

**CUNDALL FARMS METROPOLITAN DISTRICT**  
**SPECIAL MEETING**  
(via Teleconference)  
June 8, 2021 at 5:30 P.M.

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David Scott, President/Treasurer	Term to May 2022
Reuben Patrick Maes, Vice President	Term to May 2023
Bradley Mark Nelson, Director	Term to May 2023
Kathy Snyder, Director	Term to May 2023
Darren Fresquez, Secretary	Term to May 2022

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*Due to Executive Orders issued by Governor Polis, and Public Health Orders implementing the Executive Orders issued by the Colorado Department of Health and Environment, and the risk posed by COVID 19, this meeting will be held via teleconferencing and can be joined through the directions below:*

Link:

<https://zoom.us/j/93456597060?pwd=YXNiMWxuUVByOWdOemh6Y3RUZ1dOQT09>

Meeting ID: 934 5659 7060

Passcode: 890247

Phone: 1-253-215-8782

**NOTICE OF SPECIAL MEETING AND AGENDA**

1. Call to Order
2. Declaration of Quorum/Conflict of Interest Disclosures
3. Approval of Agenda
4. Public Comment - Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes per person. Please sign in.
5. Consent Agenda **(5 minutes)**
  - a. Approval of March 17, 2021 Special Meeting Minutes (**enclosure**)
  - b. Approval of April 28, 2021 Special Meeting Minutes (**enclosure**)
  - c. Approval of May 4, 2021 Special Meeting Minutes (**enclosure**)
  - d. Ratification of Fun Services Contract (**enclosure**)
  - e. Ratification of Arbortanics, Inc. d/b/a The Tree Farm Contract (**enclosure**)
  - f. Ratification of 1<sup>st</sup> Green Colorado LLC Contract (**enclosure**)
  - g. Approval of James Nursery Company Contract (**enclosure**)
  - h. Ratification of Contract For Musical Services (**enclosure**)
6. Director Matters **(20 minutes)**

- a. Discussion regarding Board liaisons
  - b. Discussion regarding Architectural Review Committee
  - c. Discussion regarding Establishment of Finance Committee
  - d. Discussion regarding upcoming Board Vacancy
7. Financial Matters **(10 minutes)**
- a. Consider Ratification of Cash Position and Interim Claims Report **(to be distributed)**
  - b. Consider Approval of 2020 Audit **(to be distributed)**
  - c. Other Financial Matters
8. Management Matters **(30 minutes)**
- a. Manager Report **(enclosure)**
  - b. Consider Approval of Reserve Study from Association Reserves **(enclosure)**
  - c. Update Regarding Basketball Court Repairs
  - d. Discussion Regarding Prairie Dogs Eradication in Open Space **(enclosure)**
  - e. Discussion Regarding Grading Near St. Paul Street
  - f. Other Management Matters
9. Legal Matters
- a. Update Regarding White Bear Ankele Tanaka & Waldron Covenant Enforcement Services **(enclosure)**
  - b. Other Legal Matters
10. Executive Session – The Board intends to enter into executive session pursuant to § 24-6-402(4)(b), C.R.S., conference with an attorney for the District for the purpose of receiving legal advice on specific legal questions related to a fine waiver request for account 1824267 and pursuant to § 24-6-402(4)(e), C.R.S. determining positions relative to matter that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators related to a fine waiver request for account 1824267.
11. Adjourn

MINUTES OF A SPECIAL MEETING OF THE BOARD  
OF DIRECTORS

OF

CUNDALL FARMS METROPOLITAN DISTRICT

Held: Wednesday, March 17, 2021, at 4:00 p.m. via  
Teleconference.

Due to the Executive Orders issued by Governor Polis and Public Health Orders implementing the Executive Orders issued by the Colorado Department of Public Health and Environment, and the threat posed by the COVID-19 coronavirus, this meeting will be held via teleconference.

**Attendance**

A special meeting of the Board of Directors of the Cundall Farms Metropolitan District was called and held as shown above and in accordance with the applicable statutes of the State of Colorado. The following directors, having confirmed their qualification to serve on the Board, were in attendance:

David Scott  
Reuben Patrick Maes  
Bradley Mark Nelson  
Kathy Snyder  
Darren Fresquez

Also present was Clint C. Waldron, Esq. and Megan J. Murphy, Esq., White Bear Ankele Tanaka & Waldron, District General Counsel; Keenan Rice and Lizzy Rice, Muncip, Inc., District Municipal Advisor; Gigi Pangindian, CliftonLarsonAllen LLP, District Accountant; Elizabeth Dauer, Esq., Seter & Vander Wall, District Special Counsel; Zach Bishop, Mike Ryan, and Mike Sullivan, Piper Sandler & Co., Placement Agent; and homeowners.

**Call to Order**

Mr. Scott noted that a quorum of the Board was present and called the meeting to order.

**Declaration of Quorum/Director  
Qualification/Reaffirmation of  
Disclosures**

Ms. Murphy advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Murphy reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of

State's Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Ms. Murphy inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

**Agenda**

The Board reviewed the proposed agenda. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the agenda as presented.

**Public Comment**

None.

**Executive Session**

Upon motion of Mr. Scott, seconded by Ms. Snyder, and upon an affirmative vote of at least two-thirds of the quorum present, the Board convened in executive session at 4:03 P.M. for the purpose of receiving legal advice on specific legal questions related to: (a) General Obligation Refunding Bonds, Series 2017A, Subordinate Limited Tax General Obligation Improvement Bonds, Series 2017B, and Limited Tax Junior Lien Subordinate General Obligation Bonds, Series 2017C (collectively, the "Bonds"); and (b) Developer Advance Payment to Cundall Farms, LLC and pursuant to § 24-6-402(4)(e), C.R.S. determining positions relative to matter that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators related to the Bonds and/or the Developer Advance Payment to Cundall Farms, LLC.

Pursuant to § 24-6-402(2)(d.5)(II)(B), C.R.S., no record will be kept of the portion of this executive session that, in the opinion of the District's attorney, constitutes privileged attorney-client communication pursuant to § 24-6-402(4)(b), C.R.S.

Also pursuant to § 24-6-402(4), C.R.S., the Board did not adopt any proposed policy, position, resolution, rule, regulation or take formal action during execution session.

Upon motion of Ms. Snyder, seconded by Mr. Scott, the Board reconvened in regular session at 5:21 P.M.

**Review and Consider Approval of Term Sheets for Loan**

The Board reviewed the term sheets for the loan. Following discussion, upon a motion duly made and seconded, the

Board unanimously approved the term sheet from BBVA, subject to final legal review. The Board authorized Director Maes to sign the rate lock agreement with BBVA. The Board further directed Piper Sandler & Co. to request permission from BBVA to share the term sheet with Cundall Farms, LLC as needed.

**Adjourn**

There being no further business to be conducted, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

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Secretary for the Meeting

The foregoing minutes were approved on the 8<sup>th</sup> day of June, 2021.

**ATTORNEY STATEMENT  
REGARDING PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

Pursuant to Section 24-6-402(2)(d.5)(II)(B), C.R.S., I attest that, in my capacity as the attorney representing Cundall Farms Metropolitan District, I attended the executive session meeting at a special meeting of Cundall Farms Metropolitan District convened at 4:03 P.M. on March 17, 2021 for the sole purpose of discussing legal advice on specific legal questions related to: (a) General Obligation Refunding Bonds, Series 2017A, Subordinate Limited Tax General Obligation Improvement Bonds, Series 2017B, and Limited Tax Junior Lien Subordinate General Obligation Bonds, Series 2017C (collectively, the “Bonds”); and (b) Developer Advance Payment to Cundall Farms, LLC and determining positions relative to matter that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators related to the Bonds and/or the Developer Advance Payment to Cundall Farms, LLC as authorized by Section 24-4-402(4)(b), C.R.S. and Section 24-4-402(4)(e), C.R.S. I further attest it is my opinion that all of the executive session discussion constituted a privileged attorney-client communication as provided by Section 24-6-402(4)(b), C.R.S. and, based on that opinion, no further record, written or electronic, was kept or required to be kept pursuant to Section 24-6-402(2)(b), C.R.S. or Section 24-6-402(2)(d.5)(II)(B), C.R.S.

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Megan J. Murphy, Esq.

MINUTES OF A SPECIAL MEETING OF THE BOARD  
OF DIRECTORS  
OF  
CUNDALL FARMS METROPOLITAN DISTRICT

Held: Wednesday, April 28, 2021, at 5:30 p.m. via  
Teleconference.

Due to the Executive Orders issued by Governor Polis and Public Health Orders implementing the Executive Orders issued by the Colorado Department of Public Health and Environment, and the threat posed by the COVID-19 coronavirus, this meeting will be held via teleconference and at Rocky Top Middle School (14150 York Street, Thornton, CO 80602).

**Attendance**

A special meeting of the Board of Directors of the Cundall Farms Metropolitan District was called and held as shown above and in accordance with the applicable statutes of the State of Colorado. The following directors, having confirmed their qualification to serve on the Board, were in attendance:

David Scott  
Bradley Mark Nelson  
Kathy Snyder  
Darren Fresquez  
Reuben Patrick Maes

Also present was Megan J. Murphy, Esq. and Erin K. Stutz, Esq., White Bear Ankele Tanaka & Waldron, District General Counsel; Kamille Curylo, Esq., Kutak Rock, LLP, District Bond Counsel; Mike Sullivan and Mike Ryan, Piper Sandler & Co, District Placement Agent; Keenan Rice, Municap, Inc., District Municipal Advisor; and homeowners.

**Call to Order**

Mr. Scott noted that a quorum of the Board was present and called the meeting to order.

**Declaration of Quorum/Director  
Qualification/Reaffirmation of  
Disclosures**

Ms. Murphy advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Murphy reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the

meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Ms. Murphy inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

## **Agenda**

The Board reviewed the proposed agenda. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the agenda as amended.

## **Public Comment**

Ms. Paula Juhrs asked about a community garage sale at the end of May/early June, as a summer event. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the summer event and a community garage sale on a Friday and Saturday.

Mr. Chad Hebert asked about District's minutes which seemed to be a high level of summaries and requested more detailed minutes or for the Board to record the meeting and post the audio. Following discussion, upon a motion duly made and seconded, the Board unanimously approved recording the meetings for the next 90 days and post to the recording to the District's website for 90 days after the meeting.

Ms. Julia Romero asked who is responsible for repairing the concrete sidewalks in the community. Ms. Murphy responded that the homeowner should contact Ms. Sykes, District Manager, regarding concrete repairs.

## **Executive Session**

The Board intends to enter into executive session pursuant to § 24-6-402(4)(b), C.R.S., conference with an attorney for the District for the purpose of receiving legal advice on specific legal questions related to: (a) General Obligation Refunding Bonds, Series 2017A, Subordinate Limited Tax General Obligation Improvement Bonds, Series 2017B, and Limited Tax Junior Lien Subordinate General

The Board determined to remove this item from the agenda.



Obligation Bonds, Series 2017C (collectively, the “Bonds”) and (b) Developer Advance Payment to Cundall Farms, LLC and pursuant to § 24-6-402(4)(e), C.R.S. determining positions relative to matter that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators related to the Bonds and/or the Developer Advance Payment to Cundall Farms, LLC

### **Refinancing Transaction**

Discussion Regarding Refinancing Schedule of Events

Mr. Ryan presented to the Board a high level review of the refinancing transaction and the schedule of events. He noted that the estimated savings on \$600,000 home is \$500 a year. He further noted that the refinancing closing is set for May 18, 2021.

Consider Ratification of Agreement In The Nature of An Accord Concerning Developer Advance and Infrastructure Agreements between the District and Cundall Farms, LLC

The Board reviewed the Agreement in the Nature of an Accord Concerning Developer Advance and Infrastructure Agreements between the District and Cundall Farms, LLC. Following discussion, and upon motion duly made and seconded, the Board unanimously ratified the agreement.

Consider and make a final determination to issue and refund general obligation indebtedness by the adoption of a resolution: authorizing the incurrence of the District’s Taxable (Convertible to Tax-Exempt) General Obligation (Limited Tax Convertible to Unlimited Tax) Refunding Loan, Series 2021A-1, and General Obligation (Limited Tax Convertible to Unlimited Tax) Improvement Loan, Series 2021A-2 in the combined estimated aggregate principal amount of \$16,000,000 (which amount is subject to increase or decrease as determined by the Board, or as

Ms. Curylo presented the Board the resolution authorizing the issuance of the District’s Taxable (Convertible to Tax-Exempt) General Obligation (Limited Tax Convertible to Unlimited Tax) Refunding Loan, Series 2021A-1, and General Obligation (Limited Tax Convertible to Unlimited Tax) Improvement Loan, Series 2021A-2. Following discussion, upon a motion duly made and seconded, the Board adopted the resolution, appointed Director Scott or Director Maes as the District’s Authorized Delegate, and appointed Director Scott or Director Maes as the District’s Representative.

Mr. Sullivan reviewed the Costs of Issuance with the Board.

otherwise permitted by any resolution adopted by the Board at such meeting); for the purpose of refunding its existing general obligation indebtedness and funding amounts to pay or reimburse the costs of public improvements approving, ratifying and confirming the execution of certain related documents thereto, including, but not limited to, a Loan Agreement with BBVA Mortgage Corporation, as lender, and a Placement Agent Agreement with Piper Sandler & Co., and other related documents, instruments and certificates; making determinations and findings as to other matters related to such financing transaction; authorizing incidental action; and repealing prior inconsistent actions. Pursuant to the Supplemental Public Securities Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of such loans may be commenced more than thirty days after the authorization of such loans pursuant to the aforementioned resolution

## **Other Business**

### **Adjourn**

There being no further business to be conducted, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

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Secretary for the Meeting

The foregoing minutes were approved on the 8<sup>th</sup> day of June, 2021.

**ATTORNEY STATEMENT  
REGARDING PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

Pursuant to Section 24-6-402(2)(d.5)(II)(B), C.R.S., I attest that, in my capacity as the attorney representing Cundall Farms Metropolitan District, I attended the executive session meeting at a special meeting of Cundall Farms Metropolitan District convened at 5:46 P.M. on April 6, 2021 for the sole purpose of discussing legal advice on specific legal questions related to: (a) General Obligation Refunding Bonds, Series 2017A, Subordinate Limited Tax General Obligation Improvement Bonds, Series 2017B, and Limited Tax Junior Lien Subordinate General Obligation Bonds, Series 2017C (collectively, the “Bonds”); and (b) Developer Advance Payment to Cundall Farms, LLC and determining positions relative to matter that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators related to the Bonds and/or the Developer Advance Payment to Cundall Farms, LLC as authorized by Section 24-4-402(4)(b), C.R.S. and Section 24-4-402(4)(e), C.R.S. I further attest it is my opinion that all of the executive session discussion constituted a privileged attorney-client communication as provided by Section 24-6-402(4)(b), C.R.S. and, based on that opinion, no further record, written or electronic, was kept or required to be kept pursuant to Section 24-6-402(2)(b), C.R.S. or Section 24-6-402(2)(d.5)(II)(B), C.R.S.

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Megan J. Murphy, Esq.

MINUTES OF A SPECIAL MEETING OF THE BOARD  
OF DIRECTORS

OF

CUNDALL FARMS METROPOLITAN DISTRICT

Held: Wednesday, May 4, 2021, at 5:30 p.m. via  
Teleconference.

Due to the Executive Orders issued by Governor Polis and Public Health Orders implementing the Executive Orders issued by the Colorado Department of Public Health and Environment, and the threat posed by the COVID-19 coronavirus, this meeting will be held via teleconference.

**Attendance**

A special meeting of the Board of Directors of the Cundall Farms Metropolitan District was called and held as shown above and in accordance with the applicable statutes of the State of Colorado. The following directors, having confirmed their qualification to serve on the Board, were in attendance:

David Scott  
Reuben Patrick Maes  
Bradley Mark Nelson  
Darren Fresquez

Director Kathy Snyder was absent. All absences are deemed excused unless otherwise noted in these minutes.

Also present was Megan J. Murphy, Esq., White Bear Ankele Tanaka & Waldron, District General Counsel; Melissa Sykes, Advance HOA Management, Inc., District Manager; Gigi Pangindian, CliftonLarsonAllen LLP, District Accountant; and homeowners.

**Call to Order**

Mr. Scott noted that a quorum of the Board was present and called the meeting to order.

**Declaration of Quorum/Director  
Qualification/Reaffirmation of  
Disclosures**

Ms. Murphy advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Murphy reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the

meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Ms. Murphy inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

## **Agenda**

The Board reviewed the proposed agenda. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the agenda as presented.

## **Public Comment**

Ms. Paula Juhrs thanked the Board for supporting the social events. She noted that she received the property assessment in the mail and requested that Ms. Sykes include information in the newsletter notifying homeowners property assessment information is available from the Adam's County Assessor.

Ms. Leslie Warner-Garcia inquired about prairie dogs to make sure they are not the kind of prairie dogs that cannot be eradicated pursuant to local laws. She noted killing prairie dogs might impact other wildlife. She also inquired about the design guideline amendments and why they are proposing changes to exterior lighting.

Director Maes noted that every light in the neighborhood park is turned off. Ms. Sykes said she would investigate.

Sam inquired if all the lights on poles are the responsibility of the District or United Power. Director Scott noted that the lights on the public right-of-way belong to the City of Thornton.

Ms. Timm inquired if trees in the park are blooming. She noted that she agrees with the lighting in the park being turned off and should be fixed. Director Fresquez noted that the lights in the park will be investigated and the trees in the community are being replaced as part of a larger tree planting project.

Mr. Warren inquired about exterior lighting and the design guideline amendments. He would like to know when the decision will be made. He also noted that the lights at the park have been an issue for at least a year.

Dave inquired about the presentation from ET Irrigation and inspection of the playground. Director Scott noted the playground inspection contract has been approved. Ms. Sykes noted that ET Irrigation will provide another presentation to the Board when they are ready.

Sam commented about the entrance way on 156<sup>th</sup> and Columbine, noting that it was an eye sore. He inquired if anything will be done. Director Maes responded that this will be investigated with the landscape maintenance company.

## **Consent Agenda**

Following a summary by Ms. Murphy, the items on the consent agenda were approved and/or adopted by one motion duly made and seconded, and unanimously carried.

### 1. April 6, 2021 Special Meeting Minutes

## **Director Matters**

Discussion Regarding Board Liaisons

The Board deferred discussion.

Discussion Regarding Architectural Review Committee

The Board deferred discussion.

Discussion Regarding Establishment of Finance Committee

The Board deferred discussion.

Consider Appointment of Tribunal for Appeal of Architectural Review Committee Decision

Ms. Murphy presented the appointment of Tribunal for Appeal of Architectural Review Committee to the Board for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the appointment of Directors Maes and Scott to the Tribunal.

## **Financial Matters**

Consider Ratification of Cash Position and Interim Claims Report

Ms. Pangindian presented the interim claims totaling \$35,678.62 and Cash Position Report to the Board for ratification. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the claims and the cash position report.

Public Hearing on 2021 Budget Amendment

Director Scott opened the public hearing on the 2021 Budget Amendment. Ms. Murphy noted that the notice of public hearing was provided in accordance with Colorado

Law in the *Northglenn-Thornton Sentinel* on April 29, 2021. No written objections have been received prior to the meeting. There being no public comment, the hearing was closed.

Consider Adoption of Resolution Amending 2021 Budget

Ms. Pangindian reviewed the Resolution Amending the 2021 Budget with the Board. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution amending the Debt Service Fund to an amount to be determined by Ms. Pangindian based on the refinancing transaction set to close on May 18, 2021.

Other Financial Matters

None.

### **Management Matters**

Manager Report

Ms. Sykes reviewed the Manager Report with the Board. She noted Schultz Industries will aerate the park in the next week or so.

Weeds in the Park

Director Maes inquired about weeds in the park. Ms. Sykes responded that Schultz Industries provides a pre-emergent and removal of weeds throughout the season.

Pre-Emergent in the Native Grass Areas

Director Nelson inquired about pre-emergent in the native grass areas. Ms. Sykes will provide proposals for consideration at the next meeting.

Proposal with Schultz Industries for Over Seed in the Park

The Board engaged in discussion regarding a proposal with Schultz Industries for over seed in the park in the amount of \$4,291.59 for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the proposal.

### **Executive Session**

Upon motion of Mr. Scott, seconded by Mr. Fresquez, and upon an affirmative vote of at least two-thirds of the quorum present, pursuant to § 24-6-402(4)(b), C.R.S., conference with an attorney for the District, the Board convened in executive session at 6:30 P.M. for the purpose of receiving legal advice on specific legal questions related to waiver of fines and fees.

Pursuant to § 24-6-402(2)(d.5)(II)(B), C.R.S., no record will be kept of the portion of this executive session that, in the opinion of the District's attorney, constitutes privileged

attorney-client communication pursuant to § 24-6 402(4)(b), C.R.S.

Also pursuant to § 24-6-402(4), C.R.S., the Board did not adopt any proposed policy, position, resolution, rule, regulation or take formal action during execution session.

Upon motion of Director Scott, seconded by Director Maes, the Board reconvened in regular session at 6:44 P.M.

Discuss Waive Fee

Following discussion, upon a motion duly made and seconded, the Board unanimously approved to waive \$100 fee so long as the homeowners remains in compliance with the District's rules and regulations for 30 days. It was noted that if the homeowner is in violation of the District's rules and regulations in the next 30 days, a third notice will be provided.

Discuss Meeting Time

Ms. Sykes presented a request from a homeowner to start meetings after 5:30 p.m. The Board determined to keep the current meeting time of 5:30 p.m.

Discuss Landscaping at 156<sup>th</sup> and Columbine

Ms. Sykes inquired about entryway landscaping at 156<sup>th</sup> and Columbine. Director Scott noted that it could use some clean up. Ms. Sykes will request a proposal from Schultz Industries.

Discuss Fine/Fee Waiver Requests

Ms. Sykes asked the Board how they would like to address fine/fee waiver requests from homeowners. Following discussion, upon a motion duly made and seconded, the Board unanimously authorized Director Maes to approve fine/fee waiver request for amounts up to \$99.99. All other fine/fee waiver requests will be heard by the Board.

Proposal from Schultz Industries To Remove Tree Stakes

Director Nelson noted that the Board inquired about the tree stakes being removed throughout the community. Following discussion, upon a motion duly made and seconded, the Board unanimously approved Director Fresquez to approve a proposal from Schultz Industries to remove tree stakes in an amount not to exceed \$3,000.

Discuss Tree Replacements and Insurance Schedule

The Board engaged in general discussion regarding staging for the large tree planting project and decided to allow staging on Tract M. Ms. Murphy requested Director Fresquez notify Ms. Sykes when the trees are installed so that they can be added to the insurance schedule.



Discuss Debris in the Big Dry Creek

The Board engaged in general discussion regarding construction debris in Big Dry Creek. Ms. Sykes noted that she will reach out to KB Homes and request additional debris be removed. Director Nelson inquired about installing a perimeter fence near Big Dry Creek. Ms. Sykes will request proposals to install a fence.

Consider Approval of Amendment to Section 1.4 and Section 3.44 of the Residential Improvement Guidelines and Site Restrictions for Trailside Community

Ms. Murphy reviewed with the Board the Amendment to Section 1.4 and Section 3.44 of the Residential Improvement Guidelines and Site Restrictions for Trailside Community. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the amendment with changes discussed at the meeting and the effective date of the resolution to be July 1, 2021.

Update Regarding Basketball Repairs

Director Nelson discussed the basketball court repair with the Board. He noted that he has reached out to three recommended contractors for proposals. No action taken.

Discussion Regarding Prairie Dogs Eradication in Open Space

Ms. Murphy reviewed prairie dog eradication on Tract D with the Board. She noted that they City is not willing to pay the cost of eradication but is willing to pay half the costs. The Board directed Ms. Murphy to investigate the policies and procedures the City of Thornton uses to manage prairie dogs on City property.

Other Management Matters

Director Fresquez presented an update regarding the insurance claim and large tree planting project. Following discussion, upon a motion duly made and seconded, the Board unanimously authorized Director Fresquez to spend the remaining insurance proceeds on additional trees and associated oversight costs related to tree planting.

## **Legal Matters**

Update Regarding White Bear Ankele Tanaka & Waldron Covenant Enforcement Services

Ms. Murphy presented an update regarding the White Bear Ankele Tanaka & Waldron Covenant Enforcement Services noting that White Bear Ankele Tanaka & Waldron will no longer provide covenant enforcement legal services effective June 15, 2021. The Board deferred action on this item until the next meeting.

Other Legal Matters

The Next Regular Board Meeting is scheduled for June 8, 2021 at 5:30 p.m. subject to availability of Director Snyder.

## **Adjourn**

There being no further business to be conducted, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

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Secretary for the Meeting

The foregoing minutes were approved on the 8<sup>th</sup> day of June, 2021.

**ATTORNEY STATEMENT  
REGARDING PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

Pursuant to Section 24-6-402(2)(d.5)(II)(B), C.R.S., I attest that, in my capacity as the attorney representing Cundall Farms Metropolitan District, I attended the executive session meeting at a special meeting of Cundall Farms Metropolitan District convened at 6:30 P.M. on May 4, 2021 for the sole purpose of discussing legal advice on specific legal questions related to: (a) General Obligation Refunding Bonds, Series 2017A, Subordinate Limited Tax General Obligation Improvement Bonds, Series 2017B, and Limited Tax Junior Lien Subordinate General Obligation Bonds, Series 2017C (collectively, the “Bonds”); and (b) Developer Advance Payment to Cundall Farms, LLC and determining positions relative to matter that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators related to the Bonds and/or the Developer Advance Payment to Cundall Farms, LLC as authorized by Section 24-4-402(4)(b), C.R.S. and Section 24-4-402(4)(e), C.R.S. I further attest it is my opinion that all of the executive session discussion constituted a privileged attorney-client communication as provided by Section 24-6-402(4)(b), C.R.S. and, based on that opinion, no further record, written or electronic, was kept or required to be kept pursuant to Section 24-6-402(2)(b), C.R.S. or Section 24-6-402(2)(d.5)(II)(B), C.R.S.

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Megan J. Murphy, Esq.



**AGREEMENT**

12345 Huron Street  
 Westminster, CO 80234  
 (303) 427-7443  
 1-(800) 779-7443  
 Fax: (303) 427-0612

**SPECIAL EVENT HOURS**  
 Monday-Saturday 8:00-5:00

www.funservicescolorado.com

ResID for Fun Services, Inc Offic 58428

**Customer/Organization** CUNDALL FARMS METRO DIST/TRAI **Res Date** 5/11/2021  
**Address** P.O BOX 370390 **Phone** (303) 591-0967  
**City, State and Zip** DENVER, CO 80237- **Fax**  
**Other**

<b>Chairperson/Contact</b> PAULA JUHRS	<b>Co-Chairperson/Contact2</b> DAVID SCOTT
<b>Address:</b>	<b>Address</b>
<b>City, State and Zip</b> , CO	<b>City, State and Zip</b> , CO
<b>Home</b>	<b>Home</b>
<b>Work</b>	<b>Work</b>
<b>Fax</b> Cell (303) 591-0967	<b>Fax</b> Cell
<b>eMail</b> countryplumbing@aol.com	<b>eMail</b>

**Event Start Date** Saturday, June 26, 2021 **Event Start Time**  
**Event End Date** Saturday, June 26, 2021 **Event End Time**  
**Event Location** TRAILSIDE COMMUNITY PARK: E. 158TH AVE. & ELIZABETH CIR. Brighton  
**Est Attendance** **Representative** Nick  
**FS DELIVERY: 6/26/2021 TBD** **FS PICKUP: 6/27/2021 AM**

Description	Comment	Charge	Taxable	Unit	QTY	Days /Hrs	Amt
CANOPY 20' X 30' (Yellow)		\$205.00	Y	DAY	2	1	\$410.00
CANOPY 20' x 20' (Blue)		\$155.00	Y	DAY	1	1	\$155.00
SETUP FEE	Canopies	\$75.00	N	EACH	3	1	\$225.00
MINIATURE GOLF	9-Hole Course w/set-up	\$500.00	Y	DAY	1	1	\$500.00
CORN HOLE SET		\$50.00	Y	DAY	3	1	\$150.00
LADDERBALL		\$50.00	Y	DAY	1	1	\$50.00
BADMINTON		\$35.00	Y	DAY	1	1	\$35.00
GIANT CONNECT 4		\$75.00	Y	DAY	1	1	\$75.00

**Prize Program**

**Event Comments** ANNUAL COMMUNITY HOA EVENT. GRASS SET-UP.

**Special Instructions**

**CUSTOMER WILL PROVIDE**  
 Adults for setup:  
 Adults for take down:  
 Booth workers:  
 Tables for games:

<b>Deposit Amt:</b> \$0.00	<b>Delivery</b> \$120.00
<b>Deposit Date Due:</b> 5/16/2021	<b>Service Fee</b> \$48.00
<b>Dep Amt Recd:</b>	<b>Sales Tax</b> \$65.31
<b>Balance Due:</b>	<b>TOTAL DUE</b> \$1,833.31
<b>Cancellation Fee:</b> \$0.00	

Items returned late are subject to additional cost per day.  
**Terms of payment:** WILL CALL WITH CREDIT CARD #

A 1 1/2 % per month service charge will be added to the unpaid balance

**SALES TAX INFORMATION**

Organizations exempt from paying sales tax in Colorado will have been issued a Certificate of Exemption from the Colorado Department of Revenue, along with a seven digit number that begins with "98-". If the organization elects to provide Fun Services with their tax-exempt number, no sales tax will be charged and the organization agrees to be responsible for collecting and remitting any applicable sales or use tax.

Tax Exempt#

or Resale License#

**RELEASE OF FUN SERVICES, INC.**

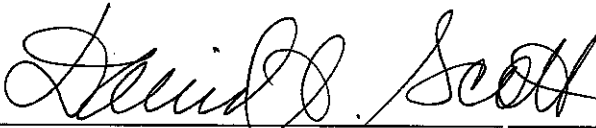
The Lessee shall control the operation of the rented item(s). Fun Services, Inc. is not responsible for any injuries occurring to Lessee or to any persons using the rented item(s). Lessee agrees to pay for any damage to or loss of the rented item(s). Lessee further agrees to indemnify Fun Services, Inc. harmless from any injuries and costs incurred arising from claims or demands by third parties arising from the use or misuse of the rented item(s).

**CANCELLATION POLICY FOR RENTAL ITEMS**

Cancellations must be made at least 3 days in advance of scheduled delivery or pick up date. ALL cancellations will be charged the full invoice amount of the order if received less than 3 days prior to delivery or pick up date. In the event of a cancellation prior to 3 days of scheduled pick up or delivery, it is the responsibility of the Lessee to notify the Rental Department at Fun Services and receive a cancellation code in order to not be charged the full reservation amount.

**RENTAL POLICIES**

A major credit card is required for all rentals and rental reservations. A 50% deposit is required at the time of booking for events delivered or staffed by Fun Services. Remaining balances are charged the week of customer pickup or Fun Services delivery. Rental charges are based on items delivered/picked-up from our warehouse. No credit will be given on unused supplies or rental items.

x  5/12/21

SIGNATURE REQUIRED

DATE

FUN SERVICES, INC. REP

DATE

CUNDALL FARMS METRO DIST/TRAILSIDE HOA 6/26/2021

My signature indicates that I have read and agree to all the above terms and conditions of this agreement.

Customer

## CUNDALL FARMS METROPOLITAN DISTRICT CONTRACT

**Name of Contractor/Provider/Consultant:** Arbortanics, Inc. d/b/a The Tree Farm  
**Title of Agreement/Contract:** Purchase of Trees  
**Agreement/Contract Date:** April 29, 2021

This Contract (“Agreement”) is made by and between Cundall Farms Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) and the above-referenced contractor, provider, or other consultant (the “Contractor”).

Introduction. The District and the Contractor desire to enter into this Contract to be effective the date above.

1. Scope of Services. The Contractor shall perform the services set forth in **Exhibit A** (the “Services”): (a) in a first-class manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period specified in the Agreement; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the District; and (d) in compliance with all applicable federal, state, county and local or municipal statutes, ordinances and regulations.

2. Compensation of Services. Compensation for the Services provided under this Agreement shall be provided in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided herein, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses. Exhibit A may take any form. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern.

3. Repairs/Claims. The Contractor shall notify the District immediately, in writing, of any and all incidents/accidents which result in injury or property damage. The Contractor will promptly repair or, at the District’s option, reimburse the District for the repair of any damage to District property caused by the Contractor or its employees, agents or equipment.

4. Independent Contractor. The Contractor is an independent contractor and nothing herein shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor is not entitled to workers’ compensation benefits or unemployment insurance benefits and the District will not provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained.

5. Prohibitions on Public Contracts for Services. The Contractor shall comply with the provisions of §§ 8-17.5-101, *et seq.*, C.R.S., and certifies that Contractor is in compliance with the provisions of this law as evidenced by Contractor’s signature below. Contractor’s violation of the requirements of §§ 8-17.5-101, *et seq.*, C.R.S. is grounds for termination of the Agreement and may subject the Contractor to actual and consequential damages.

The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in the Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) in order to confirm the employment

eligibility of all employees who are newly hired for employment to perform work under the public contract for services contemplated herein.

b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated in the Agreement.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is being performed.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under the Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

i. Notify the subcontractor and the District within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

6. Contractor's Insurance. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of the Agreement, the following insurance coverage: (i) Standard worker's compensation and employer's liability insurance covering all employees of Contractor involved with the performance of the services, with policy amounts and coverage in compliance with law; (ii) Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 general aggregate (iii) Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage, and (iv) any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations; nor shall the purchase of the required insurance serve to limit the Contractor's liability. The Contractor shall be responsible for the payment of any deductibles on issued policies.

7. Indemnification. The Contractor shall defend, indemnify and hold harmless the District and each of its directors, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including legal expenses and attorneys' fees, arising directly or indirectly out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or

employees. The Contractor is not obligated to indemnify the District for the District's own negligence. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under worker's compensation acts, disability acts or other employee benefit acts. Such indemnity shall survive the expiration or termination of this Agreement. To the extent the District is or may be obligated to indemnify, defend, or hold Contractor harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with this Agreement.

8. Termination. This Agreement may be terminated by either party for cause or for convenience upon ten (10) days prior written notice to the other party. If the Agreement is terminated, the Contractor shall be paid for all Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business.

9. Governing Law / Disputes. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions shall be in the District Court in and for the county in which the District is located.

10. Subject to Annual Appropriation and Budget. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The obligations of the District under this Agreement is subject to annual budgeting and appropriations, and the Contractor expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of District's governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Contractor understand and intend that the Districts' obligation to make payments and pay other amounts due under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements.

11. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the §§ 24-10-101, *et seq.*, C.R.S.

12. Remedies. To the extent the Contractor's remedies for a District default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited solely to sums lawfully appropriated for such purpose and shall further be limited to amounts to become due during the District's then current fiscal period.

13. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.

14. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.



15. Miscellaneous. This Agreement constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments.

16. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

<b>District:</b>	<b>Contractor:</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Exhibit A  
Scope of Services/Compensation Schedule



11868 Mineral Rd. (HWY 52) • Longmont, CO 80504  
 PHONE 303-652-2961 • FAX 303-652-2960  
 E-Mail: info@TheTreeFarm.com  
 www.TheTreeFarm.com

# ORDER

ACKNOWLEDGMENT#: 716867-A  
 DATE: 04/29/21 08:46:36  
 PAGE: 1  
 CUSTOMER #: 170358

----- B I L L T O : -----  
 CUNDALL FARMS METRO DISTRICT  
 C/O DARREN FRESQUEZ  
 15887 CLAYTON ST  
 THORNTON, CO 80602  
 HM: 303-859-5820 WK:  
 JOB NAME:

CUSTOMER P.O. #	REP	SHIP VIA	TERMS	OPERATOR	REG	DELIVER
*	DS	ACKNOWLEDGED	A CASH/COD	david	99	/ /

Qty Taken	Qty Order	Size	Product Description	Price Each	Extended Price	
	1.00	BB2.00	BALDCYPRESS, COMMON	599.95	449.96*	449.96
	4.00	25C200	BUCKEYE, OHIO	649.95	449.99*	1799.96
	6.00	BB3.00	CATALPA, NORTHERN	899.95	674.96*	4049.76
	2.00	BB2.00	COFFEETREE, KENTUCKY	649.95	487.46*	974.92
	4.00	20C150	COTTONWOOD, NARROWLEAF	339.95	254.96*	1019.84
	1.00	BB2.00	CRAB, CORALBURST	619.95	464.96*	464.96
	2.00	25C200	CRAB, GLADIATOR	599.95	399.99*	799.98
	12.00	BB2.00	CRAB, SPRING SNOW	539.95	399.99*	4799.88
	9.00	BB1.50	FILBERT, TURKISH	629.95	472.46*	4252.14
	3.00	25C200	HAWTHORNE, WASHINGTON	599.95	449.96*	1349.88
	9.00	BB2.50	COFFEETREE, ESPRESSO	859.95	644.96*	5804.64
	4.00	BB2.00	LILAC, IVORY SILK JAPANESE T	649.95	487.46*	1949.84
	14.00	45C250	LINDEN, GREENSPIRE	799.95	599.96*	8399.44

CONTINUED ON PAGE 2



11868 Mineral Rd. (HWY 52) • Longmont, CO 80504  
 PHONE 303-652-2961 • FAX 303-652-2960  
 E-Mail: info@TheTreeFarm.com  
 www.TheTreeFarm.com

# ORDER

ACKNOWLEDGMENT#: 716867-A  
 DATE: 04/29/21 08:46:36  
 PAGE: 2  
 CUSTOMER #: 170358

----- B I L L T O : -----  
 CUNDALL FARMS METRO DISTRICT  
 C/O DARREN FRESQUEZ  
 15887 CLAYTON ST  
 THORNTON, CO 80602  
 HM: 303-859-5820 WK:  
 JOB NAME:

CUSTOMER P.O. #	REP	SHIP VIA	TERMS	OPERATOR	REG	DELIVER
*	DS	ACKNOWLEDGED	A CASH/COD	david	99	/ /

Qty Taken	Qty Order	Size	Product Description	Price Each	Extended Price
	22.00	25C175	MAPLE, SUGAR 'FALL FIESTA'	619.95	439.99* 9679.78
	11.00	25C175	MAPLE, SUGAR 'GREEN MOUNTAIN	569.95	427.46* 4702.06
	3.00	28I200	MAPLE, BIGTOOTH 'ROCKY MTN.G	699.95	524.96* 1574.88
	5.00	25C200	MAPLE, SENSATION	599.95	449.96* 2249.80
	13.00	BB2.00	OAK, CHINKAPIN no Bur Oak	699.95	524.96* 6824.48
	4.00	BB3.00	OAK, CHINKAPIN	1039.95	779.96* 3119.84
	5.00	BB2.00	OAK, CHINKAPIN	699.95	524.96* 2624.80
	1.00	BB2.50	OAK, CRIMSON SPIRE	859.95	644.96* 644.96
	20.00	45C250	PEAR, CLEVELAND	729.95	529.99*10599.80
	8.00	45C250	PEAR, CLEVELAND	729.95	529.99* 4239.92
	2.00	BB 06	SPRUCE, BLACK HILLS	599.95	479.96* 959.92
	5.00	BB08MD	SPRUCE, FAT ALBERT BLUE	879.95	699.99* 3499.95

SUB TOTAL	86835.39
TAX	0.00
<b>GRAND TOTAL</b>	<b>86835.39</b>

\* - Sale Price

SEE SEPARATE INVOICE

PLANTPLANT/DEL-ON ACCT

**50% COPAY  
RETAIL LIMITED WARRANTY**

All trees and shrubs offered for sale by THE TREE FARM have been inspected both by the Colorado Department of Agriculture and personnel at THE TREE FARM, and found to be in good condition and apparently free from insect pests and plant diseases. After purchased plants leave THE TREE FARM, we of course, do not have control over their horticultural care, such as weather conditions, transportation damage, improper planting, poor soil, over-watering, under-watering, animal damage, damage by a person, mishandling, mechanical/lawnmower damage, etc. Therefore, we cannot guarantee their survival.

**However, as a practice of goodwill to our valued customers, if a plant dies within the first year and you choose to purchase a replacement plant, we at THE TREE FARM, upon return of the dead plant material and a sales receipt, will offer a 50% COPAY of the original purchase price paid, towards your replacement plant of equal or greater cost.**

**Example: If your original purchase price paid was \$100.00, your 50% COPAY will be \$50.00 towards a minimum plant REPLACEMENT PURCHASE of \$100.00 (or more). Otherwise, your COPAY will be 50% of the replacement cost amount under \$100.00.**

**THE 50% COPAY IS NEVER REDEEMABLE AS A BLANKET CREDIT OR REFUND  
AND DOES NOT APPLY TO HARD GOODS OR ANNUALS.**

**Returns and Exchanges**

Since our products are living things, once the plants leave our nursery, all returns or exchanges are subject to a 10% restocking fee (20% on balled and burlap plants). Returns or exchanges will be accepted **only within 14 days** of the original purchase date. Returns are also subject to refusal, based on the condition of the plant being returned.

If the plant being returned is deemed unsellable, our 50% Copay Warranty will apply.

We do not allow returns on items after they have been planted or under-watered.

Respectfully,  
The management at THE TREE FARM

**Guarantee**

All our stock is guaranteed to be true to name and variety. If any stock proves otherwise, we will never be liable for an amount greater than the original purchase price.

## CUNDALL FARMS METROPOLITAN DISTRICT CONTRACT

**Name of Contractor/Provider/Consultant:** 1<sup>st</sup> Green Colorado LLC  
**Title of Agreement/Contract:** Tree Planting  
**Agreement/Contract Date:** April 29, 2021

This Contract (“Agreement”) is made by and between Cundall Farms Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) and the above-referenced contractor, provider, or other consultant (the “Contractor”).

Introduction. The District and the Contractor desire to enter into this Contract to be effective the date above.

1. Scope of Services. The Contractor shall perform the services set forth in **Exhibit A** (the “Services”): (a) in a first-class manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period specified in the Agreement; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the District; and (d) in compliance with all applicable federal, state, county and local or municipal statutes, ordinances and regulations.

2. Compensation of Services. Compensation for the Services provided under this Agreement shall be provided in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided herein, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses. Exhibit A may take any form. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern.

3. Repairs/Claims. The Contractor shall notify the District immediately, in writing, of any and all incidents/accidents which result in injury or property damage. The Contractor will promptly repair or, at the District’s option, reimburse the District for the repair of any damage to District property caused by the Contractor or its employees, agents or equipment.

4. Independent Contractor. The Contractor is an independent contractor and nothing herein shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor is not entitled to workers’ compensation benefits or unemployment insurance benefits and the District will not provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained.

5. Prohibitions on Public Contracts for Services. The Contractor shall comply with the provisions of §§ 8-17.5-101, *et seq.*, C.R.S., and certifies that Contractor is in compliance with the provisions of this law as evidenced by Contractor’s signature below. Contractor’s violation of the requirements of §§ 8-17.5-101, *et seq.*, C.R.S. is grounds for termination of the Agreement and may subject the Contractor to actual and consequential damages.

The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in the Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) in order to confirm the employment

eligibility of all employees who are newly hired for employment to perform work under the public contract for services contemplated herein.

b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated in the Agreement.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is being performed.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under the Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

i. Notify the subcontractor and the District within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

6. Contractor's Insurance. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of the Agreement, the following insurance coverage: (i) Standard worker's compensation and employer's liability insurance covering all employees of Contractor involved with the performance of the services, with policy amounts and coverage in compliance with law; (ii) Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 general aggregate (iii) Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage, and (iv) any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations; nor shall the purchase of the required insurance serve to limit the Contractor's liability. The Contractor shall be responsible for the payment of any deductibles on issued policies.

7. Indemnification. The Contractor shall defend, indemnify and hold harmless the District and each of its directors, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including legal expenses and attorneys' fees, arising directly or indirectly out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or

employees. The Contractor is not obligated to indemnify the District for the District's own negligence. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under worker's compensation acts, disability acts or other employee benefit acts. Such indemnity shall survive the expiration or termination of this Agreement. To the extent the District is or may be obligated to indemnify, defend, or hold Contractor harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with this Agreement.

8. Termination. This Agreement may be terminated by either party for cause or for convenience upon ten (10) days prior written notice to the other party. If the Agreement is terminated, the Contractor shall be paid for all Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business.

9. Governing Law / Disputes. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions shall be in the District Court in and for the county in which the District is located.

10. Subject to Annual Appropriation and Budget. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The obligations of the District under this Agreement is subject to annual budgeting and appropriations, and the Contractor expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of District's governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Contractor understand and intend that the Districts' obligation to make payments and pay other amounts due under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements.

11. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the §§ 24-10-101, *et seq.*, C.R.S.

12. Remedies. To the extent the Contractor's remedies for a District default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited solely to sums lawfully appropriated for such purpose and shall further be limited to amounts to become due during the District's then current fiscal period.

13. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.

14. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.



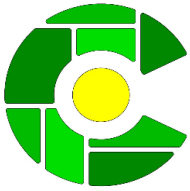
15. Miscellaneous. This Agreement constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments.

16. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

<b>District:</b> By: <u><i>David J. Scott</i></u> Name: <u>David Scott</u> Title: <u>President</u>	<b>Contractor:</b> By: _____ Name: _____ Title: _____
---	--

Exhibit A  
Scope of Services/Compensation Schedule



**1st Green Colorado**  
Design/Build Landscaping for the Colorado Lifestyle

12149 E. Baseline Rd.  
Lafayette, Colorado 80026  
Phone: (303) 926-7260  
Fax: (303) 926-7262

Proposal Prepared for:  
**Fresquez**  
**15887 Clayton Street**  
**Thornton, CO**  
**27-Apr-21**

**Project: Large Spruces**

<i>Product Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Item Price</i>	<i>Total price</i>
<b>Project Site Work</b>				<b>\$ 319.65</b>
Project Mobilization	1.00	each	319.65	319.65
<b>Environmental Fees</b>				<b>\$ 951.77</b>
Disposal Charge / Construction & Demolition Debris : Sod & Bad Soil	6.00	ton/s	124.39	746.31
Dump Trailer Disposal Charge / 6 tons per load - Debris	1.00	each	205.46	205.46
<b>Coniferous Trees</b>		total		<b>\$ 18,057.43</b>
Spruce, Colorado 8'	2.00	each	945.38	1,890.76
Spruce, Colorado 11'	2.00	each	1,239.46	2,478.92
Spruce, Colorado 12'	1.00	each	1,282.76	1,282.76
Spruce, Colorado 13'	3.00	each	1,388.85	4,166.54
Spruce, Colorado 14'	2.00	each	1,554.04	3,108.08
Spruce, Colorado 15'	3.00	each	1,710.12	5,130.37
<b>Deliveries</b>				<b>\$ 150.00</b>
Trees delivery and handling	2.00	each	75.00	150.00
<b>Superintendant Fee</b>				<b>\$ 973.94</b>
<b>Proposal total:</b>				<b>\$ 20,452.79</b>



**Exclusions:**

Utility trenching • Permits • Engineering. Gas & Electrical installation not included  
(Must be completed by licensed plumber or electrician)  
Tenting • Heating • Winter work considerations

**Acceptance Signature:**

**Date:**

The proposed prices, specifications and conditions are hereby accepted, as well as terms of limited warranty included in customer care package. 1st Green Colorado is authorized to do the work as specified. Any private utility lines will not be located by UNCC. The homeowner is responsible for disclosing the location of these items. It is the homeowners financial responsibility to repair any damage due to nondisclosure. Payment will be 50% down prior to the start of work with installment payments based on percentage of work completed. Progress Payments will be due by the 10th of each month for the previous months billing. The above pricing is valid for 30 days following the date of this proposal. Prices are subject to adjustment thereafter unless quote has been signed and scheduled prior to 30 days from the date of proposal. 1st Green Colorado reserves the right to take and use pictures of specific project for management and marketing.

## CUNDALL FARMS METROPOLITAN DISTRICT CONTRACT

**Name of Contractor/Provider/Consultant:** James Nursery Company

**Title of Agreement/Contract:** Tree Planting

**Agreement/Contract Date:** May 25, 2021

This Contract ("Agreement") is made by and between Cundall Farms Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") and the above-referenced contractor, provider, or other consultant (the "Contractor").

Introduction. The District and the Contractor desire to enter into this Contract to be effective the date above.

1. Scope of Services. The Contractor shall perform the services set forth in **Exhibit A** (the "Services"): (a) in a first-class manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period specified in the Agreement; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the District; and (d) in compliance with all applicable federal, state, county and local or municipal statutes, ordinances and regulations.

2. Compensation of Services. Compensation for the Services provided under this Agreement shall be provided in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided herein, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses. Exhibit A may take any form. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern.

3. Repairs/Claims. The Contractor shall notify the District immediately, in writing, of any and all incidents/accidents which result in injury or property damage. The Contractor will promptly repair or, at the District's option, reimburse the District for the repair of any damage to District property caused by the Contractor or its employees, agents or equipment.

4. Independent Contractor. The Contractor is an independent contractor and nothing herein shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor is not entitled to workers' compensation benefits or unemployment insurance benefits and the District will not provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained.

5. Prohibitions on Public Contracts for Services. The Contractor shall comply with the provisions of §§ 8-17.5-101, *et seq.*, C.R.S., and certifies that Contractor is in compliance with the provisions of this law as evidenced by Contractor's signature below. Contractor's violation of the requirements of §§ 8-17.5-101, *et seq.*, C.R.S. is grounds for termination of the Agreement and may subject the Contractor to actual and consequential damages.

The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in the Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) in order to confirm the employment

eligibility of all employees who are newly hired for employment to perform work under the public contract for services contemplated herein.

b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated in the Agreement.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is being performed.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under the Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

i. Notify the subcontractor and the District within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

6. Contractor's Insurance. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of the Agreement, the following insurance coverage: (i) Standard worker's compensation and employer's liability insurance covering all employees of Contractor involved with the performance of the services, with policy amounts and coverage in compliance with law; (ii) Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 general aggregate (iii) Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage, and (iv) any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations; nor shall the purchase of the required insurance serve to limit the Contractor's liability. The Contractor shall be responsible for the payment of any deductibles on issued policies.

7. Indemnification. The Contractor shall defend, indemnify and hold harmless the District and each of its directors, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including legal expenses and attorneys' fees, arising directly or indirectly out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or

employees. The Contractor is not obligated to indemnify the District for the District's own negligence. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under worker's compensation acts, disability acts or other employee benefit acts. Such indemnity shall survive the expiration or termination of this Agreement. To the extent the District is or may be obligated to indemnify, defend, or hold Contractor harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with this Agreement.

8. Termination. This Agreement may be terminated by either party for cause or for convenience upon ten (10) days prior written notice to the other party. If the Agreement is terminated, the Contractor shall be paid for all Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business.

9. Governing Law / Disputes. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions shall be in the District Court in and for the county in which the District is located.

10. Subject to Annual Appropriation and Budget. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The obligations of the District under this Agreement is subject to annual budgeting and appropriations, and the Contractor expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of District's governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Contractor understand and intend that the Districts' obligation to make payments and pay other amounts due under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements.

11. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the §§ 24-10-101, *et seq.*, C.R.S.

12. Remedies. To the extent the Contractor's remedies for a District default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited solely to sums lawfully appropriated for such purpose and shall further be limited to amounts to become due during the District's then current fiscal period.

13. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.

14. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

15. Miscellaneous. This Agreement constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments.

16. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

<b>District:</b>	<b>Contractor:</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____



Exhibit A  
Scope of Services/Compensation Schedule

# Order Acknowledgement

James Nursery Company  
 7900 York St., Denver CO 80229-6134  
 Sales: (303) 288-2424 Fax: (303) 287-2627  
 1-800-756-TREE (8733)  
 www.jamesnurserycompany.com

Transaction #: 21-98933  
 Customer : WHOLES  
 Order Date : 5/8/2021  
 Due Date : 5/25/2021  
 PO Number : CUNDALL FARMS HOA  
 Ship Via : TAKEN  
 Terms : CASH/DUE ON RECEIPT

**Sold To:**  
 WHOLESALE TAXABLE

**Job Site:**  
 303.859.5820 DARREN FRESQUEZ

Item	Item Description - 1	Ordered	Unit Price	Disc %	Disc Price	Amount
TILIAMSEBB200	LINDEN, AMER. SENTRY 2.00" B&B	10.00	358.0000	9.00	\$325.78	\$3,257.80
PYRUCLEV/BB200	PEAR, CLEVELAND 2.00" B&B SELECT	20.00	340.0000	9.00	\$309.40	\$6,188.00
PINUPONDBB144	PINE, PONDEROSA 12' B&B	1.00	775.0000	9.00	\$705.25	\$705.25
POPUACUMBB200	COTTONWOOD, ACUMIN 2.00" B&B	9.00	313.0000	9.00	\$284.83	\$2,563.47
GRAERRA0F05G	GRASS, ERIA. RAVENNA #5 CONT. HRDY PAMPAS	20.00	39.2500	9.00	\$35.72	\$714.35
GLEDHADBB200	LOCUST, SHADEMASTER 2.00" B&B	10.00	308.0000	9.00	\$280.28	\$2,802.80
GYMNKEESBB200	ESPRESSO COFFEETREE 2.00" B&B	5.00	358.0000	9.00	\$325.78	\$1,628.90
QUERHERIBB200	OAK, HERITAGE 2.00" B&B	5.00	388.0000	9.00	\$353.08	\$1,765.40
POPUASCLBB200	ASPEN, CLUMP 2.00" B&B	5.00	278.0000	9.00	\$252.98	\$1,264.90
PICEBABLBB060	SPRUCE, BABY BLUE 5' B&B	5.00	268.0000	9.00	\$243.88	\$1,219.40
CATASPECBB250	CATALPA, SPECIOSA 2.50" B&B	4.00	334.0000	9.00	\$303.94	\$1,215.76
CATASPECBB200	CATALPA, SPECIOSA 2.00" B&B	10.00	334.0000	9.00	\$303.94	\$3,039.40
PICEBABEBB060	SPRUCE, BABY BLUEEYE 5' B&B	5.00	299.0000	9.00	\$272.09	\$1,360.45
MESTAGGED	TREES TAGGED-LOOK FOR SOLD TAG ON TREE	1.00	0.0000	9.00	\$0.00	\$0.00
CATAHEARB300	CATALPA, HEARTLAND 3.00" B&B	5.00	525.0000	9.00	\$477.75	\$2,388.75

# Order Acknowledgement

James Nursery Company  
 7900 York St., Denver CO 80229-6134  
 Sales: (303) 288-2424 Fax: (303) 287-2627  
 1-800-756-TREE (8733)  
 www.jamesnurserycompany.com

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 Ship Via : TAKEN  
 Terms : CASH/DUE ON RECEIPT

**Sold To:**  
 WHOLESALE TAXABLE

**Job Site:**  
 303.859.5820 DARREN FRESQUEZ

Item	Item Description - 1	Ordered	Unit Price	Disc %	Disc Price	Amount
------	----------------------	---------	------------	--------	------------	--------

WE GUARANTEE ALL STOCK TO BE TRUE TO NAME AND FREE FROM DISEASE AND PESTS, WE MAKE NO WARRANTY AS TO LIFE OR SUCCESS SECURED IN TRANSPLANTING, UNLESS A RETAIL GUARANTEE HAS BEEN PROVIDED.

TERMS: All sales are C.O.D. (cash or guaranteed check) unless credit has been established. All accounts are due 60 days from the date of invoice. ALL ACCOUNTS PAST 60 DAYS ARE REFERRED TO OUR COLLECTION AGENCY. PAST DUE ACCOUNTS WILL FORFEIT THEIR VOLUME DISCOUNT ON THE PAST DUE BALANCE. They are also subject to a 2% per month service charge on the unpaid balance (24% per year) or the highest legally obtainable rate. All past due accounts will be held financially responsible for all legal and collection costs.  
 BUYER IS RESPONSIBLE FOR ANY ADDITIONAL SALES TAX BEYOND STATE AND ADAMS COUNTY.  
 ACCEPTANCE: AS AGENT FOR THE ABOVE NAMED COMPANY, I ACCEPT BOTH THE CONDITION OF THE STOCK AND THE CONDITIONS OF THIS SALE AS STATED

Item Total	:	\$30,114.63
Tax Rate	:	0.00
Sales Tax	:	\$0.00
Total Amount	:	\$30,114.63

## Contract for Musical Services

This contract covers the services that will be provided by **Call Us A Cab**, 4048 East Maplewood Place, Centennial Co 80121-3143, 303-741-0940, [Mike@CallUsACab.com](mailto:Mike@CallUsACab.com), hereafter called "Band," and **Trailside Social Committee**, hereafter called "Employer." Any alterations to this agreement must be made in writing and must be signed by both parties.

By signing this document, employer agrees to pay **\$600** in cash or check made out to **Mike Braun**, Call Us A Cab's band leader, for services rendered on **Saturday, June 26<sup>th</sup>, 2021 from 4:00 p.m. to 7:00 p.m** prior to the end of the performance. A deposit is not required to hold the date. The performance will take place at:

---

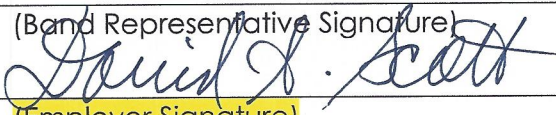
Location	Address	City	ZIP
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Band will take no more than two ten-minute breaks during performance, unless Employer requests additional breaks or extends the length of breaks for Employer activities. Band will assist as Master of Ceremonies for such activities if requested. Employer may use Band's public address system as needed. No outside parties will be allowed to sit-in with the Band or perform in lieu of Band.

Venue must be made available to Band for setup of equipment at 3:00 p.m. on the day of performance. Band will promptly pack up and leave at the conclusion of their performance. No alcohol will be consumed by musicians while on site.

By signing this document, both parties agree that these terms are acceptable.

---

(Band Representative Signature)  
  
(Employer Signature)

---

(Date)  
5/20/21  
(Date)

---

(Employer Address)

---

(Employer City, State, ZIP)

Tanya Revoir

---

(Contact Name & Phone)

trevoir11@gmail.com

---

(Contact Email)



# ASSOCIATION RESERVES™



## Cundall Farms Metropolitan District *Thornton, CO*



Report #: 40929-0  
Beginning: January 1, 2021  
Expires: December 31, 2021

# RESERVE STUDY

"Full"

April 8, 2021



# Welcome to your Reserve Study!

**A** Reserve Study is a valuable tool to help you budget responsibility for your property. This report contains all the information you need to avoid surprise expenses, make informed decisions, save money, and protect property values.

**R**egardless of the property type, it's a fact of life that the very moment construction is completed, every major building component begins a predictable process of physical deterioration. The operative word is "predictable" because planning for the inevitable is what a Reserve Study by **Association Reserves** is all about!

In this Report, you will find three key results:

- **Component List**  
Unique to each property, the Component List serves as the foundation of the Reserve Study and details the scope and schedule of all necessary repairs & replacements.
- **Reserve Fund Strength**  
A calculation that measures how well the Reserve Fund has kept pace with the property's physical deterioration.
- **Reserve Funding Plan**  
A multi-year funding plan based on current Reserve Fund strength that allows for component repairs and replacements to be completed in a timely manner, with an emphasis on fairness and avoiding "catch-up" funding.

## Questions?

Please contact your Project Manager directly.



ASSOCIATION  
RESERVES™

*Planning For The Inevitable™*

[www.reservestudy.com](http://www.reservestudy.com)

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Cundall Farms Metropolitan District  
Thornton, CO  
Level of Service: "Full"

Report #: 40929-0  
# of Units: 362

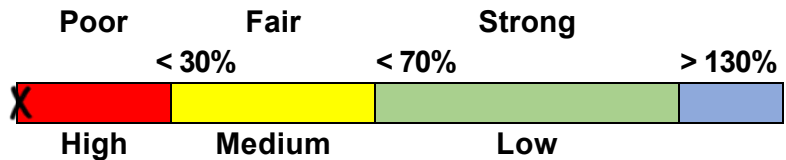
January 1, 2021 through December 31, 2021

Findings & Recommendations

as of January 1, 2021

Starting Reserve Balance	\$0
Fully Funded Reserve Balance	\$97,055
Percent Funded	0.0 %
Recommended 2021 Monthly "Fully Funding" Contributions	\$2,050
Alternate/Baseline Monthly Minimum Contributions to Keep Reserves Above \$0	\$1,850
Recommended 2021 Special Assessments for Reserves	\$0
Most Recent Monthly Reserve Contribution Rate	\$0

Reserve Fund Strength: 0.0%



Risk of Special Assessment:

Economic Assumptions:

Net Annual "After Tax" Interest Earnings Accruing to Reserves	1.00 %
Annual Inflation Rate	3.00 %

- This "Full", (original, created "from scratch"), is based on our site inspection on 2/18/2021.
- The Reserve Study was reviewed by a credentialed Reserve Specialist (RS).
- Your Reserve Fund is currently 0.0 % Funded. This means the client's special assessment & deferred maintenance risk is currently High.
- Based on this starting point and your anticipated future expenses, our recommendation is to budget the Monthly Reserve contributions at \$2,050 with 3% annual increases in order to be within the 70% to 130% level as noted above. 100% "Full" contribution rates are designed to achieve these funding objectives by the end of our 30-year report scope.
- The goal of the Reserve Study is to help the client offset inevitable annual deterioration of the common area components. The Reserve Study will guide the client to establish an appropriate Reserve Contribution rate that offsets the annual deterioration of the components and 'keep pace' with the rate of ongoing deterioration. No assets appropriate for Reserve designation were excluded. See photo appendix for component details; the basis of our assumptions.
- We recommend that this Reserve Study be updated annually, with a With-Site-Visit Reserve Study every three years. Research has found that clients who update their Reserve Study annually with a No-Site-Visit Reserve Study reduce their risk of special assessment by ~ 35%.

#	Component	Useful Life (yrs)	Rem. Useful Life (yrs)	Current Average Cost
<b>Sites and Grounds</b>				
21080	Drainage Swales/Pans - Repair - 5%	5	2	\$4,500
21090	Concrete Walkways - Repair - 5%	5	2	\$37,150
21140	Gazebo Roof – Repair/Replace	40	33	\$4,000
21600	Mailbox Kiosks - Replace	30	23	\$34,800
21610	Sign/Monument - Refurbish/Replace	30	23	\$11,800
21620	Pet Waste Stations - Replace	20	13	\$2,750
21660	Park Pole Lights - Replace	30	23	\$9,800
<b>Amenities</b>				
26030	Playground Cover - Refill/Replace	10	3	\$6,100
26050	Playground Equipment - Replace	25	18	\$129,400
26060	Picnic Tables/Benches - Replace	30	23	\$14,500
26230	Soccer Goal - Replace	15	8	\$3,200
26250	Basketball Court - Seal/Repair	5	1	\$3,600
<b>Mechanicals</b>				
25570	Irrigation Clocks - Replace	15	8	\$19,250

**13 Total Funded Components**

Note 1: Yellow highlighted line items are expected to require attention in this initial year.

## Introduction



A Reserve Study is the art and science of anticipating, and preparing for, an association's major common area repair and replacement expenses. Partially art, because in this field we are making projections about the future. Partially science, because our work is a combination of research and well-defined computations, following consistent National Reserve Study Standard principles.

The foundation of this and every Reserve Study is your Reserve Component List (what you are reserving for). This is because the Reserve Component List defines the *scope and schedule* of all your anticipated upcoming Reserve projects. Based on that List and your starting balance, we calculate the association's Reserve Fund Strength (reported in terms of "Percent Funded"). Then we compute a Reserve Funding Plan to provide for the Reserve needs of the association. These form the three results of your Reserve Study.



Reserve contributions are not “for the future”. Reserve contributions are designed to offset the ongoing, daily deterioration of your Reserve assets. Done well, a stable, budgeted Reserve Funding Plan will collect sufficient funds from the owners who enjoyed the use of those assets, so the association is financially prepared for the irregular expenditures scattered through future years when those projects eventually require replacement.

## Methodology



For this [Full Reserve Study](#), we started with a review of your Governing Documents, recent Reserve expenditures, an evaluation of how expenditures are handled (ongoing maintenance vs Reserves), and research into any well-established association precedents. We

performed an on-site inspection to quantify and evaluate your common areas, creating your Reserve Component List *from scratch*.

## *Which Physical Assets are Funded by Reserves?*

There is a national-standard four-part test to determine which expenses should appear in your Reserve Component List. First, it must be a common area maintenance responsibility. Second, the component must have a limited life. Third, the remaining life must be predictable (or it by definition is a *surprise* which cannot be accurately anticipated). Fourth, the component must be above a minimum threshold cost (often between .5% and 1% of an association's total budget). This limits Reserve



RESERVE COMPONENT "FOUR-PART TEST"

Components to major, predictable expenses. Within this framework, it is inappropriate to include *lifetime* components, unpredictable expenses (such as damage due to fire, flood, or earthquake), and expenses more appropriately handled from the Operational Budget or as an insured loss.

## *How do we establish Useful Life and Remaining Useful Life estimates?*

- 1) Visual Inspection (observed wear and age)
- 2) Association Reserves database of experience
- 3) Client History (install dates & previous life cycle information)
- 4) Vendor Evaluation and Recommendation

## *How do we establish Current Repair/Replacement Cost Estimates?*

In this order...

- 1) Actual client cost history, or current proposals
- 2) Comparison to Association Reserves database of work done at similar associations
- 3) Vendor Recommendations
- 4) Reliable National Industry cost estimating guidebooks

## How much Reserves are enough?

Reserve adequacy is not measured in cash terms. Reserve adequacy is found when the *amount* of current Reserve cash is compared to Reserve component deterioration (the *needs of the association*). Having *enough* means the association can execute its projects in a timely manner with existing Reserve funds. Not having *enough* typically creates deferred maintenance or special assessments.

Adequacy is measured in a two-step process:

- 1) Calculate the *value of deterioration* at the association (called Fully Funded Balance, or FFB).
- 2) Compare that to the Reserve Fund Balance, and express as a percentage.



Each year, the *value of deterioration* at the association changes. When there is more deterioration (as components approach the time they need to be replaced), there should be more cash to offset that deterioration and prepare for the expenditure. Conversely, the *value of deterioration* shrinks after projects are accomplished. The *value of deterioration* (the FFB) changes each year, and is a moving but predictable target.

There is a high risk of special assessments and deferred maintenance when the Percent Funded is *weak*, below 30%. Approximately 30% of all associations are in this high risk range. While the 100% point is Ideal (indicating Reserve cash is equal to the *value of deterioration*), a Reserve Fund in the 70% - 130% range is considered strong (low risk of special assessment).

Measuring your Reserves by Percent Funded tells how well prepared your association is for upcoming Reserve expenses. New buyers should be very aware of this important disclosure!

## How much should we contribute?



RESERVE FUNDING PRINCIPLES

According to National Reserve Study Standards, there are four Funding Principles to balance in developing your Reserve Funding Plan. Our first objective is to design a plan that provides you with sufficient cash to perform your Reserve projects on time. Second, a stable contribution is desirable because it keeps these naturally irregular expenses from unsettling the budget.

Reserve contributions that are evenly distributed over current and future owners enable each owner to pay their fair share of the association's Reserve expenses over the years. And finally, we develop a plan that is fiscally responsible and safe for Boardmembers to recommend to their association. Remember, it is the Board's job to provide for the ongoing care of the common areas. Boardmembers invite liability exposure when Reserve contributions are inadequate to offset ongoing common area deterioration.

## What is our Recommended Funding Goal?

Maintaining the Reserve Fund at a level equal to the *value* of deterioration is called "Full Funding" (100% Funded). As each asset ages and becomes "used up," the Reserve Fund grows proportionally. **This is simple, responsible, and our recommendation.** Evidence shows that associations in the 70 - 130% range *enjoy a low risk of special assessments or deferred maintenance.*



FUNDING OBJECTIVES

Allowing the Reserves to fall close to zero, but not below zero, is called Baseline Funding. Doing so allows the Reserve Fund to drop into the 0 - 30% range, where there is a high risk of special assessments & deferred maintenance. Since Baseline Funding still provides for the timely execution of all Reserve projects, and only the "margin of safety" is different, Baseline Funding contributions average only 10% - 15% less than Full Funding contributions. Threshold Funding is the title of all other Cash or Percent Funded objectives *between* Baseline Funding and Full Funding.

**Site Inspection Notes**

During our site visit on 2/18/2021 we visually inspected the common area assets and were able to see a majority of the common areas.

Please see photo appendix for component details; the basis of our assumptions.



## Projected Expenses

While this Reserve Study looks forward 30 years, we have no expectation that all these expenses will all take place as anticipated. This Reserve Study needs to be updated annually because we expect the timing of these expenses to shift and the size of these expenses to change. We do feel more certain of the timing and cost of near-term expenses than expenses many years away. Please be aware of your near-term expenses, which we are able to project more accurately than the more distant projections.

The figure below summarizes the projected future expenses as defined by your Reserve Component List. A summary of these expenses are shown in the 30-Year Reserve Plan Summary Table, while details of the projects that make up these expenses are shown in the 30-Year Income/Expense Detail.

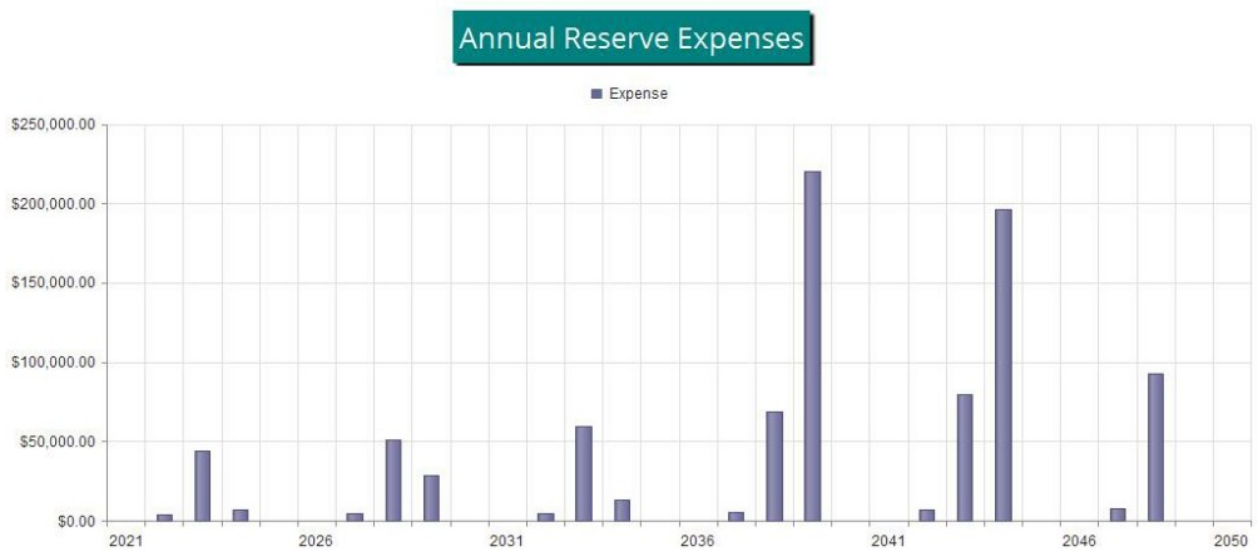


Figure 1



## Reserve Fund Status

As of 1/1/2021 your Reserve Fund balance is projected to be \$0 and your Fully Funded Balance is computed to be \$97,055 (see the Fully Funded Balance Table). The Fully Funded Balance represents the deteriorated value of your common area components. Comparing your Reserve Balance to your Fully Funded Balance indicates your Reserves are 0.0 % Funded.

## Recommended Funding Plan

Based on your current Percent Funded and your near-term and long-term Reserve needs, we are recommending Monthly budgeted contributions of \$2,050. The overall 30-Year Plan, in perspective, is shown below in the Annual Reserve Funding (Fig. 2). This same information is shown numerically in both the 30-Year Reserve Plan Summary Table and the 30-Year Income/Expense Detail.

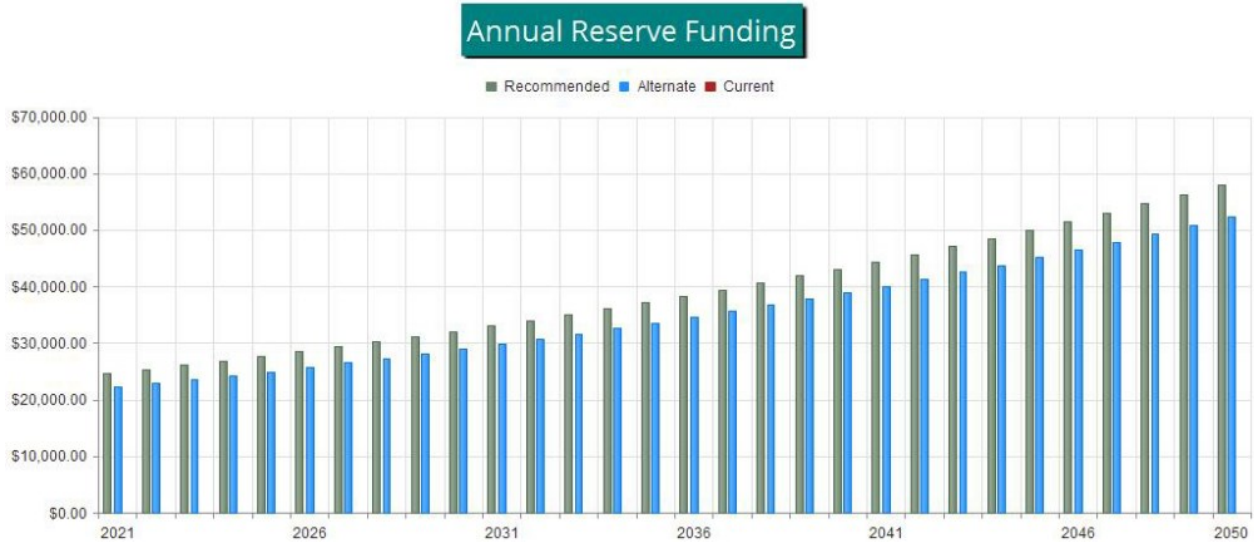


Figure 2

The reserve balance under our recommended Full Funding Plan, an alternate Baseline Funding Plan, and at your current budgeted contribution rate, compared to your always—changing Fully Funded Balance target is shown in the 30-Yr Cash Flow (Fig. 3).

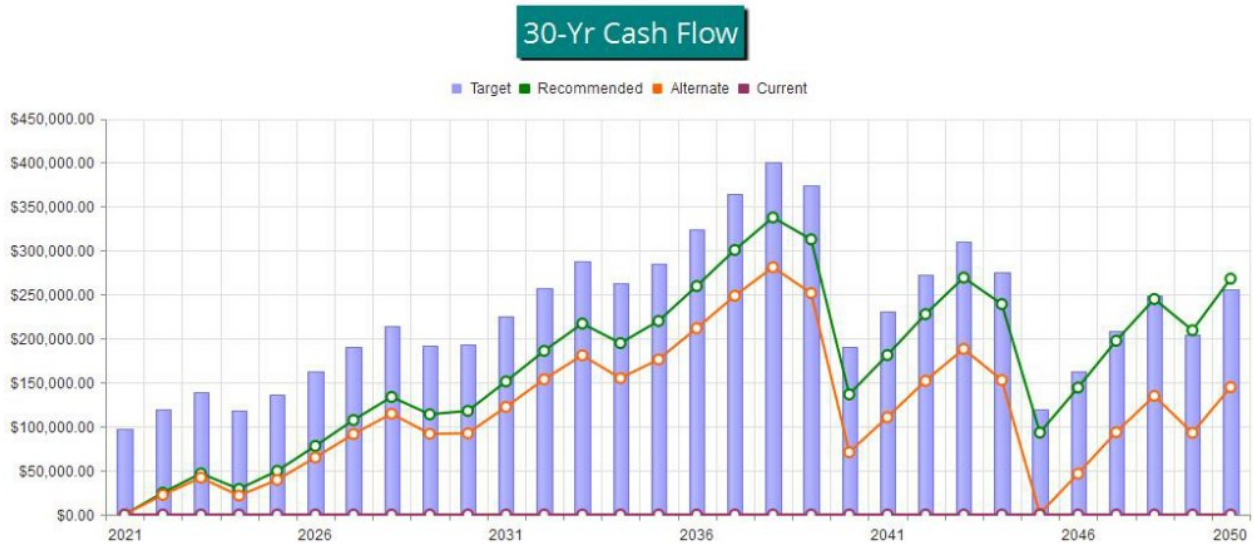


Figure 3

The information from Figure 3 is plotted on a Percent Funded scale in Figure 4. It is clear here to see how your Reserve Fund strength approaches the 100% Funded level under our recommended multi-yr Funding Plan. A client that has a percent funded level of <30% may experience an ~ 20%-60% chance risk of special assessment. A client that is between 30% and 70% may experience an ~ 20%-5% chance risk of special assessment. A client that has a percent funded of >70% may experience an ~ <1% chance risk of special assessment.



Figure 4



Executive Summary is a summary of your Reserve Components

Reserve Component List Detail discloses key Component information, providing the foundation upon which the financial analysis is performed.

Fully Funded Balance shows the calculation of the Fully Funded Balance for each of your components, and their contributions to the property total. For each component, the Fully Funded Balance is the fraction of life used up multiplied by its estimated Current Replacement Cost.

Component Significance shows the relative significance of each component to Reserve funding needs of the property, helping you see which components have more (or less) influence than others on your total Reserve contribution rate. The deterioration cost/yr of each component is calculated by dividing the estimated Current Replacement Cost by its Useful Life, then that component's percentage of the total is displayed.

30-Yr Reserve Plan Summary provides a one-page 30-year summary of the cash flowing into and out of the Reserve Fund, with a display of the Fully Funded Balance, Percent Funded, and special assessment risk at the beginning of each year.

30-Year Income/Expense Detail shows the detailed income and expenses for each of the next 30 years. This table makes it possible to see which components are projected to require repair or replacement in a particular year, and the size of those individual expenses.

#	Component	Quantity	Useful Life	Rem. Useful Life	Current Cost Estimate	
					Best Case	Worst Case
<b>Sites and Grounds</b>						
21080	Drainage Swales/Pans - Repair - 5%	5% of ~ 3300 GSF	5	2	\$4,100	\$4,900
21090	Concrete Walkways - Repair - 5%	5% of ~ 59400 GSF	5	2	\$29,700	\$44,600
21140	Gazebo Roof – Repair/Replace	(1) Gazebo	40	33	\$3,000	\$5,000
21600	Mailbox Kiosks - Replace	~ (24) CBUs	30	23	\$31,200	\$38,400
21610	Sign/Monument - Refurbish/Replace	~ (2) Monuments	30	23	\$10,000	\$13,600
21620	Pet Waste Stations - Replace	~ (9) Poles	20	13	\$2,500	\$3,000
21660	Park Pole Lights - Replace	~ (7) Lights	30	23	\$8,400	\$11,200
<b>Amenities</b>						
26030	Playground Cover - Refill/Replace	~ 8200 GSF	10	3	\$5,100	\$7,100
26050	Playground Equipment - Replace	~ (10) Pieces	25	18	\$114,800	\$144,000
26060	Picnic Tables/Benches - Replace	~ (22) Pieces	30	23	\$11,200	\$17,800
26230	Soccer Goal - Replace	(2) Goals	15	8	\$2,600	\$3,800
26250	Basketball Court - Seal/Repair	~ 3900 GSF	5	1	\$3,400	\$3,800
<b>Mechanicals</b>						
25570	Irrigation Clocks - Replace	~ (7) Clocks	15	8	\$15,400	\$23,100

13 Total Funded Components

#	Component	Current Cost Estimate	X	Effective Age	/	Useful Life	=	Fully Funded Balance
<b>Sites and Grounds</b>								
21080	Drainage Swales/Pans - Repair - 5%	\$4,500	X	3	/	5	=	\$2,700
21090	Concrete Walkways - Repair - 5%	\$37,150	X	3	/	5	=	\$22,290
21140	Gazebo Roof – Repair/Replace	\$4,000	X	7	/	40	=	\$700
21600	Mailbox Kiosks - Replace	\$34,800	X	7	/	30	=	\$8,120
21610	Sign/Monument - Refurbish/Replace	\$11,800	X	7	/	30	=	\$2,753
21620	Pet Waste Stations - Replace	\$2,750	X	7	/	20	=	\$963
21660	Park Pole Lights - Replace	\$9,800	X	7	/	30	=	\$2,287
<b>Amenities</b>								
26030	Playground Cover - Refill/Replace	\$6,100	X	7	/	10	=	\$4,270
26050	Playground Equipment - Replace	\$129,400	X	7	/	25	=	\$36,232
26060	Picnic Tables/Benches - Replace	\$14,500	X	7	/	30	=	\$3,383
26230	Soccer Goal - Replace	\$3,200	X	7	/	15	=	\$1,493
26250	Basketball Court - Seal/Repair	\$3,600	X	4	/	5	=	\$2,880
<b>Mechanicals</b>								
25570	Irrigation Clocks - Replace	\$19,250	X	7	/	15	=	\$8,983
								\$97,055

# Component	Useful Life (yrs)	Current Cost Estimate	Deterioration Cost/Yr	Deterioration Significance
<b>Sites and Grounds</b>				
21080 Drainage Swales/Pans - Repair - 5%	5	\$4,500	\$900	4.75 %
21090 Concrete Walkways - Repair - 5%	5	\$37,150	\$7,430	39.24 %
21140 Gazebo Roof – Repair/Replace	40	\$4,000	\$100	0.53 %
21600 Mailbox Kiosks - Replace	30	\$34,800	\$1,160	6.13 %
21610 Sign/Monument - Refurbish/Replace	30	\$11,800	\$393	2.08 %
21620 Pet Waste Stations - Replace	20	\$2,750	\$138	0.73 %
21660 Park Pole Lights - Replace	30	\$9,800	\$327	1.73 %
<b>Amenities</b>				
26030 Playground Cover - Refill/Replace	10	\$6,100	\$610	3.22 %
26050 Playground Equipment - Replace	25	\$129,400	\$5,176	27.34 %
26060 Picnic Tables/Benches - Replace	30	\$14,500	\$483	2.55 %
26230 Soccer Goal - Replace	15	\$3,200	\$213	1.13 %
26250 Basketball Court - Seal/Repair	5	\$3,600	\$720	3.80 %
<b>Mechanicals</b>				
25570 Irrigation Clocks - Replace	15	\$19,250	\$1,283	6.78 %
13 Total Funded Components			\$18,933	100.00 %

Fiscal Year Start: 2021

Interest: 1.00 %

Inflation: 3.00 %

Reserve Fund Strength Calculations: (All values of Fiscal Year Start Date)	Projected Reserve Balance Changes
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Year	Starting Reserve Balance	Fully Funded Balance	Percent Funded	Special Assmt Risk	% Increase		Reserve Contribs.	Loan or Special Assmts	Interest Income	Reserve Expenses
					In Annual Reserve	Reserve				
2021	\$0	\$97,055	0.0 %	High	0.00 %	\$24,600	\$0	\$124	\$0	
2022	\$24,724	\$119,468	20.7 %	High	3.00 %	\$25,338	\$0	\$357	\$3,708	
2023	\$46,711	\$139,319	33.5 %	Medium	3.00 %	\$26,098	\$0	\$378	\$44,186	
2024	\$29,001	\$118,676	24.4 %	High	3.00 %	\$26,881	\$0	\$393	\$6,666	
2025	\$49,609	\$136,680	36.3 %	Medium	3.00 %	\$27,688	\$0	\$637	\$0	
2026	\$77,934	\$162,730	47.9 %	Medium	3.00 %	\$28,518	\$0	\$926	\$0	
2027	\$107,378	\$190,219	56.4 %	Medium	3.00 %	\$29,374	\$0	\$1,205	\$4,299	
2028	\$133,658	\$214,784	62.2 %	Medium	3.00 %	\$30,255	\$0	\$1,237	\$51,224	
2029	\$113,926	\$192,451	59.2 %	Medium	3.00 %	\$31,163	\$0	\$1,158	\$28,439	
2030	\$117,808	\$193,636	60.8 %	Medium	3.00 %	\$32,097	\$0	\$1,345	\$0	
2031	\$151,250	\$224,890	67.3 %	Medium	3.00 %	\$33,060	\$0	\$1,686	\$0	
2032	\$185,996	\$257,845	72.1 %	Low	3.00 %	\$34,052	\$0	\$2,015	\$4,983	
2033	\$217,079	\$287,443	75.5 %	Low	3.00 %	\$35,074	\$0	\$2,059	\$59,383	
2034	\$194,829	\$262,706	74.2 %	Low	3.00 %	\$36,126	\$0	\$2,073	\$12,997	
2035	\$220,031	\$285,839	77.0 %	Low	3.00 %	\$37,210	\$0	\$2,397	\$0	
2036	\$259,639	\$323,912	80.2 %	Low	3.00 %	\$38,326	\$0	\$2,801	\$0	
2037	\$300,765	\$364,012	82.6 %	Low	3.00 %	\$39,476	\$0	\$3,191	\$5,777	
2038	\$337,655	\$400,277	84.4 %	Low	3.00 %	\$40,660	\$0	\$3,251	\$68,841	
2039	\$312,724	\$373,612	83.7 %	Low	3.00 %	\$41,880	\$0	\$2,245	\$220,295	
2040	\$136,555	\$191,116	71.5 %	Low	3.00 %	\$43,136	\$0	\$1,588	\$0	
2041	\$181,280	\$231,046	78.5 %	Low	3.00 %	\$44,430	\$0	\$2,044	\$0	
2042	\$227,754	\$273,199	83.4 %	Low	3.00 %	\$45,763	\$0	\$2,484	\$6,697	
2043	\$269,305	\$310,776	86.7 %	Low	3.00 %	\$47,136	\$0	\$2,541	\$79,806	
2044	\$239,176	\$275,266	86.9 %	Low	3.00 %	\$48,550	\$0	\$1,661	\$196,273	
2045	\$93,114	\$119,850	77.7 %	Low	3.00 %	\$50,007	\$0	\$1,187	\$0	
2046	\$144,308	\$163,089	88.5 %	Low	3.00 %	\$51,507	\$0	\$1,708	\$0	
2047	\$197,523	\$208,813	94.6 %	Low	3.00 %	\$53,052	\$0	\$2,212	\$7,764	
2048	\$245,023	\$249,138	98.3 %	Low	3.00 %	\$54,644	\$0	\$2,271	\$92,517	
2049	\$209,421	\$204,638	102.3 %	Low	3.00 %	\$56,283	\$0	\$2,387	\$0	
2050	\$268,091	\$255,395	105.0 %	Low	3.00 %	\$57,972	\$0	\$2,984	\$0	

Fiscal Year	2021	2022	2023	2024	2025
Starting Reserve Balance	\$0	\$24,724	\$46,711	\$29,001	\$49,609
Annual Reserve Contribution	\$24,600	\$25,338	\$26,098	\$26,881	\$27,688
Recommended Special Assessments	\$0	\$0	\$0	\$0	\$0
Interest Earnings	\$124	\$357	\$378	\$393	\$637
<b>Total Income</b>	<b>\$24,724</b>	<b>\$50,419</b>	<b>\$73,187</b>	<b>\$56,275</b>	<b>\$77,934</b>
# Component					
<b>Sites and Grounds</b>					
21080 Drainage Swales/Pans - Repair - 5%	\$0	\$0	\$4,774	\$0	\$0
21090 Concrete Walkways - Repair - 5%	\$0	\$0	\$39,412	\$0	\$0
21140 Gazebo Roof - Repair/Replace	\$0	\$0	\$0	\$0	\$0
21600 Mailbox Kiosks - Replace	\$0	\$0	\$0	\$0	\$0
21610 Sign/Monument - Refurbish/Replace	\$0	\$0	\$0	\$0	\$0
21620 Pet Waste Stations - Replace	\$0	\$0	\$0	\$0	\$0
21660 Park Pole Lights - Replace	\$0	\$0	\$0	\$0	\$0
<b>Amenities</b>					
26030 Playground Cover - Refill/Replace	\$0	\$0	\$0	\$6,666	\$0
26050 Playground Equipment - Replace	\$0	\$0	\$0	\$0	\$0
26060 Picnic Tables/Benches - Replace	\$0	\$0	\$0	\$0	\$0
26230 Soccer Goal - Replace	\$0	\$0	\$0	\$0	\$0
26250 Basketball Court - Seal/Repair	\$0	\$3,708	\$0	\$0	\$0
<b>Mechanicals</b>					
25570 Irrigation Clocks - Replace	\$0	\$0	\$0	\$0	\$0
<b>Total Expenses</b>	<b>\$0</b>	<b>\$3,708</b>	<b>\$44,186</b>	<b>\$6,666</b>	<b>\$0</b>
Ending Reserve Balance	\$24,724	\$46,711	\$29,001	\$49,609	\$77,934



<b>Fiscal Year</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>
Starting Reserve Balance	\$77,934	\$107,378	\$133,658	\$113,926	\$117,808
Annual Reserve Contribution	\$28,518	\$29,374	\$30,255	\$31,163	\$32,097
Recommended Special Assessments	\$0	\$0	\$0	\$0	\$0
Interest Earnings	\$926	\$1,205	\$1,237	\$1,158	\$1,345
<b>Total Income</b>	<b>\$107,378</b>	<b>\$137,957</b>	<b>\$165,150</b>	<b>\$146,247</b>	<b>\$151,250</b>
# Component					
<b>Sites and Grounds</b>					
21080 Drainage Swales/Pans - Repair - 5%	\$0	\$0	\$5,534	\$0	\$0
21090 Concrete Walkways - Repair - 5%	\$0	\$0	\$45,690	\$0	\$0
21140 Gazebo Roof – Repair/Replace	\$0	\$0	\$0	\$0	\$0
21600 Mailbox Kiosks - Replace	\$0	\$0	\$0	\$0	\$0
21610 Sign/Monument - Refurbish/Replace	\$0	\$0	\$0	\$0	\$0
21620 Pet Waste Stations - Replace	\$0	\$0	\$0	\$0	\$0
21660 Park Pole Lights - Replace	\$0	\$0	\$0	\$0	\$0
<b>Amenities</b>					
26030 Playground Cover - Refill/Replace	\$0	\$0	\$0	\$0	\$0
26050 Playground Equipment - Replace	\$0	\$0	\$0	\$0	\$0
26060 Picnic Tables/Benches - Replace	\$0	\$0	\$0	\$0	\$0
26230 Soccer Goal - Replace	\$0	\$0	\$0	\$4,054	\$0
26250 Basketball Court - Seal/Repair	\$0	\$4,299	\$0	\$0	\$0
<b>Mechanicals</b>					
25570 Irrigation Clocks - Replace	\$0	\$0	\$0	\$24,385	\$0
<b>Total Expenses</b>	<b>\$0</b>	<b>\$4,299</b>	<b>\$51,224</b>	<b>\$28,439</b>	<b>\$0</b>
Ending Reserve Balance	\$107,378	\$133,658	\$113,926	\$117,808	\$151,250

<b>Fiscal Year</b>	<b>2031</b>	<b>2032</b>	<b>2033</b>	<b>2034</b>	<b>2035</b>
Starting Reserve Balance	\$151,250	\$185,996	\$217,079	\$194,829	\$220,031
Annual Reserve Contribution	\$33,060	\$34,052	\$35,074	\$36,126	\$37,210
Recommended Special Assessments	\$0	\$0	\$0	\$0	\$0
Interest Earnings	\$1,686	\$2,015	\$2,059	\$2,073	\$2,397
<b>Total Income</b>	<b>\$185,996</b>	<b>\$222,062</b>	<b>\$254,212</b>	<b>\$233,028</b>	<b>\$259,639</b>
# Component					
<b>Sites and Grounds</b>					
21080 Drainage Swales/Pans - Repair - 5%	\$0	\$0	\$6,416	\$0	\$0
21090 Concrete Walkways - Repair - 5%	\$0	\$0	\$52,967	\$0	\$0
21140 Gazebo Roof – Repair/Replace	\$0	\$0	\$0	\$0	\$0
21600 Mailbox Kiosks - Replace	\$0	\$0	\$0	\$0	\$0
21610 Sign/Monument - Refurbish/Replace	\$0	\$0	\$0	\$0	\$0
21620 Pet Waste Stations - Replace	\$0	\$0	\$0	\$4,038	\$0
21660 Park Pole Lights - Replace	\$0	\$0	\$0	\$0	\$0
<b>Amenities</b>					
26030 Playground Cover - Refill/Replace	\$0	\$0	\$0	\$8,958	\$0
26050 Playground Equipment - Replace	\$0	\$0	\$0	\$0	\$0
26060 Picnic Tables/Benches - Replace	\$0	\$0	\$0	\$0	\$0
26230 Soccer Goal - Replace	\$0	\$0	\$0	\$0	\$0
26250 Basketball Court - Seal/Repair	\$0	\$4,983	\$0	\$0	\$0
<b>Mechanicals</b>					
25570 Irrigation Clocks - Replace	\$0	\$0	\$0	\$0	\$0
<b>Total Expenses</b>	<b>\$0</b>	<b>\$4,983</b>	<b>\$59,383</b>	<b>\$12,997</b>	<b>\$0</b>
Ending Reserve Balance	\$185,996	\$217,079	\$194,829	\$220,031	\$259,639

<b>Fiscal Year</b>	<b>2036</b>	<b>2037</b>	<b>2038</b>	<b>2039</b>	<b>2040</b>
Starting Reserve Balance	\$259,639	\$300,765	\$337,655	\$312,724	\$136,555
Annual Reserve Contribution	\$38,326	\$39,476	\$40,660	\$41,880	\$43,136
Recommended Special Assessments	\$0	\$0	\$0	\$0	\$0
Interest Earnings	\$2,801	\$3,191	\$3,251	\$2,245	\$1,588
<b>Total Income</b>	<b>\$300,765</b>	<b>\$343,432</b>	<b>\$381,565</b>	<b>\$356,850</b>	<b>\$181,280</b>
# Component					
<b>Sites and Grounds</b>					
21080 Drainage Swales/Pans - Repair - 5%	\$0	\$0	\$7,438	\$0	\$0
21090 Concrete Walkways - Repair - 5%	\$0	\$0	\$61,403	\$0	\$0
21140 Gazebo Roof – Repair/Replace	\$0	\$0	\$0	\$0	\$0
21600 Mailbox Kiosks - Replace	\$0	\$0	\$0	\$0	\$0
21610 Sign/Monument - Refurbish/Replace	\$0	\$0	\$0	\$0	\$0
21620 Pet Waste Stations - Replace	\$0	\$0	\$0	\$0	\$0
21660 Park Pole Lights - Replace	\$0	\$0	\$0	\$0	\$0
<b>Amenities</b>					
26030 Playground Cover - Refill/Replace	\$0	\$0	\$0	\$0	\$0
26050 Playground Equipment - Replace	\$0	\$0	\$0	\$220,295	\$0
26060 Picnic Tables/Benches - Replace	\$0	\$0	\$0	\$0	\$0
26230 Soccer Goal - Replace	\$0	\$0	\$0	\$0	\$0
26250 Basketball Court - Seal/Repair	\$0	\$5,777	\$0	\$0	\$0
<b>Mechanicals</b>					
25570 Irrigation Clocks - Replace	\$0	\$0	\$0	\$0	\$0
<b>Total Expenses</b>	<b>\$0</b>	<b>\$5,777</b>	<b>\$68,841</b>	<b>\$220,295</b>	<b>\$0</b>
Ending Reserve Balance	\$300,765	\$337,655	\$312,724	\$136,555	\$181,280

<b>Fiscal Year</b>	<b>2041</b>	<b>2042</b>	<b>2043</b>	<b>2044</b>	<b>2045</b>
Starting Reserve Balance	\$181,280	\$227,754	\$269,305	\$239,176	\$93,114
Annual Reserve Contribution	\$44,430	\$45,763	\$47,136	\$48,550	\$50,007
Recommended Special Assessments	\$0	\$0	\$0	\$0	\$0
Interest Earnings	\$2,044	\$2,484	\$2,541	\$1,661	\$1,187
<b>Total Income</b>	<b>\$227,754</b>	<b>\$276,002</b>	<b>\$318,982</b>	<b>\$289,387</b>	<b>\$144,308</b>
# Component					
<b>Sites and Grounds</b>					
21080 Drainage Swales/Pans - Repair - 5%	\$0	\$0	\$8,622	\$0	\$0
21090 Concrete Walkways - Repair - 5%	\$0	\$0	\$71,183	\$0	\$0
21140 Gazebo Roof – Repair/Replace	\$0	\$0	\$0	\$0	\$0
21600 Mailbox Kiosks - Replace	\$0	\$0	\$0	\$68,681	\$0
21610 Sign/Monument - Refurbish/Replace	\$0	\$0	\$0	\$23,288	\$0
21620 Pet Waste Stations - Replace	\$0	\$0	\$0	\$0	\$0
21660 Park Pole Lights - Replace	\$0	\$0	\$0	\$19,341	\$0
<b>Amenities</b>					
26030 Playground Cover - Refill/Replace	\$0	\$0	\$0	\$12,039	\$0
26050 Playground Equipment - Replace	\$0	\$0	\$0	\$0	\$0
26060 Picnic Tables/Benches - Replace	\$0	\$0	\$0	\$28,617	\$0
26230 Soccer Goal - Replace	\$0	\$0	\$0	\$6,315	\$0
26250 Basketball Court - Seal/Repair	\$0	\$6,697	\$0	\$0	\$0
<b>Mechanicals</b>					
25570 Irrigation Clocks - Replace	\$0	\$0	\$0	\$37,992	\$0
<b>Total Expenses</b>	<b>\$0</b>	<b>\$6,697</b>	<b>\$79,806</b>	<b>\$196,273</b>	<b>\$0</b>
Ending Reserve Balance	\$227,754	\$269,305	\$239,176	\$93,114	\$144,308

<b>Fiscal Year</b>	<b>2046</b>	<b>2047</b>	<b>2048</b>	<b>2049</b>	<b>2050</b>
Starting Reserve Balance	\$144,308	\$197,523	\$245,023	\$209,421	\$268,091
Annual Reserve Contribution	\$51,507	\$53,052	\$54,644	\$56,283	\$57,972
Recommended Special Assessments	\$0	\$0	\$0	\$0	\$0
Interest Earnings	\$1,708	\$2,212	\$2,271	\$2,387	\$2,984
<b>Total Income</b>	<b>\$197,523</b>	<b>\$252,787</b>	<b>\$301,938</b>	<b>\$268,091</b>	<b>\$329,047</b>
# Component					
<b>Sites and Grounds</b>					
21080 Drainage Swales/Pans - Repair - 5%	\$0	\$0	\$9,996	\$0	\$0
21090 Concrete Walkways - Repair - 5%	\$0	\$0	\$82,521	\$0	\$0
21140 Gazebo Roof – Repair/Replace	\$0	\$0	\$0	\$0	\$0
21600 Mailbox Kiosks - Replace	\$0	\$0	\$0	\$0	\$0
21610 Sign/Monument - Refurbish/Replace	\$0	\$0	\$0	\$0	\$0
21620 Pet Waste Stations - Replace	\$0	\$0	\$0	\$0	\$0
21660 Park Pole Lights - Replace	\$0	\$0	\$0	\$0	\$0
<b>Amenities</b>					
26030 Playground Cover - Refill/Replace	\$0	\$0	\$0	\$0	\$0
26050 Playground Equipment - Replace	\$0	\$0	\$0	\$0	\$0
26060 Picnic Tables/Benches - Replace	\$0	\$0	\$0	\$0	\$0
26230 Soccer Goal - Replace	\$0	\$0	\$0	\$0	\$0
26250 Basketball Court - Seal/Repair	\$0	\$7,764	\$0	\$0	\$0
<b>Mechanicals</b>					
25570 Irrigation Clocks - Replace	\$0	\$0	\$0	\$0	\$0
<b>Total Expenses</b>	<b>\$0</b>	<b>\$7,764</b>	<b>\$92,517</b>	<b>\$0</b>	<b>\$0</b>
Ending Reserve Balance	\$197,523	\$245,023	\$209,421	\$268,091	\$329,047



## Accuracy, Limitations, and Disclosures

Association Reserves and its employees have no ownership, management, or other business relationships with the client other than this Reserve Study engagement. Bryan Farley, R.S., president of the Colorado LLC, is a credentialed Reserve Specialist (#260). All work done by Association Reserves is performed under his Responsible Charge and is performed in accordance with National Reserve Study Standards (NRSS). There are no material issues to our knowledge that have not been disclosed to the client that would cause a distortion of the client's situation.

Per NRSS, information provided by official representative(s) of the client, vendors, and suppliers regarding financial details, component physical details and/or quantities, or historical issues/conditions will be deemed reliable, and is not intended to be used for the purpose of any type of audit, quality/forensic analysis, or background checks of historical records. As such, information provided to us has not been audited or independently verified.

Estimates for interest and inflation have been included, because including such estimates are more accurate than ignoring them completely. When we are hired to prepare Update reports, the client is considered to have deemed those previously developed component quantities as accurate and reliable, whether established by our firm or other individuals/firms (unless specifically mentioned in our Site Inspection Notes). During inspections our company standard is to establish measurements within 5% accuracy, and our scope includes visual inspection of accessible areas and components and does not include any destructive or other testing. Our work is done only for budget purposes. Uses or expectations outside our expertise and scope of work include, but are not limited to, project audit, quality inspection, and the identification of construction defects, hazardous materials, or dangerous conditions. Identifying hidden issues such as but not limited to plumbing or electrical problems are also outside our scope of work. Our estimates assume proper original installation & construction, adherence to recommended preventive maintenance, a stable economic environment, and do not consider frequency or severity of natural disasters. Our opinions of component Useful Life, Remaining Useful Life, and current or future cost estimates are not a warranty or guarantee of actual costs or timing.

Because the physical and financial status of the property, legislation, the economy, weather, owner expectations, and usage are all in a continual state of change over which we have no control, we do not expect that the events projected in this document will all occur exactly as planned. This Reserve Study is by nature a "one-year" document in need of being updated annually so that more accurate estimates can be incorporated. It is only because a long-term perspective improves the accuracy of near-term planning that this Report projects expenses into the future. We fully expect a number of adjustments will be necessary through the interim years to the cost and timing of expense projections and the funding necessary to prepare for those estimated expenses.



## Terms and Definitions

<b>BTU</b>	British Thermal Unit (a standard unit of energy)
<b>DIA</b>	Diameter
<b>GSF</b>	Gross Square Feet (area). Equivalent to Square Feet
<b>GSY</b>	Gross Square Yards (area). Equivalent to Square Yards
<b>HP</b>	Horsepower
<b>LF</b>	Linear Feet (length)
<b>Effective Age</b>	The difference between Useful Life and Remaining Useful Life. Note that this is not necessarily equivalent to the chronological age of the component.
<b>Fully Funded Balance (FFB)</b>	The value of the deterioration of the Reserve Components. This is the fraction of life "used up" of each component multiplied by its estimated Current Replacement. While calculated for each component, it is summed together for an association total.
<b>Inflation</b>	Cost factors are adjusted for inflation at the rate defined in the Executive Summary and compounded annually. These increasing costs can be seen as you follow the recurring cycles of a component on the "30-yr Income/Expense Detail" table.
<b>Interest</b>	Interest earnings on Reserve Funds are calculated using the average balance for the year (taking into account income and expenses through the year) and compounded monthly using the rate defined in the Executive Summary. Annual interest earning assumption appears in the Executive Summary.
<b>Percent Funded</b>	The ratio, at a particular point in time (the first day of the Fiscal Year), of the actual (or projected) Reserve Balance to the Fully Funded Balance, expressed as a percentage.
<b>Remaining Useful Life (RUL)</b>	The estimated time, in years, that a common area component can be expected to continue to serve its intended function.
<b>Useful Life (UL)</b>	The estimated time, in years, that a common area component can be expected to serve its intended function.



## Component Details

The primary purpose of the photographic appendix is to provide the reader with the basis of our funding assumptions resulting from our physical analysis and subsequent research. The photographs herein represent a wide range of elements that were observed and measured against National Reserve Study Standards to determine if they meet the criteria for reserve funding:

- 1) Common are maintenance, repair & replacement reasonability
- 2) Components must have a limited life
- 3) Life limit must be predictable
- 4) Above a minimum threshold cost (board's discretion – typically ½ to 1% of annual operating expenses).

Some components are recommended for reserve funding, while others are not. The components that meet these criteria in our judgment are shown with corresponding maintenance, repair or replacement cycles to the left of the photo (UL = Useful Life or how often the project is expected to occur, RUL = Remaining Useful Life or how many years from our reporting period) and a representative market cost range termed “Best Cost” and “Worst Cost” below the photo. There are many factors that can result in a wide variety of potential cost; we are attempting to represent a market average for budget purposes. Where there is no UL, the component is expected to be a one-time expense. Where no pricing, the component deemed inappropriate for Reserve Funding.



## Sites and Grounds

**Comp #: 21080 Drainage Swales/Pans - Repair - 5%**

**Quantity: 5% of ~ 3300 GSF**

Location: Common Areas

Funded?: Yes.

History:

Comments: The concrete swales and pans were observed to be in fair condition. Minor cracking was noted at the time of the inspection. No heavy damage was seen. Concrete swales are important elements of the site drainage system. Should be inspected periodically to ensure that drainage is not interrupted and any significant cracks or damaged sections repaired in order to maintain a smooth surface. Plan on replacing the swales at the same time as the asphalt removal.

Useful Life:  
5 years

Remaining Life:  
2 years



Best Case: \$ 4,100

Worst Case: \$ 4,900

Cost Source: Allowance

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**Comp #: 21090 Concrete Walkways - Repair - 5%**

**Quantity: 5% of ~ 59400 GSF**

Location: Common Areas

Funded?: Yes.

History:

Comments: Concrete sidewalks determined to be in fair condition typically exhibit minor changes in slope and a moderate percentage of cracking and surface wear. Trip hazards may be increasing in frequency and severity and should be closely monitored to prevent further risks. Colorado is home to expansive soils. One of the causes of concrete damage in this type of soil moisture. Expansive soils tend to swell in size when wet and contract as they dry out. As the soil expands and contracts it can create enough force to cause major damage to sidewalks. Repair any trip and fall hazards immediately to ensure safety. As routine maintenance inspect regularly pressure wash for appearance and repair promptly as needed to prevent water penetrating into the base and causing further damage. In our experience larger repair/replacement expenses emerge as the community ages. Although difficult to predict timing cost and scope we suggest a rotating funding allowance to supplement the operating/maintenance budget for periodic larger repairs. Adjust as conditions actual expense patterns dictate within future reserve study updates.

Useful Life:  
5 years

Remaining Life:  
2 years



Best Case: \$ 29,700

Worst Case: \$ 44,600

Cost Source: Allowance

**Comp #: 21100 Site Drainage System - Clean/Repair**

**Quantity: Common Areas**

Location: Common Areas

Funded?: No.

History:

Comments: No access to inspect in-ground drainage infrastructure. Annual preventive maintenance work is typically performed as part of a client's general maintenance/operating fund. Under normal circumstances site drainage components are constructed of very durable materials which should have a very long useful life (often assumed to be 50 years or more). Repairs may occasionally be required but timing and scope of work is too unpredictable for Reserve funding in accordance with National Reserve Study Standards. If there are specific known concerns with drainage system we recommend further investigation using cameras or other means to document and identify conditions. Some clients consult with civil and/or geotechnical engineers in order to develop scopes of work for repair/replacement. If more comprehensive analysis becomes available findings should be incorporated into Reserve Study updates as appropriate.

Useful Life:

Remaining Life:



Best Case:

Worst Case:

Cost Source:

**Comp #: 21140 Gazebo Roof – Repair/Replace**

**Quantity: (1) Gazebo**

Location:

Funded?: Yes.

History:

Comments: Gazebo roofs determined to be in fair condition typically exhibit minor wear and tear. Advantages of metal roofs include long life expectancies with relatively low need to repair. Metal roofing is typically a long-lived component assuming it was properly installed and is properly maintained. As routine maintenance, many manufacturers recommend inspections at least twice annually (once in the fall, before the rainy season, and again in the spring) and after large storm events. Promptly replace any damaged/missing sections or conduct any other repair needed to ensure waterproof integrity of roof. We recommend having roof inspected in greater detail (including conditions of sub-surface materials) by an independent roofing consultant prior to replacement. There is a wealth of information available through organizations such as the Roof Consultant Institute <http://www.rci-online.org> and the National Roofing Contractors Association (NRCA) <http://www.nrca.net/>. If the roof has a warranty, be sure to review terms and conduct proper inspections/repairs as needed to keep warranty in force.

Useful Life:  
40 years

Remaining Life:  
33 years



Best Case: \$ 3,000

Worst Case: \$ 5,000

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 21310 Site Handrail: Replace**

**Quantity: ~ 40 LF**

Location:

Funded?: No.

History:

Comments: Railing should be inspected regularly, cleaned for appearance and repaired promptly as needed to ensure safety stability. In general, costs related to this component are expected to be included in the client's Operating budget. No recommendation for Reserve funding at this time. However, any repair and maintenance or other related expenditures should be tracked, and this component should be re-evaluated during future Reserve Study updates based on most recent information and data available at that time. If deemed appropriate for Reserve funding, component can be included in the funding plan at that time.

Useful Life:

Remaining Life:



Best Case:

Worst Case:

Cost Source:

**Comp #: 21370 Perimeter Walls – Inspect/Replace**

**Quantity: ~ 5700 LF**

Location: Common Areas

Funded?: No.

History:

Comments: Concrete paneled walls. No significant or widespread cracking, settling or other problems observed. Assumed to have been properly designed and installed with adequate base and surrounding drainage. Inspect regularly, repair as needed from Operating budget. If shifting, cracking, etc. are observed, consult with a civil or geotechnical engineer for repair scope.

At this time, no expectation of large-scale repairs or replacement; no Reserve funding recommended. An allowance for partial repairs/replacements may be added during future Reserve Study updates if warranted by association history.

Useful Life:

Remaining Life:



Best Case:

Worst Case:

Cost Source:

**Comp #: 21600 Mailbox Kiosks - Replace**

**Quantity: ~ (24) CBUs**

Location: Common Areas

Funded?: Yes.

History:

Comments: Mailbox kiosks determined to be in fair condition typically exhibit minor to moderate surface wear at this stage. All components and hardware appear to function properly but appearance is diminishing. Inspect regularly and clean by wiping down exterior surfaces. If necessary change lock cylinders lubricate hinges and repair as an Operating expense. Best to plan for total replacement at roughly the time frame below due to constant exposure usage and wear over time.

Note USPS has a limited budget for replacement and should not be relied upon for purposes of long term planning.

Useful Life:  
30 years

Remaining Life:  
23 years



Best Case: \$ 31,200

Worst Case: \$ 38,400

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 21610 Sign/Monument - Refurbish/Replace**

**Quantity: ~ (2) Monuments**

Location: Common Areas

Funded?: Yes.

History:

Comments: Monument signage determined to be in fair condition typically exhibits acceptable appearance and aesthetics in keeping with local area but with more weathering and wear showing on surfaces. If present landscaping and lighting are still in serviceable condition. At this stage signage may be becoming more dated and diminishing in appeal. As routine maintenance inspect regularly clean/touch-up and repair as an Operating expense.

Plan to refurbish or replace at the interval below. Timing and scope of refurbishing or replacement projects is subjective but should always be scheduled in order to maintain good curb appeal. In our experience most clients choose to refurbish or replace signage periodically in order to maintain good appearance and aesthetics in keeping with local area often before signage is in poor physical condition. If present concrete walls are expected to be painted and repaired as part of refurbishing but not fully replaced unless otherwise noted. Costs can vary significantly depending on style/type desired and may include additional costs for design work landscaping lighting water features etc. Reserve Study updates should incorporate any estimates or information collected regarding potential projects.

Useful Life:  
30 years

Remaining Life:  
23 years



Best Case: \$ 10,000

Worst Case: \$ 13,600

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 21620 Pet Waste Stations - Replace**

**Quantity: ~ (9) Poles**

Location: Common Areas

Funded?: Yes.

History:

Comments: Pet stations are generally replaced at longer intervals due to weathering or style changes or to coincide with other exterior projects such as replacement of entry signage street lighting etc. Signs should be inspected regularly to make sure visibility is adequate including at night. Repair any damaged or leaning posts as needed. Costs for replacement can vary greatly depending on style selected unless otherwise noted costs shown here are based on replacement with a comparable type as are currently in place.

Useful Life:  
20 years

Remaining Life:  
13 years



Best Case: \$ 2,500

Worst Case: \$ 3,000

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 21640 Informational Signs - Replace**

**Quantity: ~ (10) Signs**

Location: Common Areas

Funded?: No.

History:

Comments: Cost to replace signs is not expected to meet threshold for Reserve funding. Maintain repair and replace as needed as an Operating expense. However any repair and maintenance or other related expenditures should be tracked and this component should be re-evaluated during future Reserve Study updates based on most recent information and data available at that time. If deemed appropriate for Reserve funding component can be included in the funding plan at that time.

Useful Life:

Remaining Life:



Best Case:

Worst Case:

Cost Source:

**Comp #: 21660 Park Pole Lights - Replace**

**Quantity: ~ (7) Lights**

Location:

Funded?: Yes.

History:

Comments: Pole lights determined to be in fair condition typically exhibit somewhat faded/worn appearance but overall assembly is sturdy and aging normally. Serviceable physical condition and still appropriate for aesthetic standards. Observed during daylight hours assumed to be in functional operating condition. As routine maintenance, inspect, repair/change bulbs as needed. Best to plan for large scale replacement at roughly the time frame below for cost efficiency and consistent quality/appearance throughout client. Replacement costs can vary greatly estimates shown here are based on replacement with a comparable size and design, unless otherwise noted.

Useful Life:  
30 years

Remaining Life:  
23 years



Best Case: \$ 8,400

Worst Case: \$ 11,200

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 21720 Landscaping - Refurbish**

**Quantity: Common Areas**

Location: Common Areas

Funded?: No.

History:

Comments: In general costs related to this component are expected to be included in the client's Operating budget. No recommendation for Reserve funding at this time. However any repair and maintenance or other related expenditures should be tracked and this component should be re-evaluated during future Reserve Study updates based on most recent information and data available at that time. If deemed appropriate for Reserve funding component can be included in the funding plan at that time.

Useful Life:

Remaining Life:



Best Case:

Worst Case:

Cost Source:



## Amenities

**Comp #: 26030 Playground Cover - Refill/Replace**

**Quantity: ~ 8200 GSF**

Location: Common Areas

Funded?: Yes.

History:

Comments: Includes ~ 2600 GSF Toddler park and ~ 5600 Central park.

Coverage was generally sufficient. Playground surfaces should be inspected regularly for hazards slip and fall risks etc. Plan to replace at the approximate interval shown here for aesthetic and functional reasons. When evaluating replacement options the client should consult with vendors to ensure adequate protection from falls. Costs shown are based on replacement with same surface type unless otherwise noted.

Useful Life:  
10 years

Remaining Life:  
3 years



Best Case: \$ 5,100

Worst Case: \$ 7,100

Cost Source: ARI Cost Database: Similar Project Cost History

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**Comp #: 26050 Playground Equipment - Replace**

**Quantity: ~ (10) Pieces**

Location: Common Areas

Funded?: Yes.

History:

Comments: Includes (4) Toddler park pieces, (1) Toddler park swing, (3) Central park swingsets, (2) Central park playground. The equipment was observed to be in fair condition with minor issues observed at the time of the inspection. Our inspection is not intended to identify any structural or latent defects, safety hazards, or other liability concerns. Funding recommendation shown here is strictly for budget purposes. As a routine maintenance expense, inspect for stability, damage and excessive wear and utilize maintenance funds for any repairs needed between replacement cycles. Life expectancy can vary depending on the amount of use/abuse. Unless otherwise noted, cost estimates assume replacement would be with comparable size and style of equipment as noted during inspection.

Useful Life:  
25 years

Remaining Life:  
18 years



Best Case: \$ 114,800

Worst Case: \$ 144,000

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 26060 Picnic Tables/Benches - Replace**

**Quantity: ~ (22) Pieces**

Location: Common Areas

Funded?: Yes.

History:

Comments: Includes (4) Tables, (2) Grills, (10) Benches, (6) Trashcans.

Outdoor/site furniture determined to be in fair condition typically exhibits typical signs of wear and age. Style is still appropriate for the local aesthetic standards of the development. Inspect regularly, clean for appearance and repair as needed from general Operating funds. Cost to replace individual pieces may not meet threshold for Reserve funding. We recommend planning for regular intervals of complete replacement at the time frame indicated below, to maintain a good, consistent appearance in the common areas. Costs shown are based on replacement with comparable types unless otherwise noted.

Useful Life:  
30 years

Remaining Life:  
23 years



Best Case: \$ 11,200

Worst Case: \$ 17,800

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 26220 Sand Courts - Maintain**

**Quantity: (2) Courts**

Location: Common Areas

Funded?: No.

History:

Comments: In general costs related to this component are expected to be included in the Client's Operating budget. No recommendation for Reserve funding at this time. However any repair and maintenance or other related expenditures should be tracked and this component should be re-evaluated during future Reserve Study updates based on most recent information and data available at that time. If deemed appropriate for Reserve funding component can be included in the funding plan at that time.

Useful Life:

Remaining Life:



Best Case:

Worst Case:

Cost Source:

**Comp #: 26230 Soccer Goal - Replace**

**Quantity: (2) Goals**

Location: Common Areas

Funded?: Yes.

History:

Comments: The equipment was observed to be in fair condition with minor issues observed at the time of the inspection. Our inspection is not intended to identify any structural or latent defects, safety hazards, or other liability concerns. Funding recommendation shown here is strictly for budget purposes. As a routine maintenance expense, inspect for stability, damage and excessive wear and utilize maintenance funds for any repairs needed between replacement cycles. Life expectancy can vary depending on the amount of use/abuse. Unless otherwise noted, cost estimates assume replacement would be with comparable size and style of equipment as noted during inspection.

Useful Life:  
15 years

Remaining Life:  
8 years



Best Case: \$ 2,600

Worst Case: \$ 3,800

Cost Source: ARI Cost Database: Similar Project Cost History

**Comp #: 26250 Basketball Court - Seal/Repair**

**Quantity: ~ 3900 GSF**

Location: Common Areas

Funded?: Yes.

History:

Comments: Seal was reported to be in fair condition with no major issues noted at the time of the inspection. Sport courts should be inspected and repaired routinely as an Operating expense in order to preserve an attractive playable court surface. Plan to repair (as-needed) and re-coat at the approximate interval shown here in order to protect the court from sunlight and weather.

Useful Life:  
5 years

Remaining Life:  
1 years



Best Case: \$ 3,400

Worst Case: \$ 3,800

Cost Source: ARI Cost Database: Similar Project Cost History

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## Mechanicals

**Comp #: 25570 Irrigation Clocks - Replace**

**Quantity: ~ (7) Clocks**

Location:

Funded?: Yes.

History:

Comments: Minimal or no subjective/aesthetic value for this component. Useful life is based primarily on normal expectations for service/performance life in this location. Unless otherwise noted, remaining useful life expectancy is based primarily on original installation or last replacement/purchase date, our experience with similar systems/components, and assuming normal amount of usage and good preventive maintenance. Irrigation controllers should have a relatively long life expectancy under normal circumstances. Replacement is often required due to lack of available replacement parts, lightning strikes, etc. as opposed to complete failure of existing equipment. Exposure to the elements can affect overall life expectancy, and controllers should be located in protected areas or within protective enclosures whenever possible. When evaluating replacement options, the Association should consider replacement with "smart" models (i.e. respond to projected weather data) to minimize unnecessary water usage. Payback period for efficient controllers that minimize water use is typically very short, easily justifying the additional costs of these options.

Useful Life:  
15 years

Remaining Life:  
8 years



Best Case: \$ 15,400

Worst Case: \$ 23,100

Cost Source: Research with Local Vendor/Contractor

**Comp #: 25580 Backflow Devices - Replace**

**Quantity: ~ (7) Devices**

Location:

Funded?: No.

History:

Comments: In general, costs related to this component are expected to be included in the client's Operating budget. No recommendation for Reserve funding at this time. However, any repair and maintenance or other related expenditures should be tracked, and this component should be re-evaluated during future Reserve Study updates based on most recent information and data available at that time. If deemed appropriate for Reserve funding, component can be included in the funding plan at that time.

Useful Life:

Remaining Life:



Best Case:

Worst Case:

Cost Source:

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## PRAIRIE DOG RELOCATION INFORMATION

*Updated October 2020*

This document serves as an explanation of the City's Prairie Dog Ordinance (Ord. Number 2628 adopted on August 28, 2000) and of the procedures for compliance. A copy of Ordinance 2628 is available upon request and states that no Development Permits will be issued for development applications received after August 2000 until the developer documents good faith efforts to relocate prairie dogs from the land slated for development.

### Compliance Procedures

To verify compliance with the City's Prairie Dog Policy, the City Development Department requires documentation from the developer at three key points in the development process:

1. **At First Submittal** – Developer required to indicate (by marking the correct box on the development application) whether prairie dogs currently inhabit the site in question.
2. **Prior to DP Approval** – For Development Permits, the developer must submit a letter that serves as evidence of good faith efforts to relocate the prairie dogs (see below for more details.) If a development project does not require a Development Permit, then the planner assigned to the project will determine the appropriate time for submission of the evidence of good faith effort.
3. **With Grading Permit Application** – To receive a grading permit, the developer must submit a letter indicating actions taken to remove prairie dogs from the site.

### Evidence of Good Faith Effort

The City of Thornton requires developers to submit a letter outlining actions taken in good faith to relocate prairie dog colonies from the development site, including the results of those efforts. The City of Thornton considers a good faith effort to relocate prairie dogs to include, at a minimum, but not limited to, two of the following actions:

- Contacting private and public property owners in Adams County to request use of their land for prairie dog relocation.
- Examining other personal property holdings of the developer, or other persons not listed, for suitability for prairie dog relocation.
- Working with Colorado Parks and Wildlife and City Development staff to examine the possibility of including prairie dog colonies in the proposed development. (This option is possible only on a case-specific basis.)
- Contacting at least one or more prairie dog relocation organizations to attempt to schedule prairie dog relocation.
- Contacting a contractor to inquire into possibility of relocating the prairie dogs to a black-footed ferret farm or raptor rehabilitation center.
- Pursuing any other options known to the developer.

If good faith efforts reveal that relocation is possible, the developer may relocate the prairie dogs, in conformance with Colorado Parks and Wildlife regulations, from the land slated for development. If good faith efforts reveal that relocation is not feasible, the developer may dispose of the prairie dogs through extermination methods permitted by the Department of Agriculture. The City strongly encourages property owners to capture and relocate or capture and donate the prairie dogs to a raptor rehabilitation center or black footed ferret conservancy. The City strongly discourages the use of any extermination method other than USDA gas cartridges.

## **Relocation Permit Application**

In order to relocate prairie dogs, a permit is required from Colorado Parks and Wildlife. The process takes approximately 30 days and requires the applicant to identify the relocation site, the process through which the prairie dogs will be relocated and the relocation organization. Colorado Parks and Wildlife recommends that individuals who are attempting prairie dog relocation start by contacting a relocation organization.

## **Relocation Sites**

State statutes prohibit the transfer of prairie dogs across county lines without the prior approval of the board of county commissioners of the receiving county. Developers may wish to approach public and private landowners in Adams County to search for relocation sites. In addition, developers may wish to review their existing property holdings or to purchase land to examine the possibility of relocating the prairie dogs to another site within Adams County.

Colorado Parks and Wildlife (CPW) has guidelines as to what constitutes a suitable prairie dog relocation site. Contact CPW for specific guidelines at 303-291-7227 or visit their website at <http://cpw.state.co.us/>.

## **Timing of Relocation**

Prairie dogs can be relocated only at specific times during the year, which must be considered when planning relocation. While the relocation process must commence as early as possible in the development process to insure success, prairie dogs must be physically relocated close to the time of grading to prevent recolonization prior to the start of construction.

## **Contact Information**

Please direct questions about the City of Thornton's prairie dog ordinance to City Development at 303-538-7295.

S:\CDV\ComDev\HANDOUTS\Prairie Dog Ordinance\Originals\PrairieDogRelocationInformation - Oct 2020.docx



## **Relocation Organizations**

### ***Dog Gone***

Gay Balfour  
970-565-9878

Dog-Gone uses vacuuming to remove the prairie dogs. If the developer does not have a relocation site for the prairie dogs, they are donated to the black-footed ferret reintroduction program. The vacuuming is performed only between June and October. Currently there is a waiting list for this service.

### ***Enviro-Zone***

Scott Harvey  
303-735-0406  
Or email [harveysd@colorado.edu](mailto:harveysd@colorado.edu)

Enviro-Zone is a business that specializes in protecting the natural environment. The company uses only trapping to relocate prairie dogs, which can be conducted at anytime during the year, except the birthing season which is approximately March through May. Enviro-Zone conducts relocation only. If a suitable relocation site is not identified, either by the developer or by the company, Enviro-Zone will not take the prairie dogs to the black-footed ferret reintroduction program. Enviro-Zone has extensive experience relocating prairie dogs throughout the Front Range, including in the cities of Boulder and Fort Collins and for the Stapleton Redevelopment Area.

### ***Roe Ecological Services, LLC***

Christopher Roe and Kelly Roe, Wildlife Biologists  
970-532-1305 or email to [res@yourwildlife.com](mailto:res@yourwildlife.com)  
Website - [www.YourWildlife.com](http://www.YourWildlife.com)

Roe Ecological Services (ROE) is available to perform prairie dog live relocations or humane removals (live-trap and donate to a raptor rehabilitation program). ROE works to ensure 100% removal at the end of the project. ROE is also available to provide clients with wildlife impact assessments, threatened and endangered species surveys, wetlands surveys and delineations, assistance obtaining federal permits for impacts to wildlife or wetlands, designing and installing prairie dog movement barriers, natural resource inventories and assessments, and more. .

### ***Smith Environmental and Engineering***

Peter Smith, Vice President  
720-887-4928 or email to [petersmith@smithdelivers.com](mailto:petersmith@smithdelivers.com)  
Website - [www.smithdelivers.com](http://www.smithdelivers.com)

Smith Environmental and Engineering (SMITH) has a property in eastern Adams County that receives live prairie dogs. In addition to receiving and relocating prairie dogs, SMITH provides comprehensive environmental services, including NEPA document preparation, environmental assessments, threatened and endangered species surveys, wetlands surveys, wildlife studies, and many

others. SMITH's engineers and scientists can perform any and all environmental studies and design needed to get clients through the planning and permitting process for any project.

***Prairie Dog Action***

Deb Jones, President  
PO Box 725  
Broomfield, CO 80038  
Phone: 303-439-9264 or 303-324-6829  
Or email to [Notestodj@aol.com](mailto:Notestodj@aol.com)  
Website – [www.prairiedogaction.org](http://www.prairiedogaction.org)

Prairie Dog Action is an all volunteer, non-profit organization committed to saving the Black-Tailed Prairie Dog and the prairie ecosystem.

***Prairie Preserves, LLC***

Pam Wanek  
Phone: 303-280-8860 or email to [wanek@q.com](mailto:wanek@q.com)

Available for consultation on restoring native grass communities and practicing Black-Tailed Prairie Dog relocations.

***Animal & Pest Control Specialist, Inc.***

3800 E. 64<sup>th</sup> Ave.  
Commerce City, CO 80022  
Phone: 303-987-0842  
Fax: 303-431-4968

Animal & Pest Control Specialists (APCS) is a nuisance wildlife removal company with an emphasis on prairie dog removals and management. All technicians carry licenses issued by the Colorado Division of Wildlife and/or the Colorado Department of Agriculture. APCS has a division dedicated to prairie dog removals and works closely with raptor programs and the United States Fish and Wildlife Service's Black-footed Ferret Program in Carr, Colorado. APCS uses the most up-to-date methods and equipment when implementing trapping, flushing or fumigation programs in order to assist you and meet your needs. Any and all non-target animals that are captured during the trapping or flushing process will be released immediately on-site. All methods and procedures follow all city, county, state and federal rules and regulations.

Dear Valued Clients,

As you know, WBA currently provides collection and covenant enforcement services to Districts with such needs. Most of you know Heather Hartung, who led the department for the past five years, has recently transitioned into solely providing district general counsel services. You are also probably familiar with some other folks who have passed through the department over the years, mostly recently Lisa Cancanon. Unfortunately, Lisa has decided to pursue other options and her last day with WBA will be Friday, April 23, 2021.

While we are sad to see Lisa go, the Firm has taken this opportunity to evaluate the collection and covenant enforcement department to ensure that client needs are met in the most efficient and economic manner. Effective as of June 15, 2021, WBA has made the difficult decision to no longer provide covenant enforcement services to our clients. We will continue to provide collection services. We have reached out to several reputable firms who are experts in covenant enforcement matters to provide generic proposals that we may share with our clients. Each Board will need to review the proposals and make a decision on engaging a separate firm to represent the District in covenant enforcement matters. This includes appeals from applicants, hearings, coordination with managers, notices, etc. WBA will work with the selected firm to transfer all existing files at no cost to the District and will work hard to make it as seamless of a transition as possible.

Thank you for your understanding as we navigate through this difficult decision. We will be in touch soon to provide you with proposals from outside firms.

Proposal for  
Covenant Enforcement  
Services for

**CLIENTS OF  
WHITE BEAR  
ANKELE TANAKA  
& WALDRON**

April 22, 2021



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April 22, 2021

*Via E-mail (hhartung@wbapc.com)*

Heather L. Hartung, Esq.  
White Bear Ankele Tanaka & Waldron  
2154 East Commons Avenue, Suite 2000  
Centennial, CO 80122

***Re: Covenant Enforcement Legal Services Proposal of Orten Cavanagh Holmes & Hunt, LLC***

Dear Ms. Hartung:

Thank you for your interest in the legal services of Orten Cavanagh Holmes & Hunt, LLC. We understand that White Bear Ankele Tanaka & Waldron is seeking special counsel to prosecute covenant enforcement matters for its special district clientele (“Clients”). Based on this request, as well as our recent discussion, we are providing our proposal to share with your Clients.

### **Legal Services**

Our firm’s partners have over 100 years combined experience providing legal services to Colorado communities at competitive rates. Our firm has extensive experience in covenant and rule enforcement matters, from the demand letter stage through trial and appeal.

We have a dedicated covenant enforcement department including a team of two attorneys and two paralegals. The department is headed by co-managing partner Jonah Hunt.

Our covenant enforcement team as well as our transactional attorneys regularly counsel clients on covenant matters even before the manager sends initial contact to the potential violator. We have found that these initial discussions help our clients identify potential roadblocks to enforcement so that they may be addressed proactively rather than as a defense in a litigation matter.

We understand that your Clients enforce covenants through their own district declarations or through an assignment from a common interest community. As a result, different statutory frameworks apply to districts in how they pursue their enforcement obligations. While there are differences with respect to districts and common interest communities and the laws that may apply in covenant enforcement, the objective of obtaining compliance is the same.

Regardless of which statutes apply in a given circumstance, our operating philosophy in these matters is to seek or induce voluntary compliance from the owner if at all possible. When voluntary compliance is not obtainable, we prosecute each case diligently to trial in order to obtain compliance.

**Engagement of our Law Firm**

Our hourly rates for 2021 for our principal attorneys range from \$315 - \$355 per hour. The rates for associate attorneys range from \$225 - \$295, and the hourly paralegal rates are \$100 - \$120.

We have included a generic engagement agreement with the description of legal services, but we are happy to provide tailored proposals and engagement agreements specifically for any of your Clients requesting covenant enforcement services. We welcome any questions regarding our services or our proposed engagement agreement, and are available to meet or interview with your firm's Clients to discuss the same. We look forward to the opportunity to assist any of White Bear Ankele Tanaka & Waldron's Clients for their covenant enforcement needs.

Sincerely,

ORTEN CAVANAGH HOLMES & HUNT, LLC



Jonah G. Hunt  
Co-Managing Partner



Lauren C. Holmes  
Co-Managing Partner

# COVENANT AND RULE ENFORCEMENT

Orten Cavanagh Holmes & Hunt recognizes that districts and their managers desire effective and expeditious resolution of covenant and rule violations.

Attorneys at our office have extensive experience in the covenant enforcement process. At every stage, our firm seeks compliance from the owner when possible. Sometimes, it only takes the act of handing the matter over to our attorneys to let the owner know that a district is taking the violation very seriously. A demand letter from our attorneys, which puts the owner on notice, frequently brings the matter to an early conclusion. Effective enforcement starts with communicating with the violator to try to get the violation corrected voluntarily.

Yet, a demand letter and/or notice of covenant violation is not always enough to accomplish compliance. At this stage we consult with the board and management on additional enforcement steps, including filing suit in either county or district court.

Our firm has an established track record of success in covenant enforcement lawsuits, including cases involving unusual or complex nuances, as well as those involving acrimonious owners.

We charge reasonable fees for preparation of demand letters, and when desired, to prepare and record notices of violation or to take the owner to court. We seek to collect attorney fees from the owner whenever possible, if appropriate given the context of the violation. However, compliance is first and foremost our main objective.

## **Covenant and Rule Enforcement Services**

- Consultation with the board and/or management
- Document review and interpretation
- Covenant enforcement policy preparation or revisions
- Demand letters
- Notice of covenant violation – recorded against the owner’s real property
- Settlement stipulation - after demand letter
- County or District court lawsuits (typically injunctive in nature)
- Collection of monetary awards obtained in covenant enforcement litigation
- Credit reports or skip traces by the law firm
- Monthly Status Reports – No Charge
- Other miscellaneous covenant enforcement services



# TEAM



**JERRY ORTEN**  
Special Counsel



**CANDYCE D. CAVANAGH**  
Partner



**LAUREN C. HOLMES**  
Co-Managing Partner



**JONAH G. HUNT**  
Co-Managing Partner



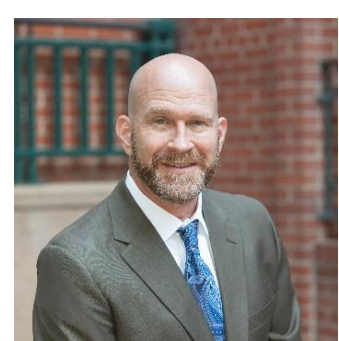
**HAL KYLES**  
Partner



**AARON J. GOODLOCK**



**KELLY G. MORROW**



**ERIC R. McLENNAN**

\*Attorney biographies can be accessed by hovering over and selecting attorney's name or can be provided upon request.



**CONNOR B. WILDEN**



**JOSEPH A. BUCCERI**

Thank you for selecting Orten Cavanagh Holmes & Hunt, LLC (the “Law Firm”) to provide legal services as requested by the District. Requests for services may be made by the District’s manager or staff, or a designated board member liaison. The following includes the District’s terms of engagement of the Law Firm. Please note that this agreement becomes effective when the Law Firm receives a duly signed copy of the agreement and the Law Firm is not required to provide professional until such receipt.

**Representation of the District** - The Law Firm represents the District. The Law Firm’s professional responsibilities, and those of its attorneys and paralegals, run to the District. The Law Firm does not represent the board of directors, any individual board members or officers, the manager, the management company, or owners within the District, unless expressly authorized by the District and agreed to by the Law Firm. It is agreed to that the Law Firm will also communicate with and liaise with the District’s general counsel law firm, White Bear Ankele Tanaka & Waldron, as needed or requested.

**Law Firm Responsibilities** - The Law Firm will provide legal counsel and assistance on matters referred to us. We will rely upon information and guidance the District provides. We will keep the District reasonably informed of progress and developments and respond to its inquiries.

**District Responsibilities** - In order to enable the Law Firm to provide legal services, the District agrees to disclose fully and accurately all facts and keep our Law Firm apprised of all developments relating to matters referred. The parties agree that the Law Firm has the right to rely on information and documents provided by the District or its agents.

The District agrees to cooperate fully as needed and to be available to attend meetings, conferences, hearings, and other proceedings on reasonable notice, and stay reasonably informed on all developments relating to matters referred.

#### **Fees of the Law Firm**

**Hourly Rates** - For services not covered by a specific flat fee, hourly rates apply. The hourly rates for the Law Firm’s professionals range from \$315 - \$355 for principals, \$225 - \$295 for associates, and \$100 - \$120 for paralegals.

**Covenant and Rule Enforcement** - Legal services to assist the District in enforcing the covenants and rules are performed on an hourly basis. Typical services involve reviewing existing correspondence between the District and the owner, sending a demand letter, discussing the matter with the owner, and pursuing legal action through the courts, if necessary.

**Collections** - To the extent that collection services may be needed in connection with a covenant enforcement matter, we will coordinate with the District’s general counsel to determine the most efficient method of collection.

**Litigation** - We are available to represent the District in other litigation when necessary to protect its rights, if such assistance is requested by the District’s general counsel and/or the District. Fees are billed on an hourly basis.

**Costs** - The District authorizes the Law Firm to advance costs and expenses on its behalf as the Law Firm deems advisable. These advanced costs will be billed to the District monthly for reimbursement. These expenses may include court costs, fees, service of process costs, title company costs, recording fees, or other expenses. Photocopy costs for litigation services or extraordinary projects will be billed at \$.15 per copy. Mailing costs for extraordinary projects will be billed per item or as an administrative fee of 1% applied to our statements, as determined by the Law Firm.

**Travel** - Travel time is billed at ½ the hourly rate from the Law Firm’s Denver or Colorado Springs office. In the event travel extends beyond Denver and Colorado Springs, mileage is charged at IRS rates.

**Billing and Payment** - Our fees are not contingent unless the Law Firm is engaged under an agreement providing for contingent payment. If the Law Firm has not received any comment about a statement within 30 days of its receipt, it assumes the District found it acceptable.

Payment is due 30 days from the date of the statement. Services are billed based on hourly rates or specific fee agreements. Invoices for hourly services will show the time spent performing services billed in tenth-of-an-hour increments, with a minimum charge of one-tenth.

Interest, at the rate of 18% per annum, is payable after 60 days. In the event the Law Firm files suit to recover unpaid legal fees, the prevailing party is entitled to its attorney fees.

**Attorney-Client Communication** - Our communications and statements generally contain information protected by the attorney-client privilege. As the privilege could be deemed to have been waived if someone other than the District, board members, officers and any manager or management company sees the privileged material, we recommend that you keep all such communications and statements in a separate file marked "Attorney-Client Privileged Materials" and keep the file in a secure place.

**Estimates of Fees for Services** - From time to time, the District may ask the Law Firm to make an estimate of the fees for completing all or part of a matter. Because it is often difficult to estimate how much time it will take to complete it, the Law Firm treats any estimate as an "educated guess" and not as an assurance that we will be able to do the work for the estimated price. When an estimate is given, we will advise the District when nearing the estimated price, and will also advise if we become aware that the estimate may be exceeded. At that time, the District may decide whether to terminate work on the matter, modify the referral, or proceed to completion with a different cost estimate.

**Files at the Law Firm** - The Law Firm maintains the District's files in electronic format. The District authorizes the Law Firm to digitize documentation received and destroy paper versions of any document if, at the discretion of the firm, they are no longer necessary to retain.

**No Guarantee** - The Law Firm will perform professional services on the District's behalf to the best of its ability, but cannot make and have not made any guarantees regarding the outcome of the work. Any expressions by the Law Firm or its employees about the outcome are our best professional views only and are limited by our factual knowledge at the time they are expressed.

**Completion of Matter** - After a particular matter is completed, the Law Firm does not (unless the District specifically requests in writing that we do so) undertake to continue to review that matter and update the District concerning legal developments, such as changes in applicable laws or regulations. If the District does ask us to review a specific matter on which we have previously worked, we consider that to be a new representation. Thus, while we may, from time to time, call to your attention issues or legal developments that might be relevant, we are not undertaking to do so as a part of our representation.

**Termination of the Law Firm** - The District's engagement of the Law Firm may be terminated at any time, by either party. Upon termination, all amounts due and owing and incurred in withdrawing from representation of the District are to be paid upon receipt.

The Law Firm's engagement is based on the above Terms of Engagement. Terms and fees may be updated upon written notice from Orten Cavanagh Holmes & Hunt.

**Electronic Delivery of Statements:** Monthly billing statements are delivered to the District electronically.

Billing email address: \_\_\_\_\_

Check here to opt out of electronic delivery. If opted out, statements will be mailed to the billing address.

Billing Address	Mailing Address (if different)
Address, City, State and Zip Code _____ _____	Address, City, State and Zip Code _____ _____

This Agreement is effective upon receipt by Orten Cavanagh Holmes & Hunt.

Agreed to and accepted on: \_\_\_\_\_, 2021.

\_\_\_\_\_  
**DISTRICT (PLEASE PRINT NAME)**

By: \_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title



April 16, 2021

White Bear Ankele Tanaka Waldron  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122

Denver Office  
Jeffrey B. Smith  
Direct 303.991.2066  
jsmith@altitude.law

Re: *Altitude Community Law P.C. Legal Services Proposal*

To Whom it May Concern:

Thank you for your interest in the legal services we can provide for your District. Enclosed are materials describing our experience, philosophy, services and fees, specifically related to Covenant Enforcement. We offer a variety of fee programs, including flat fees and retainers, to suit the needs of individual districts. To determine what fee program may best suit your District, please give me a call after you have had a chance to review the enclosed material.


**How we will work with you.** Our experience enables us to partner with your District and your current legal team to provide tailored, creative solutions that best meet the District's unique needs. As the trusted leader in community association law in Colorado, we have over 100 years combined experience and have successfully represented more than 2,000 associations and metro districts. We make every effort to understand your issues and constraints and will alert you when we see an opportunity or potential problem that is beyond the District's immediate need, while keeping your budget in mind.

**Value-added benefits of partnering with Altitude Community Law P.C.** We are committed to providing our clients with up-to-date information, education and tools to help you govern your community proactively and positively. We offer education programs designed exclusively for board and committee members. The 2021 education schedule is available on our website, [www.altitude.law/education](http://www.altitude.law/education). From our website you also may register for our blog, webinars and e-newsletter, to keep up-to-date on current issues that may impact your association.

**Next steps.** If you desire to hire our firm, please complete and return the 2021 Legal Services and Fee Summary Agreement. To take advantage of one of our retainer programs, check the appropriate retainer box on page 4 of the Agreement.

Feel free to contact me with questions or comments after you've had an opportunity to review the enclosed materials. We would be happy to attend a board meeting to meet you, listen to your concerns and discuss how we can assist your association.

Sincerely,



Jeffrey B. Smith  
Altitude Community Law P.C.

JBS/ca  
Enc.  
07364188.DOCX



## **2020-2021** LEGAL SERVICES AND FEE SUMMARY AGREEMENT

The following is a summary of the fees and charges for the various legal services offered by Altitude Community Law.

Our retainer programs reduce your association's legal expenditures and simplify the budgeting process by establishing a **fixed monthly fee**. This fee purchases the essential legal services your association requires, making us available to you as needed. We now offer **three** retainer packages to better fit your needs.

### RETAINER SERVICES AND BENEFITS

For a yearly fee of **\$2,400**, payable monthly at **\$200 per month**, retainer clients receive the following legal services and benefits without further charges:

**Phone Calls.** We will engage in unlimited telephone consultations with a designated board member or association manager regarding legal and other questions and status of ongoing work we are performing for you, exclusive of litigation, foreclosure, covenant enforcement, and document amendments. Written consultations/communications such as emails, written correspondence, and calls with multiple Board members at the same time will be billed at our reduced hourly rates, as will our time to review governing documents, correspondence, etc., if necessary to answer a question.

**Reduced Hourly Rates.** For legal services billed hourly beyond what is included in the retainer, we will provide those services at \$20 per hour less than our non-retainer rates for attorneys and \$10 per hour less than our non-retainer rates for paralegals.

**In-Office Consultation.** We will meet with a designated board member and/or the association's manager in our office for 30 minutes on any new matter. If the meeting extends beyond the 30 minutes, you will be billed at our reduced hourly rates.

**Attendance at Board Meeting.** At your request, we will attend one board meeting per twelve-month period for up to one hour. As a retainer client, we will prioritize attending the board meeting of your choosing. If our attendance exceeds one hour, you will be billed at our reduced hourly rates.

**Audit Response Letter.** We will prepare a letter to your financial auditor in connection with your annual audit indicating pending or threatened litigation. We will also review your annual financial audit upon completion.

**Periodic Report.** We will prepare and file your periodic report with the Secretary of State if you have designated us as your registered agent.

**DORA Renewal:** We will prepare and file your renewal report with DORA if requested.

### RETAINER PLUS SERVICES AND BENEFITS

For a yearly fee of **\$3,000**, payable monthly at **\$250 per month**, we will provide the following legal services and benefits without further charges:

In addition to the services provided to Retainer clients, **Retainer Plus** clients will receive the following additional services:

Email Consultations. We will engage in 30 (thirty) minutes of email consultations every month with a designated board member and the association's manager regarding legal and other questions and the status of ongoing work that we are performing on your behalf, exclusive of litigation, foreclosure, covenant enforcement, and document amendment matters. Additional written consultations and communications will be billed at our reduced hourly rates. If it is necessary to review governing documents, correspondence, etc. to answer a question, you will be billed at our reduced hourly rates.

**SB100 Policy Update.** We will provide one free SB100 Policy update for your association.

**Credit Card Payments.** For Retainer Plus clients, we will accept homeowner payments via credit card.

#### PREMIUM RETAINER SERVICES AND BENEFITS

For a yearly fee of **\$6,000**, payable monthly at **\$500 per month**, we will provide the following legal services and benefits without further charges:

In addition to the services provided to **Retainer and Retainer Plus** clients, Premium Retainer clients will receive the following additional services:

Email Exchanges. We will communicate with your designated board member and the association's manager via email up to **60 (sixty) additional** minutes every month which includes minor research.

Attendance at **one additional Board Meeting** per year. At your request, we will attend a total of two board meetings per twelve-month period for up to one hour each. If our attendance exceeds one hour, you will be billed at our reduced hourly rates.

Other needed revisions to SB100 Policies required by new legislation reduced by \$100.

#### RETAINER SERVICES GENERALLY

We will send notices of renewal of retainers annually. Upon expiration, the retainer will automatically be renewed on a monthly basis until we receive a notice to terminate.

#### FIXED FEE SERVICES

Altitude Community Law offers fixed fee services. The association will pay Altitude Community Law (the Firm) for performance of the services as outlined in a proposal for services, plus costs. The association understands that it is not entering into an hourly fee agreement for that specified service, except as otherwise set forth. This means the Firm will devote such time to the matter as is necessary, but the Firm's fee will not be increased or decreased based upon the number of hours spent.

#### NON-RETAINER SERVICES AND BILLING TERMS

If you desire representation on a non-retainer basis, you will be billed hourly for all work performed unless a fixed fee (such as collection matters or amendment of documents) has been agreed to in advance. Our hourly rates for 2020-2021 non-retainer clients are \$95 - \$155 for legal assistants/paralegals, \$300 - \$350 for attorneys. Non-retainer clients are billed hourly for all phone calls.

#### TERMINATION OF REPRESENTATION

You may terminate our representation at any time by notifying us in writing and we may resign from representation by notifying you in writing. In either case, you understand that court or administrative rules may require us to obtain a judicial or administrative order to permit our withdrawal. We agree that upon receipt of your termination notice, we will take such action as is necessary to withdraw from representing

you, including requesting any necessary judicial or administrative order for withdrawal. However, whether you terminate our representation, we cease performing further work and/or withdraw from representing you, as allowed under the Colorado Rules of Professional Conduct or for your failure to comply with the terms of this Agreement, you understand and agree that you continue to be responsible to us for the payment of all fees and expenses due and owing and incurred in withdrawing from representing you, including any fees and expenses we incur to obtain, and/or during the time we are seeking to obtain, any necessary judicial or administrative order to approve our withdrawal.

If you so request, we will send to you your files as soon as a particular matter is concluded. If you do not request your files, the firm will keep the files for a minimum of ten (10) years, after which it may retain, destroy or otherwise dispose of them.

#### PRIVACY POLICY

Attorneys, like other professionals who provide certain financial services, are now required by federal and state laws to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new law. Thus, we have always protected the privacy of your confidential information.

In the course of providing legal services, we sometimes receive significant nonpublic personal information from our clients. As a client of Altitude Community Law, you should know that all such information we receive from you is held in confidence. We do not disclose such information to anyone outside the firm except when required or authorized by applicable law or the applicable rules of professional conduct governing lawyers, or when authorized by you in writing.

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. In order to guard your nonpublic personal information, we maintain, physical, electronic and procedural safeguards that comply with our professional standards.

If you have any questions or would like more information about our privacy policies and practices, please let us know.

#### GENERAL TERMS FOR ALL CLIENTS

We represent the association as a corporate entity. We will take our direction for work as instructed by the manager or the board. We do not represent any individual board members or homeowners.

Clients are required to reimburse us for cost advances and other out-of-pocket expenses. Reimbursement is made at actual cost for outside charges such as court recording fees, filing fees, service of process charges, computerized legal research, expert witness fees, title searches, deposition reporting and transcription fees, outside photocopying, etc. Typically, we do not charge for internal photocopies, faxes, postage and long-distance telephone calls unless these charges are extraordinary. We provide monthly statements for services and expenses incurred. Unless other arrangements are made and agreed upon in writing, all charges are due and payable upon your receipt of the statement. A finance charge of 12% per annum may be imposed upon any amount not paid within 30 days of becoming due. Fees may be modified upon 30 days prior written notice. If it becomes necessary to file suit to recover unpaid attorney fees, the prevailing party shall be entitled to receive its attorney fees.

In the event we have not been provided with, or our files do not contain, all of the recorded documents of the association, we retain the right to obtain any such recorded documents to supplement our file without association approval and at the association's cost. The association's cost will include, but not be limited to, hourly charges for procuring the documents and copying costs. In order to provide you with the most efficient and effective service we will, at all times, unless otherwise directed, work through your manager if appropriate.



Should you have any questions, please do not hesitate to call any of our attorneys. We are happy to answer any of your questions or meet with you at no charge to discuss our services and fees in greater detail.

RESPONSE REQUIRED

If you desire to engage our services, please indicate below which type of service you prefer by checking the appropriate box, execute the acceptance and return it to us via mail, e-mail or fax.

Legal Services: (select one)

- Retainer Services
- Retainer Plus Services**
- Premium Retainer Services
- Custom Retainer Option
- Non-Retainer

Collection Services:

Please see attached Fee Structure

Billing Preference: (select one)

- Paper and Mailed
- Electronic and Emailed

Email address: \_\_\_\_\_

(please note, only one email address per management company or self-managed association will be used)

Agreed to and accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Print Association Name

By: \_\_\_\_\_  
President/Manager



## EXHIBIT A TO FEE SUMMARY AGREEMENT FOR 2020-2021 LEGAL COLLECTION SERVICES

### Fee Structure

This is a flat fee agreement for collection services. The Association will pay Altitude Community Law (the Firm) for performance of the services described below, plus costs. The Association understands that it is not entering into an hourly fee agreement for collection services, except as otherwise set forth below. This means the Firm will devote such time to the representation as is necessary, but the Firm's fee will not be increased or decreased based upon the number of hours spent.

The Association has the right to terminate the representation at any time and for any reason, and the Firm may terminate the representation in accordance with Rule 1.16 of the Colorado Rules of Professional Conduct. In the event that the Association terminates the representation without wrongful conduct by the Firm that would cause the Firm to forfeit any fee, or the Firm justifiably withdraws in accordance with Rule 1.16 from representing the Association, the Association shall pay, and the Firm shall be entitled to, the fee or part of the fee earned by the Firm as described in paragraph 1 above, up to the time of termination. If the representation is terminated between the completion of increments (if any), the Association shall pay a fee based on our standard hourly rate set forth in our standard fee agreement. However, such fees shall not exceed the amount that would have been earned had the representation continued until the completion of the increment, and in any event all fees shall be reasonable. Once the work is performed, the Fee will be deemed earned and is due upon receipt of an invoice.

#### Case Intake, Review and Assessment - No charge

We do not charge you to review new collection cases and make recommendations. However, if we receive open collection files from another attorney, there will be a \$25 set-up and review fee per file. This fee will be waived if you are a retainer client.

At the rates set here in, upon receiving a new turnover, we will perform the following work for due diligence and to put the Association in the best possible collection position: Assessment Lien Package (if a lien has not already been recorded), Demand Letter, Public Trustee Search, and Bankruptcy Search. Next steps after this work depends on the homeowner's response, balance due, history, information acquired, and other factors.

#### Demand Letter - \$155

Preparation of a demand letter includes reviewing the ledger or equivalent record to ascertain the amounts owed including interest, late charges, fines and charge backs, if relevant, and review prior notice given to owner to meet statutory requirements; drafting and mailing the demand letter to the homeowner; follow-up, including telephone calls with the management company and homeowner, negotiation of an acceptable payment plan; follow up letter (as needed) to confirm payment arrangements. All correspondence other than the initial demand and payment plan letter is \$50 per letter (e.g., follow up demand letter, breach of payment plan letter).

#### Super Lien Demand Letter - \$110

Preparation of a demand letter post foreclosure includes reviewing ledger to ascertain amounts owed; verifying party to whom demand should be sent; drafting and mailing demand letter: or if request is received from a lender for the super lien amount, drafting a response. All discussions with the owner or lender after the letter are billed hourly.

Assessment Lien Package - \$110

This charge includes preparing both the lien and the lien release. It also includes verification of ownership with either the assessor's office or title company.

Lawsuit: - \$350 plus costs

This charge includes preparing the summons and complaint, filing these papers with the court, appearing at the return date and obtaining default judgment. It also includes all negotiations and telephone conferences with the owners prior to an answer being filed with the court.

Lawsuit: Trial - Hourly rates apply

All preparation for trial and appearances in court are billed on an hourly basis. If the association prevails at trial, it can recover its attorney fees and costs from the delinquent owner.

Interrogatories - \$80

We prepare and file a motion with the court to request the court to order an owner to answer a series of questions from us about the owner's assets. We will use the answer to help satisfy any judgment obtained by the association. We will also arrange for service of the order on the client and monitor and evaluate answers received from the owner.

Contempt Citation - \$105

If an owner fails to answer the interrogatories as ordered by the court, we will prepare and file all the necessary paperwork to require the owner to appear before the judge to explain why the questions were not answered. Our fee also includes our appearance at court, subsequent appearance if the owner fails to appear initially and review and evaluation of the answers once received from the owner.

Garnishments - \$105 (each)

We will identify entities (usually banks, employers or tenants) which owe or have money of the owner and prepare documentation to be filed with the court to order the entity to release all or a portion of the money they hold for or are obligated to pay the owner to the association. We will arrange for service of the necessary documentation and will monitor for responses.

Payment Plans - \$75-175 (each)

In the event an owner wishes to pay their balance due over time exceeding 6 months, we will charge a fee depending upon the length of the payment plan to prepare the necessary documentation, monitor and process payments and close the file. Unless we are instructed otherwise, we may agree to payment plans of up to 24 months with any homeowner.

Motions - \$100-125

Occasionally, certain motions may be necessary in a case in order to get the court to issue a ruling without further legal action. These will be prepared, filed, monitored and argued before the court, if necessary.

Outbound Phone Calls - \$55

Once we obtain a phone number for an owner, we will make up to 3 outbound calls to an owner to secure payment. All other calls with an owner will be at no charge.

Payoff Calculations - \$100

It is important for your management company or treasurer to confirm all payoff amounts with us prior to issuing status letters or advising owners of balances so that all legal costs and fees can be included. We will also insure that all fees necessary to close or dismiss a file are included. Rush charges do apply.

Monitoring Lender Foreclosure - \$195 (one-time charge)

It is important to monitor lender foreclosure through the sale and redemption period. We obtain periodic ownership and encumbrance reports, if needed, and routinely verify the status of the foreclosure action. We advise you of the association's rights and options throughout the process. Once a sale is completed, we advise the association of the new owner and the association's rights.

Monitoring Bankruptcy - \$180 Chapter 7; \$300 Chapter 13 (one-time charge)

We prepare and file a Proof of Claim, if necessary, monitoring the bankruptcy through discharge. Our services include reviewing the plan (if Chapter 13) to make sure it includes provisions for payment of pre- and post-petition assessments, and checking with the trustee and debtor's attorney to determine if property has been abandoned. If it becomes necessary to file any motion with the court, we charge fixed fees as follows:

Motion to Dismiss: \$395

Motion for Relief from Stay: \$595

Objection to Plan: \$195

All preparation for and appearances in court are charged on an hourly basis.

Assessment Increase Notice - \$200

We prepare notice to the bankruptcy court of any increase in the ongoing debt owed to the association upon receipt of notice from you, including filing a proof of claim and letter to the bankruptcy attorney or debtor.

Public Trustee/Bankruptcy Search - \$30 (each)

Verifying whether a property is in foreclosure or subject to a bankruptcy before filing a lawsuit can save the association hundreds of dollars. So, we will search both the public trustee and bankruptcy records and then advise the association if different action is necessary.

Receiverships (County Court) - \$295 initial, then hourly. Court costs are approximately \$250

We will prepare pleadings and appear in court to obtain appointment of a receiver to collect rents where the property is abandoned or being rented by the owner. Once appointed, we supervise disbursement of the monies collected by the receiver at an hourly rate.

Lien/Judicial Foreclosures (District Court) - Hourly rates apply

We recommend that foreclosure be considered as a viable collection remedy in all problem cases. Our fee is based on the complexity of your circumstances and should reflect the value you will receive from the monetary result of the foreclosure.

Lien Sales - \$500

We list all liens that are potentially available for sale on our website at <https://Altitude.Law/general-topics/liens-for-sale/> at no cost. In the event a lien is sold we collect our fee from the purchaser of the lien. In order to handle quickly, within the legal time limits, we reserve the right to sell liens, without prior approval if the purchase price is equal to or more than the balance due.

Status Report - \$75/month (if not accessed electronically)

We provide online access to each association's collection status report. For more information please contact us. If your association chooses to have us prepare your status report, there will be a monthly fee.

Asset/Person Locations - \$25-100

From time to time we must locate debtors and/or their assets in order to secure payment for you. We will use various databases for which there is a cost to us, to secure possible leads. This information is then reviewed and analyzed to develop the best strategy for quickly and efficiently securing payments.



## SERVING HOMEOWNERS ASSOCIATIONS

Altitude Community Law P.C. is the premier law firm which serves legal needs of community associations. More than 2000 associations throughout Colorado have chosen us to guide them through the formation, transition and operation of their organizations. Our association clients include condominium, townhome and detached single family associations across the state.

Communities ranging in size from two units to more than 90,000 units have enjoyed the personal attention we provide, along with the depth and breadth of knowledge that only years of experience can yield. More than any law firm, we focus on homeowners associations and covenant controlled communities. We have prepared in excess of 500 sets of rules and architectural control guidelines and assisted over 500 associations in amending or restating their legal documents.

With several offices throughout Colorado, we are able to service our clients in a timely, efficient, and responsive manner.

### OUR TEAM

Altitude Community Law was founded in 1988. Our attorneys work as a team to help you in the formation of a new community association, in running your existing association, or resolving disputes involving your association. Adding to the firm's 200 plus years of combined experience are attorneys Elina B. Gilbert, Melissa M. Garcia, David A. Firmin, David A. Closson, William H. Short, Debra J. Oppenheimer, Kiki N. Dillie, Jeffrey B. Smith, Maris S. Davies, Kate M. Leason, Amanda K. Ashley, Kelly K. McQueeney, Azra Z. Taslimi, Sheridan Classick, and Andrew Moore.

### CLIENT SERVICE - OUR NUMBER ONE PRIORITY

Each member of our firm is committed to providing you with the best legal representation in our field at competitive rates that fit your budget. We also understand that each client has different needs and expectations, and good client servicing is in the eyes of the client, not in the eyes of the firm.

That's why we're committed to getting to know the board members of your association so that we can understand and meet your needs. By returning your calls promptly, communicating with you regularly, and offering various educational workshops annually, we are always looking for ways to better serve you and to exceed your expectations in a law firm.

By working with you, we can help you accomplish your goals on behalf of your association, and we can make your role as a board member easier by providing you with the tools you need to do your job effectively.

### PREVENTION - THE BEST LEGAL APPROACH

The first and best legal solution is preventing disputes and other legal problems. With a strong emphasis on prevention, we draw from our experience to help you lay a proper foundation for the future and avoid costly and destructive pitfalls.

And, while we emphasize prevention, we are also fully prepared to fight for your cause if the need arises. We can represent you to resolve disputes through mediation, arbitration or litigation.

**COMMITMENT  
TO  
EDUCATION**

Education of both community managers and board members has been the backbone of the firm since its inception. At Altitude, we believe that education is the best way to avoid problems in communities and we continually strive to provide the best and most accessible education to not only our clients, but to any directors or managers that want to better understand the industry. Altitude Community Education (ACE) provides numerous lunch forums, webinars, classes, and other educational opportunities to ensure your community's success. For more information please refer to our Education Tab on the Altitude website.

**COUNSEL FOR  
ASSOCIATIONS  
AT ALL STAGES**

We advise associations at all stages of growth; from pre transition to the mature association. Many areas of law converge to govern community associations. We can help you address issues at all stages of a homeowner association's development. In addition to our experience, we have been an advocate for community associations at the Capitol. Our attorneys serve on the Legislative Action Committee for CAI and are aggressively involved in monitoring and testifying in the legislature concerning bills affecting community associations.

**TRANSITION OF  
CONTROL**

One of the most pivotal times for a community association is during its transition from developer to homeowner control. The developer controls a common interest community during its formation. As lots or units are sold, transition from developer to homeowner control begins, with owners bearing the responsibility for the association's operation. Ideally this is a process rather than an isolated event. Over time, owners gradually become involved in the governance of the association. Altitude Community Law has assisted hundreds of associations with this process making for a smooth and problem-free transition.

**THE MATURE  
COMMUNITY  
ASSOCIATION**

Mature associations function best when they provide services to owners (as set forth in the governing legal documents) and responsibly enforce their governing documents and anticipate changing needs.

**REVIEWING,  
AMENDING AND  
INTERPRETING  
DOCUMENTS**

By periodically reviewing, amending or revising your association's articles of incorporation, bylaws, covenants, and rules, Altitude Community Law can help you build a strong, legally-sound foundation for your community. We can assist you by understanding your goals and redrafting, writing or amending rules, architectural control guidelines and covenants that address your association's needs within the framework of local, state and federal laws. We can also aid you in the proper interpretation and clarification of your governing documents.

**COVENANT  
ENFORCEMENT**

Two principles apply when addressing enforcement of covenants and rules. Covenants and rules must be carefully written to be enforceable and must be enforced consistently to retain their strength. The same principles apply when dealing with architectural control or design enforcement. At Altitude Community Law, we can assist you in these important areas through use of our alternate dispute resolution services, or if need be, through our litigation services.

**CREATIVE  
PROBLEM  
SOLVING**

We've handled a wide variety of covenant enforcement issues and achieved many successes for our association clients. From painting and landscaping, to pets and parking, we have experience with virtually every imaginable covenant violation. While our goal is to resolve disputes outside of court, when litigation is necessary, we're strong advocates for associations. Not only do we have years of courtroom experience, but we also have years of industry experience—insight that enables us to utilize creative solutions, as well as anticipate the challenges of a covenant violation lawsuit.

**DEBT  
RECOVERY**

Financial well-being hinges on timely collection of association assessments. In addition to traditional collections methods such as demand letters, liens, and personal lawsuits, we've developed successful alternatives to use when traditional methods fail, including the use of receiverships and foreclosures. In the last two years we've collected approximately \$9 million in delinquent assessments and fees for our clients. No other firm can claim this degree of success.

Every collection matter in our office is handled by an attorney, not the paralegal-driven model that many law firms use. This difference provides for better representation, higher quality work and better results for our clients.

We are also the first firm to provide clients with online status reports of their collection accounts. The information is real-time account history accessed through a secure online system.

**INSURANCE  
AUDIT**

At every stage of an association's maturity, it is important that the association have adequate insurance not only for the structures and improvements, but also for the board of directors. We can review your current policies for adequate coverage and to determine if your coverage complies with the requirements in your governing documents.

An association that isn't properly insured for general liability and property coverage, director and officer coverage, fidelity insurance, and gap coverage may be susceptible to lawsuits filed by owners. Our insurance audit can assist your association not only by determining any weaknesses in your coverage, but by recommending a more comprehensive insurance plan that will meet your needs and budget.

**DISPUTE  
RESOLUTION/  
LITIGATION**

We emphasize prevention of legal problems through thoughtful and thorough advice and counsel given prior to taking action or entering into transactions. When a legal problem does arise, we will assist you in finding the most practical and cost-effective solution. Our trial attorneys are not only experienced, but also

have a long track record of winning in the courtroom. Our goal is to resolve disputes outside of court whenever possible, and all Altitude Community Law attorneys have had formal training in mediation and negotiation.

But when a resolution cannot be found, we bring our extensive litigation experience to bear on behalf of our clients. We assess with you the benefits of litigation and weigh them against the costs and risks.

A wide variety of problems and needs come up in the course of governing and operating a homeowners association. Often the solution is not obvious. We enjoy taking both a creative and proactive approach and working with you to find legal solutions that allow you to do what your association wants to do. Altitude Community Law has gained a reputation for using ground-breaking methods and solving old problems in refreshing new ways.

Pertinent examples of such creative problem solving include:

- Negotiated and closed the first bond financing in the country by a homeowners association of 15 million dollars for various capital improvements.
- Negotiated and drafted a favorable annexation agreement that provided for substantial payment to the association.
- Identified and implemented procedures to collect working capital contribution from developer for use by association in a build-out community.
- Amended legal documents for a condominium community to create and sell a unit out of the common elements, with the proceeds going to the Association.
- Consolidated two associations into one, eliminating duplicate costs and overhead.

#### **FINANCIAL CONSIDERATIONS**

From the beginning of our relationship with you, we welcome an open dialogue about the subject of fees and costs. We know how essential legal services are to your successful operation. We also know you must work within an established budget

#### **HOW WE CHARGE FOR OUR SERVICES**

We have made every effort to package our services in a meaningful way that reflects their value to you. We strongly urge all associations to elect to be on one of our popular retainer programs. The retainer programs are set at levels to be a maximum benefit to your community. They further simplify the budgeting process by establishing a fixed monthly fee for certain services.

Additionally, whether you are on one of our retainer programs or not, fees for specific work are frequently quoted on a flat or fixed fee basis. We will work with you to select from these convenient options, or to create an alternative arrangement tailored to suit your needs.



# Altitude Community Law

## Managing Partner



**David A. Firmin :: Shareholder**

**Education:** University of Denver (B.A., 1991); University of Denver (J.D., 1998).

**Member:** Colorado Bar Association; Southwestern Colorado Bar Association; Community Associations Institute.

**Practice Areas:** Condominium and Homeowners' Association Law.

## Debt Recovery



**Kiki N. Dillie :: Partner - Debt Recovery Department Head**

**Education:** University of Colorado (B.A., 2002); University of Colorado School of Law (J.D., 2008).

**Member:** Colorado Bar Association; Colorado Creditor Bar Association; Community Associations Institute.

**Practice Areas:** Collections.



**Amanda K. Ashley :: Associate**

**Education:** Central Methodist University (B.A., 2000); Marquette University Law School (J.D., 2004).

**Member:** Colorado Bar Association; Adams County Bar Association; Community Associations Institute; Wisconsin Lawyers Assistance Program; Wisconsin Law Foundation Fellow; Board of Directors: Non Resident Lawyer Division WI.

**Practice Areas:** Collections.



**Sheridan Classick :: Associate**

**Education:** Metropolitan State University of Denver (B.A., 2015); Gonzaga School of Law (J.D., 2018).

**Member:** Colorado Bar Association; Denver Bar Association; Community Associations Institute.

**Practice Areas:** Collections.

## Litigation/Foreclosure/Covenant Enforcement



**Jeffrey B. Smith :: Partner - Litigation Department Head**

**Education:** Providence College (B.A., 2005); University of Denver College of Law (J.D., 2008).

**Member:** Colorado Bar Association; Denver Bar Association; Community Associations Institute; Colorado Defense Lawyers Association.

**Practice Areas:** Covenant and Rule Enforcement Litigation; Insurance Defense; Civil Litigation; Contract Disputes; Fair Housing Law; Foreclosure.



**William ("Bill") H. Short :: Partner**

**Education:** University of Vermont (B.A., 1979); Emory University School of Law (J.D., 1982).

**Member:** Colorado Bar Association; Denver Bar Association; Community Associations Institute. Colorado Defense Lawyers Association.

**Practice Areas:** Insurance Defense; D&O Liability; Construction Law; Civil Litigation; Contract Disputes; Fair Housing Law; Covenant and Rule Enforcement Litigation.



**Debra J. Oppenheimer :: Partner**

**Education:** Metropolitan State College (B.S., 1986); University of Texas (J.D., 1989).

**Member:** Colorado Bar Association; El Paso Bar Association; Community Associations Institute.

**Practice Areas:** Covenant and Rule Enforcement Litigation; Insurance Defense; Civil Litigation; Contract Disputes; Fair Housing Law.



**Kate M. Leason :: Associate**

**Education:** University of Central Florida (B.A., 1987); University of South Florida (M.L.S., 2003); Barry University, Dwayne O'Andreas School of Law (J.D., 2008).

**Member:** Colorado Bar Association; Denver Bar Association; Community Associations Institute; American Association of Law Libraries.

**Practice Areas:** Foreclosure.



**Azra Z. Taslimi :: Associate**

**Education:** State University of New York at Albany (B.A., 2004); State University of New York at Buffalo (J.D., 2007)

**Member:** Colorado Bar Association; Community Associations Institute

**Practice Areas:** Fair Housing Law; Covenant and Rule Enforcement Litigation; Foreclosure.

## Transactional



**Elina B. Gilbert :: Shareholder - Transactional Department Head**

**Education:** University of Michigan, Ann Arbor, Michigan (B.A., 1993); University of Detroit Mercy School of Law (J.D., Cum Laude, 1997).

**Member:** American Bar Association; Michigan Bar Association; Community Associations Institute; College of Community Association Lawyers.

**Practice Areas:** Condominium and Homeowners' Association Law.



**Melissa Garcia :: Shareholder**

**Education:** University of Nevada, Reno (B.A., 1996); California Western School of Law (J.D., 1999).

**Member:** Community Associations Institute.

**Practice Areas:** Condominium and Homeowners' Association Law.



**David A. Closson :: Shareholder**

**Education:** Colorado State University (B.A., 1995); University of Colorado (M.B.A., 2002); University of Colorado (J.D., 2002).

**Member:** Community Associations Institute.

**Practice Areas:** Business; Condominium and Homeowners' Association Law.



**Maris S. Davies :: Associate**

**Education:** Ithaca College (B.S., 2001); University of Denver (J.D., 2009).

**Member:** Colorado Bar Association; Community Association Institute.

**Practice Areas:** Condominium and Homeowners' Association Law.



**Kelly K. McQueeney :: Associate**

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**Member:** Colorado Bar Association; Community Associations Institute.

**Practice Areas:** Condominium and Homeowners' Association Law.



**Andrew Moore :: Associate**

**Education:** University of Richmond (B.A., 2009); University of Denver Sturm College of Law (J.D., 2014)

**Member:** Colorado Bar Association; 14th Judicial District Ask-A-Lawyer Clinic; Volunteer Attorney and Former Board Member; Colorado Headwaters Land Trust, Former Board Member; Metro Volunteer Lawyer, Volunteer Attorney; Community Associations Institute.

**Practice Areas:** Business; Real Estate; Immigration; Condominium and Homeowners' Association Law.



**BOARD OF DIRECTORS ROSTER**

Please complete and email to hoalaw@altitude.law, fax to 303.991.2045 or mail to 555 Zang Street, Suite 100, Lakewood, CO 80228-1011.

This information will be used for communication (correspondence, blogs, newsletters, etc.) between our firm and you. It will not be released outside of our firm.

Thank you.

Association Name: \_\_\_\_\_ Date: \_\_\_\_\_

Website: \_\_\_\_\_

Board Meeting: \_\_\_\_\_

Month of Annual Meeting: \_\_\_\_\_

PRESIDENT			
Name		Phone Number(s)	
Mailing Address		(H)	(C)
City, State, Zip:		(W)	Fax:
Email Address			
I do not want to receive: E-newsletter Blog Periodic Client Alerts		Term Expires (mo/yr):	

VICE PRESIDENT			
Name		Phone Number(s)	
Mailing Address		(H)	(C)
City, State, Zip:		(W)	Fax:
Email Address			
I do not want to receive: E-newsletter Blog Periodic Client Alerts		Term Expires (mo/yr):	

SECRETARY			
Name		Phone Number(s)	
Mailing Address		(H)	(C)
City, State, Zip:		(W)	Fax:
Email Address			
I do not want to receive: E-newsletter Blog Periodic Client Alerts		Term Expires (mo/yr):	

TREASURER			
Name		Phone Number(s)	
Mailing Address		(H)	(C)
City, State, Zip:		(W)	Fax:
Email Address			
I do not want to receive: E-newsletter Blog Periodic Client Alerts		Term Expires (mo/yr):	

MEMBER/ADDITIONAL BOARD MEMBER			
Name		Phone Number(s)	
Mailing Address		(H)	(C)
City, State, Zip:		(W)	Fax:
Email Address			
I do not want to receive: E-newsletter Blog Periodic Client Alerts		Term Expires (mo/yr):	



# Successful Enforcement of Covenants, Rules and Architectural Standards/Guidelines

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## Successful Enforcement of Covenants, Rules and Architectural Standards/Guidelines

### I. INTRODUCTION

- A. Community associations use covenants, rules, and architectural standards/guidelines to:
- Maintain, preserve, enhance, and protect the property values and assets of the community.
  - Promote harmonious community living.
  - Preserve the common scheme and harmonious design of the community.
- B. Covenants and rules and the fair enforcement are essential for community associations for several reasons:
- There is less sense of community with more contact via social media and less face to face time and the covenants assist in dealing with the relationships between residents (owners and tenants).
  - Local governments are pushing more obligations onto associations.
  - In cases where rules have been poorly developed or enforced, the courts are ruling against community associations.
- C. Authority to make and enforce rules rests with the board of directors of the association. But the association manager is expected to:
- Give the board practical, technical, and administrative assistance in developing and enforcing covenants and rules.
  - Maintain records which can furnish legal support if board actions in adopting or enforcing rules are challenged.

### II. DEFINITIONS

A covenant affects the use and enjoyment of the property and is said to "run with the land" or "touch and concern" the property. This means the covenant and the property are inseparable once the covenant is recorded, and all owners, present and future, are subject to the covenant.

A rule is a specific statement of required behavior the violation of which carries a penalty (e.g., fine, suspension of voting rights, etc.). It is meant to clarify or fill in the gaps of the covenants not supplant the covenants.

An architectural or design standard/guideline is a specific type of rule that applies to the appearance of an owner's lot or the exterior of his or her unit.

### III. SCOPE OF COVENANTS (DEALING WITH USE RESTRICTIONS), RULES AND ARCHITECTURAL STANDARDS/GUIDELINES

In a community association, covenants, rules and architectural standards/guidelines identify expected behavior, identify limitations and assist in



the governance of the community in three areas. These areas may include the following but some areas may only be possible via covenants and some via rules:

- A. The use of both common property and individual lots or units. Rules and architectural standards/guidelines are developed in this area to promote conformity and harmonious living.
- B. Changes in architecture, construction, or appearance of lots or units. Rules and architectural standards/guidelines are developed in this area in order to:
  - Establish and preserve a harmonious design for a community
  - Protect the value of the property
- C. The behavior of residents (owners and tenants), guests, and other visitors. Rules are developed in this area because of the possible impact one person's behavior may have on other persons.

#### IV. TYPICAL AREAS OF USE RESTRICTIONS IN COVENANTS, RULE-MAKING, AND ARCHITECTURAL STANDARDS/GUIDELINES

- A. Use restrictions found in covenants typically address: signs, noise, trash, vehicles, business activities/residential use, animals, antennas, parking, maintenance, renting and leasing of units.
- B. Typical areas of rulemaking to clarify use restrictions include: pets, parking, solicitation, maintenance of units, use of common areas and facilities, garbage and trash, and noise.
- C. Architectural standards/guidelines frequently address: fencing, decks and patios, exterior lighting, landscaping, doors and windows, building protrusions, such as skylights, water coolers and AC units, outdoor equipment, such as play sets.

#### V. RELATION OF RULES TO HIERARCHY OF AUTHORITY

In a community association, rules are established by means of resolutions or other motions. Here is where rules fit in the general hierarchy of authority for operating community associations:

- Federal constitution and statutes
- State and local statutes
- Map or plat for subdivision or association
- Declaration of Covenants, Conditions and Restrictions (CC&Rs)
- Articles of Incorporation
- Bylaws
- Rules and regulations

This hierarchy of authority means that rules and architectural standards/guidelines may not contradict or be in conflict with the legal sources that take precedence

over them. For example, a covenant may be more restrictive than a city ordinance (i.e., the city ordinance allows fences up to six feet in height, but a covenant may prohibit fences in excess of three feet). Likewise, if a covenant is less restrictive than a county ordinance, the owners must comply with not only the covenant but also the county ordinance. For example, the county may require that all dogs be registered with the county every year, but the covenants may not require any registration or only a one-time registration. However, the association is not responsible for ensuring that the owner complies with the county's requirements.

Although rules and architectural standards/guidelines are lower in the hierarchy of authority for community associations, they may clarify and expand an association's governing documents. However, they cannot conflict with any source that has a higher precedence.

## VI. SOURCES OF AUTHORITY TO MAKE AND ENFORCE RULES

Check all the legal documents in your association's hierarchy to verify its authority to make and enforce rules. The most important sources of an association's authority to make and enforce rules are:

- A. State Statutes and Court Decisions  
The Colorado Common Interest Ownership Act (CCIOA) provides associations with the authority to adopt rules and regulations. In addition, case law supports the right of associations to make and enforce rules.
- B. Governing Documents  
Governing documents provide general powers. General powers consist of the broad authority to adopt and enforce rules in order to carry out the purpose of the community association. That purpose is to preserve, maintain, and enhance the community's property.

Governing documents also provide specific powers—the authority to adopt and enforce rules in specific areas. Final authority to adopt and enforce rules rests with a board of directors, unless the governing documents specify otherwise.

A board may delegate the task of drafting or enforcing rules to standing or ad hoc committees or to other sources when the governing documents allow (e.g., architectural review committee).

## VII. CRITERIA FOR A VALID AND ENFORCEABLE RULE

- A. List of Criteria. In general, the courts recognize the following lists as characteristics of a valid rule. Furthermore, residents are more likely to accept and cooperate with rules with these characteristics. The following criteria should be used when developing or reviewing rules:

1. The rule must reasonably relate to the operation and purpose of the association (i.e., a rule must protect, preserve or enhance the properties within the community).
  2. The rule must be reasonable. A reasonable rule is one that is just, sensible, and not excessive (i.e., a rule should be necessary and not more punitive than necessary).
  3. The rule must be fair. It must not create a separate class or group of people (e.g., certain rules that treat resident owners and nonresident owners differently).
  4. The rule must be clear and unambiguous.
  5. The rule must not violate a fundamental constitutional right (e.g., freedom of speech).
  6. The rule must be consistent with applicable federal, state and local statutes (e.g., FHAA, ADA, Civil Rights Act, CCIOA).
  7. The rule must be consistent with the association's governing documents (i.e., a rule cannot prohibit what the covenants permit and vice versa).
  8. The rule must be uniformly enforced - this means there must be no selective enforcement or exceptions (i.e., a rule must be enforced against all owners not just owners who are delinquent in payment of assessments).
- B. What is an Unreasonable Rule? If reasonable rules promote a legitimate goal, unreasonable rules promote an illegitimate goal. They are illogical or unfair; too broad or too severe. To determine if a rule is unreasonable, take the following test:
1. Is the restriction based on outdated notions? If circumstances change, restrictions should change, too. Associations should constantly review their restrictions to ensure they are current.
  2. Does the restriction create safety hazards? Most courts will choose safety over aesthetics. Reasonable community associations recognize this.
  3. Is the restriction too intrusive? It is unreasonable to restrict activities within a unit that have no external effect on neighbors or property values.
  4. Does it unfairly target a particular group? Restrictions that unfairly benefit a majority of residents at the expense of a minority are typically not reasonable.

- C. Examples of Unreasonable or Ambiguous Rules. Examples of unreasonable or ambiguous rules and covenants appear below, with suggestions for improvement in italics below.
1. No worshipping on general common elements.  
*No Rule.*
  2. Children may not ride bikes in parking lot or on sidewalks.  
*No person may ride a bike in the parking lot or on the sidewalks.*
  3. Owners may have a reasonable number of household pets.  
*Owners may have no more than two (2) dogs and no more than two (2) cats.*
  4. Pets shall be on a leash while on common areas and while on city property adjacent to any common areas.  
*Pets shall be leashed whenever outside its unit within the community.*
  5. No vehicles are allowed in the community except 2 and 4 door sedans.  
*Abandoned and inoperable vehicles are prohibited. Trucks in excess of 1 ton are prohibited.*
  6. First floor owners will be assigned 2 parking spaces. Second floor owners are limited to 1 parking space.  
*All residents will be assigned 2 parking spaces.*
  7. Paint colors shall be muted earth tones except for pastels.  
*Paint colors shall be muted earth tones as indicated on approved color chart or other earth tones approved by the ARC.*
- D. Required Policies. All associations must adopt written policies, procedures, and rules and regulations regarding:
1. Collection of unpaid assessments;
  2. Handling of board member conflicts of interest;
  3. Conduct of meetings with reference to applicable provisions in the Nonprofit Act or other recognized rules and principles if desired;
  4. Enforcement of covenants and rules – including notice and hearing procedures and the schedule of fines;
  5. Inspection and copying of association records by unit owners;
  6. Investment of reserve funds;
  7. Adoption and amendment of policies, procedures and rules;
  8. Handling of disputes between association and homeowners (Alternative Dispute Resolution); and
  9. Reserve Study Policy.
- E. Restrictions on Covenants by Statutes:
1. Xeriscaping.

- a. The use of xeriscape or drought-tolerant vegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner. Associations may adopt and enforce design or aesthetic guidelines or rules that require drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property or on a limited common element or other property for which the unit owner is responsible. [38-33.3-106.5(1)(i)]
  - b. Any section of a restrictive covenant or of the declaration, bylaws, or rules and regulations of a common interest community, all as defined in section 38-33.3-103, and any rule or policy of a special district, as defined in section 32-1-103 (20), that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist wholly or partially of turf grass is hereby declared contrary to public policy and, on that basis, is unenforceable. [37-60-126(11)(a)] This subsection (11)(a) does not prohibit common interest communities or special districts from adopting and enforcing design or aesthetic guidelines or rules that require drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on property that is subject to the guidelines or rules.
  - c. Associations may not place any additional burdens (procedural or financial) on owners who submit xeriscape plans for approval. [37-60-126(11)(b)]
  - d. Associations may bring enforcement actions against unit owners who allow their grass to die unless water restrictions are in effect. [37-60-126(11)(c)]
  - e. Associations must give unit owners a reasonable and practical time period to try to revive grass that died during a period of water restrictions before requiring re-sodding. [37-60-126(11)(c)(1)]
  - f. The association may require proof from the unit owner that the unit owner is watering the landscape or vegetation in a manner that is consistent with the maximum watering permitted by the restrictions or guidelines then in effect. [38-33.3-302(1)(k)(II)]
2. Patriotic and Political Expression, Emergency Vehicles, and Fire Mitigation.
    - a. An association may not prohibit the display of American flag by a unit owner or occupant on a unit owner's property, in an owner's window or adjoining balcony if display is consistent with Federal Flag Code. [38-33.3-106.5(1)(a)]
    - b. An association may not prohibit the display of service flag by unit owner or occupant on unit owner's window or door who is or

whose immediate family is a member of the active or reserve military service. [38-33.3-106.5(1)(b)]

- c. An association must at least allow unit owners and occupants to display political signs in the manner no more restrictive than any applicable local ordinances. If no ordinances apply, an association may not prohibit the display of at least one political sign per political office or ballot issue within 45 days before any election and within seven days after any election on a unit owner's property or window. [38-33.3-106.5(1)(c)]
- d. An association may not prohibit the parking on the association's streets, the unit owner's driveway, or the association's guest parking spaces of an emergency vehicle with an official emblem weighing less than 10,000 lbs that is a condition of employment for a unit owner's employment as an emergency firefighting, law enforcement, ambulance, or emergency medical services and does not impede the safe and efficient use of the streets for other unit owners. [38-33.3-106.5(d)]
- e. An association may not prohibit unit owners from removing vegetation surrounding the owner's home for fire mitigation purposes and following a written defensible space plan created for the property and filed with the association. [38-33.3-106.5(e)]
- f. An association shall not require the use of cedar shakes or other flammable roofing materials. [38-33.3-106.5(2)]

3. Unreasonable Restrictions on renewable energy prohibited.

- a. An association may not prohibit solar energy devices. [38-30-168]
- b. However aesthetic provisions that impose reasonable restrictions on the dimensions, placement, or external appearance of a renewable energy generation device and that do not: (I) Significantly increase the cost of the device; or (II) Significantly decrease its performance or efficiency are allowed.
- c. An association may prohibit a wind-electric generator if due to sound it is a nuisance.
- d. Energy efficiency measures must be allowed [38-33.3-106.7] including swamp coolers, awning, shutters, trellis, attic fans.
- e. Retractable clotheslines must be allowed. [38-33.3-106.7]

4. Over the Air Reception Devices Rule

- a. FCC adopted the OTARD rule in 1996. Pursuant to the rule associations may not prohibit satellite dishes in many situations.
- b. The rule (47 C.F.R. Section 1.4000) has been in effect since October 1996, and it prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and

wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

5. Accommodations/Modifications due to disability
  - a. An association must make accommodations to their rules in order to comply with the federal Fair Housing Act. 42 U.S.C. sec. 3604 plus the state fair housing statutes at 24-34-502.2.
  - b. An association must make necessary modifications to association property in order to comply with the federal Fair Housing Act and state fair housing act. The modifications are at the expense of the owner and not the association.

#### VIII. STEPS IN DEVELOPING RULES

Use the following ten steps to develop rules for your association:

- A. Determine the need for a rule in the specific area.  
Answer the question, "Why?" Also, ask whether the rule is designed to maintain, preserve, enhance and protect the property value of the community, promote harmonious community living and preserve the common scheme and harmonious design of the community. Determine whether the problem identified is of sufficient consequence to justify creating a rule - what are the trade offs? Then check to be sure that your association's existing rules and governing documents are inadequate to address the issue.
- B. Consider both the immediate impact of such a rule and its long term implications.  
How is the rule likely to be received? Will a solution to a current problem create future ones for the community?
- C. Identify the source(s) of your association's authority to make a rule in the specific area involved.  
Review your governing documents and CCIOA. They may also provide who has authority to act and thus allow you to make a determination as to whether the proposed rule must be an amendment to the governing documents or can simply be a new board adopted rule.
- D. Define the scope of the rule.  
Specify "who" and "what" will be covered by the rule. The "what" of a rule includes:
  - Required steps, procedures, acts, or prohibitions a person is expected to follow
  - Enforcement procedures
  - Penalties for violations
  - Due process procedures

- E. Apply the "enforceability test."  
Check to be sure the proposed rule has the eight criteria of a valid and enforceable rule listed earlier. Then make sure it works with your association's procedures. Don't create a rule limiting parking to "no more than two days" if the association doesn't employ someone to monitor parking on a daily basis.
- F. Use clear, concise and unambiguous language.  
The proposed rule should be drafted in such a manner as to be concise and simple, yet clear and understandable. Avoid words or phrases that are vague or ambiguous (e.g., trucks, commercial vehicles, recreational vehicles). Check the rule out with several people who had nothing to do with drafting the rule. Make sure rules do not state that they are suggestions or use suggestive language such as "may". Use mandatory language such as "must" or "shall".
- G. Give notice of any proposed rule.  
Build consensus and support for the rule before it is adopted in order to gain acceptance and compliance. In addition to giving notice of the proposed rule, provide an explanation of the purpose, value and benefit of this rule as well as rules in general. For example, make owners and tenants aware that the board is considering a particular rule. Invite written comments. Schedule a hearing on a proposed rule if it is a major matter. Consensus and hence compliance is possible when rules are seen as fair and reasonable by owners and tenants.
- H. Have the rule reviewed by attorney.  
Have your association's attorney review the wording of rules - as proposed and as adopted - to ensure that they are legally sound.
- I. Act promptly on a proposed rule.  
Once a proposed rule has been published and input received, the board should act on it at its next regularly scheduled meeting. The board's options are to either approve or reject the proposed rule as it is or as amended. Failure to act will cause the board and the rule to lose credibility.
- J. Give notice of an adopted rule.  
Follow the terms and conditions of your policy on adoption of rules. Generally you should consider the following:
- Actual notice of an adopted rule is necessary if people are to voluntarily obey it, and may be required by the declaration.
  - Send a notice to the owner's last known address in the community's records. Send a notice to the unit or lot address, too, in case the occupant is a non-owner.
  - Use a first-class mailing, either with a billing notice or separately, to maximize the likelihood of people receiving the notice and reading it.



- Publish the rule in the community newsletter.
- Whatever notice you give, use a positive "tone of voice." Avoid sounding demanding or condescending.

**IX. PROBLEM AREAS**

- A. Retroactivity and grandfathering.
- B. Actions of developer/sales people.
- C. Commercial vehicles.
- D. "Concealed from View" provisions.
- E. Parking on public streets.
- F. Children.
- G. Home businesses.
- H. Satellite dishes/antennas.
- I. Leasing/renters.
- J. Signs.
- K. Painting.
- L. Fair Housing.

**X. DEVELOPMENT OF ARCHITECTURAL STANDARDS /GUIDELINES AND THE REVIEW PROCESS**

- A. Usually an association's declarations or CC&R's provide a review process for architectural changes. Work with counsel to make sure you develop and obtain approval for these standards in compliance with the CC&Rs. The approval or denial of unit owners' applications for architectural or landscaping changes must be made in compliance with standards and procedures contained in the declaration or bylaws and may not be made arbitrarily or capriciously.

It is in the community's best interests for a board or the architectural review committee to establish written architectural standards/guidelines for two reasons:

1. Written standards/guidelines indicate to owners what types of changes will be allowed under normal circumstances.
2. Written standards/guidelines are a way to avoid claims of arbitrary or selective treatment of owners.

- B. The Purpose of Architectural Control

The purpose of architectural review (or architectural control) is to keep the community attractive for the enjoyment of residents and for the protection of property values. The single most important step in organizing the process of architectural review is the development of a set of standards/guidelines. The declaration of covenants typically contains architectural authority and broad, general objectives. These need to be supplemented and expanded upon by specific procedures and standards. The standards/guidelines serve two basic purposes: first, they assist the

homeowner, both in designing any proposed improvement and in determining how to apply for approval; and second, they provide criteria for consistent decisions by the architectural committee.

An essential element to successful architectural review is the recognition by all members of the association that it is a benefit and not a burden. Well-drafted "Architectural Standards/Guidelines" will result in substantial benefits to all. Plus if you do end up in court, clear documents demonstrate to the Court the efforts of the association to be clear for all its members.

### C. Checklist of Recommended Provisions

The following is a checklist of recommended provisions for inclusion in Architectural Standards/Guidelines:

- What must have approval. The scope will vary with the nature of the development (e.g., high rise condos v. single family, detached homes). The architectural review process normally applies to all new construction and exterior changes. Likewise, any exclusions should also be stated. DO NOT REPEAT THE COVENANTS.
- Design criteria/standards. The guidelines should state in broad, general terms the basic design objectives it is seeking to accomplish. These must be consistent with those stated in the declaration. Example objectives include: improvement in harmony with surrounding structures; improvement will not result in unnecessary destruction or blighting of the natural landscape or of the achieved man-made environment. In addition to these design objectives, members need to know what criteria or standards the association will be using to determine whether a proposed design meets the stated objective. Examples include height, color, setback, materials, etc.
- Establishment of Architectural Committee. If this is not spelled out in the governing documents of the association, the architectural standards/guidelines should do so. Include such things as number of members, terms, how they are appointed, whether they should be board members also, record keeping procedures, and waiver of liability of members to homeowners.
- Application procedures. Detailed procedures for making application should be spelled out so that owners know what is expected of them. This should include a standard application form for use by all persons seeking approval.
- Decision-making process. The process for rendering a decision on any application and communicating that decision should be spelled out. Included should be time frames, voting procedures, criteria for approving or rejecting an application, and the process for notifying the homeowner of the status of his/her application.
- Variances. Indicate what authority, if any, and under what circumstances, the architectural committee (or board) can grant

variances from the standards/guidelines. Again, check your declaration to see if it provides for a variance process.

- Appeal process. The procedures for the homeowner to appeal a decision of the architectural committee to the board of directors should be spelled out, if that right exists.
- Licensed contractors. Consider requiring all construction to be done by licensed contractors with appropriate liability and workers compensation insurance. But remember do not set up requirements that you cannot monitor and enforce. Don't just list it hoping it will be followed with no intention or ability to enforce as that could create liability down the road.
- Indemnification and responsibility for maintenance and repair. In many instances, it may be appropriate for the association to require the homeowner to indemnify the association for any injuries or damage resulting from the construction or improvement. Likewise, in certain situations, the board may want to require the owner to assume all responsibility for the maintenance and/or repair of the improvement.
- Enforcement. The various enforcement alternatives available to the association in the event of a violation of the standards/guidelines (e.g., fines, injunctive relief via lawsuit) should be spelled out in detail. Also, include a provision that the failure to enforce the standards/guidelines shall not constitute a waiver of the right to do so in the future and a provision for the award of attorney fees to the prevailing party.

#### D. Checklist of Recommended Documents

The following is a checklist of recommended documents and forms that every association should have for use in connection with the architectural review process:

- Design guidelines, if any
- Written architectural application and review procedures
- Written enforcement procedures including fine schedule
- Written procedures for conducting violation hearing
- Warning letter (no fine imposed)
- Cease and desist letter
- Notice/letter of alleged violation
- Notice/letter of violation hearing
- Notice of violation hearing findings and decision
- ACC/ARC application for improvement/modification
- Receipt of application checklist
- Review of applications/plans checklist
- Application approval/denial form
- Request for variance
- Review of request for variance checklist
- Approval/Denial of variance form

E. Enhance enforcement of Architectural Restrictions in these ways

By following the Three "Rs" in architectural approval, you can enhance the enforceability and value of your Architectural Standards/Guidelines.

1. Receipt of Application

Purpose - Determine when submission is complete to guard against thirty (or forty-five) day waiver mandate.

The majority of documents state that applications will be deemed approved if written approval or disapproval is not received by the applicant within thirty (30) or forty-five (45) days of submission. As a result, it is imperative that architectural committees understand what is required for a complete submission and that the status of the submission is carefully documented. There are two possible determinations at this stage:

- a. The application is deemed complete and will be ruled upon without the need for any further information within the set time deadline.
- b. The application is deemed incomplete and will not be ruled upon until the missing information is submitted. In this case a written notice should be sent advising the applicant of this. Just giving the application back does not maintain a clear record of why it is not being reviewed.

Recommended Forms:

- a. Application
- b. Application Checklists
- c. Letter to Applicant
- d. Variance Request
- e. Variance Checklist

2. Review of Application

Purpose - it is imperative that the substance of the application be compared to the factors set forth in the governing documents for approval or disapproval.

Case law in Colorado and other jurisdictions has consistently held that associations can enforce their governing documents if, and only if, they base their decisions upon the factors set forth in the governing documents. As a result, applications are reviewed based upon the particular subjective factors and objective use restrictions set forth in the governing documents. A checklist should be created consisting of these specific factors to consider.

Recommended Form:

- a. Application Evaluation Checklist.

3. Response to Application

Purpose - to document the decision of the committee and provide a written response to the application as to approval or disapproval prior to expiration of the waiver period.

Once an application is deemed submitted and thereafter reviewed, it is imperative that a written response of approval or disapproval be provided to the applicant prior to the expiration of any time limits imposed by the governing documents. Whether the application is approved or disapproved, the letter should utilize the language set forth on the checklists and in the governing documents.

Recommended Forms:

- a. Decision of Committee
- b. Variance Decision
- c. Letter to Applicant

XI. FACTORS IN SUCCESSFUL ENFORCEMENT

- A. Voluntary Compliance: Every effort should be made to achieve voluntary compliance with the rule in order to reduce the need for active enforcement and enforcement problems. Give ample notice of the existence of the rule. Build a community consensus in support of the rule. Make timely amendments to the rule when situations and circumstances change.
- B. Timely Enforcement: Failure to act promptly upon notice of a violation results in a loss of confidence and breeds an air of permissiveness. Past board failures to enforce rules do not foreclose the possibility of enforcement of rules by subsequent boards. However, there is a danger that failure to enforce against some violations or permitting a violation to exist for too long a period of time may result in losing the right to enforce in subsequent situations.
- C. Reasonable Rules and Reasonable Penalties for Violations: Community support is necessary for effective enforcement. To achieve this, the need for the rule, the rule itself, and the penalty for violation must all be viewed as reasonable - both within the community and by the courts.
- D. Consistency and Uniformity of Enforcement: Once a rule has been adopted, the board must uniformly and consistently apply the rule and the standards against all situations. Permitting one fence but not another or acting against one owner but not another is inconsistent and destroys the consensus upon which voluntary compliance is based. If the board adopts a rule, it must uniformly and consistently apply it against all violations.

XII. OPTIONS FOR ENFORCING COVENANTS, RULES AND ARCHITECTURAL STANDARDS/GUIDELINES

A. Six Enforcement Options

There are generally six (6) enforcement options available to the association:

1. Fines
2. Internal Resources
3. External Resources
4. ADR/ Mediation or Arbitration
5. No Action
6. Legal Action

B. Type of Violations

Which option(s) to utilize will depend in large part upon the nature of the violation. Violations can be classified into one of the following four categories:

1. Work in process—This may be someone building something that was not approved or they are building it different from what was approved. This is singled out because due to case law it is important to take action quickly and notify the owner of the violation as soon as possible in order for the association to mitigate damages.
2. Completed act
3. Ongoing violation as opposed to the top item this is the owner who repeatedly parks in a place that is not allowed and/or repeatedly has parties. So the same violation occurs again and again with each offense harming the association.
4. Neighbor to neighbor dispute. Many times these disputes do not involve a covenant violation but the neighbors seek to drag the association into the dispute. It is important to notify the parties that the refusal of the association to get involved is due to the fact that there is no covenant violation or the issue is one for the police not the association. When there are feuding neighbors if one does violate the covenants it becomes especially important to have verification of the violation from someone other than the feuding neighbor.

C. Fines

1. Authority. Be sure your association has the authority to impose fines, as well as to collect them. Fines must bear a reasonable relation to the violation involved. Courts will not allow an association to continue to fine until the amount owed becomes unreasonable. Therefore, daily fines that continue to accrue will typically be found to be unreasonable if the association just lets them run without taking other action to stop the violations.
2. CCIOA Provisions on Fines. The Colorado Common Interest Ownership Act (CCIOA) allows associations to treat and collect fines in the same manner as assessments, provided the violator is first

given notice of the alleged violation and the opportunity to have a hearing to determine whether the violation occurred. Therefore, an association can lien the violator's property and ultimately foreclose its lien if payment is not received, or file suit to obtain a money judgment for the amount owed. In addition, the association can also collect its reasonable attorney fees and costs associated with any of these actions.

3. Due Process. However, before a fine can even be imposed for a violation, CCIOA requires certain due process requirements must be complied with. Specifically, the violator must receive notice of the violation and be given an opportunity to have a hearing. Without this notice and opportunity for a hearing, fines are unenforceable.
4. Basic Due Process Steps. The basic steps in a due process procedure for handling alleged rule violations are:
  - a. Issue a warning letter which contains:
    - Notice of the alleged violation
    - The action required to end the violation. Be specific. If you just tell someone to move something they may move it to another unallowed location.
    - A specific time within which the violation must be corrected
    - The penalty (sanction) which will be imposed after a hearing if the violation does not end within the stated time.
  - b. Issue notice of right to hearing if violation does not end within the stated time. This is a written notice to an alleged violator informing him or her of the alleged violation and that a hearing may be requested or has been scheduled to consider his or her alleged violation. A hearing is only required if you are imposing a fine.
  - c. Hold the scheduled hearing.

This is a fact-finding hearing to determine if a violation has occurred. It is recommended that the hearing procedure be kept informal. The following are suggested procedures to be followed:

    - State the rule allegedly violated
    - State the possible penalty (e.g., fine)
    - Explain the rules to be followed:
      - ✓ All remarks are to be addressed to the chair, all communications civil.
      - ✓ After you have advised the owner of the violation ask the owner to explain to the Board or hearing panel why he/she wanted a hearing.
      - ✓ Allow the owner to present evidence and witnesses if any.

- ✓ Hearing panel may then ask person questions if something is unclear but do not try to cross examine them.
- ✓ Chair asks if anyone else has anything to say.
- ✓ The association will advise everyone that if there is no more information for the board they will conclude the hearing and issue a written ruling by a set date.
- ✓ Written decision will be issued by [date]

It is recommended that the procedures to be followed be in writing and provided to the alleged violator in advance of the hearing.

The hearing may not be in executive session unless the owner accused of the violation requests it to be in executive session.

- d. Issue a decision after the hearing is held.  
The hearing panel determines the facts; whether or not a rule, covenant or architectural standard/guideline has been violated; the penalty (e.g. fine) to be imposed, if any; and the enforcement date of the penalty, if any. The hearing panel then issues this information in the form of a written decision. A hearing panel may find an alleged violator guilty or not, or may decide that not enough evidence was submitted to allow the panel to reach a clear guilty verdict.

Unlike in criminal actions where the standard of proof is "beyond a reasonable doubt", the standard for this type of hearing is a "preponderance of the evidence" which means more evidence than not. Thus, if there is more credible evidence than not that the owner violated a covenant or rule, then the standard has been met. No decision should be given during a hearing. This is to avoid the claim that the hearing panel was predisposed to a particular point of view. The hearing panel should issue its written decision within a reasonable time (in compliance with enforcement policy).

**D. Internal Resources for Enforcing Covenants, Rules and Architectural Standards/Guidelines**

There are a number of internal resources a community can use to encourage a resident to conform to the association's covenants and rules. Before using any of the internal resources for enforcing rules, verify that the association has the legal authority to take such action set forth in a statute or in the CCRs.

- 1. Suspension of Owner's Voting Rights - While this may be the mildest action possible, an association should still use it as a resource in



encouraging rule violators to conform to common area covenants and rules.

2. Suspension of the Use of Recreational Facilities and Common Areas - If your governing documents do not contain broad authority allowing for the suspension of an owner's right to use recreational facilities and common areas, you should only suspend privileges related to the violation. (e.g. suspend pool privileges - not parking privileges - for a pool violation.)
  6. Utility Shutoff - Some governing documents allow utilities, particularly water service, to be shut off if an owner violates certain covenants. This resource, even if specifically provided for, should be used cautiously, if at all. Some municipalities prohibit this type of action because of health and safety concerns. Therefore this very aggressive alternative should not be considered without consulting first with your association's attorney.
  7. Towing - The authority to tow a vehicle is typically found in either the covenants or rules. It can be an effective means of resolving a violation, although the cautionary comments under Self-Help are also applicable to towing. Reasonable notice prior to towing should be provided unless the violation constitutes an immediate threat to the safety of individuals or the community in general, such as a fire lane violation. In addition, associations should make certain that they are complying with all state and local laws regarding towing.
  8. Self-Help - Self-help means the association takes action to correct the violation itself without a court order. Because of the potential for confrontation resulting in breach of the peace or damage to an owner's personal or real property, self-help is generally not recommended. However, if an association decides to utilize self-help, the association must develop careful procedures before using self-help to correct a violation. Self-help should only be used if it is expressly authorized in the declaration and then only after consultation with legal counsel. Although governing documents may specifically provide for self-help, the courts may see it as a breach of the peace or trespass and look unfavorably on the association for utilizing this mechanism rather than the court system. This potentially dangerous alternative should not be considered without consulting first with your association's attorney.
- E. External Resources for Enforcing Covenants, Rules and Architectural Standards/Guidelines
- Community associations can also draw on resources within the broader community to help them enforce covenants and rules. Do not overlook local government agencies and municipal services as resources for enforcing your rules. Cities, counties, and municipalities do not enforce covenants,

rules, regulations or architectural standards. However, if your covenants or rules are the same as or less restrictive than a county or city ordinance, you may be able to get the governmental agency or municipal service to enforce its ordinance instead of spending association time and resources on enforcement of its covenants and rules. However, you must ask for help. And you must take the time to build working relationships with all the parties listed below.

1.     Local Health Department  
Your local health department can be asked to enforce the local health code. For example, possible areas of violation include:
  - Number of occupants in a unit
  - Internal use of a unit or storage on a lot
  
2.     Local Building/Zoning Department  
These terms refer to the local government office that issues building permits. In some areas, this office's responsibilities overlap with those of zoning and health. In some areas, this office requires the approval of a community's board of directors before it will issue a permit. This local government office may be able to help you if a unit is in violation of an existing building, plumbing, fire, or electrical code.  
These local agencies can assist with enforcement of such rules as:
  - Fence or shed regulations
  - Setback restrictions
  - Restrictions on commercial use of dwellings
  - Failure to obtain city or county permit
  - Building is not up to code
  - Other matters involving common areas and lots
  
3.     Local Law Enforcement  
The police or sheriff's department will enforce traffic regulations, issue tickets and/or tow violators of community's parking rules. They should be called for any issue regarding safety or security. They can also assist with disturbing the peace.
  
4.     Local Fire Department  
Your local fire department may help with enforcement of fire lanes and the removal of hazardous materials. They can also assist with hoarding issues in multi-family housing as the condition is a fire hazard.
  
5.     Code Enforcement Department  
This department is often part of the police department but they can assist with many violations that are also a violation of the association's documents. They often have local ordinances which prohibit weeds, abandoned vehicles, etc. Call can result in weeds

mowed and a lien placed on the property or the offending vehicles removed.

6. Animal Control Department

You can request that this agency patrol your community for animals in violation of its pet rules or local ordinances. Direct owners to contact this agency for barking dog violations or vicious animals.

7. Neighborhood Resource Center

A growing number of cities have established neighborhood resource departments to assist in the resolution of neighbor to neighbor disputes. Many have free or low cost mediation services and they also have excellent referral services available.

F. Alternative Dispute Resolution (ADR)/ Mediation or Arbitration

Most courts require mediation before they will set a situation for trial. Mediation involves submitting a dispute to a trained, uninvolved third party who will work with the two parties to try to reach a mutually agreeable solution. Mediation can be very helpful but it takes both parties to agree to sit down and work with the mediator. If an agreement is reached it will be reduced to writing and binding. Arbitration is hiring a third party to act as a paid judge. That person does not have to follow the rules of evidence and you cannot appeal the decision. Once it is submitted to the arbiter to decide, the decision is binding on all parties. Unless your governing documents require arbitration, there are only limited numbers of times that this is a good option. Mediation can be a more efficient and effective way to resolve a dispute than other means. An association might propose mediation when two neighbors are seeking to drag the association into a personal fight which has no covenant violations involved. Mediation may also be useful to enforce the covenants with some individuals.

G. No Action

Board members often mistakenly believe they must enforce all violations either because they have a legal duty to do so or by failing to enforce a violation they will have waived their right to enforce against a future violation. This can lead to unnecessary lawsuits and expenses for the association.

While the association through its board of directors is charged with enforcing its covenants and rules overall, not every single violation must be enforced. The law permits the board to exercise its reasonable business judgment and make a case by case determination of whether (and what type of) enforcement is appropriate.

As long as the board acts reasonably, in good faith and with the best interests of the association, a court will not overrule the board's decision. For example, the board may determine that there is a strong statute of

limitations defense likely to be asserted if the association were to bring suit for a violation. The board is within its rights to make a determination in this instance to not pursue legal action. Such a decision does not breach any duty owed to the association nor does it establish a legal precedence whereby all future violations cannot be enforced or all future requests must be approved.

It is important for the board to consult with legal counsel prior to making any decision, either to take enforcement action or no action. It is also important for the board to document in writing its decision not to take action.

#### H. Legal Action

The ultimate recourse of the association is to seek civil legal action against an owner in violation of a covenant or rule. Legal action may entail seeking an injunction order to stop the offending action and to prevent any further violation. The association may also seek to have the court force the owner to restore the property or situation to that which existed prior to the violation and to reimburse the association for any costs incurred in enforcing the restriction including attorney fees. A number of factors go into the decision to pursue legal action. Such a decision should never be made without consulting first with the association's attorney.

##### 1. Who May (or Must) Enforce Documents?

The right of enforcement lies with the parties for whom the benefit of the covenant was created. The benefited parties may depend upon whether there is a mandatory association, a voluntary association or only recorded covenants. Many times the governing documents will expressly identify benefited parties. Where the parties are not so identified, they must be ascertained from the language of the restriction, construed in light of the circumstances existing at the time the restriction was implemented. In addition, CCIOA also grants certain rights to associations to bring suit or intervene in suits.

The typical plaintiff is one or more of the following:

- In a mandatory association, the association through its board of directors
  - Power or authority to enforce by CCIOA and the CCRs
  - Duty to enforce
- If a voluntary association, the association, the architectural review committee or a homeowner
  - There may be no specific authority nor duty to enforce to association as CCIOA does not apply but there is implied authority in case law. However this is a case by case analysis based upon the CCRs.
  - Power or authority to enforce may be to architectural review committee

- Power or authority to enforce to homeowner
- Homeowner
  - No duty to enforce
  - But usually right to enforce
  - Architectural or Design Review Committee (ARC/DRC)

2. Which Court Can an Enforcement Action be Filed In?

There are three primary courts in Colorado: small claims court, county court, and district court. Each of these courts can hear enforcement action cases. There are advantages and disadvantages to each court which should be considered in evaluating where to file a case including costs, discovery rights, the judges, trial process and jurisdictional limits. These factors should be discussed with your association's attorney given the specifics of an individual case.

3. Remedies

Generally, the sole remedy for breach of a restrictive covenant or rule lies within the equitable jurisdiction of the courts. In other words, the courts will not grant the prevailing plaintiff monetary relief, but instead require the defendant to strictly comply with the restrictive covenant or rule (injunction).

In the past, the courts have ordered the following remedies: (1) temporary injunctions, (2) permanent injunctions, (3) court orders directing the removal or modification of building and structures to conform with restrictions, and (4) attorney's fees and costs of the prevailing party.

One other remedy is available in unusual circumstances: Monetary damages may be imposed on the defendant when the court can no longer strictly enforce the covenant or rule. However, to receive damages the plaintiff must prove that the violation of the restriction monetarily damaged the plaintiff in some way.

4. Recovery of Attorney Fees

- a. Colorado law (C.R.S. §38-33.3-123(2)) authorizes the association, a unit owner, or class of unit owners affected by another party's failure to comply with CCIOA or the association's governing document to seek reimbursement for costs and attorneys fees without the commencement of legal proceedings.
- b. Also C.R.S. §38-33.3-315(4) provides that misconduct that creates a common expense of the association may be placed on the offending owner's ledger.

- c. In the event that a lawsuit is filed to enforce or defend any provision of CCIOA or an association's governing documents, Colorado law (C.R.S. §38-33.3-123(c)) requires courts to award costs and reasonable attorney fees to the prevailing party. Courts use the word reasonable to reduce the amount of fees awarded to the prevailing party.

Therefore, if a court of law finds in favor of the association, the association is entitled to recover from the losing party the attorney fees it spent. Likewise though, if the owner wins, the association will be required to pay the owner's legal fees.

- c. Most declarations also have a provision that authorizes the association to recover from the owner any legal fees the association incurs in enforcing its covenants.
- d. Even though the association may be entitled to recover its attorney fees, a court must still determine if the amount of attorney fees sought is "reasonable."

- 5. Defenses to Enforcement of Covenants and Rules: Defenses against restrictive covenants fall into two groups. The first group includes:
  - Challenges to the covenant or rule
  - Challenges to the procedures of the association
  - Abandonment

The defenses in this group relate to the actions of the Declarant or association in how the governing documents were created and enacted and applied. If a Declarant failed to properly enact the governing documents or if the association made an error in amending the documents this can be attacked. In addition if the Declarant failed to follow the documents in order to sell the properties a claim of abandonment of a particular rule can be raised. In addition, failure of a board to enforce can create a defense of abandonment of a particular rule or covenant. Typically, three or four prior violations that have gone unenforced are probably insufficient to make any of the defenses valid. Rather, the number of prior violations must be so great that a reasonable person would come to the conclusion that the particular covenant or rule has been abandoned or waived.

The second group of defenses include:

- Estoppel
- Laches
- Waiver
- Statute of limitations

The defenses in this group deal directly with the association's (or plaintiff's) actions or inactions prior to or during the time of the alleged violations which mislead an owner acting in good faith to believe what he or she is doing does not violate a rule or covenant.

- a. Statute of Limitations on Building Restrictions. Colorado law for both CCIOA and non CCIOA association imposes a one year statute of limitations on actions brought to enforce the terms of any building restriction or compel the removal of any building or improvement on land. The complete statute follows:

38-33.3-123. Enforcement - limitation. (2) Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the declaration, bylaws, articles, or rules and regulations or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

38-41-119. One-year limitation

No action shall be commenced or maintained to enforce the terms of any building restriction concerning real property or to compel the removal of any building or improvement on land because of the violation of any terms of any building restriction unless said action is commenced within one year from the date of the violation for which the action is sought to be brought or maintained.

Thus, if no action (i.e. lawsuit) is brought within one year from the date of the building restriction violation, the right to sue is forever lost. It is not sufficient to send a letter demanding removal or compliance, but rather an actual lawsuit must be filed within the one year window. However, the lawsuit does not necessarily need to be served on the defendant within the one year statute of limitations.

- b. Statute of limitations on use violations: Each day that a use violation occurs is considered a new violation, therefore the statute of limitations begins to run on the last day the use violation occurs. Unlike covenant and rule violations involving buildings or improvements, there is no statute of limitations specific to common interest communities for enforcing a use violation, so we must look to the nature of the

claim for guidance. Covenants and the rules passed through the authority of the covenants, are based on contract theory meaning that, without a statute specific to common interest communities, the courts treat covenants similarly to contracts. Covenant enforcement actions which are analogous to breach of contract actions are to be held to the statute of limitations for contracts which is three years. Covenants and rules may also result in a claim which is more analogous to a negligence action. In this case, the statute of limitations for use violations would be the same for negligence actions which is two years.

- c. Other Defenses: In addition to the above defenses, additional defenses that are often asserted include:
- Violation of a constitutional right, statute, covenant, or public policy
  - Board exceeded its authority
  - Rule was not properly enacted in accordance with governing documents (declarations require owners to have opportunity to comment on rules)
  - Enforcement procedures were not followed (procedure requires 30 days notice before lawsuit and only 10 days notice was given)
  - Covenant or rule is vague or ambiguous (No recreational vehicles)
  - Covenant or rule is being applied in an arbitrary and capricious manner

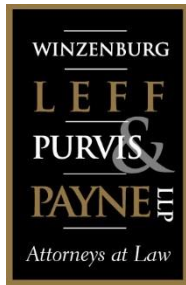
6. Judicial Perspective

- a. Demands on judicial system; very high, crowded dockets
- b. Perception of HOAs and boards; generally negative, unreasonable, arbitrary, controlling
- c. Court sitting "in equity"; broad discretion to fashion appropriate remedy
- d. Making your case:
- Reasonable board
  - Procedures documented in writing and followed
  - Documents followed
  - Correspondence and records exist
  - Efforts to resolve prior to filing suit



Procedures and Forms for Successful Covenant and Rule Enforcement

- A. Covenant and Rule Enforcement Procedures
- B. Fine Schedule
- C. Warning Letter to Owner
- D. Notice of Violation and Hearing Letter to Owner
- E. Violation Hearing Procedures
- F. Findings of Board
- G. Letter Regarding Board's Decision
- H. ARC Guidelines and Procedures
- I. Application Form
- J. Application Submission Checklist
- K. Letter to Applicant Regarding Receipt and Status of Application
- L. Variance Request Form
- M. Variance Checklist
- N. Application Evaluation Checklist
- O. Decision of Committee Form (Application)
- P. Decision of Committee Form (Variance)
- Q. Letter to Applicant Regarding Committee's Decision
- R. Appeal Procedures
- S. Notice of Appeal
- T. Decision of Board
- U. Letter to Applicant Regarding Decision of Board
- V. Letter Regarding Cease and Desist
- W. Letter Regarding Restoration of Property
- X. Letter Regarding Construction Not in Accordance with Application
- Y. Letter Regarding Construction Not Completed in Timely Fashion



LINDSAY S. SMITH  
lsmith@wlpplaw.com  
www.cohoalaw.com

April 16, 2021

*Via e-mail to:*

Board of Directors  
**“your metropolitan district”**  
c/o

*Re: Proposal for Legal Services for “your metropolitan district”*

Dear Members of the Board of Directors:

We are writing at Mrs. Hartung’s request to provide information about the legal services that our firm can provide **“your metropolitan district”** (the “District”). For 40 years Winzenburg, Leff, Purvis & Payne, LLP has specialized in representing community associations and metropolitan and special districts throughout the Denver metropolitan, and Colorado Front Range and mountain areas. We offer our proposal to undertake covenant enforcement and fee collection matters as special legal counsel to the District.

## **Why Choose Us?**

We know that you have several options of law firms that provide legal services to your community. We believe the provision of legal services still requires, and best serves the client, when there is a professional relationship between the client and the lawyer and the lawyer is responsive to the needs of the client. That professional relationship develops over time, but is furthered when certain characteristics exist. Those characteristics include the following:

### **CLIENT SATISFACTION IS OUR TOP PRIORITY**

At Winzenburg, Leff, Purvis & Payne, client satisfaction is our top priority. We promptly return all phone calls, work with you to determine deadlines and meet those deadlines, and provide timely status reports for collection accounts and covenant violation matters. Our attorneys are always available to speak to you concerning legal issues that matter to you.



*Focused on Communities*

8020 Shaffer Parkway, Suite 300  
Littleton, Colorado 80127  
303.863.1870  
Fax 303.863.1872



## **TRUST**

We strive to create a relationship with our clients based on trust. You can trust us to:

- know the law relating to communities, covenant enforcement, and collections, without having to learn at your expense
- represent the District's best interests
- provide timely and effective representation
- provide sound, practical advice along with our legal advice
- not sell you unnecessary services

## **SUPERIOR EXPERIENCE**

We have substantial experience in representing common interest communities throughout Colorado in collecting delinquent assessments, dues, fees and other charges, as well as enforcing their restrictive covenants and rules and regulations. Because you already have general counsel for matters such as budgeting, meetings, and governance, our proposed services are limited to covenant enforcement and fee collection matters working in concert with your general counsel.

## **AFFORDABLE COST**

We are committed to providing the highest level of personal attention to our clients in the most economically efficient manner. We will work with you to determine your specific needs and devise a plan to meet these needs within your budget. Our general fee collection schedule includes numerous fixed fees, as you can see in the attachment. Covenant and rule enforcement matters require a more variable time commitment, and our fees for such matters are billed hourly at the following rates: from \$160 to \$350 per hour for our attorneys, \$140 per hour for law clerks (when available), and \$110 per hour for our paralegals.

Please do not hesitate to call if you have any questions regarding our fees, services, or any other specific issues. We welcome the opportunity to serve the District.

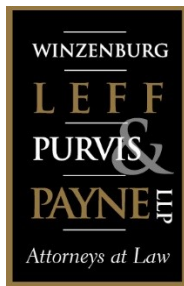
Very truly yours,

WINZENBURG, LEFF, PURVIS & PAYNE, LLP

LSS/ag

Encl.

P.S. This proposal and the enclosures, including our fee schedules, contain proprietary and confidential information to be shared only with the Board of Directors and manager.



## 2021 TRADITIONAL FEE SCHEDULE DISTRICT CLIENTS

<b>COUNTY COURT COLLECTION FEE SCHEDULE</b>	
<b>County court services will be billed on a monthly basis at fixed fees or hourly rates as they are incurred as follows:</b>	
<b>FEE</b>	<b>SERVICE</b>
No charge	Open and prepare collection file.
No charge	Prepare, update and send monthly status reports to the District.
\$150.00	Fixed fee to review owner account documents, calculate balance due, and prepare and send a demand letter to owner. A \$50.00 additional fee if owner is foreclosing lender.
\$100.00	Fixed Fee to prepare and send debt verification letter to owner after the demand letter expiration date.
\$60.00	Fixed Fee to prepare and send payment reminder letter to owner.
\$125.00	Fixed Fee to prepare and send payment plan agreement to owner prior to initiation of a lawsuit. A monitoring fee of \$15.00 per month will be charged to monitor payments due under the payment plan.
\$75.00	Fixed Fee to prepare and send notice of default letter to owner in the event owner does not comply with the provisions of pre-lawsuit payment plan agreement.
\$375.00	Fixed Fee to: <ul style="list-style-type: none"> <li>• Review file upon expiration of demand letter;</li> <li>• Communicate with District in obtaining ledger;</li> <li>• Reconcile account balance;</li> <li>• Prepare initial County Court Summons and Complaint and Exhibits (“lawsuit”);</li> <li>• Send lawsuit to process server and follow up communications with process server;</li> <li>• E-file lawsuit with Court;</li> <li>• Review file and reconcile account in preparation for Court return date;</li> <li>• Appear and travel to/from Court on Court return date;</li> <li>• Review Colorado Courts E-Docket to ascertain if Answer filed by owner;</li> </ul> Review Colorado Courts E-Docket to confirm accuracy of judgment entered.
\$75.00	Fixed fee to prepare and file Affidavit of Attorneys’ Fees and Costs with Court for Court return date.
\$125.00	Fixed Fee to prepare and e-file Motion for Default Judgment against owner and to prepare and e-file Affidavit of Attorneys’ Fees and Costs and other supporting documents in support of Motion.
\$150.00	Fixed Fee to negotiate and prepare Settlement Stipulation after the initiation of the lawsuit and prior to an Answer being filed. Fixed Fee includes preparation and filing of Motion to Dismiss upon compliance with Settlement Stipulation. A monitoring fee of





	\$15.00 per month will be charged to monitor the payments due under the Settlement Stipulation.
\$100.00	Fixed Fee to prepare and send owner Notice of Default in Settlement Stipulation.
\$125.00	Fixed Fee to reconcile the account balance and to prepare and file Motion for Entry of Judgment upon default under the Settlement Stipulation, Affidavit of Fees and Costs and Proposed Order.
\$75.00	Fixed Fee to prepare and send notice of judgment letter to owner.
\$125.00	Fixed Fee to prepare and file post-judgment interrogatories. Fixed fee includes arranging service on owner and monitoring for an Answer within the deadline provided.
\$125.00	Fixed Fee to prepare and file Motion for Contempt Citation, Proposed Citation and Proposed Order.
\$150.00	Fixed Fee to prepare and file Writ of Garnishment. Fixed fee includes arranging service on the Garnishee, monitoring for an Answer within the deadline provided, monitoring for payments due under the Garnishment, forwarding payments to the District and preparing Notice of Release of Garnishment.
\$150.00	Fixed Fee to prepare post-judgment payment plan agreement. A monitoring fee of \$15.00 per month will be charged to monitor payments due under the agreement.
\$195.00	Fixed fee to prepare letter to court requesting transcript of judgment, e-record transcript of judgment in county records, to prepare letter to court requesting certificate of satisfaction of judgment, prepare and e-file satisfaction of judgment with court, prepare and e-record certificate of satisfaction of judgment in county records.
\$100.00	Fixed Fee to reconcile account ledger, calculate balance owed after judgment has been satisfied and to prepare and send letter to owner regarding account balance following Satisfaction of Judgment.
\$50.00 each	Fixed Fee for computerized skip tracing and investigation, credit report and analysis or box breaker.
\$150.00	Fixed Fee to prepare payoff calculation letter (a rush fee of \$75.00 is added if the payoff is required within 48 hours of request).
\$30.00	Fixed Fee to review ownership and encumbrance report.
\$50.00	Fixed Fee to review the accuracy of assessment lien not prepared by our office.
\$30.00 each	Fixed Fee to conduct foreclosure, military or bankruptcy search in preparation for lawsuit.
\$195.00	Fixed Fee to review ledger and calculate super lien, and to prepare and send super lien demand letter to first deed of trust holder. Fixed fee includes monitoring of public trustee foreclosures up to nine months. Monitoring of public trustee foreclosures over nine months will be charged at our hourly rates.
\$300.00	Fixed Fee to obtain and review ledger, calculate balance and prepare and file Notice of Intent to Redeem with supporting documents.
Hourly rates apply	For additional services that are not provided for in the Fixed Fee rates set forth above.

### BANKRUPTCY FEE SCHEDULE

**All fees for bankruptcy services will be billed on a monthly basis at fixed fees or hourly rates as follows:**

FEE	SERVICE
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\$175.00	Fixed Fee to prepare Entry of Appearance in a Chapter 7 bankruptcy case.
\$250.00	Fixed fee to prepare and file Entry of Appearance and a Proof of Claim in a Chapter 13 bankruptcy case.
\$350.00	Fixed Fee to prepare and file Motion to Dismiss a Chapter 13 bankruptcy case with supporting documents for owner's failure to make plan payments.
\$375.00	Fixed Fee to prepare and file Motion for Relief from Bankruptcy Stay with supporting documents.
Hourly rates apply	For additional services that are not provided for in the Fixed Fee rates set forth above.

Costs (e.g. ownership and encumbrance reports, service of process charges, court filings, document recording fees, etc.) are billed on a monthly basis and due and payable upon receipt of the invoice. There is no charge on general collection matters for photocopies, postage, long distance phone calls, incoming or outgoing faxes, and preparation of monthly status reports.

The following are our **2021 hourly rates**:

Mark K. Payne	\$350.00 per hour
Suzanne M. Leff	\$325.00 per hour
Molly Foley-Healy	\$350.00 per hour
Kimberly A. Porter	\$325.00 per hour
Wendy E. Weigler	\$325.00 per hour
Brianna L. Schaefer	\$300.00 per hour
Lindsay S. Smith	\$300.00 per hour
Travis B. Keenan	\$320.00 per hour
Marci M. Achenbach	\$225.00 per hour
Amanda M. Doherty	\$225.00 per hour
Jimoh A. Yussuf	\$180.00 per hour
Law Clerk (if available)	\$140.00 per hour
Paralegals	\$110.00 per hour