

**ORDINANCE NO. 2
SERIES OF 2020**

**AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING THE 1201 MAIN STREET PROJECT INCLUDING:**

MAJOR SITE PLAN REVIEW (FOR A MIXED RESIDENTIAL/COMMERCIAL BUILDING), A CONDITIONAL USE PERMIT (TO ALLOW GROUND FLOOR RESIDENTIAL UNITS), ALTERNATIVE COMPLIANCE (TO ALLOW REDUCTION IN WIDTH OF REQUIRED LANDSCAPE BUFFER AREA ALONG STATE HIGHWAY 133 AND OFF-STREET PARKING TO BE LOCATED WITHIN THE COLORADO AVENUE RIGHT-OF-WAY), AND AN AMENDMENT TO ORDINANCE NO. 18, SERIES OF 2016 (FOR PURPOSES OF CONFIRMING PRIOR REZONING TO MIXED-USE (MU) ZONE DISTRICT)

WHEREAS, 1201 CO Ave. Holdings, LLC ("Applicant") submitted an application to the Town of Carbondale ("Town") for Major Site Plan Review approval to develop a mixed commercial and residential use project upon the property described on *Exhibit A* (the "Property"), for a Conditional Use Permit to authorize ground floor dwelling units, for alternative compliance approval to allow a reduction in the width of a required landscape area along State Highway 133 and required off-street parking to be located within the Colorado Avenue right-of-way, and for an amendment to Ordinance No. 18, Series of 2016, for purposes of confirming a prior rezoning of the Property to be part of the Mixed-Use (MU) zone district; and

WHEREAS, after required public notices, the Town's Planning and Zoning Commission reviewed these requests at a noticed public hearing on October 10, 2019 and November 14, 2019, and recommended approval of these requests with conditions; and

WHEREAS, after required public notices, the Town's Board of Trustees conducted a public hearing on these requests on December 10, 2019, during which public hearing the Board of Trustees heard and considered the statements of Town staff, the Applicant's representatives, and members of the public, and reviewed and considered all other relevant documents and information presented at such hearing, all as required by law; and

WHEREAS, the Board of Trustees finds and determines that the Site Plan attached to this Ordinance as *Exhibit B* should be approved, with conditions, in order to allow development of a mixed-use project upon the Property for the following reasons pursuant to Section 2.5.3.C of the Unified Development Code ("UDC") (the UDC is codified as Chapter 17 of the Carbondale Municipal Code):

- a. The proposed site plan is consistent with the Comprehensive Plan as the area is designated New Urban which envisions a flexible mix of retail, restaurants, service commercial, and multi-story mixed use buildings with buildings being the focal points of the site located close to adjacent streets;
- b. The proposed site plan is consistent with the purposes section of the Mixed Use (MU) zone district as the development will provide a compact, mixed-use development that will provide people with the opportunity to live, work, recreate and shop in a pedestrian-friendly environment; the project will also include multi-modal access to and from downtown Carbondale, a vertical and horizontal mix of land uses, an interesting and walkable environment, tailored building design and streetscape standards that address features such as building mass and placement, building entries, and windows/transparency;
- d. The proposed site plan complies with all applicable development and design standards set forth in the UDC; and
- e. Traffic generated by the proposed development will be adequately served by existing Town streets.

WHEREAS, the Board of Trustees also finds and determines that a conditional use permit should be approved to authorize ground floor residential units upon the Property, with conditions, pursuant to Section 2.5.1.C.3.a of the UDC for the following reasons:

- a. The site, building(s), and use meet the criteria, all applicable regulations and development standards as specified in the UDC for the zone district in which the use is located;
- b. The proposed use is consistent with the Comprehensive Plan which envisions a flexible mix of uses, including residential uses;
- c. The site includes no non-conformities;
- d. The proposed use is planned in a manner that minimizes adverse impacts on the traffic in the neighborhood and surrounding uses; and
- e. The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics (including hours of operation, noise, odor, dust, and other external impacts); and



WHEREAS, the Board of Trustees also finds and determines that it is appropriate to approve Applicant's request for alternative compliance from Section 5.4.3.B of the UDC, which would allow Applicant's proposed public plaza to be within the required 10-foot landscape buffer area along State Highway 133, with conditions, pursuant to Section 5.1.3.E of the UDC for the following reasons:

- a. Applicant's proposed alternative will achieve the intent of the standard in UDC Section 5.4.3.B.3 to a better degree than the regular standard for landscape buffers as the proposal improves the aesthetic character, contributes to the quality of development, and provides for pedestrian activity in front of the building;
- b. Applicant's proposed alternative will advance the goals and policies of the Comprehensive Plan and the UDC to a better degree than the regular standard as it meets the goal in Section 4.11 of the Comprehensive Plan (New Urban) which states that site design should provide obvious and safe connections to the buildings for pedestrians and cyclists as well as suggests that the inside of the building be connected with elements such as outdoor activity areas;
- c. Applicant's proposed alternative will result in benefits to the community that exceed benefits associated with the standard because the alternative provides for pedestrian activity in front of the building as contemplated in the Mixed-use Zone District, while the existing landscaped area in the CDOT right-of-way provides an aesthetic landscape buffer; and
- d. Applicant's proposed alternative will impose no greater impacts on adjacent properties than would occur through compliance with the specific requirements of the UDC; and

WHEREAS, the Board of Trustees also finds and determines that it is appropriate to approve Applicant's request for alternative compliance from Section 5.8 of the UDC, which would allow Applicant to place a portion of its required off-street parking within the Colorado Avenue right-of-way, with conditions, pursuant to Section 5.1.3.E of the UDC for the following reasons:

- a. Applicant's proposed alternative will achieve the intent of the standard in UDC Section 5.8 as it will encourage multi-modal transportation options and enhanced pedestrian safety;
- b. Applicant's proposed alternative will advance the goals and policies of the Comprehensive Plan and the UDC to a better degree than the regular



standard as it meets the goal in Section 4.11 of the Comprehensive Plan (New Urban) to balance a pedestrian/bike friendly feel with convenient automobile access;

- c. Applicant's proposed alternative will result in benefits to the community that exceed benefits associated with the standard because it provides a sidewalk which is more safe for pedestrians; and
- d. Applicant's proposed alternative will impose no greater impacts on adjacent properties than would occur through compliance with the specific requirements of the UDC; and

WHEREAS, although Ordinance No. 2016, Series of 2016, which provided for the rezoning of the Property to Mixed-Use (MU), provided in section 4 that the Property would revert to Planned Community Commercial (PCC) zoning if development did not commence within one year, the Board of Trustees finds and determines that good cause has been shown, and that it is in the public interest, to eliminate the required timeline so that the 1201 Main Project described herein can proceed to be developed as part of the MU zone district as envisioned by the Town's 2013 Comprehensive Plan; and

WHEREAS, the Board of Trustees also finds and determines that certain conditions of approval should be imposed as set forth below so that the project will be developed consistent with the purposes of the UDC; all of these conditions shall be met by making certain changes to the draft Site Plan and other documents submitted as part of the application and by virtue of the terms and conditions of a Development Improvements Agreement to be entered into between the Town and the Applicant and recorded contemporaneously with this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that:

- 1. All development shall be consistent with the final Site Plan and architectural renderings approved by the Town concurrent with this application.
- 2. Approval of the application shall also be subject to the following conditions:
 - a. Contemporaneous with recordation of the Site Plan, the Applicant and the Town shall enter into a Development Improvements Agreement ("DIA"). Said DIA generally sets forth additional obligations of the Applicant in connection with this development, including, without limitation, obligations relating to installation of utilities and construction of other



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onsite and offsite improvements, and required security for the same. As set forth in the DIA, the construction of these required improvements shall be completed by September 15, 2021 unless such timeline is extended by the Board of Trustees in its discretion for good cause shown. If construction of required improvements is not complete by this deadline, the Town may revoke or amend these approvals. The Applicant shall record the DIA with the Garfield County Clerk and Recorder contemporaneously with recording of this Ordinance and the approved Site Plan. The Applicant shall also submit an unconditional, irrevocable letter of credit in a form acceptable to the Town Attorney securing the required improvements described in this Ordinance and the DIA for a period extending at least 30 days following the deadline for completion of the required improvements.

- b. Engineered construction plans for utilities shall be subject to review and approval by the Town's Utilities and Public Works Directors prior to issuance of any building permit. The Applicant shall repair Town streets after utility lines are installed as per the Public Works Manual. Upon completion of construction, as-builts of all public and private utility locations shall be provided to the Town in accordance with the DIA.
- c. The DIA requires a construction management plan to be approved by Town staff prior to the issuance of any building permits or the commencement of construction of the Public Improvements. The construction management plan shall include reclamation requirements, including re-grading and re-seeding, and remediation of any public safety issues, in the event that ongoing construction ceases prior to completion, and that the security held by the Town pursuant to the DIA may be applied to perform reclamation if the Applicant fails to do so.
- d. All required public utility, public access (including public access to the plaza, and a pedestrian/bicycle easement), and a public bus stop easement, all as shown on attached ***Exhibit D*** shall be dedicated to the Town by grant of easement, which dedication shall include a special warranty of title, prior to acceptance of the required improvements. The final location and size of the easements shall be subject to Town Staff's reasonable review and acceptance. Prior to acceptance, the Applicant shall provide the Town with surveyed legal descriptions of each easement and a current title insurance commitment committing to insure the Town's interests in these easements with a coverage amount of at least \$250,000.00, and the easement dedication shall be free and clear of all liens and encumbrances excepting any exceptions set forth on the title commitment that the Town determines to accept after review of a current title commitment.. Any title

insurance premiums, including any additional premium(s) necessary to delete the "standard" title exceptions from the final title policy (if reasonably available), shall be paid by the Applicant. Any lender holding any lien upon the Property shall be required to execute a lien consent and subordination with regard to these easement dedications. Upon dedication, the Applicant shall pay the title premium required for an Owner's Title Policy to issue to the Town insuring these required public easement dedications.

- e. After construction of any public or private infrastructure or improvements, all portions of the site which will remain vacant shall be regraded and revegetated at the expense of the Applicant.
- f. Separate sign permits shall be obtained from the Town for all outdoor signage prior to installation in accordance with the Carbondale Municipal Code.
- g. All applicable water and sewer system development fees shall be paid prior to issuance of a building permit.
- h. The Applicant shall enter into an agreement with the Carbondale & Rural Fire Protection District that addresses payment of impact fees prior to the issuance of any building permits for this project.
- i. All development upon the Property shall conform to the approved landscape plan. All required public street trees shall be maintained, and replaced if needed, by the Applicant for two-full irrigation seasons following the planting or replacement of each tree.
- j. The Applicant shall be responsible for the maintenance of the 5 ft. wide sidewalk along Colorado on the north side of the property.
- k. The landscape islands in the Colorado Avenue right-of-way, including irrigation and maintenance of the irrigation system, shall be privately maintained in perpetuity by the Applicant. This maintenance obligation shall include replacement of plant material as needed from time to time. This private maintenance obligation may only be assigned by the Applicant to a successor owner of the entire project, or if the building is ever subdivided or condominiumized, to an incorporated owner's association for the project, the members of which shall include all owners of all units within the project, which members shall pay regular assessments toward these common maintenance obligations.

- l. The seating wall will be constructed of concrete/masonry.
- m. Two windows have been added on the north façade of the building, toward the east side of the structure nearest Highway 133 to break up the long appearance of the façade.
- n. The rooftop equipment shall be screened in accordance of Section 5.4 of the UDC (Landscaping and Screening).
- o. All lighting shall be in compliance with Section 5.10 of the UDC (Exterior Lighting). The lighting plan shall be subject to review and approval of Town Staff.
- p. Per Section 5.11 of the UDC, 20% of the total residential units within the project (five units) will be required to meet the Town's Community Housing Guidelines. At all times, at least 20% of the completed residential units shall be made available and utilized as affordable housing pursuant to the Carbondale Affordable Housing Guidelines. There are a total of 36 bedrooms in the proposed plan; at least 15% of these bedrooms must be made available for affordable housing, and Applicant proposes to deed-restrict residential units containing at least 5 bedrooms.

While this project is under single ownership, the Applicant has offered to commit to a voluntary agreement pursuant to C.R.S. 38-12-301(2)(a) such that all affordable housing requirements will be met by the Applicant providing a proportionate number of deed-restricted rental units at the time of issuance of each building permit, with terms and occupancy overseen by the Town or its designee. However, at such time as any portion of this project is ever subdivided or condominiumized in the future, the Applicant shall be required to comply with the Community Housing requirements set forth in Section 5.11 of the UDC, as amended from time to time.

- q. A shower and changing facility shall be constructed within the commercial space.
- r. The Applicant shall pay a fee in lieu of water rights dedication to the Town in the amount of \$30,035 prior to issuance of a building permit.
- s. A "Knox" box shall be installed prior to issuance of a certificate of occupancy. The installation of the "Knox" box shall be subject to review and approval of the Fire District.



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- t. The Applicant shall also enter into an agreement with the Carbondale & Rural Fire Protection District that addresses payment of impact fees prior to the issuance of any building permits for this project.
 - u. All representations of the Applicant in written submittals to the Town or in public hearings concerning this project shall also be binding as conditions of approval.
3. The duration, lapsing and/or termination of the approvals set forth herein shall continue to be governed by applicable provisions of the UDC with regard to site plans (UDC Section 2.5.3.G.2) and conditional use permits (UDC Section 2.5.1.C.4).
4. The Applicant shall pay and reimburse the town for all other applicable (and reasonable) professional and Staff fees pursuant to the Carbondale Municipal Code and as set forth in the DIA.
5. This Ordinance shall not be effective until full execution of the DIA, Applicant's posting of all security required by the DIA, and the posting and publication of this Ordinance for a 30-day period in accordance with the Carbondale Home Rule Charter.

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INTRODUCED, READ AND PASSED this 10th day of December 2020¹⁹.

THE TOWN OF CARBONDALE

By:


Dan Richardson, Mayor

ATTEST:


Cathy Derby, Town Clerk

EXHIBITS:

- A. Legal Description of Property
- B. Site Plan
- C. Development Improvements Agreement
- D. Public Access Easement Exhibit

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ATTACHMENT I

Commitment No: 7000096-C2

SCHEDULE A (continued)

LEGAL DESCRIPTION

The Land referred to herein is located in the County of **Garfield**, State of **Colorado**, and described as follows:

A PARCEL OF LAND IN THE TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO, SITUATED IN LOT 9 OF SECTION 33 AND IN LOT 12 OF SECTION 34, ALL IN TOWNSHIP 7 SOUTH, RANGE 88 WEST OF THE 6TH P.M., LYING SOUTHERLY OF THE SOUTHERLY RIGHT OF WAY LINE OF A ROAD OR STREET IN THE TOWN OF CARBONDALE, NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF A COUNTY ROAD AND EASTERLY OF THE EASTERLY RIGHT OF WAY LINE OF COLORADO STATE HIGHWAY NO. 133, SAID PARCEL OF LAND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID ROAD OR STREET WHENCE THE SURVEY MONUMENT AT THE INTERSECTION OF MAIN AND EIGHTH STREETS IN SAID TOWN BEARS: S. 00° 03' 00" W. 394.04 FEET AND S. 89° 57' 00" E. 878.41 FEET;

THENCE S. 00° 25' 00" E. 138.22 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SAID COUNTY ROAD;

THENCE S. 89° 18' 00" W. 194.31 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID HIGHWAY;

THENCE N. 58° 31' 30" W. 114.09 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID HIGHWAY;

THENCE N. 21° 52' 38" W. 99.85 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID HIGHWAY;

THENCE S. 87° 58' 00" E. ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ROAD OR STREET, 328.01 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT:

That portion conveyed to Colorado Department of Transportation, State of Colorado, by instrument recorded April 28, 2014, at Reception No. 8-48650.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Westcor Land Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; and Schedule B, Part II-Exceptions.

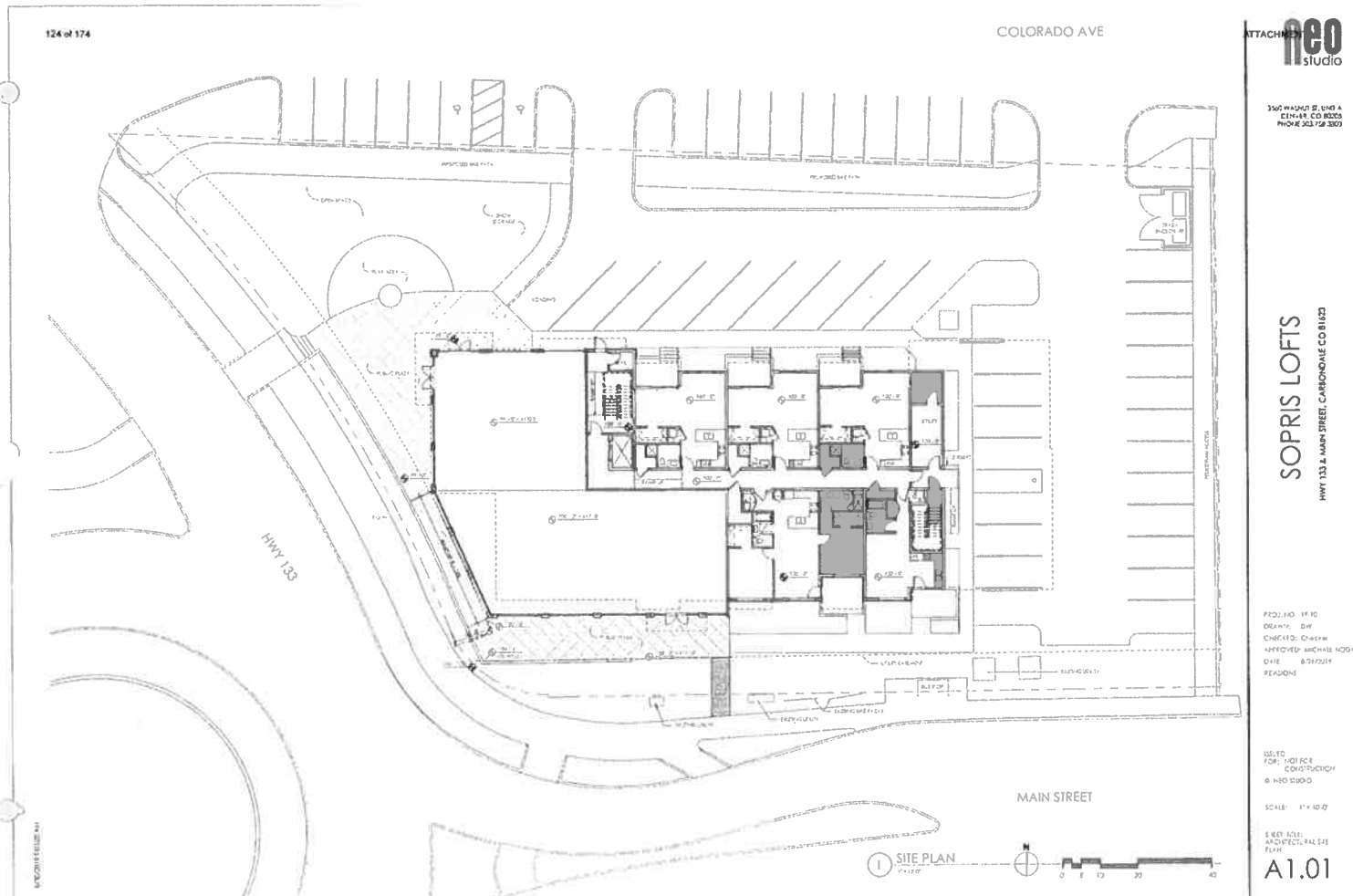
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DEVELOPMENT IMPROVEMENTS AGREEMENT 1201 MAIN PROJECT TOWN OF CARBONDALE, COLORADO

This DEVELOPMENT IMPROVEMENTS AGREEMENT ("Agreement") is made and entered into between the Town of Carbondale, Colorado ("Town"), and 1201 CO Ave. Holdings, LLC, a Colorado limited liability company (referred to herein as "Developer"), to become effective February 11, 2020, regardless of the date when the parties actually sign it.

1. Recitals

For the purpose of interpreting and giving effect to this Agreement, the Town and the Developer agree to the truth and the accuracy of the following:

a. Developer is the owner in fee simple of the property described on attached *Exhibit A* (the "Property").

b. Developer has submitted to the Town an application for approval of a Major Site Plan for the Property, together with requests for approval of a conditional use permit and two alternative compliance approvals, to facilitate the development of a mixed use (residential/commercial) project, and desires the Town to approve the same (all of these related requests are collectively referred to herein as the "Application" and the project requested to be approved pursuant to the Application is referred to as the "Development" or the "project").

c. This Agreement shall constitute the Development Improvements Agreement between the Town and the Developer regarding the development of the Property.

e. The obtaining of final approval of the Application will inure to the benefit of Developer and any of Developer's successors and assigns.

f. The Developer recognizes and acquiesces in the jurisdiction and the power of the Town to impose the restrictions and conditions required of the Developer in this Agreement, joins in the imposition of them, and agrees to perform each and every one of them.

g. On February 11, 2020, the Board of Trustees of the Town of Carbondale, after holding all necessary public hearings, approved Ordinance No. 2, Series of 2020 (the "Approval Ordinance"), which document is being recorded in the Office of the Garfield County Clerk and Recorder contemporaneously with this Agreement. The terms and conditions of the Approval Ordinance are incorporated herein by this reference as if set forth herein verbatim, and the approvals cited above are contingent upon the express condition that all of the obligations and duties set forth in this Agreement and the Approval Ordinance are faithfully performed by the Developer.

2. **Specific Conditions.**

Developer hereby agrees to the following conditions of approval by the Town:

a. That all representations of the Developer made in the Application and in statements during the meetings and public hearings before the Town shall be considered conditions of approval. In the event it is determined by the parties that there is an omission in this Agreement or that this Agreement or other agreement between the parties does not correctly address or include all representations of the Developer, the agreement of the parties, or the conditions of approval by the Town, the parties shall execute an amendment to this Agreement or such other agreement as may be necessary to correct such omitted or incorrect matter.

b. That the Town has approved a Major Site Plan for the Property that includes the development of up to 27 housing units (consisting of 18 efficiency/studio apartments and nine two-bedroom apartments) and 3,881 square feet of commercial square footage within a single building, together with associated parking facilities, a common plaza area, sidewalks, and trails (the "Site Plan"). All development shall be consistent with the approved Site Plan unless an amendment is approved by the Board of Trustees pursuant to Sections 2.3.8 and 2.5.3 of the UDC. A copy of the Site Plan is attached hereto as ***Exhibit B***.

c. That the public and portions of the private improvements required to be completed by the Developer in connection with the Town's approval of the Major Site Plan ("Required Improvements") and certain other obligations of the Developer shall be secured pursuant to this Agreement prior to the commencement of construction of any improvements or the issuance of any building permits for this project. The Required Improvements are described herein and are displayed on ***Exhibit C*** attached hereto and incorporated herein by this reference. The estimated cost of the Required Improvements is set forth on ***Exhibit D*** attached hereto and incorporated herein by this reference. In addition to completing the Required Improvements, the Developer has agreed to install a new 12" sanitary sewer main under Colorado Ave., as described on ***Exhibit E*** ("Sewer Main Improvements"). The cost of the Sewer Main Improvements is set forth on ***Exhibit F*** attached hereto and incorporated herein by reference and the Town shall reimburse Developer for such costs, or portion thereof, to the extent required by Section 16 below.

d. That the Developer hereby agrees to comply with all of the terms and conditions of the Approval Ordinance and this Agreement.

3. **Major Site Plan Approval.**

The Town hereby accepts and approves the Major Site Plan Review for the Property, which provides for future development of a single building containing a mix of commercial and residential uses. The layout of the proposed building, together with parking, common open space (including a public plaza), and trails (including a public trail along the east side of the Property from Main Street to Colorado Ave. and a second five-foot wide bicycle/pedestrian trail along Colorado Ave.), is generally depicted on the Site Plan, and the general locations of the various public access easements to be dedicated to the Town are set forth on ***Exhibit G*** attached hereto

and incorporated herein by this reference. All of the public easements shown on **Exhibit G** shall be conveyed to the Town by the Developer, by easement deed with special warranties of title, with owner's title insurance coverage provided to the Town, prior to the release of any security for the Required Improvements and prior to issuance of a building permit for the project, all as required by the Approval Ordinance.

Construction and maintenance of all Required Improvements and the Sewer Main Improvements within public rights-of-way and easements shall remain the obligation of the Developer until formal acceptance by the Town; provided, however, the Town shall formally accept the Required Improvements and the Sewer Main Improvements if the same are constructed in conformance with the Engineered Plans and Specifications, and the Developer is otherwise in compliance with all terms of this Agreement, the Approval Ordinance and applicable laws and regulations, including in particular Developer's warranty security obligations hereunder. After acceptance, the Town shall assume maintenance responsibility for the public bicycle and pedestrian trail improvements, and all other public improvements located within public streets (e.g. curb/gutter and asphalt pavement, and the Sewer Main Improvements), but the Town will not accept maintenance responsibility for, and the Developer shall remain responsible for, perpetual private maintenance, repair, and replacement of all improvements within the public plaza area shown on the Site Plan and all private water or sewer service lines.

4. Additional Conditions of Approval/Improvements.

Developer hereby agrees to the following conditions of approval by the Town for installation of the Public Improvements:

a. The Developer has presented to the Town and the Town has approved all engineered plans and specifications necessary and required for construction and installation of the Public Improvements, as provided herein ("Engineered Plans and Specifications"). The Engineered Plans and Specifications include the documents listed below that are incorporated herein by reference:

REQUIRED IMPROVEMENTS

- C1.0 SITE PLAN (11-20-19)
- C2.0 GRADING PLAN (8-27-19)
- C2.1 DRAINAGE PLAN (8-27-19)
- C3.0 UTILITY PLAN (8-27-19)
- L1 LANDSCAPE PLAN (11-20-19)

SEWER MAIN IMPROVEMENTS

- C3.1 COLORADO AVENUE PROPOSED SEWER MAIN
- C3.2 SANITARY SEWER DETAILS

The Town Engineer and the Town Building Official shall have authority to require, if reasonably necessary, additional detailed drawings, clarifications, and/or corrections to these documents prior to the issuance of building permits for the project.



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b. The estimated cost of completion of the Required Improvements, including a 10% contingency, is \$252,605.10 according to the cost estimates prepared and certified by a Colorado-registered professional engineer set forth on ***Exhibit D***, attached hereto and incorporated herein by this reference, and the estimated cost of completion of the Sewer Main Improvements, including a 10% contingency is \$254,072.50 according to the cost estimate set forth on ***Exhibit F***, attached hereto and incorporated herein by reference. The Required Improvements and the Sewer Main Improvements shall be constructed and installed in accordance with the Engineered Plans and Specifications approved by the Town. The Developer agrees to pay the entire cost of installation and construction of all of the Required Improvements and the Sewer Main Improvements, and to install, construct and complete the same on or before ***September 15, 2021***, subject to the Town's obligation to reimburse the Developer for the cost of the Sewer Main Improvements after completion and acceptance of the same by the Town, pursuant to Section 16 below.

c. The Required Improvements and the Sewer Main Improvements to be installed are generally described as follows and more particularly described on the Engineered Plans and Specifications to wit:

(i) Streets and Parking Areas. All public streets and parking areas shall be constructed by the Developer in accordance with the Engineered Plans and Specifications and the Town's Public Works Manual. The concrete portions of all entrances into the Property, including but not limited to curb and gutter, entrance fillets, entrance valley pans, handicapped ramps, and warning pads, shall be constructed as part of the Required Improvements.

(ii) Public Sidewalks and Trails. The Developer shall construct all public sidewalks and trails shown on ***Exhibit G*** attached hereto.

(iii) Drainage. All construction shall be in accordance with the Drainage Report prepared by Sopris Engineering, LLC dated August 27, 2019. All drainage infrastructure (including dry wells) located upon the Property shall be permanently maintained, repaired and replaced by the owner of the Property. Drainage infrastructure located within Town rights-of-way shall be maintained by the Town after formal acceptance and expiration of applicable warranty periods.

(iv) Water Distribution System. The water distribution system shall include, by way of example, fire hydrants, water lines, and appurtenances, and shall be installed in accordance with the Engineered Plans and Specifications and the Town's Public Works Manual. All water service lines shall be owned and maintained from the valve off of the public water main (a 6" hot tap) to the building by the owner(s) of the property or properties receiving service from such line. The Developer shall include on the as-builts required in Subsection 4(b)(xiv) below, the location and elevation of all individual water service lines installed in conjunction with the Public Improvements.

(v) Sanitary Sewage Collection System. The Sanitary Sewer Improvements and all private sewer service lines that will serve the Property shall be installed in

accordance with the Engineered Plans and Specifications. The Developer shall include on the as-builts required in Subsection 4(b)(xiv) below the location and elevation of all individual sanitary sewer services lines installed in conjunction with the Public Improvements. All sewer service lines, except as provided in this Subsection 4(c)(v)(b), shall be owned and maintained from the main sewer line connection to the building by the owner(s) of the Property.

(vi) Electric. Underground electrical wiring shall be installed in accordance with requirements and plans and specifications approved by Xcel Energy, and all plans for installation shall be submitted to the Town for its reasonable approval prior to installation.

(vii) Project Lighting. All lighting on the site shall be installed as required by the Town. Design and spacing of lighting shall be in accordance with standards approved by the Town.

(viii) Underground Communication Systems. Underground communication systems shall be installed in accordance with requirements and plans and specifications of CenturyLink, Comcast and Cedar Networks, as approved by the Town. Conduits shall be installed for all shallow utility providers and lines will be pulled through the conduits by the utility providers.

(ix) Gas Distribution System. The natural gas distribution system shall be installed in accordance with the requirements and plans and specifications of Black Hills Energy, and shall be submitted to the Town for its approval prior to installation.

(x) Signs. All street signs and traffic control devices, as required by the Town, shall be installed as required by the Manual on Uniform Traffic Control Devices (MUTCD) and as required and approved by the Town.

(xi) Soils Testing. A soils report prepared by Kumar and Associates dated July 11, 2019 has been submitted to the Town. The Town may require additional site-specific soils reports at the time of excavation upon inspection by the Developer's engineer or Town Staff or as a condition of any site plan or building permit approval.

(xii) Dust/Street Cleanup. During construction, the Developer shall comply with all reasonable directives of the Town to suppress dust and shall take steps to require that all construction traffic be free of mud when entering public streets within the Town of Carbondale. The Developer shall promptly clean up such mud or other debris from the construction site on Town streets.

(xiii) Street Cuts. Any concrete street cuts made by the Developer shall be cut and replaced at existing construction joints and only full panels. Any asphalt street cuts made by the Developer shall be full-width cuts ten (10) feet in both directions and repaved with a lay-down machine.

(xiv) As-Builts (survey and GIS). Upon completion of the project, the Developer will have a Colorado-registered Professional Surveyor or Engineer who has personally

inspected the site prepare and submit to the Town one electronic copy of surveyed as-builts showing all of the Required Improvements and the Sewer Main Improvements as constructed and in place. Additionally, the Developer will have GIS as-builts prepared and submitted to the Town electronically, which GIS as-builts shall include a GIS shapefile of all utilities with a data point for each piece of infrastructure with a photo, installation date, manufacturer, model and site-specific field notes. The GIS as-built file shall be insertable into the Town's GIS system. The Developer may elect to have the Town Engineer prepare these required GIS as-builts at the Developer's expense, or have a Colorado-registered professional engineer perform these services.

(xv) Computer Construction Drawings. An electronic computer file in CAD format of the as-built construction drawings referred to in the prior paragraph will also be submitted to the Town upon completion of the improvements required by this Agreement.

(xvi) Video Recordings of Sewer Lines. At completion of sewer line installations, video recordings and logs showing interior of pipes shall be provided to Town in an acceptable electronic format.

(xvii) Stub-outs. The Developer shall clearly mark with steel or wooden posts stub-outs for all utilities and swing ties and depth to these stub-outs from permanent objects shall be on the as-builts.

(xviii) Landscaping. Landscape improvements within public rights-of-way shall be installed in accordance with the Engineered Plans and Specifications and the Landscape Plan attached as **Exhibit H** and incorporated herein by this reference. The Developer shall provide a warranty on all public street trees to extend for a period two years after initial planting or replacement of each tree. Additionally, the Developer, or any successor owner of the Property, shall remain responsible for perpetual private maintenance, and periodic replacement, of all landscaping within the landscape islands within the Colorado Ave. right-of-way, including the irrigation system that will serve the same, and for replacement of plants as needed in the future to keep these landscape areas in good condition and appearance.

(xix) Irrigation. All outdoor irrigation within the Development, and within the public landscape islands described in the preceding sub-paragraph, shall be from a private irrigation system to be constructed, owned, operated, maintained and replaced as needed in perpetuity by the Developer or the successor owner(s) of the Property. Developer's maintenance obligations may only be assigned to a successor owner of the entire Property or an incorporated owner's association, the members of which shall be the owner(s) of all units within the building on the Property, who shall be required to pay pro rata assessments toward maintenance of common areas and the public landscape areas referred to in the preceding sub-paragraph. The Town shall have the right to approve the terms included within any Declaration of Restrictive Covenants related to the foregoing maintenance obligation, and any potential future amendment of such obligation, at the time of any future subdivision or condominiumization of the Property.

(xx) Dry-Up Covenant. The construction of streets, sidewalks, driveways, parking lots and buildings within the Development will result in the dry-up of land that may have been historically irrigated. Any and all consumptive use credit attributable to such permanent dry-up shall be owned and controlled by and may be used by or for the benefit of the Town as the

Town in its sole discretion deems appropriate. The Developer hereby releases and relinquishes any ownership or claim of ownership to said consumptive use credits. This provision regarding dry-up shall constitute a covenant that touches, concerns and runs with the land in perpetuity and shall be binding on the Developer, its successors and assigns.

(xxi) Fire protection. A “Knox” box shall be installed in the building prior to issuance of a certificate of occupancy. The installation of Knox Boxes shall be subject to the review and approval of the Fire District.

d. All Required Improvements and other obligations of the Developer (including the obligation to provide a two-year warranty on the Sewer Main Improvements)) shall be secured prior to recording this Agreement or the commencement of construction as set forth below.

e. All development fees required by the Approval Ordinance shall be paid to the Town at such times as specified in the Approval Ordinance.

f. Upon completion of the Required Improvements and the Sewer Main Improvements, Developer will cause its engineers (who shall have been actively engaged in observing the construction of these improvements and be registered in the State of Colorado) to provide a written certification that the Required Improvements and the Sewer Main Improvements have been completed, to the best of their knowledge and professional judgment, in conformance with all standards, plans and specifications as submitted to and previously approved by the Town, or the pertinent utility supplier. As-built plans shall be submitted with these certifications in the form described in Section 4(b)(xiv) above. The Town may withhold or suspend the processing of building permits or certificates of occupancy until all information required by this paragraph is provided to the Town.

g. Prior to issuance of a building permit, the Developer shall permanently deed-restrict 20% of total project housing units to be built in accordance with the Approval Ordinance. Thereafter, no certificates of occupancy shall issue until the requisite affordable housing units are constructed and ready for occupancy.

h. Nothing in this Agreement or the Approval Ordinance shall be construed to alter the duration of the Site Plan approval for this project as set forth in Section 2.5.3.G.2 of the UDC (Chapter 17, Section 17.02 of the Carbondale Municipal Code).

5. Construction Management.

The Developer shall submit a Construction Management Plan (CMP) to the Town prior to issuance of any building permits. The terms and conditions of such CMP are incorporated fully herein as terms and conditions of this Agreement, provided that in the case of any inconsistency between the terms of such Plan and the terms of this Agreement, this Agreement shall govern. After construction is completed, all soils that are disturbed during construction shall be reseeded, irrigated to re-establish vegetation, and thereafter kept reasonably free of noxious weeds. The Developer shall have a pre-construction meeting with Town representatives in attendance.



6. Inspections

During the installation by the Developer of the Public Improvements and/or the Sewer Main Improvements described in Section 4 above, the Town may:

- a. Inspect the work in progress with such personnel as the Town deems necessary.
- b. Require the production and inspection of the plans and specifications of the Developer and any contractor or subcontractor working on its behalf in connection with the work in progress.
- c. Require the Developer to obtain and pay for inspections, soils composition tests, compaction tests, concrete tests, asphalt tests, or such other tests of materials and work as may be necessary in the Town's opinion to ensure that the work in progress is being performed according to the Town's specifications and the Engineered Plans and Specifications.
- d. Any Town inspector shall have the authority to immediately order that all construction in the Development be suspended if the inspector determines that such a stop work order is needed to protect the Town's interest, or in the event of a violation of this Agreement, the Carbondale Municipal Code, or any sewer and water utility installation requirements. The Town may utilize staff personnel for inspections, or hire an outside inspector, in either case the cost of which will be reimbursed by the Developer.

7. Non-Liability upon Approval and Acceptance

The Town's approval of the Engineered Plans and Specifications shall not be deemed an adoption of them or a representation or warranty to the Developer or any other person or entity that the Engineered Plans and Specifications, or any work performed under them, is fit for the purpose intended or otherwise safe.

The Town's approval of the Engineered Plans and Specifications, acceptance of the installation of the Required Improvements, or the use and maintenance of certain of the Required Improvements and/or the Sewer Main Improvements shall not be deemed to be any of the activities listed in C.R.S. 24-10-106(a)(1) for which sovereign immunity is waived. No action or inaction by the Town in connection with its approval of this Development shall be deemed a waiver of its sovereign immunity.

The Town does not warrant or make any representations whatsoever concerning the suitability of its public improvements, including water distribution system, sewer system, or any other device or system owned or controlled by the Town which may be used in improving or serving the Development. Without limiting the foregoing, the Developer assumes the risk of all costs associated with installations for improving or serving the Development as described above and of all costs necessary to improve or serve the Development.

8. Warranties

The Developer shall warrant the installation of the Required Improvements and the Sewer Main Improvements described in Section 4 above against all defects in materials and workmanship for a period of two (2) years after the date of acceptance of the work by the Town, and all curative work under this warranty shall itself be warranted for an additional one year period or the expiration of the original two (2) year warranty, whichever is greater. In the event of any defect, the Town may require the Developer to correct the defect in material or workmanship.

9. Legal Compliance

The Developer shall comply with all state, federal and local laws, ordinances, rules, and regulations, including, by way of example, Chapter 17 of the Carbondale Municipal Code (the UDC) and all other ordinances and regulations of the Town relating to streets, water lines, and sewer lines, including the Town's Public Works Manual. The Developer, or its successors in interest, shall pay all system improvement fees for utilities as required by the Town's ordinances and regulations in effect as of the date of application for the tap, provided that if connection is not made to said system before expiration of the associated building permit, Developer shall pay any additional system improvement fees which may be applicable under Town Code in effect on the date of actual connection.

10. Dedications and Conveyances to Town

Upon completion and acceptance of the Required Improvements that the Town will take ownership of, and the Sewer Main Improvements, as described in Section 4 above, such improvements shall be the property of the Town, without further action of either party, except as otherwise herein provided. After these improvements that the Town will accept ownership of are completed and approved by the Town, the Developer shall provide the Town with a bill of sale conveying these improvements, free and clear of any encumbrances, and an itemized list of the actual cost of construction of each of such improvements. The Developer shall previously have dedicated and conveyed to the Town public easements for certain of the Required Improvements according to the procedures and requirements set forth in the Approval Ordinance (including the provision of title insurance coverage at the Developer's expense). To the extent that any as-built improvements are not wholly located within dedicated public easements, the Developer shall cause additional easements to be dedicated, or for the prior easements to be amended, to the satisfaction of the Town, and subject to all requirements of the Approval Ordinance concerning title and title insurance. The Required Improvements and the Sewer Main Improvements shall not be deemed accepted, and the warranty period(s) for the same shall not commence, until the Town has both accepted completion and received all required easement dedications.

11. Certificates and Permits

No certificates of occupancy shall be issued for or relating to any structure or improvement except to the extent that the Developer has constructed the Required Improvements the Sewer Main Improvements, all parking facilities and private common open space areas, and all private utilities required to serve that structure or improvement. Except as provided in this Section 11,

nothing herein shall limit the obligations of the Developer imposed by any of the Town's ordinances concerning the issuance of a certificate of occupancy. Without limiting any of its rights under this Agreement, the Town may, but need not, issue certificates of occupancy and grant extensions of time for the completion of construction and the installation by the Developer of any improvement, but only as is provided in Section 16, below. No extension of time for completion shall impair the Town's rights under any instrument of security described in Section 15 below, and the parties obligated under such security instrument shall be deemed to have consented to the Town's extension of time whether the Town gives actual notice or not to the party liable on the instrument of security.

12. Improvement Sequence (Public and Private).

Public street improvements to be installed by the Developer shall not be installed until all utility lines to be placed in or under the streets have been completely installed.

13. Repairs

The Developer shall repair and repave all streets and roads of the Town damaged by the Developer's installation of improvements and utilities external to the Development, and shall repair and/or repave all Town owned property damaged by the installation of improvements or utilities within the Development by the Developer or those acting under it or on its behalf. The road repairs shall be full width of the pavement and ten feet in either direction from the outermost edges of the damage (*i.e.*, if the damage is ten feet long the repaving would be thirty feet long by the width of the street). The cost of repair and repavement of streets associated with construction of the Sewer Main Improvements shall be included in the Town's reimbursement obligation pursuant to Section 16 below.

14. Completion by Town

In addition to all other remedies, upon default hereunder by the Developer, after the Town provides the Developer with written notice and an opportunity to cure in accordance with Section 21 below, the Town at its option may undertake all work necessary to install and complete the Required Improvements or the Sewer Main Improvements. If the Town does so, the Developer shall pay for all costs expended by the Town, including, but not limited to, costs for materials, labor of Town employees, and labor of non-Town employees utilized on the job, plus fifteen percent (15%) of such costs for overhead and administrative time and costs.

15. Security.

The Developer has prepared engineered preliminary cost estimates for the Required Improvements and the Sewer Main Improvements, copies of which are attached hereto as ***Exhibits D and F***, both of which are incorporated herein by this reference. To secure its obligations to install the Required Improvements and the Sewer Main Improvements, the Developer shall obtain and deliver to the Town the following security:

Prior to the Town's execution of this Agreement, recordation of this Agreement and the

Approval Ordinance, or the Town's authorization of commencement of construction of any of Required Improvements or the Sewer Main Improvements, the Developer shall deliver an unconditional, irrevocable letter of credit ("Security") in the amount of **\$278,012.35** ("Security"). This amount equals 100% of the estimated total cost of the Required Public Improvements set forth on **Exhibit D** and 10% of the estimated total cost of the Sewer Main Improvements set forth on **Exhibit F** (the Town is only requiring 10% of the cost of the Sewer Main Improvements to be secured due to the Town's obligation to reimburse Developer for the cost of the same upon completion in accordance with Section 16, below). The form of the Security shall be subject to approval by the Town Attorney and shall be issued by a State or National chartered commercial bank (the "Bank") and shall, among other things, entitle the Town to draw on the Security by presentation to the Bank of a certificate that the Developer is in default (subject to the notice and cure periods described in Section 21 below) in its obligations to install Public Improvements under this Agreement, that a sum certain is required to cure the default, and that the Bank shall forthwith deliver the sum certain to the Town. The Security shall remain effective for at least one year, or 30 days following the deadline for completion deadline set forth above in Section 4.b, whichever is longer. And, subject to the release procedures set forth below, the Security shall provide for automatic extension for successive one-year periods unless, at least 90 days prior to the then applicable expiration date, the Town receives notification from the Bank (via certified U.S. Mail, return receipt requested) that the Bank does not elect to extend the expiration date.

The Developer shall pay all costs incurred in obtaining the Security. If the Developer fails to install improvements or otherwise perform as required above, the Town may pursue its remedies under the Security. Nothing herein shall limit any other remedies available to the Town.

As construction progresses, until completion and Town acceptance of the Sewer Main Improvements and dedication of all required easements, the Developer will not be allowed to apply for partial releases of the Security. However, thereafter, if a partial release is desired, the Developer shall cause its engineer to provide the Town with a written application stating what Public Improvements have been completed and the amount of the Security for which partial release is sought. The Developer's engineer shall certify that the Required Improvements for which the partial release of the security is sought have been installed and completed according to the terms hereof, Engineered Plans and Specifications and all Carbondale Municipal Code and Public Works Manual requirements. Once reviewed and approved by the Public Works/Utility Departments, the Town Engineer, and any independent inspector hired by the Town, and after the Developer has reimbursed the Town for any legal or engineering fees incurred by the Town during project review, the request will be submitted to the Board of Trustees for final review and approval at a regular meeting. If authorized by the Board of Trustees to do so, Town staff shall review and approve requests for partial releases of the Security. The documentation associated with any such partial releases shall be in a form approved by the Town. Notwithstanding the foregoing, the Town shall at all times retain no less than \$50,667.76 of the Security (i.e. the Town shall continue to at all times hold at least 10% of the estimated cost of Required Improvements plus 10% of the estimated cost of the Sewer Main Improvements). Any partial release of the Security shall not constitute formal acceptance by the Town for purposes of commencing the warranties required by Section 8. Except to the extent that the acceptance of landscaping may be deferred until a later date in accordance with Section 8, above, such warranties will only commence upon the Town Engineer's certification that the Required Improvements and the Sewer Main Improvements are both 100%

complete, and the Board of Trustees' review and approval of the release of all security, excepting the warranty security required by the following paragraph and any additional security required by the Town to continue to guaranty completion of any required landscaping that is not complete at the time of acceptance of the other Public Improvements.

Upon Developer's completion of 100% of the Required Improvements and the Sewer Main Improvements required by this Agreement (other than landscaping), the Developer shall have its engineer provide the Town Engineer with certification that all of the Required Improvements and the Sewer Main Improvements have been completed as to approved designs, all required as-builts (in both survey and GIS format), and a request for formal acceptance. The Town Engineer shall timely provide the Developer's Engineer with a list of any items requiring correction or completion. Upon the Town Engineer's satisfaction that all Required Improvements and the Sewer Main Improvements are completed as required, and confirmation of receipt of all required as-builts and any additional required easement documentation, the Town Engineer shall timely recommend to the Town's Board of Trustees that the completed Required Improvements and Sewer Main Improvements be formally accepted. Then, the Town shall schedule an agenda item for a regular meeting of the Board of Trustees in order for the Board to review and approve formal acceptance of the Required Improvements and the Sewer Main Improvements. The warranty period shall commence upon the Board of Trustees' vote to approve formal acceptance. Within thirty (30) days after formal acceptance, the entire remaining amount of the Security shall be released, provided that an amount equal to ten percent (10%) of the original amount of the total estimated cost of the Required Improvements and the Sewer Main Improvements (as determined by the Town, in its discretion) shall remain in place (plus any additional amount retained by the Town to guaranty completion of any incomplete landscaping) as Warranty Security. The warranty periods under Section 8 hereof shall continue to be guaranteed through retention of the Security as set forth above or the Developer may provide cash deposits or replacement security to as the Warranty Security, in amounts and forms acceptable to the Town.

16. Town Cost-Share.

Upon the Town Board of Trustee's vote to formally accept completion of the Sewer Main Improvements, the Town shall reimburse the Developer for the Developer's actual cost of construction of the Sewer Main Improvements, provided the total of said reimbursement shall not exceed \$254,072.50 except if approved by the Town after review of documentation justifying any exceedance, and subject to all Town budgeting requirements. Prior to commencement of construction, the Developer shall provide the Town with a copy of a binding fix priced cost estimate from Developer's contractor for review and approval prior to commencement of construction. The Developer shall thereafter provide the Town with any information reasonably required by the Town to verify the actual out-of-pocket cost of the Developer to construct the Sewer Main Improvements.

17. Extension of Due Date

The construction completion date for installation of Public Improvements required in Section 3 may be extended for a reasonable time by the Town, after a written request from the Developer and any third party that provided security to the Town to guaranty completion of the

Public Improvements, and after a hearing before the Board of Trustees and approval of associated ordinances, if the Developer demonstrates delay occurred through no fault of the Developer and for reasons beyond the Developer's control. No certificate of occupancy shall be issued during any extension of time granted hereunder for the completion of the Required Improvements or the Sewer Main Improvements unless specifically approved by the Board of Trustees.

18. Non-Suit

The Town's approval of this project shall not make it liable for any loss or damage suffered within or by use of the project for any act, condition or omission occurring or arising out of or in connection with the Town's approval of the project. Neither the Developer nor anyone acting through it shall attempt to hold the Town liable for any loss or damages arising out of or in connection with the Town's approval of this project.

19. Benefit/Assignment

The provisions of this Agreement shall bind and inure to the benefit of the parties, their assigns as allowed by this Agreement, and their successors-in-interest of all kinds. The Developer's obligations under this Agreement shall not be wholly assigned except pursuant to a written assignment approved by the Town of Carbondale and provision of replacement security acceptable to the Town pursuant to Section 15 above.

20. Non-Waiver

Any indulgence by the Town to the Developer as to the performance of any portion of this Agreement and any waiver by the Town as to the Developer's performance or non-performance of any part of this Agreement shall not be deemed or considered to be an indulgence or waiver of any other part of this Agreement or any subsequent non-performance by the Developer.

21. Breach by Developer; Town's Remedies

In the event of a material breach of any of the terms and conditions of this Agreement by the Developer, the Town may take such action as the Town deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship, which action may include the following:

- a. The refusal to issue to the Developer any buildingsopris permit or certificate of occupancy.
- b. The recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or his designee, stating that the terms and conditions of this Agreement have been materially breached by the Developer. Upon the recording of such an affidavit, no lots or parcels may be sold, conveyed or further developed within the property until the default has been cured; an affidavit signed by the Town Manager or his designee and approved by the Board of Trustees stating that the default has been cured shall remove this restriction.

c. Drawing upon the Security or, Warranty Security, or Restoration Security for the purpose of undertaking completion or remediation work on the Required Improvements or the Sewer Main Improvements, or restoring and securing undeveloped portions of the Property, after providing Developer with the ten-day notice specified below. The Security or Warranty Security may be applied by the Town toward all costs incurred in remedying the Developer's default, including inspections, testing, and legal and engineering services.

d. The refusal to consider further development plans, building permits or certificates of occupancy for development upon the Property.

e. Any other right or remedy available at law or in equity.

Should the Town prevail in any action to enforce this Agreement, or any associated ordinances or approvals against the Developer, the Town shall be awarded its court costs, attorneys' fees and an amount to compensate the Town for the time of its employees or any experts in the preparation of and/or participation in such action.

Unless necessary to protect the immediate health, safety, and welfare of the Town, and notwithstanding any term or provision of this Agreement to the contrary, the Town Manager shall provide the Developer ten (10) days written notice of any alleged breach or default by Developer under this Agreement, during which ten (10) day period, the Developer may cure the breach or default described in said notice.

22. Indemnification/Insurance

Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from this Agreement and/or the Approval Ordinance, or the development of the Property, including, without limitation, any claims by any contractor, sub-contractor, laborer or materials supplier regarding payment for labor and materials associated with construction of the Required Improvements and/or the Sewer Main Improvements (including any mechanics' lien claims), and any claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and any amendments thereof, and any claims by the Surety or the Bank against the Town with regard to any claim or draw by the Town upon the Security. This indemnification shall include actual attorney's fees and costs incurred in the event that any party brings an action against the Town for any of the approvals described herein. The parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this Section. Therefore, the parties hereto agree to reasonably cooperate to prevent duplicate expenses incurred as a result of the indemnification herein described. This indemnification shall include the assignment to the Town of the proceeds of any insurance policy insuring the Developer or its successors-in-interest. The Developer shall be obligated to reimburse the Town for all legal or other expenses reasonably incurred by the Town in connection with investigation or defense of any such loss or claim. The Developer shall also cause the Town to be named as an additional insured under the terms of the liability insurance policy maintained by the Developer. A certificate showing such insurance shall be provided to the Town prior to commencement of any work by the Developer, which insurance shall not be subject to cancellation or non-renewal without at least fifteen (15) days prior written notice to the Town.

23. Waiver of Defects

In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer as set forth herein or in the other documentation being executed contemporaneously, and concerning the procedure, substance, and form of the ordinances or resolutions approving the Development and adopting this Agreement.

24. Final Agreement

To the extent that this Agreement is in conflict with any prior agreement between the parties, this Agreement supersedes and controls with respect to said areas of conflict. In all other respects, said prior agreements shall remain in full force and effect.

25. Modifications

This Agreement shall not be amended, except by subsequent written agreement of the parties.

26. Release of Liability

It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town of Carbondale Code and Ordinances and the laws of the State of Colorado, and that Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town officers or agents or their designees which is subsequently held unlawful by a court of law.

27. Invalid Provision

If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

28. Governing Law

The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.

29. Notice

All notices required under this Agreement shall be in writing and shall be hand- delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective upon delivery or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Town: Planning Director
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

with copy to: Mark E. Hamilton, Esq.
Holland & Hart, LLP
600 E. Main St, Suite 104
Aspen, CO 81611

Developer: 1201 CO Ave. Holdings LLCLLC
414 Aspen Airport Business Center, Unit A
Aspen, CO 81611

With copy to: Ben Genshaft, Esq.
Waas, Campbell, Rivera, Johnson & Velasquez LLP
420 E. Main St., Suite 210
Aspen, CO 81611

30. Recording Fees

The Developer shall pay for the costs of recording this Agreement and any documents which may be recorded according to the terms of this Agreement.

31. Titles

The Section titles in this Agreement are for convenience only and are not to be used to construe or interpret this Agreement.

32. Estoppel/Completion.

The Town agrees that it will, at any time and from time to time, within thirty (30) days following receipt of a written request from Developer or an independent third party who is a proposed or existing lender, seller or purchaser of property within the Development, execute, acknowledge and deliver to the party making such request, a statement certifying: (i) that this Agreement has not been modified, supplemented or amended and is in full force and effect (or if there have been any such modifications, supplements or amendments, reference to the same will be made); and (ii) that to the best of the Town's knowledge and belief, the obligations of the Developer hereunder requiring performance prior to the time of the request, have been performed in compliance with this Agreement (or, if there has been default in such performance, reference to the same will be made). Such statement shall not constitute a waiver by the Town of any claims against the Developer and such statement shall in no event subject the Town to any affirmative liability whatsoever to the Developer or to any independent third party, notwithstanding the negligence or other inadvertent failure of the Town to investigate, disclose, or correct any deficiency in performance. Prior to or at the time the Town delivers any such statement, the party making such request shall pay to the Town its reasonable costs and attorneys' fees incurred in preparing, executing and delivering such statement.



Reception#: 949906
02/08/2021 11:00:15 AM Jean Alberico
29 of 39 Rec Fee:\$203.00 Doc Fee:0.00 GARFIELD COUNTY CO

THE TOWN OF CARBONDALE
a Colorado home rule municipal corporation

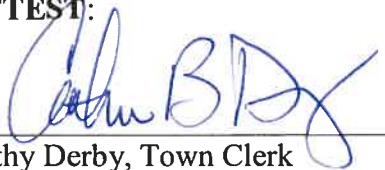
By:


Dan Richardson, Mayor

Date:

2/11/2020

ATTEST:


Cathy Derby, Town Clerk

STATE OF COLORADO)

) ss.

COUNTY OF GARFIELD)

SHEIJA BINSHABAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194026023
MY COMMISSION EXPIRES JULY 10, 2023

The above and foregoing document was acknowledged before me this 12 day of February 2020, by Dan Richardson, as Mayor for the Town of Carbondale and by Cathy Derby as Town Clerk for the Town of Carbondale.

Witness my hand and official seal.

My commission expires: July 10, 2023


Notary Public

DEVELOPER:

1201 CO AVE. HOLDINGS LLC
a Colorado limited liability company

By:

Riley Soderquist
Riley Soderquist

, Manager

Date:

6/25/20

STATE OF COLORADO)

) ss.

COUNTY OF GARFIELD)

The above and foregoing document was acknowledged before me this 25th day of JUNE 2020, by RILEY C. SODERQUIST as Manager of 1201 CO Ave. Holdings LLC, a Colorado limited liability company.

Witness my hand and official

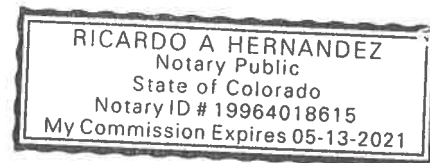
My commission expires: 05-13-2021

Ricardo A Hernandez
Notary Public

EXHIBITS:

- A. Property Description
- B. Site Plan
- C. Required Improvements
- D. Required Improvements Cost Estimate
- E. Sewer Main Improvements
- F. Sewer Main Improvements Cost Estimate
- G. Easement Map
- H. Landscaping Plan

r5tjlqv.DOCX



LEGAL DESCRIPTION

A PARCEL OF LAND IN THE TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO, SITUATED IN LOT 9 OF SECTION 33 AND IN LOT 12 OF SECTION 34, ALL IN TOWNSHIP 7 SOUTH, RANGE 88 WEST OF THE 6TH P.M., LYING SOUTHERLY OF THE SOUTHERLY RIGHT OF WAY LINE OF A ROAD OR STREET IN THE TOWN OF CARBONDALE, NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF A COUNTY ROAD AND EASTERLY OF THE EASTERLY RIGHT OF WAY LINE OF COLORADO STATE HIGHWAY NO. 133, SAID PARCEL OF LAND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID ROAD OR STREET WHENCE THE SURVEY MONUMENT AT THE INTERSECTION OF MAIN AND EIGHTH STREETS IN SAID TOWN BEARS: S. 00° 03' 00" W. 394.04 FEET AND S. 89° 57' 00" E. 878.41 FEET;

THENCE S. 00° 25' 00" E. 138.22 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SAID COUNTY ROAD;

THENCE S. 89° 18' 00" W. 194.31 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID HIGHWAY;

THENCE N. 58° 31' 30" W. 114.09 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID HIGHWAY;

THENCE N. 21° 52' 38" W. 99.85 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID HIGHWAY;

THENCE S. 87° 58' 00" E. ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ROAD OR STREET, 328.01 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT:

That portion conveyed to Colorado Department of Transportation, State of Colorado, by instrument recorded April 28, 2014, at Reception No. 848650.

County of Garfield, State of Colorado.

also known by street and number as: 1201 Colorado Avenue, Carbondale, CO 81623



1906+ SOWING TOFTS ¹ - SNOW STORAGE CALCULATION					
SITE	FLOW AREA ²	FLOW VOL.	STORAGE ³	STORAGE VOL. (CFT)	NET +/- (CFT)
	(SQ)	(CFT [1])	AREA (SQ)	(2)	(CFT)
ROW	4,302	2,101	982	2,946	855
OWSITE	15,443	7,717	5,600	16,600	9,084
TOTAL ⁴	19,615	9,818	6,582	19,146	9,979

[1] = ASSUMING A 12" SNOW STORAGE DEPTHS DOWN TO 6" DEPTH

[2] = ASSUMING AVERAGE STORAGE DEPTHS IS 3"

[3] =

SNOW STORAGE NOTES:

1. FROM AERIAL VIEW, THE BUILDING AND ACCESS DRIVE IS IN THE NORTH, SOUTH STOWARD OR NORTH LANE 2 IS HORIZONTAL TO THE TOWN OF CARROLLTOWN.
2. SOUTH LANE STOWARD IS PERPENDICULAR TO THE NORTH-WEST CORNER OF THE BUILDING. THE CLUB ON THE WEST END OF THE BUILDING, WHICH IS IDENTICAL TO THE CLUB ON SOUTH LANE, CAN NOT BE PLACED TO THE LARGEST UNOCCUPIED AREA, SINCE IT WOULD HAVE TO BE PLACED IN A LOCATION.

ENDING POINT

PROPOSED LEGEND

PROPOSED RETAINING WALL
PROPOSED STONE SPUR
PROPOSED SLOPE
PROPOSED ASPHALT PAVEMENT
PROPOSED CONCRETE/ASPHALT
PROPOSED SNOW STORAGE AREA

SITE NOTES.

1. The analysis and proposed strategy was performed by a licensed Engineering LLC. The existing condition was determined at one (1) foot intervals.
2. The proposed control interval is one (1) foot.
3. The proposed structural and MEP condition's plans for building reclamation.
4. Refer to the building structural plans regarding the site analysis improvements.
5. All electrical, plumbing and mechanical shall be adhered to.

SOPUS ENGINEERING, LLC
CONCRETE TANKS

H07 56401 0.70427
 (approx) 0.02 (Lap 0.042)
 (0.01, 0.042)
 P & 1979 0.70427

DESIGNED BY	APP
DRAWN BY	APP
CHECKED BY	FTN
DATE	02-05-2020
JOB NO	19065

SOPRIS LOFTS:
1201 COLORADO AVE
CARBONDALE, COLORADO

SITE PLAN

DRAWING NO. C-1.0

Exhibit 'D' - Sopris Lofts Public Improvements
Engineer's Opinion of Probable Construction Costs
SE Job # 19066
December 19, 2019

PAGE 1

ITEM	NATURE OF WORK	QUANTITY	UNIT	UNIT COST	COST
GENERAL					
G1	MOBILIZATION	JOB	L.S.	11,000.00	\$ 11,000.00
G2	LAYOUT, OBSERVATION, TESTING & AS-BUILTS	JOB	L.S.	16,000.00	\$ 16,000.00
G3	CLEAR AND GRUB	JOB	L.S.	1,000.00	\$ 1,000.00
G4	SAWCUT & REMOVE ASPHALT	400	S.Y.	8.00	\$ 3,200.00
G5	SUBGRADE PREP, FINE GRADING	10,000	S.F.	2.50	\$ 25,000.00
G6	STREET/STOP SIGNS	4	E.A.	400.00	\$ 1,600.00
G7	TRAFFIC CONTROL	JOB	L.S.	10,000.00	\$ 10,000.00
SUBTOTAL SITE =					\$ 67,800.00
PAVING & CONCRETE IN RIGHT OF WAY					
R1	CLASS 6 AGGREGATE	199	C.Y.	42.00	\$ 8,358.00
R2	4" ASPHALTIC PAVEMENT	720	S.Y.	31.50	\$ 22,680.00
R3	CONCRETE CURB & GUTTER	335	L.F.	35.00	\$ 11,725.00
R4	3' VALLEY PAN	235	L.F.	35.00	\$ 8,225.00
R5	CONCRETE SIDEWALK	225	S.F.	8.00	\$ 1,800.00
R6	HANDICAP RAMP	40	S.F.	15.00	\$ 600.00
SUBTOTAL PAVING =					\$ 53,388.00
PUBLIC SIDEWALKS ONSITE					
P1	CLASS 6 AGGREGATE	20	C.Y.	42.00	\$ 840.00
P2	CONCRETE SIDEWALK	1,040	S.F.	8.00	\$ 8,320.00
P3	HANDICAP RAMP	100	S.F.	15.00	\$ 1,500.00
SUBTOTAL PATHS =					\$ 10,660.00
WATER					
W1	6" DIP WATER SERVICE (TO LOT LINE)	53	L.F.	65.00	\$ 3,445.00
W2	6" WATER VALVES	2	E.A.	1,800.00	\$ 3,600.00
W3	6" DIP WATER MAIN FOR FIRE HYDRANT	42	L.F.	65.00	\$ 2,730.00
W4	FIRE HYDRANT ASSEMBLY	1	E.A.	6,000.00	\$ 6,000.00
SUBTOTAL WATER =					\$ 15,775.00
SANITARY SEWER					
SS1	6" SEWER SERVICE (TO LOT LINE)	22	L.F.	60.00	\$ 1,320.00
SS2	12X6" SEWER SERVICE WYE	1	E.A.	1,000.00	\$ 1,000.00
SUBTOTAL SEWER =					\$ 2,320.00
STORM SEWER					
ST1	4' DIAMETER DRYWELL	3	E.A.	7,500.00	\$ 22,500.00
ST2	12" ADS N12 STORM	14	L.F.	40.00	\$ 560.00
SUBTOTAL SEWER =					\$ 23,060.00
EROSION CONTROL					
E1	EROSION CONTROL (SILT FENCE, STRAW BALES, ETC)	JOB	L.S.	1,000.00	\$ 1,000.00
E2	GRASS SEEDING LANDSCAPE AREAS IN ROW	900	S.F.	2.50	\$ 2,250.00
SUBTOTAL EROSION =					\$ 3,250.00
TOTAL ALL ITEMS =					\$ 229,641.00
10% CONTINGENCY =					22,964.10
TOTAL =					\$ 252,605.10

Sanitary Sewer Note: Per discussion with the Public Works director, the Sanitary Sewer Main line will be funded by the Town of Carbondale, but will be constructed with the development of this parcel. The sewer service wye and line is included in this estimate.

NOTE: This opinion of probable construction cost was prepared for budgeting purposes only. Sopris Engineering, LLC cannot be held responsible for variances from this estimate as actual costs may vary due to bid and market fluctuations.

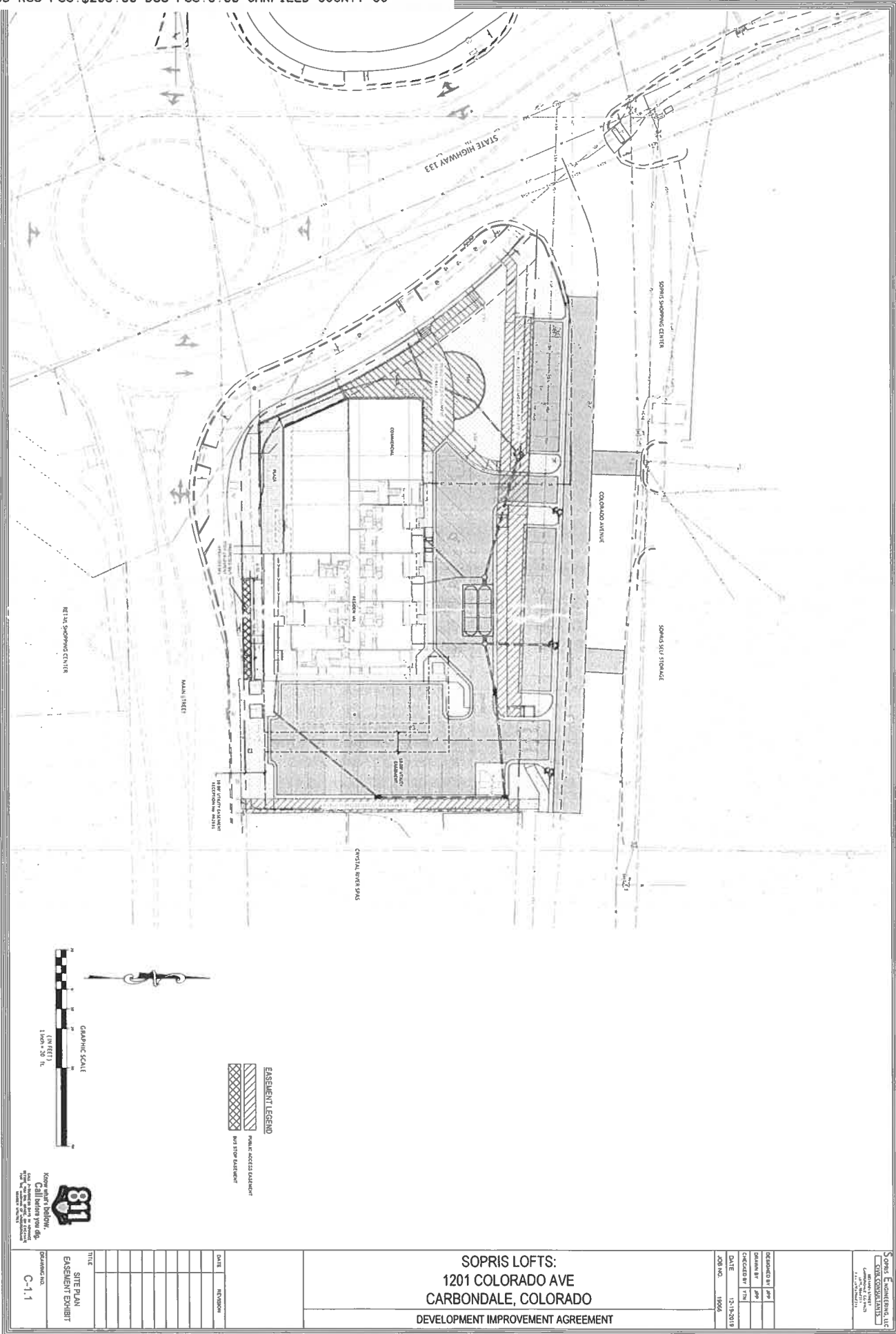
Exhibit 'F' - Colorado Avenue 12" Sanitary Sewer Main
Engineer's Opinion of Probable Construction Costs
SE Job # 19066
January 23, 2020

PAGE 1

ITEM	NATURE OF WORK	QUANTITY	UNIT	UNIT COST	COST
GENERAL					
G1	MOBILIZATION	JOB	L.S.	10,000.00	\$ 10,000.00
G2	LAYOUT, OBSERVATION, TESTING & AS-BUILTS	JOB	L.S.	22,000.00	\$ 22,000.00
G4	SAWCUT & REMOVE ASPHALT	580	S.Y.	8.00	\$ 4,640.00
G7	TRAFFIC CONTROL (INCLUDES DETOUR)	JOB	L.S.	15,000.00	\$ 15,000.00
SUBTOTAL SITE =					\$ 51,640.00
PAVING & CONCRETE IN RIGHT OF WAY					
R1	CLASS 6 AGGREGATE	49	C.Y.	55.00	\$ 2,695.00
R2	3" ASPHALTIC PAVEMENT (PATCH)	580	S.Y.	28.00	\$ 16,240.00
R3	1" ASPHALTIC PAVEMENT OVERLAY	2,615	S.Y.	20.00	\$ 52,300.00
SUBTOTAL PAVING =					\$ 71,235.00
SANITARY SEWER					
SS1	12" SDR 26 SEWER LINE	625	L.F.	100.00	\$ 62,500.00
SS2	10" SDR 26 SEWER LINE	16	L.F.	100.00	\$ 1,600.00
SS3	CAST IN PLACE SEWER MANHOLE SH 133	1	E.A.	15,500.00	\$ 15,500.00
SS4	4' DIA. PRECAST SEWER MANHOLE	4	E.A.	6,500.00	\$ 26,000.00
SS5	BYPASS PUMPING	JOB	L.S.	2,500.00	\$ 2,500.00
SUBTOTAL SEWER =					\$ 108,100.00
TOTAL ALL ITEMS =					\$ 230,975.00
10% CONTINGENCY =					23,097.50
TOTAL =					\$ 254,072.50

Sanitary Sewer Note: Per discussion with the Public Works director, the Sanitary Sewer Main line will be funded by the Town of Carbondale, but will be constructed with the development of this parcel. Asphalt and final grading prep in front of project is included on Sopris Lofts public improvements cost estimate

NOTE: This opinion of probable construction cost was prepared for budgeting purposes only. Sopris Engineering, LLC cannot be held responsible for variances from this estimate as actual costs may vary due to bid and market fluctuations.





Reception#: 949906
02/08/2021 11:00:15 AM Jean Alberico
39 of 39 Rec Fee:\$203.00 Doc Fee:0.00 GARFIELD COUNTY CO

