.
- (b) Furthermore, these landscaping standards are intended to promote quality landscape design that:
 - (1) Reinforces the identity of the community and each neighborhood;
 - (2) Provides tree-lined streets in urban areas;
 - (3) Anchors new buildings in the landscape;
 - (4) Provides tree canopies within paved areas;
 - (5) Is environmentally sensitive by preserving existing trees, using water conservation techniques and planting native species (when appropriate), and enhances valuable habitat;
 - (6) Encourages the utilization of xeriscape principles; and
 - (7) Promotes efficient use of water and reduces water waste. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-412. Applicability.

- (a) **This Section applies to all new or renovated landscapes that require development review permits. However, both the standards and/or the submittal requirements may be amended with Town approval when necessary to reflect the individuality of the specific site and development.**
- (b) Please see Section 16-2-490 of this Division for a summary of the landscaping requirements based on development types.
- (c) **An applicant may use the Planned Unit Development zoning and approval process if necessary to amend the regulations to allow for individualized landscapes in connection with unique developments. (Ord. 607 §1, 2009)**

Sec. 16-2-415. General provisions.

All land development applications shall be accompanied by an appropriate landscape plan. Building permit applications for individual single-family residences will require landscape plans. However, all landscaping within the community shall comply with the intent of these regulations. Any landscaping in place at the time of the adoption of these regulations that does

not conform to these regulations will be considered legal nonconforming. However, any legal nonconforming landscaping on commercial, industrial and multi-family developments will be required to comply with these regulations if changes are made to more than twenty-five percent (25%) of the total landscaped area of the subject property. This twenty-five percent (25%) will be measured from the existing conditions at the time of the adoption of the ordinance codified herein and does not allow for repeated changes of less than twenty-five percent (25%) so as to avoid conformity. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Trees can transform a street more easily than any other physical improvement. Moreover, for many people, trees are the most important single characteristic of a good street.

– *Great Streets, Alan B. Jacobs*

Sec. 16-2-420. Street trees.

- (a) Landscape improvements in urban settings shall create an orderly, irrigated, managed landscape. All urban neighborhoods shall have tree-lined streets. Street trees shall include a mix of species and be aligned in straight rows. Street trees shall be placed within the right-of-way tree lawn. Spacing of trees shall allow for their mature spread. Trees installed along streets that will be widened in the future shall take into account plans for future widening of streets so that established trees will not be disturbed during future construction.
- (b) Landscape improvements in rural subdivisions, environmentally sensitive areas and lower-density, rural developments shall be native-looking and informal. Street trees in rural developments shall be planted to create irregular clusters of trees to reinforce the design and character of each project and to frame views. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-422. Soil amendments and mulch.

- (a) Soil amendments.
 - (1) Addition of proper and adequate soil amendments is required for all plantings. A soil amendment is any material added to improve its physical properties, such as water retention, permeability, water infiltration, drainage, aeration and structure, with the goal of providing a better environment for roots. In addition to helping the plants grow, this addition can also help with successful water conservation.
 - (2) Prior to the installation of turf grass and/or other plant materials in areas to be landscaped, the areas shall be thoroughly loosened, and organic industry-accepted, certified weed-free soil amendment (such as compost, peat or aged manure) shall be thoroughly incorporated (i.e., rototilled) into the soil at a rate of at least four (4) cubic yards of soil amendment per one thousand (1,000) square feet of turf grass and/or area to be planted, to a depth of at least six (6) inches. In addition, prior to installation of any turf grass and/or other planted area, all foreign waste materials, including concrete, plastic, wire and the like, along with rocks larger than three (3) inches, shall be removed from the top six (6) inches of soil. The developer shall affirm and certify, in writing, that the turf grass and/or planted areas have been installed according to these standards or that legally binding commitments have been made to install such soil amendments prior to installation of such turf grass and/or other plant materials.

(b) Mulch.

- (1) All plantable areas not covered with turf shall be covered with a minimum of four (4) inches of a suitable mulch to retain water and inhibit weeds. Nonporous fabrics (like black plastic) shall not be placed under mulches.
- (2) Mulch shall be of wood-based materials and does not include gravel, rock, grass clippings, straw, hay or leaves. (Ord. 607 §1, 2009)

Sec. 16-2-425. Site landscape design.

Landscape improvements shall be an integral part of the overall site design for each property. Landscape improvements shall be designed to complement and enhance the character of neighborhoods and shall follow these guidelines:

- (1) Landscaped areas shall be configured to *maximize their interconnectivity* within the site, to natural areas and to landscaped areas in adjacent developments. Small, isolated islands of landscaping should be avoided except as required in parking lots and for screening along roadways.
- (2) Landscaped areas shall enhance functional open space through the *creation of outdoor rooms* appropriate to the location and purpose of the open space within the development. This can be accomplished through a combination of plantings, fencing and berms and by using natural features on the site.
Use plantings and berms to create outdoor rooms in common open space areas.
- (3) Landscape improvements in all developments shall be *consistent with the character* of the proposed development and the surrounding area to reinforce neighborhood identity. For example, if the theme of the development is prairie grassland then fewer trees will be required while more shrubs and grasses will be necessary.
- (4) Landscape design shall *enhance natural features, drainage ways and environmental resources*.
- (5) All landscape improvements shall be designed for mature landscapes and shall provide appropriate *visibility for cars and pedestrians*. Landscaping shall be no more than thirty (30) inches high when located in a sight distance triangle.
- (6) Preserve and *frame views* both into and out of the neighborhood.
- (7) Incorporate the elements of *gateway, path and destination* into the design of landscapes. Gateways are entries that provide transitions from one (1) space to another. Pathways are routes that lead to a destination. Destinations are focal points that can include anything from a garden bench at the end of a path to a civic building at the end of a street. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-427. Water efficiency in landscape design.

Landscape improvements shall be designed with water efficiency as a goal. These guidelines shall apply to the design of all regulated landscapes:

- (1) Landscapes shall use the following *xeriscape design principles* to facilitate water conservation:
 - a. Well-planned planting schemes.
 - b. Appropriate turfs election to minimize the use of bluegrass.
 - c. Use of mulch to maintain soil moisture and reduce evaporation.
 - d. Grouping of plant materials according to their microclimatic needs and water requirements.

- e. Improvement of the soil with organic matter if needed.
 - f. Efficient irrigation systems.
 - g. Proper maintenance and irrigation schedules.
 - h. Design of landscaping to help minimize steep grades and reduce water runoff.
 - i. Minimize landscaping in strips less than eight (8) feet wide when necessary, such as between the street and the sidewalk.
 - j. In medians, use of native plants that require low amounts of water and maintenance.
- (2) Plants shall be selected appropriately based upon their adaptability to the climatic, geologic and topographical conditions of the site. Protection and preservation of native species and natural areas is encouraged. The planting of trees is encouraged wherever it is consistent with the other provisions of this Division. Please see the approved Town Plant Species List.
 - (3) Recirculating water shall be used for decorative water features.
 - (4) With prior written approval of the Town's designated staff, artificial plants, grass and other materials are allowed where they are aesthetically in accord with the neighborhood, of a quality consistent with current state-of-the-art products and in compliance with the requirements of this Code.
 - (5) Refer to Section 13-2-60 of this Code for the Town's watering restrictions.
 - (6) Refer to the Department of Local Affairs Smart Growth Office "WaterWise Landscaping Best Practices Manual" for a list of approved plant species for use as well as other pertinent information to help develop a water-efficient and water-conserving landscape. (Ord. 607 §1, 2009)

Sec. 16-2-430. Landscaping environmental considerations.

- (a) All landscapes shall strive to *maximize the use of native species*. Where native material is not appropriate for the intended use or appearance, plant species that are regionally adapted and noninvasive may be used.
- (b) Landscapes shall consist of a variety of species to *enhance biodiversity*. No one (1) species may make up more than twenty-five percent (25%) of the total non-grass plant materials on the site.
- (c) Buildings and parking areas shall be located to *preserve and promote the health of existing trees, environmental resources and natural drainage ways*. No healthy tree shall be removed without good cause. This requirement is not intended to prevent the removal of unhealthy trees in conjunction with site development.
- (d) Trees shall be located to *provide summer shade and limit winter shade* on walks and streets.
- (e) A combination of plantings, berms, walls and fences shall be used as appropriate to *buffer sensitive habitat*. Use buffers to protect the physical integrity of riparian ecosystems. Try to preserve vegetation and trees in streamside zone and middle zone. Encourage grass and landscaping in outer zone to filter runoff from backyards, parking areas, roads, etc.
- (f) Plants shall be selected to blend with the native vegetation for projects at the interface between urban areas and natural open space (nonirrigated). Locally recognized invasive introduced plants shall be unacceptable. Plants with low fuel volume and/or low flammability shall be emphasized.
- (g) All areas disturbed by construction shall be reseeded to *prevent erosion*. Erosion mats may be necessary under certain conditions. Native, noninvasive grasses shall be used for

revegetation where practical. Weed control is the responsibility of the landowner on all reseeded areas and all preservation areas. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-435. New buildings and paved areas.

- (a) Anchor structures in the landscape through the use of trees, shrubs and ground cover. The size and intensity of plantings shall be appropriate to the size and context of the improvements.
- (b) Integrate adjacent land uses of different intensities through a combination of berming, plantings and fencing. Use opaque screening only when necessary to mitigate the impact of noise, light, unattractive aesthetics and traffic. A fence shall not be the only screening material used. A combination of berming, planting and fencing to integrate land uses.
- (c) Use landscaping to provide a transition from developed, managed landscape to more natural vegetation.
- (d) Provide a tree canopy by installing shade trees within and adjacent to paved areas. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-440. Plant materials.

- (a) Minimum tree and shrub planting sizes shall be as follows:
 - (1) Ornamental trees: one-and-one-half-inch caliper.
 - (2) Deciduous shade trees: two-inch caliper.
 - (3) Evergreen trees: six-foot height.
 - (4) Shrubs: five-gallon.
- (b) Required plant materials shall be grown in a recognized nursery in accordance with proper horticultural practice. Plants shall be healthy, well-branched, vigorous stock with a growth habit normal to the species and variety and free of diseases, insects and injuries.
- (c) All plants shall conform to standards for measurements, grading, branching, quality, ball and burlapping as stated in the *American Standard for Nursery Stock*, 1990 Edition, American Association of Nurserymen, Inc. (AAN-ASNS), and the Colorado Nursery Act of 1965 (CNA).
- (d) Native grass seed mixes shall be certified as weed-free. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-450. Guarantee of installation.

Required landscape improvements shall be installed prior to issuance of a certificate of occupancy for all structures. If weather conditions prevent installation, the developer shall post a financial guarantee for the improvements. This guarantee shall be released upon completion of the installation of the landscaping. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-455. Maintenance.

- (a) In order to provide for the ongoing health and appearance of landscape improvements, all landscaping shall be maintained and replaced by the landowner/occupant as necessary. All property owners/occupants shall be responsible for maintenance of landscaping within the portion of the public right-of-way between the back of the curb or street pavement and the adjacent property.
- (b) A regular *maintenance schedule* satisfying the following conditions shall be submitted as part of the Landscape Documentation Package. A regular maintenance schedule shall

include, but not be limited to, checking, adjusting and repairing irrigation equipment, resetting the automatic controller, aerating and dethatching turf areas (only if needed), replenishing mulch, fertilizing, pruning and weeding in landscaped areas. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-463. Landscaping design standards and minimum requirements for common open space areas in residential areas and multi-family, commercial and industrial developments.

(a) Water efficiency in irrigation design.

- (1) All required landscaping shall be irrigated as required for plant establishment and maintenance. Irrigation shall be appropriate to the type and scope of the improvements.
 - a. Use of nontreated water for irrigation is encouraged if a permanent suitable supply is available. In the event that nontreated water is not continually available, an alternative supply of treated water shall be available by means of a separate line to avoid any possibility of cross-contamination.
 - b. Required landscaping shall be irrigated with a permanent irrigation system.
 - c. Irrigation for native grasses and vegetation shall be used for establishment and shall be available for maintenance if necessary.
- (2) Irrigation system improvements shall be designed to achieve water efficiency as a goal. These guidelines shall apply to the irrigation system design for all regulated landscapes:
 - a. Plant water requirements shall be considered in irrigation design schemes.
 - b. Hydraulic principles shall be employed when designing the irrigation system.
 1. Separate landscape meters shall be installed for all regulated landscapes.
 2. The irrigation system shall be designed to provide irrigation per Section 13-2-60 of this Code.
 3. The tap size shall be based on the water demand of the site and shall take into consideration the areas of each plant type (i.e., turf, native seed, perennials, annuals and shrubs), the evapotranspiration for the site, the water demand of each plant type at peak season and the water window.
 4. A reduced-pressure backflow preventer shall be used on all systems. The requirement of a backflow preventer may be waived if the irrigation system utilizes nonpotable water that is in no way connected to a domestic system.
 5. Turf and grass areas irrigation shall be designed using the following principles:
 - a) No single zone shall mix head types, such as rotors and pop-up spray heads in the same zone.
 - b) Sprinklers shall be spaced for "head-to-head" coverage where the spray pattern from one (1) head will reach to the next head.
 - c) Check valves shall be included in heads or valves where low drainage will occur due to elevation changes.
 6. Shrub bed areas with plant material one (1) gallon in size or larger shall be irrigated with a drip or subsurface system.

7. Where the water supplied will be from secondary or other nonpotable water sources, the use of nonpotable color indicators shall be used on the equipment. This includes purple handles on quick coupler valves and gate valves, caps for irrigation heads, valve box lids and marker tape buried above the mainline.
 8. All systems shall be equipped with an automatic rain shut-off device.
 9. All wire connections shall be made with watertight connectors and contained in a valve box.
- c. Irrigation control systems shall be employed that offer flexibility in programming.
1. All irrigation systems shall include an electric automatic controller with multiple programs and multiple repeat and rest cycle capabilities and a flexible calendar program.
 2. The controller shall have the ability to adjust run times based on percentage of maximum evapotranspiration rate.
 3. Each zone/valve shall have its own station on the controller.
- d. Installation of irrigation systems shall be per plan and accurate.
1. Mainline shall be tested to ensure its ability to maintain required pressure for two (2) hours. Proof of test and compliance shall be submitted to the Town.
 2. Before acceptance, each zone shall be operated and each valve box opened to verify accurate installation. Proof of test and compliance shall be submitted to the Town.
- e. "As-built" drawings of irrigation system may be provided after the installation, with dimensions shown for irrigation components depending on the development as designated by the Town.
1. The "as-built" drawings shall show all points of connection, including tap size, line size and static water pressure of service. Dimensions that will be used to locate components shall be shown on plans. Components to be located include meters, backflow preventers, all valves, including quick coupler, control, gate and manual drain valves, and controller locations.
 2. The drawings shall also show zone number, valve size, and gallons per minute.
- (b) Landscaping within right-of-way and required common open space. The developer or assigns shall provide:
- (1) Street trees: Deciduous shade trees, selected from the Town's tree list, shall be provided at the rate of one (1) tree on approximately forty-foot centers in tree lawns along all streets adjacent to or within new developments and for new single-family, two-family and townhome dwellings in existing neighborhoods along all streets. Where this spacing would result in a tree location in conflict with utility facilities or driveways, the spacing may be reduced or increased to facilitate the best location for tree planting purposes. Tree lawns between the curb and detached sidewalk shall consist of seventy- five percent (75%) live ground cover at maturity.
 - (2) Collector and local streets: Live ground cover, including a combination of grass, required street trees, flowers or shrubs. In commercial areas, this area may be paved if

- it functions as pedestrian access to storefronts and is integrated into the overall design of the other improvements on the site.
- (3) Arterial streets: Live ground cover as appropriate to the use and function of the area, including a combination of grass, required street trees, flowers, paving and one (1) shrub for every one hundred fifty (150) square feet of landscape area clustered into planting beds. The developer shall also install an automatic irrigation system for all landscaping within arterial rights-of-way.
 - (4) Landscaping for required common open space: Landscaping within new multi-family developments or other residential developments that have common open space shall be provided as specified within each land use category below. Landscape area shall include common open space within the development and shall be in addition to the required street trees in Paragraph (1) above.
 - (5) A mechanism for long-term maintenance of common open space and arterial and collector street right-of-way landscaping, such as a homeowners' association and covenants.
- (c) Multi-family and mixed-use district residential landscaping standards:
- (1) In addition to right-of-way landscaping, the developer or assigns shall provide:
 - a. Site trees: A minimum of one (1) tree per one thousand (1,000) square feet of landscaped area, distributed on the site.
 - b. Shrubs: A minimum of one (1) shrub per one hundred fifty (150) square feet of landscaped area. Group shrubs and distribute throughout the site. Trees may be substituted for up to one-half (1/2) of the required shrubs at the rate of one (1) tree for ten (10) shrubs.
 - c. Ground cover: Irrigated turf maintained to appropriate standards for active recreation in areas that will function for active recreation. Where appropriate, use native grass for areas that will not function as active recreation areas. Native grass must be weed-free and maintained at a maximum height of eight (8) inches. There shall be a minimum of seventy-five percent (75%) live materials at maturity between the front of the house and the curb unless approved by the Town. Mulch may be considered live ground cover as associated with plantings as approved by the Town.
 - (2) Landscape setback to parking lots: The density, width and quality of the buffer design shall be reviewed for approval by the Town. Signage may be included in this setback as long as it is not located within the sight distance triangle.
- (d) Business/commercial and industrial development landscaping standards.
- (1) Landscape improvements shall be designed to enhance the overall appearance of the development and integrate the project with adjacent land uses and into the surrounding neighborhood. All improvements shall consider the people who will use the site, travel through or by the site and adjacent land uses. A minimum of fifteen percent (15%) of the site (gross) shall be landscaped area. Of this fifteen percent (15%), there shall be a minimum of seventy-five percent (75%) live materials at maturity, fifty percent (50%) of which shall be between the front of the building and the street. **This requirement may be waived with Town approval.**
 - (2) Parking lots shall be screened through the use of dense shrubbery, low walls, berms or a combination of these methods a minimum of three (3) feet in height, so that at

least fifty percent (50%) of the light from headlights of vehicles in the parking lot is screened from view beyond the parking lot.

- (3) The developer or assigns shall provide:
 - a. Site trees: Plant a minimum of one (1) tree per one thousand (1,000) square feet of landscaped area, distributed on the site.
 - b. Shrubs: Plant a minimum of one (1) shrub per one hundred fifty (150) square feet of landscaped area. Group shrubs and distribute throughout the site. Trees may be substituted for up to one-half (1/2) of the required shrubs at the rate of one (1) tree for ten (10) shrubs.
 - c. Ground cover: Establish irrigated grass turf maintained to appropriate standards for active recreation in areas that will function for active recreation. Where appropriate, use native grass for areas that will not function as active recreation areas. Native grass must be weed-free and maintained at a maximum height of eight (8) inches. There shall be a minimum of seventy-five percent (75%) live materials at maturity between the building and the street unless approved by the Town. Mulch may be considered live ground cover as associated with plantings as approved by the Town.
 - d. Landscape setback to parking lots: The purpose of the setback is to provide a buffer between street parking areas. The density, design and quality of the buffer shall be reviewed for approval by the Town. Signage may be included in this setback as long as it is not located within the sight distance triangle.
 - e. Screen loading areas: Screen loading areas (including vehicles being loaded), service and storage areas visible from the public right-of-way or adjacent property with an opaque screen that is an integral part of the building architecture or by landscaping. Chain-link fencing with slats, tires or used building materials are not acceptable screening materials.
 - f. Compatibility: Integrate activities on the subject property with adjacent land uses by utilizing a combination of landscaping, building orientation and appropriate architectural elements.

Create pedestrian-friendly commercial areas by:

 - a. Providing open areas for gathering places.
 - b. Creating a tree canopy between on-street parking and store fronts to provide a separation between cars and sidewalks.
 - c. Landscaping parking lots.
- (4) The building owner or occupant shall maintain the yard and landscaping within the adjacent road right-of-way in accordance with Town regulations.
- (e) State highway corridor landscaping standards. The developer or assigns shall provide:
 - (1) Landscape setback to parking lots: Provide a fifty-foot landscape setback from the highway. The purpose of the setback is to provide a buffer between the street and parking areas. Signage may be included in this setback as long as it is not located within the sight distance triangle.
 - (2) Shrubs: A minimum of one (1) shrub per one hundred fifty (150) square feet of landscaped setback. Group shrubs and distribute throughout the landscape setback. Trees may be substituted for up to one-half (1/2) of the required shrubs at the rate of one (1) tree for ten (10) shrubs.

- (f) Downtown landscaping standards. Downtown landscaping is intended to provide an attractive environment for people to walk and shop. Refer to the streetscape at Section 16-2-835 of this Article for illustrations of the character and quality of landscaping the Town is seeking.
- (1) Deciduous shade trees, selected from the Town's tree list, shall be provided at the rate of one (1) tree on approximately forty-foot centers along all existing streets in the downtown area. Where this spacing would result in a tree location in conflict with utility facilities, alleys or driveways, the spacing may be reduced or increased to facilitate the best location for tree planting purposes. Trees installed along streets shall be located within a protective tree grate that shall be flush with the sidewalk.
 - (2) Additional landscaping may be provided in the form of planters or window boxes which shall be constructed of the same or similar materials used in the adjacent building or of similar materials used in benches and trash receptacles and may be designed to include bench seating.
 - (3) Buffering shall be provided between land uses of different intensities, such as between residential and commercial uses. The responsibility for buffering shall rest with the proposed land use, rather than with existing land uses. Buffering may be accomplished through the use of dense plant materials, fencing, walls, berms or a combination of these methods and shall provide visual screening between the land uses, as well as screen or mitigate other negative impacts such as noise or lighting.
 - (4) Existing trees shall be preserved where feasible and when the trees are in good health and of a desirable species. When trees are removed from a site, replacement shall be at a ratio of two (2) trees for every tree that was removed from the site or as approved by the Community Development Director.
 - (5) Street furniture, including benches and trash receptacles, shall be provided to serve the public and shall be constructed of a combination of wood and wrought iron or other similar metal. Planters may be constructed of the same or similar materials used in the adjacent building or of similar materials used in benches and trash receptacles and may be designed to include bench seating. All street furnishings in the downtown area shall meet standards established by the Town.
 - (6) Street lighting fixtures shall be on poles no higher than twelve and one-half (12 1/2) feet and shall be of the single-acorn Victorian style.
- (g) Parking lot landscaping standards. Parking lot landscaping is intended break up large expanses of pavement, create shade, buffer views of parking lots from adjacent streets and development and enhance the overall appearance of each project.
- (1) Applicability. All parking lots with fifteen (15) spaces or more shall be subject to these requirements. Landscape standards for parking lots within the downtown business district may be adjusted to provide the maximum number of parking spaces within the downtown area. The applicant must demonstrate that the variance from the standard will provide additional parking and provide alternative streetscape improvements to meet the intent of this Division.
 - (2) The developer or assigns shall provide:
 - a. Site trees: A minimum of one (1) tree per five (5) parking spaces. Group trees together in islands which are a minimum of ten (10) feet wide. Use the landscaping to break up large expanses of pavement and to create a tree canopy for summer shade.

- b. Shrubs: A minimum of one (1) shrub per one hundred fifty (150) square feet of landscaped area. Group plantings in landscape islands.
- c. Ground cover: Limit areas of irrigated turf. Grass is discouraged in areas less than ten (10) feet wide. Install a grass buffer (native grass where possible) around the perimeter to filter runoff and improve water quality.
- d. Landscape setback to parking lots: The purpose of the setback is to provide a buffer between the street and parking areas and to screen the parking from the street. The density, design and quality of the buffer shall be reviewed for approval by the Town.
- e. Screening: Parking lots shall be screened through the use of dense shrubbery, low walls, berms or a combination of these methods a minimum of three (3) feet in height, so that at least fifty percent (50%) of the light from headlights of vehicles in the parking lot is screened from view beyond the parking lot.
- f. Provide a mechanism for long-term maintenance of landscaping: All landscaping within and adjacent to parking lots shall be owned and maintained by the landowner or occupant. (Ord. 480 §2.13, 2003; Ord. 507 §1, 2005; Ord. 607 §1, 2009)

Sec. 16-2-465. Storm drainage facilities.

- (a) Intent. The intent of this Section is to promote innovative and effective land- and water-management techniques that protect and enhance water quality.
- (b) General provisions.
 - (1) Landscaping associated with storm drainage facilities shall be integrated into the overall design of the project.
 - (2) Stormwater drainage facilities shall enhance the overall appearance of the project, prevent erosion, minimize mosquito habitat and improve water quality of stormwater runoff whenever possible.
 - (3) Storm drainage facilities may function as open space for active recreation, trail corridors or habitat enhancement areas if they are designed appropriately and approved by the Board of Trustees.
 - (4) The use of planting strips and shallow, landscaped depressions in parking lots and along roads is encouraged to help trap and remove pollutants from stormwater runoff.
- (c) Applicability. All storm drainage facilities shall be appropriately landscaped.
- (d) Minimum requirements.
 - (1) All facilities shall be seeded to grass appropriate to the function of the area. Areas to be used for active recreation shall be seeded to a turf-type grass and irrigated with a permanent irrigation system. Areas to be maintained for habitat enhancement shall be seeded to native grasses and wildflowers. The developer is responsible for establishment of a complete, weed-free stand of grass. Trail corridors may be seeded to native grasses if appropriately integrated with adjacent improvements.
 - (2) Maximum side slope on drainage facilities shall be 4:1; minimum slope of the bottom of a drainage facility shall be one-half percent (0.5%).
 - (3) Landscape improvements shall be designed to enhance the function of the facility. Areas designed for recreation shall include clusters of trees to provide shade, located so they do not impair the function of the facility.

- (4) Habitat and water quality enhancement, including wetland plantings in low wet areas, is encouraged.
- (e) Ownership and maintenance. All drainage facilities shall be owned and maintained by the landowner or occupant unless otherwise approved by the Town. (Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-470. Submittal standards for landscape plans.

All land development applications will be accompanied by the appropriate landscape plan:

<i>TYPE OF APPLICATION</i>	<i>CONCEPTUAL LANDSCAPE PLAN</i>	<i>PRELIMINARY LANDSCAPE PLAN</i>	<i>FINAL LANDSCAPE PLAN</i>
Sketch Plan	X		
Preliminary Plat/PUD		X	
Final Plat/PUD			X
Conditional Use Review			X
Site Plan			X

- (1) Conceptual landscape plan (submit with sketch plan). Intent: to illustrate the overall design concept for landscaping and depict how it relates to the overall development.
 - a. Describe the design intention of the proposed landscape improvements.
 - b. This information should be included on the sketch plan map or combined with the conceptual open space plan if it can be clearly illustrated and the scale is not greater than 1" = 200'.
 - c. Information required on the plan is listed in the table which follows.
- (2) Preliminary landscape plan (submit with preliminary plat). Intent: to illustrate the master landscape plan for the development.
 - a. Describe the design intention and how the proposal is consistent with the purpose and intent of these regulations.
 - b. Landscaping should be included on the preliminary open space and ecological characterization plan if it can be clearly illustrated and the scale is not greater than 1" = 100'.
 - c. Information required on the plan is listed in the table which follows.
- (3) Final landscape plan (submit with final plat). Intent: to ensure that each phase of the final landscape plan is consistent with the master landscape plan for the development and to illustrate the specific landscaping details for each phase.
 - a. Describe the design intention and how the proposal is consistent with the preliminary landscape plan.
 - b. The final landscape plan must be on a separate page from the final plat map and should be included with the final open space and ecological characterization plan if it can be clearly illustrated. The scale shall not be greater than 1"=50'.
 - c. Information required on the plan is listed in the table which follows.

<i>INFORMATION REQUIRED</i>	<i>CONCEPT</i>	<i>PRELIMINARY</i>	<i>FINAL</i>
Scale, north arrow, site boundary.	✓	✓	✓
Existing and proposed streets.		✓	✓
Existing and proposed utilities and easements.		✓	✓
Existing contours (2' intervals), can be USGS for conceptual landscape plan.	✓	✓	✓
General grading concepts for proposed improvements, typical cross-sections of streets and special treatment areas.		✓	
Proposed contours (2' intervals).			✓
Describe the design intention.	✓	✓	✓
Describe the general character and location of proposed landscaping and open space and how it meets the purpose of these regulations.	✓		
Illustrate how the open space network and pedestrian circulation system will function.	✓		
Existing site features, including ditches, trees, shrubs and ground cover, and any drainage ways, wetlands or wildlife habitat present on the site. Indicate which plants will be preserved, the method of preservation and which will be removed.	✓	✓	✓
Proposed landscaping, including trees, shrubs, ground cover, walks, fences. Show which plantings are deciduous and evergreen.		✓	
Indicate which areas will be irrigated and method of irrigation.		✓	✓
Typical detail drawings at 1" = 20' to illustrate perimeter treatment, buffering, typical front yard and any special treatment areas on the site.		✓	
Define areas to be considered open space and if they will be public or private. Indicate how open space will be maintained, including erosion control, revegetation and weed management, both during and after construction.		✓	✓
Detailed planting plan indicating location, species, size and quantity of all proposed plantings and ground cover. Improvements shall be shown in their final location and mature size. Include a plant list in chart form and description of the type and location of ground cover, walks, fences and mulches. Include a cost estimate for improvements. (This may be submitted as a separate sheet and is not required on the plans.)			✓

(Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-475. Prohibited plant materials list.

- (a) The following list of trees are prohibited in the Town:
- (1) Russian olive (an invasive species that threatens native trees in
 - (2) Lombardy poplar (susceptible to canker-forming fungi for controls).
 - (3) Siberian elm (can dominate native vegetation, especially in disturbed areas; is weak-wooded and subject to continuous dieback when large; can be devastated by the elm leaf beetle).
 - (4) Boxelder maple (primary host plant of the Boxelder bug).
 - (5) Cotton-bearing cottonwood. The Board of Trustees will consider cotton-bearing cottonwood on a case-by-case basis for restoration projects along riparian corridors (often considered a public nuisance).
- (b) All plant species on the Colorado State Invasive and Noxious Weed List are prohibited.
(Ord. 480 §2.13, 2003; Ord. 607 §1, 2009)

Sec. 16-2-480. Buffering and screening techniques.

- (a) Intent. The intent of this Section is to integrate adjacent land uses and provide seamless transitions from one (1) use to another through the use of building orientation and access, landscaping and appropriate architectural elements.
- (b) General provisions.
 - (1) Special consideration shall be given to adjacent land uses of different intensities. **The responsibility for buffering shall rest with the proposed land use, rather than with existing land uses.** The developer shall ensure that the transition from one (1) use to another is attractive and functional and minimizes conflicts between the current and planned uses.
 - (2) **Buffering can be accomplished through the effective use of shared access and parking, appropriate building orientation and setbacks, landscaping, architectural treatment and limited use of fencing and screening walls. Special consideration shall be given to the impact of aesthetics, noise, lighting and traffic.**
 - Integrate adjacent land use through appropriate:
 - 1. building orientation and setback;
 - 2. landscaping;
 - 3. access;
 - 4. architectural elements.
 - (3) Buffering may be required between any development and adjacent natural or environmentally sensitive areas. This will be determined on a case-by-case basis.
 - (4) Under no circumstances shall a fence be the only screening material used as a buffer between land uses.
- (c) Location and screening of required loading and service areas.
 - (1) Loading docks, solid waste facilities, recycling facilities and other service areas shall be placed to the rear or side of buildings in visually unobtrusive locations.
 - (2) Screening and landscaping shall prevent direct views of the loading areas and their driveways from adjacent properties or from the public right-of-way. Screening and landscaping shall also prevent spill-over glare, noise or exhaust fumes. Screening and buffering shall be achieved through walls, architectural features and landscaping and shall be visually impervious. Recesses in the building or depressed access ramps may be used.
- (d) Dumpsters.
 - (1) Every development that is required to provide one (1) or more Dumpsters for solid waste collection shall provide sites for such Dumpsters that are:
 - a. Located to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties or public rights-of-way; and
 - b. Constructed to allow for collection without damage to the development site or the collection vehicle.
 - (2) All such Dumpsters shall be screened to prevent them from being visible to:
 - a. Persons located within any dwelling unit on residential property other than that where the Dumpster is located;
 - b. Occupants, customers or other invitees located within any building on nonresidential property other than that where the Dumpster is located; and

- c. Persons traveling on any public street, sidewalk or other public way. (Ord. 480 §2.15, 2003; Ord. 607 §1, 2009)

Sec. 16-2-485. Fences and walls.

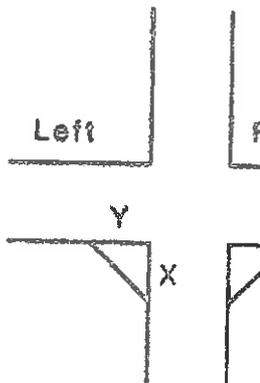
- (a) Intent. The intent of this Section is to ensure that walls and fences are attractive and in character with the neighborhood. Recognizing that fences are used to create privacy, the Town encourages privacy fences (six-foot and solid) be located close to the house and not alongside and rear property lines.
- (b) General provisions.
 - (1) Compatibility. Walls and fences shall be architecturally compatible with the style, materials and colors of the principal buildings on the same lot. If used along collector or arterial streets, such features shall be made visually interesting by integrating architectural elements such as brick or stone columns, varying the alignment or setback of the fence, softening the appearance of fence lines with plantings or through similar techniques. A fence or wall may not consist of a solid, unbroken expanse for more than fifty (50) feet for every seventy-five (75) feet of length, or portion thereof. See Section 16-2-835 of this Article for examples. Fence support posts should be constructed inside the fence and should not be visible from the outside of the fence, and all exterior fences made of wood shall be finished with a clear seal or left in their natural state. Decorative or ornamental fence support structures may be visible if approved by the Community Development Director.
 - (2) Materials.
 - a. Stone walls, or brick walls with a stone or cast stone cap, treated wood fences, decorative metal, cast iron fences, stucco walls and stone piers are encouraged. Solid walls and fences are permitted only in rear and side yards. Retaining walls are permitted where required for landscaping and approved with a final drainage plan for architectural purposes. Hedges may be used in the same manner and for the same purposes as a fence or wall. Refer to Section 16-2-835 of this Article for illustrations of fence styles that the Town is encouraging.
 - b. Fences used in front yards and adjacent to public streets alongside and rear yards shall be at least fifty percent (50%) open. Allowable fences are split rail, wrought iron, picket or other standard residential fences of a similar nature approved by the Building Inspector.
 - c. Solid fences shall be constructed to meet the wind design criteria of the adopted Building Code, using a basic wind speed of ninety-five (95) miles per hour.
 - d. Other materials may be incorporated in fences and walls as may be approved by the Town.
 - (3) Prohibited materials. Contemporary security fencing such as concertina or razor wire, barbed wire or electrically charged fences are prohibited unless specifically allowed by the Board of Trustees. Chain-link fencing with or without slats shall not be used, except as administratively approved for replacement, or extension of, existing chain-link fencing within the Town Subdivision on residential property in close proximity to existing chain-link fencing within the neighborhood. Chain-link fencing is prohibited in the Downtown area as per Subparagraph 16-2-721(d)(5)a.
 - (4) Retaining walls. Retaining walls shall be designed to resist loads due to the lateral pressure of retained material in accordance with accepted engineering practice and

shall not be unsightly or detrimental to abutting property. Any retaining wall greater than forty-eight (48) inches in height shall be engineered and allowed only with prior approval from the Town.

(5) Height limitations. Fences or walls shall be:

- a. No more than forty-two (42) inches high between the front building line and the front property line. Walls shall not be solid except for retaining walls. For corner lots, front yard fence regulations shall apply to both street sides of the lot.
- b. No more than forty-two (42) inches high if located on a side yard line in the front yard, except if required for demonstrated unique security purposes. Fences and walls shall not be solid, except for retaining walls.
- c. No more than six (6) feet high for an opaque privacy fence located on a rear property line or on a side yard line in the rear yard.
- d. No more than six (6) feet high for opaque privacy fences that are located directly adjacent to and integrated with the architecture of the house or connected to a courtyard.
- e. No more than thirty (30) inches high when located within the site distance triangle, and fences or walls within this site distance triangle shall not be solid.

Sight Distance Table Type of Street	Y Distance (in feet)	X Distance (in feet)	Safe Sight Distance (in feet)
Arterial	Right 135' Left 270'	15'	500'
Collector	Right 120' Left 220'	15'	400'
Local	Right 100' Left 150'	15'	300'
Alley	Right 100' Left 150'	15'	-----



- f. In the Industrial (I) District, a chain-link fence is permitted so long as it is not higher than six (6) feet anywhere on the premises, and the visibility at the intersection shall be in accordance with site triangle regulations. Additional landscaping must be installed to minimize the visual impact of the chain-link fence.
 - g. Fences around a recreation court (e.g., tennis, squash racket, squash tennis or badminton) or around a publicly owned recreation area may exceed six (6) feet in height if the fence is at least fifty percent (50%) open.
- (6) Maintenance. Fencing shall be maintained in an acceptable appearance. Missing and broken segments of fence shall be repaired in a timely manner. Dilapidated, unsightly or dangerous fences shall be removed or repaired when so ordered by the Building Inspector. Hedges shall be maintained in a healthy condition, trimmed and pruned as appropriate for the plant type. Dead plant material in hedges shall be removed or replaced as appropriate when so ordered by the Building Inspector. Hedges shall not

encroach upon sidewalks or street rights-of-way. The Town may repair and/or replace fencing or plants and bill the owner if the owner does not make repairs as ordered by the Building Inspector.

- (7) Ornamental gates associated with fences will be allowed subject to approval by the Town.
- (c) Warranty period. The warranty period for perimeter fences along arterial and collector streets shall be two (2) years. Provision for compliance shall be as outlined in the warranty section of the subdivision improvement agreement.
- (d) Additional fencing requirements for the downtown area.
 - (1) Security or privacy fencing, not exceeding six (6) feet in height, located on the rear one-third ($\frac{1}{3}$) of the property and not visible from Broad Street, may be permitted if the use of the enclosed area and the design of the fence meets the intent of the downtown commercial standards. Chain-link fences shall not be allowed. Decorative fencing that is fifty percent (50%) open is encouraged.
 - (2) All exterior fences which are made of wood shall be finished with a clear seal or left in the natural color of the wood. Painted fences shall not be permitted.
 - (3) Fence support posts shall be constructed inside the fence and shall not be visible from the outside of the fence. Decorative or ornamental fence support structures may be visible if approved by the Community Development Director.
 - (4) Fencing shall be maintained in good repair and, when needed, shall be replaced with fencing that is equal to or better than the original fencing.
 - (5) The use of materials not customarily used for fencing shall not be permitted. (Ord. 480 §2.16, 2003; Ord. 607 §1, 2009; Ord. 643 §1, 2011)

Sec. 16-2-490. Summary tables; matrixes of landscaping requirements.

Landscaping Requirement Matrix			
	<i>Developer/Builder Single-Family Homes and Subdivisions</i>		<i>Owner-Built Single-Family Homes</i>
	<i>Common Open Space Areas and Parks</i>	<i>Individual Lots</i>	
Must landscape front, side and rear yards. Landscaping requirements include stamped irrigation systems, soil amendments and xeriscaping principles.	Same as for commercial, industrial and multi-family developments.	Must landscape front yards. Front yard must be irrigated turf or xeriscape with irrigation. Unfenced side and rear yard landscaping required adjacent to open space, parks or street installed within one year of C.O. issuance.	Must landscape front yards. Front yard must be irrigated turf or xeriscape with irrigation. Side and rear yard options include: irrigated turf, hydro seed and xeriscaping with irrigation.
		Requirement of proof of backflow preventer and mechanical rain sensor on automatic sensors. Stamped irrigation system drawings are not required.	Requirement of proof of backflow preventer and mechanical rain sensor on automatic sensors. Stamped irrigation systems drawings are not required.

Landscaping Requirements by Type of Use				
<i>Requirement</i>	<i>Existing Single-Family/ Two-Family Home</i>	<i>New, Owner-Built Single-Family / Two-Family Home</i>	<i>Developer-Built Single-Family /Two-Family Home</i>	<i>Commercial, Industrial, Multi-Family Developments and Open Space Common Areas of Residential Subdivisions</i>
Street Trees	N/A	N/A	N/A	Required Section 16-2-463
Soil Amendment & Mulch	Required Section 16-2-422	Required Section 16-2-422	Required Section 16-2-422	Required Section 16-2-422
Site Landscape Design	Required Section 16-2-425	Required Section 16-2-425	Required Section 16-2-425	Required Section 16-2-425
Landscaping Environmental Considerations	Required Section 16-2-430	Required Section 16-2-430	Required Section 16-2-430	Required Section 16-2-430
New Buildings & Paved Areas	Recommended	Recommended	Required Section 16-2-435	Required Section 16-2-435
Plant Materials	Recommended	Recommended	Required Section 16-2-440	Required Section 16-2-440
Water Efficiency in Landscape Design	N/A	Recommended	Required if building 2 or more homes Section 16-2-427	Required Section 16-2-427

Landscaping Requirements by Type of Use				
<i>Requirement</i>	<i>Existing Single-Family/ Two-Family Home</i>	<i>New, Owner-Built Single-Family / Two-Family Home</i>	<i>Developer-Built Single-Family /Two-Family Home</i>	<i>Commercial, Industrial, Multi-Family Developments and Open Space Common Areas of Residential Subdivisions</i>
Guarantee of Installation	N/A	Required Section 16-2-450	Required Section 16-2-450	Required Section 16-2-450
Soil Amendment & Mulch	Required Section 16-2-455	Required Section 16-2-455	Required Section 16-2-455	Required Section 16-2-455
Maintenance	Required Section 16-2-425	Required Section 16-2-425	Required Section 16-2-425	Required Section 16-2-425
Landscaping Design Standards & Minimum Requirements	N/A	Required Section 16-2-460	Required Section 16-2-460	Required Section 16-2-463
Storm Drainage Facilities	N/A	N/A	N/A	Required Section 16-2-465
Submittal Standards for Landscape Plans	N/A	N/A	N/A	Required Section 16-2-440
Prohibited Plant Material List	Required Section 16-2-475	Required Section 16-2-475	Required Section 16-2-475	Required Section 16-2-475
Buffering & Screening Techniques	N/A	N/A	N/A	Required Section 16-2-475
Fences & Walls	Required Section 16-2-485	Required Section 16-2-485	Required Section 16-2-485	Required Section 16-2-485

(Ord. 607 §1, 2009; Ord. 643 §2, 2011)

Sec. 16-2-715. General provisions.

- (a) **Connections.** Commercial developments must be linked with surrounding areas by extending town streets, sidewalks and/or paths directly into and through the development, thereby providing convenient, direct pedestrian, bicycle and vehicle access to and from all sides of the development.
- (b) **Accessibility.** Developments must be accessible to pedestrians and bicyclists as well as motorists. Site plans shall equally emphasize the following:
 - (1) Pedestrian access to the site and buildings;
 - (2) Gathering areas for people; and
 - (3) Auto access and parking lots.The emphasis must not be placed solely on parking and drive-through functions.
- (c) **Walkways.** Walkways must be located and aligned to directly and continuously connect areas or points of pedestrian origin and destination, and not be located and aligned solely based on the outline of a parking lot configuration that does not provide such direct pedestrian access.
- (d) **On-Street Parking.** Streets and other elements of the site plan shall be designed so that on-street parking is a functional part of the development (except along arterial streets).
- (e) **Building Orientation.** Where possible, buildings shall be located to front on and relate primarily to streets. Building setbacks from local and collector streets should be minimized in order to establish a visually continuous, pedestrian-oriented streetfront. In the case of large buildings for employment, storage or auto-related uses, where greater setbacks are needed, a minimum of thirty percent (30%) of the building shall be brought to the setback line. If a minimized setback is not maintained, the larger setback area shall have landscaping, low walls or fencing, a tree canopy and/or other site improvements along the sidewalk designed for pedestrian interest, scale and comfort.
- (f) **Pedestrian Scale.** The establishment of buildings on isolated "pad sites" surrounded by parking lots and driveways, and that offer mainly auto-oriented signage to define entrances, is discouraged. Even relatively massive development can be configured into "blocks" or other spaces, proportioned on a human scale and city block scale; and need not be proportioned on a monolithic, auto-oriented scale.
- (g) **Thematic Architectural Styles.** Standardized "corporate" or strongly thematic architectural styles associated with chain-type restaurants and service stores are strongly discouraged unless they accommodate the desired image for the Town and are compatible with adjacent structures and uses. Refer to Section 16-2-835 of this Article for illustrations.
- (h) **Location of Parking Lots.** Parking requirements shall be provided to the greatest extent possible by spaces at the rear or sides of the building. Refer to Division 3 and Division 5 of this Article for additional parking requirements.
- (i) **Blank Walls.** Blank, windowless walls are discouraged. Where the construction of a blank wall is necessary, the wall shall be articulated.
- (j) **Wall articulation.**
 - (1) Walls shall not have an uninterrupted length exceeding fifty (50) feet. Pilasters, texture transitions, windows and stepping of the wall plane are required.
 - (2) All exterior elevations shall maintain the integrity of the adjacent dwellings architectural character and detailing.
 - (3) Continuous cornice lines or eaves are encouraged between adjacent buildings.

- (4) Buildings with flat roofs shall provide a parapet with an articulated cornice.
- (k) Facade Treatment. The architectural treatment of the front facade shall be continued, in its major features, around all visibly exposed sides of a building. Blank wall or service area treatment of side and/or rear elevations visible from the public viewshed is discouraged.
- (l) Windows. Windows shall be vertically proportioned wherever possible.
- (m) Awnings. Fixed or retractable awnings are permitted. Canvas is the preferred material, although other waterproofed fabrics may be used; metal or aluminum awnings shall not be used unless otherwise approved by the Board of Trustees. Awnings used as signage must conform to the Sign Code.
- (n) Screening. All air-conditioning units, HVAC systems, exhaust pipes or stacks, elevator housing, satellite dishes and other telecommunications receiving devices shall be thoroughly screened from view from the public right-of-way and from adjacent properties by using walls, fencing (except chain-link), roof elements and landscaping. In addition, all trash facilities, loading and parking areas shall be properly screened.
- (o) Architectural Details. All materials, colors and architectural details used on the exterior of a building shall be compatible with the building's style and with each other. Refer to Section 16-2-835 of this Article for illustrations of commercial architecture that the Town is encouraging. (Ord. 480 §2.18, 2003)

Sec. 16-2-835. Design vocabulary.

A small community is physically unified by common design features which include building mass and style, facade treatment, materials, colors, landscape and streetscape details.

– Visions for a New American Dream, Anton Nelessen, 1994

- (a) Intent. The following images are intended to provide examples of buildings and landscape features that may contribute to Milliken's special character. The intent of the Design Vocabulary is to illustrate the character and quality of development the Town is seeking and to help ensure new development is integrated with "downtown" Milliken. The residential architectural styles illustrate traditional Colorado styles which are referred to in Section 16-2-35 and in Division 6 of this Article.
- (b) The Design Vocabulary includes the following elements:
 - (1) Residential architectural styles.
 - (2) Multi-family residential architectural styles.
 - (3) Downtown and neighborhood commercial.
 - (4) Common areas.
 - (5) Commercial/industrial.
 - (6) Streetscape.
 - (c) Fences.
 - (d) Signage.

(Ord. 480 §2.24, 2003)

Community Design Principles and Development Standards

Division 8 Development Standards

Sec. 16-2-810. Lighting.

(a) Intent. The intent of this Section is as follows:

- (1) To create an attractive lighting system to enhance visibility and safety, while minimizing glare and contrast.
- (2) To encourage exterior lighting that is functional, aesthetically pleasing and complementary to the architectural style of buildings.

(b) General Provisions.

- (1) Evaluation of Exterior Lighting. Exterior lighting shall be evaluated in the development review process to ensure that the functional and security needs of the project are met in a way that does not adversely affect the adjacent properties or neighborhood.
- (2) Light Style. The style of lights shall be consistent with the style and character of architecture proposed on the site. Light fixtures that illuminate signage shall be compatible with the architecture of the building on which they are placed.
- (3) Concealed Light Source. Light sources shall be concealed or shielded to the maximum extent feasible to minimize the potential for glare and unnecessary diffusion on adjacent property and away from the vision of passing motorists. All lights shall be directed downward and the light source shall be equipped with "cut-off" devices so that it will not be visible from any adjacent property and to ensure that ambient skyward light is eliminated. Accent and flagpole lighting shall be permitted to be directed upward as long as the light source is shielded and not visible from any adjacent property. Light fixtures installed under canopies, awnings, overhangs and the like shall be fully recessed.
- (4) Hours of Lighting Operation. All parking lot lighting fixtures and exterior building lights, except those required for security purposes, shall be extinguished within one (1) hour after the end of business hours and remain extinguished until one (1) hour prior to the beginning of business hours. If a portion of a parking lot is used after dark, only that portion shall be lighted.
- (5) Height Standards for Lighting.
 - a. Residential Zoning Districts. Light fixtures shall be mounted on concrete, fiberglass or painted metal poles no higher than sixteen (16) feet from the ground. Lighting mounted on a building or structure shall not exceed the height of the building or structure. Bollard-type lighting fixtures shall be between three (3) and four (4) feet high.
 - b. Nonresidential Zoning Districts. **Light fixtures shall be mounted on concrete, fiberglass or painted metal poles no higher than twenty-five (25) feet from the ground, unless a greater height, not to exceed the maximum building height in the applicable zone district, is approved by the Planning Commission or Board of Trustees through a development application review process. Lighting mounted on a building or structure shall not exceed the height of the building or structure. Bollard-type lighting fixtures shall be between three (3) and four (4) feet high.**

- (6) **Exemption for Outdoor Recreational Uses.** Because of their limited hours of operation and their unique requirements for nighttime visibility, ball diamonds, playing fields, tennis courts and other similar outdoor recreational uses (both public and private), unless otherwise restricted by the Board of Trustees, shall be exempt from the general provisions of this Section. However, exterior lighting for such uses shall be extinguished no later than 11:00 p.m. (Ord. 480 §2.19, 2003)

Sec. 16-2-820. Sanitary sewer.

All residential, commercial and industrial uses which have human occupancy shall have sanitary sewer. The sanitary sewer system shall be connected to an existing public sanitary sewer system and shall consist of a closed system of sanitary sewer mains and lateral branch connections to each structure or lot upon which a structure is to be built. Sanitary sewer lines are to be of sufficient size and design to collect all sewage from all proposed or portable structures within the subdivision or development. On a case-by- case basis, the Board of Trustees may approve individual sewage disposal systems that comply with County Health Department standards. However no new addition, upgrade or major repair to an individual sewage disposal system will be permitted if the property is located within four hundred (400) feet of a municipal or sanitation district collection line, measured through existing sewer easements or utility rights-of-way, except where such connection is not feasible or has been denied by the Town or district. (Ord. 480 §2.21, 2003)

Sec. 16-2-825. Potable water.

All residential, commercial and industrial uses which have human occupancy shall have potable water served by the Town or appropriate water district. The water system shall be of sufficient size and design to supply potable water to each structure or lot upon which a structure is to be built. (Ord. 480 §2.22, 2003)

Sec. 16-2-830. Fire hydrants.

The subdivider shall install fire hydrants at street intersections and at other points as per the requirements of the District. Fire hydrants shall have national standards threads, two-and-one-half-inch outlets and four-and-one-half-inch or six-inch streamers. (Ord. 480 §2.23, 2003)

Sec. 16-3-10. General provisions.

ARTICLE III

Zoning

Division 1 General

- (a) In their interpretation and application, the provisions of these zoning regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, morals, convenience, comfort, prosperity and general welfare.
- (b) **Uniformity of Regulations.** The regulations established by this Article within each zone shall apply uniformly to each class or kind of structure or land. Unless exceptions are specified in this Article, the following interpretations shall apply:
 - (1) No buildings, structure or land shall be used or occupied, and no building, structure or part thereof shall be erected, changed, constructed, moved or structurally altered unless in conformity with all of the regulations herein specified

for the zone in which it is located. Where a lot is divided by a zoning district boundary line by the current official zoning map or by subsequent amendments to the zoning map, the zoning requirements may be extended within the lot for a distance of not more than twenty-five (25) feet.

- (2) No building or other structure shall be erected or altered:
 - a. To exceed the height limitations.
 - b. To accommodate or house a greater number of families.
 - c. To occupy a greater percentage of the area.
 - d. To have narrower or smaller rear yards, front yards, side yards or other open spaces.
 - (3) No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Article, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building unless specific exception therefore is stated in this Article. Exceptions may be granted by the Board of Trustees for infill development.
 - (4) No yard or lot existing or approved at the time of passage of this Code shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Code shall meet at least the minimum requirements established by this Code.
 - (5) Any use not permitted in a zone either specifically or by interpretation by the Board of Trustees per Section 16-3-210 of this Article is hereby specifically prohibited from that zone.
 - (6) The Town shall withhold building permits, occupancy certificates, final inspection certificates and any other certificates or permits provided for by any building code or other law, if a violation of this Article exists with respect to the land to which the permit or certificate pertains, or such a violation would exist upon the exercise of the privilege granted by the permit or certificate.
 - (7) No building shall hereafter be changed to a residential, business, commercial or industrial use, nor shall any new structure, building or land be occupied for a residential, business, commercial or industrial use unless the owner has first obtained a certificate of occupancy from the Building Official. Provided that the use is in conformance with the provisions of this Article, a certificate of occupancy shall be issued within a reasonable time after written notification that the building is ready for occupancy.
 - (8) The fact that land is zoned pursuant to this Article does not excuse compliance with Town subdivision regulations and community design and development standards.
- (c) Conflict with Other Provisions of Law. Whenever the requirements of this Article are at a variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or that imposing the higher standards shall govern.
- (d) Conflict with Private Covenants or Deeds. In case of a conflict between this Code and any private restrictions imposed by covenant or deed, the responsibility of the Town of Milliken shall be limited to the enforcement of this Code. When provisions within this Code are more restrictive than those imposed by covenant or deed, or when any such

private instruments are silent on matters contained within this Code, the provisions of this Code shall rule.

- (e) Zoning of Annexed Territory.
 - (1) Zoning of land during annexation may be done in accordance with the procedure and notice requirements of this Section. The proposed zoning ordinance shall not be passed before the date when the annexation ordinance is passed.
 - (2) Any area annexed shall be brought under the provisions of this Section and the map there under within ninety (90) days from the effective date of the annexation ordinance, despite any legal review that may be made challenging the annexation. During such ninety-day period, or such portion thereof as is required to zone the territory, the Town shall refuse to issue any building permit for any portion or all of the newly annexed area.
- (f) Previous Zoning Ordinance. At the effective date of the initial code, all territory in the Town had been zoned pursuant to an earlier zoning ordinance that had been amended from time to time. That earlier code, as it existed on the effective date of the initial code, will be referred to hereinafter as the "Zoning Ordinance." The zoning district classifications are assigned to the territory of the Town pursuant to the zoning map. The Zoning Ordinance and the last zoning map hereunder are hereby made a part of this Article, in order to facilitate application of the nonconforming use provisions of this Article and of certain additional provisions of this Article.
- (g) Administrative Official. The Town Clerk shall administer this Article, with the assistance from other Town employees. The Town Clerk is referred to as the "administrative official" in this Article. The function of administering this Article shall include, but not necessarily be limited to, reviewing proposed construction projects and other proposed land use activities to determine compliance with this Article; interpreting words, phrases and concepts contained herein; obtaining factual material needed for making decisions which this Article requires to be made; and performing other duties specifically or impliedly delegated to the administration official by other sections of this Article.
- (h) Enforcement Official.
 - (1) The Town Clerk shall be responsible for enforcing compliance with this Article. The Town Clerk may designate other Town employees assigned to the Town Clerk's office to assist him or her. The Town Clerk is also referred to as the "enforcement official" in this Article.
 - (2) The enforcement official shall have authority to notify owners or occupiers of land in the Town of violations of this Article, and to issue orders requiring compliance within specified times, not longer than six (6) months unless a longer time is specified by the Zoning Board of Appeals.
 - (3) The enforcement official may initiate proceedings in the Municipal Court for the punishment of persons who violate this Article. The issuance of a notice or order pursuant to Paragraph (2) above shall not be a prerequisite to the initiation of any such proceeding in the Municipal Court. (Ord. 480 §3.1, 2003)

Sec. 16-3-20. Purpose.

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

- (1) To promote the health, safety, aesthetics, morals and general welfare of the community;
- (2) To lessen congestion in the streets and enhance pedestrian and vehicular movement with the least detriment to environmental quality;
- (3) To secure the safety of the people against fire, panic, flood waters and other dangers;
- (4) To provide adequate light and air, to prevent the overcrowding of land and to avoid the undue concentration of population;
- (5) To regulate the location of activities and developments which could produce significant changes in population density;
- (6) To classify land use and distribute land development and utilize in a way which will benefit the community; to regulate development and activities in hazardous areas; and to regulate the use of land on the basis of the impact thereof on the community and other surrounding areas;
- (7) To provide, in conjunction with other laws and regulations, for transportation, water, schools, sewage treatment and other public requirements;
- (8) To preserve mineral lands for needed development;
- (9) To provide for phased development of government services and facilities and to aid in realizing the policies, objectives and goals of the Comprehensive Plan;
- (10) To encourage innovations in land uses in order to take advantage of improvements in the technology of land use and development;
- (11) To encourage and facilitate the orderly growth and expansion of the Town, while at the same time protecting the environment in a manner consistent with constitutional rights;
- (12) To construct new domestic water and sewer systems in areas which result in minimal environmental damage;
- (13) To permit extension of domestic water and sewage systems in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the environmental and financial capacity of the area;
- (14) To encourage traditional neighborhood residential mixed and multiple-use developments, so the growing demand for housing may be met;
- (15) To protect the environmental and cultural heritage of the community; and
- (16) To ensure quality development that will present and enhance the quality of life for residents of the Town. (Ord. 480 §3.2, 2003)

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. 16-4-430. Site plan.

- (a) Purpose. Site plan approval is needed for a building permit for all multi-family, commercial and industrial developments as well as parks, open space and trails. The only development a site plan is not needed for is a new single-family or duplex development. The site plan shows how the lot will be developed so that the Town can make sure that the site design will be in compliance with all Town regulations.
- (b) Site Plan Process.
 - (1) Step 1: Submit Site Plan Application.
 - a. Land Use Application Form.
 - b. Site Plan – 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. Site Plan Map. The site plan map shall be a minimum of eighteen (18) inches by twenty- four (24) inches and shall provide the following information:
 - 1. Title of project.
 - 2. North arrow, scale (no greater than 1" = 50') and date of preparation.
 - 3. Vicinity map.
 - 4. Address of project.
 - 5. Legal description of property.
 - 6. Name, address and phone number of property owner.
 - 7. Name, address and phone number of person or firm responsible for plan.
 - 8. Lot size (square footage).
 - 9. Bearings and distances of all lot lines.
 - 10. Existing and proposed easements and rights-of-way.
 - 11. Existing and proposed paved areas and sidewalks on the site and in the adjacent rights- of-way, all dimensioned, showing how pedestrians will have access to the site and buildings.
 - 12. Gathering areas for people.
 - 13. Existing and proposed curb cuts on the site and in the adjacent rights-of-way (on both sides of perimeter streets), all dimensioned.

14. Existing and proposed two-foot contours.
15. Existing waterways on or adjacent to the site.
16. Finished floor elevations for all structures.
17. Footprint (including roof overhangs and eaves, decks, balconies, outside stairs and landings) of all proposed structures and their use with their dimensions and locations noted with respect to the property lines.
18. Existing structures and their use.
19. Square footage of the proposed building and the footprint of the proposed building.
20. Proposed structure height.
21. For commercial and industrial uses, the type of activity and number of employees.
22. For multi-family residential, the number of residential units and bedrooms per unit.
23. Location of proposed signs and lights.
24. Specifications for the signs and lights, including type, height and general conformance to the Code. For commercial and industrial uses, a photometric plan prepared by a qualified electrical or lighting engineer shall be submitted that depicts all lighting fixtures and the light spread (in foot-candles) of these fixtures across the site to all property boundaries.
25. Proposed traffic controls and striping for parking areas (all lanes, driveways and parking spaces must be dimensioned).
26. Trash disposal areas and enclosures including specifications for enclosures.
27. Location and size of existing and proposed water and sewer service connections and tap sizes (including those for irrigation systems).
28. Location and size of water and sewer lines to which the service connections will be or are made.
29. Location and size of water meters.
30. Location and size of backflow-prevention devices.
31. Indication of how and where perimeter drain will drain (if one exists).
32. Location of existing electrical lines and poles on or adjacent to the site.
33. Location of proposed electrical service connection and meter location.
34. Location of electric transformer.
35. Location of all fire hydrants. If none exist on-site, note distance and direction of the closest hydrant adjacent to the site within three hundred (300) feet.
36. Location of detention/retention areas and storm sewer infrastructure with the required drainage easements.
37. The distance from the proposed building or structure to adjacent lot lines, easements and adjacent structures.
38. A land use chart (table).
39. Certificate blocks for signatures of owner, surveyor and Town approval, as applicable (see Workbook for samples).

- e. Community Design Principles and Development Standards Description. Demonstrate in written or graphic form how the proposed structure is consistent with the community design principles and development standards found in Article II of this Chapter.
- f. Certified Drainage Report. A certified drainage report, including an erosion control study and plan, as applicable, must be reviewed and approved by the appropriate sanitation district (if applicable) prior to submittal of the report to the Town as part of the site plan application.
- g. Final Landscape Plan. Refer to Article II, Division 5 of this Chapter for the final landscape plan requirements.
- h. Final Open Space and Ecological Characterization Plan. Refer to Article II, Division 5 of this Chapter for the final open space and ecological characterization plan requirements.
- i. Exterior Elevations of Proposed Structures/Graphic Visual Aids. Provide complete building elevations, drawn to scale, with illustrations of all colors and identifying major materials to be used in the structure. In addition, Staff may require building floor plans, sectional drawings, perspective drawings, models and/or computer visualizations when the impacts of a proposal warrant such information.
- j. 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.
- k. Colorado Historical Society Records Search. At the discretion of the Staff or Board of Trustees, an applicant may be required to provide the Town with a Colorado Historical Society records listing of historically or archaeologically significant findings on the property being subdivided. If a listing shows a significant finding, a site-specific historic survey is required. The survey shall provide the following information:
 - 1. Site identification:
 - a) State site number;
 - b) Site address;
 - c) Site location/access;
 - d) Type and description of finding (what is historic); and
 - e) Owner's name and address.
 - 2. Eligibility assessment for historic designation.
 - 3. Statement of significance.
 - 4. Management and administrative data:
 - a) References;
 - b) Photographs of the site;
 - c) Maps of the site;
 - d) Name, address, phone number and qualifications of person completing survey; and

e) Date of completion of survey.

If, in coordination with the applicant, the Board of Trustees decides to protect an historic resource, a protection plan must be devised.

- l. Rare species occurrence survey (from U.S. Fish and Wildlife Service).
 - m. Letter from U.S. Fish and Wildlife Service certifying either there are no endangered species on the property or the project has an approved Habitat Conservation Plan or Mitigation Plan in place.
- (2) Step 2: 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.
 - (3) Step 3: Staff Refers Application to Adjacent Municipalities and Other Agencies. Staff may refer the site plan materials to adjacent municipalities and other agencies and service providers for comments. The referral period shall be twenty-eight (28) days. Staff shall notify the applicant of any adjustment to the referral period.
 - (4) Step 4: Staff Reviews Application and Prepares Comments. Staff will review the site plan map to ensure it is consistent with the site plan review criteria. Staff may consider comments received during the referral period in its review of the site plan. Following the review, Staff will prepare a written report outlining any changes that the applicant must make before the site plan can be approved. This report will be forwarded to the applicant.
 - (5) Step 5: Applicant Addresses Staff Comments. The applicant shall address all of the Staff comments, then submit the following to the Town:
 - i. Letter explaining how all of the comments have been addressed; and
 - ii. Revised maps and other documents.
 - (6) Step 6: Site Plan Agreement. Staff may require that the applicant execute a site plan agreement to assure the construction of on-site and off-site improvements as a condition of approval of the site plan. Guarantees in the site plan agreement may be secured by an irrevocable letter of credit, or by cash deposited in an escrow account in an amount determined appropriate by Staff.
 - (7) Step 7: Schedule Site Plan for a Public Meeting and Complete Public Notification Process. The Planning Commission shall schedule a public meeting for the purpose of making a recommendation on the site plan. 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.
 - (8) Step 8: Planning Commission Public Meeting and Decision. The Planning Commission shall hold a public meeting to review the application based on the site plan 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. Notice of approval of the site plan shall be

- submitted to the Town Board of Trustees.
- (9) Step 9: Applicant Addresses Planning Commission Conditions. The applicant shall revise the site plan based on the Planning Commission's conditions of approval and submit it to the Town.
 - (10) Step 10: Schedule Site Plan Public Meeting and Complete Public Notification Process. The Board of Trustees shall schedule a public meeting for the purpose of taking action on the site plan. The Town Clerk shall publish notice in a newspaper of general circulation. The meeting may be held no less than thirty (30) days from the date of advertising.
 - (11) Step 11: Board of Trustees Action. The site plan shall be presented to the Board of Trustees for its review and action at a public meeting. The Board of Trustees may approve, conditionally approve or deny the minor subdivision plat based on the minor subdivision plat review criteria. All final decisions of the Board of Trustees approving, approving subject to conditions or denying an application shall be subject to review by the District Court in Weld County. Any applicant or other interested party may appeal such decisions in the manner provided by rules relating to civil proceedings before the District Court.
 - (12) Step 12: Submit and Record Site Plan. Upon approval by the Planning Commission, the applicant shall have thirty (30) days to submit two (2) original Mylars. The Town shall submit the approved site plan to the County Clerk and Recorder's Office for recording.
The recording fees shall be paid by the developer.
 - (13) Step 13: Post - Approval Actions.
 - a. Building Permit. A building permit shall be issued only when a site plan has been approved. However, with the approval of the Town, an applicant may submit a building permit application concurrent with the site plan application. Building permits shall not be issued for any development that is not in conformance with the approved site plan.
 - b. Certificate of Occupancy. When building construction and site development are completed in accordance with the approved site plan and building permit, a Certificate of Occupancy may be issued.
 - c. Phasing and Expiration of Approval. The site plan shall be effective for a period of three (3) years from the date of approval, unless stated otherwise in the written site plan approval. Building permits shall not be issued based on site plans that have an approval date more than three (3) years old. For multiphased plans, building permits shall not be issued based on an approval date more than three (3) years from the date of Phase I approval.
 - (c) Site Plan Review Criteria. The site plan must meet the following review criteria:
 - (1) All of the information required on a site plan is shown.
 - (2) The lot size and lot dimensions are consistent with what is shown on the approved final plat.
 - (3) No buildings or structures infringe on any easements.
 - (4) The proposed site grading is consistent with the requirements of the current Town Master Drainage Plan, on file at the Town Hall.
 - (5) The density and dimensions shown conform to the density and dimensional standards at Section 16-3-490 of this Chapter or to the approved PUD

requirements.

- (6) The applicable community design principles and development standards have been adequately addressed and the proposed improvements conform with Article II of this Chapter.

(d) Amendments to Approved Site Plans.

- (1) Minor variations in the location of structures, improvements or open space areas caused by engineering or other unforeseen difficulties may be reviewed and approved by the Town Staff. Such changes shall not exceed ten percent (10%) of any measurable standard or modify the use, character or density of an approved site plan. All plans so modified shall be revised to show the authorized changes and shall become a part of the permanent records of the Town.
- (2) Changes to approved site plans that exceed the ten-percent threshold, or other major modifications (such as changes in building size or footprint, relocation of access points, changes to required parking, etc.), shall be considered as a new site plan application. Such amendments shall require Planning Commission review and approval to become effective. A complete site plan application shall be prepared and submitted in compliance with the requirements set forth in this Section.

(Ord. 480 §4.12, 2003; Ord. 620 §1, 2010)

LEGAL DESCRIPTION

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., TOWN OF MILLIKEN, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 23, MONUMENTED WITH A 2" ALUMINUM CAP STAMPED PLS 24302;

THENCE SOUTH 01°14'30" EAST FOR 228.98 FEET ON THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 23.

THENCE NORTH 88°45'30" EAST FOR 30.00 FEET MEASURED PERPENDICULAR TO SAID WEST LINE TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING NORTH 88°45'30" EAST FOR 209.00 FEET;

THENCE SOUTH 01°14'30" EAST FOR 417.00 FEET PARALLEL WITH AND 239.00 FEET EAST OF SAID WEST LINE;

THENCE SOUTH 88°45'30" WEST FOR 209.00 FEET;

THENCE NORTH 01°14'30" WEST FOR 417.00 FEET PARALLEL WITH AND 30.00 FEET EAST OF SAID WEST LINE TO THE POINT OF BEGINNING.

PARCEL CONTAINS 2.001 ACRES.

BASIS OF BEARING: THE WEST LINE OF THE SOUTHWEST QUARTER, SECTION 23, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., WELD COUNTY, COLORADO, AS REFERENCE TO THE COLORADO STATE PLANE NORTH ZONE, NORTH AMERICAN DATUM 1983, BEARS SOUTH 01°14'30" EAST FOR 2612.21 FEET BETWEEN THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 23 MONUMENTED WITH 2" ALUMINUM CAP STAMPED PLS 24302, AND THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 23 MONUMENTED WITH A 3 1/4" ALUMINUM CAP STAMPED PLS25619, WITH ALL OTHER BEARINGS REFERENCED THERETO.



SHEET 1 OF 2



**LAMP RYNEARSON
& ASSOCIATES**

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JJM		FAK	0213004	05-14-2015		
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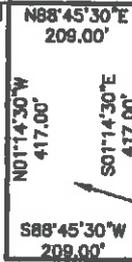
0 300
SCALE: 1" = 300'
U.S. SURVEY FEET

WEST QUARTER CORNER SECTION 23, T.4N, R.67W OF THE 6TH
FOUND: 3/4" REBAR & 2" ALUMINUM CAP
STAMPED: 2000, PLS 24302
WELD COUNTY, COLORADO
POINT OF COMMENCEMENT

228.98'

POINT OF BEGINNING

30.00'
S88°45'30"W



87153 SQ. FT
2.001 ACRES

SOUTHWEST 1/4
SECTION 23 TOWNSHIP 4
RANGE 67 WEST OF THE 6TH P.M.

N01°14'30"W
2612.21'



SOUTHWEST CORNER SECTION 23, T.4N, R.67W OF THE 6TH P.M.
FOUND: REBAR & 2" ALUMINUM CAP
STAMPED: 2000, PLS 24302
WELD COUNTY, COLORADO

SHEET 2 OF 2



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drawn by	designed by	reviewed by	project - task number	date	book and page	revisions
JJM		FAK	0213004	05-15-2015		
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The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS4-8-13) (Mandatory I-14)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE
(LAND)
(Property with No Residences)
(Property with Residences-Residential Addendum Attached)**

Date: October 1, 2015 _____

AGREEMENT

1. AGREEMENT. Buyer, identified in § 2.1, agrees to buy, and Seller, identified in § 2.3, agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, THE TOWN OF MILLIKEN, a statutory municipality, will take title to the Property described below as Joint Tenants Tenants In Common Other severalty _____.

2.2. Assignability and Inurement. This Contract Is Is Not assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract inures to the benefit of and is binding upon the heirs, personal representatives, successors and assigns of the parties.

2.3. Seller. Seller, _____, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of _____, Colorado:
A portion of Section 23, T4N, R67W of the 6th P.M., Weld County, Colorado, to be subdivided, consisting of approximately 2 acres as depicted on Attached Exhibit A

known as No. _____
Street Address City State Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):
2.5.1. Fixtures. All fixtures attached to the Property on the date of this Contract.
Other Fixtures: NOT APPLICABLE

If any fixtures are attached to the Property after the date of this Contract, such additional fixtures are also included in the Purchase Price.

2.5.2. Personal Property. If on the Property, whether attached or not, on the date of this Contract, the following items are included:
NOT APPLICABLE

Other Personal Property:
NOT APPLICABLE

The Personal Property to be conveyed at Closing must be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except _____. Conveyance will be by bill of sale or other applicable legal instrument.

2.5.3. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows: **NOT APPLICABLE**

The Trade Fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except _____. Conveyance will be by bill of sale or other applicable legal instrument.

54 2.6. Exclusions. The following items are excluded (Exclusions): Oil, gas and other minerals appurtenant to the
 55 Property are excluded and shall be reserved to Seller on the deed.
 56

57 2.7. Water Rights, Well Rights, Water and Sewer Taps. NOT APPLICABLE
 58 2.7.1. Deeded Water Rights. The following legally described water rights: NOT APPLICABLE
 59

60 Any deeded water rights will be conveyed by a good and sufficient _____ deed at Closing.
 61

62 2.7.2. Other Rights Relating to Water. The following rights relating to water not included in §§ 2.7.1, 2.7.3,
 63 2.7.4 and 2.7.5, will be transferred to Buyer at Closing: NOT APPLICABLE
 64

65 2.7.3. Well Rights. Seller agrees to supply required information to Buyer about the well. Buyer understands that
 66 if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes,
 67 Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered
 68 with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a
 69 registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in
 70 connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is
 71 _____
 72

73 2.7.4. Water Stock Certificates. The water stock certificates to be transferred at Closing are as follows:
 74

75 _____ 2.7.5. Water and Sewer Taps. Note: Buyer is advised to obtain, from the provider, written confirmation of
 76 the amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.
 77

78 ~~2.7.6. Conveyance. If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water),~~
 79 ~~§ 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the~~
 80 ~~applicable legal instrument at Closing.~~
 81

82 2.8. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows: See Section 10.6.1.7.

83 3. DATES AND DEADLINES.

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	
		Title	
2	§ 8.1	Record Title Deadline	
3	§ 8.2	Record Title Objection Deadline	
4	§ 8.3	Off-Record Title Deadline	
5	§ 8.3	Off-Record Title Objection Deadline	
6	§ 8.4	Title Resolution Deadline	
7	§ 8.6	Right of First Refusal Deadline	
		Owners' Association	
8	§ 7.3	Association Documents Deadline	N/A
9	§ 7.4	Association Documents Objection Deadline	N/A
		Seller's Property Disclosure	
10	§ 10.1	Seller's Property Disclosure Deadline	
		Loan and Credit	
11	§ 5.1	Loan Application Deadline	N/A
12	§ 5.2	Loan Objection Deadline	N/A
13	§ 5.3	Buyer's Credit Information Deadline	N/A
14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
15	§ 5.4	Existing Loan Documents Deadline	N/A
16	§ 5.4	Existing Loan Documents Objection Deadline	N/A
17	§ 5.4	Loan Transfer Approval Deadline	N/A
18	§ 4.7	Seller or Private Financing Deadline	N/A
		Appraisal	
19	§ 6.2	Appraisal Deadline	N/A
20	§ 6.2	Appraisal Objection Deadline	N/A

Item No.	Reference	Event	Date or Deadline
		Survey	
21	§ 9.1	Current Survey Deadline	
22	§ 9.2	Current Survey Objection Deadline	
23	§ 9.3	Current Survey Resolution Deadline	
		Inspection and Due Diligence	
24	§ 10.2	Inspection Objection Deadline	
25	§ 10.3	Inspection Resolution Deadline	
26	§ 10.5	Property Insurance Objection Deadline	
27	§ 10.6	Due Diligence Documents Delivery Deadline	
28	§ 10.6	Due Diligence Documents Objection Deadline	
29	§ 10.6	Due Diligence Documents Resolution Deadline	
30	§ 10.6	Environmental Inspection Objection Deadline	
31	§ 10.6	ADA Evaluation Objection Deadline	N/A
32	§ 10.7	Conditional Sale Deadline	N/A
33	§ 11.1	Tenant Estoppel Statements Deadline	N/A
34	§ 11.2	Tenant Estoppel Statements Objection Deadline	N/A
		Closing and Possession	
35	§ 12.3	Closing Date	NLT 12/31/2015
36	§ 17	Possession Date	MEC
37	§ 17	Possession Time	12:00 Noon
38	§ 28	Acceptance Deadline Date	
39	§ 28	Acceptance Deadline Time	

84 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. Any box,
85 blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision,
86 including any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted.
87 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

88 **4. PURCHASE PRICE AND TERMS.**

89 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$ 0	
2	§ 4.3	Earnest Money		\$ 0
3	§ 4.5	New Loan		\$ 0
4	§ 4.6	Assumption Balance		\$ 0
5	§ 4.7	Private Financing		\$ 0
6	§ 4.7	Seller Financing		\$ 0
7				\$ 0
8				
9	§ 4.4	Cash at Closing		\$ 0
10		TOTAL	\$ 0	\$ 0

90 **4.2. Seller Concession.** Seller, at Closing, will credit, as directed by Buyer, an amount of \$ N/A to assist
91 with any and all of the following: Buyer's closing costs (Seller Concession). Seller Concession is in addition to any sum Seller has
92 agreed to pay or credit Buyer elsewhere in this Contract. Seller Concession will be reduced to the extent it exceeds the aggregate
93 of what is allowed by Buyer's lender as set forth in the Closing Statement, Closing Disclosure or HUD-1, at Closing.

94 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of _____, will be payable
95 to and held by _____ (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The
96 Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an Alternative Earnest
97 Money Deadline (§ 3) for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the
98 Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest
99 Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and
100 Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this
101 transaction will be transferred to such fund.

102 ~~4.3.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the~~
103 ~~time of tender of this Contract, is as set forth as the Alternative Earnest Money Deadline (§ 3).~~
104 ~~4.3.2. Return of Earnest Money. If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to~~
105 ~~the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided~~
106 ~~in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute~~
107 ~~and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three~~
108 ~~days of Seller's receipt of such form.~~
109 **4.4. Form of Funds; Time of Payment; Available Funds.**
110 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing
111 and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified
112 check, savings and loan teller's check and cashier's check (Good Funds).
113 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer, must be
114 paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at
115 Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this
116 Contract, Does Does Not have funds that are immediately verifiable and available in an amount not less than the amount
117 stated as Cash at Closing in § 4.1.
118 **4.5. New Loan.**
119 **4.5.1. Buyer to Pay Loan Costs.** Buyer, except as provided in § 4.2, if applicable, must timely pay Buyer's loan
120 costs, loan discount points, prepaid items and loan origination fees, as required by lender.
121 **4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and acceptable to
122 Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions).
123 **4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following types of loans:
124 Conventional Other _____
125 **4.6. Assumption.** Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption
126 Balance set forth in § 4.1, presently payable at \$ _____ per _____ including principal and interest
127 presently at the rate of _____ % per annum, and also including escrow for the following as indicated: Real Estate
128 Taxes Property Insurance Premium and _____
129 Buyer agrees to pay a loan transfer fee not to exceed \$ _____. At the time of assumption, the new interest rate will
130 not exceed _____ % per annum and the new payment will not exceed \$ _____ per _____ principal and
131 interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance,
132 which causes the amount of cash required from Buyer at Closing to be increased by more than \$ _____, then Buyer has
133 the Right to Terminate under § 25.1, on or before Closing Date (§ 3), based on the reduced amount of the actual principal balance.
134 Seller Will Will Not be released from liability on said loan. If applicable, compliance with the requirements for
135 release from liability will be evidenced by delivery on or before Loan Transfer Approval Deadline (§ 3) at Closing of
136 an appropriate letter of commitment from lender. Any cost payable for release of liability will be paid by _____
137 in an amount not to exceed \$ _____
138 **4.7. Seller or Private Financing.**
139 **WARNING:** Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on
140 sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a
141 licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics
142 of financing, including whether or not a party is exempt from the law.
143 **4.7.1. Seller Financing.** If Buyer is to pay all or any portion of the Purchase Price with Seller financing (§ 4.1),
144 Buyer Seller will deliver the proposed Seller financing documents to the other party on or before _____ days before
145 Seller or Private Financing Deadline (§ 3).
146 **4.7.1.1. Seller May Terminate.** If Seller is to provide Seller financing (§ 4.1), this Contract is conditional
147 upon Seller determining whether such financing is satisfactory to the Seller, including its payments, interest rate, terms, conditions,
148 cost and compliance with the law. Seller has the Right to Terminate under § 25.1, on or before Seller or Private Financing
149 Deadline (§ 3), if such Seller financing is not satisfactory to the Seller, in Seller's sole subjective discretion.
150 **4.7.2. Buyer May Terminate.** If Buyer is to pay all or any portion of the Purchase Price with Seller or private
151 financing (§ 4.1), this Contract is conditional upon Buyer determining whether such financing is satisfactory to the Buyer,
152 including its availability, payments, interest rate, terms, conditions and cost. Buyer has the Right to Terminate under § 25.1, on or
153 before Seller or Private Financing Deadline (§ 3), if such Seller or private financing is not satisfactory to Buyer, in Buyer's sole
154 subjective discretion.

TRANSACTION PROVISIONS

156 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

157 **5.1. Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New
 158 Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must make an application verifiable
 159 by such lender, on or before Loan Application Deadline (§ 3) and exercise reasonable efforts to obtain such loan or approval.
 160 ~~**5.2. Loan Objection.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional
 161 upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its
 162 availability, payments, interest rate, terms, conditions, and cost of such New Loan. This condition is for the sole benefit of Buyer.
 163 Buyer has the Right to Terminate under § 25.1, on or before Loan Objection Deadline (§ 3), if the New Loan is not satisfactory to
 164 Buyer, in Buyer's sole subjective discretion. **IF SELLER IS NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE
 165 BUYER'S WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY WILL BE NONREFUNDABLE,** except
 166 as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).~~
 167 ~~**5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional (for the sole
 168 benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be at Seller's sole
 169 subjective discretion. Accordingly: (1) Buyer must supply to Seller by Buyer's Credit Information Deadline (§ 3), at Buyer's
 170 expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit
 171 condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; and (3) any such information and
 172 documents received by Seller must be held by Seller in confidence, and not released to others except to protect Seller's interest in
 173 this transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under § 25.1,
 174 on or before Closing. If Seller disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective discretion,
 175 Seller has the Right to Terminate under § 25.1, on or before Disapproval of Buyer's Credit Information Deadline (§ 3).~~
 176 ~~**5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver copies of the loan
 177 documents (including note, deed of trust, and any modifications) to Buyer by Existing Loan Documents Deadline (§ 3). For the
 178 sole benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents.
 179 Buyer has the Right to Terminate under § 25.1, on or before Existing Loan Documents Objection Deadline (§ 3), based on any
 180 unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the
 181 Property is required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan,
 182 except as set forth in § 4.6. If lender's approval is not obtained by Loan Transfer Approval Deadline (§ 3), this Contract will
 183 terminate on such deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective
 184 discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth
 185 in § 4.6.~~

186 **6. APPRAISAL PROVISIONS.**

187 ~~**6.1. Lender Property Requirements.** If the lender imposes any requirements or repairs (Requirements) to be made to
 188 the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller has the Right to
 189 Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following Seller's receipt of the
 190 Requirements, based on any unsatisfactory Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this
 191 § 6.1 does not apply if, on or before any termination by Seller pursuant to this § 6.1: (1) the parties enter into a written agreement
 192 regarding the Requirements; or (2) the Requirements have been completed; or (3) the satisfaction of the Requirements is waived in
 193 writing by Buyer.~~
 194 ~~**6.2. Appraisal Condition.** The applicable Appraisal provision set forth below applies to the respective loan type set
 195 forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.~~
 196 ~~**6.2.1. Conventional/Other.** Buyer has the sole option and election to terminate this Contract if the Property's
 197 valuation, determined by an appraiser engaged on behalf of _____, is less than the Purchase
 198 Price. The appraisal must be received by Buyer or Buyer's lender on or before Appraisal Deadline (§ 3). Buyer has the Right to
 199 Terminate under § 25.1, on or before Appraisal Objection Deadline (§ 3), if the Property's valuation is less than the Purchase
 200 Price and Seller's receipt of either a copy of such appraisal or written notice from lender that confirms the Property's valuation is
 201 less than the Purchase Price. This § 6.2.1 is for the sole benefit of Buyer.~~
 202 ~~**6.2. Cost of Appraisal.** Cost of any appraisal to be obtained after the date of this Contract must be timely paid by
 203 Buyer Seller. The cost of the appraisal may include any and all fees paid to the appraiser, appraisal management company,
 204 lender's agent or all three.~~

205 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common Interest Community
 206 and subject to such declaration.

207 ~~**7.1. Owners' Association Documents.** Owners' Association Documents (Association Documents) consist of the following:
 208 **7.1.1.** All Owners' Association declarations, articles of incorporation, bylaws, articles of organization, operating
 209 agreements, rules and regulations, party wall agreements;~~

210 ~~7.1.2. Minutes of most recent annual owners' meetings;~~
211 ~~7.1.3. Minutes of any directors' or managers' meetings during the six-month period immediately preceding the~~
212 ~~date of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.1.1, 7.1.2 and 7.1.3,~~
213 ~~collectively, Governing Documents); and~~
214 ~~7.1.4. The most recent financial documents which consist of: (1) annual and most recent balance sheet, (2) annual~~
215 ~~and most recent income and expenditures statement, (3) annual budget, (4) reserve study, and (5) notice of unpaid assessments, if~~
216 ~~any (collectively, Financial Documents).~~
217 ~~7.2. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON~~
218 ~~INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER~~
219 ~~OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE~~
220 ~~COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE~~
221 ~~ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL~~
222 ~~OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY~~
223 ~~ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE~~
224 ~~ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE~~
225 ~~DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE~~
226 ~~OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE~~
227 ~~ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION.~~
228 ~~PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE~~
229 ~~FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY~~
230 ~~READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF~~
231 ~~THE ASSOCIATION.~~
232 ~~7.3. Association Documents to Buyer.~~
233 ~~7.3.1. Seller to Provide Association Documents. Seller will cause the Association Documents to be provided to~~
234 ~~Buyer, at Seller's expense, on or before Association Documents Deadline (§ 3).~~
235 ~~7.3.2. Seller Authorizes Association. Seller authorizes the Association to provide the Association Documents to~~
236 ~~Buyer, at Seller's expense.~~
237 ~~7.3.3. Seller's Obligation. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's~~
238 ~~receipt of the Association Documents, regardless of who provides such documents.~~
239 ~~Note: If neither box in this § 7.3 is checked, the provisions of § 7.3.1 apply.~~
240 ~~7.4. Conditional on Buyer's Review. Buyer has the right to review the Association Documents. Buyer has the Right to~~
241 ~~Terminate under § 25.1, on or before Association Documents Objection Deadline (§ 3), based on any unsatisfactory provision in~~
242 ~~any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after~~
243 ~~Association Documents Deadline (§ 3), Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to~~
244 ~~Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive~~
245 ~~the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after Closing~~
246 ~~Date (§ 3), Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice~~
247 ~~to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any~~
248 ~~Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).~~

249 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**
250 **8.1. Evidence of Record Title.**
251 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance
252 company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline** (§ 3), Seller must
253 furnish to Buyer, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase
254 Price, or if this box is checked, an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be
255 issued and delivered to Buyer as soon as practicable at or after Closing.
256 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance
257 company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline** (§ 3), Buyer must
258 furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase
259 Price.
260 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.
261 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not** commit to delete or
262 insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4)
263 unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is recorded), and (6) unpaid taxes,
264 assessments and unredeemed tax sales prior to the year of Closing (OEC). If the title insurance company agrees to provide an
265 endorsement for OEC, any additional premium expense to obtain an endorsement for OEC will be paid by **Buyer** **Seller**
266 **One-Half by Buyer and One-Half by Seller** **Other** _____
267 **Note:** The title insurance company may not agree to delete or insure over any or all of the standard exceptions.

268 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations, covenants,
269 conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible, summaries of such
270 documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer. The documents or
271 summaries of such documents described in this Section constitute the title documents (collectively, Title Documents).
272 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline** (§ 3), copies of all
273 Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the
274 county where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense
275 of the party or parties obligated to pay for the owner's title insurance policy.
276 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all or any
277 portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline** (§ 3).
278 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the
279 Title Documents as set forth in § 8.4 (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline** (§ 3).
280 Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding
281 § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or
282 Title Documents are not received by Buyer, on or before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title
283 Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be
284 delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object
285 to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or
286 Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of
287 Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.4
288 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents
289 required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection
290 by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title
291 Commitment and Title Documents as satisfactory.
292 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline** (§ 3), true copies of all
293 existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including,
294 without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without
295 limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge (Off-Record
296 Matters). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by
297 public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of
298 Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2
299 and § 13), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline** (§ 3).
300 If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline** (§ 3), Buyer has until the earlier of Closing or
301 ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or
302 Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer and this Contract are governed by
303 the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or
304 Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such rights, if any, of third
305 parties of which Buyer has actual knowledge.
306 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is not limited to those
307 matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in Buyer's sole subjective discretion. If
308 Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:
309 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter (Notice
310 of Title Objection) on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on
311 or before **Title Resolution Deadline** (§ 3), this Contract will terminate on the expiration of **Title Resolution Deadline** (§ 3),
312 unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive
313 objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**
314 (§ 3). If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended to the earlier of Closing or ten
315 days after receipt of the applicable documents by Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the Title
316 Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the
317 applicable documents; or
318 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 25.1, on or
319 before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.
320 **8.5. Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION
321 INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE
322 PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK
323 FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE
324 CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH
325 INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE
326 SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY

327 **TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING**
328 **FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND**
329 **RECORDER, OR THE COUNTY ASSESSOR.**

330 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline** (§ 3), based on any
331 unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

332 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a right to approve
333 this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the
334 right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate.
335 If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and
336 effect. Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval
337 of this Contract has not occurred on or before **Right of First Refusal Deadline** (§ 3), this Contract will then terminate.

338 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed
339 carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property,
340 including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations,
341 unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property, and
342 various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may**
343 **be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include**
344 **transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal**
345 **energy or water on or under the Property, which interests may give them rights to enter and use the Property. Such matters,**
346 **and others, may be excluded from or not covered by the owner's title insurance policy. Buyer is advised to timely consult legal**
347 **counsel with respect to all such matters as there are strict time limits provided in this Contract [e.g., Record Title Objection**
348 **Deadline (§ 3) and Off-Record Title Objection Deadline (§ 3)].**

349 **9. CURRENT SURVEY REVIEW.**

350 **9.1. Current Survey Conditions.** If the box in § 9.1.1 or § 9.1.2 is checked, Buyer, the issuer of the Title Commitment
351 or the provider of the opinion of title if an Abstract of Title, and _____ will receive an Improvement
352 Location Certificate, Improvement Survey Plat or other form of survey set forth in § 9.1.2 (collectively, Current Survey), on or
353 before **Current Survey Deadline** (§ 3). The Current Survey will be certified by the surveyor to all those who are to receive the
354 Current Survey.

355 **9.1.1. Improvement Location Certificate.** If the box in this § 9.1.1 is checked, Seller Buyer will order
356 or provide, and pay, on or before Closing, the cost of an Improvement Location Certificate.

357 **9.1.2. Other Survey.** If the box in this § 9.1.2 is checked, a Current Survey, other than an Improvement Location
358 Certificate, will be an Improvement Survey Plat or _____. The parties agree that payment
359 of the cost of the Current Survey and obligation to order or provide the Current Survey are as follows:

360
361
362 **9.2. Current Survey Objection.** Buyer has the right to review and object to the Current Survey. If the Current Survey is
363 not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **Current**
364 **Survey Objection Deadline** (§ 3), notwithstanding § 8.3 or § 13:

365 **9.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

366 **9.2.2. Current Survey Objection.** Deliver to Seller a written description of any matter that was to be shown or is
367 shown in the Current Survey that is unsatisfactory and that Buyer requires Seller to correct.

368 **9.3. Current Survey Resolution.** If a Current Survey Objection is received by Seller, on or before **Current Survey**
369 **Objection Deadline** (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Current Survey**
370 **Resolution Deadline** (§ 3), this Contract will terminate on the **Current Survey Resolution Deadline** (§ 3), unless Seller receives
371 Buyer's written withdrawal of the Current Survey Objection before such termination, i.e., on or before expiration of **Current**
372 **Survey Resolution Deadline** (§ 3).

373 **DISCLOSURE, INSPECTION AND DUE DILIGENCE**

374 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE** 375 **OF WATER.**

376 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline** (§ 3), Seller agrees to deliver to
377 Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed
378 by Seller to Seller's actual knowledge, current as of the date of this Contract.

379 **10.2. Inspection Objection.** Unless otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the
380 Property to Buyer in an "as is" condition, "where is" and "with all faults." Colorado law requires that Seller disclose to Buyer any
381 latent defects actually known by Seller. Disclosure of latent defects must be in writing. Buyer, acting in good faith, has the right to

382 have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense.
 383 If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the
 384 electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service
 385 to the Property (including utilities and communication services), systems and components of the Property (e.g. heating and
 386 plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise
 387 (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole
 388 subjective discretion, Buyer may, on or before **Inspection Objection Deadline** (§ 3):
 389 **10.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
 390 **10.2.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory physical condition that
 391 Buyer requires Seller to correct.
 392 **10.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before **Inspection Objection**
 393 **Deadline** (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution**
 394 **Deadline** (§ 3), this Contract will terminate on **Inspection Resolution Deadline** (§ 3) unless Seller receives Buyer's written
 395 withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline** (§ 3).
 396 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other written agreement
 397 between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at
 398 Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer
 399 must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify,
 400 protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such
 401 Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against
 402 any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and
 403 expenses. The provisions of this section survive the termination of this Contract. This § 10.4 does not apply to items performed
 404 pursuant to an Inspection Resolution.
 405 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and premium for
 406 property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance**
 407 **Objection Deadline** (§ 3), based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.
 408 **10.6. Due Diligence.**
 409 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver copies of the following
 410 documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence**
 411 **Documents Delivery Deadline** (§ 3): none
 412 **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;
 413 **10.6.1.2.** Property tax bills for the last 3 years;
 414 **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including architectural,
 415 electrical, mechanical, and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now
 416 available;
 417 **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;
 418 **10.6.1.5.** Operating statements for the past _____ years;
 419 **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;
 420 **10.6.1.7.** All current leases, including any amendments or other occupancy agreements, pertaining to the
 421 Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):
 422 Farm Lease with Tenant, Paul Wagner. Buyer shall be responsible for negotiating and paying for a release of Tenant's rights to
 423 occupy the Property, which may include payment for damage to crops.
 424 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet
 425 completed and capital improvement work either scheduled or in process on the date of this Contract;
 426 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have been made
 427 for the past _____ years;
 428 **10.6.1.10.** Soils reports, Surveys and engineering reports or data pertaining to the Property (if not delivered
 429 earlier under § 8.3);
 430 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II environmental reports,
 431 letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or
 432 other toxic hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's
 433 possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;
 434 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the
 435 Property with said Act;
 436 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any governmental
 437 authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations,
 438 if any; and
 439

440 10.6.1.14. Other documents and information:

441
442
443
444 10.6.2. Due Diligence Documents Review and Objection. Buyer has the right to review and object to Due
445 Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory in Buyer's sole subjective
446 discretion, Buyer may, on or before Due Diligence Documents Objection Deadline (§ 3):

447 10.6.2.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

448 10.6.2.2. Due Diligence Document Objection. Deliver to Seller a written description of any unsatisfactory
449 Due Diligence Documents that Buyer requires Seller to correct.

450 10.6.3. Due Diligence Document Resolution. If a Due Diligence Document Objection is received by Seller, on or
451 before Due Diligence Document Objection Deadline (§ 3), and if Buyer and Seller have not agreed in writing to a settlement
452 thereof on or before Due Diligence Document Resolution Deadline (§ 3), this Contract will terminate on Due Diligence
453 Document Resolution Deadline (§ 3) unless Seller receives Buyer's written withdrawal of the Due Diligence Document
454 Objection before such termination, i.e., on or before expiration of Due Diligence Document Resolution Deadline (§ 3).

455 10.6.4. Zoning. Buyer has the Right to Terminate under § 25.1, on or before Due Diligence Documents Objection
456 Deadline (§ 3), based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction
457 over the Property, in Buyer's sole subjective discretion.

458 10.6.5. Due Diligence - Environmental, ADA. Buyer has the right to obtain environmental inspections of the
459 Property including Phase I and Phase II Environmental Site Assessments, as applicable. Seller Buyer will order or provide
460 Phase I Environmental Site Assessment, Phase II Environmental Site Assessment (compliant with ASTM E1527-05
461 standard practices for Environmental Site Assessments) and/or _____, at the expense
462 of Seller Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation
463 whether the Property complies with the Americans with Disabilities Act (ADA Evaluation). All such inspections and evaluations
464 must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants'
465 business uses of the Property, if any.

466 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the
467 Environmental Inspection Objection Deadline (§ 3) will be extended by _____ days (Extended Environmental Inspection
468 Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the Closing Date (§ 3),
469 the Closing Date (§ 3) will be extended a like period of time. In such event, Seller Buyer must pay the cost for such Phase
470 II Environmental Site Assessment.

471 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.5, Buyer has the
472 Right to Terminate under § 25.1, on or before Environmental Inspection Objection Deadline (§ 3), or if applicable, the
473 Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in
474 Buyer's sole subjective discretion.

475 Buyer has the Right to Terminate under § 25.1, on or before ADA Evaluation Objection Deadline (§ 3), based on any
476 unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

477 10.7. Conditional Upon Sale of Property. This Contract is conditional upon subdivision of the Property by the Seller.
478 Buyer has the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before
479 Conditional Sale Deadline (§ 3) if such property is not sold and closed by such deadline. This § 10.7 is for the sole benefit of
480 Buyer. If Seller does not receive Buyer's Notice to Terminate on or before Conditional Sale Deadline (§ 3), Buyer waives any
481 Right to Terminate under this provision.

482 10.8. Source of Potable Water (Residential Land and Residential Improvements Only). Buyer Does Does Not
483 acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water
484 for the Property. Buyer Does Does Not acknowledge receipt of a copy of the current well permit. There is No Well.
485 Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND
486 WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO
487 DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

488 10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned
489 to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the
490 Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller
491 enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably
492 withheld or delayed.

492 11. TENANT ESTOPPEL STATEMENTS.

493 11.1. ~~Tenant Estoppel Statements Conditions. Buyer has the right to review and object to any Estoppel Statements.~~
494 ~~Seller must obtain and deliver to Buyer on or before Tenant Estoppel Statements Deadline (§ 3), statements in a form and~~
495 ~~substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of~~
496 ~~the Lease stating:~~

497 ~~_____ 11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;~~

498 ~~11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or~~
499 ~~amendments;~~
500 ~~11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;~~
501 ~~11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;~~
502 ~~11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and~~
503 ~~11.1.6. That the Lease to which the Estoppel is attached is a true, correct and complete copy of the Lease demising~~
504 ~~the premises it describes.~~
505 ~~11.2. Tenant Estoppel Statements Objection. Buyer has the Right to Terminate under § 25.1, on or before Tenant~~
506 ~~Estoppel Statements Objection Deadline (§ 3), based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective~~
507 ~~discretion, or if Seller fails to deliver the Estoppel Statements on or before Tenant Estoppel Statements Deadline (§ 3). Buyer~~
508 ~~also has the unilateral right to waive any unsatisfactory Estoppel Statement.~~

509

CLOSING PROVISIONS

510 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

511 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to
512 enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If
513 Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing
514 Company, in a timely manner, all required loan documents and financial information concerning Buyer's new loan. Buyer and
515 Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this
516 transaction. Buyer and Seller will sign and complete all customary or reasonably required documents at or before Closing.

517 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Are Not executed with
518 this Contract.

519 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as
520 the Closing Date (§ 3) or by mutual agreement at an earlier date. The hour and place of Closing will be as designated
521 by _____.

522 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and extent of service vary
523 between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

524 **13. TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by Buyer with the
525 other terms and provisions hereof, Seller must execute and deliver a good and sufficient bargain and sale Deed, excluding all
526 mineral rights, to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of
527 Closing. Except as provided herein, title will be conveyed free and clear of all liens, including any governmental liens for special
528 improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title will be conveyed subject to:

529 **13.1.** Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents
530 accepted by Buyer in accordance with Record Title (§ 8.2),

531 **13.2.** Distribution utility easements (including cable TV),

532 **13.3.** Those specifically described rights of third parties not shown by the public records of which Buyer has actual
533 knowledge and which were accepted by Buyer in accordance with Off-Record Title (§ 8.3) and Current Survey Review (§ 9),

534 **13.4.** Inclusion of the Property within any special taxing district,

535 **13.5.** Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon, whether
536 assessed prior to or after Closing, and

537 **13.6.** Other All matters of record, except liens. _____

538 **14. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid will be paid at or before Closing from the
539 proceeds of this transaction or from any other source.

540 **15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

541 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required
542 to be paid at Closing, except as otherwise provided herein.

543 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by Buyer Seller
544 One-Half by Buyer and One-Half by Seller Other _____

545 **15.3. Status Letter and Record Change Fees.** Any fees incident to the issuance of Association's statement of
546 assessments (Status Letter) must be paid by Buyer Seller One-Half by Buyer and One-Half by Seller None.
547 Any record change fee assessed by the Association including, but not limited to, ownership record transfer fees regardless of name
548 or title of such fee (Association's Record Change Fee) must be paid by Buyer Seller One-Half by Buyer and One-
549 Half by Seller None.

550 15.4. Local Transfer Tax. The Local Transfer Tax of N/A % of the Purchase Price must be paid at Closing
551 by Buyer Seller One-Half by Buyer and One-Half by Seller None.

552 15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such
553 as community association fees, developer fees and foundation fees, must be paid at Closing by Buyer Seller One-Half
554 by Buyer and One-Half by Seller None. The Private Transfer fee, whether one or more, is for the following association(s):
555 _____ in the total amount of _____ % of the Purchase Price or \$ _____

556 15.6. Water Transfer Fees. The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed
557 \$ _____ for:

558 Water Stock/Certificates Water District
559 Augmentation Membership Small Domestic Water Company _____
560 and must be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller None.

561 15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by
562 Buyer Seller One-Half by Buyer and One-Half by Seller None.

563 16. PRORATIONS. The following will be prorated to the Closing Date (§ 3), except as otherwise provided:
564 16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the
565 year of Closing, based on Taxes for the Calendar Year Immediately Preceding Closing Most Recent Mill Levy and
566 Most Recent Assessed Valuation, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled
567 veteran exemption or Other _____

568 16.2. Rents. Rents based on Rents Actually Received Accrued. At Closing, Seller will transfer or credit to
569 Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of
570 such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must
571 assume Seller's obligations under such Leases.

572 16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in
573 advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred
574 maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents.
575 Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital.
576 Any special assessment assessed prior to Closing Date (§ 3) by the Association will be the obligation of Buyer Seller.
577 Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's
578 signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents that the Association
579 Assessments are currently payable at \$ _____ per _____ and that there are no unpaid regular or special
580 assessments against the Property except the current regular assessments and _____. Such
581 assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to
582 deliver to Buyer before Closing Date (§ 3) a current Status Letter.

583 16.4. Other Prorations. Water and sewer charges, propane, interest on continuing loan, and _____
584 16.5. Final Settlement. Unless otherwise agreed in writing, these prorations are final.

585 17. POSSESSION. Possession of the Property will be delivered to Buyer on Possession Date (§ 3) at Possession Time (§ 3),
586 subject to the Leases as set forth in § 10.6.1.7.

587 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable
588 to Buyer for payment of \$ _____ per day (or any part of a day notwithstanding § 18.1) from Possession Date (§ 3) and
589 Possession Time (§ 3) until possession is delivered.

590 **GENERAL PROVISIONS**

591 18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

592 18.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain
593 Time (Standard or Daylight Savings as applicable).

594 18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified,
595 the first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or
596 federal or Colorado state holiday (Holiday), such deadline Will Will Not be extended to the next day that is not a
597 Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

598 19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND
599 WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the
600 condition existing as of the date of this Contract, ordinary wear and tear excepted.

601 19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of
602 loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), Seller is obligated

603 to repair the same before **Closing Date** (§ 3). Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), if
604 the Property Damage is not repaired before **Closing Date** (§ 3) or if the damage exceeds such sum. Should Buyer elect to carry out
605 this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received
606 by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any
607 deductible provided for in such insurance policy. Such credit must not exceed the Purchase Price. In the event Seller has not
608 received such insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** (§ 3) or, at the option of
609 Buyer, Seller must assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance
610 policy, but not to exceed the total Purchase Price.

611 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication
612 services), system, component or fixture of the Property (collectively Service), e.g., heating or plumbing, fail or be damaged
613 between the date of this Contract and Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1,
614 on or before **Closing Date** (§ 3).

615 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may
616 result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation
617 action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on such condemnation action, in
618 Buyer's sole subjective discretion. **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has
619 the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies
620 with this Contract.

621 **19.5. Risk of Loss – Growing Crops.** The risk of loss for damage to growing crops by fire or other casualty will be borne
622 by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to such insurance proceeds or benefits for
623 the growing crops.

624 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller acknowledge
625 that the respective broker has advised that this Contract has important legal consequences and has recommended the examination
626 of title and consultation with legal and tax or other counsel before signing this Contract.

627 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any note or check received as
628 Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation
629 hereunder is not performed or waived as herein provided, the nondefaulting party has the following remedies:

630 **21.1. If Buyer is in Default:**

631 **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest Money
632 (whether or not paid by Buyer) will be paid to Seller and retained by Seller; and Seller may recover such damages as may be
633 proper; or Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance or
634 damages, or both.

635 **21.1.2. Liquidated Damages, Applicable.** This § 21.1.2 applies unless the box in § 21.1.1 is checked. All
636 Earnest Money (whether or not paid by Buyer) will be paid to Seller, and retained by Seller. Both parties will thereafter be released
637 from all obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a
638 penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of
639 Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly
640 waives the remedies of specific performance and additional damages.

641 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received
642 hereunder will be returned, or Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to
643 specific performance, or both.

644 **23. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties must first
645 proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person
646 who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the
647 dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will
648 share equally in the cost of such mediation. The mediation, unless otherwise agreed, will terminate in the event the entire dispute is
649 not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at the party's
650 last known address. This section will not alter any date in this Contract, unless otherwise agreed.

651 **25. TERMINATION.**

652 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to Terminate), the
653 termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written
654 notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or
655 before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as
656 satisfactory and waives the Right to Terminate under such provision.

657 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder will be
658 returned and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

659 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL.** This Contract, its exhibits and specified addenda, constitute
660 the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or
661 written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is
662 valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this
663 Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same.

664 **27. NOTICE, DELIVERY, AND CHOICE OF LAW.**

665 **27.1. Physical Delivery.** All notices must be in writing, except as provided in § 27.2. Any document, including a signed
666 document or notice, from or on behalf of Seller, and delivered to Buyer is effective when physically received by Buyer, any
667 signatory on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm of Broker working
668 with Buyer (except for delivery, after Closing, of the notice requesting mediation described in § 23 and except as provided in
669 § 27.2). Any document, including a signed document or notice, from or on behalf of Buyer, and delivered to Seller is effective
670 when physically received by Seller, any signatory on behalf of Seller, any named individual of Seller, any representative of Seller,
671 or Brokerage Firm of Broker working with Seller (except for delivery, after Closing, of the notice requesting mediation described
672 in § 23 and except as provided in § 27.2).

673 **27.2. Electronic Delivery.** As an alternative to physical delivery, any document, including a signed document or written
674 notice, may be delivered in electronic form only by the following indicated methods: Facsimile Email Internet. If no
675 box is checked, this § 27.2 is not applicable and § 27.1 governs notice and delivery. Documents with original signatures will be
676 provided upon request of any party.

677 **27.3. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with
678 the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property
679 located in Colorado.

680 **28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and
681 Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or
682 before **Acceptance Deadline Date** (§ 3) and **Acceptance Deadline Time** (§ 3). If accepted, this document will become a contract
683 between Seller and Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a
684 copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

685 **29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not
686 limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5), **Title**
687 **Insurance, Record Title and Off-Record Title** (§ 8), **Current Survey Review** (§ 9) and **Property Disclosure, Inspection,**
688 **Indemnity, Insurability, Due Diligence and Source of Water** (§ 10).

689

ADDITIONAL PROVISIONS AND ATTACHMENTS
--

690 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate
691 Commission.)

692 **30.1. Buyer will pay for: (a) title insurance in an amount determined by Buyer; and (b) all costs associated with the minor**
693 **subdivision of the Property by the Seller. Buyer shall prepare, process and pay for the cost of the minor subdivision. The**
694 **Town agrees that all of the Town's standard fees for subdivision shall be waived.**

695 **30.2. Sale is contingent upon the minor subdivision of the Property being acceptable to the Seller and approved by Buyer's**
696 **Board of Trustees on or before December 31, 2015. Seller agrees to execute the minor subdivision application, plat, and**
697 **any other document(s) necessary to complete the minor subdivision process within three (3) business days following the**
698 **Town's request to execute the same, except that Seller is not obligated to execute any document that imposes on Seller**
699 **costs, improvement obligations, or indemnification obligations.**

700 **30.3. Seller agrees that Buyer shall be authorized to occupy, construct and install the Town's water tank improvements on**
701 **the Property upon MEC, in accordance with the terms of that certain temporary construction easement ("TCE"), a copy of**
702 **which is attached hereto as Exhibit B and is incorporated by reference. The Parties shall execute the TCE at MEC.**

709 30.4. Closing shall not occur until Seller has provided Buyer and Title Company with partial releases of the following
710 deeds of trust: (a) Deed of Trust (Ronald O. Ehrlich, beneficiary) recorded September 22, 2005 at Reception No. 3325048
711 in the real property records of Weld County, Colorado; and (b) Deed of Trust (First National Bank, beneficiary) recorded
712 February 26, 2008 at Reception No. 3537412, as modified by that certain Modification of Deed of Trust recorded August 4,
713 2010 at Reception No. 3709745 in the real property records of Weld County, Colorado, which releases shall release the
714 Property from any lien(s) created by the Deeds of Trust referenced above.
715

716 30.5 If Seller is unable to obtain the releases upon terms acceptable to Seller, Seller shall not be in default of its obligations
717 hereunder, however, the parties agree that instead of conveying the Property to Buyer, Seller shall grant Buyer a
718 permanent non-exclusive easement in, over, through and across the Property, in a form acceptable to Buyer and Seller.
719 The easement shall provide that Buyer is not assuming the Ehrlich and First National Bank debts, and shall provide that
720 Seller shall indemnify Buyer from all obligations pursuant to the deeds of trust.
721

722 30.6 Title Company and Closing Instructions. The title company for this transaction is Heritage Title Company (the "Title
723 Company"). The Title Company's address is 7251 W. 20th Street, Building L, Suite 100, Greeley, CO 80634. The Parties
724 hereby instruct the Title Company to use this Contract, including the Additional Provisions set forth in this § 30, as closing
725 instructions. The Parties shall each perform such other actions or deliver such other documents, including additional
726 closing instructions, as may be reasonable and necessary to complete the sale under this Contract.
727

728 **31. ATTACHMENTS.**

729 31.1. The following attachments are a part of this Contract:
730
731

732
733 31.2. The following disclosure forms are attached but are not a part of this Contract:
734
735
736

737 **SIGNATURES**

738 Buyer's Name: The Town of Milliken, a statutory municipality Buyer's Name: _____

Buyer's Signature _____ Date _____
Address: Post Office Box 290
Milliken, CO 80543
Phone No.: (970)587-4331
Fax No.: _____
Electronic Address: _____

Buyer's Signature _____ Date _____
Address: _____
Phone No.: _____
Fax No.: _____
Electronic Address: _____

739 [NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Seller's Name: Lot Holding Investments, LLC

Seller's Name: _____



Seller's Signature _____ Date _____
Address: _____
Phone No.: _____
Fax No.: _____
Electronic Address: _____

Seller's Signature _____ Date _____
Address: _____
Phone No.: _____
Fax No.: _____
Electronic Address: _____

740

741 **32. COUNTER; REJECTION.** This offer is Countered Rejected.

742 Initials only of party (Buyer or Seller) who countered or rejected offer _____

743

END OF CONTRACT TO BUY AND SELL REAL ESTATE

744

**TEMPORARY CONSTRUCTION AND ACCESS EASEMENT
(Town of Milliken South Side Water Tank)**

THIS TEMPORARY CONSTRUCTION AND ACCESS EASEMENT is granted this ____ day of October, 2015 from Lot Holding Investments, LLC, whose legal address is 301 Centennial Drive, Milliken, Colorado 80543, ("Grantor"), to the Town of Milliken, a municipal corporation, whose address is 1101 Broad Street, Milliken, Colorado 80543, ("Town" or "Grantee"), collectively (the "Parties").

In consideration of the sum of One and 00/100 Dollars (\$1.00), the receipt and sufficiency of which is acknowledged, and the further consideration of the covenants and agreements set forth below, Grantor sells, conveys, transfers, and delivers to the Grantee its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns, a Temporary Construction and Access Easement ("Temporary Construction Easement") for the real property described in Exhibit A, a copy of which is attached and incorporated by this reference, (the "Property") for the construction of a Town water storage tank ("Project").

The Property is not yet subdivided. The parties are under contract to transfer the Property to the Town (the "Purchase Contract"), following the completion of the minor subdivision process. The parties are entering into this Temporary Construction Easement because the Town requires immediate possession of the Property.

This Temporary Construction Easement is granted in accordance with, and subject to, the following terms, conditions, requirements, and limitations:

1. The term of this Temporary Construction Easement shall begin upon Town providing written notice to the Grantor that use of the said Temporary Construction Easement has begun and shall remain in full force and effect until such time as the Property is conveyed to the Town in fee simple. Upon Grantor's conveyance of the Property to the Town or upon Grantor's grant of a permanent easement, this Temporary Construction Easement shall automatically terminate.
2. The Temporary Construction Easement shall allow the Town, including its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns thereof to use the Property for construction of the Project. The Town shall have the right to enter on and have access to the Property, the right to operate construction equipment on the Property, the right to perform incidental work related to the Project, and the right to construct the Project on the Property in accordance with the Town's specifications. Without limitation, incidental work related to the Project may include grading and paving and utility installation. The Town shall not use the Property for any other use or purpose without Grantor's prior consent.
3. Grantor covenants and agrees that it has good title to the Property and that it has good and lawful right to grant this Temporary Construction Easement.
4. Grantor warrants that no building, structure, or other above or below ground obstruction that may interfere with the purposes for which this Temporary Construction Easement is granted may be placed, erected, installed or permitted upon the Property during the term of this Temporary Construction Easement. The Grantor further agrees that in the event the terms of this Temporary Construction Easement are violated, that such violation shall immediately be corrected by the Grantor upon receipt of written notice from the Town.
5. Grantor reserves the right to the use and enjoyment of the Property during the term for all purposes insofar as such use is consistent with and does not impair any grant herein contained.

6. Any payment obligation of the Town under this Temporary Construction Easement whether direct or contingent, shall extend only to funds appropriated or otherwise lawfully made available by the Board of Trustees of the Town for the purpose of this Temporary Construction Easement.

7. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to Town: Kent Brown, Town Administrator
Town of Milliken
1101 Broad Street
Milliken, Colorado 80543

If to Grantor: Lot Holding Investments, LLC
Attn: Bret Hall
301 Centennial Drive
Milliken, Colorado 80543

8. This instrument and the Purchase Contract are the complete integration of all understandings between the parties concerning the Property. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Temporary Construction Easement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this agreement properly executed by the Parties. No oral representation of any kind preceding the date of this Temporary Construction Easement by any officer, employee, or agent of Town at variance with the terms and conditions of this Agreement, or with any written amendment to this Agreement, shall have any force or effect nor bind the Town. This Temporary Construction Easement and any amendments to it shall be binding upon the Parties and their successors and assigns.

9. Each and every term, condition, or covenant of this Temporary Construction Easement is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable state or federal law. Such applicable law as may be amended from time to time, is expressly incorporated into this Temporary Construction Easement as if fully set out by this reference. Venue for any action arising out of the Temporary Construction Easement shall be in the District Court in the County of Weld, Colorado.

10. The benefits and burdens of the Temporary Construction Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Temporary Construction Easement on the date first written above.

"GRANTOR"

Lot Holding Investments, LLC

By [Signature]

Title:

STATE OF COLORADO

COUNTY OF

Weld

)
) ss.
)

The foregoing instrument was acknowledged before me this ____ day of October 2015, by Bret Hall as Mgr. of Lot Holding Investments, LLC.

My commission expires: 8-3-19

WITNESS my hand and official seal.

[Signature]
Notary Public

The Town of Milliken
a political subdivision of the State of Colorado

By _____

ATTEST:

Cheryl Powell, Town Clerk



STATE OF COLORADO

COUNTY OF WELD

)
) ss.
)

The foregoing instrument was acknowledged before me this ____ day of October, 2015, by Milt Tokunaga as Mayor of the Town of Milliken.

My commission expires: _____

WITNESS my hand and official seal.

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

r