IRON WORKS VILLAGE METROPOLITAN DISTRICT

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 • 800-741-3254
Fax: 303-987-2032

NOTICE OF A SPECIAL MEETING AND AGENDA

Board of Directors:	Office:	Term/Expiration:
Cecily VanHouten	Vice President	2022/May 2023
Taylor Strickland	President	2022/May 2023
Carter Harris	Treasurer	2023/May 2023
Bryan Karns	Secretary	2023/May 2022
Jennifer Bartlett	Assistant Secretary	2022/May 2022

DATE: ***April 12, 2021***
TIME: ***6:00 P.M.***
PLACE: Due to Executive Orders issued by Governor Polis and Public Health Orders implementing the Executive Orders issued by the Colorado Department of Health and Environment, and the threat posed by the COVID-19 coronavirus, this meeting will be held via Zoom and can be joined through the directions below: *Please email Peggy Ripko if there are any issues (pripko@sdmsi.com*).

Join Zoom Meeting
https://us02web.zoom.us/j/83077208369?pwd=Q2JSZ0VXeTZ5Z3pvVSsxeFFER2EwUT09
Meeting ID: 830 7720 8369
Passcode: 584825

I. ADMINISTRATIVE MATTERS

A. Confirm Quorum and Present Conflict Disclosures.

_____

B. Approve Agenda, confirm location of the meeting and posting of meeting notices.

_____

II. PUBLIC COMMENTS- of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes per person

A. _____

III. COMMUNITY MANAGEMENT

A. Discuss Updating Enforcement Resolution regarding Dog Waste Concerns (enclosures).

_____

B. Ratify approval of a proposal from BrightView Landscaping for landscape services and authorize preparation and execution of Service Agreement regarding same (enclosure).

C. Discussion and consideration of engagement of covenant enforcement legal services (enclosure).

IV. ADJOURNMENT ***THE NEXT REGULAR MEETING IS SCHEDULED FOR JUNE 7, 2021***

Adam Sattley - (Encore - PM)

From: Sean Atkinson <seanatkinson4@gmail.com>
Sent: Monday, April 5, 2021 4:38 PM
To: Iron Works Village (Property)
Subject: Re: Iron Works - Picking up after pet 595-202

Adam,

Thank you for the email. I am responding only on my (Sean) behalf, in order to detail to you exactly what happened yesterday (Sunday) which has apparently resulted in a complaint against my apartment.
Yesterday, on a Sunday morning at 9:30 AM, I was sitting outside on my balcony when the resident I am fairly certain has complained suddenly threw a bag of dog feces in a produce bag he had scooped up outside of his house up at me onto my balcony from the street, narrowly missing me. I verbally confronted him from the balcony and then again down in the street, and there were several witnesses to the entire scene.
I, however, do not own dogs. My roommates own dogs, as you obviously know. I, though, do not. I do not pay for dogs, I do not feed dogs, I do not walk dogs. I was EXTREMELY offended to have a bag of shit randomly launched at me in the middle of my Sunday morning coffee.
And for the record, which I also made clear to this guy at the time, my roommates were out of town this weekend, and they had taken their dogs with them. There had been no dogs here for over 24 hours by this point.
I would appreciate it being made clear to the residents in townhouse 2827 the policy on throwing feces at another resident, who does not own or deal with dogs, and with no evidence, at 9:30 AM on Easter Sunday.
Furthermore, in my opinion, even if this guy had actually witnessed someone who lives in any apartment anywhere not picking up after their dog, which he did not, in what world is the proper next step to pick it up and throw it at someone sitting on their balcony?
If you have any questions I am more than happy to answer them. My cell is 706-614-2904.

Thank you,
Sean Atkinson

Dear Property Manager,

Name: Braydon Richards sent you an email.
Please review the information below.

Message:
The person living in 2827 S Fox St assaulted the person in our apartment building by throwing dog poop at them sitting on the balcony. The person in that townhome has repeated cause and escalated issues. He is a problem to our neighborhood and is very angry all the time which is causing escalation to issues that could be resolved with much simpler solutions like reaching out to the HOA. There is also a woman with dirty blonde hair that has brown poodle/labordoodle that walks her dog off leash which supported the man assaulting the tenant in this building. This needs to be addressed asap by the HOA or the police. I am concerned the man living in 2827 townhome will keep assaulting people that are innocent bystanders. Something needs to be done to fix the issue. If we need to reach out to the police please let me know how I can assist. We have several witnesses or this incident.

Property:
Iron Works
1805 S. Bannock St
Denver, CO 80223

Unit:
595-304

Resident:
Name: Braydon Richards

Mobile: (720)646-8665
Email: braydonrichards@gmail.com

IRON WORKS VILLAGE

Property Description

INDEPENDENT CONTRACTOR
LANDSCAPE MAINTENANCE
AT IRON WORKS VILLAGE
AGREEMENT

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "**Agreement**"), is entered into as of the 1st day of April, 2021, by and between IRON WORKS VILLAGE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District**"), and BRIGHTVIEW HOLDINGS, INC., a Colorado corporation (the "**Contractor**"). The District and the Contractor are referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, the District was organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the District is empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, the District desires to engage the Contractor to perform certain services as are needed by the District to serve the Pradera property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF SERVICES; PERFORMANCE STANDARDS. The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Services**"): (a) in a professional manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the District. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the District

in any manner whatsoever, except to the extent specifically provided in this Agreement (including **Exhibit A**) or through other authorization expressly delegated to or authorized by the District through its Board of Directors.

2. TERM/RENEWAL. This Agreement shall be effective as of April 1, 2021 and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) or December 31, 2021.

3. ADDITIONAL SERVICES. The District may, in writing, request the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the District pursuant to a written service/work order executed by an authorized representative of the District and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the District has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.

4. REPAIRS/CLAIMS. The Contractor shall notify the District immediately of any and all damage caused by the Contractor to District property and that of third parties. The Contractor will promptly repair or, at the District's option, reimburse the District for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the District of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

5. GENERAL PERFORMANCE STANDARDS.

a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the District or any agent of the District and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the

Contractor's performance of the Services does not meet this standard, the Contractor shall, at the District's request, re-perform the Services not meeting this standard without additional compensation.

b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give prompt notice to the District of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "**Laws**" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, sub-consultant or employee of the District. Review, acceptance or approval by the District of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the District, at the District's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("**Monthly Report**").

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the District of the estimated amount of such reimbursable costs (or

any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the District with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) ("**W-9**"). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B**.

b. Invoices. Invoices for the Services shall be submitted monthly to the District through Manager, Special District Management Services, Inc, by the 5th of each month, during the term of this Agreement and shall contain the following information:

i. An itemized statement of the Services performed.

ii. Any other reasonable information required by the District to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The District shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the District after the 5th of each month may be processed the following month.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the District within forty (40) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The District may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the District to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the District's approved budget. Such payment shall require review and approval of each Monthly Report and invoice by two officers of the District.

9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained. The District shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions,

or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or sub-contractors of the Contractor and will not for any purpose be considered employees or agents of the District. **The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the District, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.**

10. EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

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

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

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

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

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

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

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

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.

g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the District may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the District.

11. CONTRACTOR'S INSURANCE.

a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the District, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The District shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.

b. Prior to commencing any work under this Agreement, the Contractor shall provide the District with a certificate or certificates evidencing the policies required by this Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit C-1**. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the District and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the District to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

12. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. Any information deemed confidential by the District and given to the Contractor by the District, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the District deems confidential, or which the District has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the interests of the District. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the District; or (iii) independently developed by the Contractor without use of the District's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the District and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the District shall agree to be bound by the terms of such confidentiality agreement.

b. Personal Identifying Information. During the performance of this Agreement, the District may disclosure Personal Identifying Information to the Contractor. "**Personal Identifying Information**" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

c. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the District, the Contractor agrees to notify the District of conflicts known to the Contractor that impact the Contractor's provision of Services to the District.

13. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the District under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the District's request the Contractor will provide the District with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the District's use and shall provide such copies to the District upon request at no cost.

14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

15. INDEMNIFICATION.

a. The Contractor shall defend, indemnify and hold harmless the District and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "**District Indemnitees**"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "**Claims**"), including reasonable legal expenses and attorneys' fees actually incurred, by the District Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the District Indemnitees for the negligence of the District or the negligence of any other District Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the District of the existence of such Claim, the District may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.

c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth

in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

16. ASSIGNMENT. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the District. Any attempted assignment of this Agreement in whole or in part with respect to which the District has not consented, in writing, shall be null and void and of no effect whatsoever.

17. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the District for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the District's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities or obligations under this Agreement . The Contractor shall not subcontract any Services without prior written approval by the District. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the District harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the District in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.

18. TERMINATION. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days prior written notice to the District and by the District by giving the Contractor thirty (30) days prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the District to ensure a timely and efficient transition of all work and work product to the District or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the District.

19. DEFAULT. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting

party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

20. NOTICES. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

District:

Iron Works Village Metropolitan District
c/o
Special District Management Services, Inc.
141 Union Blvd., Suite 150
Lakewood, CO 80228
Attention: Peggy Ripko
Phone: (303) 987-0835
E-mail: pripko@sdmsi.com

Contractor:

Brightview Holdings, Inc.
8888 N. Motsenbocker Road
Parker, CO 80134
Attention: [_____]
Phone: [_____]
Email: [_____]

Invoices to:
Special District Management Services, Inc.
141 Union Blvd., Suite 150
Lakewood, CO 80228

Attention: Peggy Ripko
Phone: (303) 987-0835
E-mail: pripko@sdmsi.com

21. AUDITS. The District shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the District at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

22. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the District.

23. BINDING AGREEMENT. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

24. NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

25. GOVERNING LAW.

a. Venue. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the District's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the District shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

b. Choice of Law. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

c. Litigation. At the District's request, the Contractor will consent to being joined in litigation between the District and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays

caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the District to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.

27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the District's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the District, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the District or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of District funds. The District's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

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

29. NEGOTIATED PROVISIONS. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

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

31. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall

give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

32. OPEN RECORDS. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.

33. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the "**Work**") will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the District, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

34. TAX EXEMPT STATUS. The District is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the District is exempt shall not be included in any invoices submitted to the District. The District shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

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

[Signature pages follow].

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

DISTRICT:
IRON WORKS VILLAGE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

_____
President [Officer of the District]

ATTEST:

_____

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

_____
General Counsel for the District

CONTRACTOR:
Brightview Holdings, Inc.

_____

_____
Printed Name

_____
Title

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, as the _____ of Brightview Holdings, Inc.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

EXHIBIT A

SCOPE OF SERVICES/COMPENSATION SCHEDULE

Your Transition to BrightView

PRE-SERVICE

- Branch planning meeting
- Identify and mitigate any safety hazards
- Meet your Client Service Team. Establish communication, reporting expectations & preferences
- Individual site planning

30 DAYS

- Initial site walk-through
- Week 1 Alignment Check
- Week 2 Alignment Check
- 30 Day Alignment Check
- Receive first invoice

60 DAYS

- Site walk of entire Community
- Receive/Complete Customer Satisfaction Survey (performed monthly)
- Review responses to Customer Satisfaction Survey with your Client Service Team, align and strengthen areas in need of improvement

90 DAYS

- Site walk of District with your Client Service Team
- 90 Day Alignment Check

Itemized Pricing That Puts You in Control

The price to maintain the District's landscape is primarily based on the amount of time our employees and equipment will be dedicated to your property. We want that time to be spent on tasks and services that equate to a more healthy and beautiful landscape. Another goal is also to engage in a landscape program that reduces or eliminates unnecessary services and cost. We feel this is the how we can truly offer our customers the greatest overall value. For example, while we understand many contractors include 2 turf aerations in their contract, we feel a more cost-effective option would be perform it only once. There is very little value to aerating in the fall right before the grass goes dormant and then again in the spring right after it comes out of dormancy.

The maintenance program and associated pricing on the next page represents a comprehensive program; one that would ensure those services you do get are at a level noticeably above what you have been receiving. Our goal is to create an opportunity to work together with you on a unique program that best meets your needs. For example, if the total price of our program is greater than your budget and services have been included that aren't necessary, we can adjust services to reduce the price. Conversely, if we haven't included something, or you'd like for something to be done more frequently, we can easily make those adjustments based on the pricing provided.

Landscape Service Program – Itemized

TURF	$11,310	NOTES & SUGGESTIONS
Mow, Trim, Blow (26X)	$9,580	Mowers of the appropriate size to be used for all turf areas
Edge (13X)	$720	½ of property every week in alternating schedule
Aerate Turf (1X)	$260	Done once ground is soft enough for proper effectiveness
Fertilizer and Weed Control (1/3X)	$750	Applications performed together. Includes 1 pre and 2 post emergent. Fertilizer is season-long release for optimal results
SHRUBS AND BEDS	**$6,010**	**NOTES & SUGGESTIONS**
Trim Back Grasses / Perennials (1X)	$980	Performed during Spring / Fall Cleanup activities
Pre-emergent Weed Control (1X)	$350	Performed early spring to prevent germination
Hand Pulling Weeds (26X)	$1,420	Weeds over 3" tall are pulled
Spot Treatments / Roundup for Beds, Cracks and Curb Lines (26X)	$2,380	Weeds under 3" are spot / target sprayed so as not to waste chemical and to avoid damage to other plants
Shrub Pruning (1X)	$880	Will need to be pruned more often as plants mature
TREES	**$1,000**	**NOTES & SUGGESTIONS**
Health Assessment By Arborist	Included	Performed throughout the season
Cutting / Removal of Tree "Suckers"	Included	Performed along with Hand Pulling Weeds
Maintain Tree Rings (2X)	$110	Performed with Spot Treatments
Tree Pruning Up to 10'	N/A	We would not recommend pruning trees at this stage of their lifecycle
Wrap Trees	$510	Performed in Fall
Unwrap Trees	$380	Removed in early Spring
MISCELLANEOUS	**$3,740**	**NOTES & SUGGESTIONS**
Litter Removal (51X)	$1,100	Performed weekly (minus Christmas week) to include trash cans and pet waste stations
Spring Cleanup (1X)	$880	Cleanup accumulated leaves and pines needles from over the winter
Fall Clean-up (2X)	$1,760	Done with final mowing and when majority of leaves drop
IRRIGATION	**$2,130**	**NOTES & SUGGESTIONS**
Check and Adjust (20-22X)	$1,550	Community-wide hotspot checks performed and then ½ of all zones inspected weekly from Activation to Winterization
Activation (1X)	$260	System may be activated and repairs made, but not set for regular operation until weather conditions dictate
Winterization (1X)	$320	Damage from improper winterization repaired at no cost
Grand Total	**$24,190**	

EXHIBIT B

CONTRACTOR'S COMPLETED W-9

EXHIBIT C

INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of this Agreement.

1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.

2. Commercial General Liability Insurance with minimum limits of liability of not less than $2,000,000 per occurrence for bodily injury and property damage liability; $2,000,000 designated location, general aggregate; and $1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:

   a. premises operations;
   b. personal injury liability without employment exclusion;
   c. limited contractual;
   d. broad form property damages, including completed operations;
   e. medical payments;
   f. products and completed operations;
   g. independent consultants coverage;
   h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

   This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than $1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**

4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the District covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

6. Professional liability insurance in the amount of $2,000,000.00 each occurrence.

EXHIBIT C-1

CERTIFICATE(S) OF INSURANCE

April 7, 2021

Board of Directors
Ironworks Village Metropolitan District
c/o Special District Mgmt. Services
141 Union Blvd., Ste. 150
Lakewood, CO 80228

Denver Office
David A. Firmin
Direct 303.991.2028
dfirmin@altitude.law

Re: Altitude Community Law P.C. Legal Services Proposal for Ironworks Village Metropolitan District

Dear Members of the Board:

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

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

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

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

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

Sincerely,

David A. Firmin
Altitude Community Law P.C.
DAF/ss
Enc.

2020-2021 LEGAL SERVICES AND FEE SUMMARY AGREEMENT

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

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

RETAINER SERVICES AND BENEFITS

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

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

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

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

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

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

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

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

RETAINER PLUS SERVICES AND BENEFITS

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

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

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

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

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

PREMIUM RETAINER SERVICES AND BENEFITS

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

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

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

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

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

RETAINER SERVICES GENERALLY

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

FIXED FEE SERVICES

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

NON-RETAINER SERVICES AND BILLING TERMS

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

TERMINATION OF REPRESENTATION

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

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

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

PRIVACY POLICY

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

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

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

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

GENERAL TERMS FOR ALL CLIENTS

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

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

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

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

RESPONSE REQUIRED

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

Legal Services: (select one)
□ Retainer Services
□ **Retainer Plus Services**
□ Premium Retainer Services
□ Custom Retainer Option
□ Non-Retainer

Collection Services:
Please see attached Fee Structure

Billing Preference: (select one)
□ Paper and Mailed
□ Electronic and Emailed
Email address: _____
(please note, only one email address per management company or self-managed association will be used)

Agreed to and accepted this ____ day of _____, 20___.

_____
Print Association Name

By: _____
President/Manager

SERVING HOMEOWNERS ASSOCIATIONS

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

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

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

OUR TEAM

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

CLIENT SERVICE - OUR NUMBER ONE PRIORITY

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

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

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

PREVENTION - THE BEST LEGAL APPROACH

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

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

COMMITMENT TO EDUCATION

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

COUNSEL FOR ASSOCIATIONS AT ALL STAGES

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

TRANSITION OF CONTROL

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

THE MATURE COMMUNITY ASSOCIATION

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

REVIEWING, AMENDING AND INTERPRETING DOCUMENTS

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

COVENANT ENFORCEMENT

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

CREATIVE PROBLEM SOLVING

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

DEBT RECOVERY

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

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

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

INSURANCE AUDIT

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

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

DISPUTE RESOLUTION/ LITIGATION

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

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

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

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

Pertinent examples of such creative problem solving include:

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

FINANCIAL CONSIDERATIONS

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

HOW WE CHARGE FOR OUR SERVICES

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

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

Altitude Community Law

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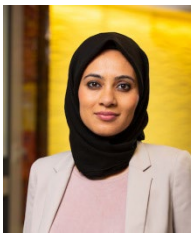

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Successful Enforcement of Covenants, Rules and Architectural Standards/Guidelines

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Successful Enforcement of Covenants, Rules and Architectural Standards/Guidelines

I. INTRODUCTION

A. Community associations use covenants, rules, and architectural standards/guidelines to:
- Maintain, preserve, enhance, and protect the property values and assets of the community.
- Promote harmonious community living.
- Preserve the common scheme and harmonious design of the community.

B. Covenants and rules and the fair enforcement are essential for community associations for several reasons:
- There is less sense of community with more contact via social media and less face to face time and the covenants assist in dealing with the relationships between residents (owners and tenants).
- Local governments are pushing more obligations onto associations.
- In cases where rules have been poorly developed or enforced, the courts are ruling against community associations.

C. Authority to make and enforce rules rests with the board of directors of the association. But the association manager is expected to:
- Give the board practical, technical, and administrative assistance in developing and enforcing covenants and rules.
- Maintain records which can furnish legal support if board actions in adopting or enforcing rules are challenged.

II. DEFINITIONS

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

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

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

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

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

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

A. The use of both common property and individual lots or units.
Rules and architectural standards/guidelines are developed in this area to promote conformity and harmonious living.

B. Changes in architecture, construction, or appearance of lots or units.
Rules and architectural standards/guidelines are developed in this area in order to:
- Establish and preserve a harmonious design for a community
- Protect the value of the property

C. The behavior of residents (owners and tenants), guests, and other visitors.
Rules are developed in this area because of the possible impact one person's behavior may have on other persons.

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

A. Use restrictions found in covenants typically address: signs, noise, trash, vehicles, business activities/residential use, animals, antennas, parking, maintenance, renting and leasing of units.

B. Typical areas of rulemaking to clarify use restrictions include: pets, parking, solicitation, maintenance of units, use of common areas and facilities, garbage and trash, and noise.

C. Architectural standards/guidelines frequently address: fencing, decks and patios, exterior lighting, landscaping, doors and windows, building protrusions, such as skylights, water coolers and AC units, outdoor equipment, such as play sets.

V. RELATION OF RULES TO HIERARCHY OF AUTHORITY

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

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

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

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

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

VI. SOURCES OF AUTHORITY TO MAKE AND ENFORCE RULES

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

A. State Statutes and Court Decisions
The Colorado Common Interest Ownership Act (CCIOA) provides associations with the authority to adopt rules and regulations. In addition, case law supports the right of associations to make and enforce rules.

B. Governing Documents
Governing documents provide general powers. General powers consist of the broad authority to adopt and enforce rules in order to carry out the purpose of the community association. That purpose is to preserve, maintain, and enhance the community's property.

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

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

VII. CRITERIA FOR A VALID AND ENFORCEABLE RULE

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

1. The rule must reasonably relate to the operation and purpose of the association (i.e., a rule must protect, preserve or enhance the properties within the community).

2. The rule must be reasonable. A reasonable rule is one that is just, sensible, and not excessive (i.e., a rule should be necessary and not more punitive than necessary).

3. The rule must be fair. It must not create a separate class or group of people (e.g., certain rules that treat resident owners and nonresident owners differently).

4. The rule must be clear and unambiguous.

5. The rule must not violate a fundamental constitutional right (e.g., freedom of speech).

6. The rule must be consistent with applicable federal, state and local statutes (e.g., FHAA, ADA, Civil Rights Act, CCIOA).

7. The rule must be consistent with the association's governing documents (i.e., a rule cannot prohibit what the covenants permit and vice versa).

8. The rule must be uniformly enforced - this means there must be no selective enforcement or exceptions (i.e., a rule must be enforced against all owners not just owners who are delinquent in payment of assessments).

B. What is an Unreasonable Rule? If reasonable rules promote a legitimate goal, unreasonable rules promote an illegitimate goal. They are illogical or unfair; too broad or too severe. To determine if a rule is unreasonable, take the following test:

1. Is the restriction based on outdated notions? If circumstances change, restrictions should change, too. Associations should constantly review their restrictions to ensure they are current.

2. Does the restriction create safety hazards? Most courts will choose safety over aesthetics. Reasonable community associations recognize this.

3. Is the restriction too intrusive? It is unreasonable to restrict activities within a unit that have no external effect on neighbors or property values.

4. Does it unfairly target a particular group? Restrictions that unfairly benefit a majority of residents at the expense of a minority are typically not reasonable.

C. Examples of Unreasonable or Ambiguous Rules. Examples of unreasonable or ambiguous rules and covenants appear below, with suggestions for improvement in italics below.

1. No worshiping on general common elements.
   No Rule.

2. Children may not ride bikes in parking lot or on sidewalks.
   No person may ride a bike in the parking lot or on the sidewalks.

3. Owners may have a reasonable number of household pets.
   Owners may have no more than two (2) dogs and no more than two (2) cats.

4. Pets shall be on a leash while on common areas and while on city property adjacent to any common areas.
   Pets shall be leashed whenever outside its unit within the community.

5. No vehicles are allowed in the community except 2 and 4 door sedans.
   Abandoned and inoperable vehicles are prohibited. Trucks in excess of 1 ton are prohibited.

6. First floor owners will be assigned 2 parking spaces. Second floor owners are limited to 1 parking space.
   All residents will be assigned 2 parking spaces.

7. Paint colors shall be muted earth tones except for pastels.
   Paint colors shall be muted earth tones as indicated on approved color chart or other earth tones approved by the ARC.

D. Required Policies. All associations must adopt written policies, procedures, and rules and regulations regarding:

1. Collection of unpaid assessments;
2. Handling of board member conflicts of interest;
3. Conduct of meetings with reference to applicable provisions in the Nonprofit Act or other recognized rules and principles if desired;
4. Enforcement of covenants and rules – including notice and hearing procedures and the schedule of fines;
5. Inspection and copying of association records by unit owners;
6. Investment of reserve funds;
7. Adoption and amendment of policies, procedures and rules;
8. Handling of disputes between association and homeowners (Alternative Dispute Resolution); and
9. Reserve Study Policy.

E. Restrictions on Covenants by Statutes:

1. Xeriscaping.

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

2. Patriotic and Political Expression, Emergency Vehicles, and Fire Mitigation.
    a. An association may not prohibit the display of American flag by a unit owner or occupant on a unit owner's property, in an owner's window or adjoining balcony if display is consistent with Federal Flag Code. [38-33.3-106.5(1)(a)]
    b. An association may not prohibit the display of service flag by unit owner or occupant on unit owner's window or door who is or

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

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

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

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

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

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

VIII. STEPS IN DEVELOPING RULES

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

A. Determine the need for a rule in the specific area.

Answer the question, "Why?" Also, ask whether the rule is designed to maintain, preserve, enhance and protect the property value of the community, promote harmonious community living and preserve the common scheme and harmonious design of the community. Determine whether the problem identified is of sufficient consequence to justify creating a rule - what are the trade offs? Then check to be sure that your association's existing rules and governing documents are inadequate to address the issue.

B. Consider both the immediate impact of such a rule and its long term implications.

How is the rule likely to be received? Will a solution to a current problem create future ones for the community?

C. Identify the source(s) of your association's authority to make a rule in the specific area involved.

Review your governing documents and CCIOA. They may also provide who has authority to act and thus allow you to make a determination as to whether the proposed rule must be an amendment to the governing documents or can simply be a new board adopted rule.

D. Define the scope of the rule.

Specify "who" and "what" will be covered by the rule. The "what" of a rule includes:

- Required steps, procedures, acts, or prohibitions a person is expected to follow
- Enforcement procedures
- Penalties for violations
- Due process procedures

E. Apply the "enforceability test."
Check to be sure the proposed rule has the eight criteria of a valid and enforceable rule listed earlier. Then make sure it works with your association's procedures. Don't create a rule limiting parking to "no more than two days" if the association doesn't employ someone to monitor parking on a daily basis.

F. Use clear, concise and unambiguous language.
The proposed rule should be drafted in such a manner as to be concise and simple, yet clear and understandable. Avoid words or phrases that are vague or ambiguous (e.g., trucks, commercial vehicles, recreational vehicles). Check the rule out with several people who had nothing to do with drafting the rule. Make sure rules do not state that they are suggestions or use suggestive language such as "may". Use mandatory language such as "must" or "shall".

G. Give notice of any proposed rule.
Build consensus and support for the rule before it is adopted in order to gain acceptance and compliance. In addition to giving notice of the proposed rule, provide an explanation of the purpose, value and benefit of this rule as well as rules in general. For example, make owners and tenants aware that the board is considering a particular rule. Invite written comments. Schedule a hearing on a proposed rule if it is a major matter. Consensus and hence compliance is possible when rules are seen as fair and reasonable by owners and tenants.

H. Have the rule reviewed by attorney.
Have your association's attorney review the wording of rules - as proposed and as adopted - to ensure that they are legally sound.

I. Act promptly on a proposed rule.
Once a proposed rule has been published and input received, the board should act on it at its next regularly scheduled meeting. The board's options are to either approve or reject the proposed rule as it is or as amended. Failure to act will cause the board and the rule to lose credibility.

J. Give notice of an adopted rule.
Follow the terms and conditions of your policy on adoption of rules. Generally you should consider the following:

- Actual notice of an adopted rule is necessary if people are to voluntarily obey it, and may be required by the declaration.
- Send a notice to the owner's last known address in the community's records. Send a notice to the unit or lot address, too, in case the occupant is a non-owner.
- Use a first-class mailing, either with a billing notice or separately, to maximize the likelihood of people receiving the notice and reading it.

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

IX. PROBLEM AREAS

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

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

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

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

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

B. The Purpose of Architectural Control

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

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

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

C. Checklist of Recommended Provisions

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

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

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

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

D. Checklist of Recommended Documents

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

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

E. Enhance enforcement of Architectural Restrictions in these ways

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

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

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

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

Recommended Forms:
a. Application
b. Application Checklists
c. Letter to Applicant
d. Variance Request
e. Variance Checklist

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

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

Recommended Form:
a. Application Evaluation Checklist.

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

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

Recommended Forms:
a. Decision of Committee
b. Variance Decision
c. Letter to Applicant

XI. FACTORS IN SUCCESSFUL ENFORCEMENT

A. Voluntary Compliance: Every effort should be made to achieve voluntary compliance with the rule in order to reduce the need for active enforcement and enforcement problems. Give ample notice of the existence of the rule. Build a community consensus in support of the rule. Make timely amendments to the rule when situations and circumstances change.

B. Timely Enforcement: Failure to act promptly upon notice of a violation results in a loss of confidence and breeds an air of permissiveness. Past board failures to enforce rules do not foreclose the possibility of enforcement of rules by subsequent boards. However, there is a danger that failure to enforce against some violations or permitting a violation to exist for too long a period of time may result in losing the right to enforce in subsequent situations.

C. Reasonable Rules and Reasonable Penalties for Violations: Community support is necessary for effective enforcement. To achieve this, the need for the rule, the rule itself, and the penalty for violation must all be viewed as reasonable - both within the community and by the courts.

D. Consistency and Uniformity of Enforcement: Once a rule has been adopted, the board must uniformly and consistently apply the rule and the standards against all situations. Permitting one fence but not another or acting against one owner but not another is inconsistent and destroys the consensus upon which voluntary compliance is based. If the board adopts a rule, it must uniformly and consistently apply it against all violations.

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

A. Six Enforcement Options

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

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

B. Type of Violations

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

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

C. Fines

1. Authority. Be sure your association has the authority to impose fines, as well as to collect them. Fines must bear a reasonable relation to the violation involved. Courts will not allow an association to continue to fine until the amount owed becomes unreasonable. Therefore, daily fines that continue to accrue will typically be found to be unreasonable if the association just lets them run without taking other action to stop the violations.

2. CCIOA Provisions on Fines. The Colorado Common Interest Ownership Act (CCIOA) allows associations to treat and collect fines in the same manner as assessments, provided the violator is first

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

3. Due Process. However, before a fine can even be imposed for a violation, CCIOA requires certain due process requirements must be complied with. Specifically, the violator must receive notice of the violation and be given an opportunity to have a hearing. Without this notice and opportunity for a hearing, fines are unenforceable.

4. Basic Due Process Steps. The basic steps in a due process procedure for handling alleged rule violations are:

   a. Issue a warning letter which contains:
      - Notice of the alleged violation
      - The action required to end the violation. Be specific. If you just tell someone to move something they may move it to another unallowed location.
      - A specific time within which the violation must be corrected
      - The penalty (sanction) which will be imposed after a hearing if the violation does not end within the stated time.

   b. Issue notice of right to hearing if violation does not end within the stated time. This is a written notice to an alleged violator informing him or her of the alleged violation and that a hearing may be requested or has been scheduled to consider his or her alleged violation. A hearing is only required if you are imposing a fine.

   c. Hold the scheduled hearing.
      This is a fact-finding hearing to determine if a violation has occurred. It is recommended that the hearing procedure be kept informal. The following are suggested procedures to be followed:
      - State the rule allegedly violated
      - State the possible penalty (e.g., fine)
      - Explain the rules to be followed:
        - ✓ All remarks are to be addressed to the chair, all communications civil.
        - ✓ After you have advised the owner of the violation ask the owner to explain to the Board or hearing panel why he/she wanted a hearing.
        - ✓ Allow the owner to present evidence and witnesses if any.

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

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

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

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

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

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

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

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

2. Suspension of the Use of Recreational Facilities and Common Areas - If your governing documents do not contain broad authority allowing for the suspension of an owner's right to use recreational facilities and common areas, you should only suspend privileges related to the violation. (e.g. suspend pool privileges - not parking privileges - for a pool violation.)

6. Utility Shutoff - Some governing documents allow utilities, particularly water service, to be shut off if an owner violates certain covenants. This resource, even if specifically provided for, should be used cautiously, if at all. Some municipalities prohibit this type of action because of health and safety concerns. Therefore this very aggressive alternative should not be considered without consulting first with your association's attorney.

7. Towing - The authority to tow a vehicle is typically found in either the covenants or rules. It can be an effective means of resolving a violation, although the cautionary comments under Self-Help are also applicable to towing. Reasonable notice prior to towing should be provided unless the violation constitutes an immediate threat to the safety of individuals or the community in general, such as a fire lane violation. In addition, associations should make certain that they are complying with all state and local laws regarding towing.

8. Self-Help - Self-help means the association takes action to correct the violation itself without a court order. Because of the potential for confrontation resulting in breach of the peace or damage to an owner's personal or real property, self-help is generally not recommended. However, if an association decides to utilize self-help, the association must develop careful procedures before using self-help to correct a violation. Self-help should only be used if it is expressly authorized in the declaration and then only after consultation with legal counsel. Although governing documents may specifically provide for self-help, the courts may see it as a breach of the peace or trespass and look unfavorably on the association for utilizing this mechanism rather than the court system. This potentially dangerous alternative should not be considered without consulting first with your association's attorney.

E. External Resources for Enforcing Covenants, Rules and Architectural Standards/Guidelines

Community associations can also draw on resources within the broader community to help them enforce covenants and rules. Do not overlook local government agencies and municipal services as resources for enforcing your rules. Cities, counties, and municipalities do not enforce covenants,

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

1. Local Health Department
   Your local health department can be asked to enforce the local health code. For example, possible areas of violation include:
   - Number of occupants in a unit
   - Internal use of a unit or storage on a lot

2. Local Building/Zoning Department
   These terms refer to the local government office that issues building permits. In some areas, this office's responsibilities overlap with those of zoning and health. In some areas, this office requires the approval of a community's board of directors before it will issue a permit. This local government office may be able to help you if a unit is in violation of an existing building, plumbing, fire, or electrical code.
   These local agencies can assist with enforcement of such rules as:
   - Fence or shed regulations
   - Setback restrictions
   - Restrictions on commercial use of dwellings
   - Failure to obtain city or county permit
   - Building is not up to code
   - Other matters involving common areas and lots

3. Local Law Enforcement
   The police or sheriff's department will enforce traffic regulations, issue tickets and/or tow violators of community's parking rules. They should be called for any issue regarding safety or security. They can also assist with disturbing the peace.

4. Local Fire Department
   Your local fire department may help with enforcement of fire lanes and the removal of hazardous materials. They can also assist with hoarding issues in multi-family housing as the condition is a fire hazard.

5. Code Enforcement Department
   This department is often part of the police department but they can assist with many violations that are also a violation of the association's documents. They often have local ordinances which prohibit weeds, abandoned vehicles, etc. Call can result in weeds

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

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

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

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

G. No Action

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

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

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

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

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

H. Legal Action

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

1. Who May (or Must) Enforce Documents?

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

The typical plaintiff is one or more of the following:

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

- Power or authority to enforce to homeowner

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

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

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

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

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

4. Recovery of Attorney Fees

   a. Colorado law (C.R.S. §38-33.3-123(2)) authorizes the association, a unit owner, or class of unit owners affected by another party's failure to comply with CCIOA or the association's governing document to seek reimbursement for costs and attorneys fees without the commencement of legal proceedings.

   b. Also C.R.S. §38-33.3-315(4) provides that misconduct that creates a common expense of the association may be placed on the offending owner's ledger.

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

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

c. Most declarations also have a provision that authorizes the association to recover from the owner any legal fees the association incurs in enforcing its covenants.

d. Even though the association may be entitled to recover its attorney fees, a court must still determine if the amount of attorney fees sought is "reasonable."

5. Defenses to Enforcement of Covenants and Rules: Defenses against restrictive covenants fall into two groups. The first group includes:

- Challenges to the covenant or rule
- Challenges to the procedures of the association
- Abandonment

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

The second group of defenses include:

- Estoppel
- Laches
- Waiver
- Statute of limitations

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

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

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

38-41-119. One-year limitation
No action shall be commenced or maintained to enforce the terms of any building restriction concerning real property or to compel the removal of any building or improvement on land because of the violation of any terms of any building restriction unless said action is commenced within one year from the date of the violation for which the action is sought to be brought or maintained.

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

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

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

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

6. Judicial Perspective

   a. Demands on judicial system; very high, crowded dockets

   b. Perception of HOAs and boards; generally negative, unreasonable, arbitrary, controlling

   c. Court sitting "in equity"; broad discretion to fashion appropriate remedy

   d. Making your case:
      - Reasonable board
      - Procedures documented in writing and followed
      - Documents followed
      - Correspondence and records exist
      - Efforts to resolve prior to filing suit

Procedures and Forms for Successful Covenant and Rule Enforcement

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