AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Boundary Line Adjustment; Robert and Ruth Ann Stoh

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Boundary Line Adjustment between Belvedere and Storh on Lots 16, 17, 19 and 20, Marble Ski Area Filing 3.

Fiscal Impact:

Submitted by: Cathie Pagano **Submitter's Email Address:** cpagano@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required Yes ○ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/29/2015

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 5 minutes

Agenda Date: 5/5/2015

Contract Distribution:

Gunnison County, CO
Community Development Department
221 N. Wisconsin St. Ste. D, Gunnison, CO 81230
Phone: (970) 641-0360 FAX: (970) 641-8585
Website: www.gunnisoncounty.org
Email: planning@gunnisoncounty.org

To: Russ Forrest

From: Cathie Pagano

Date: April 27, 2015

Re: Stohr Boundary Line Adjustment

Robert and Ruth Ann Stohr have applied for a boundary line adjustment. The Stohrs were issued a Stop Work Order by Crystal Lambert, Gunnison County Building and Environmental Health Official for construction of a 2-story exterior deck without a permit. After further review it was determined that the deck did not meet County setback requirement and encroached partially on the neighbor's parcel. To resolve that situation the Stohrs' proposed to adjust the boundary line between the parcels.

Gunnison County standards require that if there is a lien or mortgage holder on a parcel, that lien/mortgage holder must provide notarized consent prior to execution of the boundary line adjustment. In this case the Stohr's have two mortgage holders (HUD and Mortgage Electronic Registration Systems, Inc), both very large and difficult to work with. It is estimated that if we hear from the lenders it could be multiple months. The parcel is currently under contract for sale and has been so for more than 5 months. The prospective buyers are aware of the issues that the County has identified on the parcel and are anxious to close. Mr. Stohr has contracted with Jacob With to represent him in this matter. I've attached a letter from Mr. With regarding his proposal to resolve this issue. David Baumgarten and I have met with With and agree that his proposed approach his reasonable and meets the County requirements.

I have attached the proposed plat, draft letter from With for your signature and a letter from With describing the application.

Staff and County Attorney Baumgarten have reviewed the plat and find that it is compliance with the Gunnison County *Land Use Resolution* and recommend approval. Please let me know if you have any questions. Thanks.

Gunnison County Commissioners
200 E. Virginia
Gunnison, CO 81230

April 25, 2015

Stewart Title
1620 Grand Avenue
Glenwood Springs, CO 81601

Dear Sir or Madam,

Enclosed with this letter is the executed Boundary Line Adjustment of Lots 15, 16, 19 and 20 Marble Ski Area Filing No 3, Gunnison County, Colorado (the "Boundary Line Adjustment"). The Boundary Line Adjustment is being delivered to you conditioned on your acceptance of the terms of instructions set forth in this letter. If you are unwilling to perform the instructions in this letter, please have the plat returned to Gunnison County Community Development attn. Cathie Pagano, 221 N. Wisconsin, Suite D, Gunnison, CO 81230. With respect to the Boundary Line Adjustment, your instructions are as follows:

1. The Boundary Line Adjustment may not be recorded until you have received the full payoff amounts for the deeds of trust recorded at Reception Nos. 622328 and 622327 in the Gunnison County, Colorado Clerk and Recorder's Office.
2. If you have any question about whether the Boundary Line Adjustment may be recorded, you are to contact David Baumgarten and Jacob With. If either of those individuals instruct you not to record the Boundary Line Adjustment, you are not to record it and are to retain it for a period of 30 days pending further instructions. If you receive none, you are to return the Boundary Line Adjustment to Cathie Pagano at the address above at the end of that period.

Sincerely,

Gunnison County Commissioners

_____
Chairman

LAW OF THE ROCKIES

Members
Marcus J. Lock
Jacob A. With
Kendall K. Burgemeister

Of Counsel
John R. Hill, Jr.

525 N. Main Street, Gunnison, CO 81230 | 970.641.1903
lawoftherockies.com | Fax: 970.641.1943 | jwith@lawoftherockies.com

April 25, 2015

VIA ELECTRONIC MAIL

Gunnison County Community Development
Attn: Cathie Pagano
cpagano@gunnisoncounty.org

Re: Boundary Line Adjustment for Lots 15 and 16, Marble Ski Area Filing No. 3, Gunnison County, Colorado

Dear Ms. Pagano,

As you are aware, I've been retained by Robert Stohr to assist in addressing and resolving the issues identified in your letter dated January 14, 2015. Among the other issues you identified in your letter is that Mr. Stohr did not receive a permit for the deck built onto his residence. Though this would not typically be too substantial an issue, it has become apparent that according to the most recent survey the deck does not meet the side yard setback of 15 feet. In order to meet this setback, Mr. Stohr must obtain a boundary line adjustment with his neighbor whereby he acquires that additional fifteen feet around the deck.

Normally a simple process, this boundary line adjustment has proven difficult for a number of reasons. The most recent obstacle is that Mr. Stohr has two lenders, the Secretary of Housing and Urban Development and Mortgage Electronic Registration Systems, Inc. In order for a boundary line adjustment to be approved, typically all lenders involved must consent to the boundary line adjustment. This makes sense because if the lenders do not consent and the lenders subsequently foreclose, they would not be bound by the boundary line adjustment and the foreclosure would result in the boundary line adjustment being undone.

While lender consent is not normally difficult where local or other small lenders are involved, the Secretary of Housing and Urban Development and Mortgage Electronic Registration Systems, Inc. have proven to be a bureaucratic abyss into which paperwork enters but never leaves. The best estimate is that the Secretary of Housing and Urban Development may consent, but we will not know for months. Mortgage Electronic Registration Systems, Inc. has not responded to multiple letters sent to various offices.

Compounding the concerns created by this delay in coming into compliance is that Mr. Stohr has the property under contract to sell. The property has been under contract for a number of months and the boundary line adjustment appears to be the only outstanding item.

However, I believe that the real estate sale presents a unique opportunity to resolve the matter without lender consent. At closing, the buyer will pay sufficient funds to pay off Mr. Stohr's lenders. By having Mr. Stohr, his neighbor, and the County sign the plat prior to closing, but arrange so that it will not be recorded until the closing agent receives sufficient funds to pay off the existing lenders, I believe that we can proceed without lender consent. Because Mr. Stohr's lenders will have committed prior to closing to releasing their liens in exchange for the payoff amount provided to the closing company, we can know with certainty that if the payoff amount is received, there is no risk of the current lenders ever foreclosing and undoing the boundary line adjustment through the foreclosure. Because the buyer's new lender will record a deed of trust against the property as described in the boundary line adjustment, they will take title subject to the boundary line adjustment, so there is no risk of the new lender foreclosing and undoing the boundary line adjustment.

To ensure this result, I have enclosed with this letter a proposed letter of instruction to be signed by the Board of County Commissioners that is to accompany the plat to the title company and instruct the title company that the plat cannot be recorded until the payoff amounts are received for the existing liens.

I believe that this is an elegant solution, and I want to thank you and the County Attorney for identifying, and working with me towards, this solution. You've been of great assistance throughout this process, and I am very hopeful that Mr. Stohr will soon be in compliance and the matter resolved.

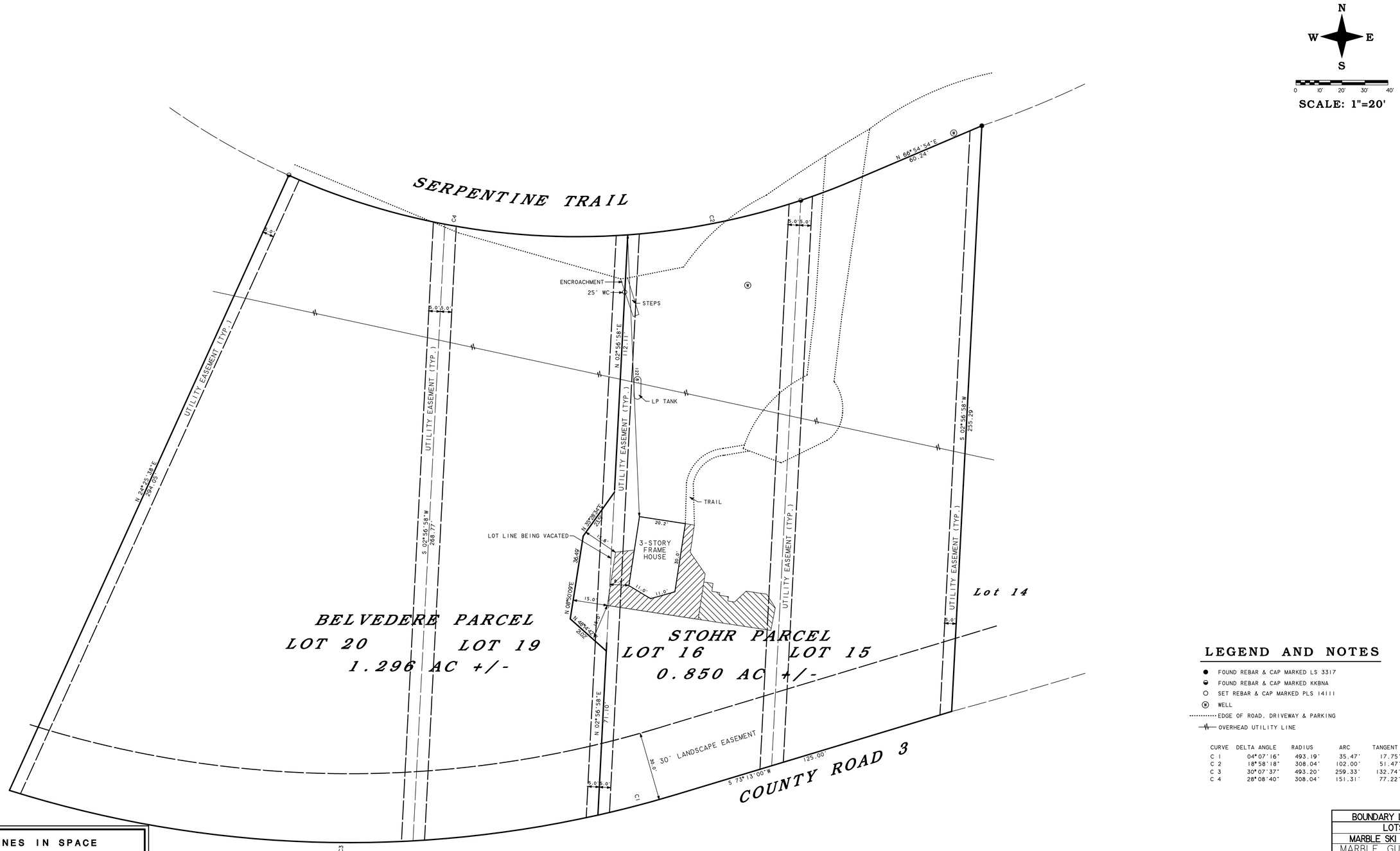
Sincerely,

Jacob A. With
LAW OF THE ROCKIES

Enclosure

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

BOUNDARY LINE ADJUSTMENT OF LOTS 16, 17, 19 AND 20
MARBLE SKI AREA FILING NO. 3
GUNNISON COUNTY, COLORADO



LEGEND AND NOTES

- ● FOUND REBAR & CAP MARKED LS 3317
- ◒ FOUND REBAR & CAP MARKED KKBNA
- ○ SET REBAR & CAP MARKED PLS 14111
- ⊙ WELL
- EDGE OF ROAD, DRIVEWAY & PARKING
- OVERHEAD UTILITY LINE

CURVE	DELTA ANGLE	RADIUS	ARC	TANGENT	CHORD	CHORD BEARING
C 1	04°07'16"	493.19'	35.47'	17.75'	35.47'	S 75°16'54"W
C 2	18°58'18"	308.04'	102.00'	51.47'	101.53'	N 76°24'05"E
C 3	30°07'37"	493.20'	259.33'	132.74'	256.35'	N 87°35'52"W
C 4	28°08'40"	308.04'	151.31'	77.22'	149.80'	S 80°02'24"E

LINES IN SPACE
LAND SURVEYS

BOUNDARY LINE ADJUSTMNET OF
LOTS 16, 17, 19 & 20
MARBLE SKI AREA FILING NO. 3
MARBLE, GUNNISON COUNTY, CO.
BY: LINES IN SPACE
SYDNEY LIINCICOME (L.S. 14111)
67 GLENWOOD AVE. CARBONDALE, CO. 970-963-3852
PAGE 2 OF 2 | DATE: 03/30/2015 SCALE: 1" = 20' JOB NO.: 14-49

SERP209

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ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

BOUNDARY LINE ADJUSTMENT OF LOTS 16, 17, 19 AND 20
MARBLE SKI AREA FILING NO. 3
GUNNISON COUNTY, COLORADO

ATTORNEY'S OPINION

I, Jacob A. With, an attorney at law duly licensed to practice in the State of Colorado, hereby certify that I have examined title to all lands herein dedicated and subdivided. Such title is vested in Elise M. Belvedere a/k/a Elise Belvedere, as to her parcel as shown on this plat, and Robert Stohr and Ruth Ann Stohr, as to their parcel as shown on this plat, and is free and clear of all liens, defects, encumbrances, restrictions and reservations except as follows:

1. As to both parcels:

A. Reservations, exceptions and rights of way, as reserved in the United States Patent recorded in Book 101 at Page 100 as Reception No. 65408.

B. Undivided 1/16 interest in all of the oil, gas, and other hydrocarbons and all associated substances and other mineral of every kind and character, in, on, and under subject property, with the right of ingress and egress and possession at all times for the purpose of exploring, all surface damages occasioned thereby as reserved by Barney Cockburn in the Deed to Crystal River Enterprises, Inc., a Colorado corporation recorded March 26, 1956 at 294 at page 468 as Reception No. 230226, and any and all assignments thereof or interests therein.

C. All matters as shown on the Plat of Marble Ski Area, Filing 3 recorded January 18, 1971 as Reception No. 283029.

D. Master Declaration Protective and Design Covenants for Marble Ski Area, Inc. recorded June 21, 1971 in Book 429 at Page 32 and in any Supplemental Declarations thereto.

E. Notice of Underground Facilities of the Marble Metropolitan District recorded February 22, 1982 in Book 577 at Page 379 as Reception No. 365532.

F. Board of County Commissioners of Gunnison County Resolutions recorded February 28, 1995 in Book 760 at Page 532 as Reception No. 458437, recorded March 1, 1995 in Book 760 at Page 598 as Reception No. 458467, and recorded June 5, 1997 as Reception No. 476029 and rerecorded June 9, 1997 as Reception No. 476109.

G. Any taxes, assessments, fees, or charges by reason of the inclusion of the subject property within the Marble Metropolitan District.

H. All existing roads, highways, railroads, ditches, fences, pipelines, telephone lines, power lines, utilities, rights of way and easements therefore, and easements granted to Marble Metropolitan District.

I. Real property taxes and assessments for the current year, a lien not yet due and payable.

2. As to the parcel owned by Robert Stohr and Ruth Ann Stohr prior to this boundary line adjustment:

A. Public Trustee of the Deed of Trust from Robert Stohr and Ruth Ann Stohr for the use of Secretary of Housing and Urban Development to secure $397,500.00, recorded August 23, 2013 as Reception No. 622328.

B. Public Trustee of the Deed of Trust from Robert Stohr and Ruth Ann Stohr for the use of Mortgage Electronic Registration Systems Inc to secure $397,500.00, recorded August 23, 2013 as Reception No. 622327.

C. Application of Land Use Change recorded August 31, 1995 in Book 769 at Page 602 as Reception No. 462192.

D. Resolution Vacating Mica Drive recorded July 14, 2010 as Reception No. 599481.

E. All matters as shown on the Improvement Location Certificate prepared by Lines in Space, dated November 4, 2014 and revised November 11, 2014, Job No. 14-49, including but not limited to: Serpentine Trail encroaching onto subject property, steps and deck not within subject property, steps, deck and parking within utility easement, overhead utility line not within easement.

3. As to the portion of the property owned by Elise M. Belvedere a/k/a Elise Belvedere prior to the boundary line adjustment:

A. Lot Cluster Agreement and Declaration recorded June 17, 1996 in Book 785 at Page 128 as Reception No. 468400.

Dated this ____ day of _____, 20___.

/s/ _____
Jacob A. With, Attorney-at-Law, #: 40546

The undersigned agree that the boundary line, as indicated on this plat, is hereby determined and permanently established as the boundary between their respective properties. Each party hereby grants, sells and conveys to the other party such of his or her property as may lie on the other party's side of the agreed boundary, as indicated.

_____
Elise M. Belvedere a/k/a Elise Belvedere

_____
Robert Stohr

_____
Ruth Ann Stohr

State of _____)
)
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2015 by Elise M. Belvedere a/k/a Elise Belvedere.
Commission exp: _____

_____
Notary

State of _____)
)
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2015 by Robert Stohr.
Commission exp: _____

_____
Notary

State of _____)
)
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2015 by Ruth Ann Stohr.
Commission exp: _____

_____
Notary

SURVEYOR'S CERTIFICATE

I, Sydney Lincicome, do hereby certify that I am a registered land surveyor licensed under the laws of the State of Colorado that this plat is a true, correct and complete plat as laid out, platted, dedicated and shown hereon, that such plat was made from an accurate survey of said property by me and correctly show the location and dimensions of the parcels of said corrected plat.

In witness whereof I have set my hand and seal this _____ day of _____, A.D., 2015.

_____
Sydney Lincicome P.L.S. 14111

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within BOUNDARY LINE ADJUSTMENT PLAT is approved this _____ day of _____, A.D. 2015.

_____
Chairman, Gunnison County Board of Commissioners

Attest:_____
Gunnison County Clerk and Recorder

GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE

This plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado, on this _____ day of _____, A.D., 2009, Reception Number _____, Time _____, Date _____.

_____
County Clerk

LINES IN SPACE
LAND SURVEYS

	BOUNDARY LINE ADJUSTMENT OF
	LOTS 16, 17, 19 & 20
	MARBLE SKI AREA FILING NO. 3
	MARBLE, GUNNISON COUNTY, CO.
	BY: LINES IN SPACE
	SYDNEY LINCICOME (L.S. 14111)
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PAGE 1 OF 2	DATE: 03/30/2015 SCALE: 1" = 20' JOB NO: 14-49

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