AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Amended Declaration of Protective Covenants for Lo

Action Requested:

Parties to the Agreement:

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

Summary:

Amended Covenants

Fiscal Impact:

Submitted by: Neal Starkebaum **Submitter's Email Address:** nstarkebaum@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 12/14/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/14/2017 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/15/2017

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

Agenda Date: 12/19/2017

Revised April 2015

Gunnison County Community
Development Department
Offices of Planning, Building and Environmental Health
221 N. Wisconsin St., Ste. D
Gunnison, CO 81230
Phone: (970) 641-0360 Fax: (970)641-8585

December 12, 2017

TO: **Board of County Commissioners**
Matthew Birnie, County Manager
David Baumgarten, County Attorney

FROM: **Neal Starkebaum**
Assistant Director

SUBJECT: **Lower Slate River Ranch Subdivision**
Boundary Line Adjustment/Replat and Amended Covenants
LUC-17-00039

Barry White and Shelly Garcia-White, owners, request a change to the boundaries between two existing lots, and minor amendments to the existing Covenants.

The Board approved the replat on November 21, 2017. Due to some problems with the red lined copy, the amended covenants were rescheduled to December 19th.

Attachments:
Clean Copy – Amended Declaration of Protective Covenants for Lower Slate River Ranch

AMENDED DECLARATION OF PROTECTIVE COVENANTS

FOR

LOWER SLATE RIVER RANCH

THIS AMENDED DECLARATION, made with an effective date of the ____ day of _____, 2017, by Barry W. White and Shelley Garcia-White ("Declarant"), replaces in its entirety the Declaration of Protective Covenants for Lower Slate River Ranch bearing Reception No. 587184 in the office of the Gunnison County Clerk and Recorder, which is hereby rendered null and void.

ARTICLE 1.

STATEMENT OF PURPOSE

Section 1.1 - Ownership of Property. Declarant is the owner of the real property ("Property") situate in Gunnison County, Colorado as set forth on attached **Exhibit A** which is incorporated herein by reference.

Section 1.2 - Subdivision of Property. The Property shall be subdivided and platted as shown on the Replat of Lower Slate River Ranch, bearing Reception No. _____ in the office of the Gunnison County Clerk and Recorder.

Section 1.3 - Declaration of Covenants. Declarant hereby makes, declares and establishes the covenants, restrictions and easements set forth herein which shall affect the Property. This Amended Declaration of Protective Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any part thereof, their heirs, successors and assigns and their tenants, employees, guests and invitees and shall inure to and be for the benefit of each Owner of a Lot within Lower Slate River Ranch.

Section 1.4 - Statement of Purpose. This Amended Declaration of Protective Covenants is imposed:

A. For the benefit of the Owners and future Owners of Lots located within Lower Slate River Ranch;

B. To provide for the preservation of values of Lower Slate River Ranch;

C. To preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Property and the Owners of Lots; and

D. To protect the water rights located on the Property.

Section 1.5 – Exemption from Colorado Common Interest Ownership Act. Pursuant to C.R.S. Section 38-33-116, Lower Slate River Ranch is subject only to C.R.S. Sections 38-33.3-105 to 38-33.3-107 because the annual average common expense liability of each lot, exclusive of optional users fees and any insurance premiums, shall not exceed three hundred dollars.

ARTICLE 2.

DEFINITIONS

The following terms and words shall have the definitions set forth in this Article 2:

Section 2.1 - "Assessments" shall mean regular monthly, quarterly or annual assessments or special assessments levied to provide funds for common purposes.

Section 2.2 - "Building" shall mean anything constructed or erected with a fixed location on the ground and having a roof supported by columns or walls.

Section 2.3 - "Declarant" shall mean Barry W. White and Shelley Garcia-White, their heirs, representatives, successors and assigns.

Section 2.4 - "Declaration" or "Declaration of Protective Covenants" shall mean this Amended Declaration of Protective Covenants for Lower Slate River Ranch and as this Amended Declaration may be hereafter amended, modified or extended.

Section 2.5 - "Garage" shall mean an accessory Building or an accessory portion of a Single Family Residence designed for the storage of one or more motor vehicles and for incidental uses.

Section 2.6 - "Home Occupation" shall mean a use conducted entirely within a dwelling which is incidental and secondary to the use of the dwelling for dwelling purposes and which does not change the residential character thereof. Any noise or activity related to such incidental and secondary use of the dwelling shall not interfere with the quiet and dignity of the neighborhood and no persons other than the

primary dwelling occupants and one employee shall be employed in such use.

Section 2.7 - "Improvements" shall mean all Buildings, structures, parking areas, loading areas, fences, walls, driveways, signs, changes in exterior color or shape, excavation, site work, grading, landscaping, road construction, utilities and any other construction or facility installed on or under a Lot or other part of the Property.

Section 2.8 - "Living Area" shall mean the floor area of a residence having a ceiling height in excess of five feet designed for interior occupancy and use by the inhabitants, but excluding basements, Garages, porches, decks, patios and breezeways.

Section 2.9 – "Lot" shall mean the lots shown on the Replat of Lower Slate River Ranch as originally filed and/or as amended.

Section 2.10 - "Maintenance Fund" shall mean the fund created by Assessments and fees levied pursuant to this Amended Declaration to provide funds for driveway maintenance and other common purposes.

Section 2.11 – "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Lot or interest therein as security for the payment of any indebtedness. **"First Mortgage"** shall mean any mortgage which is not subject to or junior to any lien or encumbrance, except liens for taxes and other liens which are given priority by statute.

Section 2.12 - "Owner" shall mean the record owner, whether one or more Persons or entities, of fee simple title to any Lot; provided, however, that prior to the first conveyance of any Lot after the recording of this Amended Declaration, Owner shall mean Declarant unless Declarant has designated a successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Section 2.13 - "Person" shall mean a person, corporation, partnership, joint venture, association, fiduciary or any other type of entity or designation by which title to any Lot is held.

Section 2.14 - "Plat" or "Replat" shall mean the Replat of Lower Slate River Ranch affecting the Property dedicated by Declarant as filed in the records of Gunnison County, Colorado, and as such Replat may be amended or revised from time to time.

Section 2.15 – "Property" shall mean and include the Property described on attached Exhibit A which is subject to this Amended Declaration.

Section 2.16 - "Single Family Residence" shall mean a detached Building designed for or used as a dwelling exclusively by one family as an independent housekeeping unit.

Section 2.17 - "Subdivision" shall mean all of the Property subdivided and platted by this Replat, including amendments thereto, filed in the records of Gunnison County, Colorado pertaining to Lower Slate River Ranch.

ARTICLE 3.

USE OF LOTS

Section 3.1 - Use of Lots. Lots shall be used only for the following Buildings.

A. One Single Family Residence containing Living Area of no less than 2,500 square feet and no more than 5,000 square feet;

B. One guest house containing Living Area of no more than 2,500 square feet;

C. One Garage; and/or

D. One barn.

E. No Building shall be larger than 5,000 square feet and aggregate square footage on each Lot shall not exceed 8,000 square feet.

F. Commercial activities, except for Home Occupations, as defined herein, are prohibited.

G. All Buildings shall be located with the Building Site shown on the Plat.

Section 3.2 - Partition of Lots. Lot 1 shall not be partitioned, separated or subdivided from any other part thereof.

Section 3.3 - Approval by Gunnison County. No Building or Improvement shall be constructed on any Lot nor shall any Building or Improvement be altered or demolished except as approved by Gunnison County.

Section 3.4 - Wetlands. No Buildings or Improvements shall be located or constructed in a manner which adversely impacts wetlands.

Section 3.5 - Animals. No animals shall be kept on a Lot except horses and usual household pets, subject to the following conditions:

A. Household pets shall be confined to the Owner's Lot. No barking or vicious dogs shall be permitted within Lower Slate River Ranch. No more than three dogs shall be kept on either Lot. Lot Owners shall comply with all applicable provisions of Section 11-106: F.6: Domestic Animal Controls, Section 11-109: D: Domestic Animal Controls, and Section 9-508: Keeping of Livestock Not On an Agricultural Operation of the Gunnison County Land Use Resolution.

B. Horses shall be allowed on both Lots on condition that such horses are kept within the boundaries of each Owner's Lot. Corrals and stalls on both Lots must be kept in a neat, clean and sanitary condition.

C. Grass stubble height on both Lots shall always be at least 4 inches.

D. No more than five (5) horses are allowed on Lot 1.

E. A steer or lamb or other 4-H project animal may be maintained in an enclosure for 4-H educational purposes.

F. Livestock is permitted on Lot 2.

Section 3.6 - Parking and Storage. Parking of vehicles on a Lot is permitted only within the building site depicted on the Plat. No abandoned vehicles shall be stored outside on either Lot. An "abandoned vehicle" is a vehicle that has not moved under its own power for twelve months. Lot Owners shall comply with all applicable parking provisions in the Gunnison County Land Use Resolution. In the event of a conflict between the provisions of this Section 3.6 and those of the Gunnison County Land Use Resolution, the stricter provision shall apply.

Section 3.7 - Mining and Drilling. Neither Lot shall be used for the purpose of mining, quarrying, drilling, boring, exploring for, or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth; provided, however, that materials on the Lot may be removed and incorporated into Buildings constructed on such Lot, subject to the condition that neither Lot Owner shall remove any material from the Lot owned by another without prior permission in writing signed by the Owner of the Lot from which the material is to be removed.

Section 3.8 - Light, Sounds and Odors.

A. No exterior lighting shall be allowed except for lighting required by the applicable codes of Gunnison County. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. All exterior lights shall be shielded and directed downward to reduce to the extent practicable visibility of such exterior lights from adjacent property. No mercury vapor lights shall be permitted. Other outdoor lighting that creates a glare or glow causing visual discomfort to the other Lot Owner shall be permitted only for brief, limited periods.

B. No sound shall be emitted on any Lot which is unreasonably loud or annoying.

C. No odor shall be emitted on any Lot which is noxious or offensive to others. No coal shall be burned within Lower Slate River Ranch.

Section 3.9 - Refuse. Lots shall be maintained in a neat and tidy condition at all times. No refuse, including without limitation trash, garbage, manure, lumber, construction materials, grass clippings, shrub clippings or tree clippings, plant waste, compost, ashes, metals, bulk materials, or scrap materials shall be allowed to accumulate if visible from the other Lot. Each Owner shall provide suitable Colorado Division of Wildlife recommended covered, noiseless, animal-proof receptacles for the collection of refuse in preparation for regularly scheduled periodic pickup. Refuse shall be stored for such pickup in such containers which shall, in turn, be enclosed in an approved structure so as to be screened from public view and protected from disturbance. No refuse may be thrown or dumped on any part of Lower Slate River Ranch. The burning of refuse out of doors shall not be permitted. No incinerators or other devices for the burning of refuse indoors shall be constructed, installed, or used within the Property.

Section 3.10 - Mobile Homes. No mobile home or temporary structure shall be permitted within the Property, except on a temporary basis for use exclusively as a construction office which use shall not include temporary occupancy as a residence. Such use shall comply with all applicable regulations of Gunnison County. No water service shall be supplied to such temporary construction office. A recreational vehicle is not a "mobile home" for purposes of this Section 3.10.

Section 3.11 - Drainage. Neither Owner shall alter the natural drainage of a Lot more than the minimum necessary or in a manner which damages any Building, improvement or the other Lot within Lower Slate River Ranch.

Section 3.12 - Utilities. All utilities shall be installed underground.

Section 3.13 - Nuisances. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate within the Property so as to be detrimental to any part of the Property or offensive to its occupants.

Section 3.14 - Wood Burning Devices. The maximum number of woodburning devices per Lot shall be the maximum number permitted by Gunnison County. Such wood burning device shall be designed to reduce polluting emissions from such wood burning device and shall comply with all applicable rules and regulations of Gunnison County. All stoves shall comply with Colorado Regulation No. 4 of the Colorado Air Quality Control Commission. All fireplaces shall be low emission Rumford masonry fireplaces that do not generate higher emissions than 6.0 grams per kilogram as established by EPA approved testing laboratories or similar low emission devices that do not generate higher emissions than 6.0 grams per kilogram as established by EPA approved testing laboratories.

Section 3.15 - Weed Control and Revegetation. Following construction of roads, driveways, houses and other Improvements, weeds shall be controlled and disturbed ground shall be revegetated in accordance with the reasonable recommendations of Gunnison County's weed control specialist.

Section 3.16 – Easements.

A. The owner of Lot 2 shall have an easement to the Slate River across Lot 1.

B. The owner of Lot 2 shall have an easement across Lot 1 to access the ditch located between the Lot 1 Building Site and the Slate River. Such easement shall include the right to access and maintain the head gate, construct a pipe to transmit irrigation water to Lot 2 and to maintain such facilities.

ARTICLE 4.

BUILDING DESIGN

Section 4.1 - Building Design.

A. No Building or Improvement shall be commenced, constructed, erected or maintained on any Lot, nor shall any alteration or

demolition be made, until the plans and specifications therefor have been submitted to and approved in writing by Gunnison County pursuant to the regulations of Gunnison County. All Buildings shall be located within the building sites shown on the Plat.

B. All Buildings shall have unobtrusive, primarily earth tone, colors and materials that blend with the surrounding natural terrain and environment. No exterior walls shall consist of T-111 or any similar material, composition shingles or unplastered cement or similar block. No bright colors or other construction techniques which would unnecessarily call attention to the Building shall be permitted. A-frames or geodesic domes shall not be permitted. Metal roofs shall be non-reflective.

C. No part of a Building shall be higher above the natural grade directly below that part of the Building than allowed by the rules and regulations of Gunnison County. Cupolas, chimneys and similar architectural features not useable as habitable floor area may extend above the height limit not more than 25% of the height of the Building. Buildings on hillsides shall be designed to minimize apparent height and bulk. Building masses shall be stepped down the hillside. Hillsides shall not be adapted to a Building designed for a flat site.

D. Each Owner is responsible for obtaining all approvals, licenses and permits as may be required by Gunnison County prior to starting construction, alteration or demolition of any Building or Improvement.

ARTICLE 5.

MAINTENANCE ASSESSMENTS

Section 5.1 - Creation of Lien. Each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the Maintenance Fund: (1) All regular Assessments or charges, and (2) any special Assessments or charges which shall be fixed, established and collected as determined by the Owners as required for access to the Lots and other common purposes. The annual and special Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such Assessment is made until paid. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment became due.

Section 5.2 - Purpose of Assessments. The Assessments shall be used for the following:

A. Any costs and expenses pertaining to the constructing, maintenance or snowplowing of the common access driveway.

B. Any costs and expenses pertaining to the construction, maintenance or operation of any common water or sewage lines or other facilities which serve both Lots.

C. Acquisition, rental, maintenance, operation and improvement of any personal property or other facility for the use or benefit of both Owners

D. Any other purpose not inconsistent with this Amended Declaration approved by both Lot Owners.

Section 5.3 - Regular Assessments. The Lot Owners shall adopt a common expense budget prior to the beginning of each calendar year and determine, levy and assess regular Assessments for the following year.

Section 5.4 - Special Assessments. In addition to the regular Assessments set forth in Section 5.3, above, the Owners may levy in any fiscal year one or more special Assessments for the purpose of defraying, in whole or in part, any expense which was not anticipated at the time the budget was adopted.

Section 5.5 - Assessment for Each Lot. All regular and special Assessments shall be allocated equally between both Lots, or as otherwise agreed in writing by both Owners.

Section 5.6 - Nonpayment of Assessments. Any regular or special Assessment which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any Assessment becomes delinquent, the non-defaulting Owner, in his sole discretion, may take one or more of the following actions:

A. Assess a late charge of at least 10% of the amount due and owning per delinquency.

B. Assess an interest rate charge from the date of delinquency at the rate of eighteen percent per annum.

C. Bring an action against the defaulting Owner personally obligated to pay the delinquent Assessment.

D. File a Statement of Lien with respect to the Lot and foreclose such lien in the manner hereafter set forth. The nondefaulting Owner may file a Statement of Lien by recording with the Clerk and

Recorder of Gunnison County, Colorado, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the claimant and the amount of the delinquent Assessments then owing, which Statement shall be signed and acknowledged and which shall be sent by certified mail, postage prepaid, to the Owner at such address as Gunnison County may have in its records. Thirty days following the mailing of such Notice, the non-defaulting Owner may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages or in any other manner authorized by the law of the State of Colorado. Such Statement of Lien shall secure all Assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same has been satisfied and released, together with the attorneys' fees and costs incurred in connection with such delinquency, including the preparation and recording of such Statement of Lien and any release thereof. In any action for the payment or foreclosure of such Assessment, the Association and/or the non-defaulting Owner shall be entitled to recover as part of the action, the interest, costs and all reasonable attorneys' fees with respect to the delinquency and action.

E. The Statement of Lien shall be superior to all other liens and encumbrances (including a Mortgage or First Mortgage) on such Lot, except only any tax and Assessment liens levied by any governmental entity.

Section 5.7 - Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the lien on a Lot for such Assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses and attorneys' fees against such Lot.

ARTICLE 6.

ENFORCEMENT OF COVENANTS

Section 6.1 - Violations Deemed a Nuisance. Every violation of this document shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof. The failure to comply herewith shall be grounds for an action to recover damages, for injunctive relief, for specific performance, or for any other relief available in law or at equity. All remedies shall be cumulative. Any action to enforce any provision of this document and/or the Plat may be brought by either Owner or by Gunnison County.

Section 6.2 - No Waiver. The failure to enforce or obtain compliance as to any violation shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

Section 6.3 - Attorneys' Fees. In the event of any legal action or arbitration to enforce or interpret any of the provisions of this document or to restrain the violation of this document, whether judicial, non-judicial or administrative, the prevailing party shall be awarded all costs, fees and expenses incurred by it in such action, including all reasonable attorneys' fees and costs and expert witness fees and costs incurred.

ARTICLE 7.

DURATION OF COVENANTS

Section 7.1 - Term. The term of this Amended Declaration of Protective Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until September 1, 2047. Thereafter, this Amended Declaration of Protective Covenants shall be automatically extended for five successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Section 7.2 - Amendment. This Amended Declaration and/or the Plat may be terminated, extended, modified or amended upon the written consent by both Owners subject to approval by Gunnison County. Any amendment shall be by an instrument duly executed and acknowledged by both Owners and by the Board of County Commissioners of Gunnison County and shall be recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Lots within the Subdivision.

Section 7.3 - Amendment by Declarant. Notwithstanding the provisions of Section 7.2, above, the Declarant, as long as it owns one Lot, reserves the right and power to modify or amend this Amended Declaration and/or the Plat in any respect, subject to approval by Gunnison County, by executing and recording such amendment in the records of Gunnison County, Colorado. This right to modify or amend this Amended Declaration or the Plat in whole or in part, at any time and from time to time, shall be effective until both Lots within the Property have been conveyed by a recorded instrument of conveyance to a person or persons other than the Declarant.

Section 7.4 - Mortgage Holder Approval Not Required. The Amended Declaration and/or Plat may be amended as set forth in Sections

7.2 and 7.3 of this Amended Declaration and such amendment shall be effective against the holders of Mortgages encumbering Lots in the Subdivision notwithstanding the fact that such holders of Mortgages have not approved such amendment.

ARTICLE 8.

PRINCIPLES OF INTERPRETATION

Section 8.1 - Severability. This Amended Declaration, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Amended Declaration is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

Section 8.2 - Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 8.3 - Headings. The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Amended Declaration.

Section 8.4 - Written Notice. All notices required under this Amended Declaration shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt requested, to the address of such Owner on file in the records of Gunnison County at the time of such mailing.

Section 8.5 - Applicable Law. The exclusive proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of this Amended Declaration shall be the County Court or District Court of Gunnison County, Colorado.

Section 8.6 - Interest. Any sums, amounts or monies due and owing under this Amended Declaration shall bear interest at 1.5% per month (18% per year) from the date due until paid.

Section 8.7 - Assignment. Declarant may assign all or any part of their rights and reservations hereunder to any successor who takes title to all or part of the Property, in whole or in part. Such successor shall be identified, the particular rights being assigned shall be specified and, to

the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Gunnison County, Colorado.

IN WITNESS WHEREOF, the Declarant has executed this Amended Declaration of Protective Covenants as of the day and year first above written.

_____	_____
Barry W. White	Shelley Garcia-White

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The above and foregoing Amended Declaration of Protective Covenants for Lower Slate River Ranch was acknowledged before me this ____ day of _____, 2017, by Barry W. White and Shelley Garcia-White.

Witness my hand and official seal. My commission expires:

_____
Notary Public