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STATE OF WYOMING
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IN THE SUPREME COURT, STATE OF WYOMING

RAFTER J RANCH HOMEOWNER'S ASSOCIATION,
a Wyoming nonprofit corporation,

Appellant (Plaintiff),

v.

STAGE STOP, INC.,
a Wyoming profit corporation,

Appellee (Defendant).

RESPONSE BRIEF OF APPELLEE STAGE STOP, INC.

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STATEMENT OF JURISDICTION

Jurisdiction is proper in the Wyoming Supreme Court under Rule 2.01(a) of the Wyoming Rules of Appellate Procedure, in that this is a timely appeal of a final judgment of the Ninth Judicial District Court for Teton County. The final judgment under appeal was issued on January 17, 2024. *See* Rec. at 710-726 (Order on Summary Judgment Motions and Motion in Limine). This was a final, appealable order pursuant to Rule 1.05 of the Wyoming Rules of Appellate Procedure. The final judgment under appeal disposed of all claims and causes of action by and between the parties.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the CCRs for the Rafter J Ranch subdivision permit Lot 333 to be used for apartments intended for the local workforce.

STATEMENT OF THE CASE

This matter involves Stage Stop's proposed use of Lot 333 of the Rafter J Ranch subdivision for apartments intended for members of the local workforce. The Rafter J Ranch subdivision was established in 1978 as a mixed-use subdivision, meaning that it includes a variety of different uses: residential, commercial, open space, etc. *See* Rec. at 175-180 (Rafter J Plat). Lot 333 encompasses 5.37 acres and is identified on the subdivision plat as "Ranch Headquarters & Local Commercial." *See id.* at

176 (Rafter J Plat, at p. 2). The Covenants, Conditions, and Restrictions ("CCRs") for the Rafter J Ranch subdivision declare that Lot 333 may be used "for any commercial purpose." *See id.* at 204 (CCRs, at p. 19, Art. IX, § 1).[1]

On February 15, 2023, the Rafter J Ranch Subdivision Homeowner's Association ("Rafter J HOA"), filed a declaratory action alleging that Stage Stop's proposed use of apartments for the local workforce on Lot 333 violates the subdivision's CCRs. *See id.* at 1-80 (Plaintiff's Complaint). The Rafter J HOA generally alleges that Lot 333 may not be used for any residential purpose whatsoever, even if said use is subordinate to a commercial purpose.

In its answer, Stage Stop generally denied the Appellant's claims and counterclaimed for declaratory relief of its own, alleging that the property is owned and operated as a business venture and apartments are generally considered commercial property because they are distinctly

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[1] The CCRs were submitted by both parties with their respective motions for summary judgment and can be found at Rec. 181-212 and Rec. 358-389. For ease of reading, references to the CCRs in this brief will cite the page number and the section within the CCRs themselves, not the record number.

income producing in character. *See id.* at 104-120 (Defendant's Answer and Counterclaim). Stage Stop sought a determination that its workforce apartments are a commercial use permitted under the CCRs and do not require an amendment thereto.

Both parties filed cross-motions for summary judgment, and on January 17, 2024, the district court held that Stage Stop's proposed use on Lot 333 is permitted by the plain language of the CCRs and granted judgment against each of the Rafter J HOA's claims. *See id.* at 722-726 (Order on Summary Judgment Motions, at pp. 13-17).

STATEMENT OF FACTS

Lot 333 is part of the Rafter J Ranch subdivision in unincorporated Teton County. *See id.* at 163 (Defendant's Statement of Facts, at p. 2, ¶ 1). The subdivision plat was officially approved by the Board of County Commissioners in 1978. *See id.* at 175-180 (Rafter J Plat). Lot 333 encompasses 5.37 acres and is identified on the plat as "Ranch Headquarters & Local Commercial." *See id.* at 176 (Rafter J Plat, at p. 2).

a. Rafter J Ranch Subdivision CCRs.

On January 6, 1978, the original Declaration of Covenants, Conditions, and Restrictions ("CCRs") for the Rafter J Ranch subdivision was filed for record in Teton County. *See id.* at 181-212 (CCRs). Lot 333 is subject to the CCRs. *See* CCRs at p. 27, Exhibit C. Generally speaking,

there are five kinds of land use classifications in the Rafter J Ranch subdivision: residential, multiple dwelling, commercial, common area, and miscellaneous areas (*i.e.*, church area, corral, stables, recreational vehicle storage, and future developable property). *See id.*

EXHIBIT "C"
LAND CLASSIFICATIONS

The lots within the Rafter J Ranch Subdivision have been classified in accordance with Article VIII, Section 1, in the following areas:

CLASSIFICATION		LOT NUMBERS
(a)	Residential	1 through 324
(b)	Multiple Dwelling	325 through 329
(c)	Commercial Area	333, 334, and such portions of future developable property as may be designated
(d)	Common Area	As designated on Exhibit "A"
(e)	Miscellaneous Areas:	
	Church Area	330
	Public Facility Area	331
	Corral and Stables	332
	R. V. Storage	335
	Future Developable Property	As designated on Exhibit "B"

CCRs, at p. 27.

According to the CCRs, lots 1-324 are designated as "residential," and "each residential lot shall be used exclusively for residential purposes, and no more than one (1) family . . . shall occupy such residence." *See id.* at p. 16, Art. VII, § 3(a) (emphasis added). Neither the subdivision plat, nor the CCRs, define the phrase "residential." *See id.* at 164 (Defendant's Statement of Facts, at p. 3, ¶ 7).

Lots 325-329 are designated as "multiple dwelling," and "each multiple dwelling lot shall be used exclusively for residential, recreational, club and related purposes, and no more than one (1) family . . . shall occupy each unit located within such multiple dwelling lots." *See* CCRs at p. 16, Art. VII, § 3(a) (emphasis added). Neither the subdivision plat, nor the CCRs, define the phrase "multiple dwelling," although the CCRs frequently use the terms "condominiums" or "town houses" when referring to multiple dwellings. *See* Rec. at 165 (Defendant's Statement of Facts, at p. 4, ¶ 9); *see also* CCRs at pp. 2, 3, and 4-5.[2] "No commercial, retail or other business activities shall be conducted on or from any residential lot or multiple dwelling lot." *See* CCRs at p. 16, Art. VII, § 3(a).

Lot 333 is designated as a "commercial area" and may be used "for any commercial purpose." *See* CCRs at p. 19, Art. IX, § 1 (emphasis

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[2] According to the first printing of the Teton County Comprehensive Plan and Implementation Program, enacted contemporaneously with execution of the original CCRs, a "condominium" is a "unit in a multi-family dwelling within which each individual unit is intended for separate purchase along with an interest in common in the site on which the multi-family dwelling is located." *See* Rec. at 225.

added). Neither the subdivision plat, nor the CCRs, define the phrase "commercial." *See* Rec. at 165 (Defendant's Statement of Facts, at p. 4, ¶ 13). Other than being subject to the CCRs and such restrictions as may be contained in deeds, leases, or other instruments of conveyance, the CCRs do not include any specific prohibitions or exclusions on the uses of Lot 333. *See* CCRs, at p. 19, Art. IX, § 1. The CCRs do not provide that Lot 333 is to be used exclusively for commercial purposes or otherwise limited to no more than one family. *See id.*

***b. Lot 333 and the Legacy Lodge*.**

Lot 333 presently contains the Legacy Lodge, a two-story, 50,000 square foot building formerly used as an assisted living facility from the completion of construction in 2004 until its closure in 2021. *See* Rec. at 166 (Defendant's Statement of Facts, at p. 5, ¶ 15). Legacy Lodge includes fifty-seven (57) residential units, which vary from studio apartments to two-bedroom apartments. *See id.* at 167 (Defendant's Statement of Facts, at p. 6, ¶ 20). Each unit contains a kitchenette and bathing facilities. *See id.* at 168 (Defendant's Statement of Facts, at p. 7, ¶ 21). The facility also includes a commercial kitchen, common dining area, laundry facilities, and a parking lot that accommodates approximately forty (40) vehicles. *See id.* at 169 (Defendant's Statement of Facts, at p. 8, ¶ 22).

Enlargement of site from Teton County's ownership mapserver

The Legacy Lodge was very active, with a variety of individuals coming and going throughout the day, including residents, management personnel, clerical staff, receptionists, cooks, custodians, maintenance personnel, nurses, security personnel, deliveries, drivers, and guests. *See id.* (Defendant's Statement of Facts, at p. 8, ¶ 23). The facility not only housed elderly residents in need of assistance, but also provided temporary housing for employees and out-of-town family members visiting residents. *See id.* (Defendant's Statement of Facts, at p. 8, ¶ 24). Furthermore, the facility also provided housing for numerous local residents who did not require any assistance and merely lived at Legacy Lodge out of convenience, to be among other elderly residents, to enjoy amenities (such as laundry and meal services), and to take part in the

various activities provided by the facility. *See id.* (Defendant's Statement of Facts, at p. 8, ¶ 25). These residents drove to and from the facility, led an active lifestyle, and paid rent to live at the facility. *See id.*

During the planning process for Legacy Lodge, both the Appellant and the Rafter J Ranch Architectural Review Committee supported the application for an assisted living facility. *See id.* at 167 (Defendant's Statement of Facts, at p. 6, ¶ 18). Despite referring to the facility as "another type of residential use," the Appellant never expressed any concern that the facility would violate the provisions of the CCRs. *See id.* (Defendant's Statement of Facts, at p. 6, ¶ 19); *see also* Rec. at 240 (letter at p. 2) (stating that "the RJARC feels that this facility as another type of residential use with regard to its intended occupants and the density of living units on the site, can and will be an asset to the overall community fabric of Rafter J.").

c. ***Stage Stop*.**

After the closure of Legacy Lodge in 2021, Stage Stop purchased Lot 333. *See* Rec. at 170 (Defendant's Statement of Facts, at p. 9, ¶¶ 27-28). Stage Stop, Inc. is a for-profit corporation. *See id.* (Defendant's Statement of Facts, at p. 9, ¶ 29). Recognizing a need in the community for workforce housing, Stage Stop purchased the facility with the intent to transform it into apartments intended for members of the local

workforce. *See id.* at 170-171 (Defendant's Statement of Facts, at pp. 9-10, ¶ 31). In concept, Stage Stop intends to offer the units for lease to employers in the area in blocks, so there are master leases to local employers who then offer individual units for rent to their employees. *See id.* at 171 (Defendant's Statement of Facts, at p. 10, ¶ 31). Employers will lease blocks of units at rates negotiated by the employer and Appellee. *See id.* The employer will then determine rental rates for its own employees. *See id.* The proposed use for apartments is intended to be carried out as a business conducted to produce income and make a profit. *See id.* (Defendant's Statement of Facts, at p. 10, ¶ 32).

Prior to applying for any permits or approvals with Teton County, Stage Stop met with members of the Appellant, including its then-President, to discuss Stage Stop's intended uses of Lot 333. *See id.* (Defendant's Statement of Facts, at p. 10, ¶ 33). The Appellant did not inform Stage Stop, or caution Stage Stop, that it might consider the proposed uses of Lot 333 to be in conflict with the CCRs. *See id.*

To that end, on May 17, 2022, the Board of County Commissioners approved an amendment to the Rafter J Ranch Planned Unit Development ("PUD") to allow workforce apartments on Lot 333 with conditions, including occupancy limits and approval of a transportation management plan. *See id.* (Defendant's Statement of Facts, at p. 10, ¶

34). On November 15, 2022, the Board of County Commissioners approved a Conditional Use Permit ("CUP") for the requested apartment use under the newly amended PUD, subject to several conditions. *See id.* at 172 (Defendant's Statement of Facts, at p. 11, ¶ 36). The conditions include that each master lease shall be approved by the Housing Department, enlargement of the parking lot, improvement of kitchen facilities, occupancy limitations, and employment of a property manager. *See id.* (Defendant's Statement of Facts, at p. 11, ¶ 37). Neither the amendment to the Rafter J Ranch PUD or the CUP permit Stage Stop to enlarge, expand, heighten, build up, or otherwise modify the footprint of the facility in any way whatsoever. *See id.* (Defendant's Statement of Facts, at p. 11, ¶ 38).

STANDARD OF REVIEW

This Court reviews decisions on summary judgment *de novo*. *See N. Fork Land & Cattle, LLLP v. First Am. Title Ins. Co.*, 2015 WY 150, ¶ 9, 362 P.3d 341, 344 (Wyo. 2015). Summary judgment is appropriate under Rule 56 of the Wyoming Rules of Civil Procedure "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." *See id.* Both parties in this case moved for summary judgment and in so doing stated that there were no issues of material fact.

"Restrictive covenants are contractual in nature and are, therefore, interpreted in accordance with principles of contract law." *Stevens v. Elk Run Homeowners' Association, Inc.*, 2004 WY 63, ¶ 12, 90 P.3d 1162, 1165-66 (Wyo. 2004). Both parties acknowledged before the district court that the CCRs are clear and unambiguous, so their interpretation is a matter of law. *See id.* Questions of law are also reviewed *de novo* by this Court. *See id.*

> As with all contracts, our goal in interpreting restrictive covenants is to determine and effectuate the intentions of the parties, especially the grantor. When the language of the covenants is clear and unambiguous, we look only to the four corners of the instrument itself to determine the parties' intent. The intention of the parties is resolved within the context of the entire instrument, rather than from a single clause. Where the language imposing the restrictions is clear and unambiguous, [we] construe it according to its plain and ordinary meaning without reference to attendant facts and circumstances or extrinsic evidence.

Id. at ¶ 13, 90 P.3d at 1166 (internal citations omitted). "In general, restrictions upon the use of land are not favored and, accordingly, such restrictions will not be extended by implication." *Id.*

ARGUMENT

While the Appellant throughout much of its brief seeks to blur the lines between zoning regulations and CCRs, it is important to distinguish between them in order to properly consider the contract at issue herein. This case is about interpreting only the CCRs, not zoning regulations.

The latter were interpreted in *Brazinski v. Bd. of Cty. Comm'rs of Teton Cty.*, 2024 WY 40 (Wyo. 2024). In that case, this Court determined that Teton County properly treated the Rafter J Ranch subdivision as a planned unit development ("PUD") for purposes of zoning and that Teton County properly amended the PUD to allow Stage Stop's proposed use on Lot 333. As a result of that decision, the proposed use is recognized as a legal use of Lot 333 under the Teton County Land Development Regulations.

The sole issue currently before this Court in this case is whether the CCRs prohibit the proposed use on Lot 333. The CCRs provide that Lot 333 "may be used for <u>any</u> commercial purpose." *See* CCRs, at p. 19, Art. IX, § 1 (emphasis added). Stage Stop proposes to utilize Lot 333 for apartments for workforce housing – a profit-making business venture.

The Appellant, on the other hand, argues that the proposed use of Lot 333 for workforce apartments violates the CCRs. The Appellant's interpretation of the CCRs, however, suffers from a fatal flaw. The Appellant's argument makes scant reference to the plain and unambiguous words of the provision at issue herein (*i.e.*, Article IX, § 1 of the CCRs). There is virtually no attempt by the Appellant to interpret these seven words ("may be used for <u>any</u> commercial purpose."). Instead, the Appellant attempts to rewrite the CCRs by inferring limitations that

are not set forth in the document itself. To give effect to the Plaintiff's analysis would be to rewrite the CCRs to its liking.

A. The phrase "commercial" is unambiguous and implies a use in connection with or for the furtherance of a profit-making enterprise.

When construing unambiguous contracts, this Court must adhere to the CCRs' plain and ordinary meaning without resorting to extrinsic evidence. *See Winney v. Hoback Ranches Property Owners Improvement and Service District*, 2021 WY 128, ¶ 62, 499 P.3d 254, 270 (Wyo. 2021), *citing Reichert v. Daugherty*, 2018 WY 103, ¶ 16, 425 P.3d 990, 995 (Wyo. 2018). Plain meaning is that "meaning which [the] language would convey to reasonable persons at the time and place of its use." *See Caballo Coal Co. v. Fidelity Exploration & Prod. Co.*, 2004 WY 6, ¶ 11, 84 P.3d 311, 315 (Wyo. 2004). Differing interpretations alone do not constitute ambiguity requiring extrinsic evidence. *See id.* Common sense and good faith are leading precepts of contract construction. *See N. Silo Res., LLC v. Deselms*, 2022 WY 116, ¶ 15, 518 P.3d 1074, 1081 (Wyo. 2022). Courts should "not rewrite contracts under the guise of interpretation" and, so long as there is no ambiguity, the Court is "bound to apply contracts as they have been written." *See Collins v. Finnell*, 2001 WY 74, ¶ 21, 29 P.3d 93, 101 (Wyo. 2001).

There are generally five categories of lots in the Rafter J Ranch subdivision: commercial, residential, multiple dwelling, common area, and miscellaneous areas. The CCRs contain general restrictions which apply to all lots regardless of their category (CCRs, at pp. 14-15, Art. VII, § 2), as well as specific restrictions and uses for each of the various categories. The uses and restrictions for residential and multiple dwelling areas are three pages long. *See* CCRs, at pp. 15-18, Art. VII, §§ 3(a)–(m). Restrictions for miscellaneous areas are approximately one page in length. *See* CCRs, at pp. 18-19, Art. VIII. Restrictions for commercial areas are a single sentence. *See* CCRs, at p. 19, Art. IX.

The CCRs state the following concerning residential and multiple dwelling lots:

> Each residential lot shall be used exclusively for residential purposes, and no more than one (1) family, including its servants and transient guests, shall occupy such residence. Each multiple dwelling lot shall be used exclusively for residential, recreational, club and related purposes, and no more than one (1) family, including its servants and transient guests, shall occupy each unit located within such multiple dwelling lots. No commercial, retail or other business activities shall be conducted on or from any residential lot or multiple dwelling lot.

See CCRs, at p. 16, Art. VII, § 3(a) (emphasis added). The CCRs also provide that "miscellaneous areas shall not be further subdivided for residential or multiple family dwelling." *See* CCRs, at p. 19, Art. VIII, § 3.

In comparison, the CCRs provide only the following with regard to commercial areas:

> Lots 333 and 334 are designated as commercial areas, and may be used for any commercial purpose, subject to these covenants and such restrictions as may be contained in deeds, leases, or other instruments of conveyance.

See CCRs, at p. 19, Art. IX, § 1 (emphasis added). The CCRs do not define the phrases "residential," "multiple dwelling," or "commercial." In the context of the whole document, it is apparent that the drafters of the CCRs intended for there to be very little restriction on commercial lots. Other than being subject to the CCRs and such restrictions as may be contained in deeds, leases, or other instruments of conveyance, the CCRs do not include any specific prohibitions or exclusions on the uses of commercial areas. Unlike residential or multiple dwelling lots which have substantial, specific restrictions and limitations, the CCRs allow commercial areas to be used for any purpose whatsoever, so long as such use constitutes a "commercial purpose."[3]

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[3] The CCRs expressly prohibit commercial activities in residential areas. But the CCRs do not prohibit residential uses in commercial areas. This distinction is notable and presumed to have a purpose. By reserving Lot 333 for "any commercial purpose," the authors of the CCRs

The CCRs do not provide that Lot 333 is to be used exclusively for commercial purposes, nor do the CCRs prohibit any residential use within the commercial areas. Similarly, the CCRs do not restrict commercial areas to no more than one family. Clearly, if the authors of the CCRs intended to limit, restrict, or otherwise regulate the uses of the commercial areas (including prohibiting specific uses), they knew how to do so. However, by using the phrase "any commercial purpose," the authors clearly intended a broad allowance for the uses of Lot 333. By phrasing it differently, the CCRs clearly and unambiguously provide that Lot 333 does not have to be used exclusively for commercial purposes; meaning that the CCRs do not prohibit residential use on Lot 333, so long as it is related, associated or subordinate to "any commercial purpose." If the covenants intended for Lot 333 to be used exclusively for commercial purposes, such a limitation would have been plainly stated.

According to this Court, the plain meaning of "commercial" includes, among other things, "of, relating to, or involving the ability of a product or business to make a profit." *See Winney v. Hoback Ranches*

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obviously intended broad, unlimited discretion to use Lot 333 for virtually any purpose whatsoever, so long as said use had some nexus to a commercial activity.

Property Owners Improvement and Service District, 2021 WY 128, ¶ 64, 499 P.3d at 270; *see also* Black's Law Dictionary (6th ed. 1990) (defining "any" to be "synonymous with 'either,' 'every,' or 'all.'"). Moreover, according to Black's Law Dictionary, commercial has the following definitions:

Commercial.	Of, relating to, or involving the ability of a product or business to make a profit.
Commercial Activity.	An activity, such as operating a business, conducted to make a profit.
Commercial Use.	A use that is connected with or furthers an ongoing profit-making activity.

See Black's Law Dictionary (11th ed. 2019).

Commercial Property.	Income producing property (*e.g.*, office buildings, apartments, etc.) as opposed to residential property.

See Black's Law Dictionary (5th ed. 1979).[4]

All of the aforementioned definitions have a common denominator involving profit or income. Apartments are distinctly income producing in character. *See Smith v. Young*, 692 A.2d 76, 81 (N.J. Super. Ct. App. Div. 1997) ("Yet, to speak, instead, only of residential and non-residential uses would tend to undervalue the fact that some residential uses, such

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[4] The 1979 edition of Black's Law Dictionary is the most contemporaneous edition with the execution of the original CCRs.

as apartment houses, are distinctly income producing in character and, therefore, at least in one sense of the term, commercial or business properties."). While apartments are designed for residential use, apartments are considered commercial property because space is leased out to others as part of a commercial business. *See Stewart v. 104 Wallace St., Inc.*, 432 A.2d 881, 889 n.7 (N.J. 1981) (finding that apartment buildings are commercial properties for purposes of extending liability for a defective abutting sidewalk); and *Delaware Racing Association v. McMahon*, 320 A.2d 758, 761 (Del. Super. Ct. 1974) (finding that apartments are "ordinary commercial properties" because income is derived from the occupancy of the property by tenants who pay for the rental of space therein).

Here, Stage Stop applied to use the vacant assisted living facility for apartments intended for members of the local workforce. In concept, Stage Stop intends to offer the units for lease to employers in blocks, so there are master leases to local employers who then offer individual units for rent to their employees. Employers will lease blocks of units at rates negotiated by the employer and Stage Stop. The employer can then determine rental rates for employees. The act of one business leasing space to another business is clearly a "commercial purpose."

Stage Stop's business enterprise will occupy the exact same space as the previous commercial use which was supported and approved by the Appellant. Further, Stage Stop's proposed use was approved by the Board of County Commissioners, subject to several conditions common to commercial businesses and not normally associated with residential uses. These conditions include minimum lease periods, inspections by safety authorities, maximum occupancy of the building, mandatory onsite property manager, and an increase in available parking. *See* Rec. at 246 (Amendment to the Rafter J Ranch Planned Unit Development); and Rec. at 263-264 (Conditional Use Permit). In Wyoming, apartments are taxed and insured as commercial real estate. *See* Rec. at 285-287 and 309-311.[5]

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[5] Under the rules and regulations for the Wyoming Department of Revenue, "commercial purpose includes, without limitation, <u>the operation for charge</u> of bars, restaurants, dancing areas, merchandise shops, <u>housing</u>, theaters and bowling alleys." *See* Rules of the Wyoming Department of Revenue, Chapter 14, § 23(a)(ii)(A) (emphasis added). The same regulations also define "commercial purpose" as the "use of property or any portion thereof to provide services, merchandise, <u>area</u> or activities <u>for a charge</u>." *See id.*, at § 23(a)(ii) (emphasis added).

The Appellant argues that Stage Stop is misconstruing the definition of commercial set forth in *Winney* and that Stage Stop's proposed use is not "commercial" under the CCRs. *See* Brief of Appellant, at pp. 20, 22-24 (arguing that commercial means "the exchange of goods or services involving transportation from place to place"). However, the covenants in *Winney* differ from the CCRs in this case. *See Winney v. Hoback Ranches Property Owners Improvement and Service District*, 2021 WY 128, ¶ 62, 499 P.3d at 270. Unlike the Rafter J Ranch subdivision, the subdivision in *Winney* was intended only for residential use and did not allow for mixed uses. *See id.*, ¶ 59, 499 P.3d at 269. The situation in *Winney* involved a different set of covenants, an exclusively residential neighborhood, and an entirely different type of alleged commercial activity. The district court determined that Stage Stop's proposed commercial use of Lot 333 meets the definition of "any commercial purpose," because there are already existing residential units on Lot 333, the proposed use is intended to make a profit, and the business will "be offering a service to all of its lessors just like the assisted living facility did to its residents." *See* Rec. at 721 (Order on Summary Judgment Motions, at p. 12, ¶ 32).

The Appellant does not provide any alternative definitions that could apply to the term commercial. The language in the CCRs

concerning the use of commercial properties is so clear and unambiguous that the Appellant is deliberately avoiding reference to the actual language, and instead, directs the Court's attention elsewhere in an attempt to find meaning in words that have no reference, or applicability, to commercial properties in the Rafter J Ranch subdivision.

By any objective definition, the act of leasing space to tenants in exchange for the payment of money constitutes a "commercial purpose." Consequently, the plain and ordinary meaning of "commercial purpose" encompasses any type of business or activity which is carried on for a profit, or a use in connection with or for furtherance of a profit-making activity. A prohibition against Stage Stop's proposed use would be a restriction extended by implication alone, which, as noted by the district court, is not permitted in Wyoming. *See* Rec. at 721-722 (Order on Summary Judgment Motions, at pp. 12-13, ¶ 33); *see also Hutchinson v. Hill*, 3 P.3d 242, 245 (Wyo. 2000) ("Restrictions upon the use of land are not favored, will not be extended by implication and, when in doubt, will be construed in favor of the free use of the land.") (citation omitted).

Therefore, the use of Lot 333 for apartments or accessory residential units is in accordance with the CCRs, and no amendment to the CCRs is necessary to accommodate the proposed use. The Appellant agrees. In its discovery responses, the Appellant confessed that "just

because there is some residential aspect to the commercial use, does not make the use residential in nature." *See* Rec. at 269 (Appellant's Response to Interrogatory No. 2). The context of the entire document reveals that the phrase "commercial" unambiguously implies a business or activity which is carried on for a profit, or a use in connection with or for furtherance of a profit-making activity.

While Stage Stop acknowledges that the CCRs are to be interpreted as a whole, reading each provision in light of all the others to find their plain meaning, the Court should steadfastly avoid an interpretation that would render the provision meaningless or nonsensical. The CCRs' provision that Lot 333 "may be used for any commercial purpose" is a broad, all-encompassing allowance for any use whatsoever, so long as it furthers, advances, promotes, or involves a "commercial purpose." The language is clear, plain, and unambiguous and does not include any restrictions, limitations, or constraints of any kind.

B. THE CCRS PROVIDE THAT RESIDENTIAL LEASING IS A COMMERCIAL ACTIVITY.

The CCRs make clear that residential leasing is considered a commercial activity. The CCRs explicitly allow residential leasing on residential lots by making it an exception to the prohibition on commercial activities: "No commercial, retail or other business activities shall be conducted on or from any residential lot or multiple dwelling lot;

provided, however, that nothing in this subparagraph (a) shall be deemed to prevent . . . the leasing of any lot from time to time by the owner thereof." *See* CCRs, at p. 16, Art. VII, § (3)(a). Thus, the CCRs already define residential leasing as a commercial activity.

The Court should not rewrite the CCRs under the guise of interpretation. *See P & N Invs., LLC v. Frontier Mall Assocs., LP*, 2017 WY 62, ¶ 18, 395 P.3d 1101, 1106 (Wyo. 2017). The CCRs are to be interpreted according to their clear language, and this Court should conclude that Lot 333 "may be used for any commercial purpose," including the workforce apartments proposed by Stage Stop.

C. THE CCRS DO NOT CONTAIN ANY DENSITY LIMITATIONS FOR COMMERCIAL LOTS.

The Appellant makes much of the "Developer's Vision and Design of Rafter J," and mentions repeatedly that the CCRs must be considered in its entirety. *See* Brief of Appellant, at pp. 24-30. It is true that in interpreting a contract, the "intention of the parties is to be determined from the entire context of the instrument." *See Anderson v. Bommer*, 926 P.2d 959, 961 (Wyo. 1996). However, well established rules of contract interpretation require the Court to give effect to each word if possible, and the Court should "strive to avoid construing a contract so as to render one of its provisions meaningless, because each provision is presumed to have a purpose." *See Shaffer v. WINhealth Partners*, 2011

WY 131, ¶ 17, 261 P.3d 708, 713 (Wyo. 2011). Evidence of the parties' subjective intent is not relevant or admissible in interpreting a contract. *See Thornock v. PacifiCorp*, 2016 WY 93, ¶ 13, 379 P.3d 175, 180 (Wyo. 2016).

The Appellant argues that the "CCRs categorize commercial use as a distinct use from residential use," because some lots are designated residential while others are designated commercial. *See* Brief of Appellant, at p. 24 (emphasis omitted). From this, the Appellant concludes that only one of these uses can be made on a lot and that there can be no overlap between the types of uses. *See id.* However, in the absence of clear language evidencing such intent, the Appellant's misguided interpretation cannot be invoked to contradict the clear meaning of the language used and does not justify insertion therein of a provision other than or different from that which the language used clearly indicates, and thereby, in effect, make a new contract for the parties. The CCRs do not include a prohibition of residential activity on commercial lots, which must be presumed to have a purpose.

As noted by the district court, "if the original developers and drafters of the CCRs intended to exclude residential uses on commercial lots they were free to exclude such uses," but they did not. *See* Rec. at 721 (Order on Summary Judgment Motions, at p. 12, ¶ 33). Instead, by

using the phrase "any commercial purpose," the drafters clearly intended a broad allowance for the uses of Lot 333. The CCRs do <u>not</u> provide that Lot 333 is to be used <u>exclusively</u> for commercial purposes, nor do the CCRs prohibit any residential use within the commercial areas. *See id.* ("The CCRs . . . do not state that residential uses are precluded. . . . To find otherwise would seem like an interpretation that residential uses cannot be carried out on a commercial lot by implication which is not permitted in Wyoming"); *see also Four B Properties, LLC v. Nature Conservancy*, 2020 WY 24, ¶ 56, 458 P.3d 832, 846 (Wyo. 2020) ("Where a contract is silent on a particular matter that easily could have been drafted into it, a court should refrain from supplying the missing language under the pretext of contract interpretation.").

The Appellant also argues that the use of Lot 333 for workforce apartments would be contrary to the density limitations in the CCRs. *See* Brief of Appellant, at pp. 3-9, 26-30. However, the only density limitations in the CCRs apply specifically to "multiple dwelling lots." *See* CCRs, at p. 20, Art. XI, § 1(c). The Appellant's argument is confounding. The Appellant is attempting to use density and square footage limitations specifically applicable to condominiums to somehow define "commercial purpose." Nowhere do the CCRs state that commercial lots are to be used only for "non-residential" purposes. The only conclusion that can be

drawn from the language of the CCRs is that commercial lots are not subject to any density or square footage limitations. The fact that other areas of the Rafter J Ranch subdivision are subject to density and square footage limitations has nothing to do with interpreting the language applicable to commercial areas. Again, if the authors of the CCRs intended such limitations concerning commercial areas, those limitations should have been expressly stated therein. The failure to include density limitations on commercial areas is presumed to have a purpose. This Court should ignore the Appellant's attempt to rewrite the CCRs under the guise of interpretation.

D. THE COURT SHOULD NOT REFER TO EXTRINSIC EVIDENCE TO DEFINE TERMINOLOGY IN ITS INTERPRETATION.

In further support of its argument that Lot 333 is subject to density limitations, the Appellant relies on projections made in a "master plan" that appears to have been prepared six months before the Rafter J Ranch subdivision was finalized. *See* Brief of Appellant, at pp. 3-9. This "master plan" is not signed by anyone and does not appear to be part of the property records, so it is impossible to guess at what kind of finality this document had. *See* Rec. at 351-356. Instead, it seems to merely be one of many documents that were drafted during the planning process of the subdivision. The Appellant's reliance on the master plan is misplaced for two reasons. First, the density limitations set forth in the master plan

clearly apply to single family homes, and not commercial areas. The density limitations set forth in the master plan are virtually equal to the total number of single-family homes developed in the Rafter J Ranch subdivision (*i.e.*, 492 vs. 495). Furthermore, the density limitations carried forward into the CCRs and the plat are expressly not applicable to commercial areas. *See* CCRs, at p. 20, Art. XI, § 1(c); *see also* Rec. at 175 (plat, at p. 1) (stating "that the total maximum density for Lots #325 to #329 both inclusive, shall not exceed 168 units nor a density exceeding 5 units per acre.").[6]

Second, the Appellant's reliance on this master plan seems to defy its own argument made later in its brief, which reasons that extrinsic evidence is not to be considered in cases such as this where the contract is unambiguous. *See* Brief of Appellant, at p. 36 ("We turn to extrinsic evidence . . . only when the contract language is ambiguous."), *quoting Wolter v. Equitable Res Energy Co., W. Region*, 979 P.2d 948, 951 (Wyo.

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[6] Furthermore, the master plan is not contractual in nature and was merely intended to provide a conceptual layout for the subdivision. The master plan includes a section titled "Land Use Restrictions," which makes specific reference the CCRs and the plat.

1999). Neither the CCRs, nor the plat, make any reference to the master plan.

This Court has refused in other cases to examine extrinsic evidence to determine whether or not the contract language was ambiguous:

> The ambiguity which justifies examining extrinsic evidence must exist … in the language of the document itself. It cannot be found in subsequent events or conduct of the parties, matters which are extrinsic evidence. <u>The suggestion that one should examine extrinsic evidence to determine whether extrinsic evidence may be examined is circuitous.</u>

Wolter v. Equitable Res. Energy Co., W. Region, 979 P.2d at 952, *quoting State v. Pennzoil Company,* 752 P.2d 975, 978 (Wyo. 1988) (citations omitted and emphasis added). The Court should look to parol evidence to understand the parties' intent only upon finding the document is ambiguous. *See Pennaco Energy, Inc. v. KD Co. LLC*, 2015 WY 152, ¶ 26, 363 P.3d 18, 26 (Wyo. 2015). Differing interpretations of contracts alone do not constitute ambiguity requiring extrinsic evidence. *See Mathisen v. Thunder Basin Coal Co., LLC*, 2007 WY 161, ¶ 12, 169 P.3d 61, 65 (Wyo. 2007).

Thus, the Court may not refer to the master plan, or any other document in its interpretation of the CCRs. The CCRs are either ambiguous, or they are not. No other document is relevant to this analysis. The ambiguity which justifies examining extrinsic evidence must exist in the language of the document itself. The CCRs make clear

that commercial lots are not subject to any density limitations. As already mentioned, the only density limitations contained in the CCRs, or even on the plat, refer specifically to multiple dwelling lots, not commercial lots. The fact that other areas of the Rafter J Ranch subdivision are subject to density limitations has nothing to do with interpreting the language applicable to commercial areas.

The only conclusion that can be drawn from the provisions relied upon by the Appellant is that lots set aside for single-family homes are subject to a variety of density and size limitations that do not apply to commercial properties. In the absence of clear language evidencing such intent, a reasonable person would not interpret the density and size limitations applicable to residential and multi-dwelling lots to equate to a total prohibition of residential activity on commercial properties. To reach such a conclusion would be to wholly ignore the meaning of the language actually used. Again, if the authors of the CCRs intended such limitations concerning commercial areas, those limitations should have been expressly stated therein. The failure to include density limitations on commercial areas is presumed to have a purpose. This Court should ignore the Appellant's attempt to rewrite the CCRs under the guise of interpretation. *See Collins v. Finnell*, 2001 WY 74, ¶ 21, 29 P.3d at 101 (holding that courts should "not rewrite contracts under the guise of

interpretation and, so long as there is no ambiguity, we are bound to apply contracts as they have been written.”).

E. NEW ARGUMENTS RAISED BY THE APPELLANT ARE UNPERSUASIVE.

The Appellant raises new arguments that were not made before the district court. Arguments raised for the first time on appeal are improper, but these will nonetheless be succinctly addressed. *See Campbell Cty. Bd. of Commissioners v. Wyoming Horse Racing, LLC*, 2023 WY 10, ¶ 20 n.6, 523 P.3d 901, 907 n.6 (Wyo. 2023) (“This Court will not consider an issue raised for the first time on appeal unless it is jurisdictional or of such fundamental nature that it must be considered.”).

First, the Appellant claims that the plat note on Lot 333 of “Local Commercial” provides a further restriction on the use of the lot. *See* Brief of Appellant, at pp. 24, 26. Under the Appellant’s reasoning, this plat note requires that Lot 333 be held to a higher standard than simply being commercial – that it must specifically be a commercial use that benefits the other lots in Rafter J Ranch. *See id.*

If the plat notes are to be considered here, then the reference to “Ranch Headquarters” for Lot 333 would incorporate residential uses since the headquarters of most ranches include homes, guest houses, boarding facilities, and other residential facilities. Regardless, neither of these terms (*i.e.*, ranch headquarters or local) are used a single time in

the CCRs. There are only five land use classifications established in the CCRs, including "commercial," but not "local commercial." Presumably, this means that the local commercial designation on the plat is not to be given a meaning any different than that given to the term "commercial" in the CCRs. The CCRs do not contain any restrictions for commercial lots that require them to be utilized solely for a use which benefits the other lots in the subdivision. Lot 333 must simply "be used for any commercial purpose."[7]

Second, the Appellant also argues for the first time that the proposed workforce apartments will somehow conflict with the

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[7] The Appellant has not cited to any authority that suggests the word "local" was intended to mean residents of the Rafter J Ranch specifically. Since "local" is not defined, it could also mean "Jackson Hole," the Town of Jackson, or Teton County. There is no evidence in the record to suggest that the assisted living facility was reserved solely for individuals related to residents of the subdivision. Moreover, the subdivision includes a church and a dentist. It is implausible to believe that the church is reserved solely for worshippers who live in the subdivision, or that the dentist is not permitted to accept patients who live outside the subdivision.

assessments paid by members of the HOA. *See* Brief of Appellant, at pp. 30-33. The CCRs require the owner of any lot to pay annual and special assessments. *See* CCRs, at pp. 4-5, Art. IV, § 1. Commercial lots like Lot 333 are not exempt from this requirement. *See id.*, at p. 5, Art. IV, § 3. Like all of the other lot owners in the Rafter J Ranch, Stage Stop has been paying its mandatory assessments and contributing to the benefits of the subdivision. Accordingly, Stage Stop and its future tenants are entitled to enjoy the benefits of the subdivision. *See id.*, at p. 2, Art. II, § 1 (stating that an owner of a lot is entitled to the use and enjoyment of common areas so long as assessments are paid); *see also id.*, at p. 3, Art. II, § 2 ("Any owner may delegate, in accordance with the bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.") (emphasis added).

The Appellant's argument ignores the fact that residents who previously resided at Legacy Lodge likely enjoyed some of the benefits of the subdivision. However, since this argument was not raised before the district court, there are few facts in the record to truly reach any conclusions here. Overall, there is little difference between Stage Stop paying the assessment for its lot while its future tenants enjoy the benefits of the subdivision, and the owner of any house, condominium,

or town house paying the assessment for its lot while renting it to a third party.

F. THE DISTRICT COURT RESTRICTED ITS DECISION TO ITS INTERPRETATION OF THE CCRS AND DID NOT IMPROPERLY RELY ON EXTRINSIC EVIDENCE.

The Appellant attempts to make a "mountain out of a mole hill" by faulting the district court for noting the fact that Stage Stop seeks to utilize the existing 50,000 square foot facility for its proposed use of workforce apartments. *See* Brief of Appellant, at pp. 33-36. The district court simply mentioned Stage Stop's intent to convert the existing residential units into apartments that can be leased out to the local workforce. *See* Rec. at 721 (Order on Summary Judgment Motions, at p. 12, ¶ 32). This statement by the district court was not the crux of its decision; it was merely a segue into its application of the *Winney* case to the matter at hand. *See id.*

The district court did not rely on any forfeiture or waiver by the Appellant in determining that the proposed use of workforce apartments is a valid commercial use permitted by the CCRs. *See id.* Nor did the district court draw any great conclusions on the Appellant's apparent endorsement of Legacy Lodge. Instead, as already discussed, the district court properly looked to the plain language of the CCRs and determined that "a for-profit apartment rental business on Lot 333 is permitted by

the plain language of the CCRs." *See id.* at 722 (Order on Summary Judgment Motions, at p. 13, ¶ 33).

CONCLUSION

As discussed above, Stage Stop's proposed use of Lot 333 for apartments for workforce housing does not constitute a violation of the CCRs. By any objective definition, the act of leasing space to tenants – whether for residential purposes or otherwise – in exchange for the payment of money, constitutes a "commercial purpose." As a result, the district court's decision granting summary judgment to Stage Stop should be affirmed, and judgment awarded in favor of Stage Stop. Accordingly, the district court's decision regarding anticipatory breach and nuisance must also be affirmed.

RESPECTFULLY SUBMITTED this 14th day of May 2024.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing RESPONSE BRIEF OF APPELLEE to be served electronically via the Wyoming Supreme Court C-Track Electronic Filing System this 14th day of May 2024 on the following parties:

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I, the undersigned, further certify that I caused a true and correct copy of the foregoing RESPONSE BRIEF OF APPELLEE to be served via electronic mail this 14th day of May 2024 on the following party:

William P. Schwartz
20 East Simpson Ave.
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I, the undersigned, also certify that I caused a signed paper original plus six copies of the foregoing to be delivered by hand this 14th day of May 2024 to the following:

Shawna Goetz, Clerk of the Court
Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, Wyoming 82002

Finally, I the undersigned, certify that all required privacy redactions have been made and, except for those redactions, every document submitted in digital form or scanned is an exact copy of the written document filed with the Clerk, and that the document has been scanned for viruses and is free of viruses.

/s/Brandon L. Jensen
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