

VISTAS AT WEST MESA METROPOLITAN DISTRICT

Special Board Meeting

Friday, September 20, 2024 at 11:00 a.m.

Via Teleconference

<https://video.cloudoffice.avaya.com/join/348696537>

Phone: (213) 463-4500 / Meeting ID: 348696537

Board of Directors	Title	Term
Jeff Powles	President	May 2027
Patrick Anderson	Vice President	May 2025
Thomas Pucciano	Treasurer/Secretary	May 2025
Hannah Buzzell	Member at Large	May 2027*
Vacant	Member at Large	May 2027

* *This seat will be a 2-year term at the May 2025 Election.*

AGENDA

1. Call to Order/Declaration of Quorum
2. Conflict of Interest Disclosures
3. Approval of Agenda
4. Public Comment - Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes.
5. Consent Agenda - The items listed below are a group of items to be acted on with a single motion and vote by the Board. Any item may be removed from the Consent Agenda upon request of any Board member.
 - a. Approval of Meeting Minutes from July 19, 2024 (**enclosure**)
 - b. Payment of Claims – for July 19th through September 20th, 2024 (**enclosures**)
 - c. Unaudited Financial Statements as of August 31, 2024 (**enclosure**)
6. Legal Matters
 - a. Revisit Consideration of Approval of Bill of Sale, Indemnification Agreement and Warranty Agreement with Grays Development Company Inc. (Phase 1 – Retaining Wall and Fencing) (**enclosures**)
 - b. Review and Consider Adoption of Resolution Regarding Acquisition of Public Improvements (Phase 2 - Landscape Improvements) (**enclosure**)
 - i. Consider Approval of Bill of Sale, Indemnification Agreement and Warranty Agreement with Grays Development Company Inc. (Phase 2 - Landscape Improvements) (**enclosures**)
 - c. Review and Consider Adoption of Resolution In Opposition to the Statewide Proposals, Initiatives 50 & 108 (**enclosure**)
7. Adjournment
 - a. Next Regular Meeting – October 11, 2024, at 11:00 a.m. via teleconference





**MINUTES OF A SPECIAL MEETING
OF THE BOARD OF DIRECTORS
VISTAS AT WEST MESA METROPOLITAN DISTRICT
July 19, 2024 AT 11:00 AM**

Pursuant to posted notice, the special meeting of the Board of Directors of the Vistas at West Mesa Metropolitan District was held on Friday, July 19, 2024 at 11:00 a.m., via video teleconference.

In attendance were Directors:

Jeff Powles, President
Patrick Anderson, Vice President
Thomas Pucciano, Treasurer / Secretary
Hannah Buzzell, Assistant Secretary

Also, in attendance were:

Heather Smith, WSDM
Sue Gonzales, WSDM
George Rowley, White Bear Ankele, Tanaka, Waldron
Audrey Johnson, White Bear Ankele, Tanaka, Waldron
Andrew Gaittens, IDES

1. Call to Order/Declaration of Quorum: President Powles called the meeting to order at 11:00 a.m. and confirmed a quorum was present.
2. Conflict of Interest Disclosures: Mr. Rowley advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. Rowley reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Mr. Rowley noted that a quorum was present and inquired as to whether members of the Board had any additional disclosures of potential or existing conflicts of interest pertaining to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The Board determined that the participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.
3. Approval of the Agenda: President Powles moved to approve the Agenda as presented; seconded by Director Anderson. Motion carried.
4. Public Comment: There was no public comment.
5. Consent Agenda: Ms. Smith introduced the items on the Consent Agenda and presented the revised Payment of Claims. After review, President Powles moved to approve the Consent Agenda as presented; seconded by Director Buzzell. Motion passed unanimously.
 - a. Approval of Meeting Minutes from May 23, 2024

- b. Payment of Claims – through July 19, 2024
- c. Unaudited Financial Statements as of June 30, 2024

6. Financial Matters:

- a. Review and Consider Approval of the 2023 Audit and Presentation: Mrs. Gonzalez presented a detailed review of the 2023 Audited Financial Statements. The Auditors are providing an unmodified, unqualified opinion, which reflects a clean audit, and no issues were found. Due to the small size of WSDM, Management has the ability to override internal controls, which is noted as a significant deficiency and has been mitigated by implementation of multiple reviewers reviewing each transaction prior to facilitation. After review, President Powles moved to accept and approve the 2023 Audited Financials, subject to the inclusion of a statement from BiggsKofford outlining the additional internal control measures implemented by WSDM; seconded by Director Pucciano. Motion carried.

7. Manager’s Report: Ms. Smith presented the District Manager’s Report in brief.

8. Legal Matters:

- a. Review and Consider Adoption of Resolution Regarding Acquisition of Public Improvements: President Powles moved to approve the Adoption of Resolution Regarding Public Improvements pertaining to the retaining wall and fencing in Phase 1; seconded by Director Pucciano. Motion passed unanimously.
 - i. Consider Approval of Bill of Sale and Warranty Agreement: President Powles moved to approve the Bill of Sale and Warranty Agreement for the retaining wall and fencing in Phase 1; seconded by Director Pucciano. Motion passed unanimously.

9. General Business:

- a. Review and Consider Approval of Trash and Recycling Services Agreement: President Powles moved to approve the proposal from HBS for trash and recycling services in the District for a total cost of \$18.91 per home, per month; seconded by Director Pucciano. Motion passed unanimously.

10. Adjournment: The Board unanimously adjourned the meeting at 11:32 a.m.

- a. The next Regular Board Meeting will be held September 13, 2024, at 11:00 a.m. via teleconference.

Respectfully Submitted,

By: President

THESE MINUTES ARE APPROVED AS THE OFFICIAL JULY 19, 2024 MINUTES OF THE VISTAS AT WEST MESA METROPOLITAN DISTRICT.



Vistas At West Mesa Metropolitan District
PAYABLES
8/22/2024
GENERAL FUND ACCOUNT

Company	Invoice	Date	Amount	Comments
BiggsKofford	116400	7/30/2024	\$ 9,600.00	
BrightView	5983035	7/22/2024	\$ 127.80	
BrightView	5999770	8/6/2024	\$ 86.88	
BrightView	9007908	8/1/2024	\$ 1,370.88	
HBS	FR4442765	7/31/2024	\$ 746.95	
IDES	PS-INV103299	6/30/2024	\$ 1,400.29	
IDES	PS-INV 103374	7/31/2024	\$ 2,242.50	
SDA	bm3LzOe	9/10/2024	\$ 415.00	
TCW Risk Management	13021	9/6/2023		
White Bear Ankele Tanaka & Waldron	36369	7/31/2024	\$ 3,090.91	
White Bear Ankele Tanaka & Waldron	34814	4/30/2024		
WSDM District Managers	354	7/31/2024	\$ 3,507.59	
WSDM District Managers	79633	3/31/2024		
TOTAL			\$ 22,588.80	

DEBT SERVICE FUND ACCOUNT

BOKF, NA	81024	8/10/2024	\$ 2,681.86	July Pledged Revenue
		TOTAL	\$ 2,681.86	

TOTAL FOR ALL FUNDS

\$ 25,270.66

_____, President

Bank Balance	56,566.25
Previous month's Payables	(21,020.75)
Current Payables	(25,270.66)
Bank Balance after Payables	<u>10,274.84</u>

Vistas At West Mesa Metropolitan District
PAYABLES
9/20/2024
GENERAL FUND ACCOUNT

Company	Invoice	Date	Amount	Comments
BrightView	6015141	8/20/2024	\$ 364.79	
BrightView	6017599	8/22/2024	\$ 264.30	
BrightView	9047409	9/1/2024	\$ 1,370.88	
HBS	FR4539811	8/31/2024	\$ 890.46	
SDA	38489	8/27/2024	\$ 415.00	
White Bear Ankele Tanaka & Waldron	36853	8/31/2024	\$ 1,990.98	
WSDM District Managers	400	8/31/2024	\$ 3,170.30	
TOTAL			\$ 8,466.71	

DEBT SERVICE FUND ACCOUNT

BOKF, NA	91024	9/10/2024	\$ 50,785.99	Aug Pledged Revenue
		TOTAL	\$ 50,785.99	

TOTAL FOR ALL FUNDS

\$ 59,252.70

_____, President

Bank Balance		81,980.90
Current Payables		(59,252.70)
Bank Balance after Payables		<u>22,728.20</u>



Vistas At West Mesa Metro District

09/17/24

Balance Sheet

Accrual Basis

As of August 31, 2024

	<u>Aug 31, 24</u>
ASSETS	
Current Assets	
Checking/Savings	
Alliance Association Bank	3,264.88
Eastern Colorado Bank	35,545.50
BOK 2023 Project Fund	40,794.72
BOK 2023 Bond Fund	53,880.60
Total Checking/Savings	<u>133,485.70</u>
Accounts Receivable	
Accounts Receivable	3,819.76
Total Accounts Receivable	<u>3,819.76</u>
Other Current Assets	
Prepaid Insurance	3,121.00
Property Tax Receivable	68,576.37
Total Other Current Assets	<u>71,697.37</u>
Total Current Assets	209,002.83
Fixed Assets	
Capital Assets	<u>1,025,518.00</u>
Total Fixed Assets	<u>1,025,518.00</u>
TOTAL ASSETS	<u>1,234,520.83</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	31,951.49
Total Accounts Payable	<u>31,951.49</u>
Other Current Liabilities	
Deferred Prop Tax Rev	68,576.37
Prepaid Assessment	3,361.12
Total Other Current Liabilities	<u>71,937.49</u>
Total Current Liabilities	103,888.98
Long Term Liabilities	
Series 2023 Bond	2,635,000.00
Total Long Term Liabilities	<u>2,635,000.00</u>
Total Liabilities	2,738,888.98
Equity	
Retained Earnings	-1,560,031.02
Net Income	55,662.87
Total Equity	<u>-1,504,368.15</u>
TOTAL LIABILITIES & EQUITY	<u>1,234,520.83</u>

Vistas At West Mesa Metro District

Profit & Loss Budget vs. Actual

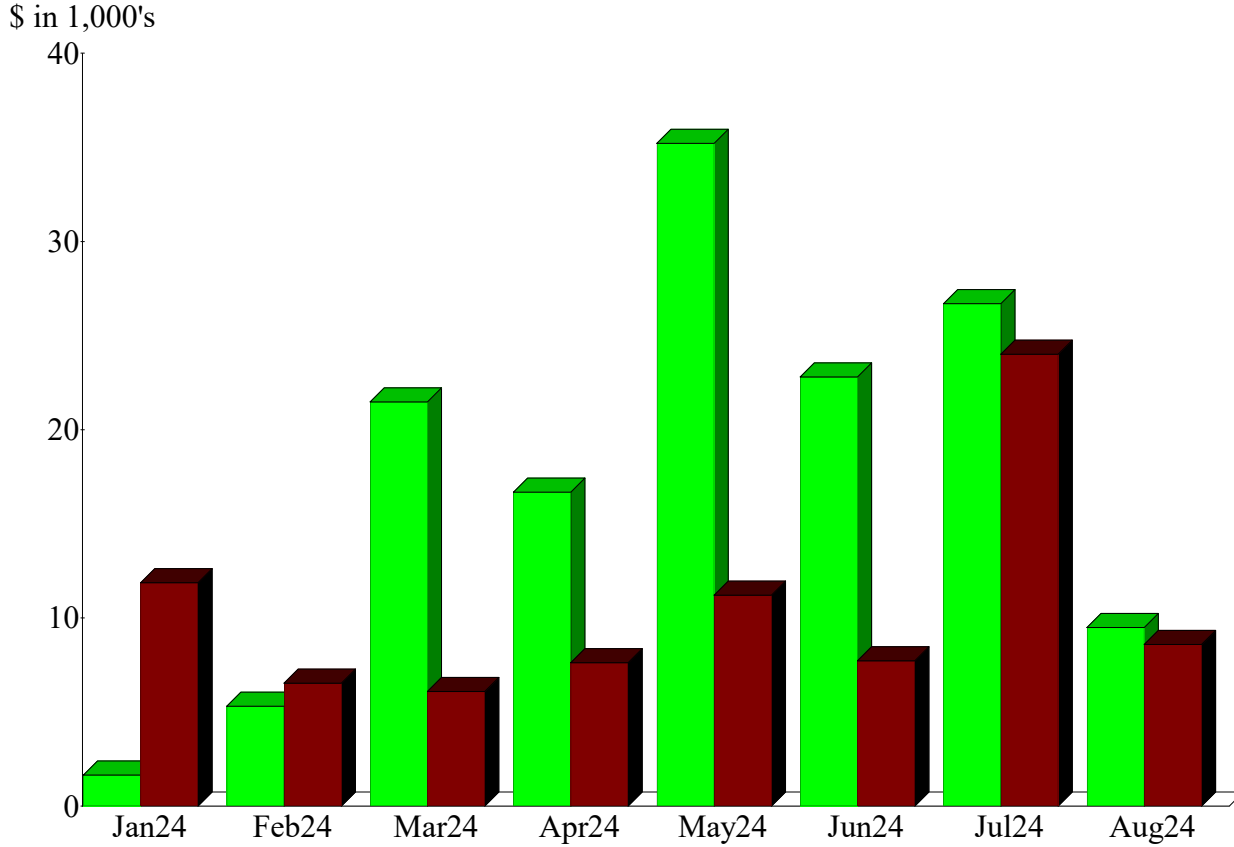
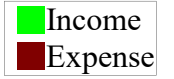
January through August 2024

	TOTAL				
	Aug 24	Jan - Aug 24	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense					
Income					
NSF Fee	0.00	20.00			
Developer Advance - O&M	0.00	25,000.00	62,000.00	-37,000.00	40.32%
Transfer & Status Letter Fee	200.00	3,100.00			
Unit Charges	5,225.81	30,679.98	24,000.00	6,679.98	127.83%
CY Property Tax - O&M	755.21	20,372.76	39,966.00	-19,593.24	50.98%
Specific Ownership Tax - O&M	305.98	2,121.47	2,798.00	-676.53	75.82%
Delinquent Interest - O&M	15.10	67.97			
CY Property Tax - Debt	1,888.01	50,931.87	99,915.00	-48,983.13	50.98%
Specifice Ownership Tax - Debt	764.96	5,303.69	7,993.00	-2,689.31	66.35%
Delinquent Interest - Debt	37.76	169.91			
Total Income	9,192.83	137,767.65	236,672.00	-98,904.35	58.21%
Expense					
General & Administrative					
Audit	0.00	9,600.00	8,755.00	845.00	109.65%
Bank Fees	0.00	10.00	20.00	-10.00	50.0%
District Management	3,170.30	24,131.65	42,000.00	-17,868.35	57.46%
Insurance	0.00	2,462.00	4,500.00	-2,038.00	54.71%
Legal	1,990.98	22,723.76	30,000.00	-7,276.24	75.75%
Office Supplies	0.00	92.05			
SDA Dues	0.00	414.97	1,500.00	-1,085.03	27.67%
Treasurer Collection Fee - O&M	11.55	306.60	599.00	-292.40	51.19%
Total General & Administrative	5,172.83	59,741.03	87,374.00	-27,632.97	68.37%
Operations					
Contingency	0.00	0.00	5,000.00	-5,000.00	0.0%
Electricity	0.00	0.00	750.00	-750.00	0.0%
Engineering - O&M	0.00	3,642.79			
General - R&M	0.00	0.00	1,000.00	-1,000.00	0.0%
Grounds Maintenance	2,086.85	7,525.91	15,000.00	-7,474.09	50.17%
Miscellaneous	415.00	415.00			
Repairs & Maintenance	0.00	617.50			
Road - R&M	0.00	0.00	1,750.00	-1,750.00	0.0%
Snow Removal	0.00	2,908.51	6,250.00	-3,341.49	46.54%
Street Sweeping	0.00	0.00	300.00	-300.00	0.0%
Stormwater	0.00	0.00	400.00	-400.00	0.0%
Trash Service	890.46	4,551.41	4,752.00	-200.59	95.78%
Water	0.00	0.00	2,600.00	-2,600.00	0.0%
Reserve Funding	0.00	0.00	5,000.00	-5,000.00	0.0%
Total Operations	3,392.31	19,661.12	42,802.00	-23,140.88	45.94%
Bond Expense					
Interest Expense	0.00	0.00	96,000.00	-96,000.00	0.0%

Vistas At West Mesa Metro District Profit & Loss Budget vs. Actual January through August 2024

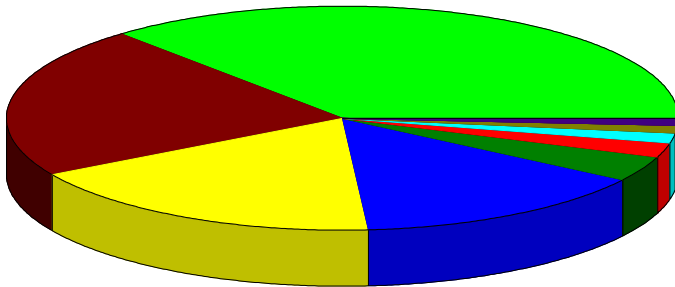
	TOTAL				
	Aug 24	Jan - Aug 24	Budget	\$ Over Budget	% of Budget
Treasurer Collection Fee - Debt	28.89	766.53	1,499.00	-732.47	51.14%
Trustee Fees	0.00	3,500.00	7,500.00	-4,000.00	46.67%
Total Bond Expense	28.89	4,266.53	104,999.00	-100,732.47	4.06%
Total Expense	8,594.03	83,668.68	235,175.00	-151,506.32	35.58%
Net Ordinary Income	598.80	54,098.97	1,497.00	52,601.97	3,613.83%
Other Income/Expense					
Other Income					
Interest Income	0.17	0.88			
Interest Income - Debt	293.68	1,563.02			
Total Other Income	293.85	1,563.90			
Net Other Income	293.85	1,563.90			
Net Income	892.65	55,662.87	1,497.00	54,165.87	3,718.3%

Income and Expense by Month
January through August 2024



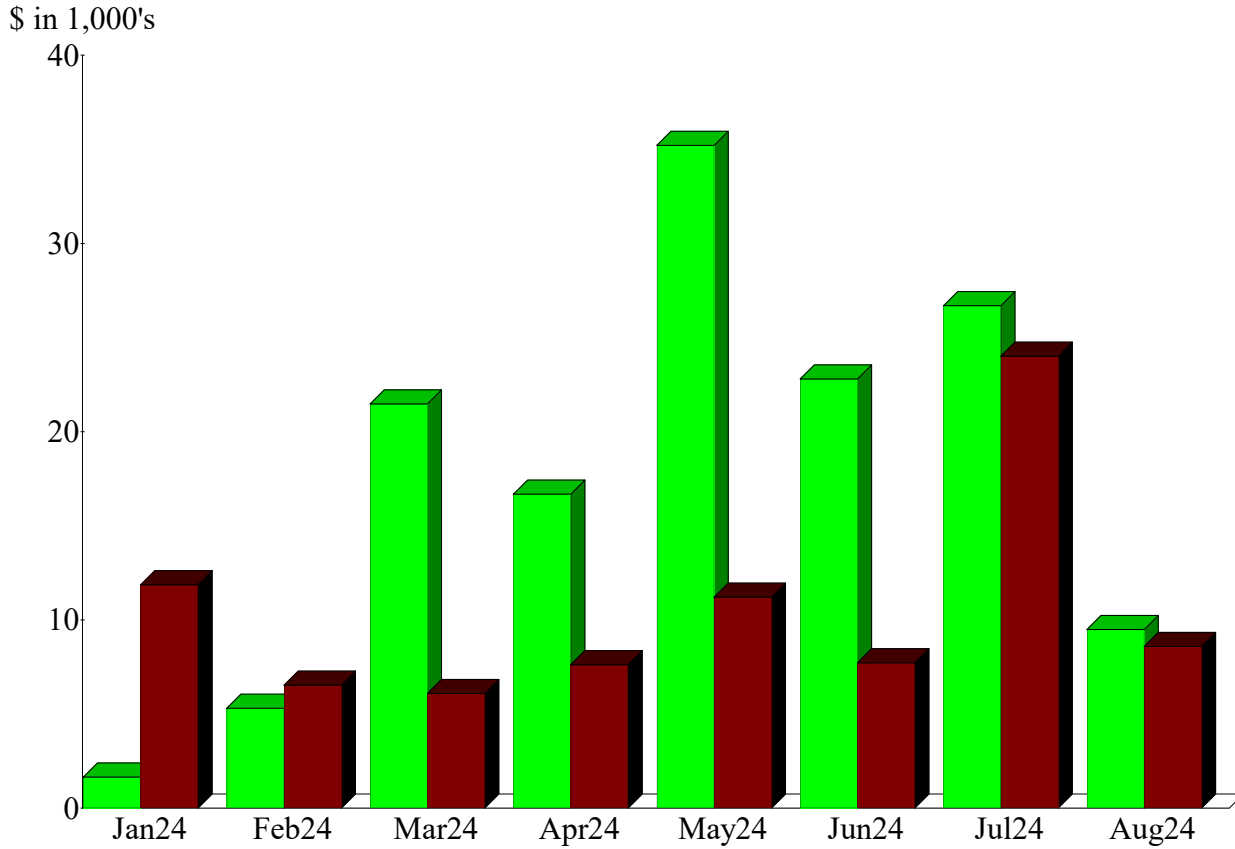
Income Summary
January through August 2024

CY Property Tax - Debt	36.55%
Unit Charges	22.02
Developer Advance - O&M	17.94
CY Property Tax - O&M	14.62
Specific Ownership Tax - Debt	3.81
Transfer & Status Letter Fee	2.22
Specific Ownership Tax - O&M	1.52
Interest Income - Debt	1.12
Delinquent Interest - Debt	0.12
Delinquent Interest - O&M	0.05
Other	0.01
Total	\$139,331.55



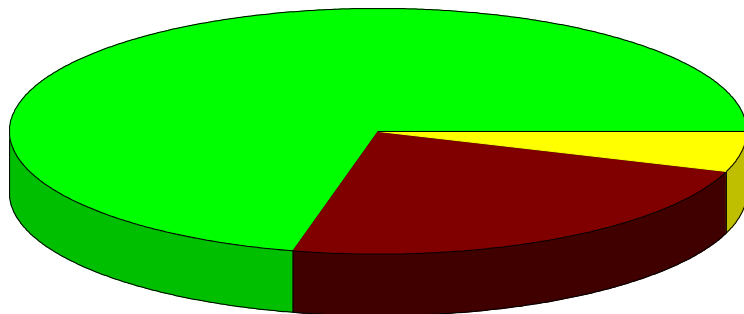
By Account

Income and Expense by Month
January through August 2024



Expense Summary
January through August 2024

General & Administrative	71.40%
Operations	23.50
Bond Expense	5.10
Total	\$83,668.68



By Account



BILL OF SALE
(Tract A Fencing and Retaining Wall Improvements)

KNOW ALL MEN BY THESE PRESENTS that GRAYS DEVELOPMENT COMPANY, INC., a Colorado corporation, hereinafter referred to as “Seller”, for good and valuable consideration, the receipt of which is hereby acknowledged, paid by the VISTAS AT WEST MESA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 2154 E. Commons Ave., Suite 2000 Centennial, CO 80211 (the “District”), has bargained and sold, and by these presents, does grant, assign, and convey unto the District, its successors and assigns, all of its right, title and interest in the Tract A Fencing and Retaining Wall Improvements of the Vistas at West Mesa development, as further described herein in **Exhibit A** (the “Improvements”), and all things of value, including all work product, both tangible and intangible, including legal, accounting, engineering, and management costs related thereto, accruing from the costs associated with the provision of the Improvements.

TO HAVE AND TO HOLD the same unto District, its successors and assigns forever; and Seller, its successors and assigns, shall warrant and defend the sale of the Improvements, property, services and facilities made unto the District, its successors or assigns, against all and every person or persons whomsoever, and warrants that the conveyance of the Improvements, property, services and facilities to the District, its successors and assigns, is made free from any claim or demand whatever.

IN WITNESS WHEREOF, Seller, by and through its authorized representatives, hereby executes this Bill of Sale as of this 19th day of July, 2024.

By: _____
Its: _____



**INDEMNIFICATION AGREEMENT
(Tract A – Fencing and Retaining Wall Improvements)**

This INDEMNIFICATION AGREEMENT (this “**Agreement**”) is entered into July 19, 2024, by and between VISTAS AT WEST MESA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and GRAYS DEVELOPMENT COMPANY, INC., a Colorado corporation (“**GDC**”). The District and GDC are collectively referred to as the “**Parties.**”

RECITALS

WHEREAS, the District and GDC entered into an Infrastructure Acquisition and Reimbursement Agreement dated March 11, 2022 (the “**Acquisition Agreement**”); and

WHEREAS, GDC has constructed certain public improvements described in **Exhibit A** (the “**District Improvements**”); and

WHEREAS, pursuant to the Acquisition Agreement, conditions precedent of the District’s acceptance of the District Improvements are (1) the receipt of lien waivers from any direct suppliers and direct subcontractors and (2) such additional information as the District may reasonably require; and

WHEREAS, GDC agrees to indemnify the District for any mechanic or materialman’s liens from suppliers and subcontractors for labor performed or materials used or furnished in the construction of the District Improvements; and

WHEREAS, the District and GDC desire to enter into this Agreement whereby GDC agrees to indemnify, defend, and hold harmless the District against any mechanics’ liens filed by contractors, subcontractors, material providers or suppliers that performed work on or provided materials for the District Improvements.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. **GDC Representations.** GDC, to induce the District to acquire the District Improvements, does hereby make the following representations to the District, with full knowledge and intent that the District will rely thereon:

a. There are no judgments, claims, or lawsuits against GDC in relation to the District Improvements as of the date first set forth above; and

b. All contractors, subcontractors, material providers and suppliers who furnished services, labor or materials in connection with the construction of the District Improvements up to and through the date first set forth above have been paid.

2. Indemnification. GDC shall at all times indemnify, defend and hold the District and its directors, officers, managers, agents and employees harmless against any liability for claims and/or liens for labor performed or materials used or furnished in the construction of the District Improvements, including any costs and expenses incurred by the District in the defense of such claims and liens, reasonable attorneys' fees and any damages to the District resulting from such claims or liens. After written demand by the District, GDC will immediately cause the effect of any suit or lien to be removed from the District Improvements. In the event GDC fails to do so, the District is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed, and the costs thereof, together with reasonable attorneys' fees, will be immediately due and payable by GDC. In the event a suit on such claim or lien is brought, GDC will, at the option of the District, defend the District in said suit at its own cost and expense, with counsel satisfactory to the District, and will pay and satisfy any such claim, lien, or judgment as may be established by the decision of the Court in such suit. GDC may litigate any such lien or suit, provided GDC causes the effect thereof to be removed promptly in advance from the District Improvements. This indemnity coverage shall also cover the District's defense costs in the event that the District, in its sole discretion, elects to provide its own defense.

3. Governing Law/Disputes. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, 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. 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, GDC shall carry on its duties and obligations under this Agreement during any legal proceedings until and unless this Agreement is otherwise terminated. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

4. 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.

5. Severability. If any covenant, term, condition or provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition or provision shall not affect any other provision contained herein, the intention being that such provisions 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.

6. Counterpart Execution. This Agreement may be executed in 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 page follows.]

DISTRICT:
**VISTAS AT WEST MESA METROPOLITAN
DISTRICT**, a quasi-municipal corporation and
political subdivision of the State of Colorado

By: _____
Officer of the District

Attest:

By: _____

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

General Counsel to the District

*District Signature page to Indemnification Agreement (Tract A – Fencing and Retaining Wall
Improvements)*

GDC:
**GRAYS DEVELOPMENT COMPANY,
INC.,** a Colorado corporation

By: _____

Printed Name

Title

*GDC Signature page to Indemnification Agreement (Tract A – Fencing and Retaining Wall
Improvements)*

EXHIBIT A

(Tract A - Fencing and Retaining Wall Improvements)





**RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
VISTAS AT WEST MESA METROPOLITAN DISTRICT**

REGARDING ACQUISITION OF PUBLIC IMPROVEMENTS

WHEREAS, Vistas at West Mesa Metropolitan District, City of Colorado Springs, El Paso County, State of Colorado ("**District**"), is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, the District was formed, inter alia, for the purpose of designing, acquiring, constructing, installing, operating, maintaining and financing street improvements, parks and recreational facilities, storm sewer improvements, water improvements, traffic and safety controls, transportation improvements, mosquito control, television relay and translator facilities, fire protection improvements, and sanitary sewer improvements (collectively, the "**Public Improvements**") within and without the boundaries of the District; subject to any limitations contained in the Service Plan for the District; and

WHEREAS, in accordance with § 32-1-1001(1)(f), C.R.S., the District has the power to acquire real and personal property, including rights and interests in property and easements necessary to its functions or operations; and

WHEREAS, the District has entered into an Infrastructure Acquisition and Reimbursement Agreement, dated March 11, 2022 (the "**Acquisition Agreement**"), by and between the District and Grays Development Company, Inc. (the "**Developer**") which sets forth the procedure for documenting, certifying, and reimbursing the Developer for certain costs related to Public Improvements that may be lawfully funded by the District and acquiring Public Improvements; and

WHEREAS, the Board has reviewed the information provided in accordance with the Acquisition Agreement and has determined that the best interests of the District, its residents, users, and property owners would be served by the District's acquisition of the Public Improvements from the Developer; and

WHEREAS, the Board desires to acquire certain of the Public Improvements from the Developer, subject to the availability of District funds for such purpose.

NOW, THEREFORE, be it resolved by the Board of the District as follows:

1. Acquisition of Improvements. The District hereby agrees to accept the Fencing and Retaining Wall on Tract A of the Vistas at West Mesa project, as further outlined in **Exhibit A**, attached hereto and incorporated by reference.

2. Engineer's Certification. The Developer has provided the information as required by the Acquisition Agreement, as applicable, in form and substance satisfactory to the District (or has provided assurance acceptable to the District, that the Developer will provide such information) and the District is in receipt of an "**Engineer's Verification.**" attached hereto as **Exhibit B.**

3. Definitions. Capitalized terms not defined herein, shall have the meanings set forth in the Acquisition Agreement.

Signature page follows.

ADOPTED THIS 19TH DAY OF JULY, 2024.

**VISTAS AT WEST MESA METROPOLITAN
DISTRICT**

Officer of the District

APPROVED AS TO FORM:
WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the District

EXHIBIT A

Tract A Fencing and Retaining Wall Improvements

EXHIBIT B
Engineer's Verification

Attachment B
Vistas at West Mesa Metropolitan District
Infrastructure Acquisition 1 Checklist

General				Application for Acceptance of District Eligible Costs; District Acquired Improvements																		District Acquisition of Public Infrastructure / Additional Requirements				
Improvement	Current Ownership	Proposed Ownership	Ready for District Acceptance	Construction Drawings	Copies of Contracts and Change Orders	Copies of Invoices, Statements, and Payment	All Real Property Conveyed	As-Built Drawings	Engineer's Cost Certification	Accountant's Cost Certification	Engineer's Certification	Assignment of Warranties	District Maintenance Agreement	O&M Manuals	Underground Facility Locates	Landscape Certification	Test Results	Pressure Tests	Insurance Information	Bill of Sale	Special Warranty Deed	District Preliminary Walkthrough	District Engineer's Punchlist	Landscape Architect's Punch-list	Completion of Punchlists	
Centennial Townes Filing No. 1																										
Tract A - Wall	Developer	District	Yes	Yes	Yes	Yes	Legal	No	Yes	No	No	Legal	Legal	N/A	N/A	N/A	No	N/A	Yes	Legal	Legal	Complete	None	Issued	Yes	
Tract A - Fence	Developer	District	Yes	Yes	Yes	Yes	Legal	No	Yes	No	No	Legal	Legal	N/A	N/A	N/A	No	N/A	Yes	Legal	Legal	Complete	None	Issued	Yes	
Phase 1 - Landscaping	Developer	District	Yes	Yes	No	No	Legal	No	No	No	No	Legal	Legal	No	N/A	No	N/A	N/A	No	Legal	Legal	Complete	None	Issued	No	



BILL OF SALE
(Phase 2 Landscape Improvements)

KNOW ALL MEN BY THESE PRESENTS that GRAYS DEVELOPMENT COMPANY, INC., a Colorado corporation, hereinafter referred to as “Seller”, for good and valuable consideration, the receipt of which is hereby acknowledged, paid by the VISTAS AT WEST MESA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 2154 E. Commons Ave., Suite 2000 Centennial, CO 80211 (the “District”), has bargained and sold, and by these presents, does grant, assign, and convey unto the District, its successors and assigns, all of its right, title and interest in the Phase 2 Landscape Improvements of the Vistas at West Mesa Development Final Landscape Plan, as further described herein in **Exhibit A** (the “Improvements”), and all things of value, including all work product, both tangible and intangible, including legal, accounting, engineering, and management costs related thereto, accruing from the costs associated with the provision of the Improvements.

TO HAVE AND TO HOLD the same unto District, its successors and assigns forever; and Seller, its successors and assigns, shall warrant and defend the sale of the Improvements, property, services and facilities made unto the District, its successors or assigns, against all and every person or persons whomsoever, and warrants that the conveyance of the Improvements, property, services and facilities to the District, its successors and assigns, is made free from any claim or demand whatever.

IN WITNESS WHEREOF, Seller, by and through its authorized representatives, hereby executes this Bill of Sale as of this 20th day of September, 2024.

By: _____
Its: _____



N.E.S. Inc.
619 N. Cascade Avenue, Suite 200
Colorado Springs, CO 80903
Tel. 719.471.0073
Fax 719.471.0267
www.nescolorado.com
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VISTAS AT WEST MESA

PUD
DEVELOPMENT PLAN
MINOR AMENDMENT
0 CENTENNIAL DRIVE

DATE: 5.16.22
PROJECT MGR: C. LIEBER
PREPARED BY: J. SHAGIN

ENTITLEMENT

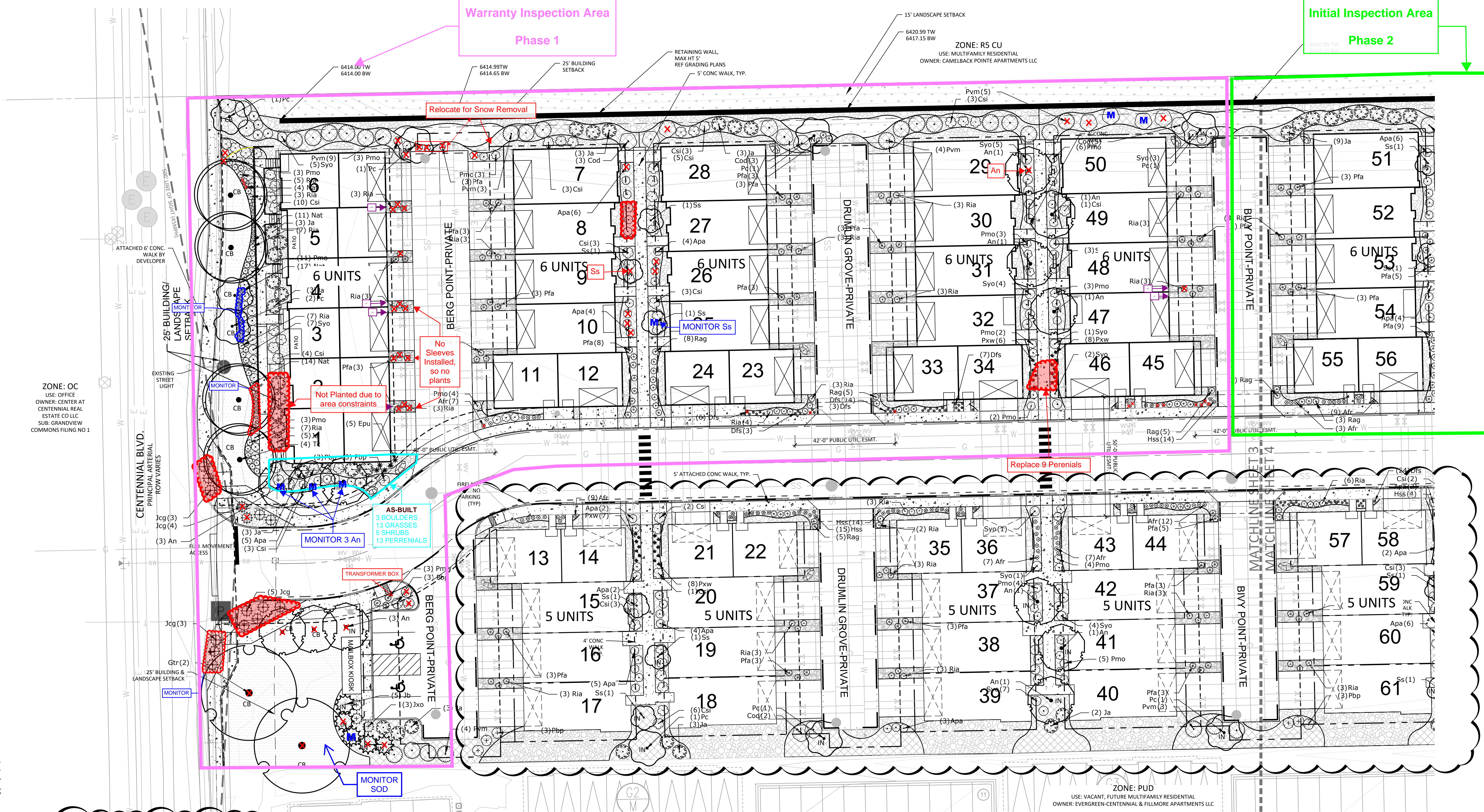
DATE: BY: DESCRIPTION:

FINAL LANDSCAPE PLAN

7
7 OF 18

Initial Inspection Area
Phase 2

Warranty Inspection Area
Phase 1



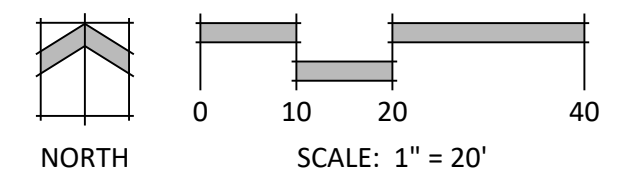
CONCEPT PLANT SCHEDULE		
	ROCK COBBLE 2-4" Speckled White River Rock	24,110 sf
	SHRUB BED 3/4" Regal Rose Decorative Rock Mulch	21,905 sf
	SOD Kentucky Blue Grass Blend	7,354 sf
	EL PASO COUNTY LOW GROW SEED MIX El Paso County Seed Mix Sideoats Grama - 29% Buffalograss - 25% Blue Grama - 20% Western Wheatgrass - 20% Green Needlegrass - 20% Sand Dropseed - 1% Drilled at 21 PL5/Acre, Hydroseeded on slopes 3:1 & Greater at 42 PL5/Acre	15,344 sf

N.E.S. Inc.
619 North Cascade Ave, Suite 200
Colorado Springs, CO 80903
719-471-0073

Inspected by: **CAD**
Inspection Date: **6-18-2024**

***NOTE: Heucheras (Coral Bells) o'located on south side of building may be substituted for Delosperma (Ice Plant) or any of the low-growing varieties of Nepeta faassenii (Catmint)

- Landscape Legend
- Missing/Dead
 - Missing/Dead (Does NOT need to be replaced)
 - Missing/Dead **M**
 - A/C Units
 - Phase Boundaries



SEE SHEET 5 OF 18 FOR PLANT SCHEDULE/LANDSCAPE NOTES

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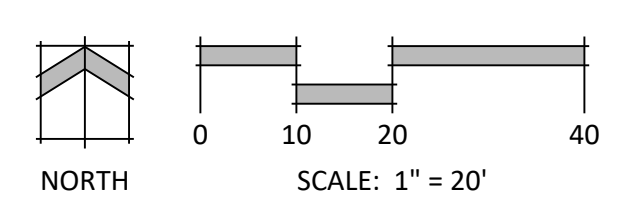
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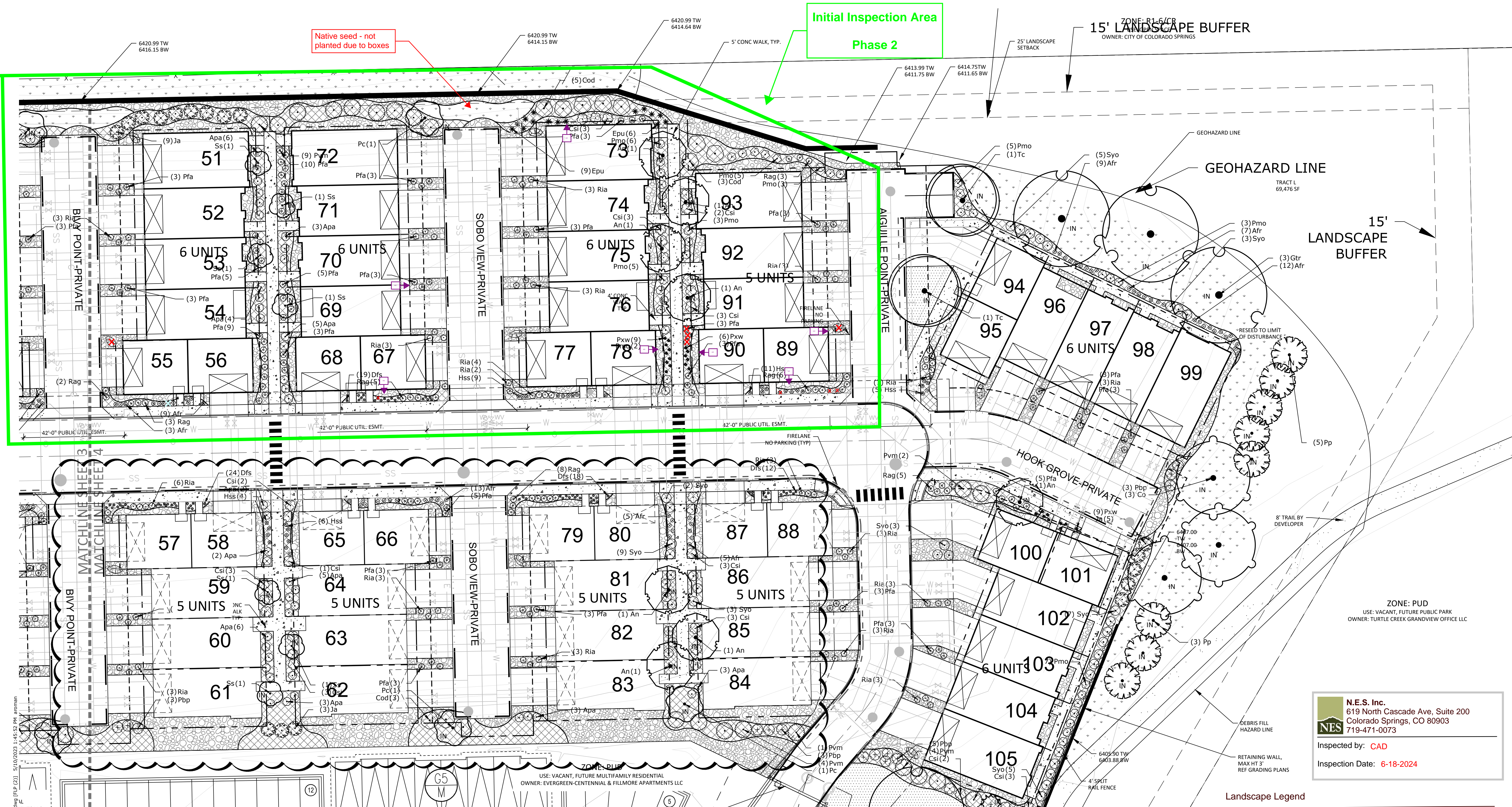
SEE SHEET 5 OF 18 FOR PLANT SCHEDULE/LANDSCAPE NOTES

ENTITLEMENT

DATE:	BY:	DESCRIPTION:

FINAL LANDSCAPE PLAN

8 OF 18
PUDD-23-0022



Native seed - not planted due to boxes

Initial Inspection Area
Phase 2

15' LANDSCAPE BUFFER
OWNER: CITY OF COLORADO SPRINGS

15' LANDSCAPE BUFFER

CONCEPT PLANT SCHEDULE

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WARRANTY AGREEMENT

(Phase 2 - Landscape Improvements)

This WARRANTY AGREEMENT (“**Agreement**”) is entered into to become effective as of September 20, 2024 (the “**Effective Date**”), by and between VISTAS AT WEST MESA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and GRAYS DEVELOPMENT COMPANY, INC., a Colorado corporation (“**GDC**”). The District and GDC are sometimes collectively referred to herein as the “**Parties**” or individually as a “**Party**.”

RECITALS

WHEREAS, the District and GDC entered into an Infrastructure Acquisition and Reimbursement Agreement dated March 11, 2021 (the “**Acquisition Agreement**”); and

WHEREAS, GDC has constructed certain public improvements described in **Exhibit A** (the “**District Improvements**”); and

WHEREAS, GDC and the District entered into that certain Bill of Sale, dated September 20, 2024, related to the District Improvements; and

WHEREAS, pursuant to the Acquisition Agreement, conditions precedent of the District’s acceptance of the District Improvements include (1) an assignment of any warranties or guaranties and (2) a Warranty Agreement in form and substance acceptable to the District; and

WHEREAS, the District and GDC desire to state their intentions with regards to the warranty for the District Improvements.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, GDC and the District hereby agree as follows:

TERMS AND CONDITIONS

1. Warranty for District Improvements. GDC agrees to warrant and to make any repairs or changes required by the District to the District Improvements for a period of one year following the execution of this Agreement (the “**Warranty Period**”). GDC further warrants to the District that the District Improvements are of good quality and new unless otherwise required or permitted, and that the District Improvements conform to the District’s requirements. District Improvements not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The obligations under this Agreement shall automatically terminate for each of the Improvements upon the expiration of the Warranty Period.

2. Assignment of Warranties. To the extent that warranties, including warranties for materials, subcontractors and material suppliers, are still in effect at the time that the District accepts ownership of the District Improvements in accordance with the Acquisition Agreement, GDC agrees that such warranties, if assignable, will be assigned to the District. To the extent that

such outstanding warranties are not legally assignable, GDC hereby agrees to enforce such warranties on behalf of the District during the Warranty Period.

3. Indemnification. GDC hereby represents that no liens or claims have been filed against the Improvements and agrees to resolve any claims at its expense and to indemnify and hold harmless the District, its successors, and assigns, against all liabilities, losses and/or damages of any kind arising out of any liens, claims, demands, costs, judgments, and/or other expenses associated with any act or omission of GDC related to the Improvements; the foregoing specifically includes, without limitation, attorney's fees. Any and all damage or incidents must be reported to the District immediately after its occurrence.

4. Default. If either party to this Agreement 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, after giving ten (10) days written notice to the other party of the alleged default, and upon said party in default having failed to cure said breach within ten (10) days, the other party shall have the right to pursue any remedy available by law or in equity.

5. Assignment. This Agreement, inclusive of any of the rights, obligations, duties and/or authority hereunder, may not be assigned, in whole or in part, by the District or GDC without the prior, written consent of the other parties, which consent shall not be unreasonably withheld. Any assignment made in violation of this Section shall be immediately void and of no force or effect. Consent to one assignment shall not constitute consent to any subsequent assignment, nor shall it constitute a waiver of any right to consent to such subsequent assignment. For purposes of this Agreement, assignments shall include all delegations.

6. Amendment. This Agreement may only be modified, amended or changed, in whole or in part, by way of a written agreement, executed by both parties with the same formalities as this Agreement.

7. Choice of Law/Venue. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, 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. 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, GDC shall carry on its duties and obligations under this Agreement during any legal proceedings until and unless this Agreement is otherwise terminated. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

8. 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.

9. Severability. If any covenant, term, condition or provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition or provision shall not affect any other provision contained herein, the intention being that such provisions 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.

10. Counterpart Execution. This Agreement may be executed in 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.

11. No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended confer upon, or give to, any third person or entity that is not a party hereto any right, remedy, or claim hereunder. All of the covenants, terms, conditions, and provisions of this Agreement exist for the sole and exclusive benefit of the District, and GDC.

12. Notices. Except as otherwise provided herein, all notices or payments given under this Agreement must be made in writing and shall be hand delivered, sent by Certified U.S. Mail with return receipt requested, sent via First Class U.S. Mail, or sent via facsimile to the following addresses:

The District:	Vistas at West Mesa Metropolitan District c/o White Bear Ankele Tanaka & Waldron 2154 E. Commons Avenue Suite 2000 Centennial, Colorado 80122 303.858.1800 (phone) growley@wbapc.com
---------------	---

GDC:	Grays Development Company, Inc. 555 DTC Parkway, Suite 330 Greenwood Village, CO 80111 Attention: Ryan Lantz (303) 501-0175 (phone) rlantz@lokalhomes.com
------	---

All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received one (1) day after sent via email, hand delivery or facsimile, or three (3) days after deposit with the United States Postal Service. Either the District or GDC

may change the address to which future notices shall be sent by written notice, sent as described above.

13. Attorney Fees. In the event of any litigation involving the District or GDC concerning the subject matter of this Agreement, the prevailing party in such litigation shall receive from the losing party, in addition to the amount of any judgment or other award entered therein, all reasonable costs, expenses and attorney's fees incurred by said prevailing party during litigation.

14. Further Assurances. The District and GDC each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their respective obligations hereunder.

15. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein. No waiver of any default hereunder shall be deemed to constitute a waiver of any subsequent default hereunder.

[Signature Pages Follow]

Entered into and executed as of the date first written above.

GDC:

**GRAYS DEVELOPMENT COMPANY,
INC.**, a Colorado corporation

By: _____

Printed Name

Title

GDC Signature Page to Warranty Agreement

DISTRICT:

VISTAS AT WEST MESA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

Officer of the District

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the District

District Signature Page to Warranty Agreement

EXHIBIT A to WARRANTY AGREEMENT
(District Improvements – Phase 2 Landscape Improvements)



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VISTAS AT WEST MESA

PUD
DEVELOPMENT PLAN
MINOR AMENDMENT
0 CENTENNIAL DRIVE

DATE: 5.16.22
PROJECT MGR: C. LIEBER
PREPARED BY: J. SHAGIN

ENTITLEMENT

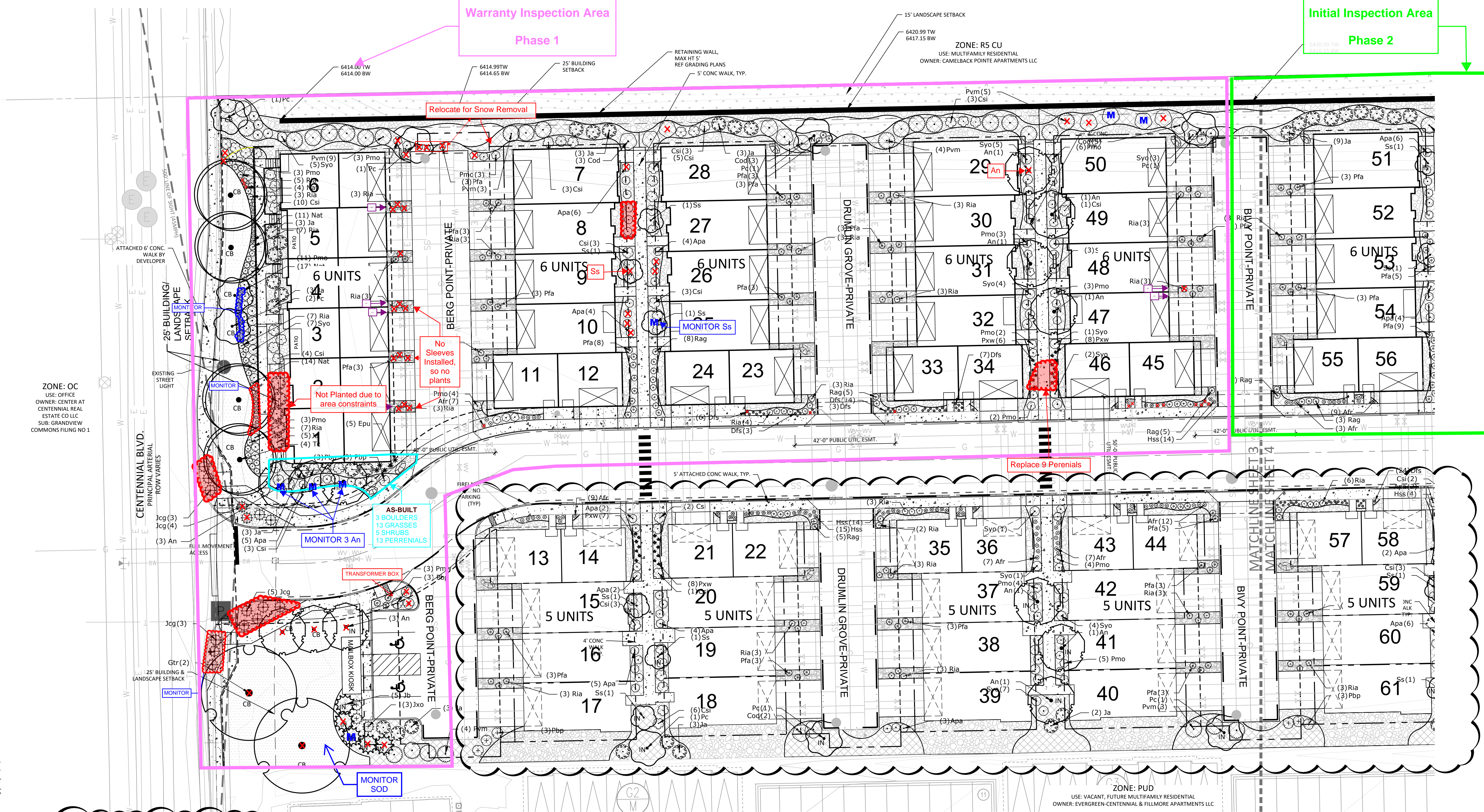
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FINAL LANDSCAPE PLAN

7 OF 18

Initial Inspection Area
Phase 2

Warranty Inspection Area
Phase 1



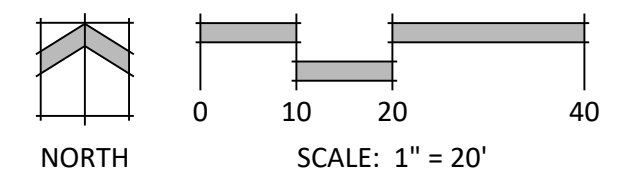
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719-471-0073

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- Missing/Dead
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 - A/C Units
 - Phase Boundaries



SEE SHEET 5 OF 18 FOR PLANT SCHEDULE/LANDSCAPE NOTES

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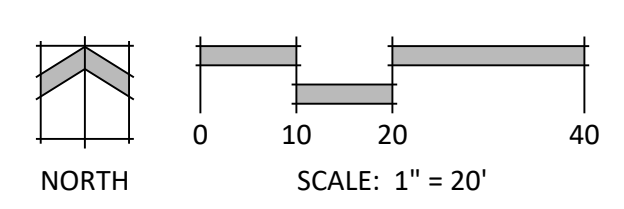
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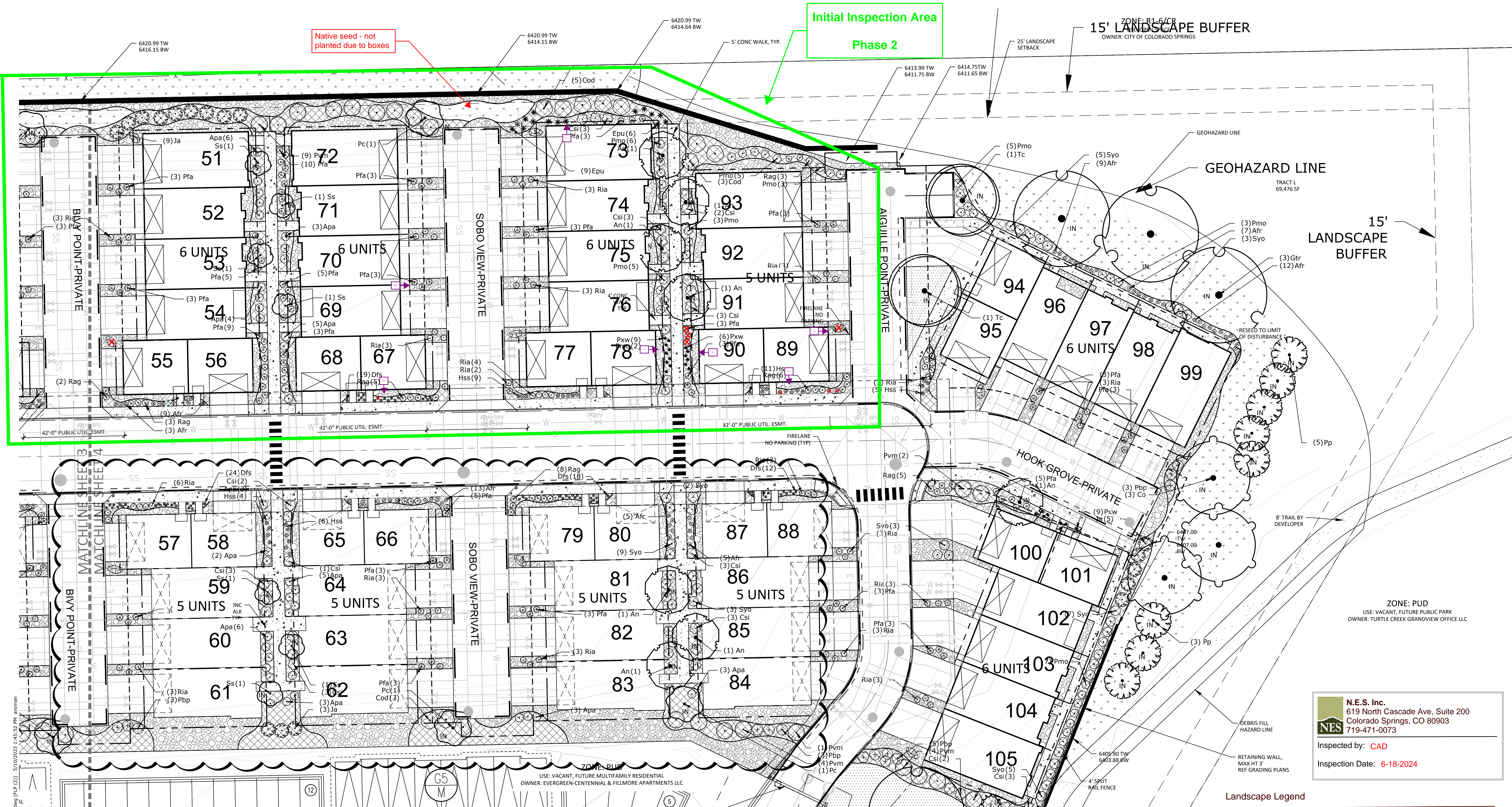
SEE SHEET 5 OF 18 FOR PLANT SCHEDULE/LANDSCAPE NOTES

ENTITLEMENT

DATE:	BY:	DESCRIPTION:

FINAL LANDSCAPE PLAN

8 OF 18
PUDD-23-0022



Native seed - not planted due to boxes

Initial Inspection Area
Phase 2

15' LANDSCAPE BUFFER
OWNER: CITY OF COLORADO SPRINGS

15' LANDSCAPE BUFFER

GEOHAZARD LINE

HOOK GROVE-PRIVATE

SOBO VIEW-PRIVATE

ANGUILE POINT-PRIVATE

BIVY POINT-PRIVATE

CONCEPT PLANT SCHEDULE

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**RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
VISTAS AT WEST MESA METROPOLITAN DISTRICT**

REGARDING ACQUISITION OF PUBLIC IMPROVEMENTS

WHEREAS, Vistas at West Mesa Metropolitan District, City of Colorado Springs, El Paso County, State of Colorado ("**District**"), is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, the District was formed, inter alia, for the purpose of designing, acquiring, constructing, installing, operating, maintaining and financing street improvements, parks and recreational facilities, storm sewer improvements, water improvements, traffic and safety controls, transportation improvements, mosquito control, television relay and translator facilities, fire protection improvements, and sanitary sewer improvements (collectively, the "**Public Improvements**") within and without the boundaries of the District; subject to any limitations contained in the Service Plan for the District; and

WHEREAS, in accordance with § 32-1-1001(1)(f), C.R.S., the District has the power to acquire real and personal property, including rights and interests in property and easements necessary to its functions or operations; and

WHEREAS, the District has entered into an Infrastructure Acquisition and Reimbursement Agreement, dated March 11, 2022 (the "**Acquisition Agreement**"), by and between the District and Grays Development Company, Inc. (the "**Developer**") which sets forth the procedure for documenting, certifying, and reimbursing the Developer for certain costs related to Public Improvements that may be lawfully funded by the District and acquiring Public Improvements; and

WHEREAS, the Board has reviewed the information provided in accordance with the Acquisition Agreement and has determined that the best interests of the District, its residents, users, and property owners would be served by the District's acquisition of the Public Improvements from the Developer; and

WHEREAS, the Board desires to acquire certain of the Public Improvements from the Developer, subject to the availability of District funds for such purpose.

NOW, THEREFORE, be it resolved by the Board of the District as follows:

1. Acquisition of Improvements. The District hereby agrees to accept the Landscape Improvements for Phase 2 of the Vistas at West Mesa project, as further outlined in **Exhibit A**, attached hereto and incorporated by reference.

2. Engineer's Certification. The Developer has provided the information as required by the Acquisition Agreement, as applicable, in form and substance satisfactory to the District (or has provided assurance acceptable to the District, that the Developer will provide such information) and the District is in receipt of an "**Engineer's Verification.**" attached hereto as **Exhibit B.**

3. Definitions. Capitalized terms not defined herein, shall have the meanings set forth in the Acquisition Agreement.

Signature page follows.

ADOPTED THIS 20TH DAY OF SEPTEMBER 2024

**VISTAS AT WEST MESA METROPOLITAN
DISTRICT**

Officer of the District

APPROVED AS TO FORM:
WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the District

EXHIBIT A

Phase 2 Landscape Improvements



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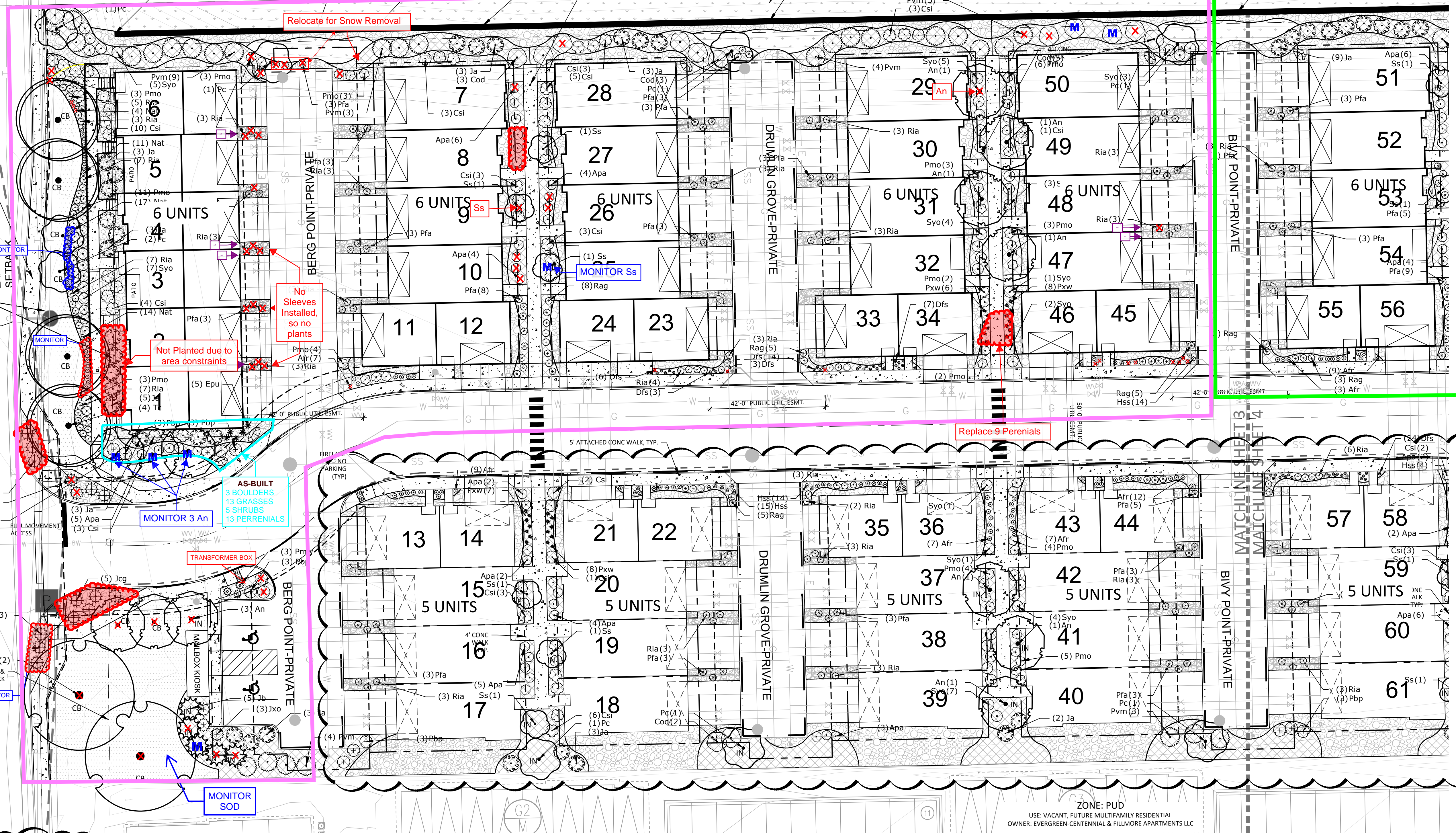
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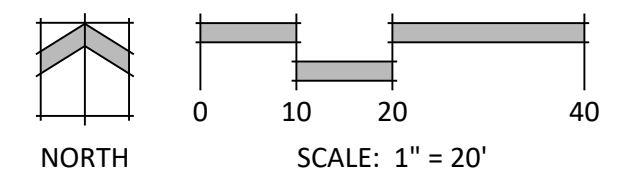
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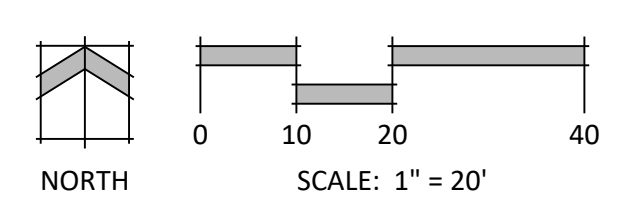
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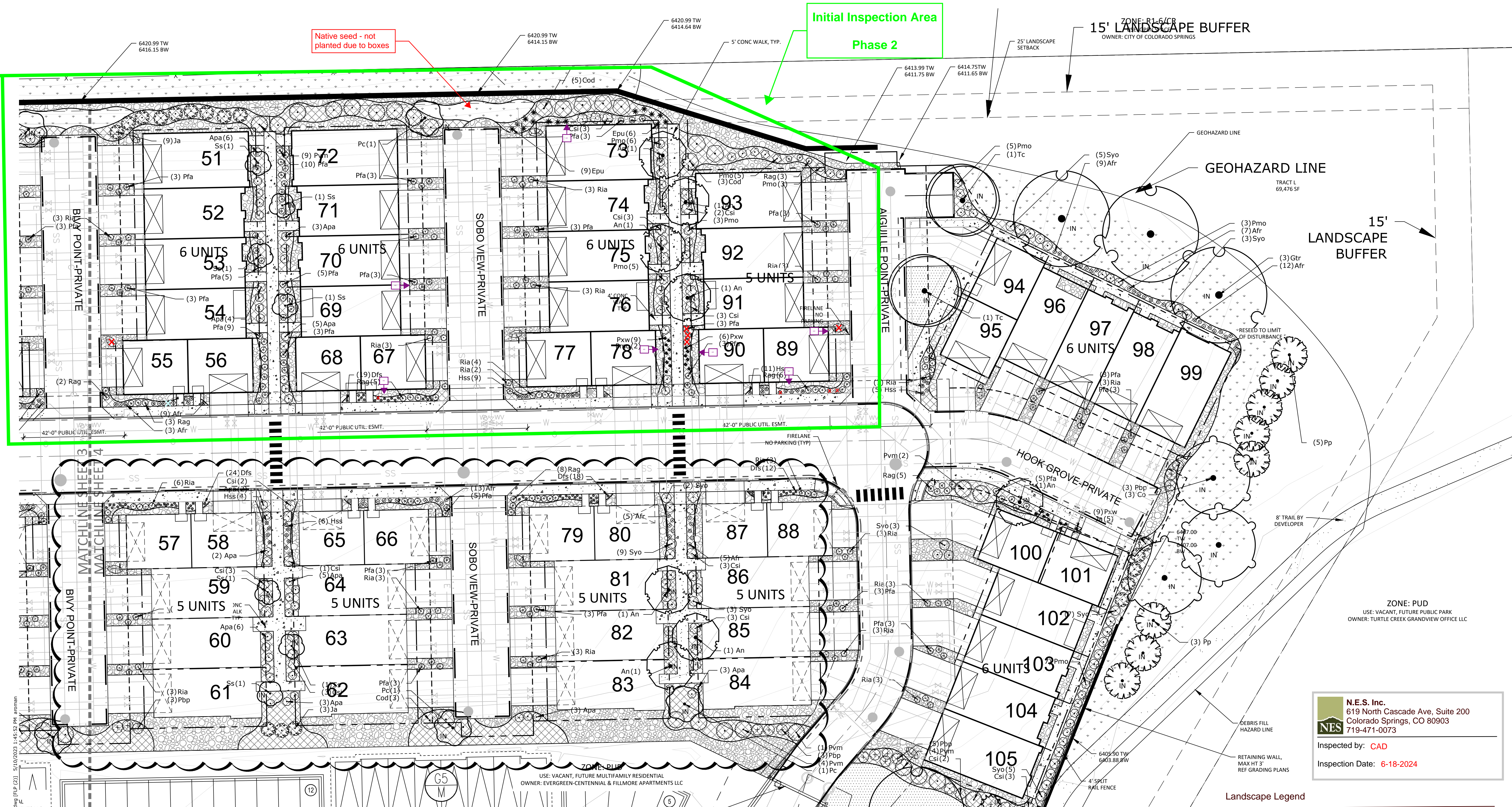
SEE SHEET 5 OF 18 FOR PLANT SCHEDULE/LANDSCAPE NOTES

ENTITLEMENT

DATE:	BY:	DESCRIPTION:

FINAL LANDSCAPE PLAN

8 OF 18
PUDD-23-0022



Native seed - not planted due to boxes

Initial Inspection Area
Phase 2

15' LANDSCAPE BUFFER
OWNER: CITY OF COLORADO SPRINGS

15' LANDSCAPE BUFFER

GEOHAZARD LINE

HOOK GROVE-PRIVATE

SOBO VIEW-PRIVATE

ANGUILE POINT-PRIVATE

BIY POINT-PRIVATE

CONCEPT PLANT SCHEDULE

	ROCK COBBLE 2-4" Speckled White River Rock	24,110 sf
	SHRUB BED 3/4" Regal Rose Decorative Rock Mulch	21,905 sf
	SOD Kentucky Blue Grass Blend	7,354 sf
	EL PASO COUNTY LOW GROW SEED MIX El Paso County Seed Mix Sideoats Grama - 29% Buffalograss - 25% Blue Grama - 20% Western Wheatgrass - 20% Green Needlegrass - 20% Sand Dropseed - 1% Drilled at 21 PLS/Acre, Hydroseed on slopes 3:1 & Greater at 42 PLS/Acre	15,344 sf

P:\Local\Homes\Fillmore and Centennial Residential\Drawings\Final\land\Vistas at West Mesa_FLP_MINOR AMENDMENT.dwg (PLP 23)_25/10/2023 1:45:52 PM araman

EXHIBIT B
Engineer's Verification

