AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Rock Creek Homeowners Association

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

County requested vote of Rock Creek HOA regarding covenants

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:
ok db 12/12/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/12/2018 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/12/2018

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

Agenda Date: 12/18/2018

Revised April 2015

Rock Creek Village Owners:

Attached please find a ballot proposed by Gunnison County for the exclusion of the remainder property to the east of Rock Creek Village from our Declaration and our homeowner's association. We have been working with Gunnison County Community Development to identify the concerns and issues with the future development of this parcel, and have come to an agreement which is attached to the ballot in the Memorandum.

We believe the exclusion of Gunnison County's parcel will preserve our existing community and prevent additional members and potential dues increases through the expansion of our HOA onto that parcel, while the agreement with Gunnison County will protect our access, add amenities, provide parking, and continue snowplowing within Rock Creek Village.

Gunnison County's current plans for the parcel are to develop it as additional workforce housing which would be consistent with the neighborhood and zoning requirements, and will provide additional ownership and rental opportunities for Gunnison County residents.

While the ballots are not due until December 31, 2018, we would encourage you to return the ballot in the enclosed self-addressed, stamped envelope or via email to Pgiavasis@gmail.com on or before **December 21, 2018** so that we can get a timely count of all the ballots.

Thank you for your time and consideration of this issue.

Received
County Administration
12/7/18
CC: M. BIRNIE
BOCC
D. BAUMGARTEN
M. HOYT
C. PAGANO
N. STARICEBAUM

ROCK CREEK VILLAGE OWNERS' ASSOCIATION, INC.

BALLOT

I. Instructions

Please complete the Ballot as set forth below to cast your vote on the proposals listed below for the Rock Creek Village Owners' Association, Inc. (the "***Association***"). Unless otherwise defined in the Ballot, capitalized terms shall have the same meaning set forth in the Governing Documents for Rock Creek Village. This Ballot provided in accordance with C.R.S. § 7-127-109, which provides in part that any action that may be taken at any Annual, Regular or Special Meeting of the Members may be taken without a meeting. To have a quorum, ballots cast by the Owners of at least 11 Units must be returned. However, each of the items below will not pass unless such item has the affirmative vote of the Owner of Units representing 75% or more of the voting interests in the Association, or 16 Units. All ballots, to be counted, must be received by the Association no later than 5:00 p.m. Mountain Time December 31, 2018 at 1410 Rock Creek Road, Gunnison Colorado 81230 or electronically to Pgiavasis@gmail.com.

The Governing Documents are comprised of the following:

1. Declaration of Covenants, Conditions, and Restrictions for Rock Creek Village dated October 4, 2001 and recorded at Reception No. 514874, and Declaration of Grants, Covenants, Conditions and Restrictions for Rock Creek Village and Rock Creek Commons, recorded September 23, 2003 at Reception No. 535106 (collectively the "***Declaration***");
2. The Bylaws of the Rock Creek Village Owners' Association, Inc., dated May, 2004 (the "***Bylaws***"); and
3. The Articles of Incorporation of the Rock Creek Village Owners' Association, Inc., filed with the Colorado Secretary of State on October 23, 2001 (the "***Articles***").

II. Ballot

I, the undersigned, being the Owner of the Unit set forth below with my signature, am an Owner of a Unit in Rock Creek Village in Gunnison County, Colorado and do hereby cast my vote as follows:

Item 1: Exclusion of Gunnison County future development property, commonly known as Lot 22A. Item 1 is whether the Association shall enter into an agreement with Gunnison County for the exclusion of its future development property and an Amendment to the Declaration shall be adopted and caused to be recorded, as follows:

a. Entering into the Agreement with Gunnison County for the exclusion of its future development property, under the terms and conditions set forth in Exhibit A.

b. Excluding from the Declaration and Association the following property:

Remainder Lot 22, Rock Creek Commons Phase 1-A according to the Plat recorded February 9, 2007 at Reception No. 572849
City of Gunnison,
County of Gunnison,
State of Colorado.

As set forth in the AMENDMENT TO DECLARATION OF GRANTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROCK CREEK VILLAGE & EXCLUSION OF PROPERTY attached as Exhibit B.

c. Upon approval of this Item 1 by the Association, development, if any, on the Remainder Lot 22 will not be subject to the Declaration, and the owner(s) of Remainder Lot 22 will not be members of the Association. The conditions for development on Lot 22 are set forth in Exhibit A. Owners within Rock Creek Village will not be responsible for the cost of installation, maintenance or repair of any common areas within the Remainder Lot 22, but will have the access and other rights as contained in Exhibit A.

I cast my vote: _____ **in favor of this item**

_____ **against this item**

(INDICATE YOUR VOTE BY CHECKING, INITIALING, OR OTHERWISE MARKING YOUR CHOICE. CHOOSE ONLY ONE)

UNIT: _____
OWNER NAME(S): _____

_____ _____
Signature Signature

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: Rock Creek Homeowner's Association

From: Cathie Pagano and John Cattles

Date: December 3, 2018

Re: Response to conditions for withdrawal of Lot22A from Rock Creek common interest community

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Thank you for your consideration of withdrawal of the County's parcel, Lot 22A from the Rock Creek Village subdivision. We received a list of conditions from Kendall Burgemeister that the Rock Creek homeowners have identified.

If the Rock Creek HOA approves the withdrawal of Lot 22A from Rock Creek Village, the County will commit to the following conditions:

- Installation of parking along the north boundary of the subdivision along Rock Creek Rd.
- "The County agrees to plow the internal roads in the subdivision during the winter of 2018-19 (between November 16, 2018 and April 30, 2019). Plowing shall not include driveways or storage areas, or any areas within the subdivision other than actual roads. In order to allow for proper plowing access, the HOA shall 1) remove any speed bumps; 2) ensure that all landscaping, vehicle parking, and storage of materials are located on the dwelling side of the concrete valley pan; and 3) indicate by appropriate signage snow storage areas to prevent vehicle parking in such areas. With regard to future winters, the County agrees to discuss with the City of Gunnison potential long-term solutions for road maintenance for the internal subdivision roads and shall engage in good faith efforts to encourage the City to assume responsibility for road maintenance.
- The installation of a walkway along the east side of the ditch on the eastern property line.
- The creation of an easement for pedestrian and cyclists across Lot 22A.
- The housing closest to Rock Creek subdivision (west side of Lot 22A) shall be developed in a similar scale and size as the existing housing in Rock Creek (not greater than two stories).
- Primary access to Lot 22A shall be off Colorado Street, in compliance with City of Gunnison standards. The County will engage in good faith efforts to explore the possibility of speed mitigation measures, as allowed by the City of Gunnison on Blaze Trail and Rock Creek Road.
- The County will work with the City of Gunnison to locate the primary access road for Lot 22A as far south as practical but that matter will be determined by the City of Gunnison staff and is not in the control of Gunnison County. The County will engage in reasonable efforts to negotiate with the City to maintain the current road configuration. If the City decides, in its sole discretion, to change the configuration notwithstanding these efforts, the County will agree install at its sole expense an architectural barrier and buffer.
- Any improvements on the parcel shall comply with City of Gunnison setback requirements.

- If a common area is established, Rock Creek property owners will be allowed access.
- No more than 76 units will be developed on Lot 22A, in compliance with the City of Gunnison zoning for the property and City of Gunnison standards.
- Gunnison County will continue to invite Rock Creek property owners to participate and provide input in the development of Lot 22A.

Upon the required approval by the HOA of the exclusion of the Lot 22A and amendment to the Declaration, Gunnison County will take the necessary actions to review and approve these terms and conditions for exclusion of Lot 22A and record the necessary documents to exclude Lot 22A from Rock Creek Village. Upon approval by Gunnison County and the required members of the HOA, this will be a binding obligation on the parties and will be appurtenant restrictions and obligations on Lot 22A.

AMENDMENT TO

DECLARATION OF GRANTS, COVENANTS, CONDITIONS AND RESTRICTIONS

FOR ROCK CREEK VILLAGE &

EXCLUSION OF PROPERTY

THIS AMENDMENT TO DECLARATION OF GRANTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROCK CREEK VILLAGE (this "Amendment") is made as of the ___ day of _____, 2018, by the GUNNISON COUNTY HOUSING AUTHORITY, lawfully organized pursuant to Title 29, Article 4, Part 5, C.R.S., ("GCHA", or the "Declarant"), with the consent of the ROCK CREEK VILLAGE OWNERS' ASSOCIATION, INC., a Colorado nonprofit corporation, (the "Association").

RECITALS

A. GCHA is the "Declarant" under the Declaration of Grants, Covenants, Conditions and Restrictions for Rock Creek Village that was recorded in the real property records of the Clerk and Recorder of Gunnison County, Colorado on October 4, 2001, at Reception No. 514874, and the Declaration of Grants, Covenants, Conditions and Restrictions for Rock Creek Village and Rock Creek Commons that was recorded in the real property records of the Clerk and Recorder of Gunnison County, Colorado on September 23, 2003, at Reception No. 535106, (the "Declarations"). All capitalized terms used in this Amendment but not defined herein have the meanings given in the Declaration.

B. Pursuant to Section 19.3 of the Declarations, GCHA as the Declarant under the Declaration, has the unilateral right, to amend the Declaration for the purpose of withdrawing from the Property any real property owned by Declarant for a period of 20 years from the date of recording of the Declaration.

C. Pursuant to Section 20.2 of the Declarations, the Association can amend the Declaration upon approval of 75% or more of the Owners and 75% or more of the First Mortgagees. Pursuant to C.R.S. 38-33.3-217, this required approval percentage is deemed to be 75%.

D. GCHA and the Association desire to amend the Declarations to withdraw from the Property the real property described as follows:

Remainder Lot 22, Rock Creek Commons Phase 1-A according to the Plat recorded February 9, 2007 at Reception No. 572849

City of Gunnison,
County of Gunnison,
State of Colorado.
(the "Withdrawn Property").

The Board of County Commissioners of the County of Gunnison, Colorado ("Gunnison County"), is the owner of the Withdrawn Property.

AMENDMENT

NOW, THEREFORE, pursuant to the terms of the Declarations, GCHA, Gunnison County, and the Association hereby declare that the Declarations are amended pursuant to the following terms and conditions:

1. Withdrawal of Withdrawn Property. Exhibit A of the Declarations are hereby amended to exclude the Withdrawn Property. The Withdrawn Property shall no longer be encumbered or affected by, or subject to, the Declarations or any of the terms, conditions, liens or assessments established thereby.

2. Association Approval. The Association, by its certificate of consent below, certifies that over 75% of the Owners in the Community have approved and consented to this Amendment and the withdrawal of the Withdrawn Property.

3. Effect. Except as amended hereby, the Declarations remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

DECLARANT:

GUNNISON COUNTY HOUSING AUTHORITY

By:_____

Name:
Title:

STATE OF_____)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____ , 2018 by _____ as _____ of the Gunnison County Housing Authority.

Witness my hand and official seal.

My commission expires:

_____
Notary Public

GUNNISON COUNTY:

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By:_____
_____, Chairperson

ATTEST:

_____
_____, County Clerk

STATE OF _____)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ as Chairperson and attested by _____ as County Clerk of the Board of County Commissioners of the County of Gunnison, Colorado.

Witness my hand and official seal.

My commission expires:

_____
Notary Public

ASSOCIATION:

The Rock Creek Owners' Association, Inc., a Colorado nonprofit corporation, hereby certifies that the above amendment and exclusion of the Withdrawn Property from the Community was approved by over 75% of the Owners within the Community by a vote of the Association on _____, 2018 as required by the Declarations and the Colorado Common Interest Ownership Act.

ROCK CREEK OWNERS' ASSOCIATION, INC.
a Colorado nonprofit corporation

By:_____
Name:
Title:

STATE OF _____)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ as _____ of the Rock Creek Owners' Association, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires:

_____
Notary Public

FIRST MORTGAGEE CONSENT:

The undersigned, hereby certifies that the above amendment and exclusion of the Withdrawn Property from the Community was Sent a dated, written notice and a copy of this amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof; and the dated notice, together with information on how to obtain a copy of the proposed amendment, was printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the county in which the common interest community is located pursuant to C.R.S. § 38-33.3-217. Pursuant to C.R.S. §38-33.3-217, the First Mortgagees have approved the Amendment and exclusion of the Withdrawn Property.

_____

Name:

STATE OF _____)

)ss.

County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____.

Witness my hand and official seal.

My commission expires:

_____

Notary Public