

Proposed New 4th Amendment to the ROTB Condominium Declaration

Condominium Board Explanation

Version 12, 1/5/2021

This document is an explanation of a proposed 4th Amendment to our Condo Declaration that we have received from the legal team representing the tentative buyers of the rights to develop the front lots at the Retreat on the Blue (ROTB).

This document covers what our condo board currently understands about this proposed amendment along with a list of Pros and Cons regarding approval of this new amendment. It may be of benefit for some of our ROTB owners to read the History and Status of the ROTB Commercial Property document that we have placed in the notices section of our website at <http://www.retreatontheblue.org> under Community Information. That summary provides the background story on how the ROTB was developed and how we got to this point where we now have a potential development for the vacant lots out front.

The 4th Amendment to our Declaration was generated by the attorney for the buyers and updated by our HOA attorney after consultation with our board. In a few cases, our board updated some of the provisions that are in this amendment.

What exactly is in this 4th Amendment to Our Condo Declaration?

One important point about this amendment is that it is organized in such a way that it may apply to either a Declarant who wants to build according to the rules of the 3rd Amendment or the rules specified in this new 4th Amendment. The new Declarant will be the party purchasing the rights to develop and that party has committed to a development plan as set forward in this new amendment and explained in this document.

The 4th Amendment that we are sending out for approval is serving 5 purposes. The first 3 were driven by the needs of the potential buyers. The 4th item below expands on a provision in the 3rd Amendment and the 5th item was driven by homeowner concerns over the allowed height of portions of any new buildings.

1. It creates an allowance for a commercial building with more than one unit per building. The new addition must have at least one commercial unit but otherwise may consist of up to six units that are used for commercial or residential purposes. The new development will be managed and assessed by the Commercial Members of our Board and will have no rights to use or benefit from what currently consists of the ROTB HOA. Our existing residential units will be managed and assessed in the same way they are now.

Back in 2014, when we last approved an amendment to our Declaration, we already had 36 residential units in 6 buildings that were turned over to the condominium association and the remaining buildings that were originally planned for the front lots were commercial buildings. The

preferred plan that the ROTB LLC had at the time was a model where one commercial owner would own one unit in each building and lease out commercial spaces. Under the 3rd Amendment, the buildings were restricted to one unit.

In order to handle a more general building configuration with more than one unit in a building and allow for individual ownership of each unit, a change is required that removes this restriction where the building has to be one unit. Changes were also necessary to allow for residential usage in the new building.

2. It creates an allowance for a developer to place a single, larger building on one of the two lots and allows for additional parking on the other lot.

Since our HOA approved the 3rd Amendment, Silverthorne relaxed their frontage requirements and started to allow a new building to be closer to the street. This essentially allowed for a larger building on each lot. By placing the new, larger building closer to the south lot line that is shared with Rainbow Run, and closer to the street, this is a more efficient use of the remaining land for parking and snow storage.

The allowed square footage of one new single building will remain essentially the same as was originally intended for two separate buildings. The amendment does not rule out two buildings but the total area for any new development must meet the terms of this amendment which is 6400 sq. feet. The current development plan that will be presented to the town has one building.

3. It provides language that is needed to support a new provision where one group of board members (the Commercial Members) manages the new building (with both new commercial and residential occupants in it) and this part of our combined board administers a separate budget for the new Common Elements on the site; all of which will be Limited Common Elements for the new owners. One of the Limited Common Element will be the parking area on the north lot. That parking area is shown in Exhibit A in the amendment but this area may change at any point up until the town approves this plan.

This provision allows our existing board, which currently covers all Residential units, to manage what we have now and not get too involved with things that pertain to the new building or some specific areas on what is now the Future Development Sites. The combined board, consisting of two commercial board members and three residential board members, is still in place. Those owners who own the units that are used for residential purposes in the new building will only vote for the Commercial Members of the Board since all of their expenses and what they can access will be controlled by those members alone. Residential owners in the new building can also be commercial members of the board.

4. It provides for specific expenses that will be shared between the New Development and our existing HOA. These are the same areas covered in the 3rd Amendment which we approved in 2014 but the

provision for how we will split these shared expenses is different than what we had in the 3rd Amendment.

The two boards will split those specific shared expense (itemized below) by the ratio of the total floor space in the new building versus the total floor space of the whole complex after the new building is in place. Using the proposed 6400 square foot as a building size, this amounts to having the new unit owners in the new building pay for about 13% of these shared costs.

The areas included as shared expenses are the costs of snow removal, the costs of all maintenance of the shared roadways, and the costs of insurance associated with these shared roadways. The shared roadways are the entry driveways (which will eventually be reduced to one driveway) and the drive lanes in the access driveways on the west side of Buildings B and E. With this arrangement for separating our paved roadway expenses, the new owners will be paying for 100% of the costs associated with all of their new parking areas. Our existing homeowners will be paying for 100% of the costs associated with our HOA's remaining driveways (the driveways along the garages, the inside driveways, and all of our existing parking spaces). All of the new sidewalks and landscaping on the lots will also be paid for by the owners of the new units.

5. It provides a way to limit the building height for a one story building.

When our HOA Executive Committee and ROTB LLC inserted language in the 3rd Amendment to reduce the original two buildings to one story, we made no specific provision for building height. Today's architects are designing one story commercial buildings with features that can be as high as the town code allows; 35 feet.

In early 2019, we worked with the same potential buyers to find a way to limit the height of the building in such a way that it would preserve some of the views of the mountains for owners in the affected buildings; this would be Building B under the proposed development plan shown in Exhibit A. Our reasoning was that a one story building of the type of architecture that was common in the early 2000's might have a maximum height of about 25 feet. We then developed an agreement where the allowed height for a new building has to be such that the sight lines from our existing buildings would be the same or lower than what would be the case with a 25 foot limit along a north-south line in the middle of each lot. This effectively allows for a higher building out along the street but only about 18 feet on the east side of the lots. This is explained in the amendment and shown in Exhibits A and B in the amendment.

If instead of using this sight line basis for our height limitation, we had adopted a more uniform height limit of 25 feet, it would be possible for a high entrance feature on the east side of either of the two lots to completely block views of the mountains from some first floor units.

Our condo board also worked with some of our owners, including a few in the B Building, while we were developing this height agreement portion of this new amendment. The buyers subsequently

agreed to this limitation in exchange for our support of the need to modify the terms of the 3rd Amendment in order to meet their needs.

Cost Sharing Considerations

As stated above, our 3rd Amendment already had provisions for sharing the roadway costs for any paved surface areas that are used for commercial owners and their customers as well as our residential homeowners. The overall percentage share of the expenses for services such as snow removal that are allocated to commercial owners (currently 28% in the 3rd Amendment) will drop to about 20% as a result of this new amendment. This is because of the change to a floor space allocation of shared expenses as described above. Since the 4th Amendment provides for more commercial parking than was possible under the 3rd Amendment, this reduction will be limited to about 7% after our north driveway is closed in the near future. We have confirmed the CO Department of Transportation (CDOT) plans to close our north driveway because of the River West development. This is not expected to happen until our ROTB expansion is complete. The monthly dues payments from our current owners will not support these new additions when the new building is turned over to the HOA and the owners of the new units will not be contributing to the residential common expenses for our existing property.

Snow Storage Considerations

This amendment provides for a specific minimum allocation of snow storage space that our existing HOA will share with the new development. This area is less than the total of each of the designated primary snow storage areas on the map that is included in the 3rd Amendment. However, a significant portion of the designated areas that were specified in the 3rd Amendment map in 2014 is not practical for using snow removal equipment.

We have done an extensive comparison of the snow storage capacity under each of the amendments and now believe that our snow storage capacity under this new amendment will be on par or slightly better than with what we could realistically use under the 3rd Amendment. The developers have agreed to use a portion of their parking area for their own snow if necessary. We cannot at this time predict how much additional space for snow storage will be available but the buyers are working with our board as they finish their design and prepare to present their development to the town for approval. Our conclusion is that this issue is not likely a major issue.

It should be noted that our HOA will face higher snow removal costs when any new development is in place on the currently undeveloped property. There is a likelihood that we will have to store snow in areas where we have not previously used for snow storage; thus impacting some of the areas in back of the B and E buildings, to the west of the north trash disposal garage, or other portions of our complex. Snow cannot be stacked very high in any of these areas. As stated above, any new development will result in our HOA getting financial support from the owners of the new units which will help offset the cost of having to occasionally haul snow from our property. The planned closure of the north driveway

will allow us to use a portion of that space for snow stacking and storage. This additional capacity will partially offset the risk of having to haul a lot of snow off of the property.

Additional Provisions in the 4th Amendment

The entire exterior of any new building will be part of the HOA common elements as will other internal building components that are not part of a unit. However, the building and the new parking area are solely to be used by unit owners in the new building thus will become Limited Common Elements (LCE) for use by those owners. The land on the north lot will also be identified as a LCE but we will have guaranteed access to a shared storage space on the northernmost portion of the north lot (now a minimum of 5062 square feet of space) for shared snow storage. The Declarant still has a right to provide for additional snow storage in other areas as necessary.

This new amendment allows for up to 37 total parking spaces with up to 24 of them in the proposed parking area on the north lot. The actual number of spaces that are eventually configured will be dependent on the final building and parking area design but will likely end up with at least 16 spaces in the parking area. The proposed 24 space parking area plan is subject to town approval because that plan includes parking spaces on the north side of the entry driveway (now our south driveway).

We will be effectively operating under two budgets and retain everything in our existing financial arrangements including our reserve funds for use solely for our existing residential units. This is essentially the same way we would have to operate if a new development were to be introduced under the provisions of the 3rd Amendment.

While the units that may be constructed under the terms of this new amendment can be sold separately, the buyers plan to purchase the commercial units and any residential units themselves and lease the residential units to their employees. This does not rule out other owners of some of the units at some future time.

Pros and Cons of Adopting this Proposed 4th Amendment

Advantages of this 4th Amendment

1. It has proven very difficult to develop the front lots under the specific set of constraints that were placed in the 3rd Amendment approved in 2014. By allowing for a building configuration with more than one unit in a building, all the owners in the new building will share the cost of maintaining the common aspects of the new building. If the new development was limited to one unit, that unit's owner would essentially have to pay dues that are needed to support the whole building. That might be a problem and a potential risk to the HOA.

2. It is not likely that the ROTB LLC would ever find a better set of businesses for our complex. The proposed dental and engineering business types, along with a possible expansion to add business of the type allowed by our Declaration, is an excellent match for a new neighbor.
3. By approving this new amendment, we are setting the stage for a new building to be added to the ROTB complex but the owners of this new building will only contribute to the portion of our existing common HOA expenses related to the shared roadway areas and we will not be contributing to the expenses related to the new development. Our current HOA's overall Operating expenses should still be reduced when the new building is completed and turned over to the HOA. This is because the new owners will share the roadway and snow removal expenses covered above. The extent of this potential reduction will not be known until the new development is approved.
4. By providing for parking in one lot and a building in the other, we are ensured that the parking requirements of the commercial business employees and customers will not impact our residential parking spaces in back of Building B and E. This new amendment is required if such a parking area is to be allowed.
5. The height limitation in this new amendment provides additional safeguards against a very high single story building or a very high portion of a building that is too close to either Building B or E. If we only have the "single story" restriction, this could be very hard to enforce.
6. By allowing for residential components in a new building, this new amendment gives the commercial owners additional flexibility to tailor their investment for different uses. This allows the owners to support leased housing for their employees in units that they own. They may also sell the units if necessary.
7. The proposed development plan places their building on the far southwest portion of our ROTB property thus minimizing the impact of a new building on the current views of the mountains from our existing B and E Building Units. Combined with the height limit feature of this amendment, this is a significant improvement over what we might expect if a project is developed per the constraints specified in the 3rd Amendment. If anything is developed according to the requirements of the 3rd Amendment, all of the 14 units in the B and E Buildings could potentially have a much more restrictive impact.

Aspects of the 4th Amendment that May or May not be a Disadvantage

1. This amendment allows for new residential units in the new mixed-use building. Our existing Residential Members of the Board of Directors will have no management control over the new building. However, the Rules and Regulations for our HOA will cover all of the Residential Units in the HOA (including the new units). In addition, the new units in any new building will still have to meet all of the provisions of our Declaration and Bylaws as modified by this amendment. We may run into some enforcement issues with such an arrangement.

In the near term, we should not be running into problems with enforcement. The new buyers will be the Declarant, the business occupants, and the owners of each of the units on the site. They are both long time Summit County residents that have established businesses in Silverthorne; one being

a dental business and the other a structural engineering business. The dental business will be the primary occupant of the new building.

Disadvantages of this 4th Amendment

1. The proposed site plan in the new amendment currently includes parking spaces on the north side of the entry driveway. This arrangement may be a traffic risk during our peak summer and winter seasons. The 3rd Amendment provided for one more parking spaces on the south side of the driveway but none on the north side.

It is likely that Silverthorne will not approve a plan with this many parking spaces on the entry driveway; especially once the north driveway will be closed. As such, our board believes that the buyers will be forced to limit the number of parking spaces in their new parking area thus alleviating this issue. If the new development does reduce their planned number of parking spaces as a result of this issue, it may also improve our snow storage situation.

The developers are clearly aware that they may have to limit their parking arrangement to the point where they have fewer spaces on their proposed parking area on the north lot. This 4th Amendment is designed such that other alternative parking arrangements are still allowed.

If the town approves their parking plan and the driveway parking access becomes a problem, our full board will have to solve this problem and possibly limit the use of the north side of the entry driveway. This space might be able to be used for additional snow storage or possibly for temporary parking only.

This issue is not that different from the 3rd Amendment parking arrangement where we would have parking on both sides of our access drive lanes that are between the new development and our B and E buildings. Now that the north entry driveway will be closed, this creates a similar risk on the access drive lanes.

2. As described in the Cost Sharing Considerations section of this document, the buyers have insisted that we change the basis for sharing our shared roadway expenses from 50-50 to a ratio that is based on floor space. This ratio is now the percentage of the total floor space in the new development compared to the total floor space in all of our ROTB buildings after the new building is in place. This new percentage is only 13%. These shared roadways are just the entry driveways and the drive lanes behind Building B and E. While the new owners will pay for all of the expenses relating to the additional parking spaces in their parking area, this does not completely offset the change to a floor space basis.

The argument in favor of this change was that floor space is the way we allocate expenses in general for our Association. Up to 4 of the units in the new building will be residential units. The 3rd Amendment forced both buildings to be entirely commercial. This difference from the 3rd Amendment shared roadway expense formula will result in approximately a 7% reduction in the

expected commercial contribution to these expenses as compared to what we would have expected using a 50-50 split as in the 3rd Amendment.

Summary

In summary, it is unlikely that another new potential buyer will come along and be interested in these lots with the same restrictions as specified in this new 4th Amendment. As such, it will likely take a future amendment to our Declaration to meet any specific list of requirements for any buyer. It is also not clear if another buyer would agree to the same height limits that we have managed to secure with the current prospective buyers.

Our current board is of the opinion that this amendment is sufficient to put it up for a vote. Our board has also decided to produce this document with its list of advantages and possible disadvantages of this new amendment as compared to the constraints in the 3rd Amendment. Our job as a board is to allow our homeowners to make their own decision after we provide the necessary background required for this particular step in the evolution of the Retreat on the Blue Condominium. In general, our board has spent a lot of time on this amendment and currently believes it is the right way to move forward.

Having said the above, it is very important that every ROTB condo owner vote on this matter. In order to declare this amendment approved, it has to be approved by 67% or more of the voting contribution of our owners or rejected by 34% or more in writing. The ROTB Condo Declaration assigns a given vote percentage to each unit based on floor space. As such, an amendment like this can pass with slightly less than the two thirds majority of owner approvals.

Any questions regarding this amendment can be directed to Dave Yost via email at dyost@dgy.com or any of the other board members by means of the board contact capability on our website. Our board can also refer questions directly to the attorney for the buyers if necessary.

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