AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Convenant Amendments; Whetstone Industrial Park

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

Protective Covenant Amendments - Whetstone Industrial Park

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 1/16/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 1/16/2019 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/17/2019

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

Agenda Date: 1/22/2019

Revised April 2015

Gunnison County Community and
Economic 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

January 14, 2019

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

FROM: **Neal Starkebaum**
Assistant Director

SUBJECT: **Whetstone Industrial Park HOA**
LUC #18-00050
Protective Covenant Amendments

Request for amendments to *Whetstone Industrial Park Declaration of Protective Covenants*. No substantive changes relate to project design or County requirements. There is one revised provision for building height that ties elevations to the individual lots to ensure the building height limit on each lot.

Attachments:
Redlined covenant amendments
Exhibit C – Building Envelope Elevations
Board Approval Signature page

AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS

WHETSTONE INDUSTRIAL PARK

~~April 25th~~November 5, 2018

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These Amended and Restated Declaration of Protective Covenants Whetstone Industrial Park (these "Covenants") amend, restate, and supersede and replace in their entirety the Declaration of Protective Covenants Whetstone Industrial Park as recorded at reception number 654064 in the real property records of Gunnison County, Colorado (the "Original Covenants"). These Covenants are certified by the Secretary of the Association to have been voted in favor of by the Owners of more than two-thirds of the Lots at a duly called and properly noticed meeting of the membership and upon approval of the Board of County Commissioners of Gunnison County. The Original Covenants are amended and restated in their entirety as set forth in these Covenants.

ARTICLE 1: Dedication

Section 1. Property Dedicated. ~~L&D Ranches, LLC, a Colorado limited liability company ("Declarant") hereby makes, declares, and establishes the~~The following covenants, restrictions and easements which shall be binding upon and affect the real property more particularly described as:

> Whetstone Industrial Park according to the Plat thereof ~~filed for record the ___ day of _____, 2017 and~~ bearing Reception No. ~~_____~~654063 of the real property records of Gunnison County, Colorado, which is more particularly described on the attached **Exhibit A**, which is incorporated herein by this reference, all as located in Gunnison County, Colorado.
>
> (the "Property")

Section 2. Dedication. ~~This Declaration of Protective~~These Covenants ~~(the "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 Lots, tracts, or parts thereof, their heirs, successors and assigns and their tenants, employees, guests, agents and invitees and shall inure to and be for the benefit of each Owner of the Lot within the Property. These Covenants are imposed for the benefit of all Owners and all future owners of Lots, parcels and areas located within the Property and to provide for the preservations of values of the Property and to provide and preserve the covenants, easements, restrictions, assessments, liens and all other matters set forth in the Covenants, all of which are for the benefit of the Property.

ARTICLE 2: Additional Definitions

Section 1. "Association" shall mean the Whetstone Industrial Park Lot Owners Association, Inc., a Colorado nonprofit corporation.

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Section 2. "Association Documents" shall mean these Covenants, the Articles of Incorporation and Bylaws for the Association, any amendments to these Covenants and such articles and bylaws, and the Regulations.

Section 3. "Assessments" shall mean such regular, annual, periodic, special, default, or delinquent assessments as levied pursuant to these Covenants and the Colorado Common Interest Ownership Act, as it may be amended from time to time ("CCIOA"), by the Association.

Section 4. "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Association Documents.

Section 5. "Building" shall mean a structure having a roof supported by walls or any similar type of improvement.

Section 6. "Building Envelope" shall mean the envelope or area within a Lot or tract, as shown on sheet 3 of the Plat, where a building or other improvement shall be located, always subject to the prior written approval of the Board and such other approvals as required herein.

Section 7. "Common Area" shall mean all real property so identified on the Plat and any other real property in which the Association owns or obtains any interest or has a leasehold interest for the common use and enjoyment of its members, including without limitation estates in fee, estates for a term of years, and leasehold estates or easements. Each and every Common Area may have a restricted use or enjoyment and may be designated for a specific use for such Common Area.

Section 8. **"Declarant"** means L&D Ranches, LLC, a Colorado limited liability company

Section 9. "Improvement" shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior building color or shape, excavation, changes in type of exterior building materials, and all other site work including without limitation grading, paving, dirt moving, road construction, trail construction, utility improvements, removal of trees or plantings, and any new exterior construction, exterior improvement, exterior change constructed, completed, or maintained on the Property.

Section ~~9~~10. "Inoperable Vehicles" shall mean any passenger vehicle, snowmobile, ATV, motor home, and side-by-side that is not capable of being driven under its own propulsion for a period of one month or more.

Section 11. "Junkyard" shall mean any Lot or Lots that stores passenger vehicles, snowmobiles, ATVs, motor homes, side-by-sides, boats, campers, and/or trailers outdoors in a disorganized or haphazard manner or of vehicles that are not operable, all as may be more fully defined and described in the Regulations.

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Section 12. "Light Industrial" shall mean any industrial use that meets the following requirements:

1. Maximum aggregate building size, excluding the square feet of any Subordinate Residential Use, shall be no greater than 5,000 square feet, except as may be otherwise permitted by the LUR (defined below). Total building size, including the Subordinate Residence, shall be equal to no more than 5,000 square feet plus the size of a Subordinate Residence, except that if the LUR permits a greater size in the future, these Covenants shall allow such greater size as permitted by the LUR.
2. Any Subordinate Residential use must comply with these Covenants.
3. The operation shall be wholly contained within buildings.
4. The Light Industrial use shall not produce any offensive noise, vibration, electrical or magnetic interference, glare, fumes, odors, smoke, dust, heat or waste noticeable at, or beyond, the property boundaries of the parcel on which the Light Industrial use is located.
5. Retail sales shall comply with the provisions contained in these Covenants.
6. Vehicles used as part of the Light Industrial use, other than parking for employees and customers, shall be parked inside buildings or within screened parking areas.
7. Parking for employees and customers shall meet the requirements of the Gunnison County Land Use Resolution. All references Gunnison County Land Use Resolution as it existed on February 16, 2016 ("LUR") shall apply and are incorporated herein by this reference.
8. Outside storage is permitted but shall be fully-screened from all roads and from neighborhood land uses.

Section ~~10~~13. "Lot" shall mean a tract or lot as shown on the Plat and any subsequent plat, but not including Common Areas.

Section ~~11~~14. "Member" shall mean any person holding membership in the Association.

Section ~~12~~15. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot.

Section ~~13~~16. "Plat" shall mean the Plat of Whetstone Industrial Park filed for record ~~the ___ day of _____, 2017~~ and bearing Reception No. ~~_____~~654063 of the real property records of Gunnison County, Colorado, and as the same may be amended or revised.

Section ~~14~~17. "Regulations" shall mean such rules, regulations, policies and procedures as may be adopted and amended by the majority vote of the Board. The Regulations may not directly contradict these Covenants, but may further define or expound upon these Covenants and may resolve any ambiguity or uncertainty in these Covenants. To the fullest extent permitted by law, the Regulations shall be interpreted in a manner harmonious with these Covenants.

Section ~~15~~18. "Subordinate Residential" shall mean that the ratio of residential use and the square footage of residential use areas to areas dedicated to other permitted uses in a given Building

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cannot be in excess of one to one, with residential square footage being the numerator and square footage of other permitted uses being the denominator. Subordinate Residential square footage is also limited to the maximum square footage set forth in Article 8. A "Subordinate Residence" means such residence as is a permitted Subordinate Residential use under these Covenants. There must be parking adequate to serve both the Light Industrial use and any Subordinate Residence as determined by the LUR. The Subordinate Residence shall be legally and physically served by the same water and wastewater treatment systems that serve the Light Industrial use. The Subordinate Residence shall be structurally integrated within the building in which the Light Industrial use is located, share common roof lines and utility systems, and there shall be an internal access between the Light Industrial use and the residence. The Subordinate Residence shall contain a full kitchen and sanitation facilities. The Subordinate Residence shall comply with the applicable building code, adopted and amended by Gunnison County, and the requirements of the applicable fire protection district. When the district's standards conflict with County standards, the County shall only enforce the County standards.

ARTICLE 3: Association Matters

Section 1. Governance of Association. The Association shall have all powers and rights that may be afforded to a homeowners' association under CCIOA and the Colorado Nonprofit Corporation Act, as it may be amended from time to time, and these Covenants, including without limitation the power, authority and right to raise and impose assessments, foreclose liens for assessments, adopt and amend the Regulations, adopt and amend design guidelines, and any other right or power that may be exercised by an Association.

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Section 2. Regulation of Common Areas and Activities Infringing Thereon. The Regulations shall contain such matters as are required by CCIOA and shall set forth such matters regarding the use of the Common Areas and the Lots as the Board believes appropriate. Specifically, but without limitation, the Regulations may include rules, regulations, policies and procedures prohibiting, limiting, restricting, or regarding hazardous activities, nuisances, noise, pets, parking, trash, debris, landscape maintenance, residence, accessory buildings, lighting, yard maintenance, junk, use of Common Areas and easements, home occupations, commercial activities, short term rentals, leases, marijuana cultivation, smoking, installing and maintaining of Improvements, and business enterprises. If permitted by these Covenants and the Regulations, all uses of, and activities on, the Property, including the Common Area and Lots, shall be subject to, and performed in accordance with, these Covenants and the Regulations. The Regulations may identify and define such uses and prohibit them, in whole or in part, on Common Areas and on Lots, or may identify and define such uses and permit them upon terms and conditions the Board believes to be in the best interests of the Association; provided, however, that such Regulations must be consistent with these Covenants. The Regulations shall also address matters such as enforcement of the Association Documents, imposition of fines, collection of Assessments, and reserve studies and funding. All Owners shall be bound by and comply with the Regulations. All Owners shall be responsible for,

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and liable to the Association for, any violation of the Association Documents by such Owner and such Owner's agents, guests, invitees, tenants, lessees, contractors, customers, and employees.

Section 3. Members. Each Owner shall be a Member; provided, however, that each Lot shall only have one membership, vote and share of common expenses, but all persons and entities that are Owners shall have the same rights to the use and enjoyment of the Common Areas.

Section 4. Grant of Utility Easements. The Association shall have the authority to give, grant, and convey a utility easement for the installation, construction and maintenance of underground utilities, Common Areas, and/or water lines over and across any right of way, road or street easement or roadway or street designed on the Plat. The Owner of each Lot hereby authorizes and empowers the Association, as its attorney in fact, to give and grant:

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A. A utility and/or water line and/or ditch easement up to 10 feet in width within and adjacent to the exterior boundary line of each Lot for the installation, construction and maintenance of underground utilities, water lines, and ditches; provided, however, that such easements shall not traverse or overlap with any Building Envelope.

ARTICLE 4: Assessments

Section 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 Association: (1) all regular assessments or charges; (2) special assessments and charges; (3) default assessments or charges; (4) late fees, returned check charges, default interest; (5) attorney's fees and costs; and (6) fines imposed against such Owner. All of such amounts shall be fixed, established and collected as determined by the Association. All of such amounts and any other amounts that the Association is entitled to recover against an Owner under CCIOA or other law shall be a charge and continuing lien upon the Lot against which such assessment is made or that such Owner may own, whichever may be applicable. The Association shall have a lien against each Lot to the fullest extent permitted and provided for by CCIOA. Such liens shall have the priority provided by CCIOA and shall be prior and superior to all other liens and interests in the Lots to the fullest extent provided by CCIOA.

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Section 2. Purpose of Assessments. All assessments shall be levied for purposes permitted under Colorado law, including without limitation: maintenance of Common Areas, repair of Common Areas, snow removal from Common Areas, costs and expenses pertaining to the operation of the Association in the performance of its duties, legal fees, accounting fees, manager fees, and any other expense, fee, cost, obligation, debt or liability incurred by the Association upon the majority vote of the Board.

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Section 3. Regular Assessments. Regular Assessments shall be imposed based upon an annual budget adopted by the Association all as provided by CCIOA.

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Section 4. Special Assessments. Special Assessments shall be imposed as provided by CCIOA and for unbudgeted or unforeseen expenses or for those matters not adequately budgeted for. Any special assessment in excess of $60,000.00 must be approved by a majority of the Members of the Association at a meeting properly called for such purpose.

Section 5. Default Assessments. All fines imposed against an Owner by the Association shall be a default assessment. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner shall be a default assessment.

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Section 6. Nonpayment of Assessments. Any assessment, whether regular, special or default, which is not paid within thirty days of its due date shall be deemed delinquent. All delinquent assessments shall bear interest at 18% per annum. A late charge of 10% of the delinquent amount shall be charged on all delinquent assessments. The Association shall have all powers of collection and enforcement provided and permitted by law, including without limitation the power to collect delinquent assessments through judicial foreclosure of the lien created by these Covenants, through personal judgment against such delinquent Owner, through referring an account to a collections agency, through the filing of a statement of lien against a delinquent Owners' Lot in the Gunnison County, Colorado Clerk and Recorder's Office, and through such further actions as an association is entitled to take upon compliance with CCIOA.

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Section 7. Liability for Assessments. In addition to the personal obligation of each Owner of a Lot to pay all assessments and the Association's lien on a Lot for such assessments, all successors to the ownership of a Lot shall be jointly and severally liable together with the prior Owner or Owners for any and all unpaid assessments, penalties, interest, costs, charges, expenses, attorneys' fees and other amounts secured by such lien.

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Section 8. Immediacy of Collections. The Association's board of directors shall promptly and expeditiously act to ensure the timely payment of all Assessments. Assessment delinquencies are not to be tolerated. To the fullest extent permitted by law, Owners with delinquent Assessments should be pursued immediately through such judicial process as the Board of Directors will create the largest net recovery for the Association.

ARTICLE 5: Enforcement of Covenants

Section 1. Violations Deemed a Nuisance. Every violation of the Association's Documents, including without limitation these Covenants and the Regulations, shall be deemed to be a nuisance and is subject to all the remedies provided by law for the same, including without limitation abatement thereof.

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Section 2. Failure to Comply. An Owner's failure to comply with any of the Association's Documents shall be grounds for the imposition of a fine in accordance with and pursuant to the

Regulations, an action to recover damages, or for injunctive relief or for specific performance, or any or all of them.

Section 3. Who May Enforce. Any action for the enforcement or interpretation of these Covenants may be brought by the Association in the name of the Association and on behalf of the Owners, by the Owner of any Lot, and by Gunnison County.

Section 4. No Waiver. The failure of the Board, the Association, or any Owner 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.

ARTICLE 6: Use of Lots

Section 1. Permitted Uses. Each Lot shall be designated as industrial, Light Industrial, or Subordinate Residential at the time such Lot is conveyed by Declarant. Such designation shall be memorialized through the recordation in the real property records of Gunnison County, Colorado of a notice substantially in the form attached hereto as Exhibit B, which will be recorded on the title of the Lot conveyed and all Lots immediately adjacent thereto. Any Lot designated as industrial may be used for industrial purposes, including industrial purposes that meet the requirements for Light Industrial. Any Lot designated as Light Industrial may be used for Light Industrial uses, but shall not be used for any other industrial use. Any Lot designated as Subordinate Residential may be used for any industrial purpose that meets the requirements for Light Industrial and may also be put to Subordinate Residential use. No Lot designated as Light Industrial or Subordinate Residential may be put to any industrial use that does not meet the standards for Light Industrial. Every Lot may be used for limited commercial uses set forth in Section 3 of this article. All Lots shall be used exclusively for the uses for which they are designated. In no event may a Lot be designated for Subordinate Residential when adjacent to a Lot already designated for industrial. In no event may a Lot be designated for industrial when adjacent to a Lot already designated as Subordinate Residential. The designation of a Lot may only be changed by the written agreement of the owners of the designated lot, the owners of the adjacent lots, the Association, and Gunnison County as part of an administrative land use change application. Such amendment of a designation shall be permitted, but only permitted, if it will not result in a Subordinate Residential Lot being located adjacent to a Lot designated as industrial. Notwithstanding any of the above, however, a storage facility may have Subordinate Residential regardless of whether the storage facility qualifies as Light Industrial provided, however, that this provision does not allow Subordinate Residential adjacent to a Lot already designated for industrial.

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A. Provided that such use is implemented in a manner that complies with the given Lot's designation, the following uses are expressly permitted:

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1. All manufacturing businesses or industries not expressly excluded;
2. Contractor's yards or storage buildings;
3. Warehousing and mini-storage;
4. All wholesale uses;
5. Automobile storage, service and repair, including without limitation R.V., snowmobile, ATV, and boat service, repair and storage;
6. Machinery, heavy equipment and transportation equipment, storage, sales, rental, and service;
7. Public utilities;
8. Freight or trucking terminals;
9. Building material storage yard;

~~10. Mixture plant for mortar, grout and other masonry materials excluding any expressly prohibited below;~~

~~11.~~10. Distillery and brewing of beverages containing alcohol;

~~12.~~11. Commercial storage and retail sales of construction materials, including without limitation dirt, gravel, lumber, and other large construction materials that typically require a large warehouse for retail sales.

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B. The following uses are expressly prohibited on all Lots:

1. Manufacturing, processing or warehousing or storage of explosives such as fireworks; and
2. Refining oil or other fossil fuels;
3. Kennels or hospitals for animals;
4. Marijuana or hemp grow operations or the manufacture and processing of marijuana and related products, including hemp;
5. Mixing plants for asphalt ~~or~~, concrete, mortar, grout and other masonry materials;
6. Any activity that will necessarily produce noise in excess of permitted residential levels by the State of Colorado between 10:00 p.m. and 4:00 a.m., such as activities that by their nature will produce substantial noise during those hours, unless such activity is related to snowplowing within the Property or ingress and egress for vehicles and equipment involved in off-site snowplowing activities.

~~6.~~7. Junkyards and the parking and storage of any Inoperable Vehicles.

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C. Provided that such use is not expressly prohibited above, any Lot may be used for any industrial or Light Industrial Use consistent with its designation. It may not be possible to implement some expressly permitted uses identified above on a Lot identified as Light Industrial or Subordinate Residential and inclusion of permitted uses above should not be construed as excusing Light Industrial or Subordinate Residential Lots from meeting the requirements for Light Industrial with respect to any use implemented on such Lots. Notwithstanding the foregoing, if the use is not expressly permitted or prohibited above, the use may be permitted upon approval by the Board of Directors of the Association and

upon an amendment to these Covenants specifically adding such use to the list of permitted uses. Such an amendment must also receive approval from Gunnison County, Colorado and any application to Gunnison County, Colorado will be at the Owner's sole expense.

Section 2. Building Envelope. All Buildings and other Improvements, including without limitation all primary structures and detached structures shall be located within the designated Building Envelope of the Lot~~,~~ (see sheet 3 of the Plat), except for driveways and approved landscaping. All septic systems will be designed, installed and maintained so as to comply with all applicable setbacks. All activities will be conducted in such a manner as to not cause damage to any septic system that is in use.

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Section 3. Commercial Uses. In addition to the expressly approved purposes above, all Lots may also be used for incidental and subordinate commercial uses, such as the sale of goods or materials produced or manufactured, in whole or in part, on the Lot, or which are related to the goods or services produced or manufactured, in whole or in part, on the Lot. Wholesaling is expressly permitted. Also expressly permitted is the retail sales of construction materials, including without limitation dirt, gravel, lumber, and other large construction materials that typically require a large warehouse for retail sales. Any such retail seller of construction materials may also include incidental and subordinate retail, which would include, by way of illustration, retail sales of construction equipment and supplies.

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Section 4. Additional Prohibited Uses. Camping, hunting, discharging firearms and practicing archery are prohibited on all Lots.

ARTICLE 7: Architectural Review and Approval

Section 1. Board. The Board shall be the Architectural Review Board.

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Section 2. Review and Approval. No structure, fence, driveway, dwelling, accessory building, Building or other Improvement shall be commenced, constructed, erected or maintained on any Lot until the plans and specifications therefor have been submitted to and approved in writing by the Board in the manner hereafter set forth. Specifically, but without limitation, no landscaping shall be done, nor shall any exterior addition, change or alteration be made, nor any excavation or other site work be done, until the plans and specifications therefor have been submitted to and approved in writing by the Board in the manner hereafter set forth.

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Section 3. Standards, Process, and Fee. The standards and procedure for submission of plans for approval, for review of plans, for denial of plans, for approval of plans, and the fee for such review shall be set forth in the design guidelines, which shall be a section of the Regulations and shall be adopted by the Board. The design guidelines shall be consistent with the standards set forth in these Covenants. The Board shall have the authority to impose a fee, which shall be set

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forth in the design guidelines, which fee may include the cost and expenses of retaining an architect to assist in the review of the matter, including without limitation ensuring compliance with the design guidelines, as well as such amounts as the Board believes to be appropriate to offset the cost to the Association associated with the implementation of such plans, which for example, may include repair costs caused by additional construction traffic for a new Building. All plans and construction on any Lot must comply with these Covenants, including without limitation Article 5, which limits the use of Lots to certain purposes and limits the construction of Buildings and Improvements to the Building Envelopes, and Article 8, which specifically addresses certain construction matters required by Gunnison County. Among other things, the design guidelines will establish standards for construction, such as the burying of all electrical, telephone and other lines, provisions regarding antennas and satellite dishes and other matters.

Section 4. Mobile Homes, Temporary Structures, and Recreational Vehicles. No mobile home, trailer house, travel trailer, or other vehicle or temporary structure shall be permitted to be occupied overnight on any Lot. Storage of any mobile home, trailer house, travel trailer, recreational vehicle, ATV, snowmobile or similar vehicle must be wholly within an enclosure approved in accordance with the design guidelines. No snowmobile or ATV or similar vehicle, including without limitation any side by side, may be used on the roads or rights of way owned by the Association. No shipping containers, or any other storage container that is substantial similar to a shipping contain, may be stacked. If any Lot has more than four shipping containers, or storage containers that are substantially similar to shipping containers, the containers must be approved by the Association both in terms of location and aesthetics in accordance with the Association's design guidelines and must be adequately screened as set forth in the design guidelines.

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Section 5. Continuity of Construction. All construction, reconstruction, alterations, and improvements shall be prosecuted diligently to completion and shall be completed within twelve months of the commencement thereof, unless an extension is granted by the Board for good cause.

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Section 6. Partition of Lots. No Lot may be further subdivided or partitioned.

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ARTICLE 8: Provisions Required By Gunnison County

Section 1. Lighting. Lighting is permitted provided, however, that all lighting must comply with the requirements of Gunnison County at the time of installation. Exterior lighting fixtures shall be full cutoff, fully-shielded, shielded by roof elements, or effectively recessed.

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Section 2. Building Matters.

A. Total aggregate square footage for all Buildings per Lot shall not exceed the maximum size limitations in the LUR. The maximum size for Subordinate Residential use, not

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including garages or workshops, is 850 square feet or such greater square footage as may later be permitted by Gunnison County.

B. All Buildings and other Improvements other than driveways and approved landscaping must be within the Building Envelope. All Improvements must comply with the setbacks from lot lines and roads as set forth in the LUR. Any excavation, except as approved by the Association and, as applicable Gunnison County, is prohibited.

C. Any metal roof must be non-reflective and have a color finish with no bright colors.

D. All Buildings and other Improvements shall be built in an exterior style and with colors and materials harmonious with the area. No roof shall contain wood shake shingles or other combustible roofing material. All colors of exterior walls and roofs will be natural or earth tones in color to blend with the natural surroundings, except that colored trim may be allowed upon approval of the Board. No A-frames, geodesic domes, or yurts shall be allowed, even temporarily.

E. No exterior radio, television, microwave or other antennae or antenna dish or signal capture or distribution device shall be permitted, installed or maintained on any Lot unless it is approved and consistent with the Regulations.

F. All chimneys will include spark arrestors on chimney terminations and all chimney caps or shrouds shall provide access for cleaning and servicing said chimneys.

G. Monitored, automatic fire suppression systems shall be included in all buildings.

H. No structure or Building shall exceed 45 feet in height; in addition, and as a further restriction on height, no structure or Building on Lot 3 shall exceed 42 feet in height, and no structure or Building on Lot 4 shall exceed 41 feet in height. For purposes of determining Building height, the base of the Building shall be considered to run from the elevations set forth on **Exhibit C** applicable to the location where the Building is constructed regardless of whether the elevation of the Lot is increased prior to construction.

Section 3. Compliance With Applicable Code; Fire Protection Matters. All Buildings and other Improvements will meet all applicable requirements of all applicable governing bodies, including without limitation the applicable fire code and building code. All Lots shall maintain defensible space to protect against wildfire hazards in such minimum distances and in such a manner as may be recommended from time to time by the local fire protection district and Gunnison County. Owners are referred to publications of the Colorado State Forest Service, the Gunnison County Weed Specialist, and the Gunnison County Public Works Department. Wildfire mitigation shall be conducted in such a fashion as to minimize soil erosion, removal of existing vegetation, thinning of trees, and adverse impacts to wildlife beyond that which is necessary. The Lots are located within the boundaries of the Crested Butte Fire Protection District, and the Crested Butte Fire Protection District shall have the authority to enforce the fire protection provisions of these Covenants. All building foundations shall be designed by a Colorado registered engineer or architect. All applications to Gunnison County for building permits must comply with all applicable building codes adopted and amended by Gunnison County, and with any applicable energy and resource conservation standards required by the County at the time of such application.

Section 4. Landscaping and Buffering on Common Areas by Association. Plant materials and landscaping elements are to be used throughout the subdivision (including in the Common Areas) in order to provide for privacy and preserve and enhance the unique identity of the site. The Association shall maintain all landscaping and buffering on the Common Areas. Landscaping will be kept and maintained in a natural state except with respect to any landscaping or buffering placed for purposes of buffering.

Section 5. Water Usage, Lawn Irrigation and Site Disturbances. Water to the Property is supplied by a well (or wells) owned by the Association and no Owner may drill or use any other water system. The Association will be responsible for owning and maintaining any and all water rights, water augmentation ponds, and wells used in the water system. Any site disturbance, including permitted and approved excavation, must be promptly revegetated. No landscaping shall alter or interfere with drainage from the Property. All applicable buffers from the Slate River will be observed, and Owners shall protect the Slate River during and after construction from all construction debris and other uses on such Owner's Lot. Excavation or disturbance of the bioswale is prohibited without Association approval. All Owners and the Association shall have the obligation to provide Gunnison County with access to obtain water samples from the Slate River for testing purposes during normal business hours upon seven days written request, which shall not occur more frequently than four times per year.

Section 6. Solid Fuel Burning Devices. Owners shall adhere to the regulations regarding solid-fuel-burning devices contained in the LUR. These regulations include, but are not limited to, the requirement that there be no more than one approved solid-fuel-burning devices installed per Building.

Section 7. Roads And Snow Removal. The Association shall remove snow from the private roads owned by the Association and any private parking spaces on Common Areas owned by the Association. Plowing, dumping and storage of snow in the Slate River is prohibited. Snow storage by the Association shall be upon Common Area and in no event within 30 feet of the Slate River. Snow storage by an Owner shall be entirely within the Owner's Lot. Upon completion of construction of the private roads, the Association shall at all times keep such roads in good repair and maintain the same in suitable condition for the use of the Members. The Association shall have no obligation to maintain public roads that any governmental entity has agreed to maintain nor shall the Association maintain private driveways. The Association will not maintain driveways or private roads belonging to anyone other than the Association. The ~~Associations hall~~Association shall be entitled to make full use of all rights of way, roads and street easements for snow removal and storage. No fences or other Improvements shall be constructed or maintained in the rights of way and roads as shown on the Plat. No Owner may use the rights of way or roads shown on the Plat for purposes of snow storage. Owners may use Open Space 2 to store snow removed from such Owners' Lots provided: (i) that the snow is not contaminated as defined in the Regulations,

and (ii) the Association may provide additional rules and regulations regarding the use of Open Space 2 for snow storage in its Regulations.

Section 8. Standards to Ensure Compatible Uses. Hazardous uses, nuisances and excessive noise, all of which may be further defined in the Regulations, are prohibited. Construction activity is limited to between the hours of 7:00 a.m. to 8:00 p.m., unless such activity is related to snowplowing within the Property or ingress and egress for vehicles and equipment involved in off-site snowplowing activities. All trash must be promptly placed in bear proof trash receptacles. All pet food shall be securely stored.

Section 9. Amendment. No amendment to the definition of Subordinate Residential under article 1 or any amendment to articles 6 or 8 of these Covenants shall be effective until approved by Gunnison County.

Section 10. Use and Maintenance of Common Areas. Common Areas shall be used and maintained consistent with their purpose. The Association shall maintain the Common Areas. Minimal impact use by owners, such as walking and bicycling, will be permitted in all Common Areas. Camping, hunting, discharging firearms, practicing archery, and open fires are prohibited on all Common Areas, as well as any other use prohibited on the Common Areas by the Board in the Regulations.

Section 11. Domestic Animal Control; No Livestock.

A. Domesticated household pets shall not be allowed, kept, or maintained on any lot except for service animals, animals used to provide security, or no more than one domestic animal kept within residential housing subordinate and ancillary to a Light Industrial use, which domestic animal is restrained at all times either by leashing or confinement within the lot or structures thereon.
B. No horses or other livestock shall be allowed on the Property.
C. Household animals, including those of visitors, guests, and construction workers, must be controlled by kenneling~~,~~ or leashing~~, fencing or other physical constraint~~. No vicious animals shall be permitted.
D. If any animal is unreasonably or repeatedly noisy, unruly, or creates a disturbance within the Property, it shall promptly be removed by the owner thereof, or it may be removed by the Association at the expense of the animal's owner or the responsible property Owner, and with no liability owed by the Association as a result of such removal.
E. Gunnison County shall have the authority to enforce the animal control restrictions set forth in the Covenants, and any expense of enforcement by Gunnison County shall be at the expense of the responsible individual or property Owner. If the responsible individual or property Owner fails or refuses to reimburse Gunnison County for such expense, the Association shall reimburse Gunnison County and any amount so

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reimbursed by the Association shall become a lien in favor of the Association against any Lot or Lots owned by the owner of the animal necessitating the enforcement action and if such person is not an owner of a Lot, against the Lot of the Owner of whom such person is a guest, invitee, lessee, tenant or visitor. All Owners shall be responsible to, and liable to, the Association for the actions of the animals of their tenants, contractors, employees and any other invitees.

Section 12. Fencing. The Association may erect and maintain exterior fencing to the extent necessary to protect against agricultural uses on adjacent properties. All other fencing must be approved in advance as an Improvement by the Association in accordance with these covenants and the design guidelines.

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Section 13. Signs. All signs within the subdivision except to the extent required to be permitted by law must be approved in advance by the Association as an Improvement in accordance with these covenants and the design guidelines. Owners also must comply with all Gunnison County regulations, including obtaining a sign permit as may be required, prior to installing any sign. Notwithstanding the foregoing, signage as is typically used for real estate sales may be placed on Lots that are for sale without the prior approval of the Association provided that such signage complies with all applicable law, including Gunnison County regulations, as well as any rules and regulations of the Association. Declarant and the Association shall not be bound by this signage limitation and may have any signage not prohibited by Gunnison County or any applicable laws.

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Section 14. Parking. All vehicles, heavy equipment, machinery, and trailers shall be parked only within individual Lots and shall be operational. Each Lot shall provide sufficient parking areas so that no parking shall occur on the roads, easements, or right of ways within the subdivision.

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Section 15. Weed Control and Revegetation. Following construction of any Improvements and any other site disturbance, if required by applicable law, the ground shall be revegetated in accordance with the reasonable recommendations of Gunnison County's Weed Control Specialist. Owners must attempt to comply with the most current version, if any, of the Gunnison Basin Weed District Management Plan or such other plan as may be prescribed by the Gunnison County Weed District of general applicability, if any, as well as any earthmoving site revegetation and noxious weed control plan adopted by the Association.

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ARTICLE 9: Provisions Pertaining To CCIOA

Section 1. CCIOA Community. Whetstone Industrial Park is a common interest community that is a planned community governed by the Association. The common interest community is subject to CCIOA. The common interest community is located in Gunnison County. A legally sufficient description of the real estate included in the common interest community is attached hereto as

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Exhibit A. The boundaries of each unit created by the Covenants is set forth on the Plat, including the unit's identifying number and its size. There are no limited common elements.

Section 2. Allocation of Interests. There are 17 Lots. Each Lot has one voting interest as set forth above and one share of common expense liability. Each Lot is allocated 1/17th of the vote in the Association and 1/17th of the common expenses of the Association.

Section 3. Lot Line Eliminations and Building Envelope Adjustments. Upon receiving all required governmental approvals and the approval of the Association, an Owner of adjacent Lots may cluster the Lots in order to remove the lot lines between the adjacent Lots; provided, however, that the clustered Lots will remain liable for the same allocation of common expense liabilities and be entitled to the same allocation of votes as they were subject to and entitled to prior to such clustering. Building envelopes may be adjusted upon receipt of all required governmental approvals and the approval of the Association and, similarly, will not alter the allocation of interests set forth above.

Section 4. Declarant Control. Declarant (or any successor declarant) shall have all the powers and rights permissible under CCIOA during the period of declarant control, as defined under CCIOA, including without limitation the power to appoint and remove Directors and officers. The period of declarant control ~~commences~~commenced upon the recordation of ~~these~~the Original Covenants and will end at the earlier of fifty years from the date of recordation of ~~these~~the Original Covenants or at such time as these rights are required expire or terminate under CCIOA.

Section 5. Development Rights. Declarant reserves the following development rights and special declarant rights: (1) the right to maintain a sales office, management office, or models in the common interest community and any such sales office, management office, or model shall be owned by Declarant and shall not be a common element and shall be removed promptly after the expiration of the timeframe set forth herein for the exercise of development rights, (2) the right to complete improvements as contemplated on the plat filed with this Declaration, (3) the right to create or amend Lots or Common Area, (4) the right to create, use and provide Owners with the right to use any trail, utility, access and other easements through the Common Area and/or through any Lot for the purpose of implementing the development plan provided, however, that no such trail, utility, access or other easement shall cross or enter any Building Envelope, (5) the right to amend the Plat and these Covenants, including without limitation the right to unilaterally amend the Plat and these Covenants to exercise any development rights or special declarant rights to the fullest extent permitted by CCIOA, and (6) the right to amend these Covenants and the Plat to correct any clerical, typographical, or technical errors. All development rights and special declarant rights shall expire, and must be exercised prior to, the earlier of fifty years from the date of recordation of ~~these~~the Original Covenants or such time that such rights are required to expire or terminate under CCIOA. No development right needs to be exercised with respect to different parcels of real estate at different times and all development rights may be exercised with respect to different parcels of real estate at different times or at the same time. No assurances are made

with regards to which parcels or portions of real estate will be subjected to the exercise of each development right or the order thereof. If any development right is exercised in any portion of the real estate subject to that development right, that development right need not be exercised in all or in any other portion or remainder of that real estate. The scope of any easement established by the Declarant shall also be established by the Declarant, and the Declarant and Association shall have the right to use, and provide to others, access and use by heavy equipment and all manners of vehicles and equipment to any easement shown on the Plat or added by Declarant.

Section 6. Notice. Notice of matters affecting the common interest community may be given to Owners by the Association or other Owners by posting the same at an entrance to the subdivision on a message board or post erected for such purpose. In addition, the Association may give notice of matters to Owners by providing such notice by email to any email address for an Owner provided by such Owner to the Association. Notice may also be given by regular, U.S. mail sent to the address of record for the Owner as made available online by the Gunnison County Assessor.

ARTICLE 10: Duration of Covenants; Miscellaneous

Section 1. Term. These Covenants shall remain in effect perpetually from the date of recordation of the Original Covenants.

Section 2. Amendment. Except to the extent that a different percentage is required by CCIOA, these Covenants may not be waived, abandoned, terminated or amended, in whole or in part, except by an instrument: (i) setting forth the written consent of the owners of two-thirds of the Lots or containing the certification by the Secretary of the Association that the owners of two-thirds or more of the Lots voted in favor of such amendment at a duly called and properly noticed meeting of the membership, and (ii) if required by Article 8, Section 9, approved by the Board of County Commissioners of Gunnison County. No mortgage or lienholder approval is required.

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Section 3. Severability. These Covenants shall, to the fullest extent possible, be construed so as to give validity to all of the provisions hereof. If any provision or portion of provision in these Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or portion thereof or section hereof and all other provisions, portions of provisions, and sections shall remain in full force and effect.

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Section 4. 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.

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Section 5. Headings. The headings on any section or article are included only for the purposes of convenient reference and shall not affect the meaning or interpretation of these Covenants.

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Section 6. Limitation of Liability. Neither the Association nor any officer, director or other representative of the Association shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through, or under these Covenants if the action or failure to act was made in good faith. The Association shall indemnify all officers, directors or other representatives of the Association with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association. Such indemnification shall include repayment of all costs and expenses incurred, including reasonable attorneys' fees.

Section 7. Attorneys' Fees. The Association shall be entitled to recover attorney's fees and costs as provided by CCIOA as shall any other party. In the absence of an applicable attorney's fees provision under CCIOA, the prevailing party in any legal action in any Court of law to enforce or interpret any provisions of the Association Documents shall be entitled to recover from the non-prevailing parties reasonable attorney's fees and costs incurred in such legal action, including without limitation all costs and fees incurred in collection, on appeal, and in bankruptcy proceedings.

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Section 8. Applicable Law. Gunnison County, Colorado district court or county court shall be the exclusive venue for any action arising out of or relating to the Association Documents or any other dispute between the Association and any Owner provided, however, that the Association may establish exclusive venue, means, and procedures for the enforcement of fines, which may include binding arbitration.

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IN WITNESS WHEREOF, the ~~Declarant has executed~~ these Covenants ~~as~~are certified by the Secretary of the ~~day~~Association to have been voted in favor of by the Owners of more than two-thirds of the Lots at a duly called and ~~year first above written.~~properly noticed meeting of the membership and upon approval of the Board of County Commissioners of Gunnison County.

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~~L&D Ranches, LLC, a Colorado limited liability company~~

~~By: Lacy Construction, Inc., its Managing Member~~

~~By:_____~~

~~William Joseph Lacy, Jr., President~~

Whetstone Industrial Park Lot Owners Association, Inc., a Colorado nonprofit corporation

By: _____

_____, Secretary

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing ~~letter~~ was acknowledged before me this ~~25th~~ _____ day of ~~April,~~ _____, 2018, by ~~L&D Ranches, LLC,~~ _____ as Secretary of Whetstone Industrial Park Lot Owners Association, Inc., a Colorado ~~limited liability company, by Lacy Construction, Inc., its Managing Member, by William Joseph Lacy, Jr., its President~~nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____.

_____
Notary Public

EXHIBIT A

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A parcel of land lying South and West of the Colorado State Highway 135 right-of-way, and situated in Government Lot 1 and Government Lot 2, Section 18, Township 14 South, Range 85 West and also situate in the E1/2NE1/4, Section13, Township 14 South, Range 86 West, all of the 6th P.M., County of Gunnison, State of Colorado, said parcel being a portion of that property described in the Deed recorded as Reception No. 292370 of the Gunnison County records, and being more fully described as follows:

Beginning at a point on the west line of Lot 1 of "RIVERLAND - AN INDUSTRIAL PARK, FILING 1", as shown on the Plat thereof, recorded as Reception No. 369534 of the Gunnison County records (from which a Rebar and Cap Stamped "LS 11250", found in place for the northwest corner of said Lot 1 bears N 31°35'24" W a distance of 15.57 feet, and from which a 3" Aluminum Cap, LS # 11250 found in place for the 185.7 foot Witness Corner to the Northeast Corner of Section 13 bears N38°16'01"E a distance of 727.03 feet);

thence S 31°35'24" E along the westerly line of said Lot 1 a distance of 135.21 feet to the Southwest Corner of said Lot 1;

thence S 80°51'37" E along the southerly line of said Lot 1, a distance of 242.00 feet to the westerly line of Lot 2 of the "Replat of Lots 2, 3, 4, Riverland Filing 1" and shown in that document recorded as Reception No. 467259 and Reception No. 489063;

thence S 19°21'37" E along said westerly line, a distance of 168.69 feet to the Southwest Corner of said Lot 2, also being the Northwest Corner of that parcel of land described in the Warranty Deed recorded as Reception No. 607486 of the Gunnison County records;

thence along the southerly line of said parcel described in said Warranty Deed recorded as Reception No. 607486, the following six (6) courses:

1. S 59°08'23" E a distance of 98.35 feet;

2. 52.55 feet along the arc of a non-tangent curve to the left, having a radius of 210.00 feet, a central angle of 14°20'15", the chord of which bears S 66°18'30" E a distance of 52.41 feet;

3. S 73°28'38" E along said southerly line, a distance of 157.18 feet to the southerly most corner of said parcel;

4. 77.94 feet along the arc of a non-tangent curve to the right, having a radius of 190.00 feet, a central angle of 23°30'13", the chord of which bears N 40°25'40" E a distance of 77.40 feet;

5. N 52°10'47" E a distance of 24.01 feet;

6. N 65°23'11" E a distance of 74.70 feet to the Northwest Corner of that parcel of land described in the Warranty Deed recorded as Reception No. 607485 of the Gunnison County records;

thence along the northerly line of said parcel, the following five (5) courses:

1. N 67°23'11" E a distance of 5.32 feet;

2. 164.93 feet along the arc of a non-tangent curve to the left, having a radius of 85.00 feet, a central angle of 111°10'20", the chord of which bears S 78°48'49" E a distance of 140.25 feet;

3. N 45°36'01" E a distance of 84.97 feet;

4. 32.64 feet along the arc of a curve to the right, having a radius of 190.00 feet, a central angle of 9°50'33", the chord of which bears N 50°31'18" E, a distance of 32.60 feet

5. N 55°26'34" E a distance of 16.54 feet to the southwesterly right-of-way of Colorado State Highway No. 135 as described in the Right of Way Deed recorded in Book 291 at Page 40 of the Gunnison County records;

thence along said right-of-way, the following three (3) courses (record bearings in said deeds being rotated 00°03'29" clockwise to coincide with basis of bearings used for the various Riverland Industrial Park plats);

1. S 34°44'31" E a distance of 391.85 feet;

2. 566.70 feet along the arc of a curve to the left, having a radius of 1960.00 feet, a central angle of 16°33'58", the chord of which bears S 43°01'01" E, a distance of 564.73 feet;

3. S 51°18'18" E a distance of 173.10 feet to east line of said Government Lot 2 of Section 18;

thence S 00°50'48" E along said east line, a distance of 884.04 feet to the northeasterly line of that Conservation Easement described in Reception No. 607494 of the Gunnison County records;

thence along said northeasterly line the following six (6) courses, (record bearings for said six (6) courses being rotated 00°00'30" counter-clockwise to coincide with basis of bearings used for the various Riverland Industrial Park plats);

1. N 67°22'22" W a distance of 674.52 feet (record distance being 674.34 feet);

2. N 62°16'49" W a distance of 202.22 feet;

3. N 45°58'14" W a distance of 433.65 feet;

4. N 37°05'15" W a distance of 673.47 feet;

5. N 28°43'04" W a distance of 542.76 feet;

6. N 25°09'49" W a distance of 341.88 feet to the southerly line that “Access Road” described in Reception No. 607499 of the Gunnison County records;

thence along said southerly line the following three (3) courses;

1. N 87°00'05" E a distance of 47.07 feet;

2. N 87°58'18" E a distance of 44.29 feet;

3. N 84°00'59" E a distance of 50.11 feet to the point of beginning, said parcel containing 38.196 acres, more or less.

Excepting therefrom:
Lot 1, RU Subdivision, containing 3.000 acres, as shown on the Plat thereof, recorded as Reception No. 607489 of the Gunnison County records.

Resulting acreage of the subject parcel being 35.196 acres, more or less.

Basis of bearings for this description is a bearing of N00°30'45"W. between the 3" Aluminum Cap, LS # 11250 found in place for the 185.7 foot Witness Corner to the Northeast Corner of Section 13, and a Rebar and Aluminum Cap, LS # 23502 found in place for the South One-Sixteenth Corner at the Section Line common to Sections 7 and 12.

EXHIBIT B

DESIGNATION OF LOT
AND
POTENTIAL RESTRICTION ADJACENT LOTS

This designation is for the following lot:

Lot ____ according to the Plat of Whetstone Industrial Park filed for record the ___ day of _____, 2017 and bearing Reception No. _____ of the real property records of Gunnison County, Colorado (hereinafter, the "Designated Lot").

The Designated Lot shall be limited to the following use: _____ Industrial
_____ Light Industrial
_____ Subordinate Residential
(check or otherwise mark only one)

The Designated Lot is adjacent to the following lots:

Lot(s) _____ according to the Plat of Whetstone Industrial Park filed for record the _____ day of _____, 2017 and bearing Reception No. _____ of the real property records of Gunnison County, Colorado (the "Adjacent Lots")

If the Designated Lot is designated as industrial, the Adjacent Lots may not be used for, nor designated as, Subordinate Residential. If the Designated Lot is designated for Subordinate Residential, the Adjacent Lots may not be used for, nor designated as, industrial (but may be designated as Light Industrial or Subordinate Residential). See article 6 of the covenants for the subdivision for more information.

L&D Ranches, LLC, a Colorado limited liability company
By: Lacy Construction, Inc., its Managing Member

By:_____
William Joseph Lacy, Jr., President

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing ~~letter~~ was acknowledged before me this ____ day of _____, ~~2017,~~201___, by L&D Ranches, LLC, a Colorado limited liability company, by Lacy Construction, Inc., its Managing Member, by William Joseph Lacy, Jr., its President.
Witness my hand and official seal.
My commission expires: _____.

_____
Notary Public

EXHIBIT C

Building Envelope Elevations	
Lot #	ELEVATION
1	8830
2	8830
3	8830
4	8830
5	8828
6	8827
7	8824
8	8822
9	8824
10	8826
11	8828
12	8832
13	8836
14	8838
15	8838
16	8838
17	8838

APPROVAL
OF AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
WHETSTONE INDUSTRIAL PARK

INTRODUCED by Commissioner _____, seconded by Commissioner _____, and adopted on this 22nd day of January, 2019.

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

_____
Jonathan Houck,
Chairperson

ATTEST:

_____
Gunnison County Clerk and Recorder