

SETBACK AGREEMENT

This **Setback Agreement** ("Agreement") is entered into this 4th day of September 2024 by and between **L P P O Association, a Colorado non-profit corporation** (the "Association") and **Jeffrey Blake Martensen and Dorsey Brown Martensen**, whose legal address 1219 N. Winnetka Ave., Dallas, TX 75208 (collectively, "Martensen") (collectively, the "Parties").

Recitals

A. Martensen owns the real property in La Plata County known as Parcel No. 508936403028, a/k/a 2001 Lake Purgatory Dr., Durango, CO 81301 (the "Martensen Property").

B. Martensen started constructing an addition to the existing residence on the Martensen Property. The proposed addition creates a violation of the setback restrictions found in the Protective Covenants of Unit 1, Lake Purgatory Subdivision La Plata County, Colorado (the "Covenants"), recorded on January 15, 2016 at Reception No. 1106999 in the La Plata County Clerk and Recorder's Office.

C. Martensen owns the vacant property adjacent to the Martensen Property known as Parcel No. 508936403029, a/k/a 2033 Lake Purgatory Dr., Durango, CO 81301 (the "Vacant Parcel").

D. Martensen intends to adjust the boundaries between the Martensen Property and the Vacant Parcel so as to eliminate the setback violation created by the addition to the residence on the Martensen Property; however, Martensen desires to continue construction on the addition prior to legally finalizing the boundary adjustment.

E. The Association is willing to allow Martensen to continue construction on the addition to the residence on the Martensen Property prior to the boundary adjustment being complete in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Permission to Commence Construction.** The Association authorizes Martensen to continue construction of the addition to the residence on the Martensen Property in accordance with the terms and conditions of this Agreement.

2. **Requirement to Eliminate the Setback Violation.** Martensen acknowledges and agrees that the proposed addition to the residence on the Martensen Property creates a violation of the setback requirements found in the Covenants. Martensen agrees to eliminate the setback violation by taking the following actions:

- a. Martensen shall submit an application to La Plata County to legally adjust the boundaries between the Martensen Property and the Adjacent Parcel so as to

eliminate all violations of the setback requirements in the Covenants on the Martensen Property.

- b. Martensen shall diligently pursue approval of the boundary adjustment application and use their best efforts to obtain final approval of a boundary adjustment plat from La Plata County no later than October 1, 2025. Said final plat shall be recorded in the real property records for La Plata County.
- c. If La Plata County does not approve the boundary adjustment plat on or before October 1, 2025, and such failure to approve is due entirely to Martensen's failure to diligently pursue the approval process, timely or adequately respond to County requests for additional information or documentation, or similar, Martensen agrees to pay to the Association a sum of \$25/day until such approval is obtained. Any amounts charged to Martensen by the Association under this Agreement shall be considered assessments under the Covenants and the Association may take all actions authorized under the Covenants and law to collect unpaid assessments.

3. **Failure to Obtain La Plata County Approval.** If La Plata County denies or does not approve Martensen's application to adjust the boundaries between the Martensen Property and the Adjacent Parcel, and after Martensen exhausts all rights to appeal the denial of such application, Martensen agrees to eliminate the setback violation by recording in the real property records a covenant restricting the placement of any structure on the Adjacent Parcel to within 20 feet of the Martensen Property. A covenant restriction for the Adjacent Parcel shall run with the land and be approved by the Association prior to recording, and no such covenant restriction may prevent or prohibit construction of improvements on the Adjacent Property.

4. **Additional Violations.** Nothing herein shall be construed as authorization by the Association to construct the addition to the residence on the Martensen Property in violation of any requirement in the Covenants or other governing document, except as expressly set forth herein.

5. **Payment to the Association.** At the time of execution of this Agreement, Martensen shall pay the Association \$1,500.00.

6. **General.**

a. Should legal action be required to enforce the terms, covenants and conditions of this Agreement, including but not limited to any action to require specific performance of the terms, covenants and conditions of this Agreement, the prevailing party in any such litigation shall be entitled to recover its costs and expenses incurred therein, including reasonable attorney's fees.

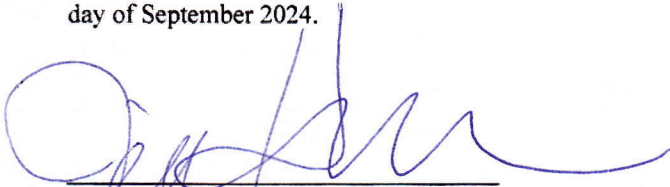
b. The Parties agree that the above agreement constitutes the entire agreement.

c. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any dispute arising out of or related to this Agreement shall be

exclusively brought and maintained in the State Court located in La Plata County, Colorado.

d. Martensen and the Association have had the opportunity to have this Agreement reviewed by independent counsel of their selection, and have either exercised or freely waived such right.

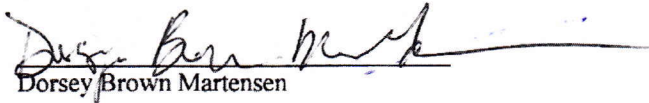
IN WITNESS WHEREOF, the Parties have executed this Setback Agreement this 30th day of September 2024.



L P P O Association
By: Jill Haviland
Its: President



Jeffrey Blake Martensen



Dorsey Brown Martensen