

**ORDINANCE NO. 3  
SERIES OF 2019**

**AN ORDINANCE OF THE BOARD OF TRUSTEES  
OF THE TOWN OF CARBONDALE, COLORADO  
APPROVING  
A MAJOR SITE PLAN (INCLUDING ALTERNATIVE COMPLIANCE),  
CONDITIONAL USE PERMIT, AND VARIANCE TO MAXIMUM FRONT  
YARD SETBACK FOR LOT 1, CARBONDALE MARKETPLACE  
SUBDIVISION**

WHEREAS, Crystal River Marketplace 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 Lot 1, Carbondale Marketplace Subdivision, as described on the Final Plat recorded in the Garfield County real property records on February 28, 2018 at Reception No. 903693 ("Lot 1"), and for a Conditional Use Permit to authorize ground floor dwelling units, for a variance to the maximum front yard setback along West Main Street, and for Alternative Compliance concerning the required number of street trees and the location of private open space; and

WHEREAS, after required public notices, the Town's Planning and Zoning Commission reviewed these requests at a noticed public hearing on September 27, 2018 and October 11, 2018 and recommended approval with conditions; and

WHEREAS, after required public notices, the Town's Board of Trustees conducted a public hearing on these requests on November 27, 2018 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 A* should be approved, with conditions, in order to allow development of a mixed-use project upon Lot 1, 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;

- c. The proposed site plan is consistent with the approved Carbondale Marketplace Final Subdivision Plat;
- 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 the proposed new streets within the Carbondale Marketplace Subdivision as well as other 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 Lot 1, 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; specifically, the ground floor units meet a significant community demand for rental housing and are integrated as urban housing into a mixed-use development; the property is south of the soon-to-be constructed City Market development with its associated 10,000 sq. ft. retail space and gas pumps and north of the property zoned Commercial/Retail/Wholesale in the Crystal Village PUD;
- c. The site includes no non-conformities with the exception of the inability to meet the maximum 10 ft. front yard setback along Main Street due to the pre-existing location of a 20 ft. wide ditch easement;
- d. The proposed use is planned in a manner that minimizes adverse impacts on the traffic in the neighborhood or surrounding uses; and



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- 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 a variance to the maximum front yard setback along West Main Street, with conditions, pursuant to Section 2.7.1.C.3.a of the UDC for the following reasons:

- a. The subject property has an exceptional site condition which is not a general condition of the MU zone district, specifically, the pre-existing location of a 20 ft. wide ditch easement which runs parallel to the southerly property line of Lot 1 adjacent to West Main Street;
- b. The location of that ditch easement creates an exceptional, practical hardship to the Applicant as buildings cannot be constructed within the easement in order to meet the maximum 10 ft. front yard setback;
- c. The requested variance is the minimum required that will afford relief as the buildings are proposed as closely as possible along the ditch easement, meeting the intent of the standard in the MU zone district;
- d. The Applicant did not create the hardship by its own actions as the ditch easement was created during the Carbondale Marketplace Subdivision application review which was submitted prior to the adoption of the UDC and the new MU zone district;
- e. The variance requested does not harm the public or injure the value of adjacent properties; and
- f. The granting of the requested variance will be consistent with the spirit and purpose of the Code; and

WHEREAS, the Board of Trustees also finds and determines that it is appropriate to approve Applicant's request for alternative compliance for street tree standards should be approved, with conditions, pursuant to Section 5.1.3.E of the UDC for the following reasons:

- a. Applicant's proposed landscape plan will achieve the intent of the standard in UDC Section 5.4.3.B.3 to a better degree than the regular street tree standard as it complies with the Tree Board's preference to space the trees apart based on the size class of each tree in order to ensure that the tree canopies will not overlap at maturity;



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- b. Applicant's proposed landscape plan will advance the goals and policies of the Comprehensive Plan and the UDC to a better degree than the regular street tree standard as it provides a creative design that does not strictly adhere to the Code's standards yet authorizes a site-specific plan that is better than the strict application of the standard;
- c. Applicant's proposed landscape plan will result in benefits to the community that exceed benefits associated with the standard as it improves the environmental and aesthetic character of Carbondale; and
- d. Applicant's proposed landscape plan 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 with regard to the elimination of balconies in exchange for rooftop private outdoor space should be approved, with conditions, pursuant to Section 5.1.3.E of the UDC for the following reasons:

- a. Applicant's proposed plan would achieve the intent of the standard in UDC Section 5.6.5.B. to a better degree than the subject standard as it would comply with the UDC in a two-fold manner: (1) private outdoor space would be provided in a creative and unique manner; and (2) it would allow a more iconic design for Building E to create a sense of entry into the project (this is in compliance with UDC Section 5.7.4.B. (importance of a building's location on a street corner);
- b. Applicant's proposed plan would advance the goals and policies of the Comprehensive Plan and the UDC to a better degree than the regular standard for private outdoor space as it would provide a creative design that would not strictly adhere to the UDC's standards yet would authorizes a site-specific plan that is better than the strict application of the standard;
- c. Applicant's proposed plan would result in benefits to the community that exceed benefits associated with the regular standard for private outdoor space as it would improve the aesthetic character of Carbondale;
- d. Applicant's proposed plan would impose no greater impacts on adjacent properties than would occur through compliance with the regular standards for private outdoor space set forth in the UDC; and



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WHEREAS, the Board of Trustees also finds and determines that certain conditions of approval should be imposed so that the project will be developed consistent with the purposes of the UDC. All of those 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. All conditions of Ordinance No. 21, Series of 1997, recorded in the Office of the Garfield County Clerk & Recorder on March 13, 1998 at Reception No. 521822 shall remain in full force and effect unless otherwise expressly approved by the Board of Trustees by subsequent ordinance.
  - b. Contemporaneous with recordation of the Site Plan, the Applicant and the Town shall enter into a Development Improvements Agreement ("DIA") in the form attached hereto as *Exhibit B*. 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 onsite and offsite improvements, reclamation requirements, and required security for the same. As set forth in the DIA, the construction of the initial public infrastructure shall be completed by **November 1, 2020**, unless such timeline is extended by the Board of Trustees in its discretion for good cause shown. If no construction has started 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 a letter of credit in a form acceptable to the Town Attorney securing the public improvements described in this Ordinance and the DIA for a period extending at least 30 days following the deadline for completion of the public improvements. The DIA also sets forth additional obligations of the Applicant with regard to the provision of additional security to guarantee performance of site restoration obligations should construction cease for a prolonged period.



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- c. 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.
- d. 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.
- e. All required public utility, public access and public pedestrian/bicycle easements shown on *Exhibit C* shall be dedicated to the Town via general warranty deed prior to acceptance of the public improvements. The final location and size of the easements shall be subject to review and approval of Town Staff. 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 coverage amount of at least \$250,000.00, and the easement dedication shall be free and clear of all liens and encumbrances excepting any encumbrancers that the Town may determine to accept after review of the title commitment. Any title insurance premiums, including any additional premium(s) necessary to delete the "standard" title exceptions from the final title policy, shall be paid by the Applicant. Any lender holding any lien upon Lot 1 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.
- f. 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. The security to be posted by the Applicant in support of the DIA shall also secure the Applicant's revegetation obligations per the terms of the DIA.
- g. In addition to completing all public and private infrastructure improvements and public easement dedications required by this Ordinance



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and the DIA, the Applicant shall pay a fee in lieu of highway improvements to the Town in the amount of \$25,000, payable in two installments, each in the amount of \$12,500, the first installment of which shall be due and payable at the time of issuance of the first building permit for private improvements upon Lot 1 and the second installment of which shall be due and payable at the time of issuance of the second building permit for private improvements upon Lot 1.

- h. Separate sign permits shall be obtained from the Town for all outdoor signage prior to installation in accordance with the Carbondale Municipal Code.
- i. All applicable water and sewer system development fees shall be paid prior to issuance of a building permit for each building.
- j. 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.
- k. The final landscape plan shall be subject to review and approval by the Carbondale Tree Board prior to the issuance of any building permits. All development upon Lot 1 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.
- l. The southerly driveway shown on the Site Plan shall be widened to 23 ft. in width.
- m. All outdoor irrigation shall be from non-potable water sources supplied by the Rockford Ditch through a private non-potable irrigation system, the construction, operation, maintenance and replacement of which shall be paid for by the owners of all lots within the Carbondale Marketplace Subdivision pursuant to that certain Reciprocal Easement Agreement dated February 28, 2018 and recorded in the Garfield County real property records on February 28, 2018 at Reception No. 903701. No more than 1.8 acres of lawn and garden areas upon Lot 1 shall be irrigated (to include up to approx. 0.8 acres of sod or sod equivalent, and up to approx. 1.0 acres of native/low water use plantings). The outdoor irrigation on Lot 1 entails approximately 104.3 equivalent residential units (EQRs) of municipal water service requirements, which results in a water rights dedication requirement of 54.24 shares of stock in the Rockford Ditch Association. The Colorado Rocky Mountain School (CRMS) has already dedicated



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sufficient Rockford Ditch shares to cover water rights dedication requirements for Lot 1.

- n. All rooftop equipment shall be screened in accordance with Section 5.4 of the UDC (Landscaping and Screening).
- o. All project lighting shall comply with Section 5.10 of the UDC (Exterior Lighting). The lighting plan shall be subject to review and approval of Town Staff prior to issuance of any building permits.
- p. Per Section 5.11 of the UDC, 20% of total residential units (up to 23 units at full build-out) will be required to meet the Town's Community Housing Guidelines. At all times, at least 20% of the completed residential units upon Lot 1 shall be made available and utilized as affordable housing pursuant to the Carbondale Affordable Housing Guidelines. Required affordable housing shall be distributed throughout the project as buildings are constructed, not clustered in one building or location. There are a total of 177 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 33 bedrooms. No certificates of occupancy for free market units, or buildings containing free market units, shall issue until the requisite percentage of affordable housing is constructed and ready for occupancy.

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. No certificates of occupancy shall issue for any residential dwelling units except to the extent that at least 20% of total existing housing units within Lot 1 have been deed-restricted and made available to qualified occupants pursuant to Carbondale's affordable housing program.

- q. Prior to each building permit application, and as a condition of the Town commencing the processing of any building permit application(s), the Applicant shall first submit a written request to the Town's Planning Director for a pre-application meeting with the Planning Director. The purpose of the pre-application meeting is to provide an opportunity for an





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evaluation of the proposal as it relates to the approved Site Plan and as well as ongoing project compliance with the associated approvals, agreements and applicable Code requirements. In support of each request for a pre-application meeting, the Applicant shall provide the following information to the Planning Director at least 10 days in advance of the pre-application meeting, unless the Planning Director determines in his or her reasonable discretion that such information is no longer needed due to completion of applicable requirements or otherwise unnecessary due to the particularities of the specific proposed building permit application:

- (1) Evidence of compliance with approved building design;
- (2) Evidence of compliance with approved Main Street Marketplace Site Plan;
- (3) Engineered plans for water and sewer services to the buildings;
- (4) Engineered plans for shallow utilities to the buildings including electric, telephone, cable, and telecommunications lines and all necessary transformers, vaults, and pedestals;
- (5) Evidence of compliance with parking requirements for the specific building(s);
- (6) Plan for road access to the specific building(s);
- (7) Engineered plans for drainage infrastructure including necessary inlets, drain pipes, and detention structures;
- (8) Plans for all walks and paths paralleling and to the buildings;
- (9) Landscaping and irrigation improvements paralleling each building and cumulative calculation of total irrigated areas on Lot 1;
- (10) Reconstruction of public sidewalks and trails from a soft surface to a concrete surface for those sidewalks and trails that parallel the buildings as outlined in the DIA;
- (11) Evidence of compliance with private common open space elements on a per-unit and project-wide basis;
- (12) Future construction access;

- (13) Easements;
- (14) Provision of accessible units (Building Code);
- (15) Evidence of compliance with affordable housing requirements;
- (16) Payment of transportation impact fee (if applicable).
- (17) An as-built schematic depicting what portions of the project have been completed and what portions remain to be completed, including cumulative parking, common open space, trails, and a chart accounting the as-built commercial square footage, total residential units, and deed-restricted community housing units.
- (18) Any other information reasonably deemed necessary by the Planning Director.

The Planning Director or Building Official may withhold or condition building permits or certificates of occupancy to the extent reasonably necessary to assure continued compliance with these project requirements.

- q. 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), conditional use permits (UDC Section 2.5.1.C.4), and variances (UDC Section 2.7.1.4).
- r. 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.
- s. The Applicant shall pay and reimburse the town for all other applicable 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 12<sup>th</sup> day of February, 2019.

THE TOWN OF CARBONDALE

By:

  
Dan Richardson, Mayor

ATTEST:

  
Cathy Derby, Town Clerk



EXHIBITS:

- A. Site Plan
- B. Development Improvements Agreement
- C. Sheet C4.0 – Roads, Easements, Setback

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**B-1 - Site Plan**  
**Main Street Marketplace**  
Carbondale, Colorado

Exhib: + A



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**DEVELOPMENT IMPROVEMENTS AGREEMENT  
CARBONDALE MARKETPLACE SUBDIVISION  
LOT 1  
TOWN OF CARBONDALE, COLORADO**

THIS AGREEMENT is made and entered into between the Town of Carbondale, Colorado ("Town"), and Crystal River Marketplace LLC, a Colorado limited liability company (referred to herein as "Developer"), to become effective February 12, 2019, 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 Lot 1 of the Carbondale Marketplace Subdivision ("Lot 1" or the "subject property") as described on the Final Plat recorded in the Garfield County real property records on February 28, 2018 at Reception No. 903693 (the "Development").

b. Developer has submitted to the Town an application for approval of a Major Site Plan for Lot 1, together with requests for approval of a variance, conditional use permit, and two alternative compliance approvals, to facilitate the development of a mixed use (residential/commercial) project upon Lot 1, and desires the Town to approve the same (all of these related requests are collectively referred to herein as the "Application").

c. Future development upon Lot 1 is affected by prior documentation associated with the prior annexation of said land into the Town of Carbondale upon application of the Colorado Rocky Mountain School, including but not limited to Ordinance No. 11--Series of 1979, Ordinance No. 21--Series of 1997, and a related agreement entitled "Carbondale-Colorado Rocky Mountain School Inc. Water Dedication Agreement, 1989" effective March 15, 1990 (the "1989 CRMS Agreement"), Ordinance No. 5, Series of 2016, recorded on February 28, 2018 at Reception No. 903650, and the First Amendment to Carbondale-Colorado Rocky Mountain School Inc., Water Dedication Agreement 1989 dated July 31, 2018 and recorded on August 8, 2018 at Reception No. 910299. These prior approvals and agreements shall continue to govern Lot 1, except to the extent amended by this Agreement or the Approval Ordinance (defined below), as approved by the Town and recorded in the Office of the Garfield County Clerk and Recorder subsequent to the execution of this Agreement. Such conditions shall be in addition to applicable provisions of the Carbondale Municipal Code, the Carbondale Public Works Manual, the Carbondale Affordable Housing Guidelines, and the various building codes (including the Green Building Codes) that also regulate development of this project.

d. This Agreement constitutes the Development Improvements Agreement between the Town and the Developer regarding the development of Lot 1.

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

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 12, 2019, the Board of Trustees of the Town of Carbondale, after holding all necessary public hearings, approved Ordinance No. 3, Series of 2019 (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 Lot 1 that includes the development of up to 115 housing units and at least 10,259 square feet of commercial square footage within up to eleven buildings, together with associated parking facilities, common open space areas, 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 A* and the Site Plan will be recorded by the Developer.

c. That the public improvements required to be completed by the Developer in connection with the Town's approval of the Major Site Plan ("Public Improvements") and 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 B* attached hereto and incorporated herein by this reference. The estimated cost of the required improvements is set forth on *Exhibit C* attached hereto and incorporated herein by this reference.



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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 Lot 1, which provides for future development of up to 11 buildings with a mix of commercial and residential uses fronting the main adjacent roadways. These 11 buildings may contain up to 115 housing units, and at least 10,259 square feet of commercial square footage. It is recognized that Buildings C, D, and E contain “flexible” residential units that could be utilized for additional commercial space (rather than residential space) without increasing the overall size of the buildings. The layout of the proposed 11 buildings, together with parking, common open space, and trails, is generally depicted on the Site Plan and the general locations of the various public utility, public ingress, egress, and emergency access, public sidewalks and trail easements to be dedicated to the Town are set forth on *Exhibit D* attached hereto and incorporated herein by this reference. All of the public easements shown on *Exhibit D* shall be conveyed to the Town by general warranty deed, with owner’s title insurance coverage provided to the Town, prior to the release of any security for the public improvements and prior to issuance of additional building permits for the project, all as required by the Approval Ordinance. The public sidewalks and trails and associated easements have been highlighted for reference on attached *Exhibit E* attached hereto and incorporated herein by this reference.

Construction and maintenance of all required public improvements within public rights-of-way and easements shall remain the obligation of the Developer until formal acceptance by the Town. After acceptance, the Town shall assume maintenance responsibility for all public improvements located within public streets and easements, with the exception that the Town will not accept maintenance responsibility for private water or sewer service lines, nor for any trails that lack hard surfaces.

### 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 and in the Annexation Agreement (“Engineered Plans and Specifications”). In addition to the requirements expressly set forth in this Agreement and the Annexation Agreement, the Engineered Plans and Specifications include the documents listed below that are incorporated herein by reference:

C1.0 – EXISTING CONDITIONS EAST (07-30-18)

C1.1 – EXISTING CONDITIONS WEST (07-30-18)

C2.0 – CONCEPTUAL UTILITIES PLAN (07-30-18)





- C2.1 – SEWER PLAN & PROFILE – 1 (07-30-18)
- C2.2 – SEWER PLAN & PROFILE – 2 (07-30-18)
- C3.0 – GRADING AND DRAINAGE PLAN (07-30-18)
- C3.1 – SNOW STORAGE PLAN (07-30-18)
- C4.0 – ROADS, EASEMENT, SETBACKS (07-30-18)
- C5.0 – DETAILS (07-30-18)
- C – 1.0 Planting Plan
- C – 1.1 Planting Plan
- C – 2.0 Irrigation Plan
- C – 2.1 Irrigation Plan
- C – 3.0 Construction Details

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

b. The estimated cost of completion of the required Public Improvements is \$636,208.80 according to the cost estimates prepared and certified by a Colorado-registered professional engineer set forth on *Exhibit C* attached hereto and incorporated herein by this reference. The Public 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 Public Improvements and shall install and construct the same on or before *November 1, 2020*.

c. The Public 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 Lot 1, 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 Public Improvements.

(ii) Public Sidewalks and Trails. The Developer shall construct all public sidewalks and trails shown on *Exhibit E* attached hereto. The Developer may elect to initially construct sidewalks and trails with a finished surface of crusher fines, provided that, until such trails are reconstructed with a hard concrete surface, the Developer shall be responsible for maintenance. After these improvements are completed with hard surfaces, the Town will assume the responsibility for maintenance. If, prior to completion with hard surfaces, the Developer fails to maintain any such improvements after written notice from the Town and an opportunity to cure in accordance with Section 20 below, the Town may withhold or



condition any future building permits or certificates of occupancy until Developer complies with its maintenance obligations.

(iii) Drainage. All construction shall be in accordance with the Drainage Report prepared by Sopris Engineering, LLC dated July 25, 2018. All drainage infrastructure (including dry wells) located upon Lot 1 shall be permanently maintained, repaired and replaced by the owner of Lot 1. 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 curb stop near the property line 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 Sewage Collection System (including, by way of example, all sewer mains and laterals), 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 or properties receiving service from such line.

(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 approval prior to installation. The existing overhead power line along Main Street shall be placed underground.

(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 HP Geotech, Inc. dated October 17, 2000 and updated January 11, 2002 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. Except as otherwise provided below in Section 12, 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 public improvements constructed. 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 F* 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.

(xix) Non-potable irrigation system. All outdoor irrigation within the Development shall be from a private, piped and pressurized irrigation system supplied by the Rockford Ditch. The private irrigation system shall be owned, operated, maintained and replaced as needed in perpetuity pursuant to that certain Reciprocal Easement Agreement dated February 28, 2018 and recorded in the Garfield County real property records on February 28, 2018 at Reception No. 903701. No more than 1.8 acres of lawn and garden areas upon Lot 1 shall be irrigated (to include up to approx. 0.8 acres of sod or sod equivalent, and up to approx. 1.0 acres of native/low water use plantings). No outdoor irrigation upon Lot 1 shall be supplied with potable water from the Town's municipal system.

(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 has historically been irrigated using the Rockford Ditch water rights that will be dedicated to the Town. 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 each mixed-use 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 Public Improvements associated with the Site Plan and other obligations of the Developer (including reclamation obligations) shall be secured prior to recording this Agreement or the commencement of construction as set forth below. Said Public Improvements are described herein and the estimated costs thereof are set forth in *Exhibit C*, attached hereto and incorporated herein by this reference.

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 Public Improvements, Developer will cause its engineers (who shall have been actively engaged in observing the construction of the Public Improvements and be registered in the State of Colorado) to provide a written certification that the Public 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 each building permit, the Developer shall permanently deed-restrict at least 20% of total project housing units (up to 23 units at full built-out to include up to 33 bedrooms) in accordance with Section 2.p of the Approval Ordinance. Thereafter, no certificates of occupancy shall issue until the requisite affordable housing units are constructed and ready for occupancy.

h. After construction of the Public Improvements and/or upon completion of each building, the Developer shall restore any remaining undeveloped areas of Lot 1 that were disturbed during construction, and that will not be developed within the following 12 months, by removing all construction materials, regrading, and re-seeding these areas to facilitate dust control and noxious weed management. The Developer shall also at all times remedy any other public nuisance, unsightliness, or public safety issues that may be presented by the temporary discontinuance of project construction (e.g. by removing any exposed rebar or other dangerous items from the site, or placing fencing and signage to preclude public access to or the view of any partially constructed improvements). Prior to issuance of the first building permit, the Developer shall also be required to post and maintain additional Restoration Security (see below Section 15) in an initial amount of \$100,000.00. If the Developer does not diligently continue to perform its restoration obligations pursuant to this paragraph after written notice from the Town and an opportunity to cure as provided in Section 20 below, or after the Town notifies the Developer in writing that a period of at least 12-months has passed without an active building permit for this project, the Town may proceed to draw upon the Restoration Security pursuant to Section 20, below, for purposes of securing and restoring any public or private portions of Lot 1 or otherwise remedying any other public safety, nuisance or unsightliness. In such event, Developer consents to the Town's entry upon Lot 1 for these purposes. Should the Town's cost in performing such work exceed the amount of the Restoration Security, the Developer shall be liable to the Town for any deficiency and, until all restoration is complete, any unsafe conditions, nuisances or unsightliness remedied, and until replacement Restoration Security is established in the amounts required by this Agreement, the Town may refuse to process any additional building permits or certificates of occupancy for the project.

i. The project contemplated by this Agreement shall be sequenced. It is anticipated that Building A and Building B will be the first built. Subsequent buildings will be constructed as the market demands. The initial public improvements that must be constructed before any buildings are occupied include water and sewer mains, Main Street utilities, public parking along Shorty Pabst Way and Hendrick Drive, all road intersections into Lot 1, public sidewalks and trails (soft surface initially), and public street trees. Pursuant to this Agreement, these items will all be completed on or before November 1, 2020. However, additional infrastructure will be required at the future time of completion of additional buildings, including: private water and sewer service lines to each building, shallow utilities (gas, electric, telephone, cable and telecommunications lines and all necessary transformers, vaults and pedestals), off-street parking spaces for specific buildings, private road access to individual buildings, private drainage infrastructure for individual buildings, concrete walks and paths around each building, landscaping and irrigation around each building, reconstruction of soft-surface public sidewalks and trails to concrete surface adjacent to each building, and private common open space improvements adjacent to each building. *Exhibit G* attached hereto and incorporated herein by this reference depicts the anticipated sequencing of private improvements, including common

open space areas, in connection with the development of various buildings within the project. The Town shall review the plans for each of these private improvements for compliance with the Site Plan and the terms of this Agreement in connection with the issuance of each building permit. Additionally, *Exhibit G* depicts centralized common open space areas that are not tied to the development of any particular buildings. In order to assure completion of these larger common open space areas to meet the anticipated needs of project residents, the following conditions shall apply: (1) unless completed prior, the futsal field shown on the Site Plan shall be completed and in service no later than upon the completion of 50 total housing units within all buildings; and (2) unless completed prior, the private common open space east of the futsal field on the Site Plan shall be completed and in service no later than upon the completion of 80 total housing units within all buildings. If the Developer fails to meet the private improvements obligations set forth in this paragraph after receiving written notice from the Town and an opportunity to cure in accordance with Section 20 below, the Town may thereafter withhold additional building permits and/or certificates of occupancy for additional housing units until the Developer meets the private improvements obligations set forth in this paragraph.

j. 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 to the Town prior to issuance of any building permits. The terms and conditions of such Plan 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 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 Public Improvements described below, or the use and maintenance of such Public 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 Public 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 those Public Improvements described in Section 4 above, such Public Improvements shall be the property of the Town, without further action of either party, except as otherwise herein provided. After any Public Improvements are completed and approved by the Town, the Developer shall provide the Town with a bill of sale conveying the Public Improvements, free and clear of any encumbrances, and an itemized list of the actual cost of construction of each of the Public Improvements. The Developer shall also dedicate and convey to the Town as-built easements according to the procedures and requirements set forth in the Approval Ordinance (including the provision of title insurance coverage at the Developer's expense). The Public 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 all Public Improvements, parking facilities and private common open space areas 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 master/main utility lines to be placed in or under the streets have been completely installed. Additional criteria for the sequencing of public and private improvements are set forth above in Section 4 and on attached *Exhibit B*.

#### **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).

#### 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 20 below, the Town at its option may undertake all work necessary to install and complete all the Public Improvements which the Developer must complete pursuant to Section 4 of this Agreement. 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.

##### (a) Security and Warranty Security.

The Developer has prepared an engineered preliminary cost estimate for all Public Improvements to be installed by the Developer to be dedicated for the use of the public or in publicly conveyed land, rights-of-way and easements. A copy of this preliminary cost estimate in the amount of \$636,208.80 is attached as *Exhibit C* and incorporated herein by this reference. To secure its obligations to install the Public Improvements described above, 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 the Public Improvements, Developer shall deliver an unconditional, irrevocable letter of credit ("Security") in the amount of \$636,208.80 ("Security"). 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 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 of the Public Improvements 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.





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As construction progresses, the Developer will be allowed to apply for partial releases of the Security. 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 Public 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 may 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 Developer shall in no event be entitled to the release of more than ninety percent (90%) of the cost of Public Improvements prior to the completion and acceptance of all Public Improvements required hereunder. The Town's 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 all required Public Improvements are 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 Public Improvements required by this Agreement (or that all required Public Improvements are complete other than landscaping), the Developer shall have its engineer provide the Town Engineer with certification that all Public 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 Developer shall also provide the Town with all required documents, and title insurance commitments, to facilitate the dedication of required public utility, access and trail easements to the Town. 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 Public Improvements are completed as required (or that all required Public Improvements other than landscaping are completed as required), and confirmation of receipt of all required as-builts and easement documentation, the Town Engineer shall timely recommend to the Town's Board of Trustees that the completed Public Improvements and easement dedications 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 Public 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 Security (as determined by the Town, in its discretion) shall remain in place (plus any additional amount retained by the Town to guaranty completion of landscaping), subject to the provisions

of the of the following sentence, to benefit the Town. 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 secure the warranty, in amounts and forms acceptable to the Town.

(b) Restoration Security.

The Developer has also provided an estimate of the cost to restore 67% of the land area within Lot 1 in order to secure its restoration/reclamation obligations pursuant to Section 4.h above. Prior to the issuance of the first building permit for any of the proposed buildings within the Development, the Developer shall post with the Town an additional unconditional, irrevocable letter of credit in the amount of \$100,000.00 ("Restoration Security"). So long as Developer remains in compliance with this Agreement, and the Town has initiated no draw requests with regard to the Security for the Public Improvements, the Developer may request the Town to accept the combination of the Security and the Restoration Security into a single letter of credit obligation. The Restoration Security shall be governed by the same requirements set forth above for the Security as to the form, type, duration, and renewal of the letter of credit, provided that partial releases of the Restoration Security shall only be permitted upon request of the Developer in the following amounts and at the following project milestones: Upon completion of three buildings and confirmation of all site restoration requirements related to the same, the Developer may request the Town to reduce the Restoration Security to 75% of the initial amount; upon completion of five buildings and confirmation of all site restoration requirements related to the same, the Developer may request the Town to reduce the Restoration Security to 50% of the initial amount; and, upon completion of eight total buildings, the Developer may request the Town to reduce the Restoration Security to 25% of the initial amount.

**16. 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 approval ordinances and/or amendments to the Annexation Agreement, 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 those Public Improvements described in Section 4 above unless specifically approved by the Board of Trustees.

**17. Non-Suit**

The Town's approval of this Development shall not make it liable for any loss or damage suffered within or by use of the Development for any act, condition or omission occurring or arising out of or in connection with the Town's approval of the Development. 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 the Development.

## **18. 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.

## **19. 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.

## **20. Breach by Developer; Town's Remedies**

In the event of a 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 building 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, warranty security, or Restoration Security for the purpose of undertaking completion or remediation work on the Public Improvements, or restoring and securing undeveloped portions of Lot 1, after providing Developer with the ten-day notice specified below. The Security, warranty security or Restoration 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 within the Development.
- 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 where reasonably practicable to do so, the Town Manager shall provide the Developer ten (10) days written notice of intent to take any action under this Section during which ten (10) day period, the Developer may cure the breach described in said notice and prevent further action by the Town.

## **21. 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, the Approval Ordinance, or the development of Lot 1, including, without limitation, indemnification against any claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and any amendments thereof, 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.

## **22. 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.

## **23. 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.

#### **24. Modifications**

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

#### **25. 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.

#### **26. 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.

#### **27. 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.

#### **28. 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: Crystal River Marketplace, LLC  
c/o Briston Peterson, Manager  
20 Sunset Drive, Unit 1  
Basalt, CO 81621

## **29. 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.

## **30. Titles**

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

## **31. 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.

**THE TOWN OF CARBONDALE**  
a Colorado home rule municipal corporation

By:   
Dan Richardson, Mayor

Date: January 8, 2020

ATTEST:

  
Cathy Derby, Town Clerk

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF GARFIELD                )

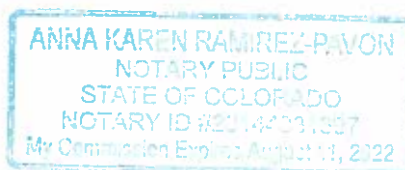
The above and foregoing document was acknowledged before me this 8<sup>th</sup> day  
of January 2020, by Dan Richardson, as Mayor for the Town of Carbondale and  
by Cathy Derby as Town Clerk for the Town of Carbondale.

Witness my hand and official seal.

My commission expires:

Aug 11, 2022

  
Notary Public





Reception#: 930572  
01/14/2020 11:08:11 AM Jean Alberico  
32 of 44 Rec Fee: \$228.00 Doc Fee: 0.00 GARFIELD COUNTY CO

**DEVELOPER:**

**CRYSTAL RIVER MARKETPLACE LLC**  
a Colorado limited liability company

By: \_\_\_\_\_

Briston Peterson, Manager

Date: \_\_\_\_\_

1/10/2020

STATE OF COLORADO )

COUNTY OF Garfield )

)  
) ss.  
)

The above and foregoing document was acknowledged before me this 10<sup>th</sup> day of January 2020, by Briston Peterson as Manager of Crystal River Marketplace LLC, a Colorado limited liability company.

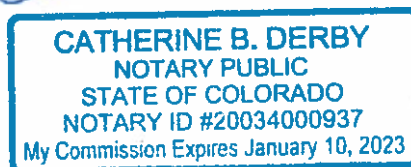
Witness my hand and official  
My commission expires:

Notary Public

*Catherine B. Derby*

**EXHIBITS:**

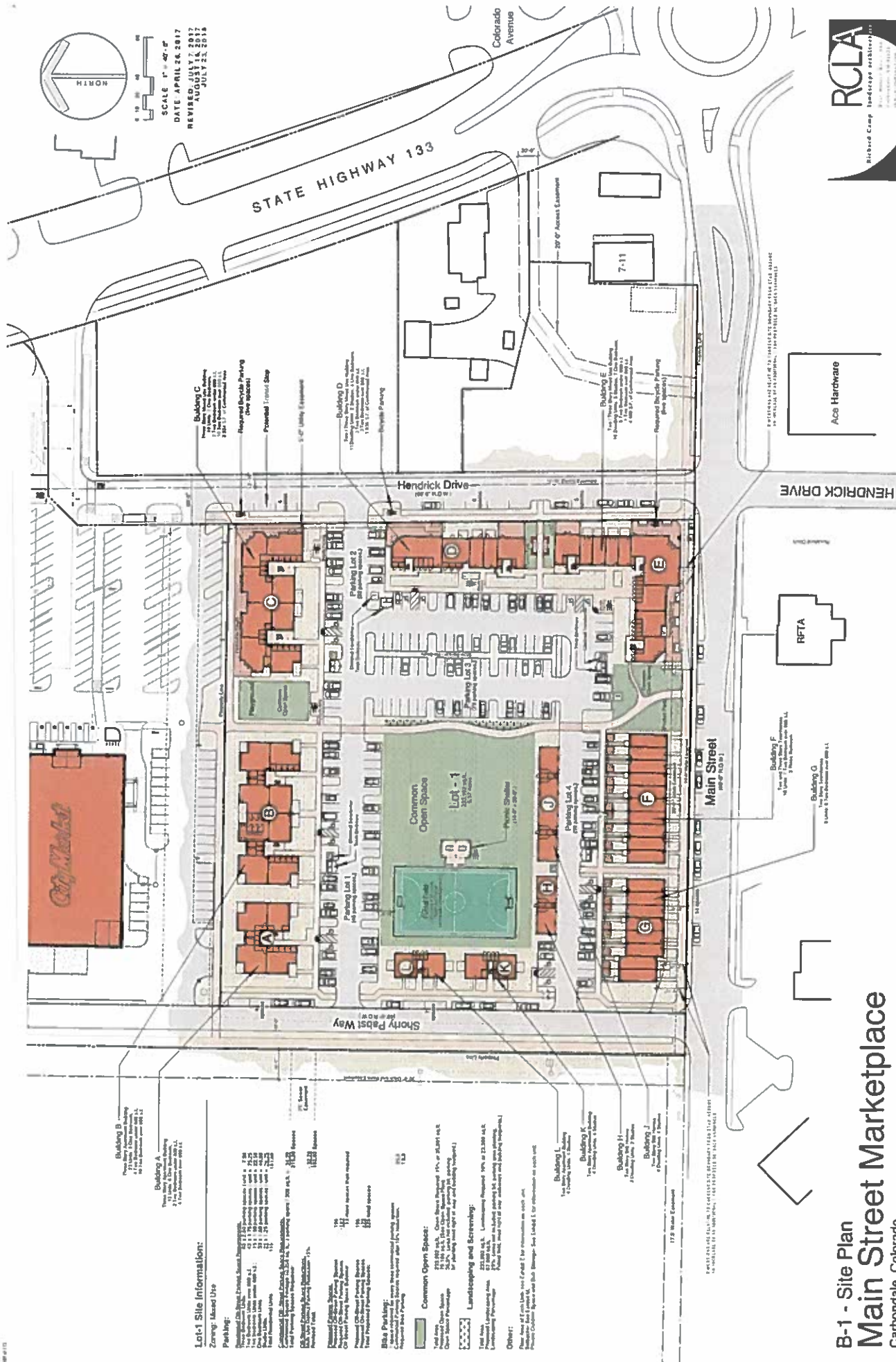
- A. Site Plan
- B. Required Public Improvements
- C. Public Improvements Cost Estimate
- D. Sheet C4.0 – Roads, Easements, Setback
- E. Public Trails & Sidewalks
- F. Landscaping Plans
- G. Sequencing Plan



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Reception#: 930572  
01/14/2020 11:08:11 AM Jean Alberico  
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**B-1 - Site Plan**  
**Main Street Marketplace**  
Carbondale, Colorado

Exh. bit A



Reception#: 930572  
01/14/2020 11:08:11 AM Jean Alberico  
34 of 44 Rec Fee \$228 00 Doc Fee 0 00 GARFIELD COUNTY CO

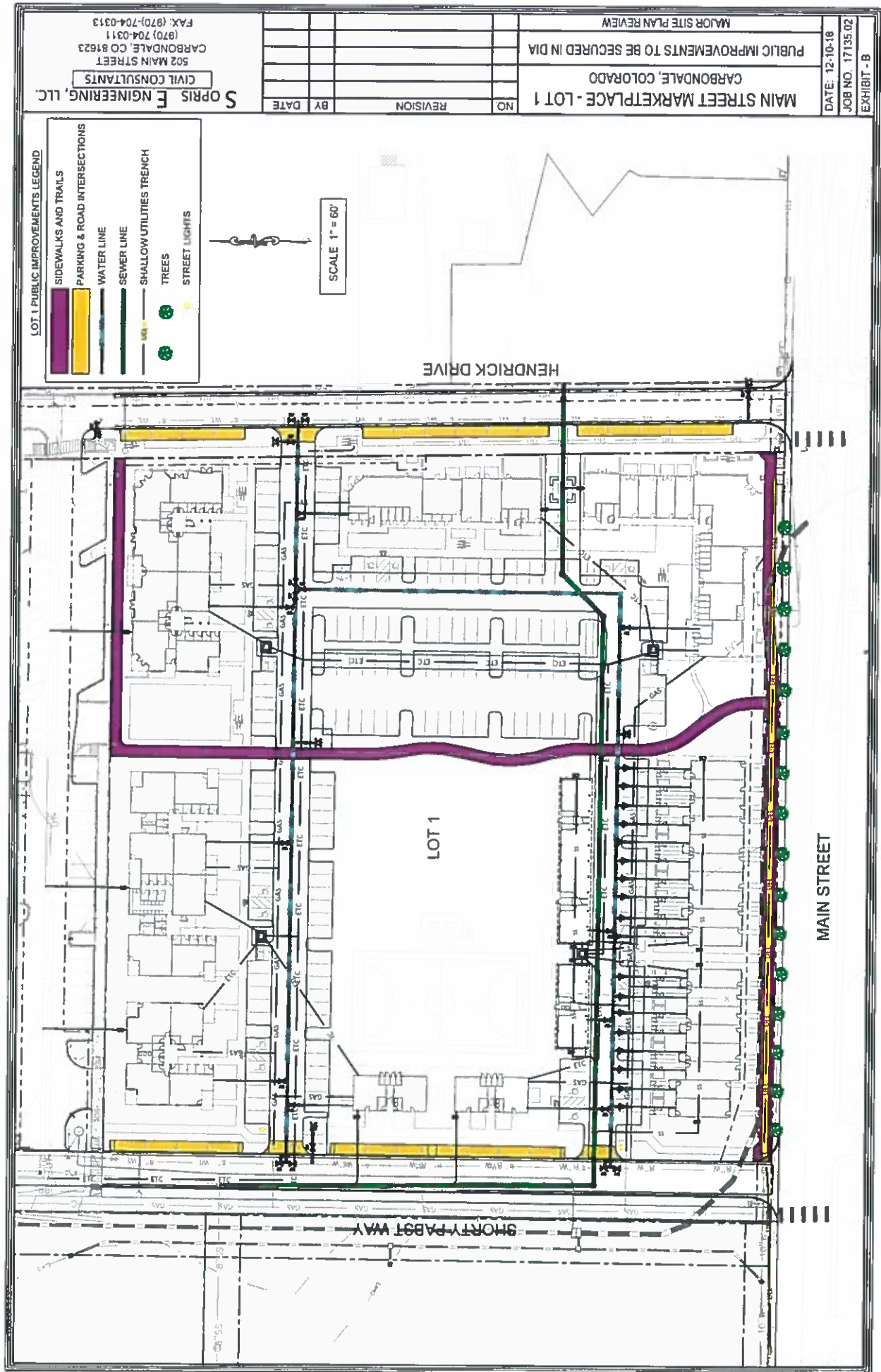


Exhibit B

**MAIN STREET MARKETPLACE - LOT 1**  
**ESTIMATED CONSTRUCTION COSTS FOR PUBLIC IMPROVEMENTS**

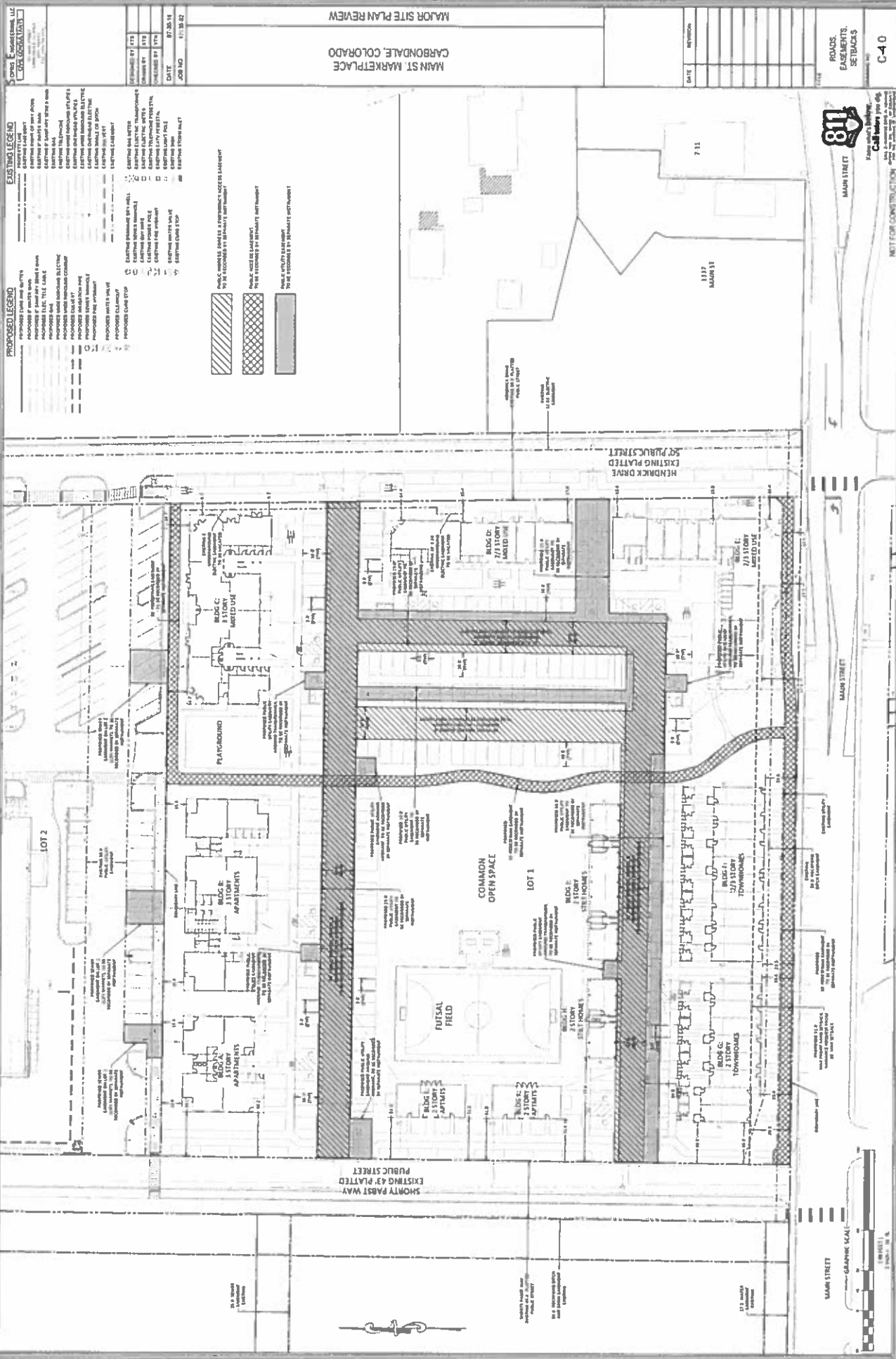
SE JOB #17135  
 DECEMBER 11, 2018  
**EXHIBIT C**

Reception#: 930572  
 01/14/2020 11:08:11 AM Jean Alberico  
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ITEM		QUANTITY	UNIT	UNIT COST	COST
<b>GENERAL</b>					
G1	MOBILIZATION	1.0	L.S.	\$ 5,000.00	\$ 5,000.00
G2	CLEAR AND GRUB	1.0	L.S.	\$ 4,000.00	\$ 4,000.00
G3	STRIP AND STAGE TOPSOIL, ASSUME 6" THICK	1.0	L.S.	\$ 4,000.00	\$ 4,000.00
G4	STRIP AND STAGE OVERBURDEN, 12" THICK	1.0	L.S.	\$ 7,500.00	\$ 7,500.00
G5	TRAFFIC CONTROL	1.0	L.S.	\$ 1,000.00	\$ 1,000.00
G6	SURVEY, CONSTRUCTION ADMIN, TESTING, AS BUILTS	1.0	L.S.	\$ 20,000.00	\$ 20,000.00
<b>SUBTOTAL G1-G6</b>					<b>\$ 41,500.00</b>
<b>UTILITY IMPROVEMENTS</b>					
U1	8" DIP WATER LINE	1158.0	L.F.	\$ 70.00	\$ 81,060.00
U2	8" GATE VALVES	5.0	EACH	\$ 2,200.00	\$ 11,000.00
U3	FIRE HYDRANT ASSEMBLY AND VALVE	6.0	EACH	\$ 6,000.00	\$ 36,000.00
U4	1" WATERLINE SERVICES TO EASEMENT INCLUDING CURB STOPS	18.0	EACH	\$ 800.00	\$ 14,400.00
U5	4" WATERLINE SERVICES TO EASEMENT INCLUDING VALVES	9.0	EACH	\$ 2,000.00	\$ 18,000.00
U6	8" SDR 35 SEWER LINE	842.0	L.F.	\$ 60.00	\$ 50,520.00
U7	SEWER SERVICE WYES AND CAP	11.0	EACH	\$ 500.00	\$ 5,500.00
U8	4' DIA. MANHOLE	4.0	EACH	\$ 4,500.00	\$ 18,000.00
U9	TIE INTO EXIST MANHOLE	1.0	EACH	\$ 3,500.00	\$ 3,500.00
U10	4' UTILITY TRENCH - MAIN STREET XCEL UNDERGROUNDING	592.0	L.F.	\$ 12.00	\$ 7,104.00
U11	SET SWITCH CABINET FOR LOT 1 (INSTALL ONLY, XCEL)	1.0	EACH	\$ 500.00	\$ 500.00
U12	ROAD INTERSECTION STREET LIGHT	3.0	EACH	\$ 3,500.00	\$ 10,500.00
<b>SUBTOTAL U1-U12</b>					<b>\$ 256,084.00</b>
<b>STREET ACCESS, EXCAVATION &amp; GRADING, SIDEWALKS/TRAILS, &amp; LANDSCAPING IMPROVEMENTS</b>					
S1	EXCAVATION & GRADING	1.0	L.S.	\$ 2,500.00	\$ 2,500.00
S2	CLASS 6 AGGREGATE BASE COURSE	240.0	C.Y.	\$ 40.00	\$ 9,600.00
S3	4" ASPHALTIC PAVEMENT	245.0	S.Y.	\$ 24.00	\$ 5,880.00
S4	CONCRETE HANDICAP RAMPS, WARNING PADS	7.0	EACH	\$ 750.00	\$ 5,250.00
S5	CONCRETE FILLET, VALLEY PANS	2892.0	S.F.	\$ 12.00	\$ 34,704.00
S6	CRUSHER FINES FOR SOFT TRAILS	87.0	C.Y.	\$ 40.00	\$ 3,480.00
S7	TREES IN LANDSCAPE BUFFERS ALONG MAIN STREET	19.0	EACH	\$ 650.00	\$ 12,350.00
<b>SUBTOTAL S1-S7</b>					<b>\$ 73,764.00</b>
<b>SUBTOTAL</b>					<b>\$ 371,348.00</b>
<b>10% CONTINGENCY</b>					<b>\$ 37,134.80</b>
<b>SUBTOTAL OF PUBLIC IMPROVEMENTS</b>					<b>\$ 408,482.80</b>
<b>UTILITY COMPANY AND CIVIL FEES</b>					
F1	XCEL ENERGY FEES	1.0	L.S.	\$ 227,726.00	\$ 227,726.00
<b>SUBTOTAL F1-F2</b>					<b>\$ 227,726.00</b>
<b>GRAND TOTAL OF PUBLIC IMPROVEMENTS - MAIN STREET MARKETPLACE</b>					<b>\$ 636,208.80</b>

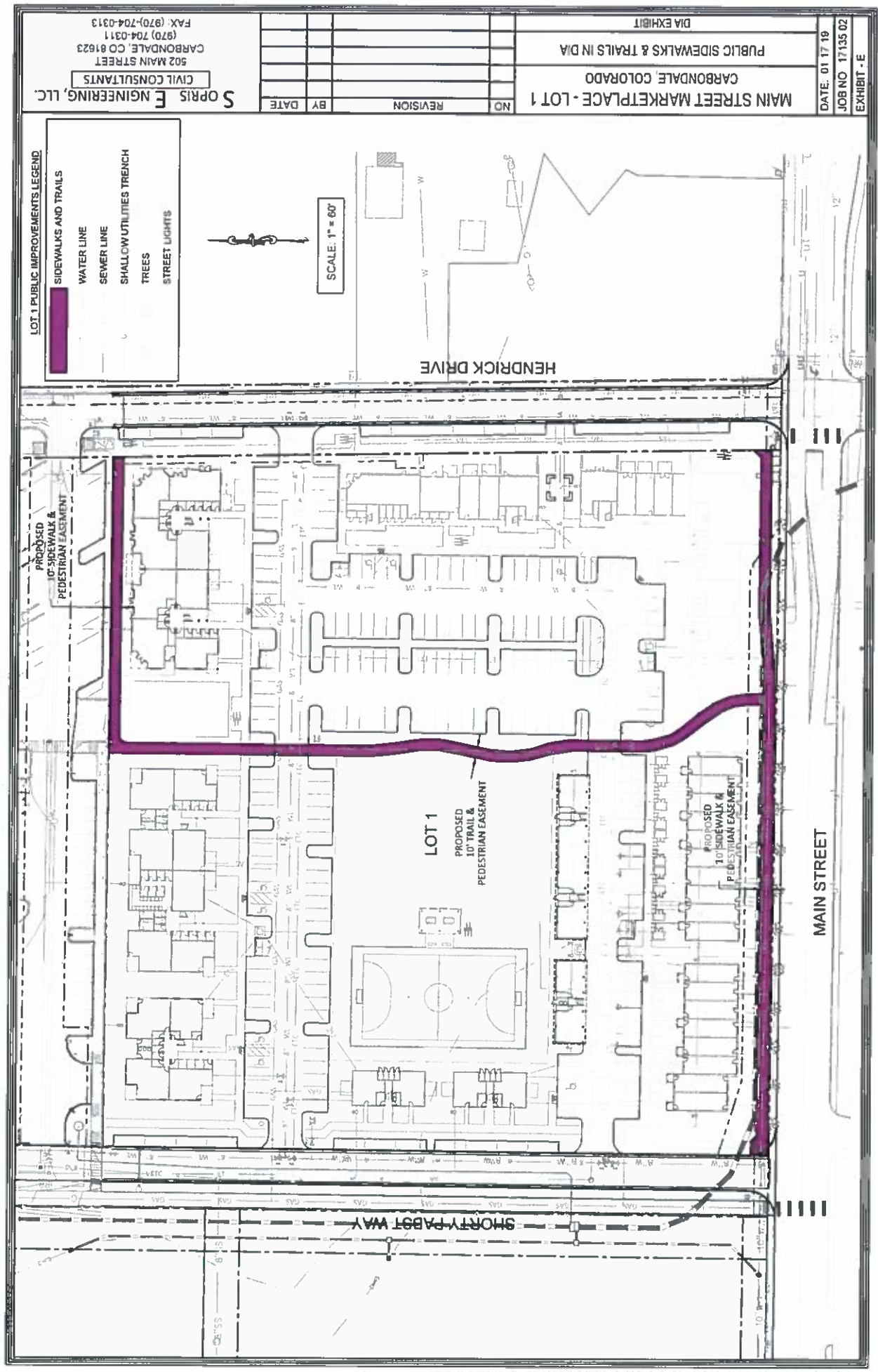
This opinion of probable cost was prepared for budgeting purposes only. Sopris Engineering, LLC cannot be held responsible for variances from this estimate as actual cost may vary due to bid and market fluctuation.







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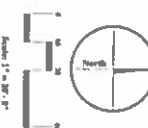


**SOPRIS ENGINEERING, LLC.**  
CIVIL CONSULTANTS  
502 MAIN STREET  
CARBONDALE, CO 81623  
(970) 704-0311  
FAX (970)-704-0313

NO	REVISION	BY	DATE

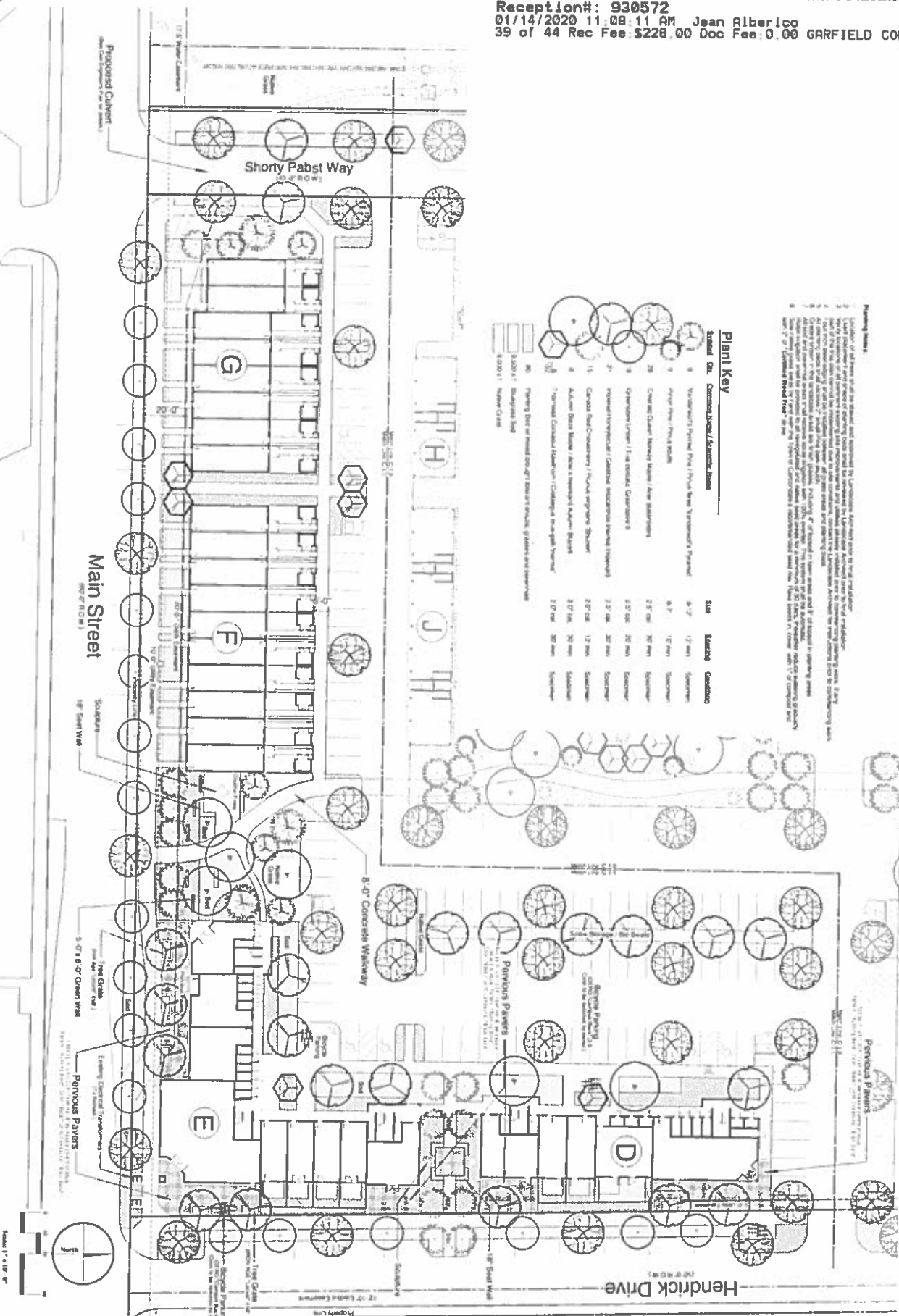
**MAIN STREET MARKETPLACE - LOT 1**  
CARBONDALE, COLORADO  
PUBLIC SIDEWALKS & TRAILS IN DIA  
DIA EXHIBIT

DATE: 01/17/19  
JOB NO: 17135.02  
EXHIBIT - E



**Lot 1, Carbondale, Colorado**

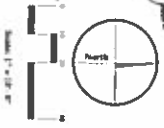






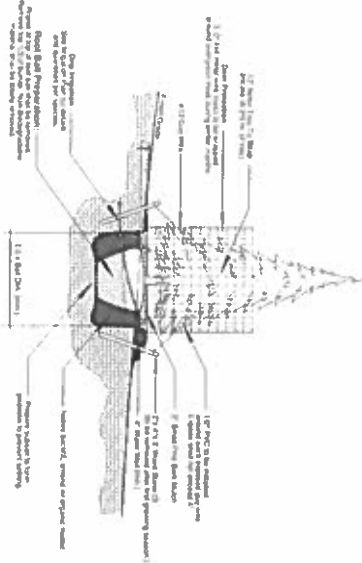






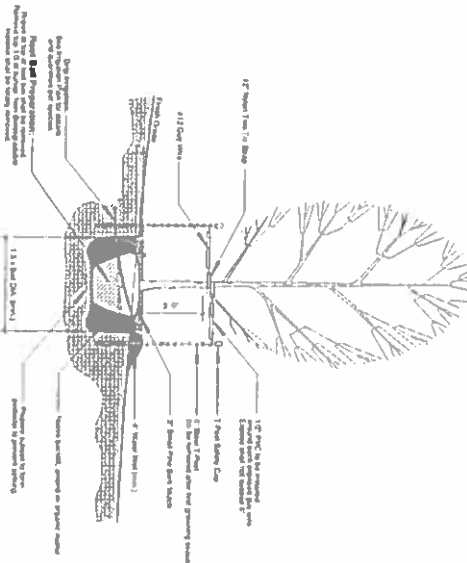
### 101 - Typical Evergreen Tree Planting Section

Scale: 3/8" = 1'-0"



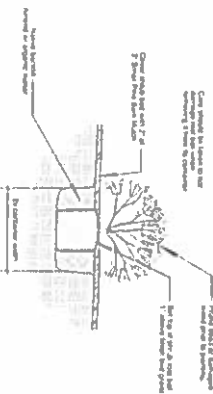
### 102 - Typical Deciduous Tree Planting Section

Scale: 3/8" = 1'-0"



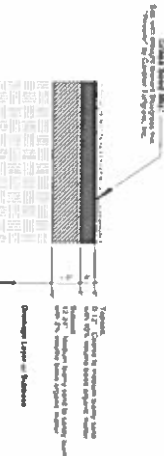
### 103 - Typical Shrub Planting Section

Scale: 1/2" = 1'-0"

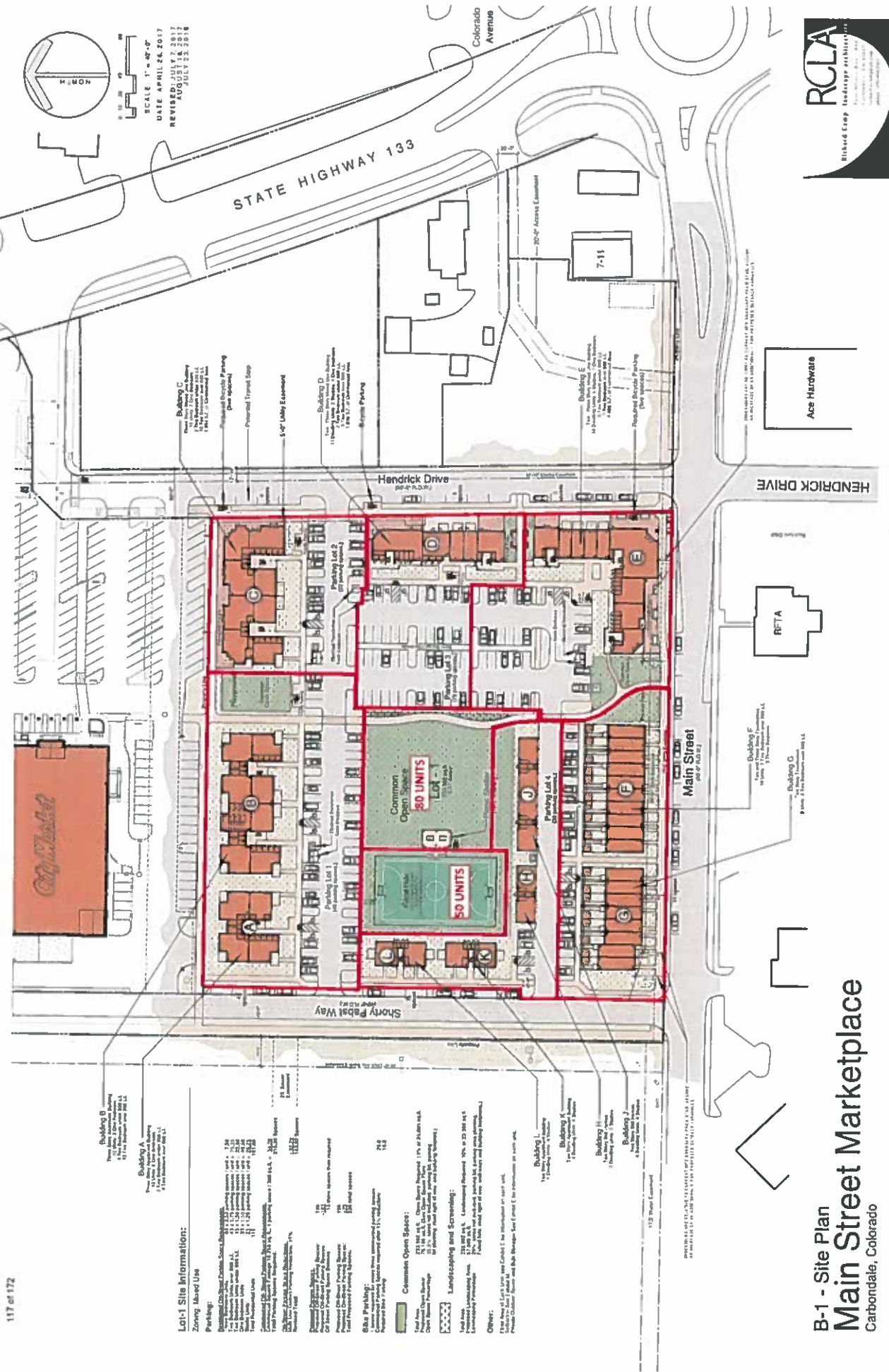


### 104 - Lawn Area Profile

Scale: 1/2" = 1'-0"



North Arrow



# B-1 - Site Plan Main Street Marketplace Carbondale, Colorado

Exhibit A

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Exh: b.1 & c

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44 of 44 Rec Fee: \$228.00 Doc Fee: 0.00 GARFIELD COUNTY CO

