

**ORDINANCE NO. 3
SERIES OF 2022**

**AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING THE FINAL LAND CONDOMINIUM PLAT FOR LOT ONE OF
THE CARBONDALE MARKETPLACE SUBDIVISION, INCLUDING
ALTERNATIVE COMPLIANCE FOR PARK DEDICATION REQUIREMENTS**

WHEREAS, Crystal River Marketplace, LLC (“Applicant”), has submitted an application to the Town of Carbondale (“Town”) for the approval of a land condominium plat (“Final Plat”) in order to condominiumize Lot 1 of the Carbondale Marketplace Subdivision (as depicted on the Final Plat recorded on February 28, 2018 at Reception No. 903693) (hereinafter the “subject property”) into seven land condominium units to be known as Units 1-7, inclusive, and associated general common elements, and

WHEREAS, in connection with the application, Applicant has requested the Town to accept a public access and use easement, and private commitments concerning construction, maintenance, repair and replacement of park-type amenities with the easement area, in lieu of the Town’s customary land dedication requirements for public parks; and

WHEREAS, after required public notices, the Town’s Planning and Zoning Commission reviewed these requests at a noticed public hearing on February 10, 2022 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 May 10, 2022, during which 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 application for approval of a land condominium plat should be granted, with conditions, because it complies with the following combined standards for preliminary and final plat approval per sub-sections 2.6.5.C.4.a. and 2.6.5.C.2.b of Chapter 17.02 of the Municipal Code:

1. The proposed land condominium subdivision complies with all applicable use, density, development, and design standards set forth in the Municipal Code. No land condominium units or patterns of units in the subdivision have been created that will make compliance with such development and design standards difficult or infeasible.
2. The general layout of land condominium units, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision are designed in a way that minimizes the amount of land disturbance,



maximizes the amount of open space in the development, preserves existing trees/vegetation and riparian areas, protects critical wildlife habitat, and otherwise accomplishes the purposes and intent of the Municipal Code.

3. The Applicant has provided evidence that provision has been made to connect to the Town's public water supply system.
4. The Applicant has provided evidence that provision has been made for a public sewage disposal system or, if other methods of sewage disposal are proposed, adequate evidence that such system shall comply with state and local laws and regulations.
5. The Applicant has provided evidence to show that all areas of the proposed subdivision that may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified by the subdivider and that the proposed use of these areas are compatible with such conditions.
6. The Applicant has provided evidence to show that all areas of the proposed subdivision that may involve other natural hazards including flood and wildfire have been identified and mitigated to the maximum extent practicable.
7. The Application provides a clear assumption of private responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision.
8. The proposed phasing for development is rational in terms of available infrastructure capacity and financing.
9. The land condominium subdivision is consistent with the approved Carbondale Marketplace Subdivision Plat. No additional detailed engineering studies are required.
10. The land condominium subdivision is consistent with Comprehensive Plan and other adopted Town policies and plans, including any adopted transportation plan or streets/roadway plan.
11. The final plat conforms to the approved preliminary plat and incorporates all recommended changes, modifications, and conditions attached to the approval of the preliminary plat.
12. The development will comply with all requirements of the Municipal Code; and

13. The development will comply with applicable technical standards and specifications adopted by the Town.

WHEREAS, the Board of Trustees also finds and determines that the Applicant's request for alternative compliance concerning park dedication requirements set forth in sub-sections 2.6.5.C.1.f, -g and -h of Chapter 17.02 of the Municipal Code, should also be approved, pursuant to Section 5.1.3.E of Chapter 17.05 of the Municipal Code, for the following reasons:

1. Applicant's proposal to construct, maintain, repair and replace park facilities that will be open to use by the general public achieves the intent of the Town's park dedication requirements to a better degree than the subject standard for park dedications as the current Code would ordinarily require the dedication of 15% of the land and fees to the Town for public park use and the payment of \$700 per unit for park improvements, or \$80,500. The size of the proposed public park easement is approximately 15% of the land area, and the costs of the proposed park improvements to be constructed and perpetually maintained and replaced by the Applicant exceed \$80,500;
2. Applicant's proposal for public use of private facilities will advance the goals and policies of the Comprehensive Plan and the Municipal Code to a better degree than the subject standard for park dedications as the park will include a futsal court, passive park area, a gazebo, and year-round restrooms;
3. Applicant's proposal will result in benefits to the community that exceed benefits associated with the subject standard for park dedications as the Town would not be responsible for the costs of park maintenance, park construction, and ongoing capital replacement, yet the park will be available to the entire community; and
4. Applicant's proposal will impose no greater impacts on adjacent properties than would occur through compliance with the Town's subject standard for park dedications.

and

WHEREAS, the Board of Trustees further finds that certain conditions of approval should be imposed so that the project will be developed consistent with the purposes of Chapter 17.02 of the Municipal Code. All of those conditions shall be met by making certain changes to the draft Final Plat and other documents submitted as part of the application and by virtue of the terms and conditions of a Park Maintenance and

Capital Reserve Agreement to be entered into between the Town and Applicant and recorded contemporaneously with the revised Final Plat.

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

1. The Applicant's requests for preliminary and final plat approval for a seven unit land condominium plat, and for alternative compliance regarding park dedication requirements, are hereby approved, subject to the conditions set forth below.

2. All development shall be consistent with the final site plan and architectural renderings previously approved by the Town, or pursuant to such plans approved by the Town in connection with a subsequent site plan application.

3. The Final Plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the Final Plat within ninety (90) days of the date of this Ordinance. Prior to recordation, the Final Plat shall be revised to include the following items in forms acceptable to the Town Attorney, which items shall also be conditions of approval pursuant to this Ordinance:

a. A plat note cross-referencing by Reception Number to recorded copies of this Ordinance, the Park Maintenance and the Condominium Declaration for the Lot One at Main Street Marketplace Condominium Association.

b. A plat note indicating that all future development upon all land condominium units and general common elements shall be consistent with site plans approved by the Town of Carbondale.

3. The Condominium Declaration for the Lot One at Main St. Marketplace Condominium Association shall be subject to review and approval by the Town Attorney prior to recordation of the plat. Such Declaration shall include perpetual requirements for the Condominium Association concerning the funding and performance of private construction, maintenance, repair and replacement obligations concerning the public recreational facilities to be constructed within the park easement area shown on the Final Plat, and the obligation to establish, fund and periodically replenish a reserve fund with regard to the future replacement of such facilities. No amendment to these requirements set forth in the Condominium Declaration shall be legally effective absent prior approval of the Town of Carbondale through amendment to this Ordinance.

4. The Applicant shall be required to submit a current title insurance commitment for the park easement dedication to the Town for review and approval by the Town Attorney. This commitment shall be prepared at the expense of the developer. All premiums required to be paid for issuance of an owner's title policy to the Town shall

thereafter be paid by the Applicant and a final owner's title policy shall be issued to the Town insuring title to the park easement in the amount of at least \$250,000.

5. The Applicant shall also provide a general warranty deed that dedicates a public park easement to the Town, which provides that all park improvements and facilities shall be privately constructed, maintained, repaired and replaced in perpetuity, pursuant to the Lot One and Main Street Condominiums Park Maintenance and Capital Reserve Agreement to be entered into by the Applicant and the Town contemporaneously with recordation of the Final Plat.

6. The owners and occupants of residences located upon the land condominium units shall have the same and no greater or lesser rights with respect to the public park easement or the facilities constructed thereon than any other member of the general public.

7. The Applicant shall construct park facilities and landscaping within the park easement area as depicted on **Exhibit A**, which is incorporated by reference. The Applicant shall thereafter continue to maintain, repair and replace all park facilities and landscaping within the public park easement in perpetuity, and the Town shall have no such maintenance obligations within the park easement area. The Applicant's private maintenance and replacement obligations shall be confirmed in the Condominium Declaration and the Park Maintenance and Capital Reserve Agreement, and shall otherwise include all items generally associated with park maintenance including planting, mowing, and watering of lawns, providing bear proof trash and recycling receptacles and trash and recycling removal, grounds litter removal, weed control (in accordance with the Carbondale Integrated Weed Management Plan), watering and irrigation maintenance, trimming, removal and replacement of trees and shrubs, construction, maintenance, repair and replacement of a futsal court and picnic shade shelter, and such other maintenance items as shall be required by the Town. These perpetual private maintenance obligations shall include periodic replacement of existing facilities when necessary and upkeep and maintenance of the recreational amenities associated with the public park, including but not limited to the futsal court, the bathrooms and storage unit, drinking fountain, the access paths to these amenities, the playground equipment, and the fall attenuation material underneath the play elements in the playground. All terms of the Park Maintenance and Capital Reserve Agreement are incorporated as conditions of this Ordinance.

9. A Reserve Study shall be performed which calculates the expected life for all improvements to be constructed within the public park easement area, including bathrooms, a playground and futsal field, which shall estimate the future replacement cost, and then identify the annual funding required to have sufficient reserve funds on deposit to pay for regular maintenance and repair as well as future replacement of the aforementioned amenities prior to the end of their useful life. An initial deposit shall be made into this reserve fund by the Applicant concurrent with the recordation of the Final Plat, and the Condominium Association shall thereafter annually contribute to this

reserve fund, as required by the Park Maintenance and Capital Reserve Fund Agreement. The Town may require the reserve study to be updated no more than every five years so that then-current inflationary trends are considered with regard to future replacement obligations. Copies of all bank statements for the Condominium Association reserve account, assessment budgets and records, and reserve study components shall be routinely made available to the Town upon request to the Condominium Association or the bank that holds the reserve fund deposit, which shall be a Colorado-chartered banking institution with a business presence in the Roaring Fork Valley.

10. Construction of the park and associated park improvements shall be completed within the timeline as set forth in Paragraph 4.i. of the Development Improvements Agreement, Carbondale Marketplace Subdivision, Lot 1 recorded in the Garfield County records on January 14, 2020 at Reception Number 930572, including that: (1) the futsal field shall be completed and made available for public use prior to the issuance of certificates of occupancy for buildings containing more than a total of 50 housing units; and (2) all other required park improvements (including but not limited to playground, bathrooms, picnic shade shelter, and landscaping) shall be completed and made available for public use prior to the issuance of certificates of occupancy for buildings containing more than 80 total housing units. No additional certificates of occupancy shall issue by the Town for any buildings that would allow the occupancy of more than these allowable totals of residential units within the project until the requisite park improvements are completed and accepted by the Town's recreation and public works directors.

11. The Town of Carbondale Parks & Recreation Department shall have the right to schedule use of the futsal court for organized league play or group rental opportunities in accordance with a priority system and fee system approved for all Town-owned recreation facilities. As the recreational amenities within the public park easement will otherwise be open to public use in the same manner as a Town park, neither the Applicant, the Condominium Association or any other land condominium unit owners, occupants or tenants shall have the right to hold private events or schedule exclusive private use of the recreational facilities within the public park easement except if approved by the Town's recreation department in the same manner as the Town manages the scheduling of private events at other Town park locations.

12. The Town of Carbondale Parks & Recreation Department shall also have the right to rent out the picnic shade shelter for small private gatherings in accordance with the Town's existing rules and regulation in other public parks.

13. At all times when the public park easement area is available for use by the general public, the Town shall keep and maintain liability insurance coverage with regard to bodily injury or property damage resulting from Town operations within the park easement area, including all Town-scheduled sporting events or other gatherings. The Condominium Association shall be named as an additional insured on this coverage. The

Town shall also reserve and does not waive any rights or limitations pursuant to the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq.

14. The Applicant or the Condominium Association shall obtain, keep, and maintain customary property and liability insurance coverage on all common areas depicted on the Final Plat, including but not limited to all recreational improvements to be constructed within the public park easement. This coverage shall specifically insure against any claims related to any bodily injury or property damage related to any alleged failure to properly maintain the public park easement area. The Town shall be named as an additional insured on this private insurance coverage. The Applicant and the Condominium Association shall reserve and shall not be required to waive any rights or defenses they may have pursuant to the Colorado Recreational Land Use Act, C.R.S. 33-41-101 et seq.

15. 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.

16. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.

17. The approvals herein are subject to, and shall not be deemed to amend, the Town's prior approval ordinances or related approval documentation concerning zoning, site plan and subdivision approval for all properties located within the Carbondale Marketplace Subdivision.

INTRODUCED, READ AND PASSED this 28th day of June, 2022.

THE TOWN OF CARBONDALE

By: Ben Bohmfalk
Ben Bohmfalk, Mayor

ATTEST:
Cathy Derby
Cathy Derby, Town Clerk



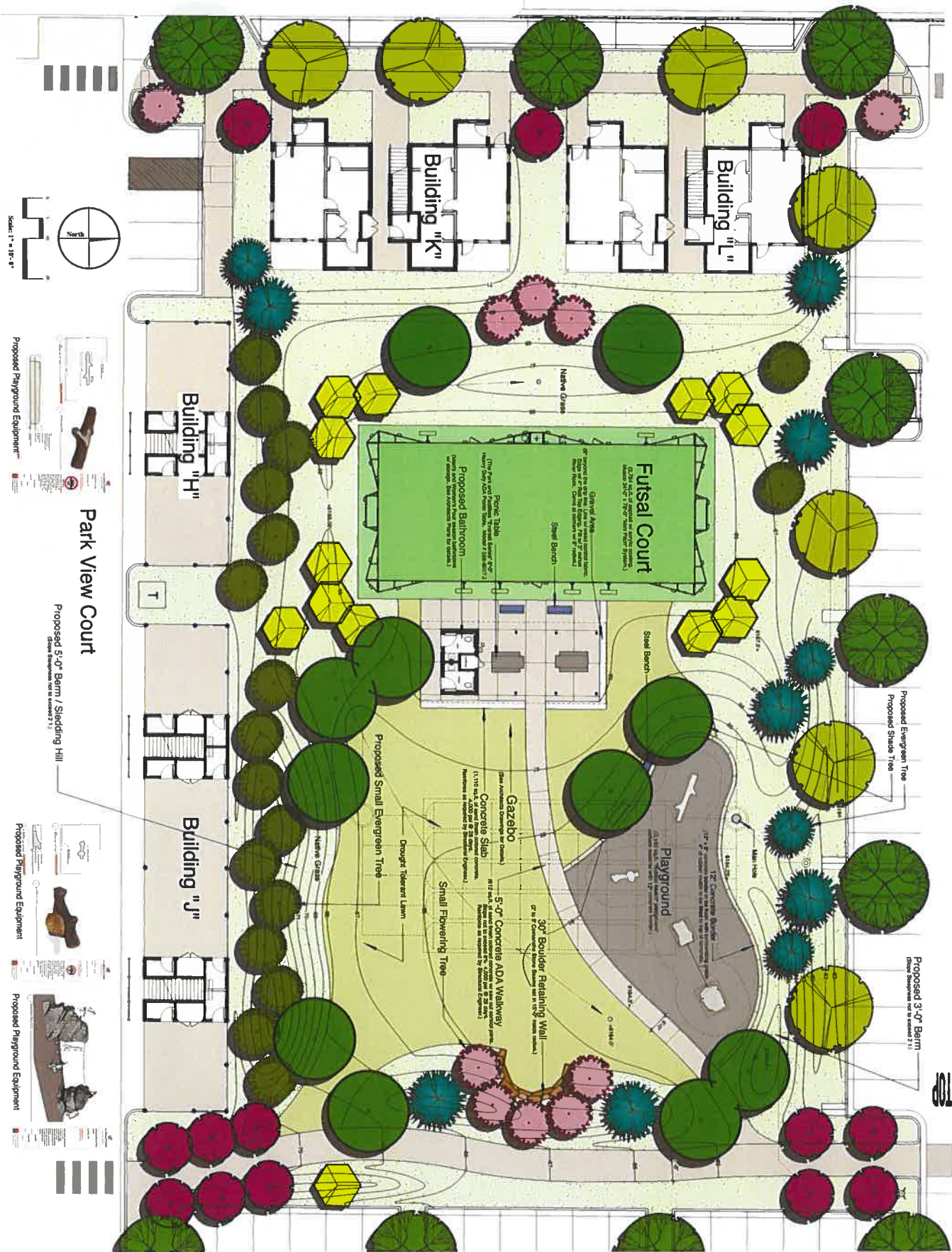
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8 of 9 Rec Fee:\$53.00 Doc Fee:0.00 GARFIELD COUNTY CO

*Town of Carbondale
Ordinance No. 3, Series of 2022
Carbondale Marketplace Subdivision
Condominiumization of Lot 1*

EXHIBIT A

(attach Central Park Landscape Plan for Carbondale Marketplace Park sheet L-2.0
prepared by RCLA)

18968965_v3



Park View Court

Proposed 5-0" Berm / Sliding Hill
 (Color Shown on the attached 2-1)



Sheet:
L-2.0

Date: January 04, 2022
 Revised: February 23, 2022

Central Park Landscape Plan
Carbondale Marketplace Park
 Carbondale Marketplace, Lot 1, Carbondale, Colorado

