



## MEMORANDUM

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**DO NOT RECORD THIS ORDINANCE UNTIL  
APPROVED TO DO SO BY TOWN ATTORNEY**

**TOWN OF PALISADE, COLORADO  
ORDINANCE NO. 2020-08**

**AN ORDINANCE OF THE TOWN OF PALISADE, COLORADO  
VACATING A PORTION OF PEACH AVENUE NORTH OF THIRD  
STREET AND RESERVING A UTILITY EASEMENT.**

**WHEREAS**, Section 31-15-702(1)(a)(I), CRS., and Section 43-2-303(1)(a), C.R.S., permit the Town of Palisade to vacate any platted or dedicated public street, road or other public way whether or not it has been used as such, following certain findings of fact; and

**WHEREAS**, Section 43-2-303, C.R.S., requires that public roadways and other public ways must be vacated by ordinance; and

**WHEREAS**, High Country Orchards, LLC (“Owner”) applied to the Town for the vacation of the western fifty feet of that portion of Peach Avenue north of Third Street and south of the railroad shown and described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter the “Right-of-Way”) be vacated, reserving unto the Town a twenty foot utility easement, also shown on Exhibit A (the “Utility Easement”); and

**WHEREAS**, Owner owns property to the west and adjacent to the Right-of-Way with a Mesa County Assessor Parcel No. 2937-092-34-001 (“Owner’s Property”) that has historic significance to the Town; and

**WHEREAS**, the Town supports the redevelopment of Owner’s Property and the preservation of the historic structure which will encourage economic development and activity in this area of the Town; and

**WHEREAS**, the Right-of-Way was historically used in conjunction with uses on Owner’s Property because the railroad created a dead end of the Right-of-Way prohibiting through access; and

**WHEREAS**, with the zero-lot line construction of the historic structure adjacent to the Right-of-Way, the vacation of the Right-of-Way will facilitate the redevelopment of Owner’s Property; and

**WHEREAS**, Owner intends to enhance the redevelopment of Owner’s Property by installing landscaping and outdoor uses on the Right-of-Way; and

**WHEREAS**, public notice has been given as required by Section 3.08 of the Palisade Land Development Code for the vacation of the Right-of-Way; and

**WHEREAS**, said application was reviewed before the Planning Commission on March 3, 2020, as required by Article 4 of the Palisade Land Development Code; and

**WHEREAS**, the Planning Commission has recommended to the Board of Trustees that the Right-of-Way be vacated; and

**WHEREAS**, with the Right-of-Way terminating at the railroad and approximately ten feet remaining east of the Right-of-Way for pedestrian access, it has been determined by the Town of Palisade that the Right-of-Way is no longer of need to the Town so long as the Utility Easement is reserved.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PALISADE, COLORADO:**

**Section 1.** The Board of Trustees of the Town of Palisade adopts the foregoing recitals and conclusions as facts and determinations and incorporates them by reference as if set forth in full herein.

**Section 2.** Pursuant to C.R.S. §43-2-303, the Board of Trustees of the Town of Palisade hereby finds that the action of vacating the Right-of-Way shall not leave any land adjoining said property without an established road connecting said land with another established public road; the remaining ten feet of public right-of-way to the east of the Right-of-Way provides adequate pedestrian access; and reserving the Utility Easement preserves the rights of the public.

**Section 3.** The Right-of-Way shown and described on Exhibit A is hereby vacated, and this vacated Right-of-Way shall merge with the Owner's Property as provided by C.R.S. §42-3-302; provided, however, pursuant to C.R.S. §43-2-303(3), there is hereby reserved by the Town a non-exclusive twenty foot utility easement in, over, under and across the Right-of-Way shown on Exhibit A, including the perpetual right to enter upon said property at a time that it may see fit, and to construct public infrastructure systems in, over, under and across the Right-of-Way and to repair, replace, relocate, inspect, operate, and maintain said systems. As such, no permanent structures shall be placed on the Utility Easement and Owner shall be required to remove any temporary structures or fencing in the event the Town needs to enter upon and work in the Utility Easement.

**Section 4.** The adoption of this Ordinance is expressly conditioned upon Owner's restoration of the historic structure on Owner's Property for a commercial purpose open to the public and receipt of a certificate of occupancy by the deadline as set forth herein. Owner shall apply for a building permit for the restoration of the historic structure by December 31, 2020 and shall receive a certificate of occupancy within two years from the issuance of the building permit, at which time the Town Clerk shall file for record in the office of the Mesa County Clerk and Recorder a certified copy of this Ordinance making it effective pursuant to C.R.S. §42-3.303(2)(f). If Owner does not redevelop Owner's Property and apply for a building permit by December 31, 2020, or receive a Certificate of occupancy within two years from the issuance of the building

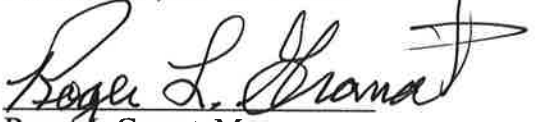
permit, this Ordinance shall not be recorded and the approval of the vacation of the Right-of-Way shall expire and be null and void; provided, however, if Owner encounters unforeseen circumstances in the restoration of the historic structure on Owner's Property as a result of a force majeure event, such as, war, riots, fire, flood, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of energy or supplies, and acts of state or governmental action prohibiting or impeding Owner performing its obligations, the deadline to receive a certificate of occupancy shall be extended by two additional years.

**Section 5.** Upon the issuance of a building permit for the redevelopment of Owner's Property, the Town hereby grants an exclusive license to Owner for its use of the Right-of-Way related to construction and redevelopment of Owner's Property. The license shall expire upon the first of the following to occur: (1) the recordation of this ordinance and the effective vacation of the Right-of-Way whereby the license merges with the Owner's ownership of the Right-of-Way, or (2) the expiration of the approval of the vacation of the Right-of-Way by owner not receiving a certificate of occupancy by the deadline set forth in Section 4, above. The Town agrees to cooperate with Owner and any reasonable request of Owner's contractor or lender to execute documents or instruments to carry out the intent of this license to further the redevelopment of Owner's Property. During this license period, Owner agrees to indemnify, defend, and hold harmless the Town against any and all claims, liabilities, or demands whatsoever relating to or arising out of the use of the Right-of-Way, the construction on Owner's Property, or arising out of or related to this license.

**Section 6.** In executing this document, Owner waives all objections it may have over the final disposition of the Right-of-Way vacation and its merger pursuant to state statute, defects, if any, in the form of this document, the formalities for execution, or over the procedure, substance, and form of this Ordinance or resolutions adopting this document.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED** at a regular meeting of the Board of the Trustees of the Town of Palisade, Colorado, held on March 10, 2020.

TOWN OF PALISADE, COLORADO

By:   
Roger L. Granat, Mayor


ATTEST:

  
Town Clerk



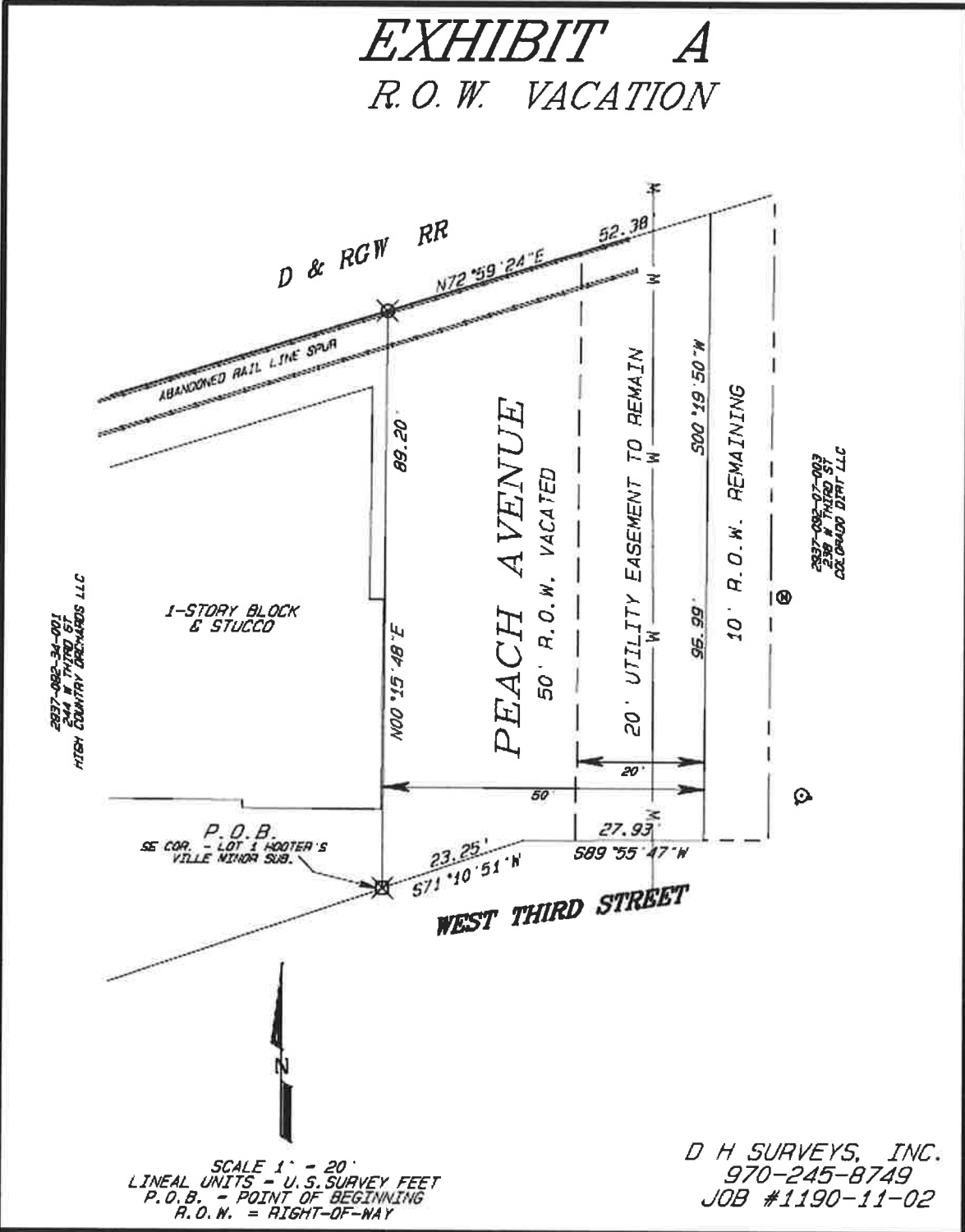
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OWNER:  
HIGH COUNTRY ORCHARDS, LLC

  
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Scott High, Manager

# EXHIBIT A

## R.O.W. VACATION



**EXHIBIT A**

**Description of Vacated Right-Of-Way**

A strip of land to be vacated, being a part of Peach Avenue, lying north of West Third Street and south of the railroad, Town of Palisade, Colorado, being described as follows:

Beginning at the southeast corner of Lot 1, Hooter's Ville Minor Subdivision;  
thence N00°15'48"E a distance of 89.20 feet along the east line of said Lot 1 to the railroad right-of-way;  
thence N72°59'24"E a distance of 52.38 feet along said railroad right-of-way;  
thence S00°19'50"W a distance of 96.99 feet to the north right-of-way of West Third Street;  
thence S89°55'47"W a distance of 27.93 feet along said right-of-way;  
thence S71°10'51"W a distance of 23.25 feet along said right-of-way to the point of beginning.  
Said strip contains 4,546 square feet more or less.