

**RULES AND REGULATIONS CONCERNING ENCROACHMENTS
TO COMMON ELEMENTS/FACILITIES
LAWSON HILL SUBDIVISION/PUD**

Effective Date: September 20, 2017

Background/Authority

These Rules and Regulations (“**Rules**”) of The Lawson Hill Subdivision/PUD (“**Community**”) have been adopted and implemented to protect the investment of the members and to enhance the values of the properties subject to regulation by The Lawson Hill Propertyowners’ Company, a Colorado nonprofit corporation (“**HOC**”).

These Rules are promulgated in accordance with the authority of the HOC as provided for in the Declaration for Lawson Hill Subdivision/PUD, recorded April 16, 1992, at No. 276371 in Book 490 at page 925 (“**Declaration**”), the Plats for the Community, the Articles of Incorporation and Bylaws for the HOC, as the same have been or may be amended and supplemented from time to time (“**Governing Documents**”). Terms which are defined in the Governing Documents shall have the same meaning herein, unless defined otherwise in these Rules. In the event of a conflict between these Rules and the terms and conditions of the Declaration, the terms and conditions of the Declaration shall control.

All Common Elements/Facilities are regulated and restricted under the Governing Documents and these Rules, which will be administered by the HOC. Further restrictions or requirements by San Miguel County also affect some of these areas. In accordance with the Governing Documents:

1. The HOC owns, maintains, manages and otherwise administers the “Facilities” within the Community, which consist of “all the real or personal property, including but not limited to all common open space and landscaping installed by the Declarant, owned or leased by the HOC or otherwise held or used by the HOC, under the HOC's management or control by, through or under contractual arrangements, licenses or other arrangements, including Property Furnished by Declarant, real property or interest therein, improvements on real property, and personal property and equipment.” The Facilities include the beneficial rights and interests under easements and other agreements which benefit the HOC.

2. The HOC, through its Executive Board, is authorized, empowered and directed to, among other things: (a) adopt, amend and enforce rules and regulations applicable within Lawson Hill with respect to any Facility or Function, (b) to enforce rules and regulations applicable within Lawson Hill with respect to any Facility or Function, and to implement the provisions of this Declaration, the Articles of Incorporation or Bylaws of the HOC (c) to regulate use of any and all Facilities to assure fullest enjoyment of use by the persons entitled to enjoy and use the same, (d) to regulate the use, maintenance, repair, replacement and modification of the Common Elements, (e) to grant easements for any period of time, including permanent easements leases, licenses and concessions through or over the Common Elements; to promote the general health, safety and welfare of persons within Lawson Hill; and (f) to protect and preserve property, property values and property rights.

Common Elements/Facilities Encroachment Rules

Homeowners are prohibited from encroaching on any part of the HOC Common Elements/Facilities. Encroachment is defined as assuming illegal occupancy, control, possession or use of any part of the Common Elements/Facilities through unauthorized use, extension of property line, placement of hardscaping, storage of materials, dumping (grass or vegetation trimmings and other materials),

dumping snow, erecting structures or making changes or improvements of any nature. The placement of modest landscaping, such as bushes and grass which does not involve clearing, grading or irrigation facilities does not necessarily constitute an encroachment as determined by the HOC on a case by case basis.

These Rules do not cover instances where an encroachment occurs on an adjoining lot or unit and the resolution of any such issues are outside the scope of these Rules. Any such encroachments shall be handled by the respective lot owners.

The foregoing notwithstanding, the HOC recognizes that homeowners in the Community have made various improvements that encroach on the Common Elements/Facilities. Historically, most transactions involving the purchase and sale of lots in Lawson Hill occurred without the aid of a survey. The HOC recognizes and anticipates that future sales of Lawson Hill lots may well result in increasing numbers of survey being required by the buyer or the buyer's lender and that such surveys may identify encroachments onto Association owned Common Elements/Facilities. The HOC anticipates that the buyer and seller involved in these transactions will begin to request the HOC to review and approve such encroachments and execute documentation allowing the encroachment to remain in place. Currently, the HOC does not have a mechanism in place that would allow for it to fairly and uniformly consider and act upon such requests.

To protect the HOC Common Elements/Facilities for the benefit of all homeowners, and to prevent further similar encroachments in the future, the HOC's Board has initiated procedures to address existing encroachments and to regulate and restrict future encroachments. The goal of the Board is to reclaim the HOC's property when necessary and to offer accommodations to homeowners to allow for the retention of the encroachments whenever possible where the needs of the Community are not compromised by the encroachment. The Board reserves the right to exercise its discretion when considering and deciding which encroachments must be removed or modified. The criteria for making such decisions will include the extent and nature of the encroachment, the impact on the HOC and adjoining property owners. The Board also acknowledges that there is not a perfect solution and its decisions will be made on a case by case basis.

Therefore, the following procedure will be followed:

1. **Initial Assessments by the HOC.** In instances where the HOC's staff is aware of a potential encroachment onto the HOC Common Elements/Facilities, the staff will bring this issue to the attention of the HOC Board to discuss and, potentially act upon. This does not mean that the HOC staff is required to investigate conditions that might involve encroachments throughout the community. In some cases this will be difficult and some margin of error should be expected since, a professional property line survey will not be obtained.

2. **Procedures if an Encroachment is Determined to Exist.** If the HOC reasonably determines - following its initial assessment – that an encroachment exists on any of the Common Elements/Facilities which could impact current or future Association operations and may need to be removed or altered consistent with these Rules, the following procedures shall take place:

2.1. **HOC to Send Written Notice.** The HOC shall send written notice to the homeowner advising of the preliminary assessment that an encroachment exists on Common Elements/Facilities and needs to be removed or altered consistent with these Rules. The notice shall indicate the general nature and location of the encroachment. This notice will also request the homeowner contact the HOC to discuss the encroachment within a reasonable period of time, not to exceed 30 days. Should a homeowner, upon receiving a notice of encroachment, dispute that an encroachment has occurred or dispute other facts contained in the notice, the homeowner must respond

to the HOC in writing within 30 days from the mailing date of the notice. Failure to respond will be considered acceptance of the HOC's preliminary determination. If a homeowner disputes the HOC's preliminary determination due to an unclear property line boundary or marker, the HOC will commission a professional survey of the pertinent property line by a licensed surveyor. Costs for the survey will be allocated as follows: (a) If the survey confirms the HOC's determination of encroachment, the homeowner will pay 100% of the survey cost; (b) If an encroachment is confirmed but it is determined that the encroachment is 12 inches or less from the surveyed property line at all points, the HOC and the homeowner will each bear 50% of the survey cost; and (c) If the survey confirms that no encroachment has occurred the HOC will bear 100% of the cost.

2.2. **Pre-existing Encroachments.** For encroachments that have occurred prior to the Effective Date of these Rules, the encroachments shall be deemed to be "grandfathered" and the following procedures shall apply beginning with the provision of the notice required by Section 2.1:

2.2.1. The homeowner shall apply for an encroachment authorization from the HOC. The request shall note the following information:

A. The name and contact information for the homeowner and affected Lot.

B. A summary describing the nature and location of any encroachments that have been places onto the HOC's Common Elements/Facilities and when the improvements that constitute the encroachments occurred. The information should include reasonably accurate measurements indicating the extent of the encroachment onto the HOC's Common Elements/Facilities. Other documentation depicting the encroachment such as current photographs should be provided. The summary should advise if permits from the HOC and the County were applied for and received and copies of such permits should be provided. The HOC has the right to request additional information appropriate for its review on a case by case basis.

2.2.2. The HOC, through the Executive Board, shall schedule a review of the encroachment authorization application and notify the homeowner of the day and time. The homeowner is encouraged to attend and present information about the encroachments. Other interested homeowners are allowed to attend the meeting and present information about the encroachments. Notice of the review meeting will be provided in the manner established for providing notice for a design review board review.

2.2.3. Unless the HOC determines that the encroachment either: (a) materially interferes with the HOC's current or future use of the impacted Common Elements/Facilities for other HOC functions, (b) constitutes a safety hazard, or (c) was installed after the Effective Date of these Regulations, the HOC may approve the application encroachment authorization application, contingent upon the general conditions noted in Section 2.2.4.

2.2.4. The approval of encroachment authorization application shall be conditioned upon the following:

(a) The approval and grant of the license to retain the encroachments shall terminate if the encroachments are damaged or destroyed, meaning that they cannot be rebuilt such that the improvements would encroach onto the Common Elements/Facilities and must remain entirely on the homeowner's lot.

(b) The encroachments may not be expanded, enlarged, altered or otherwise improved, unless approved in advance by the HOC in its sole discretion.

(c) If the HOC needs to undertake work to the Common Elements/Facilities impacted by the encroachment, the HOC may undertake such actions and activities and is not responsible for repairing, replacing or restoring the encroachment if impacted by the work of the HOC.

(d) In no case will the approval of an encroachment authorization application constitute a waiver by the HOC of its fee simple title and ownership of the Common Elements/Facilities and the homeowners will be required to acknowledge this as part of the documentation of the agreement on pre-existing encroachment.

(e) Homeowner, at its sole cost and expense, is responsible for promptly repairing, maintaining and generally keeping the approved pre-existing encroachment in good order, condition and repair. If homeowner fails or refuses to keep the approved pre-existing encroachment in good order, condition and repair, the HOC may, but need not, elect to correct such condition or remove the encroachment, and shall be able to recover costs and expenses incurred by the HOC from homeowner, which amount may be assessed against homeowner's lot and collected and enforced as a regular assessment as provided for in the Governing Documents, including the imposition of a lien on the lot.

(f) Homeowner is responsible for pursuing and obtaining any and all required plan and permit approvals required for the approved pre-existing encroachment from San Miguel County. Nothing herein shall obviate or alter such obligations to secure necessary county approvals or to comply with applicable County Land Use Code requirements.

(g) The HOC, in reviewing and approving the encroachment authorization application makes no guarantees that the improvements are fit for any particular use or purpose by homeowner. Homeowner should rely upon its architects, engineers, contactors and other design/construction professionals to assure the homeowner that the proposed improvements and/or uses are safe, appropriate and suitable for homeowner's intended use.

(h) Homeowner agrees to obtain casualty, general liability and any other insurance coverage covering the encroachment in amounts reasonably acceptable by the HOC, naming the HOC as an additional insured.

(i) Homeowner agrees to indemnify, defend and hold the HOC and its members and staff harmless from and against any and all loss, damage, penalty, fine, liability, expenses (including reasonable attorneys' fees), or claims in connection with the granting of the encroachment authorization application and the continuing use of the improvements covered by the encroachment authorization application by the homeowner, including any guests, invitees and other users of the encroachment.

(j) Such other terms, conditions, requirements or limitations as deemed necessary and appropriate by the HOC.

(k) Homeowner and the HOC shall enter into an Encroachment License Agreement reflecting these conditions, which shall be in form and content acceptable to the HOC. The License Agreement shall be recorded.

(l) The homeowner is responsible for reimbursing the HOC for costs and expenses incurred by the HOC in reviewing and processing a request for the

encroachment permit, including, without limitation, consultant fees.

2.2.5. If the homeowner fails or refuses to respond to the first notice sent pursuant to Section 2.1 and initiate and complete the process required in Section 2.2 within 30 days of the sending of the notice, the HOC shall send a second written notice. Should the homeowner fail to respond or act within 30 days of the second notice, a hearing will be set by the HOC to be conducted by the Executive Board and a notice of the hearing will be sent to the homeowner. If the matter is not addressed to the reasonable satisfaction of the Executive Board, the HOC may elect to treat the encroachment as a non-compliant use and proceed with the steps noted in Section 2.3.

2.2.6. Irrespective of whether a homeowner received notice from the HOC pursuant to these Rules, the homeowner is allowed and encourages to request HOC review and approval of an encroachment onto the HOC's Common Elements/Facilities that conforms to the provisions of Section 2.2, which will be administered in the manner provided for in Section 2.2.

2.3. **New Encroachments.** As stated in these Rules, a homeowner should take all appropriate steps to avoid the placement of encroachments on the HOC's Common Elements/Facilities and, except for exceptional circumstances as determined by the HOC in its sole discretion, new encroachments will not be tolerated or allowed as provided for in Section 2.2 and shall be acted upon by the HOC as provided for in this Section 2.3. For encroachments that have occurred after the Effective Date of these Rules, the following procedures shall be followed:

2.3.1. The HOC will notify the homeowner and provide an outline of the encroachment area. The homeowner will have 60 days from the mailing date of this notice to remove the encroachment and restore the Common Elements/Facilities to the conditions existing prior to the impact to the HOC's reasonable satisfaction.

2.3.2. Upon receipt of notification from the homeowner of the completion of restoration requirements for the encroachment area, the HOC, if it is satisfied following a site visit, will confirm its satisfaction and provide formal notice of satisfaction to the homeowner.

2.3.3. Restoration of an encroachment area requires, as far as is reasonably feasible and to the HOC's satisfaction, returning the area to its original natural condition.

2.3.4. Any plantings necessary to restore the area to its original natural condition shall be consistent with the Community and San Miguel County listing of approved native trees, shrubs and grasses.

2.3.5. The HOC also reserves the right to remove the encroachment and restore the area at the homeowner's expense should the homeowner fail to do so within 180 days from the date of the mailing of the formal notice. The homeowner will be notified in writing in advance of such action by the HOC. The homeowner is responsible for reimbursing the HOC for costs and expenses it incurs in these undertakings.

2.3.6. All HOC remedies available for collection of past due annual assessments set out in the Governing Documents will apply to unpaid penalties under these Rules.

3. **ENFORCEMENT.** These Rules are to be enforced in the manner provided for in the Declaration.

4. **MISCELLANEOUS.**

4.1. **Conflict of Documents.** In the event of a specific conflict between the Governing Documents and these Rules, the Governing Documents shall prevail.

4.2. **Notices.** Notices called for by these Rules shall be sent by the HOC to homeowners via certified mail at the address on file with the HOC.

4.3. **No Waiver.** Failure by the HOC, the Board or any person to enforce any provision of these Rules shall in no event be deemed to be a waiver of the right to do so thereafter.

4.4. **Definitions.** Unless otherwise defined in these Rules, initially capitalized or terms defined in the Declaration and Bylaws shall have the same meaning herein.

4.5. **Supplement to Law.** The provisions of these Rules shall be in addition to and in supplement of the terms and provisions of the Declaration, Bylaws, and the applicable law.

4.6. **Deviations.** The Board may deviate from the procedures set forth in these Rules if in its sole discretion such deviation is reasonable under the circumstances.

4.7. **Severability.** The provisions of these Rules shall be deemed to be independent and several, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or decree of any court of competent jurisdiction, shall in no way affect the validity or enforceability of the remaining provisions, which provisions shall remain in full force and effect.

4.8. **Construction.** Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

4.9. **Caption and Headings.** The captions and headings to the sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed so as to define, limit or otherwise describe the scope of these policies and procedures or the intent of any provision hereof.

APPROVAL AND EXECUTION

The foregoing Rules are hereby adopted by the HOC as of the Effective Date.

The Lawson Hill Propertyowners' Company, a Colorado nonprofit corporation

By: Bill de Alva

Bill de Alva, president LHPOC