



*Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623*

**AGENDA
PLANNING & ZONING COMMISSION
THURSDAY, October 24, 2019
7:00 P.M. TOWN HALL**

1. CALL TO ORDER
2. ROLL CALL
3. 7:00 p.m. – 7:05 p.m.
Minutes of the October 10, 2019 meeting.....Attachment A
4. 7:05 p.m. – 7:10 p.m.
Public Comment – Persons present not on the agenda
5. 7:10 p.m. – 7:30 p.m.
PUBLIC HEARING – Condominiumization.....Attachment B
Applicant: Joe Scofield
Location: 311 Main Street
6. 7:30 p.m. – 7:50 p.m.
PUBLIC HEARING – Thompson Park – Subdivision Parcel 2Attachment C
Applicant: Thompson Park, LLC
Location: Parcel 2, Thompson Park
7. 7:50 p.m. – 7:55 p.m.
Staff Update – Admin Report.....Attachment D
8. 7:55 p.m. – 8:00 p.m.
Commissioner Comments
9. 8:00 p.m. – ADJOURN

*** Please note all times are approx.**

Upcoming P & Z Meetings:
11-14-19 – 1201 Colorado Avenue

MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday October 10, 2019

Commissioners Present:

Michael Durant, Chair
Ken Harrington, Vice-Chair
Nick Miscione
Jeff Davlyn
Nicholas DiFrank (1st Alternate)

Staff Present:

Janet Buck, Planning Director
Mary Sikes, Planning Assistant

Commissioners Absent:

Jay Engstrom
Jade Wimberley
Marina Skiles

Other Persons Present

The meeting was called to order at 7:00 p.m. by Michael Durant.

August 29, 2019 Minutes:

Ken made a motion to approve the August 29, 2019 minutes. Nicholas seconded the motion and they were approved unanimously with Jeff abstaining.

The Commission gave Mary kudos for the minutes.

Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

PUBLIC HEARING – Sopris Lofts – Major Site Plan & Conditional Use Permit

Location: 1201 Colorado Avenue

Applicants: 1201 CO Avenue Holdings, LLC

One letter was distributed from Raul Gawrys, Architect.

Janet said that this is an application for a Major Site Plan Review and Conditional Use Permit. She stated that the Planning Commission is required to hold a public hearing and recommend approval of the request or recommend denial. She said that the Commission may also continue the public hearing.

Janet said that the property is located at the northeast corner of Highway 133 and Main Street.

Janet explained that a mixed use building is proposed on the property. She said that the portion of the building along Highway 133 and Main Street includes 3,881 sq. ft. of general commercial. She said that the balance of the building is comprised of 18 efficiency apartments and 9 two-bedroom units for a total of 27 units. She stated that they would all be rental units.

Janet stated that a public plaza at the corner of Highway 133 and Main Street is proposed. She said in addition, there would be a public trail along the east side of the property from Main Street to Colorado Avenue. She stated that there would also be a 10 ft. wide bicycle/pedestrian trail along Colorado Avenue. She said that the RFTA bus stop would remain in its present location.

Janet stated that the proposal meets the zoning parameters in the UDC such as setbacks, lot area per dwelling unit, etc. with one exception which she will cover in a bit.

Janet said that it also complies with the development standards such as private common open space and bulk storage.

Janet explained that the Tree Board reviewed the application and was generally in favor of it. She said that they included a list of recommendations. She said that she met with the applicants yesterday and that they seemed to be amenable to revising the plans to meet those recommendations.

Janet said that the UDC allows for a 15% reduction of required parking for developments in the MU zone district and a 20% reduction for residential development if the property is located within 300 ft. of a transit stop. She stated that this development meets both criteria. She said in addition, the UDC allows a 20% reduction for commercial uses if the development incorporates a transit stop, which this one does.

Janet outlined the following:

With the reductions, the required parking is 39 spaces.

The proposal is for 47 parking spaces on-site and on Colorado Avenue as follows:

Total on-site	30 spaces
Colorado Avenue	17 spaces

Parking along Colorado was discussed during review of an earlier application as well as with this applicant. It was agreed that having the bike path in front of the parking rather than behind it seemed like a safer alternative. The parking was then shifted to the north with the trail between the development and the parking spaces.

Counting 9 of the 17 spaces on Colorado Avenue toward required parking would require Alternative Compliance approval.

There are several other areas where the applicant is requesting alternative compliance.

One is the landscape strip along Highway 133 and Colorado Avenue. The one for Highway 133 is due to the requirement that all development shall be buffered from Highway 133 by a 10 ft. wide landscape strip. Buildings and parking may not be located in this buffer area. The applicant is requesting Alternative Compliance in order to place the plaza in this setback area. Another complication is the UDC only allows a 10 ft. setback so that the building cannot be set back further to accommodate the plaza area. This is a conflict in the code which should be addressed in future amendments. Staff is recommending approval of the alternative compliance.

The landscape strip along Colorado Avenue is required to be 5 ft. wide. The proposal is for one that ranges from 3 ft. to 6 ft. This is due to the Town's desire to have an 8 ft. path along Colorado.

Housing - the UDC requires that 20 percent of the rental units be deed restricted as affordable dwelling units. In this case, five units would be required. The proposal is to deed restrict five efficiency apartments which is in compliance.

Code Sections Requiring Additional Discussion

Janet stated that there are a number of code sections which need additional attention and she explained the following:

Screening - The plans do not show the solar panel and mechanical equipment. There should be a cross section from the south side of Main Street and from the north side of Colorado Avenue to demonstrate that the equipment would be adequately screened.

Pedestrian Connections – The UDC requires pedestrian connections to the transit stop.

The Building Official also indicated that the building code requires that accessible routes shall coincide with or be located in the same area as a general circulation path. There is a concern about ADA compliance for trail connections from the commercial area to the trail on Highway 133.

The Building Official also pointed out there are several ramps associated with this project, both inside and outside the building. If the slope is steeper than 1:20 (5%), handrails would be required on both sides of the ramp.

UDC Section 5.5.3.B.2. requires a pedestrian crosswalk from the northeast corner of the building to the easterly drive. This should be included on the site plan.

Building Height - The allowed building height in the MU zone district is 35 ft. My staff report noted that the building height was in compliance with the UDC. However, since I wrote the staff report, I understand that the height shown on the plans was measured from average grade. The UDC requires that it be measured from existing grade.

Building Design – A number of concerns relate to the design standards in the UDC. I listed the various code sections in the staff report but to summarize:

A long, continuous roof forms should be avoided. Long roof lines be varied by providing different heights or varying roof orientation.

The UDC states that buildings on street corners shall recognize the importance of their location by:

1. Concentrating tallest portions of buildings at intersections where they may “frame” the corner.
2. Employing architectural features such as angled facades, prominent entrances, stepped parapet walls, or other unit features.

UDC Section 5.7.6.D.2. requires that ground floor facades incorporate pedestrian friendly design features such as arcades, display windows, entryways, awning or other features.

Another code section states pedestrian activity should be encouraged on the street. Buildings should incorporate human-scaled features at ground level, i.e., articulated entries, canopies, recessed entries, changes of color and material or texture.

The design of a new building or addition shall incorporate architectural features, elements and details that are designed for pedestrian scale and pedestrian-oriented accesses.

The UDC states buildings shall feature visually prominent primary building entrances. Buildings shall incorporate a combination of two or more of the following techniques:

- a. Canopy, portico, archway, arcade, or similar projection that provides architectural interest and protection for pedestrians;
- b. Prominent tower, dome, or spire;
- c. Peaked roof;
- d. Projecting or recessed entry;
- e. Outdoor features, such as seat walls, landscaping with seasonal color, or permanent landscape planters with integrated benches; or
- f. Other comparable techniques.

The guidelines in UDC Section 5.7.6. has supplemental standards for buildings 10,000 sq. ft. or greater which address horizontal and vertical articulation. These are measurable standards which address changes in wall plane and dividing the building mass into smaller components.

Janet said that one other concern is the treatment of the building façades adjacent to the covered parking area as the facades present a blank face toward Main Street and Colorado Avenue.

Janet said that when this property was rezoned to mixed-use, that the ordinance stated that if the development didn't commence in one year, it would revert back to previous zoning. There is a request to amend that to retain MU.

Nicholas asked who the letter was from that was handed out.

Janet said that it was from Raul Gawrys, Architect. Nicholas noted the letter didn't have Raul Gawrys' name or signature.

Nicholas asked if the height was counting the grade change of seven feet. He asked if Staff was ok with the average, as figured.

Janet read the definition of building height from the UDC and she passed around a drawing from page 300 of the UDC. She said that it was measured from existing grade, not average grade.

Nick asked if the lot was ever excavated and was it at historic grade.

Janet suggested that the applicant address this during their presentation.

Michael suggested a variance might be needed.

Janet said is it a unique condition in Carbondale.

Nick said that the commercial space would be lowered on the first level.

Michael asked if the community housing requirements are broken out by categories 1-3.

Janet explained that, in the community housing guidelines, that with rentals there are only Category 1, 2 and 3 units and that there is no Category 4. She said that we pull the sequencing from on code.

Riley Soderquist introduced himself, Jack Schrager, and his team, which included Yancy and John of Sopris Engineering, Doug and Julie Pratt of The Land Studio, and Michael Noda of neo studio. He said that he is a resident of the valley.

Doug Pratt of The Land Studio explained the site plan and said that there were setback challenges trying to meet the intent of the code due to the maximum 10 ft. setback and required 10 ft. landscape strip.

Doug said that the requirement for the play area is 400 square feet and their proposal is 450 square feet. He said they didn't want the play area up against the parking lot. He

noted that they will move the handicap access closer to the building, as requested by the Building Official.

Doug continued by saying that they were trying to keep as much landscape as possible on the corner. He said that they wanted to use the alternative compliance of the code for the strip of landscape near the bike trail on Colorado.

Doug said that the Tree Board provided recommendations. He said that there will be a connection path from Main Street to Colorado Avenue on the east side of the lot. He said that there has been discussion regarding a bus stop access as well as another access at the end of the building. He said that there would be an easement for the path from Main Street to Colorado Avenue. He said that the ramp is ADA compliant from the building to Colorado and it is at 8% grade, which would require railings.

Doug said that there would be three designated crosswalks with markings.

An architect from the team said that they have researched the history of the grade and that it has been challenging.

Michael and Daniel, the architects from the team, said that they used the average grade, which they used for the built model. Michael said that the retail is compromised, with eleven feet to the south and twelve feet to the north.

Michael, from the team, explained the elevations and designs of the buildings. He noted the five components of the building, the articulation, and the various roofs, including a shed roof. He said they would entertain community art work and murals on the masonry walls, adjacent to parking. He noted that every unit has a balcony or patio.

Ken said that an eight foot wide trail is the bare minimum in width and he asked if the vegetation to the south was in a raised bed or was it flat. He said it mattered when on a bike.

Doug said that it was flat and not raised.

Ken asked what the difference in grade was from the bus stop to the wall at the parking lot.

Doug said around a 5% grade. He noted there were transformers and utilities that made it challenging.

Ken asked if there would signage for the retail units.

Michael, from the team, said that there would be signs based on the sign code. He said that the proposed store front would have multiple entrances.

Ken suggested that the area with art could be framed in tile.

Doug said that we could use tile and that we will have a discussion with the team regarding the commissioned art.

Ken asked if it would be painted with durable paint.

Doug said that the beauty would be in the aging patina of the art.

Ken said that there was a disconnect between the park area and the residential buildings.

Doug explained that they were trying to keep the park in the sunnier area of the lot.

Michael said that having the park near the round-about was a concern.

Jeff asked the applicant if they knew the status of the access control plan at Colorado Avenue and Highway 133 in that there was a plan to close the street. He asked how this would change with more traffic and that cars would be going through the shopping center.

Doug explained that this application doesn't trigger an access permit from CDOT. He said that Yancy from Sopris Engineering will be at the next continued meeting.

Ken asked about the trail on Colorado Avenue going further past this project.

Janet said that it could be feathered into Colorado going east as there was no sidewalk to the east.

Nick asked if there were any alternatives to the seven soft story parking spots. He said that the corner was not being activated and that it could be better utilized.

Doug explained that the reason was for screening and to create art on the elevation.

Nick said that he was concerned about the volume of traffic near the play area on Highway 133. He said that he thought that the southeast corner was a missed opportunity. He noted it was a great presentation.

Nicholas said that he echoes Nick and that he appreciates the attention to details. He asked about the rooftop access.

Michael, from the team, said that two units would have access to the roof but that it was not a publicly used space. He said that the balcony can be enlarged an extra five feet and we can make it shared.

Nick noted that it was a natural foot path along the east side of the lot and that there wasn't any foot traffic on the west side of lot.

Michael said that in the Comp Plan this project would be New Urban, with the building as close to the highway as possible and parking set back from the highway. He said that if the park were to the southeast it would be shaded in winter and there is a three story building to the east. He said that he too is concerned about the location of the play area.

Ken asked if there was a park requirement?

Doug responded that playground equipment was required.

Janet said that the criteria was under the multi-family guidelines.

Ken asked if left as open space, does it meet the requirements.

Doug said that it would be a natural play area with rocks and stone animals.

Jeff asked about the snow storage in the landscaped area east of the play area and what the requirement was.

Doug said that he was not aware of a code and that they figure 1/6 of the parking or 400 square feet.

Janet said that the code reads that the play area shall be developed.

Michael, from the team, said that their company did the play area in Boulder on Pearl Street using stone or concrete animals.

Doug asked the Commission for as much direction as possible that you can give us, non-compliance, concerns or things that you support.

Nick said that he is concerned about the building conforming to height as defined in the UDC.

Janet said that the height would be reviewed by the Building Official at building permit so it is important to get it right now.

Michael said that Staff will agree or not agree with grade. He said new renderings shown tonight spruced it up. He said it looked like a different building than what was shown on the application.

Michael, from the team, said that it was from a human's view, not a bird-eyes perspective.

Nicholas said that he was concerned with the building design at the round-about and asked if there was a way to frame the corner. He said that now it is the lowest portion of the building. He said that there is uniqueness and character with the setback as well. He said that it is the most prominent corner, the facade is calm, at the lowest point, and in the framing it seems as if something was missed.

Michael, from the team, said that gives us good direction. We can make it special, we can add parapets or cornices with southwest perspective. He said that we still think one story is correct.

Nicholas said that may not be enough. He said don't make it too busy or cluttered either; keep the simplicity.

Michael, from the team, said that we can keep the brick element and make the corner special. He said that we can take the cobble out and landscape all the way to the road.

Michael said that when we created New Urban, that this is the building we wanted. He said that we appreciate all of your hard work, we know that you will take our suggestions to heart.

Janet said that tonight was really helpful and that she thought of one thing for the plaza area: benches and street furniture.

Nicholas asked if there could be emphasis on showing the movement through the development.

Motion to close the comment portion of the public hearing

Ken made the motion to close the comment portion of the public hearing. Nicholas seconded the motion and it was approved unanimously.

Further discussion ensued regarding the next date certain.

Motion to Continue the Public Hearing

Ken made a motion to continue the public hearing to November 14, 2019. Nicholas seconded the motion and it was approved unanimously.

Staff Update

Janet said that she has had so many meetings with a lot of activity in the downtown.

Janet said that the Town Center property is being looked at for a smaller developments.

Janet said that City Market is moving along.

Janet stated that Thompson Park needs to get their subdivision completed at the next meeting for Parcel 2 as they have a deadline.

Janet told the Commission that she appreciates their patience and that it was a hard summer.

Commissioner Comments

Nick said that the Historic Preservation Commission (CHPC) is drafting an amendment to change the HCC and OTR zone districts' reviews with the CHPC from advisory to a requirement, which could be of relevance to the current review process happening.

Michael, Ken, Nicholas and Nick will not be able to attend the next P&Z meeting.

Motion to Adjourn

A motion was made by Jeff to adjourn. Nicholas seconded the motion and the meeting was adjourned at 9:00 p.m.

DRAFT



TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Planning and Zoning Commission Agenda Memorandum

Item No: 5

Attachment: B

Permit No: ZU19-25

Meeting Date: 10/24/2019

TITLE: 311 Main Street Condominiums/Condominium Exception

SUBMITTING DEPARTMENT: Planning Department

APPLICANT: 311 Main LLC.

OWNER: 311 Main LLC.

LOCATION: 311 Main Street

Zoning: Historic Commercial Core

ATTACHMENTS: Condominium Application

BACKGROUND

This is an application to divide a 6-unit building, encompassing 5 commercial units and 1 residential unit into a 6-unit condominium complex. The Planning Commission is required to hold a public hearing and approve the application or deny it. The Commission may also continue the public hearing. The Commission will be reviewing the application through the Condominium Exemption process and standards.

DISCUSSION

The Building was built in 2008 and currently houses the offices of DHM Design and POS Architecture. The building and site plan have been confirmed to have been constructed per the submitted condo plat. Each unit in the building is serviced by separate meters and shutoffs as required. The units vary in size for a total of 9220 square feet with the residential unit being 3572 square feet in size. The residential unit is located on the third floor of the building. Specific unit sizes are below.

Unit 101	1018 sq ft	Commercial
Unit 102	1237 sq ft	Commercial
Unit 201	1087 sq ft	Commercial
Unit 202	646 sq ft	Commercial
Unit 203	916 sq ft	Commercial
Unit 301	3572 sq ft	Residential
Totals	9220	

Parking for the residential unit is located on the main level accessed from the alley through an access easement on the adjacent lot to the west. This easement is recorded with the County at Reception Number 251600 and is noted on the Condo Plat.

The building and associated improvements are in compliance with the UDC.

A Condo Exemption may be approved if it meets all of the below criteria per Section 2.6.6.B Applicability as well as Section 2.6.6.D Condominium Exemptions.

- a. The subject property is suitable for subdivision within the meaning of Chapter 17.06:*Subdivision*;
- b. All public utilities are in place on, or immediately adjacent to, the subject property;
- c. Each lot has the necessary dedicated public access required by this code at the time of the subdivision exemption application;
- d. The subdivision plat shall comprise and describe not more than three lots and, unless the property to be subdivided is wholly owned by the Town or another federal, state or local government entity, the entire parcel to be subdivided shall be no more than five acres in size; and
- e. The preparation of engineered design data and specifications is not needed to enable the Commission to determine that the subject property meets the design specifications in Chapter 17.06:*Subdivision*. (*this section is addressed below*)

D. Condominium Exemptions

1. Applicability

- a. The Planning and Zoning Commission may exercise discretion to grant an exemption from those requirements applicable to subdivisions resulting from the creation of condominium units if the Planning and Zoning Commission finds all of the following:
 - i. The proposed condominium project complies with the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 et. seq.;
 - ii. All of the proposed condominium units are located in a building existing at the date of the filing of the application;
 - iii. Each condominium unit has adequate ingress and egress directly or through common or limited common elements to public access;
 - iv. The preparation of engineered design data and specifications is not needed in order to enable the Commission to determine that the subject property meets design specification in Chapter 17.06:*Subdivision*;

- v. No part of the area depicted in the proposed condominium map has been previously subdivided pursuant to a subdivision exemption or subdivision variance; and
- vi. Utility lines for water, sewer, and power are already installed within, adjacent to, or within 200 feet of the area proposed to be condominiumized.

FISCAL ANALYSIS

Approval of the condominiumization will allow the units to be individually transferred and owned.

RECOMMENDATION

Staff recommends that the following motion be approved: **Move to approve the 311 Main Street Condominium Exemption Plat with the suggested findings and conditions below.**

Findings:

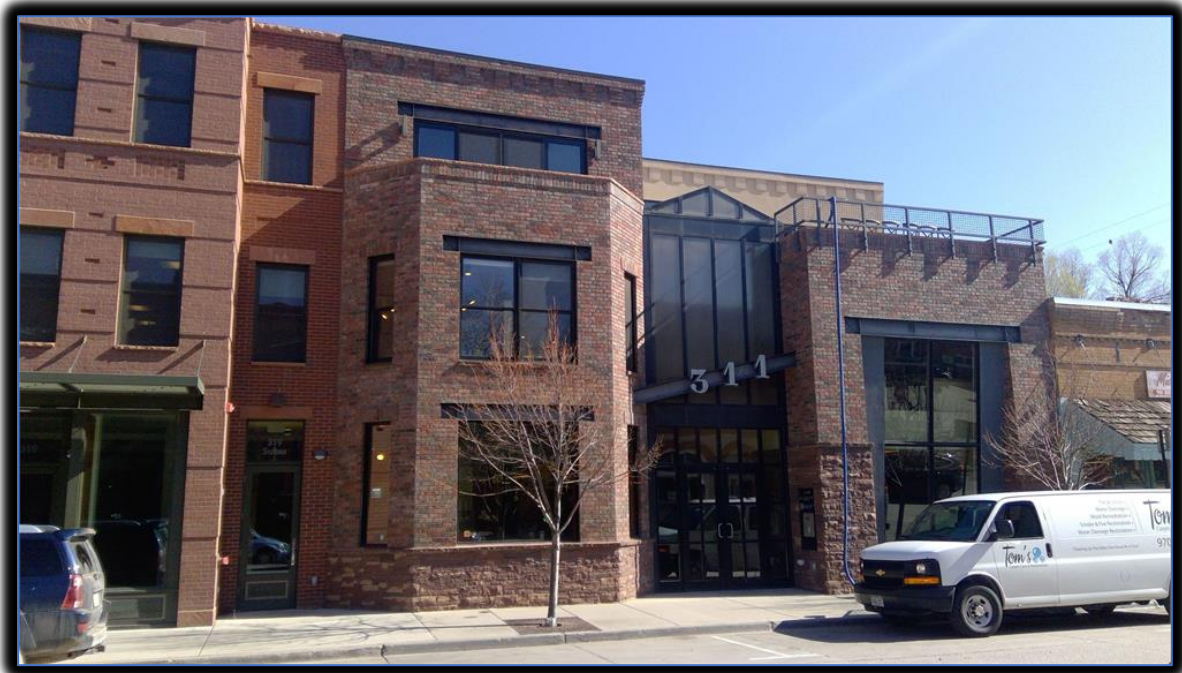
The property is capable of accommodating structures devoted to the intended use of the land; is free from natural hazards such as flooding, falling rock, landslides and snowslides; is served by a street system providing safe and convenient access, and is provided with accessible utility installations; with all of the foregoing intended to promote the health, safety and welfare of the citizens of the town.

Conditions:

1. The condominium plat shall be in a form acceptable to and approved by Town Staff prior to recording. The plat shall be recorded with the Garfield County Clerk and Recorder within ninety (90) days of the date of approval.
2. All representations of the Applicant and Applicant's representatives at the Public Hearing shall be considered conditions of approval.
3. The Applicant shall be responsible for all recording costs and shall pay all fees associated with this application to the Town, including any professional fees, as set forth in Section 1.30.030 of the Municipal Code.

Prepared By: John Leybourne

311 Main LLC Land Use Application



Condominium Exemption

Carbondale, Colorado
September 2019

SECTION 1: APPLICATION & RELATED FORMS

Land Use Application Form
Condominium Exemption Checklist
Letter of Authorization
Proof of Ownership
Project Team Directory



Town of Carbondale
511 Colorado Ave
Carbondale, CO 81623
(970)963-2733

Pre-Application Meeting Date _____

Fees _____ Date Pd _____

Land Use Application

PART 1 – APPLICANT INFORMATION

Applicant Name: JOE SCOFIELD Phone: 970.948.0677
Applicant Address: 96 RIVER GLEN DR. CARBONDALE 81623
E-mail: JOESCOFIELD@MSN.COM
Owner Name: 311 MAIN LLC Phone: 970.948.0677
Address: SAME AS ABOVE
E-mail: SAME AS ABOVE
Location of Property: provide street address and either 1) subdivision lot and block; or 2) metes and bounds:
311 MAIN STREET LOTS 22-23, BL 11 ORIGINAL TOWN SITE

PART 2 – PROJECT DESCRIPTION

General project description:

TO CREATE 6 CONDOMINIUM UNITS IN AN
EXISTING MIXED USE BUILDING

Size of Parcel: SURSF # Dwelling Units: 1 Sq Ftg Comm: 4,904

Type of Application(s): CONDOMINIUM EXEMPTION

Existing Zoning: HCC Proposed Zoning: HCC

PART 3 – SIGNATURES

I declare that I have read the excerpt from the Town of Carbondale Municipal Code Article 8 Land Use Fees. I acknowledge that it is my responsibility to reimburse the Town for all fees incurred as a result of this application.

I declare that the above information is true and correct to the best of my knowledge.

Joe Scofield 9-20-19
Applicant Signature Date

Signature of all owners of the property must appear before the application is accepted.

Joe Scofield 9-20-19
Owner Signature Date

STATE OF COLORADO)
COUNTY OF GARFIELD) ss.

The above and foregoing document was acknowledged before me this 20 day of
September 2019, by Joe Scofield

Witness my hand and official
My commission expires:



SK
Notary Public



**Town of Carbondale
Condominium Exemption
Checklist**
(970) 963-2733

Project Name:

Applicant:

311 MAIN LLC

Applicant Address:

96 RIVER GLEN DR. CARBONDALE CO 81623

Location:

311 MAIN ST - LOTS 22-23, BL. 11 - ORIGINAL TOWNSITE

Date:

9-20-19

Staff Member:

Section 2.3 of the UDC requires a pre-application meeting with
planning staff prior to submittal of a land use application.

Per Section 2.3.2.B of the UDC, the Planning Director shall
determine the form and number of application materials required.

Required Attachments

- ☒ Filing Fee of \$300 and Land Use Application (separate attachment)
- ☒ A condominium map complying with State Law which shows, at a minimum: the location of each condominium unit, common elements, utility lines and meters, existing and proposed easements, and the project boundaries.
 - ☐ Engineered plans in a scale suitable for definitive review, and data and specifications necessary to enable the Town to determine if the proposed project meets design and improvement standards of the UDC.
- ☒ A written statement of the intended use of each of the condominium units, how many bedrooms each residential unit will have and the common elements.
- ☒ Evidence of Title or Ownership of the applicant to the property, including any mineral, gravel, and oil and gas leases, reservations, or separate ownerships.
 - ☐ Additional information requested at the pre-application meetings:

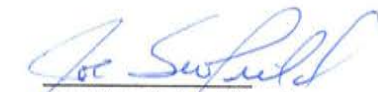
September 19, 2019

John Leybourne, Planner
Town of Carbondale Planning Department
511 Colorado Ave.
Carbondale, CO 81623

RE: 311 Main Street, Carbondale

This letter authorizes **Mark Chain of Mark Chain Consulting, LLC** to submit a land use application for a condominium exemption for the above property. This letter also authorizes Tracy Kinsella of Garfield and Hecht, P.C. to represent the owner during any discussion in the land use and review process.

Sincerely,



Joe Scofield, Member
311 Main, LLC
96 River Glen
Carbondale, CO 81623



Land Title Guarantee Company Customer Distribution



PREVENT FRAUD - Please remember to call a member of our closing team when initiating a wire transfer or providing wiring instructions.

Order Number: **ABS63014159**

Date: **09/18/2019**

Property Address: **311 MAIN STREET, #301, CARBONDALE, CO 81623**

PLEASE CONTACT YOUR CLOSER OR CLOSER'S ASSISTANT FOR WIRE TRANSFER INSTRUCTIONS

For Closing Assistance

Jessica Reed
901 GRAND AVENUE #202
GLENWOOD SPRINGS, CO 81601
(970) 930-9815 (Work)
(800) 318-8206 (Work Fax)
jreed@ltgc.com
Contact License: CO299243
Company License: CO44565

Closer's Assistant

Erin Alore
901 GRAND AVENUE #202
GLENWOOD SPRINGS, CO 81601
(970) 945-2610 (Work)
(800) 318-8206 (Work Fax)
eaalor@ltgc.com
Contact License: CO543303
Company License: CO44565

For Title Assistance

Melissa Schroder
5975 GREENWOOD PLAZA BLVD
GREENWOOD VILLAGE, CO 80111
(303) 270-0438 (Work)
mschroder@ltgc.com

Buyer/Borrower

JOSHUA H. BUCHMAN
67 NORTH 3RD ST.
Carbondale, CO 81623
(406) 360-4881 (Cell)
jhokubuchman@gmail.com
Delivered via: Electronic Mail

Attorney for Seller

GARFIELD & HECHT PC
Attention: RON GARFIELD
625 E HYMAN AVE #201
ASPEN, CO 81611
(970) 925-1936 (Work)
(970) 925-3008 (Work Fax)
garfield@garfieldhecht.com
tkinsella@garfieldhecht.com
Delivered via: Electronic Mail

Buyer/Borrower

RANDI K. BUCHMAN
22051 TWO RIVERS ROAD
Basalt, CO 81621
jhokubuchman@gmail.com
Delivered via: Electronic Mail

Seller/Buyer Agent

COLDWELL BANKER MASON MORSE REAL ESTATE
Attention: NANCY EMERSON
0290 HWY 133
CARBONDALE, CO 81623
(970) 963-3300 (Work)
(970) 963-0879 (Work Fax)
nemerson@masonmorse.com
Delivered via: Electronic Mail

Seller/Owner

311 MAIN, LLC
Attention: JOE SCOFIELD, MEMBER
96 RIVER GLEN DRIVE
CARBONDALE, CO 81623
(970) 948-0677 (Cell)
joescofield@msn.com
Delivered via: Electronic Mail

MARK CHAIN CONSULTING LLC
Attention: MARK CHAIN
811 GARFIELD AVE
CARBONDALE, CO 81623
(970) 309-3655 (Work)
mchain@sopris.net
Delivered via: Electronic Mail

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule A

Order Number: ABS63014159

Property Address:

311 MAIN STREET, #301, CARBONDALE, CO 81623

1. Effective Date:

08/19/2019 at 5:00 P.M.

2. Policy to be Issued and Proposed Insured:

"ALTA" Owner's Policy 06-17-06

\$1,375,000.00

Proposed Insured:

JOSHUA H. BUCHMAN AND RANDI K. BUCHMAN

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

A Fee Simple

4. Title to the estate or interest covered herein is at the effective date hereof vested in:

311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY

5. The Land referred to in this Commitment is described as follows:

NOTE: THE FOLLOWING LEGAL DESCRIPTION IS PRELIMINARY AND IS SUBJECT TO CHANGE UPON COMPLIANCE WITH THE REQUIREMENTS UNDER SCHEDULE B-1, HEREIN.

LOTS 22 AND 23, BLOCK 11, TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO

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PROJECT TEAM

Owner/Applicant

311 Main LLC
Joe Scofield, Member
96 River Glen Drive
Carbondale, CO 81623
970.948.0677
joescofield@msn.com

Surveying

Sopris Engineering, LLC
Mark Beckler
502 Main Street, Suite, A3
Carbondale, CO 81623
970.704.0311
Mbeckler@sopriseng.com

Planning/Coordination

Mark Chain
Mark Chain Consulting, LLC
811 Garfield Avenue
Carbondale, CO 81623
970.963.0385 (office)
970.309.3655 (cell)
mchain@sopris.net

Legal

Garfield and Hecht PC
Tracy Kinsella
Avon Town Square
0070 Benchmark Road, Unit 104
PO Box 5450
Avon, CO 81620
970.949.0707 ext. 854
tkinsella@garfieldhecht.com

SECTION 2

Application Information

Background Information/Project Narrative
Condominium Map
Access Easement in Deed recorded as Reception No. 251600

311 MAIN LLC CONDOMINIUM EXEMPTION APPLICATION

Legal Description: Lots 22 & 23, Block 11 - Original Townsite

Owner: 311 Main LLC, Joe Scofield - Owner

Land-use application components

Condominium Exemption

REQUEST

311 Main LLC is submitting a request to condominiumize an existing building at 311 Main Street. The structure was built in 2008 on two existing lots on Main Street in Downtown Carbondale. The applicant has submitted the necessary application materials including the necessary fees, a Condominium Declaration and a Condominium Map.

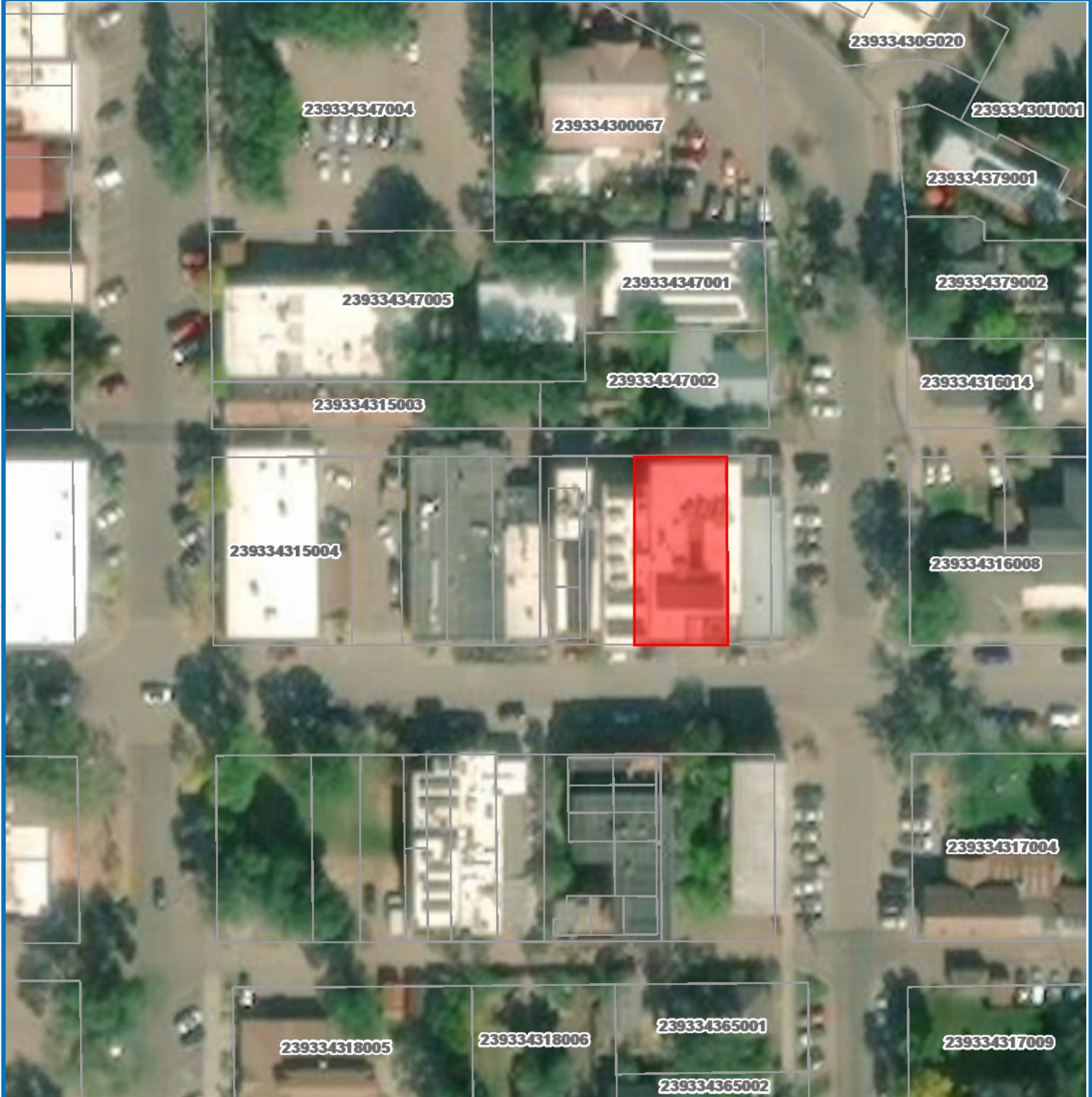
PROJECT SUMMARY/HISTORY/CURRENT DEVELOPMENT PROGRAM

311 Main LLC constructed a mixed-use building in 2008. The structure is three stories in height, approximately 10,100 ft.² in size and is a mixed-use building. The first two stories are professional office in nature and are leased to DHM Design and Poss Architecture. The third story is a residential loft. Parking is accommodated for the residential land use by a garage complex off of the alley. The residential unit is a 3 bedroom 2 ½ bath unit approximately 3500 ft.² in size.

History. Historically, the project site was the setting for a one story residential, single-family house on Main Street, owned by the Artaz family. Parking was historically accommodated on the site, and even included a deeded access easement on the adjacent lot to the west. This access easement is included as a Limited Common Element allocated to the residential unit on the site.

Proposal. The proposal is to create a total of 5 commercial units on the first and second floor in addition to the residential loft on the third floor. There are numerous common elements on the first and second commercial levels. The commercial units do not have individual restroom/water facilities – each of the first two floors are serviced by a restroom complex which is typical of many commercial buildings.

Size of the proposed units are as follows:

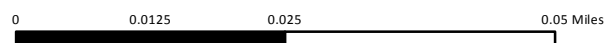


Garfield County Land Explorer

Printed by Web User

1 inch = 94 feet

1 inch = 0.02 miles



Garfield County

Garfield County Colorado
www.garfield-county.com

Colorado

Disclaimer

This is a compilation of records as they appear in the Garfield County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein contained.



Unit	Size (SF)	Land Use
Unit 101	1018	Commercial
Unit 102	1237	Commercial
Unit 201	1087	Commercial
Unit 202	646	Commercial
Unit 203	916	Commercial
Unit 301	3572	Residential
Totals	9220	

Zoning. The site is in the Historic Commercial Core (HCC) Zone District. The structure and all improvements are in compliance with all current zoning regulations. There is no proposal to change the zoning for the subject site.

SUBMITTAL REQUIREMENTS & INFORMATION

The following items are required to be submitted for a Condominium Exemption according to Section 2.6.6.D.2.b of the UDC and the Condominium Exemption Checklist. Comments shown where appropriate:

- i. A Condominium Map complying with state law which shows, at a minimum: the location of each condominium unit, common elements, utility lines and meters, existing and proposed easements, and the project boundary;

Comment: Condominium Map put together by Sopris Engineering included as part of application.

- ii. Engineered plans and a scale suitable for definitive review, and data and specifications necessary to enable the town to determine if the proposed project meets design and improvement standards of this code;

Comment: We have been not able to find the engineering plans, especially the utility plan, which was submitted with the project. The architect for the project has passed away. A waiver of submittal requirements is allowed per the UDC. Criteria include the proposed project complies with the Colorado Common Interest Ownership act, all units are located in an existing building with adequate ingress and egress and the preparation of engineered design data is not needed in order to evaluate that the project meets design specifications in Chapter 17.06 – “subdivision”. The applicant requests the waiver. The structure is well-built, has adequate utilities and access, and there has been no known problems with the structure or any building elements.

- iii. A written statement of the intended uses of each of the condominium units;

Comment: Units 101 through Unit 203 are meant for commercial and professional office use. Unit 301 is a three bedroom, 2 ½ bath residential unit.

- iv. Evidence of Title or ownership.

Comment: Title Commitment attached.

COMPLIANCE WITH APPROVAL CRITERIA

The procedures for a condominium exemption are treated in all respects as any other subdivision exemption and shall comply with requirements set forth in section 2.6.6 of the UDC. Approval criteria and responses were appropriate are included below:

- a. The subject property is suitable for subdivision within the meaning of chapter 17.06: subdivision;

Response: Chapter 17.06 outlines minimum standards for design and improvement of land including that natural hazards be mitigated; is adequately served by a street network; has accessible utilities etc. The subject site and building meet all zoning, subdivision and engineering standards as well as all building cause and effect at the time the construction.

- b. all public utilities are in place on, or immediately adjacent to, the subject site;

Response: the building and each unit are served by appropriate utilities. Meters for each utility is in place.

- c. Each lot (or unit) as a necessary dedicated public access required by code;

Response: Each unit has required access from public street/rights-of-way (Main Street and alley)

- d. The Condominium Map shall be for a building and proposed condominium units located in an existing building at the date of filing of the application;

Response: The present structure was built in 2008

- e. The preparation of engineering design data and specifications is not needed to enable the commission to determine that the subject property meets current design specifications and Chapter 17.06

Response: The preparation of engineering data is not required. The building has been functioning in a satisfactory manner since the date of construction.

CONDOMINIUM MAP OF:

311 MAIN STREET CONDOMINIUMS

PURPOSE OF THIS MAP IS TO CONDOMINIUMIZE BLOCK 11 LOTS 22-23, ORIGINAL TOWNSITE OF CARBONDALE
311 MAIN STREET, TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO
SHEET 1 OF 4
CERTIFICATES, NOTES, CONTROL AND VICINITY MAPS

CERTIFICATE OF DEDICATION AND OWNERSHIP:

KNOW ALL PERSONS BY THESE PRESENTS THAT THE UNDERSIGNED, 311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY, BEING THE OWNER OF THAT REAL PROPERTY DESCRIBED AS FOLLOWS:

ORIGINAL TOWNSITE CARBONDALE BLOCK 11 LOTS 22-23

COUNTY OF GARFIELD, STATE OF COLORADO.

HAS BY THESE PRESENTS LAID OUT, PLATTED, CREATED AND SUBDIVIDED THE SAME AND ALL IMPROVEMENTS THEREON AS A CONDOMINIUM COMMON INTEREST COMMUNITY AS SHOWN ON THIS CONDOMINIUM MAP OF 311 MAIN STREET CONDOMINIUMS (AS SUPPLEMENTED, FROM TIME TO TIME, THE "MAP"), INITIALLY CONSISTING OF ONE (1) RESIDENTIAL UNIT, FIVE (5) COMMERCIAL UNITS, ONE (1) GARAGE UNIT, AND APPURTENANT COMMON ELEMENTS, PURSUANT TO AND FOR THE PURPOSES SET FORTH IN THE CONDOMINIUM DECLARATION FOR THE 311 MAIN STREET CONDOMINIUMS, RECORDED _____, 2019, AT RECEPTION NO. _____ (AS AMENDED FROM TIME TO TIME, THE "DECLARATION"). CAPITALIZED TERMS USED ON THIS MAP WITHOUT FURTHER SPECIFIC DEFINITION HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

EXECUTED THIS _____ DAY OF _____, 2019.

OWNER: 311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY

BY: JOE SCOFIELD

NAME: _____

AS: MANAGING MEMBER

STATE OF COLORADO)
) SS
COUNTY OF GARFIELD)

THE ABOVE AND FOREGOING DOCUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2019, BY JOE SCOFIELD AS MANAGING MEMBER OF 311 MAIN, LLC.

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

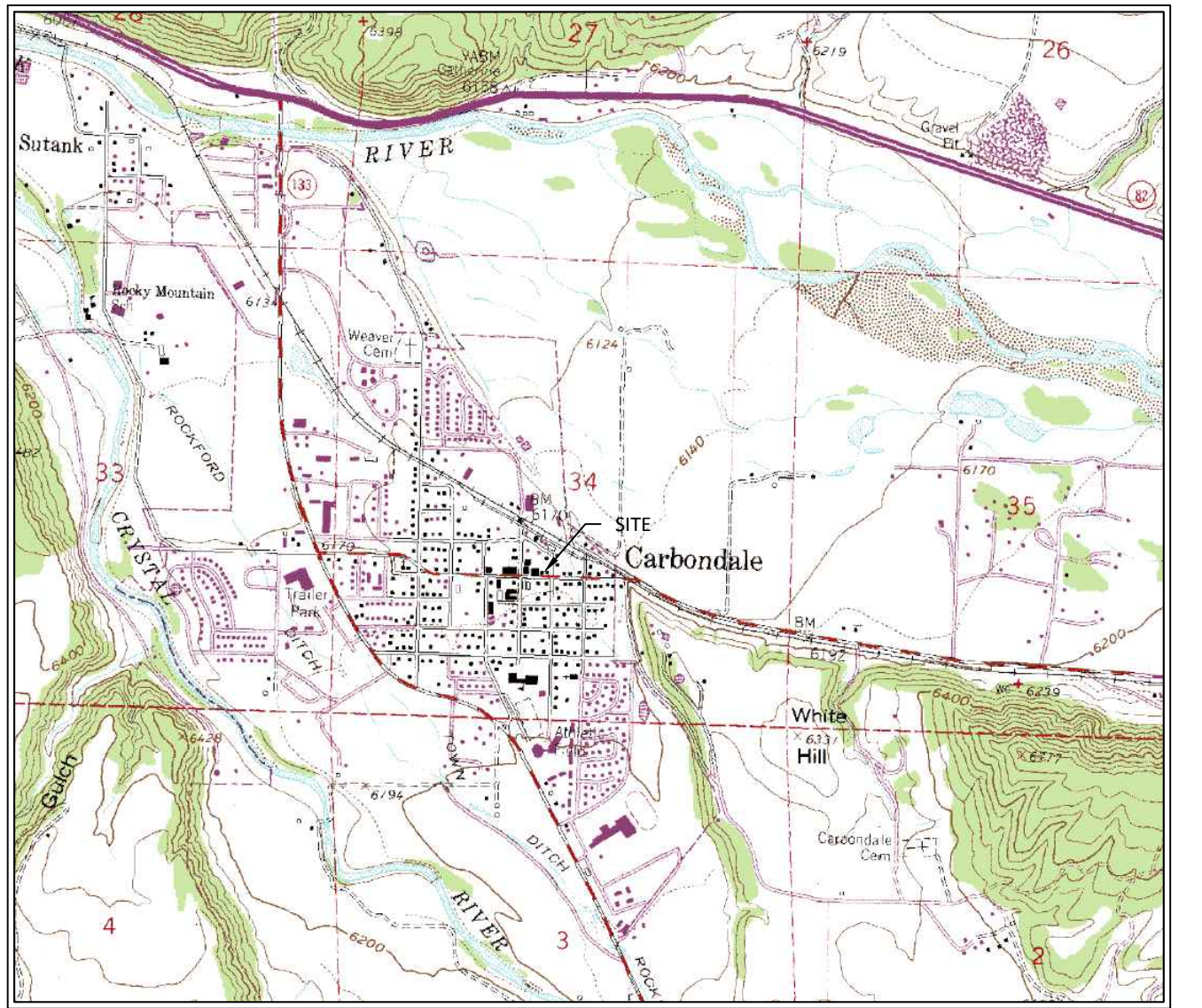
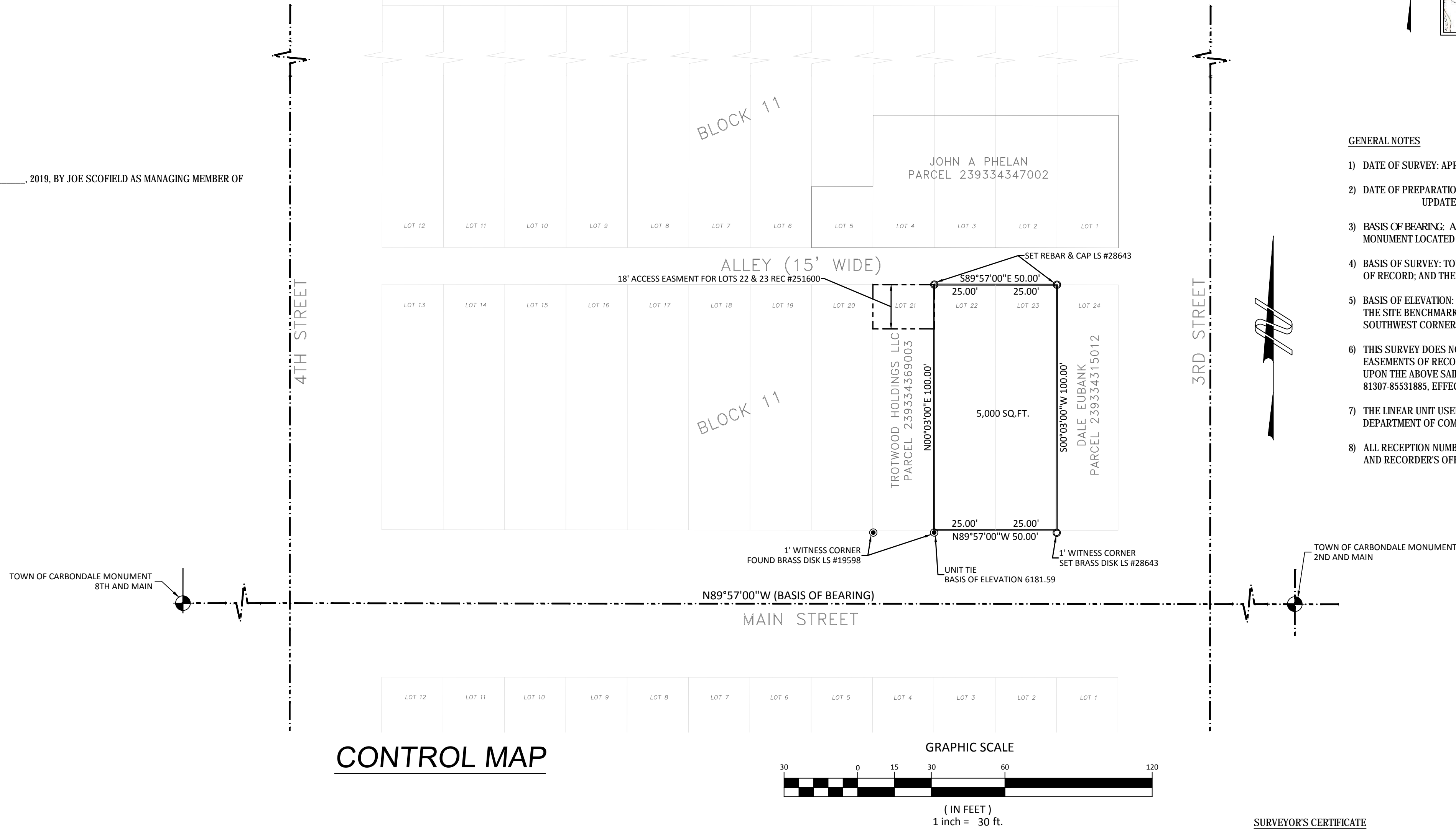
MY ADDRESS IS: _____

LEGEND

- TOWN OF CARBONDALE STREET MONUMENT
- FOUND PROPERTY CORNER
- SET PROPERTY CORNER

SHEET INDEX

- 1) CERTIFICATES, NOTES, CONTROL, EXTERIOR BOUNDARY, AND VICINITY MAPS
- 2) BUILDING DIMENSIONS, EASEMENTS AND ENCROACHMENT DETAIL
- 3) PLAN VIEWS
- 4) ELEVATION VIEWS



VICINITY MAP
SCALE: 1" = 2000'

GENERAL NOTES

- 1) DATE OF SURVEY: APRIL 2013.
- 2) DATE OF PREPARATION: APRIL-MAY 2013.
UPDATED: SEPTEMBER 2009.
- 3) BASIS OF BEARING: A BEARING OF N 89°57'00" W BETWEEN THE FOUND #5 STEEL BAR USED AS THE TOWN OF CARBONDALE STREET MONUMENT LOCATED AT SECOND & MAIN STREET AND THE MONUMENT LOCATED AT EIGHTH & MAIN STREET.
- 4) BASIS OF SURVEY: TOWN OF CARBONDALE TOWNSITE, WEAVERS ADDITION TO THE TOWN OF CARBONDALE, VARIOUS DOCUMENTS OF RECORD; AND THE FOUND MONUMENTS, AS SHOWN.
- 5) BASIS OF ELEVATION: PROJECT BASED ON AN ELEVATION OF 6196.72' (NAVD 88) ON THE NGS STATION "D-156" THIS ESTABLISHED THE SITE BENCHMARK ELEVATION OF 6181.59' ON THE 1" WITNESS CORNER FOUND BRASS DISK L.S. NO. 19598 MONUMENTING THE SOUTHWEST CORNER OF THE SUBJECT PROPERTY AS SHOWN.
- 6) THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SOPRIS ENGINEERING, LLC (SE) TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS OF WAY AND/OR TITLE OF RECORD, SE RELIED UPON THE ABOVE SAID PLATS DESCRIBED IN NOTE 4 AND THE TITLE POLICY PREPARED BY COMMONWEALTH, UNDER POLICY NO. 81307-85531885, EFFECTIVE DATE FEBRUARY 20, 2013.
- 7) THE LINEAR UNIT USED IN THE PREPARATION OF THIS MAP IS THE U.S. SURVEY FOOT AS DEFINED BY THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.
- 8) ALL RECEPTION NUMBERS REFERENCED HEREON ARE FOR DOCUMENTS RECORDED IN THE GARFIELD COUNTY, COLORADO CLERK AND RECORDER'S OFFICE.

PLANNING COMMISSION CERTIFICATE

THIS MAP APPROVED BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF CARBONDALE, GARFIELD COUNTY, STATE OF COLORADO, THIS _____ DAY OF _____, A.D. 2019, FOR FILING WITH THE CLERK AND RECORDER OF GARFIELD COUNTY, STATE OF COLORADO, AND FOR THE CONVEYANCE TO THE TOWN OF THE PUBLIC DEDICATIONS SHOWN HEREON, SUBJECT TO THE PROVISION THAT THE APPROVAL IN NO WAY OBLIGATES THE TOWN OF CARBONDALE FOR FINANCING OR CONSTRUCTING IMPROVEMENTS ON LAND, STREETS OR EASEMENTS DEDICATED TO THE PUBLIC EXCEPT AS SPECIFICALLY AGREED TO BY THE PLANNING AND ZONING COMMISSION.

CHAIR

ATTEST:

TOWN CLERK

SOPRIS ENGINEERING - LLC

CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

SURVEYOR'S CERTIFICATE

I, MARK S. BECKLER, A REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE PREPARED THIS CONDOMINIUM MAP OF 311 MAIN STREET CONDOMINIUMS; THAT SAID LAND IS IMPROVED WITH ONE THREE-STORY BUILDING; THAT THE BUILDINGS CONTAINING OR COMPRISING THE CONDOMINIUM UNITS ARE SHOWN HEREON; THE APPROXIMATE LOCATION AND DIMENSIONS OF THE LIMITED COMMON ELEMENTS, AND THE LOCATION OF OTHER FEATURES, ARE ACCURATELY AND CORRECTLY SHOWN HEREON; THAT THE SAME ARE BASED ON FIELD SURVEYS PERFORMED UNDER MY SUPERVISION; THAT THIS MAP MEETS THE REQUIREMENTS OF A LAND SURVEY PLAT AS SET FORTH IN CRS SECTION 38-51-106; AND THAT THIS CONDOMINIUM MAP CONTAINS ALL OF THE INFORMATION REQUIRED BY CRS SECTIONS 38-33.3-208 AND 38-33.3-209 OF THE COLORADO COMMON INTEREST OWNERSHIP ACT.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS _____ DAY OF _____, 2019.

MARK S. BECKLER P.L.S. #28643

CLERK AND RECORDER'S ACCEPTANCE

THIS CONDOMINIUM MAP OF 311 MAIN STREET CONDOMINIUMS IS ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER OF GARFIELD COUNTY, COLORADO AT _____ O'CLOCK _____ M., THIS _____ DAY OF _____, 2019, IN PLAT BOOK _____, AT PAGES _____, RECEPTION NO. _____

GARFIELD COUNTY CLERK AND RECORDER

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

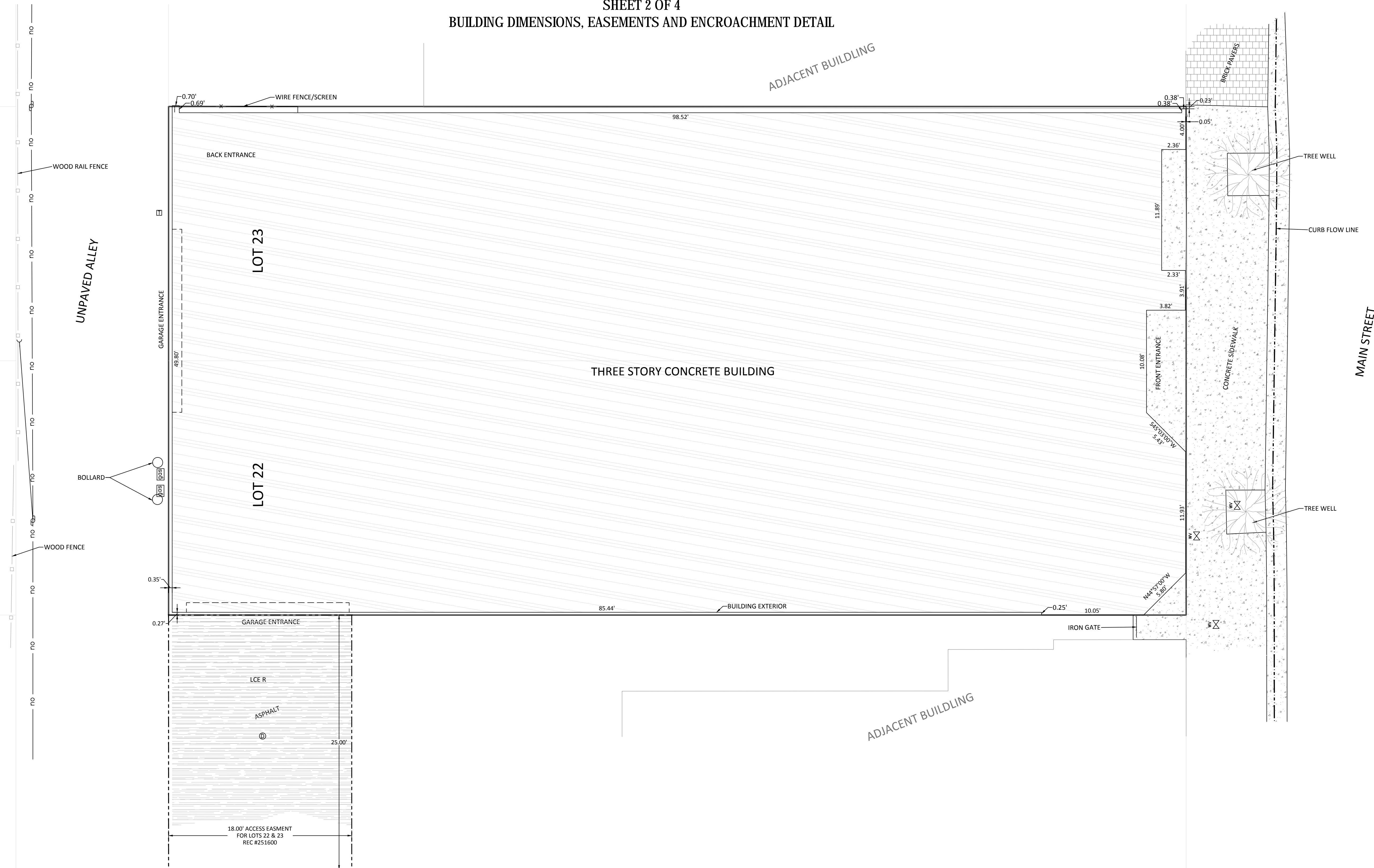
CONDOMINIUM MAP OF:

311 MAIN STREET CONDOMINIUMS

311 MAIN STREET, TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO

SHEET 2 OF 4

BUILDING DIMENSIONS, EASEMENTS AND ENCROACHMENT DETAIL



MAIN LEVEL EXTERIOR PLAN VIEW

scale 1"=5'

SOPRIS ENGINEERING - LLC

CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

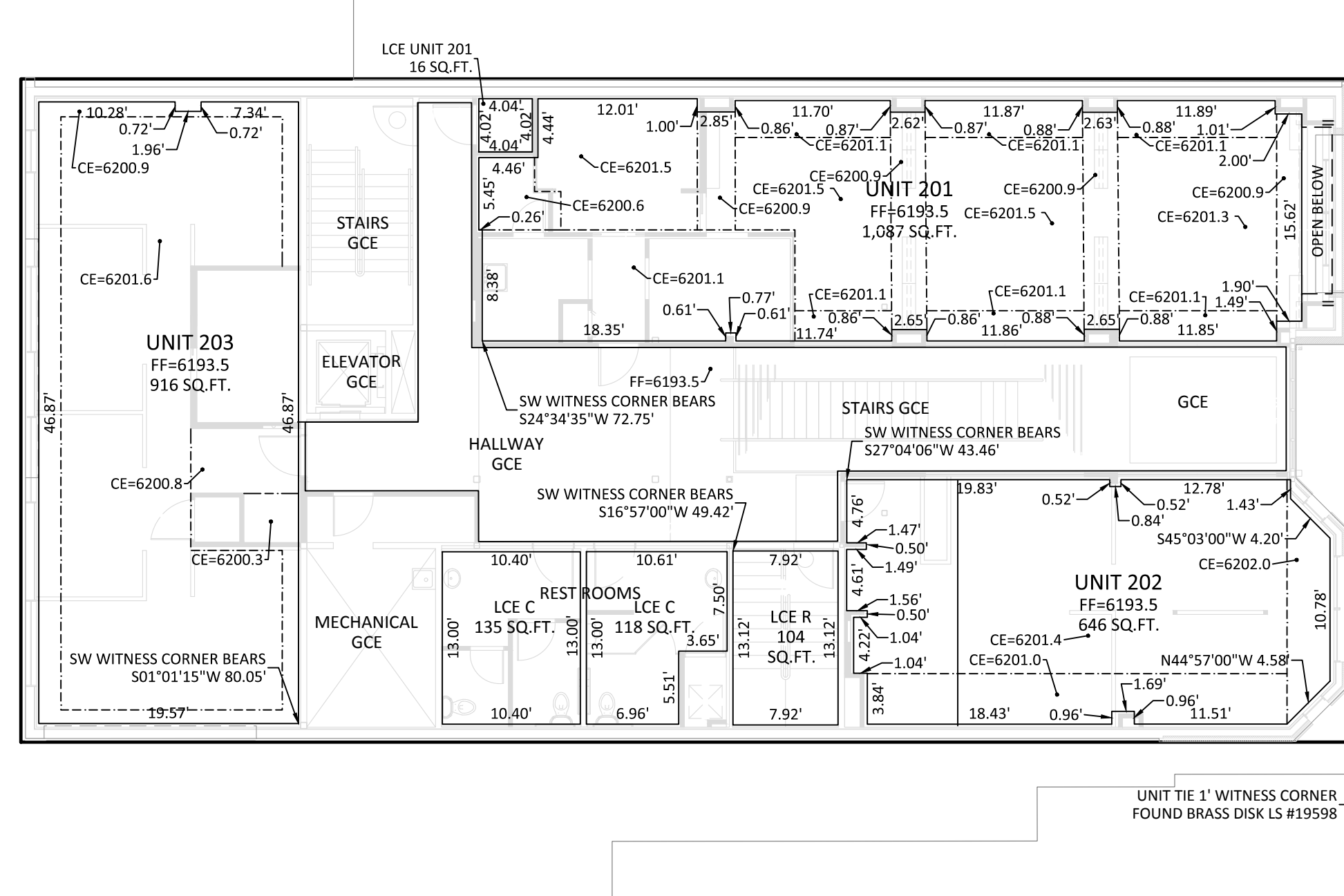
NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

sb 13041 2019-9-20 M:\3300dwgs\13041\CONDO\13041-condo C3D.dwg

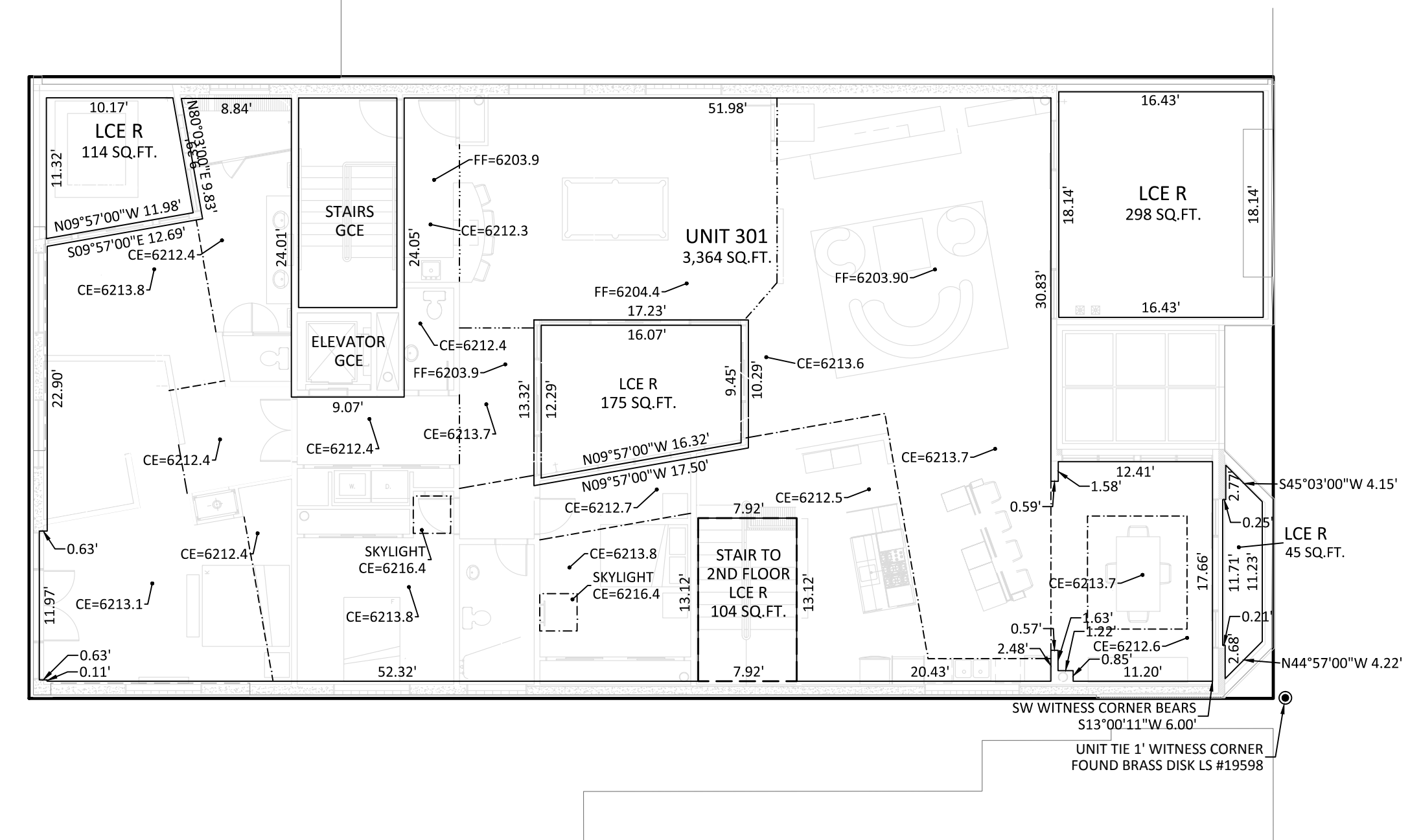
311 MAIN STREET CONDOMINIUMS

311 MAIN STREET, TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO

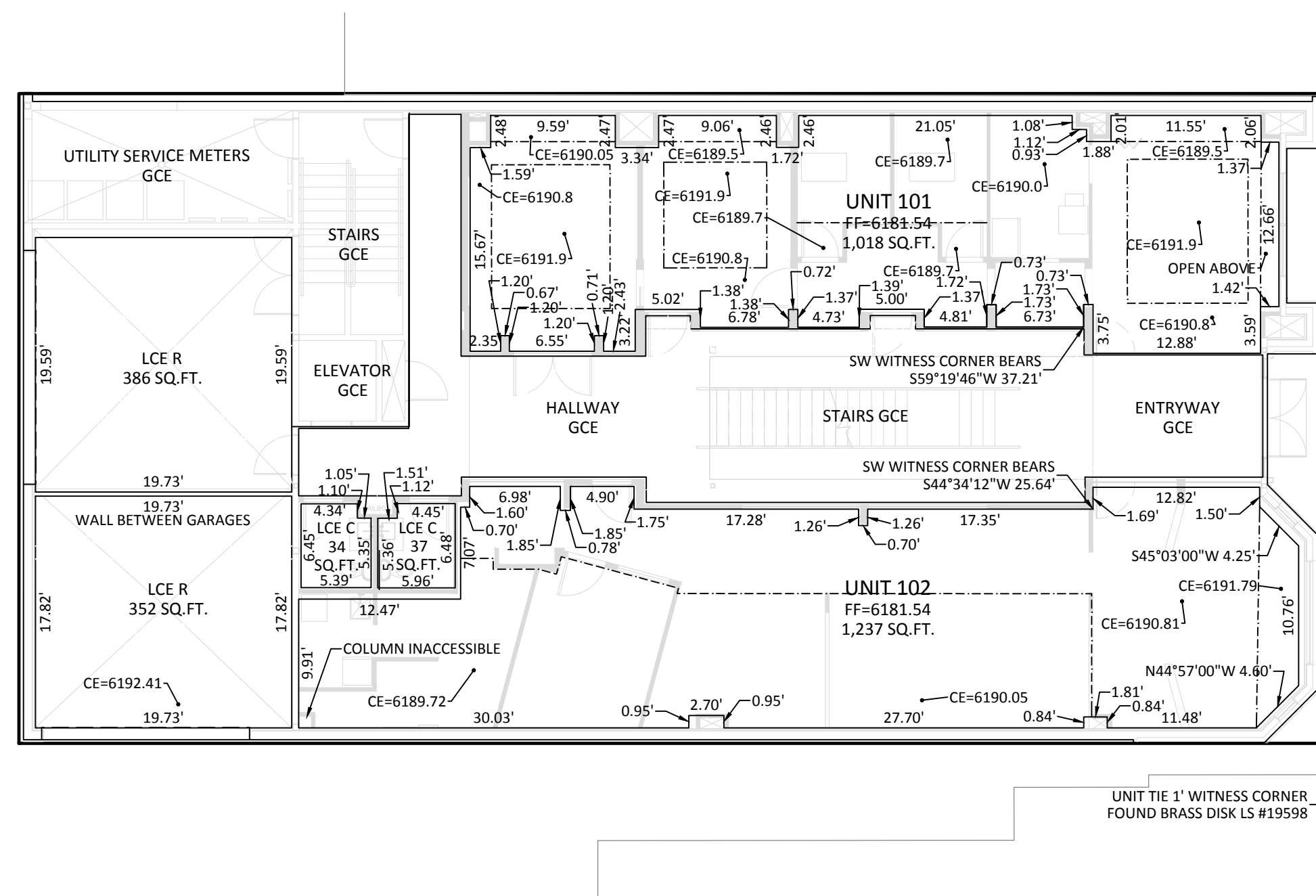
SHEET 3 OF 4
PLAN VIEWS



SECOND LEVEL PLAN VIEW
scale 1"=10'



THIRD LEVEL PLAN VIEW
scale 1"=10'



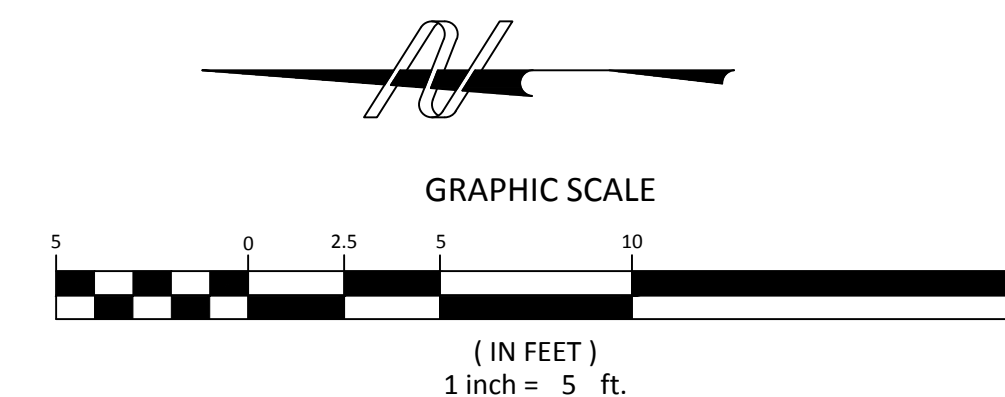
MAIN LEVEL PLAN VIEW
scale 1"=10'

MAP NOTES:

- 1) PLAN VIEWS ARE FROM ARCHITECTURAL SUBMITTAL DRAWINGS UPDATED WITH AS-BUILT DIMENSIONS AND ELEVATION INFORMATION
- 2) UNIT DIMENSIONS ARE FROM UNFINISHED PERIMETER WALL SURFACE TO UNFINISHED PERIMETER WALL SURFACE; CEILING DIMENSIONS ARE FROM UNFINISHED FLOOR TO UNFINISHED DRYWALL CEILING
- 3) ALL AREAS OUTSIDE THE INDIVIDUAL CONDOMINIUM UNITS ARE GENERAL COMMON ELEMENTS (GCE) OF THE 311 MAIN STREET CONDOMINIUMS UNLESS IDENTIFIED AS A LIMITED COMMON ELEMENT (LCE) RESERVED FOR USE BY FEWER THAN ALL THE OWNERS OF THE INDIVIDUAL UNITS. THE TERM GCE IS INTENDED TO INCORPORATE AND NOT LIMIT THE COMPONENTS INCLUDED IN THE DEFINITION OF "COMMON ELEMENTS" UNDER THE DECLARATION, UNLESS OTHERWISE IDENTIFIED AS LCE.
- 4) INTERIOR WINDOWS AND DOOR FRAMES ARE PART OF UNIT AND NOT CONSIDERED GCE.

AREA TABLE (SQ.FT.)

	LCE	UNIT
UNIT 101		1,018
UNIT 102		1,237
UNIT 201	16	1,087
UNIT 202		646
UNIT 203		916
UNIT 301	1,578	3,364



LEGEND

GCE - GENERAL COMMON ELEMENT

LCE - LIMITED COMMON ELEMENT

LCE R - LCE UNIT 301

LCE C - LCE UNITS 101, 102, 201, 202, & 203

UP - UNFINISHED FLOOR

UC - UNFINISHED CEILING

DC - CORRUGATED TIN UNDERSIDE OF CONCRETE DECK

SC - CEILING STRUCTURAL ELEMENT

INTERIOR COLUMNS (STRUCTURAL ELEMENTS) AND ATTACHED BUILDING UTILITIES, IF ANY, WITHIN A CONDOMINIUM UNIT OR LCE BOUNDARY ARE GENERAL COMMON ELEMENTS. THESE ELEMENTS, IF ANY, AND ANY INTERIOR WALLS HAVE NOT BEEN EXCLUDED FROM THE UNIT SQUARE FOOT CALCULATIONS.

N0°03'00"E NORTH-SOUTH - EXTERIOR WALL BEARING (TYP.)
N89°57'00"W EAST-WEST - EXTERIOR WALL BEARING (TYP.)
N0°03'00"E NORTH-SOUTH - INTERIOR WALL BEARING (TYP.)
N89°57'00"W EAST-WEST - INTERIOR WALL BEARING (TYP.)

--- DENOTES UNIT AREA BETWEEN LEVELS FOR STAIRWAY (TYP.)
--- CHANGE IN FLOOR ELEVATION (TYP.)
--- CHANGE IN CEILING ELEVATION (TYP.)

311 MAIN STREET CONDOMINIUMS

311 MAIN STREET, TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO

SHEET 4 OF 4
ELEVATION VIEWS



NORTH ELEVATION VIEW
SCALE 1"=10'

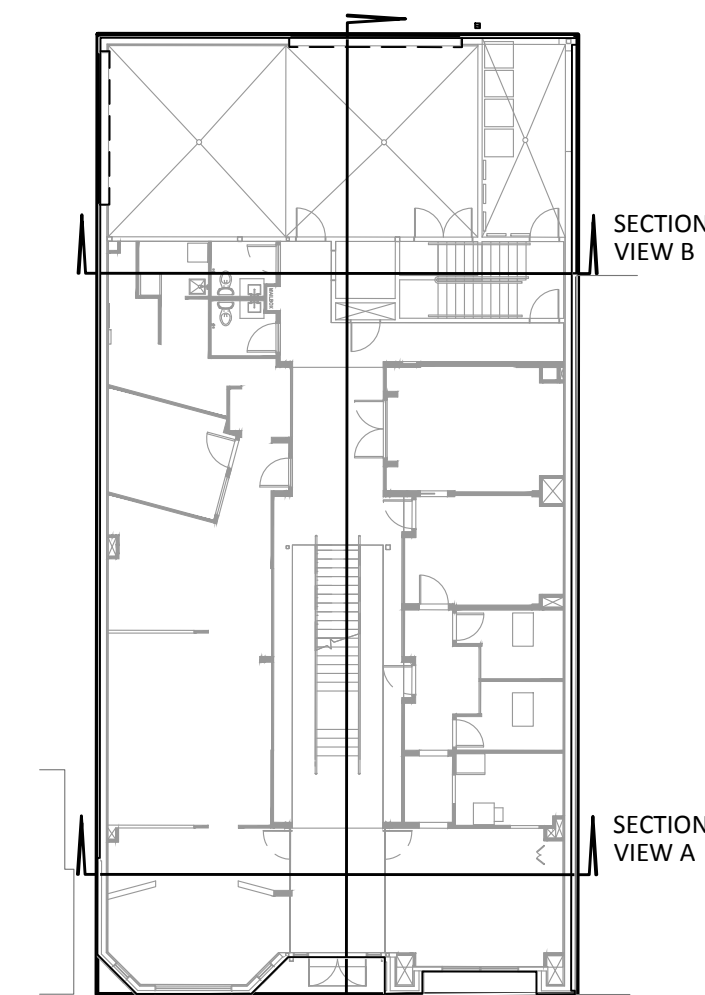
EAST ELEVATION VIEW
SCALE 1"=10'

SOUTH ELEVATION VIEW
SCALE 1"=10'

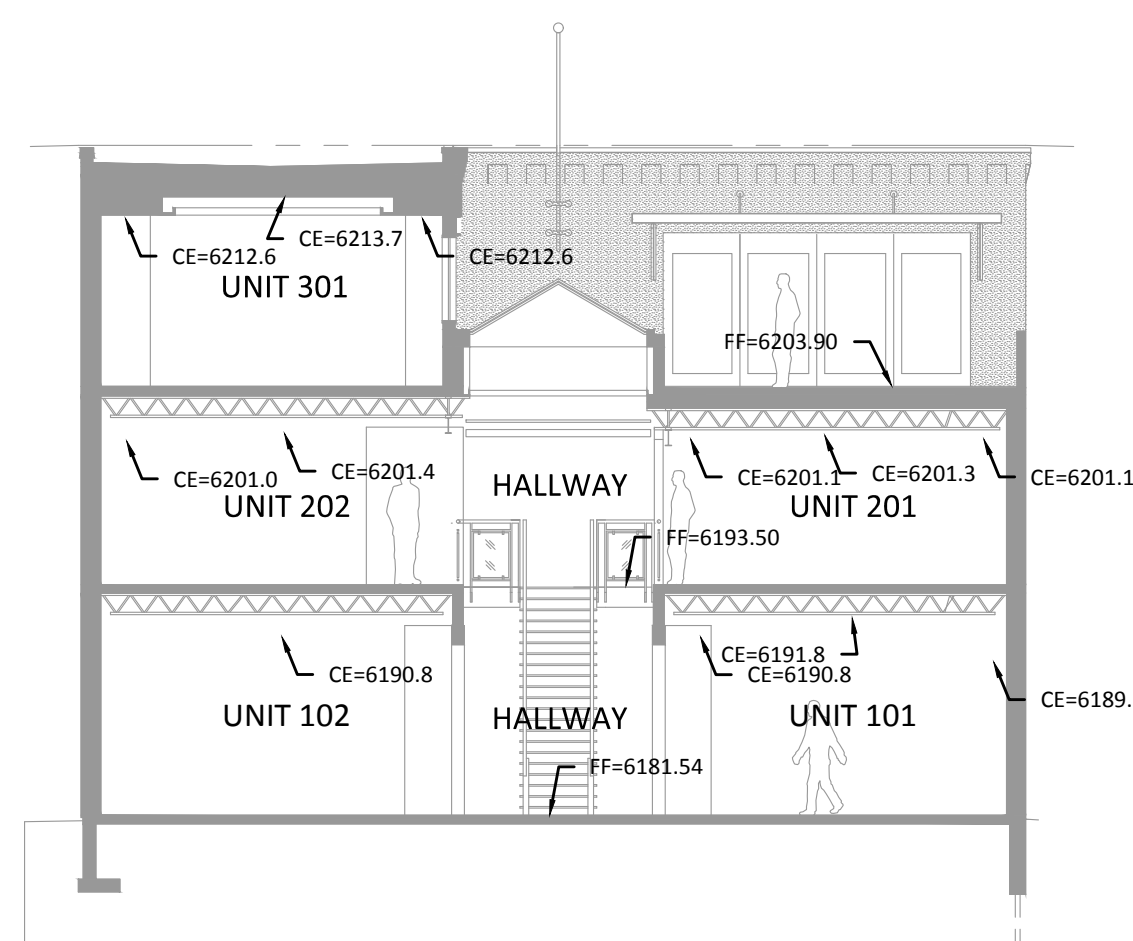
WEST ELEVATION VIEW
SCALE 1"=10'

MAP NOTES:

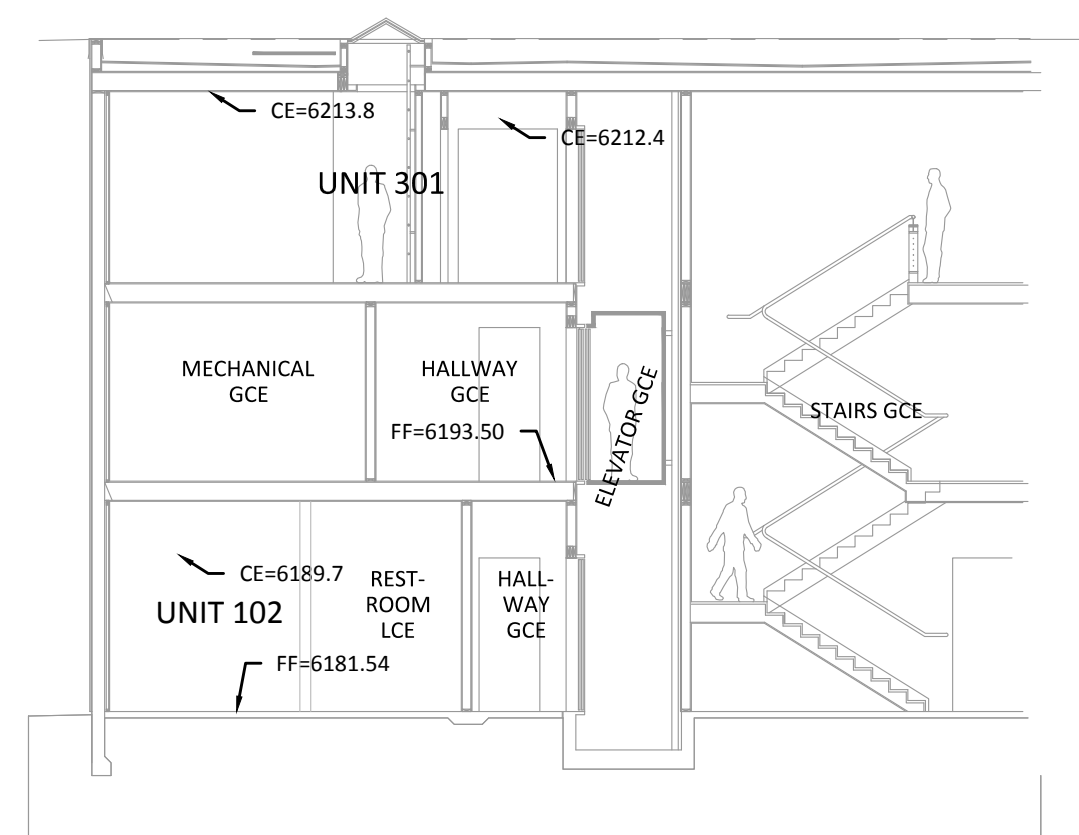
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- 2) UNIT DIMENSIONS ARE FROM UNFINISHED PERIMETER WALL SURFACE TO UNFINISHED PERIMETER WALL SURFACE; CEILING DIMENSIONS ARE FROM UNFINISHED FLOOR TO UNFINISHED DRYWALL CEILING
- 3) ALL AREAS OUTSIDE THE INDIVIDUAL CONDOMINIUM UNITS ARE GENERAL COMMON ELEMENTS (GCE) OF THE 311 MAIN STREET CONDOMINIUMS UNLESS IDENTIFIED AS A LIMITED COMMON ELEMENT (LCE) RESERVED FOR USE BY FEWER THAN ALL THE OWNERS OF THE INDIVIDUAL UNITS. THE TERM GCE IS INTENDED TO INCORPORATE AND NOT LIMIT THE COMPONENTS INCLUDED IN THE DEFINITION OF "COMMON ELEMENTS" UNDER THE DECLARATION, UNLESS OTHERWISE IDENTIFIED AS LCE.
- 4) WINDOWS AND DOOR FRAMES ARE PART OF UNIT AND NOT CONSIDERED GCE.



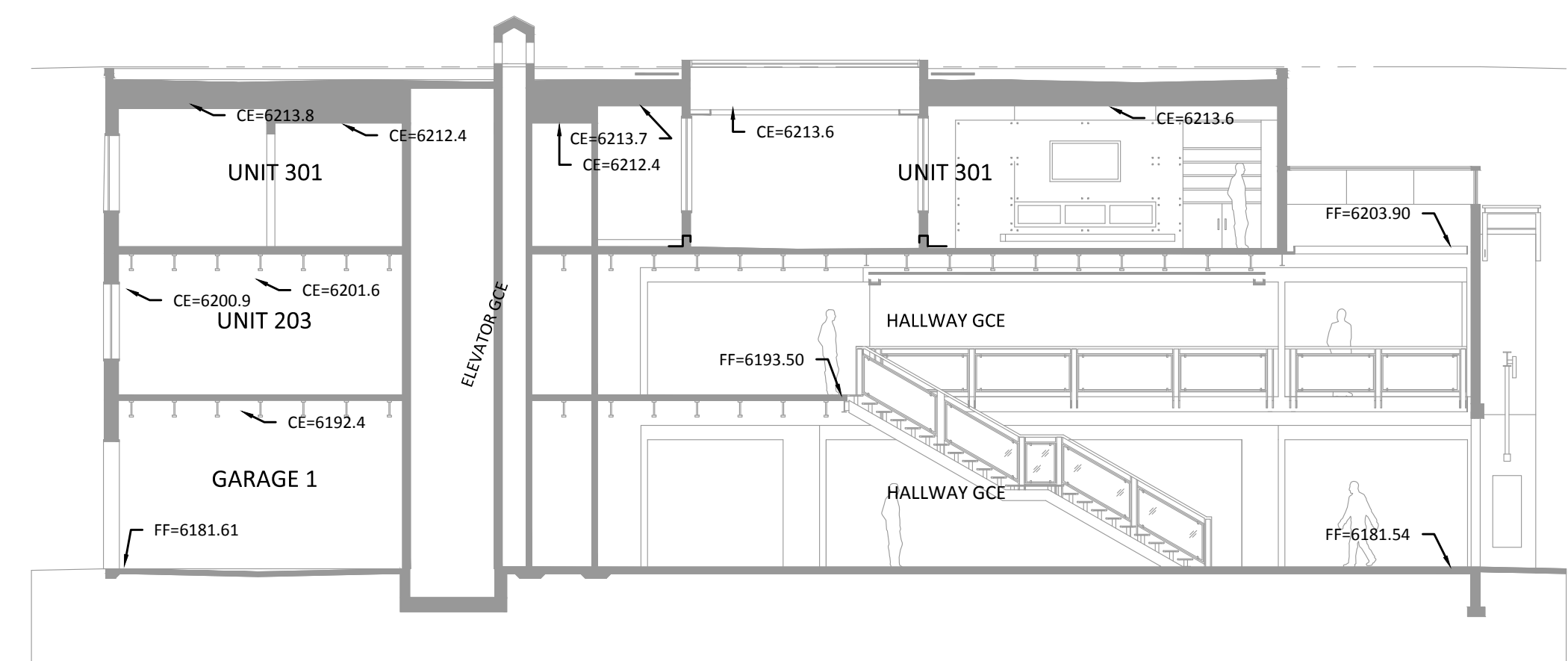
SECTION KEY
SCALE 1"=20'



SECTION VIEW A
SCALE 1"=10'



SECTION VIEW B
SCALE 1"=10'



SECTION VIEW C
SCALE 1"=10'

SOPRIS ENGINEERING - LLC

CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

THIS DEED, Made this _____ day of October ,
19 71 , between
Henry D. Artaz and Dorothy J. Artaz

of the _____ County of Garfield and State of Colo-
rado, of the first part, and
Robert L. Tattenham

County of Pitkin _____ of the
part; and State of Colorado, of the second

RECORDER'S STAMP

STATE DOCUMENTARY FEE
NOV 4 1971
\$ 8.00

WITNESSETH, That the said part ies of the first part, for and in consideration of the sum
of -----Ten Dollars -----

to the said part _____ of the first part, in hand paid by the said part y _____ of the second part, the
receipt whereof is hereby confessed and acknowledged, ha ve granted, bargained, sold and conveyed,
and by these presents do _____ grant, bargain, sell, convey and confirm unto the said part y _____ of
the second part, his _____ heirs and assigns forever, all the following described lot ---or parcel
of land, situate, lying and being in the _____ County of Garfield _____ and State of
Colorado, to wit:

1. Lot 21 of Block 11 in the Town of Carbondale, together with all
improvements situate thereon.
2. Subject to a party wall agreement for the benefit of the adjoining
Lot 20 of said Block 11, ~~and~~ recorded in Book 302 at page 76.
3. Subject to an easement for access to lots 22 and 23, Block 11,
Town of Carbondale, said easement being 18 feet in width along and
adjacent to the rear lot line of the above described property.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any-
wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and
profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said
part ies of the first part, either in law or equity, of, in and to the above bargained premises, with
the hereditaments and appurtenances; TO HAVE AND TO HOLD the said premises above bar-
gained and described, with the appurtenances, unto Robert L. Tattenham
the said part y _____ of the second part, his
heirs and assigns forever.

And the said Henry D. Artaz and Dorothy J. Artaz
parties of the first part, for themselves , their heirs, executors and
administrators, do _____ covenant grant, bargain and agree to and with the said part y _____ of the
second part, his _____ heirs and assigns, the above bargained premises in the quiet and peaceable
possession of said part y _____ of the second part, his _____ heirs and assigns, against all and every
person or persons lawfully claiming or to claim the whole or any part thereof, by, through or under
the said part ies _____ of the first part to WARRANT AND FOREVER DEFEND.

IN WITNESS WHEREOF, The said parties _____ of the first part have hereunto set their
hands and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of

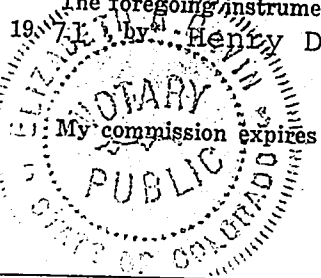
_____[SEAL]

Henry D. Artaz [SEAL]

Dorothy J. Artaz [SEAL]

STATE OF COLORADO,
County of Pitkin } ss.

The foregoing instrument was acknowledged before me this 21st day of October
19 71 by Henry D. artaz and Dorothy J. Artaz



19 71 . Witness my hand and official seal.
Elizabeth R Gauri
Notary Public.

*If by natural person or persons here insert name or names; if by person acting in representative or official capacity or as attorney-in-fact, then insert name of person as executor, attorney-in-fact or other capacity or description; if by officer of cor- poration, then insert name of such officer or officers, as the president or other officers of such corporation, naming its Statutory Acknowledgment, Session 1927.

SECTION 3

MISCELLANEOUS DOCUMENTS

Title Commitment
List of Property Owners within 300 feet
Property Card



Land Title Guarantee Company Customer Distribution



PREVENT FRAUD - Please remember to call a member of our closing team when initiating a wire transfer or providing wiring instructions.

Order Number: **ABS63014159**

Date: **09/18/2019**

Property Address: **311 MAIN STREET, #301, CARBONDALE, CO 81623**

PLEASE CONTACT YOUR CLOSER OR CLOSER'S ASSISTANT FOR WIRE TRANSFER INSTRUCTIONS

For Closing Assistance

Jessica Reed
901 GRAND AVENUE #202
GLENWOOD SPRINGS, CO 81601
(970) 930-9815 (Work)
(800) 318-8206 (Work Fax)
jreed@ltgc.com
Contact License: CO299243
Company License: CO44565

Closer's Assistant

Erin Alore
901 GRAND AVENUE #202
GLENWOOD SPRINGS, CO 81601
(970) 945-2610 (Work)
(800) 318-8206 (Work Fax)
ealore@ltgc.com
Contact License: CO543303
Company License: CO44565

For Title Assistance

Melissa Schroder
5975 GREENWOOD PLAZA BLVD
GREENWOOD VILLAGE, CO 80111
(303) 270-0438 (Work)
mschroder@ltgc.com

Buyer/Borrower

JOSHUA H. BUCHMAN
67 NORTH 3RD ST.
Carbondale, CO 81623
(406) 360-4881 (Cell)
jhokubuchman@gmail.com
Delivered via: Electronic Mail

Attorney for Seller

GARFIELD & HECHT PC
Attention: RON GARFIELD
625 E HYMAN AVE #201
ASPEN, CO 81611
(970) 925-1936 (Work)
(970) 925-3008 (Work Fax)
garfield@garfieldhecht.com
tkinsella@garfieldhecht.com
Delivered via: Electronic Mail

Buyer/Borrower

RANDI K. BUCHMAN
22051 TWO RIVERS ROAD
Basalt, CO 81621
jhokubuchman@gmail.com
Delivered via: Electronic Mail

Seller/Buyer Agent

COLDWELL BANKER MASON MORSE REAL ESTATE
Attention: NANCY EMERSON
0290 HWY 133
CARBONDALE, CO 81623
(970) 963-3300 (Work)
(970) 963-0879 (Work Fax)
nemerson@masonmorse.com
Delivered via: Electronic Mail

Seller/Owner

311 MAIN, LLC
Attention: JOE SCOFIELD, MEMBER
96 RIVER GLEN DRIVE
CARBONDALE, CO 81623
(970) 948-0677 (Cell)
joescofield@msn.com
Delivered via: Electronic Mail

MARK CHAIN CONSULTING LLC

Attention: MARK CHAIN
811 GARFIELD AVE
CARBONDALE, CO 81623
(970) 309-3655 (Work)
mchain@sopris.net
Delivered via: Electronic Mail



Land Title Guarantee Company Estimate of Title Fees

Order Number: **ABS63014159** Date: **09/18/2019**
Property Address: **311 MAIN STREET, #301, CARBONDALE, CO 81623**
Parties: **JOSHUA H. BUCHMAN AND RANDI K. BUCHMAN**
311 MAIN, LLC, A COLORADO LIMITED LIABILITY
COMPANY

Visit Land Title's Website at www.ltgc.com for directions to any of our offices.

Estimate of Title insurance Fees	
"ALTA" Owner's Policy 06-17-06	\$2,790.00
Deletion of Standard Exception(s)	\$100.00
Tax Certificate	\$26.00
	Total \$2,916.00
If Land Title Guarantee Company will be closing this transaction, the fees listed above will be collected at closing.	
Thank you for your order!	

Note: The documents linked in this commitment should be reviewed carefully. These documents, such as covenants conditions and restrictions, may affect the title, ownership and use of the property. You may wish to engage legal assistance in order to fully understand and be aware of the implications of the effect of these documents on your property.

Chain of Title Documents:

[Garfield county recorded 07/05/2006 at book 1816 page 645](#)

Plat Map(s):

[Garfield county recorded 12/07/1889 under reception no. 5889](#)

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule A

Order Number: ABS63014159

Property Address:

311 MAIN STREET, #301, CARBONDALE, CO 81623

1. Effective Date:

08/19/2019 at 5:00 P.M.

2. Policy to be Issued and Proposed Insured:

"ALTA" Owner's Policy 06-17-06

\$1,375,000.00

Proposed Insured:

JOSHUA H. BUCHMAN AND RANDI K. BUCHMAN

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

A Fee Simple

4. Title to the estate or interest covered herein is at the effective date hereof vested in:

311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY

5. The Land referred to in this Commitment is described as follows:

NOTE: THE FOLLOWING LEGAL DESCRIPTION IS PRELIMINARY AND IS SUBJECT TO CHANGE UPON COMPLIANCE WITH THE REQUIREMENTS UNDER SCHEDULE B-1, HEREIN.

LOTS 22 AND 23, BLOCK 11, TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO

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ALTA COMMITMENT

Old Republic National Title Insurance Company

Schedule B, Part I

(Requirements)

Order Number: ABS63014159

All of the following Requirements must be met:

This proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

Pay the agreed amount for the estate or interest to be insured.

Pay the premiums, fees, and charges for the Policy to the Company.

Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

1. RECORD DULY EXECUTED AND ACKNOWLEDGED CONDOMINIUM MAP OF _____.

NOTE: A COPY OF SAID CONDOMINIUM MAP MUST BE SUBMITTED TO LAND TITLE GUARANTEE COMPANY PRIOR TO RECORDATION. UPON RECEIPT AND REVIEW FURTHER REQUIREMENTS AND/OR EXCEPTIONS MAY BE NECESSARY.

2. RECORD DULY EXECUTED AND ACKNOWLEDGED CONDOMINIUM DECLARATION OF _____.

NOTE: A COPY OF SAID CONDOMINIUM DECLARATION MUST BE SUBMITTED TO LAND TITLE GUARANTEE COMPANY PRIOR TO RECORDATION. UPON RECEIPT AND REVIEW FURTHER REQUIREMENTS AND/OR EXCEPTIONS MAY BE NECESSARY.

3. A FULL COPY OF THE FULLY EXECUTED OPERATING AGREEMENT AND ANY AND ALL AMENDMENTS THERETO FOR 311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY MUST BE FURNISHED TO LAND TITLE GUARANTEE COMPANY. SAID AGREEMENT MUST DISCLOSE WHO MAY CONVEY, ACQUIRE, ENCUMBER, LEASE OR OTHERWISE DEAL WITH INTERESTS IN REAL PROPERTY FOR SAID ENTITY.

NOTE: ADDITIONAL REQUIREMENTS MAY BE NECESSARY UPON REVIEW OF THIS DOCUMENTATION.

4. DULY EXECUTED AND ACKNOWLEDGED STATEMENT OF AUTHORITY SETTING FORTH THE NAME OF 311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY. THE STATEMENT OF AUTHORITY MUST STATE UNDER WHICH LAWS THE ENTITY WAS CREATED, THE MAILING ADDRESS OF THE ENTITY, AND THE NAME AND POSITION OF THE PERSON(S) AUTHORIZED TO EXECUTE INSTRUMENTS CONVEYING, ENCUMBERING, OR OTHERWISE AFFECTING TITLE TO REAL PROPERTY ON BEHALF OF THE ENTITY AND OTHERWISE COMPLYING WITH THE PROVISIONS OF SECTION 38-30-172, CRS.

NOTE: THE STATEMENT OF AUTHORITY MUST BE RECORDED WITH THE CLERK AND RECORDER.

5. WARRANTY DEED FROM 311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY TO JOSHUA H. BUCHMAN AND RANDI K. BUCHMAN CONVEYING SUBJECT PROPERTY.

ALTA COMMITMENT

Old Republic National Title Insurance Company

Schedule B, Part I

(Requirements)

Order Number: ABS63014159

All of the following Requirements must be met:

NOTE: ITEMS 1-3 OF THE STANDARD EXCEPTIONS ARE HEREBY DELETED.

NOTE: UPON APPROVAL OF THE COMPANY AND THE RECEIPT OF A NOTARIZED FINAL LIEN AFFIDAVIT, ITEM NO. 4 OF THE STANDARD EXCEPTIONS ON THE LOAN POLICY WILL BE DELETED.

UPON THE APPROVAL OF THE COMPANY AND THE RECEIPT OF A NOTARIZED FINAL LIEN AFFIDAVIT, ITEM NO. 4 OF THE STANDARD EXCEPTIONS ON THE OWNER'S POLICY WILL BE AMENDED AS FOLLOWS:

ITEM NO. 4 OF THE STANDARD EXCEPTIONS IS DELETED AS TO ANY LIENS OR FUTURE LIENS RESULTING FROM WORK OR MATERIAL FURNISHED AT THE SPECIFIC, DIRECT REQUEST, AND WITH THE ACTUAL KNOWLEDGE OF 311 MAIN, LLC, A COLORADO LIMITED LIABILITY COMPANY. OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY SHALL HAVE NO LIABILITY FOR ANY LIENS ARISING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF JOSHUA H. BUCHMAN AND RANDI K. BUCHMAN.

NOTE: ITEM 5 OF THE STANDARD EXCEPTIONS WILL BE DELETED IF LAND TITLE GUARANTEE COMPANY CONDUCTS THE CLOSING OF THE CONTEMPLATED TRANSACTION(S) AND RECORDS THE DOCUMENTS IN CONNECTION THEREWITH.

NOTE: UPON PROOF OF PAYMENT OF 2018 TAXES, ITEM 6 WILL BE AMENDED TO READ:

TAXES AND ASSESSMENTS FOR THE YEAR 2019 AND SUBSEQUENT YEARS.

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part II
(Exceptions)

Order Number: ABS63014159

This commitment does not republish any covenants, condition, restriction, or limitation contained in any document referred to in this commitment to the extent that the specific covenant, conditions, restriction, or limitation violates state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.

- 1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.**
- 2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.**
- 3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.**
- 4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.**
- 5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.**
- 6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.**
- 7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.**
- 8. EXISTING LEASES AND TENANCIES, IF ANY.**
- 9. ANY AND ALL RIGHTS OF THE OWNER OF THE PROEPRTY ADJOINING THE SUBJECT PROPERTY ARISING FROM THE EXISTENCE OF A PARTY WALL PARTLY LOCATED ON THE SUBJECT PROPERTY.**
- 10. RIGHT OF PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 29, 1911, IN BOOK 71 AT PAGE [524](#).**
- 11. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 29, 1911, IN BOOK 71 AT PAGE [524](#).**
- 12. TERMS, CONDITIONS AND PROVISIONS OF EASEMENT IN DEED RECORDED NOVEMBER 04, 1971 IN BOOK 424 AT PAGE [344](#).**
- 13. ANY COVENANTS, AGREEMENTS, ASSESSMENTS AND/OR EASEMENTS FOR PUBLIC UTILITIES, SEWER, DRAINAGE AND OTHER INCIDENTAL PURPOSES THAT AFFECT THE COMMON ELEMENTS ONLY, AS SHOWN ON THE MAP OF SAID CONDOMINIUM RECORDED _____ UNDER RECEPTION NO. _____.**

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part II
(Exceptions)

Order Number: ABS63014159

14. ALL MATTERS CONTAINED IN INSTRUMENT(S) SETTING FORTH; COVENANTS, CONDITIONS, RESTRICTIONS, LIABILITIES, OBLIGATIONS, RESERVATIONS AND EASEMENTS;

RECORDED AT: _____ BUT "OMITTING ANY COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN UNLESS AND ONLY TO THE EXTENT SAID COVENANT (A) IS EXEMPT UNDER CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS."

- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

IN WITNESS WHEREOF, Land Title Insurance Corporation has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A to be valid when countersigned by a validating officer or other authorized signatory.

Issued by:

Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
303-321-1880



President



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By



President

Attest



Secretary

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Land Title Insurance Corporation. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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Physical Address	Owner	Account Num	Mailing Address
Not available CARBONDALE	AMERICAN LEGION POST NO 100	R510037	97 N 3RD ST CARBONDALE, CO 81623-2001
Not available CARBONDALE	CARBONDALE, TOWN OF	R510038	511 COLORADO AVENUE CARBONDALE, CO 81623-2067
Not available CARBONDALE	PICKWICK HOLDINGS LLC	R580337	329 MAIN STREET CARBONDALE, CO 81623
345 COLORADO AVE #105 CARBC	BIRNKRANT, DONALD T	R045336	PO BOX 298 WOODY CREEK, CO 81656
345 COLORADO AVE #106 CARBC	BIRNKRANT, DONALD T	R045337	PO BOX 298 WOODY CREEK, CO 81656
345 COLORADO AVE #201 CARBC	ZISLIS, THEODORE AND SUSAN FAMILY TRU	R045340	955 LOBSTER TRAP LANE TEMPE, AZ 85283
345 COLORADO AVE #202 CARBC	NAKOU, GEORGIA	R045341	9/2 THORNTREE STREET EDINBURGH, UNITED KINGDOM EH6 8PY
345 COLORADO AVE #204 CARBC	HARRIS, EDSON SHEPPARD III & MARY	R045343	PO BOX 99 CARBONDALE, CO 81623
345 COLORADO AVE #205 CARBC	PURVIS, ROBERT K RESTATEMENT AND DECI	R045344	PO BOX 1329 CARBONDALE, CO 81623
345 COLORADO AVE #206 CARBC	HAUSER, JAMES S	R045345	345 COLORADO AVENUE #206 CARBONDALE, CO 81623
345 COLORADO AVE #208 CARBC	SRUBJAN, HELEN J	R045347	345 COLORADO AVE #208 CARBONDALE, CO 81623
345 COLORADO AVE #301 CARBC	STONE, ROBERT A & SHIRLEY	R045348	PO BOX 1630 FRISCO, CO 80443
345 COLORADO AVE #302 CARBC	SPEAKER, RAY L & RON V & MARGARET H	R045349	345 COLORADO AVENUE, UNIT 302 CARBONDALE, CO 81623
345 COLORADO AVE #303 CARBC	HARRIS, MARY & EDSON	R045350	PO BOX 99 CARBONDALE, CO 81623
345 COLORADO AVE #304 CARBC	TEASDALE, ANN R	R045351	PO BOX 157 NANTUCKET, MA 02554-0157
345 COLORADO AVE #305 CARBC	305-345 COLORADO AVENUE, LLC	R045352	0175 COUNTY ROAD 105 CARBONDALE, CO 81623
345 Colorado Ave # 104	M4 Properties	R045335	PO Box 1524 Carbondale CO 81623
345 Colorado Ave # 103	Jonathan Waterman	R045334	4435 County Road 113 Carbondale, CO 81623
345 Colorado Ave # 101	Patricia Ann McCullough	R045339	345 COLORADO AVENUE, UNIT 108 CARBONDALE, CO 81623
345 Colorado Ave # 107	Aspen/Glenwood MLS Inc.	R045338	345 COLORADO AVENUE, UNIT 107 CARBONDALE, CO 81623
345 Colorado Ave # 203	George & Emily Bohmfalk	R045342	5725 Carnegie Blvd. Unit 228 Charlotte, NC 28209
345 Colorado Ave # 207	Charles R Morris, Jr.	R045345	345 COLORADO AVENUE, UNIT 207 CARBONDALE, CO 81623
Not available CARBONDALE	COLORADO PLACE CONDOMINIUM ASSOCI	R045353	320 MAIN STREET, SUITE 200 CARBONDALE, CO 81623
358 MAIN ST CARBONDALE	B P INVESTMENTS, LLC	R045737	77 CRYSTAL CANYON DRIVE CARBONDALE, CO 81623
358 MAIN ST #B CARBONDALE	B P INVESTMENTS, LLC	R045738	77 CRYSTAL CANYON DRIVE CARBONDALE, CO 81623
358 MAIN ST CARBONDALE	EUROPEAN ANTIQUES CONDOMINIUM ASSC	R045739	855 ROSE LANE CARBONDALE, CO 81623
Not available CARBONDALE	TRUE NATURE HOLDINGS LLC	R083572	2701 COUNTY ROAD 100 CARBONDALE, CO 81623
403-441 MAIN ST CARBONDALE	DINKEL PARTNERS	R009839	602 E COOPER AVENUE #202 ASPEN, CO 81611
36 4TH ST CARBONDALE	LIVERY HOLDINGS LLC THE	R580044	715 W MAIN STREET SUITE 204 ASPEN, CO 81611
389 MAIN ST CARBONDALE	K & K COMPLEX LLC	R340839	408 EAST VISTA DRIVE SILT, CO 81652
343 MAIN ST CARBONDALE	RICKUS, ROY GEORGE	R340872	134 IRWIN DRIVE CARBONDALE, CO 81623-9412
311 MAIN ST CARBONDALE	311 MAIN, LLC	R340013	96 RIVER GLEN ROAD CARBONDALE, CO 81623
303 MAIN ST CARBONDALE	EUBANK, DALE, LLC	R340820	1676 COUNTY ROAD 100 CARBONDALE, CO 81623
MAIN ST CARBONDALE	TAVERNA, FRANK X	R340866	405 OAK RUN ROAD CARBONDALE, CO 81623-2809
351 MAIN ST CARBONDALE	POUR HOUSE COMPANY LLC	R340868	351 MAIN STREET CARBONDALE, CO 81647
259 MAIN ST CARBONDALE	KOLPUS, GREGOR EDWARD	R340880	100 BRISTLECONE DRIVE CARBONDALE, CO 81623-8627
289 MAIN ST CARBONDALE	EDOCA LLC	R340818	234 MAIN STREET CARBONDALE, CO 81623
64 N 3RD ST CARBONDALE	SHOOK FAMILY LLC	R083751	3989 NW 52ND PLACE BOCA RATON, FL 33496
26 3RD ST CARBONDALE	CT & TL CHACOS LLLP	R340844	26 S 3RD STREET CARBONDALE, CO 81623
86 S 3RD ST CARBONDALE	EMERSON, ROBERT B & NANCY B	R340118	117 CRYSTAL CANYON DRIVE CARBONDALE, CO 81623
302 MAIN ST CARBONDALE	SEVEN STARS REBEKAH LODGE NO 91	R340977	302 MAIN STREET CARBONDALE, CO 81623-2031
76 S FOURTH ST CARBONDALE	CARBONDALE, TOWN OF	R340831	511 COLORADO AVENUE CARBONDALE, CO 81623-2067

343 GARFIELD AVE CARBONDALE	TACHE JR, YVAN P	R340071
Not available CARBONDALE	348 MAIN LLC	R340835
348 MAIN ST CARBONDALE	348 MAIN LLC	R340836
380 MAIN ST CARBONDALE	EQUANIMOUS HOLDINGS LLC	R510029
380 MAIN ST CARBONDALE	EQUANIMOUS HOLDINGS LLC	R510030
MAIN ST CARBONDALE	EQUANIMOUS HOLDINGS LLC	R580157
67 N 3RD ST CARBONDALE	EMJB 3RD ST LLC	R340161
65 N 3RD ST CARBONDALE	PHELAN, JOHN A	R340145
4TH ST CARBONDALE	PICKWICK HOLDINGS LLC	R580134
38 4TH ST CARBONDALE	CHURCHILL GROUP, INC	R580135
75 S 3RD ST CARBONDALE	PHILIP, MARJORIE J REVOCABLE TRUST	R580128
323 GARFIELD AVE CARBONDALE	YOUNG, REBECCA	R580129
335 MAIN ST CARBONDALE	FISCHBACHER HOLDINGS LLC	R580227
319 MAIN ST CARBONDALE	TROTWOOD HOLDINGS LLC	R580229
320 MAIN ST #100 CARBONDALE	AGC LLC	R007282
320 MAIN ST CARBONDALE	GARFINKEL, MARTIN	R007283
320 MAIN ST CARBONDALE	MILLS, LINDSAY R & MICHAEL R	R007284
320 MAIN ST CARBONDALE	320 MAIN LLC	R007285
320 MAIN ST #200 CARBONDALE	ASPEN VALLEY LAND TRUST	R007286
320 MAIN ST CARBONDALE	M & L INVESTMENTS LLC	R007287
320 MAIN ST #202 CARBONDALE	FIRST AVENUE PROPERTIES OF MINNEAPOLIS	R007288
320 MAIN ST CARBONDALE	KOLLAR, ERNEST P & BARBARA J	R007289
320 MAIN ST CARBONDALE	320 MAIN INVESTMENT LLC	R007290
320 MAIN ST #300 CARBONDALE	BERTHIAUME, THOMAS & KACHENMEISTER	R007291
320 MAIN ST CARBONDALE	320 MAIN BUILDING CONDOMINIUM ASSOCIATION	R007292
100 N 3RD ST CARBONDALE	TRUE NATURE HOLDINGS LLC	R008655
96 N 3RD ST CARBONDALE	MARSHALL, JULIA SUE	R008656
327 MAIN ST CARBONDALE	NOGGINS HOLDINGS LLC	R042206
329 MAIN ST CARBONDALE	NOGGINS HOLDINGS LLC	R042207
333 MAIN ST CARBONDALE	NOGGINS HOLDINGS LLC	R042208
Not available CARBONDALE	NOGGINS HOLDINGS LLC	R042209
60 N 3RD ST CARBONDALE	TRUE NATURE HOLDINGS LLC	R083750
259 MAIN ST CARBONDALE	AMERICAN TREE & CEMENT HOLDINGS LLC	R340523
234 MAIN ST CARBONDALE	EEH1 LLC	R340320
242 MAIN ST CARBONDALE	CASH COW PARTNERS, LLP	R340816
297 GARFIELD AVE CARBONDALE	WILLIAMS, WENDY C	R340609
295 GARFIELD AVE CARBONDALE	LEZAMA, CATALINO A	R340524
Not available CARBONDALE	SENS, WILLIAM H	R340945
225 MAIN ST #110 CARBONDALE	REED, BRENT HAMPTON	R040851
225 MAIN ST #120 CARBONDALE	ASSURED LIFE ASSOCIATION	R040852
225 MAIN ST #130 CARBONDALE	BESMALL LLC	R040853
225 MAIN ST #201 CARBONDALE	BESMALL LLC	R040854
225 MAIN ST #202 CARBONDALE	BESMALL LLC	R040855

343 GARFIELD AVENUE CARBONDALE, CO 81623
8226 DOUGLAS AVENUE, SUITE 748 DALLAS, TX 75225
8226 DOUGLAS AVENUE SUITE 748 DALLAS, TX 75225
PO BOX 982 CARBONDALE, CO 81623
PO BOX 982 CARBONDALE, CO 81623
PO BOX 982 CARBONDALE, CO 81623
PO BOX 1400 CARBONDALE, CO 81623
65 N 3RD ST CARBONDALE, CO 81623-2001
329 MAIN STREET CARBONDALE, CO 81623
40 N 4TH STREET CARBONDALE, CO 81623-2012
31 S MEADOW VIEW COURT GLENWOOD SPRINGS, CO 81601
323 GARFIELD AVENUE CARBONDALE, CO 81623
482 PASEO DRIVE CARBONDALE, CO 81623
329 MAIN STREET CARBONDALE, CO 81623
320 MAIN STREET SUITE 100 CARBONDALE, CO 81623
PO BOX 670 CARBONDALE, CO 81623-0670
PO BOX 451 CARBONDALE, CO 81623
55 NORTH 4TH STREET CARBONDALE, CO 81623
320 MAIN STREET SUITE 200 CARBONDALE, CO 81623
1072 HERITAGE DRIVE CARBONDALE, CO 81623
320 MAIN STREET SUITE 300 CARBONDALE, CO 81623
0746 WOODEN DEER ROAD CARBONDALE, CO 81623
320 MAIN STREET SUITE 204 CARBONDALE, CO 81623
320 MAIN STREET UNIT 300 CARBONDALE, CO 81623
804 KESTREL COURT BASALT, CO 81621
2701 COUNTY ROAD 100 CARBONDALE, CO 81623
96 N 3RD STREET CARBONDALE, CO 81623
329 MAIN STREET CARBONDALE, CO 81623
329 MAIN STREET CARBONDALE, CO 81623
329 MAIN STREET CARBONDALE, CO 81623
329 MAIN STREET CARBONDALE, CO 81623
2701 COUNTY ROAD 100 CARBONDALE, CO 81623
14 OLD ORCHARD ROAD CARBONDALE, CO 81623
234 MAIN STREET CARBONDALE, CO 81623
PO BOX 187 CARBONDALE, CO 81623
PO BOX 103 CARBONDALE, CO 81623
295 GARFIELD AVENUE # A-2 CARBONDALE, CO 81623-2132
52 WOODPOND ROAD W HARTFORD, CT 06107-3526
100 N 8TH STREET UNIT# 6 ASPEN, CO 81611
6030 GREENWOOD PLAZA BLVD STE 100 ENGLEWOOD, CO 80111
PO BOX 185 CARBONDALE, CO 81623
PO BOX 185 CARBONDALE, CO 81623
PO BOX 185 CARBONDALE, CO 81623

225 MAIN ST #203 CARBONDALE BESMALL LLC	R040856	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #204 CARBONDALE BESMALL LLC	R040857	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #205 CARBONDALE BESMALL LLC	R040858	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #206 CARBONDALE BESMALL LLC	R040859	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #301 CARBONDALE BESMALL LLC	R040860	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #302 CARBONDALE BESMALL LLC	R040861	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #303 CARBONDALE BESMALL LLC	R040862	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #304 CARBONDALE BESMALL LLC	R040863	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #305 CARBONDALE BESMALL LLC	R040864	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST #306 CARBONDALE BESMALL LLC	R040865	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040866	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040867	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040868	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040869	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040870	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040871	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040872	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040873	PO BOX 185 CARBONDALE, CO 81623
MAIN ST CARBONDALE BROADHURST, RICK	R040879	5317 COUNTY ROAD 165, SUITE 201 GLENWOOD SPRINGS, CO 81601
225 MAIN ST CARBONDALE BESMALL LLC	R040874	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040875	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040876	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040877	PO BOX 185 CARBONDALE, CO 81623
225 MAIN ST CARBONDALE BESMALL LLC	R040878	PO BOX 185 CARBONDALE, CO 81623



Layers

Property Record Card

Map

Search

Results

Sales Search

Sales List



Summary

Account	R340013
Parcel	239334315011
Property Address	311 MAIN ST, CARBONDALE, CO 81623
Legal Description	Section: 34 Township: 7 Range: 88 Subdivision: ORIGINAL TWNSTE CARBONDALE Block: 11 Lot: 22 AND:- Lot: 23
Acres	0
Land SqFt	5,000
Tax Area	58
Mill Levy	81.47
Subdivision	ORIGINAL TWNSTE CARBONDALE

[View Map](#)

Owner

311 MAIN, LLC
96 RIVER GLEN ROAD
CARBONDALE CO 81623

Land

Unit Type	SINGLE FAM.RES.-LAND - 1112 (RESIDENTIAL PROPERTY)
Square Feet	2500

Unit Type	OFFICES-LAND - 2120 (COMMERCIAL PROPERTY)
Square Feet	2500

Buildings

Building #	1
Units	2
Building Type	OFFICES
Abstract Codes / (Property Type)	OFFICES-IMPROVEMENTS-2220 (COMMERCIAL PROPERTY) SINGLE FAM RES-IMPROVEMT-1212 (RESIDENTIAL PROPERTY)
Architectural Style	OFFICE
Stories	3
Frame	STEEL
Actual Year Built	2008

Basement Area	0
Finish Basement Area	0
Gross Living Area	10,112
Total Heated SqFt	10,112
Bedrooms	2
Baths	5
Heating Fuel	GAS
Heating Type	FORCED AIR
Air Conditioning	CENTRAL
Roof Type	STEEL FRAM
Roof Cover	BUILT-UP

Actual Values

Columns ▼

Assessed Year	2019	2018	2017
Land Actual	\$950,000.00	\$400,000.00	\$400,000.00
Improvement Actual	\$1,080,320.00	\$1,444,340.00	\$1,444,340.00
Total Actual	\$2,030,320.00	\$1,844,340.00	\$1,844,340.00

Assessed Values

Columns ▼

Assessed Year	2019	2018	2017
Land Assessed	\$171,710.00	\$72,400.00	\$72,400.00
Improvement Assessed	\$195,270.00	\$261,430.00	\$261,430.00
Total Assessed	\$366,980.00	\$333,830.00	\$333,830.00

Tax History

Columns ▼

Tax Year	2018	2017	2016	2015
Taxes Billed	\$27,197.12	\$25,332.36	\$28,862.72	\$29,265.40

[Click here to view the tax information for this parcel on the Garfield County Treasurer's website.](#)

Transfers

Sale Date	Deed Type	Reception Number	Book - Page	Sale Price
6/30/2006	STATEMENT OF AUTHORITY	701327	1816-646	
6/30/2006	WARRANTY DEED	701326	1816-645	485000
6/30/2006	STATEMENT OF AUTHORITY	701325	1816-644	
4/18/2004	STATEMENT OF AUTHORITY	708261	1849-297	
8/18/1997	QUIT CLAIM DEED		1032-0779	

Photos



▢ **Sketches**



▢ **Contact Information**

▢ **Announcements**

The Garfield County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or interpretation. Data is subject to constant change and its accuracy and completeness cannot be guaranteed.

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Last Data Upload: 9/19/2019, 1:11:30 AM

Version 2.3.4

Developed by

 **Schneider**
GEOSPATIAL

SECTION 4

CONDOMINIUM DECLARATION

Return Upon Recordation To:

Garfield & Hecht, P.C.
Attn: Tracy Kinsella
70 Benchmark Road
PO Box 5450
Avon, CO 81620

CONDOMINIUM DECLARATION
FOR
311 MAIN STREET CONDOMINIUMS

CONDOMINIUM DECLARATION
FOR
311 MAIN STREET CONDOMINIUMS

This Condominium Declaration for 311 Main Street Condominiums (the "Declaration") is made this ____ day of _____, 2019 (the "Effective Date") by 311 Main, LLC, a Colorado limited liability company, hereinafter referred to as "Declarant."

Recitals

A. Declarant is the owner of the real property together with all improvements constructed thereon located in Garfield County, State of Colorado identified on attached Exhibit A (the "Property"). The purpose of this Declaration is to create a condominium project ("Project") by submitting the Property to the condominium form of ownership and use pursuant to the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time ("Act").

B. Declarant hereby declares that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the Property and shall be binding upon and accrue to the benefit of Declarant, its successors and assigns, and any person or entity acquiring and holding an interest in the Project, its grantees, successors, transferees, heirs, personal representatives and assigns.

C. The Property is improved one (1) building which contains 5 commercial units and 1 residential unit (each a "Unit").

D. The Units are designated on the Map. The Common Elements and Limited Common Elements are also designated on the Map.

E. In accordance with Section 118 of the Colorado Common Interest Ownership Act, the Declarant hereby submits the Property and the Project to the provisions of the Act. In the event that the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

F. By this Declaration and the Map, a plan is hereby established for the separate fee simple ownership of the Units by the Owners as depicted in the Map.

NOW, THEREFORE, the Association does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations, and obligations shall be deemed to run with the land comprising the Property and the Project, and shall be a burden and a benefit to the Owners, their lenders, grantees, successors, heirs, executors, administrators, devisees, and assigns.

1. **Statements of Purpose and Declaration.**

1.1 **Purpose.** The purpose of this Declaration is to create a condominium common interest community known as 311 Main Street Condominiums, all in accordance with the Act, as amended and supplemented from time to time.

1.2 **Intention of Owners.** The Owners intend to protect the value and desirability of the Project, and encourage a harmonious and attractive condominium community that will promote and safeguard the health, comfort, safety, convenience and welfare of the Owners.

1.3 **Number of Units.** The Project currently consists of one (1) building which contains 5 commercial Units (the "Commercial Units") and 1 residential Unit (the "Residential Unit").

1.4 **Imposition of Covenants.** To accomplish the purposes indicated above, the Association hereby declares that from the date of recording of this Declaration forward, the Project will constitute a common interest ownership community under the Act, as amended and supplemented from time to time, and shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements (collectively, the "Covenants") contained in this Declaration. The Covenants shall run with the land and be binding upon all persons having any right, title or interest in all or any part of the Project and their heirs, successors and assigns, tenants, employees, guests, and invitees. The Covenants will inure to the benefit of all present and future Owners. All Owners are subject to all the rights and duties assigned to Owners under these Covenants. The acquisition or rental of any of the Units, or the mere act of occupancy of any of the Units, will signify acceptance, ratification and an agreement to comply with this Declaration.

2. **Definitions.** The following words when used in this Declaration or any Amended Declaration shall have the following meanings:

2.1 **"Act"** means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et seq., as amended and supplemented from time to time, or any successor legislation to these statutes.

2.2 **"Allocated Interests"** means the undivided interest allocated to each Unit for the purpose of determining the Assessments for each Unit as set forth in Exhibit B attached hereto. The formulas for the Allocated Interests are as follows:

2.2.1 The Common Expenses will be allocated as follows: 80% to the Commercial Units and 20% to the Residential Unit. The percentage paid by the Commercial Units is a ratio based upon the approximate net interior square footage of a Commercial Unit compared to the approximate total net interior square footage of all Commercial Units and is set forth in Exhibit B. All such measurements are based upon the dimensions recited

in the Map.

2.2.2 The percentages of the total common expenses for Limited Common Elements is set forth in Exhibit B.

2.3 "**Articles**" means the Articles of Incorporation for the Association currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.4 "**Annual Assessment**" means the Assessment levied pursuant to an annual budget and allocable to Owners based on the Allocated Interests set forth on Exhibit B attached hereto. The Annual Assessment may be invoiced and collected on a monthly or other basis as determined by the Board of Directors.

2.5 "**Assessments**" means the Annual, Special and Default Assessments levied pursuant to Article 14 hereof. Assessments shall also constitute a Common Expense Liability as defined under the Act.

2.6 "**Association**" means 311 Main Street Condominium Association, a Colorado nonprofit corporation, and its successors and assigns, and any successor association formed to govern and manage the Project. The members of which Association shall be all of the Owners of the Units.

2.7 "**Association Documents**" means this Declaration, the Articles of Incorporation and the Bylaws of the Association, the Map and any procedures, rules, regulations and policies adopted under such documents by the Association that govern the Association.

2.8 "**Board**" means the Board of Directors of the Association, which is the executive board, as defined in the Act, designated in this Declaration to act on behalf of the Association as the governing body of the Association.

2.9 "**Bylaws**" means the Bylaws adopted by the Association, as amended from time to time.

2.10 "**Clerk and Recorder**" means the office of the Clerk and Recorder in the County of Garfield, Colorado.

2.11 "**Common Elements**" means all portions of the Project excluding the Units, but including, without limiting the generality of the foregoing, the following components, which include General Common Elements and Limited Common Elements: roof, stairs, walkways, building exteriors, and landscaping.

2.12 "**Common Expenses**" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, insuring, operating, servicing, conserving, managing, maintaining, repairing or

replacing the Common Elements and Limited Common Elements; (iii) insurance premiums for the insurance carried under this Declaration; (iv) expenses agreed upon as Common Expenses by the members of the Association; (v) expenses provided to be paid pursuant to any management agreement; (vi) expenses provided to be paid pursuant to this Declaration; and (vii) all expenses lawfully determined to be common expenses by the Board, from time to time in accordance herewith. The Common Expenses shall be allocated as follows: 80% to the Commercial Units and 20% to the Residential Unit as detailed in Exhibit B.

2.13 "**County**" means the County of Garfield, State of Colorado.

2.14 "**Declarant**" means 311 Main, LLC, a Colorado limited liability company, its successors and assigns.

2.15 "**Declaration**" means this Condominium Declaration and amendments and supplements to the foregoing, if any, recorded in the office of the Clerk and Recorder of the County in accordance with the Act.

2.16 "**Default Assessment**" means the Assessments levied by the Association pursuant to Section 14.7 below.

2.17 "**Director**" means a member of the Board.

2.18 "**First Mortgage**" means any Mortgage that is not subject to any prior lien or encumbrance except liens for taxes or other liens that are given priority by Colorado statute.

2.19 "**First Mortgagee**" means any person or entity named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person or entity under such First Mortgage.

2.20 "**General Common Elements**" means the Common Elements to the Project, except for the Units and the Limited Common Elements to the Project, as depicted on the Map and/or described in the Declaration. The General Common Elements shall include, but are not limited to, the exterior walls and siding, the elevator, stairways and stairwells, except that any of the foregoing that are located within a Unit shall not be a General Common Element. All subflooring, plumbing elements, drywall, sheetrock, interior surfaces or other components within a Unit or forming the interior boundaries of a Unit shall be considered Limited Common Elements or a portion of the applicable Unit rather than General Common Elements.

2.21 "**Limited Common Elements**" means those parts of the Common Elements to the Project which are limited to or reserved for the use of the Owners of one or more, but fewer than all, of the Units. Where a Limited Common Element is specifically stated in this Declaration or on the Map as being appurtenant to solely one Unit or fewer than all of the Units, the Owner of said Unit or Units shall be responsible to maintain, repair and replace, at its sole cost and expense, said Limited Common Element. There are two types of Limited Common Elements in the Project:

2.21.1 "Limited Common Element Commercial" or "LCE-C" means those Limited Common Elements which are only for the use of the Commercial Units.

2.21.2 "Limited Common Element Residential" or "LCE-R" means those Limited Common Elements which are only for the use of the Residential Unit.

2.22 "Managing Agent" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Board may authorize from time to time. Such person may be a member of the Board.

2.23 "Map" means the Condominium Map of the Project referred to in the Recitals and recorded with the County Clerk and Recorder. The Map depicts a plan and elevation schedule of all or a part of the Project with dimensions and requirements in accordance with the Act, which Map is subject to this Declaration and amendments hereto.

2.24 "Member" means every person or entity that holds membership in the Association.

2.25 "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

2.26 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

2.27 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

2.28 "Person" (whether or not in capitalized form) means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or combination thereof.

2.29 "Project" means the common interest community consisting of the portions of the buildings in which the Units, Common Elements and Limited Common Elements created by this Declaration and the Map exist and as shown on the Map.

2.30 "Property" means the real property more particularly described in Exhibit A which contains the Units and Common Element owned by all of the Owners as tenants in common in accordance with their percentage ownership interest in the General Common Elements. The Property is comprised of the land upon which the Project is situated. The Units are subject to the exceptions listed on Exhibit A-1.

2.31 "Special Assessment" means an Assessment levied pursuant to Section 14.5 below on an irregular basis.

2.32 "Unit" means a condominiumized individual airspace which is contained within the perimeter windows, doors, door frames and unfinished surfaces of perimeter walls, floors and

ceilings as shown and described on the Map together with the appurtenant interest in the Common Elements.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

3. **Name, Division into Units.**

3.1 **Name.** The name of the Project is 311 Main Street Condominiums. The Project is a Condominium pursuant to the Act.

3.2 **Condominium.** The Declarant hereby submits to condominium ownership all of the Property and improvements thereon related to or incidental to the Property. The Project is hereby divided into Units, Common Elements and Limited Common Elements. The Owners of the Units shall own the Common Elements in undivided interests in proportion to their respective Allocated Interests on Exhibit B.

3.3 **Use of General Common Elements.** Subject to the limitations contained herein, any Owner shall have the nonexclusive right to use and enjoy the General Common Elements except that any utility service lines located within a Unit may be accessed solely for purposes of installation, maintenance, repair and replacement.

3.4 **Association.** The name of the Association is 311 Main Street Condominium Association, Inc. The Association is incorporated as a non-profit corporation under the laws of the State of Colorado.

3.5 **Number of Units.** The current number of Units in the Project is 6.

3.6 **Identification of Units.** The Map will adequately identify each Unit in the Project.

3.7 **Nonprofit Purpose.** The Association shall not operate for pecuniary gain or profit, shall not issue capital stock, and no part of the net earnings of the Association shall inure to the benefit of any member or individual.

3.8 **Description of Units; Use.**

3.8.1 Each Unit, the appurtenant interest in the General Common Elements, Limited Common Elements, shall comprise one Unit. Each Unit shall be inseparable and may be transferred, leased, devised or encumbered only as a Unit.

3.8.2 Any instrument affecting a Unit may describe it by its Unit number, 311 Main Street Condominiums, County of Garfield, State of Colorado, according to the Map thereof recorded on _____, 2019, at Reception No. _____, and according to the Condominium Declaration for 311

Main Street Condominiums recorded on _____, 2019 at Reception No. _____ in the records of the Clerk and Recorder of the County of Garfield, State of Colorado, as amended from time to time.

- 3.8.3 Each Owner shall be entitled to the exclusive ownership and possession of his/her/its Unit.
- 3.8.4 Each Owner may use the General and Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners and subject to any use or occupancy provisions set forth in this Declaration and subject to the easements and restrictions set forth in this Declaration.
- 3.8.5 The Residential Unit shall only be used for residential purposes and may not be used for commercial or business purposes, unless such use is of an incidental nature (such as a home office) and the use does not require the Town of Carbondale approval or issuance of any plans, permits, licenses or other reviews.
- 3.8.6 The Commercial Units shall only be used for office and retail purposes. The hours of operation of any office or retail operation in these Units shall be limited to 7:00 AM to 8:00 PM. Further, no Commercial Unit shall be used as a restaurant, bar, night club, beauty salon, pet store, cannabis dispensary or grow facility or other similar use or operation nor for any purpose or use which produces disturbing or unhealthy odors or which produces noise in excess of that allowed by any noise ordinance of the Town of Carbondale.
- 3.8.7 All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project shall be observed.
- 3.8.8 No Unit shall be used for the operation of a timesharing, fractional ownership, fractional sharing, vacation club or other similar program whereby the right to the exclusive use of the Unit rotates among participants in the program over a fixed or floating schedule over a period of time.

4. **Condominium Map; Unit Combinations and Disconnections.**

4.1 **Recordation.** The Map has been filed for record in Garfield County, Colorado and approved by the Town of Carbondale. The Map may be further supplemented and amended from time to time at the direction of the Board to depict new boundaries of Units and other improvements that are approved with an affirmative vote of at least sixty-seven percent (67%) of the entire voting power of the Association. Any amendment to the Map deemed necessary by the Board and which complies with the requirements of the Act will also be filed for record in

the office of the Clerk and Recorder of Garfield County, Colorado.

4.2 **Amendment to Map.** The Association shall be entitled to amend and/or supplement the Map without the approval of the Unit Owners in its sole and absolute discretion: (i) to conform the Map to the actual location of constructed improvements and to establish, vacate and relocate utility and access easements from time to time; or (ii) as may otherwise be permitted by the Act or this Declaration.

4.3 **Inseparability of Unit.** No part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration, except as may be allowed under the Act. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association. However, nothing in this Declaration shall prevent more than one person or entity from having an ownership interest in a Unit. Ownership interests may be allocated on a percentage basis as long as such division of ownership does not conflict with prohibitions contained in this Declaration or violate any municipal ordinance or rule of the Town of Carbondale.

4.4 **Combination of Units; Subdivision.** An Owner may not subdivide his/her/its Unit into two or more Units. An Owner may not combine his/her/its Unit with any other Unit.

4.5 **Non-partitionability of Common Elements.** Except as provided otherwise in this Declaration, the Common Elements shall be owned in common by all of the Owners and shall remain physically undivided. No Owner shall bring any action for partition or division of the Common Elements. Any conveyance, encumbrance, judicial sale, or other transfer (voluntarily or involuntarily) of an individual interest of the Common Elements will be void unless the Unit to which that interest is allocated is also transferred. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Owner of the Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this subsection of the Declaration may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action. Such amount shall automatically become a Default Assessment determined and levied against such Owner's Unit and enforced by the Association in accordance with this Declaration.

4.6 **Sale of Portions of Common Elements.** No sale of any portion of the Common Elements shall be allowed.

5. **Owners' Property Rights in Common Elements.**

5.1 **General Common Elements.** Subject to Article 10 below, every Owner and the guests, tenants and licensees of each Owner shall have a perpetual right and easement of access over, across and upon the General Common Elements for the purpose of getting to and from each Unit, which right and easement shall be appurtenant to and pass with the transfer of title to each Unit. However, every such right and easement shall be subject to the following:

- 5.1.1 the covenants, conditions, restrictions, easements, reservations, rights of way, and other provisions contained in this Declaration and the Map; and
- 5.1.2 the rights of the Association to adopt from time to time any and all rules and regulations concerning the Common Elements as the Association may determine is necessary or prudent.

5.2 **Limited Common Elements.** Subject to the provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy any Limited Common Elements appurtenant to his/her/its Unit(s) if so depicted on the Map. Any balcony, patio, or terrace which is accessible from, associated with or which adjoin(s) a Unit and is identified as a Limited Common Element on the Map shall, without further reference thereto, be used in connection with such Unit to the exclusion of the use thereof by the Owners of the General Common Elements, except by invitation. The garage is a LCE-R. There is no parking for the Commercial Units. There is no exterior parking for any Unit.

6. **Membership and Voting Rights; Association Operations.**

6.1 **The Association.** The administration of the Project shall be governed by this Declaration, the Articles and the Bylaws.

6.2 **Transfer of Membership.** An Owner shall not transfer, pledge or alienate his/her/its membership in the Association in any way, except upon the sale or encumbrance of his or her Unit and then only to the purchaser or Mortgagee of his/her/its Unit.

6.3 **Membership in Association.** Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The Association shall have only one class of membership consisting of all Owners. Each Owner is subject to all the rights and duties assigned to Owners under the Association Documents.

6.4 **Voting Rights.** Each Member shall be entitled to vote in Association matters pursuant to this Declaration. Votes will be allocated based on the formula of one (1) vote for each Unit owned by said Owner; provided, however, that each such vote shall be weighted in proportion to the Allocated Interests in the General Common Elements as set forth in Exhibit B attached hereto (the "Allocated Interests"). When more than one person holds an ownership interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised by one person as the Owners determine among themselves. If more than one of the multiple

Owners are present at a meeting in person or by proxy, the vote allocated to their Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the vote allocated to his/her/its Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

6.5 Notice of Membership. Any person, on becoming a Member, will furnish the Secretary of the Association with a photocopy or certified copy of the recorded instrument or other evidence as may be specified by the Board which vests the person with the interest required to make him/her/it a Member. At the same time, the Member will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Association Documents. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and present the most recent written notice received by the Association with respect to each Member.

6.6 Compliance with Association Documents. Each Owner will abide by and benefit from the provisions, covenants, conditions and restrictions contained in the Association Documents.

6.7 Managing Agent or Manager. The Association may employ or contract for the services of a Managing Agent to whom the Board may delegate certain managerial and administrative powers and functions, as provided in the Bylaws of the Association. The Managing Agent shall have the authority to make expenditures under the general direction of the Board.

6.8 Rights of Action. The Association on behalf of itself and any aggrieved Unit Owner shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Association Documents. The Unit Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity after compliance with the Dispute Resolution provision set forth herein at Article 24. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

6.9 Notice. Any notice to an Owner of matters affecting the Project from the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record on file with the Association for that Owner.

7. **Powers of the Unit Owners' Association.** The Association shall have all of the powers, authority and duties permitted under the Act and under the Colorado Revised Nonprofit Corporation Act ("CRNCP"). The Association, acting through the Board, may (without specific authorization in the Declaration):

7.1 Adopt and amend any rules and regulations of the Association;

7.2 Adopt and amend Bylaws;

7.3 Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;

7.4 Hire and terminate Managing Agent(s) and other employees, agents and independent contractors;

7.5 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;

7.6 Make contracts and incur liabilities;

7.7 Regulate the use, maintenance, repair, replacement and modification of Common Elements;

7.8 Cause additional improvements (not exceeding \$25,000 for any improvement project) to be made to the Common Elements. If such project cost exceeds the permitted amount the Board must obtain 67% Owner approval;

7.9 Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;

7.10 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

7.11 Provide for the Association's indemnification of its officers and members of the Board, and also to maintain directors' and officers' liability insurance as determined to be appropriate by the Board or the Owners;

7.12 Borrow funds to cover Association expenditures and pledge Association assets as security therefor, subjecting Common Elements to a security interest in connection therewith;

7.13 Assign, pledge and collateralize its right to future income, including the right to receive Assessments;

7.14 Exercise any other powers conferred by the Declaration or the Bylaws;

7.15 Exercise all other powers that may be exercised in Colorado by legal entities of the same type as the Association; and

7.16 Exercise any other powers necessary and proper for the governance and operation of the Association.

7.17 Other Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided in this Declaration and its Articles, the Association shall provide to the Owners the duties and services described as:

7.17.1 Maintenance, repair and restoration of the General Common Elements and the exterior of the building as described herein;

7.17.2 Administration and management of the Common Elements;

7.17.3 Obtaining and maintaining of all required insurance as hereafter provided;

7.17.4 The enforcement of all of the provisions of this Declaration and the Association's rules and regulations and the collection of all objections and assessments owed to the Association by the Owners;

7.17.5 Acting as attorney-in-fact for the Owners in accordance with this Declaration; and

7.17.6 Performing all other acts required by this Declaration, or the Articles and Bylaws of the Association, as may be amended from time to time.

8. **No Master Association; No Delegation of Powers.** In no event shall the Association be deemed a "Master Association" under the Act, to which some or all of the Association's powers may be delegated.

9. **Mechanic's Liens; Indemnification.**

9.1 **No Liability.** If any Owner shall cause any material to be furnished to his/her/its Unit or any labor to be performed therein or thereon, no Owner of any other Unit nor the Association shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his/her/its Unit.

9.2 **Indemnification.** If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his/her/its own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

9.3 **Association Action.** Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or its Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be affected against an individual Unit or Units.

10. **Easements.** The following irrevocable, perpetual easements are hereby granted:

10.1 **Recorded Easements.** The Project shall be subject to all easements as shown on the Map and any supplement or amendment thereto as well as those indicated on any recorded document. The Project shall also be subject to the easements as provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Section and on any exhibit to this Declaration.

10.2 **Association's Rights Incident to Construction.** The Association, for itself and its Members, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, and to make such other use of the Common Elements as may be reasonably necessary or incident to any renovations of the Units or improvements on the Project, Property or other real property owned by the Association; provided, however, that no such rights shall be exercised by the Association in a way which unreasonably and materially interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

10.3 **Utility Easements.** There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Project for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of

the improvements, all in a manner customary for such companies in the area surrounding the Project, subject to approval by the Association as to locations.

10.4 **Easement for Access, Support.** The Association is hereby granted the right, for reasons of security, to limit access to certain floors of the Building to those Owners and their guests, invitees owning Units on such floors, and excepting therefrom in the event of emergency in which event all Owners shall have access, via the elevator and stairwells; each Owner shall have a nonexclusive easement for access between his/her/its Unit and the public roads and streets adjacent to the Project and Map between his/her/its Unit, the elevator and stairwells within the Project. Each Owner shall have a nonexclusive perpetual easement in and over the General Common Elements, including the General Common Elements within the Unit of another Owner, for horizontal and lateral support of the Unit which is part of his/her/its Unit and utility purposes.

10.5 **Easements for Encroachments.** If any part of the General Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of same shall and does exist in perpetuity. If any part of a Unit encroaches or shall hereafter encroach upon the General Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for maintenance of same. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on a Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by errors in the original construction of the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or renovations of the Project or any part hereof.

10.6 **Reservation of Easements, Exceptions and Exclusions.** The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association for closure for repairs and maintenance.

10.7 **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Project and easements appurtenant thereto in the proper performance of their duties.

11. **Easements and Maintenance.**

11.1 **Maintenance by Owners.** Each Owner shall, at each Owner's expense, maintain and keep in good repair the interior portions of his/her/its Unit, which shall include all nonbearing and bearing walls, interior wall surfaces such as subflooring, plaster, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the

Unit, including repair and replacement of all doors, door frames and windows, and plumbing elements and utility lines and fixtures at their points of entry into the Unit. The Residential Owner shall also maintain and keep in repair the structural and surface elements of all areas marked on the Map as LCE-R. The Commercial Owners shall share in the maintenance, repair and upkeep of the structural and surface elements of all areas marked on the Map as LCE-C in accordance with Exhibit B. These maintenance and repair obligations shall be performed on a regular basis by the Association on behalf of the Owner(s) at the Owner(s) sole cost and expense, and in a manner that will avoid damaging other Units or any structural elements. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. An Owner shall do no act or work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance of interior wall surfaces such as plaster, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including all doors, garage doors, door frames and windows.

11.2 **Owner's Failure to Maintain or Repair.** In the event that a Unit (including the allocated Limited Common Element) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Section 14.8 of this Declaration.

11.3 **Maintenance by Association.** Other than as provided in Section 11.2 of this Declaration which addresses Owners' financial responsibility for Unit repairs, maintenance and replacements, the Association shall be responsible for the maintenance, repair, control, replacement and improvement of the Common Elements and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The maintenance of the Common Elements shall include, without limitation, ongoing maintenance of landscaping and irrigation systems, ongoing maintenance of the exterior building and trash removal therefrom. The Association shall also maintain, provide access to and trash removal services for all trash enclosures. The Association will perform an annual inspection of all fire sprinkler systems in the building as well as maintenance as required to keep such systems in good repair and working order. The expenses, costs and fees of such management, operation, maintenance and repair by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees.

11.4 **Association Maintenance as Common Expense.** The cost of maintenance and repair of the Common Elements by the Association shall be a Common Expense of all of the Owners, to be shared by each Unit Owner according to the Allocated Interests therefor set forth on Exhibit B attached hereto. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be a Common Expense of all of the Owners.

11.5 **Owner's Negligence or Intentional Conduct.** In the event that the need for maintenance, repair or replacement of all or any portion of the Common Elements or the interior of any part of a Unit is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guest, invitee, licensee or tenant, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within thirty (30) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses shall automatically become a Default Assessment enforceable hereunder.

11.6 **Easement for Maintenance.** The Association shall have the irrevocable right, to be exercised by the Manager, the Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

11.7 **Association's Right to Grant Owner's Maintenance Area.** The Association reserves the right to grant the maintenance responsibility of certain areas on each Unit to the Unit Owner, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

12. **Powers and Duties of the Board of Directors.**

12.1 **Powers of the Board of Directors.**

12.1.1 **Board's Power.** Except as provided in the Declaration and Bylaws, the Board of Directors may act in all instances on behalf of the Association. Each Owner, by taking title to a Unit, appoints the Association as its duly authorized representative and grants to the Association, acting through its officers under the authority of the Board, an irrevocable power of attorney, coupled with an interest, to exercise the rights of the Association.

12.1.2 **Limitations of Board Power.** The Board may not act on behalf of the Association to amend the Declaration, to terminate the common interest community, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of the Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term. In addition, the Board may not approve the sale of any General Common Elements or approve the expenditure of any sum in excess of \$25,000 for non-emergency capital improvement purposes without a signed ballot vote of at least sixty-seven percent (67%) of the votes entitled to be cast by the Members.

12.1.3 **Enforcement.** The Board will provide for enforcement of the Association rules as set forth in the Bylaws and this Declaration. Without limiting the generality of the foregoing, the Board may suspend the voting rights of a Member after notice and hearing as provided in the Bylaws for an infraction of the rules and/or nonpayment of Assessments.

12.2 **Delegation by the Board of Directors.**

12.2.1 **Delegation to Managing Agent.** The Association, acting through the Board, may employ or contract for the services of a Managing Agent to act for the Association and the Board and the officers according to the powers and duties delegated to the Managing Agent pursuant to the Bylaws or the resolution of the Board. Neither the Board nor any officer of the Association will be liable for any omission or improper exercise by a Managing Agent of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

12.2.2 **Committees.** The Association, acting through the Board, may delegate any of its rights, duties or responsibilities to any committee or other entity that the Board may choose to form.

12.2.3 **Limitation.** Any delegation by the Board under this Section is subject to compliance with the Act and the Bylaws and the requirement that the Board, when so delegating, will not be relieved of its responsibilities under the Association Documents and the Act.

12.3 **Acquiring and Disposing of Personal Property.** The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests (Allocated Interests) in the Common Elements. Such interests shall not be transferable except with the transfer of a Unit. A conveyance of a Unit shall transfer

ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

12.4 **Contracts with Others.** The Association may contract with the Town of Carbondale or with other homeowners' associations or owners of nearby property in order to provide services required herein or by law for the benefit of Owners and their family members, guests, tenants and invitees. Any resulting costs incurred by the Association shall be a Common Expense.

12.5 **Books and Records.** The Association will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents, and the books, records, and financial statements of the Association prepared pursuant to the Bylaws, as well as any management agreement. The Managing Agent shall send or otherwise make available to each owner on an annual basis, a copy of the Association's financial statements for the preceding year, which will be available within 120 days after the end of the Association's fiscal year except due to any unusual circumstance.

12.6 **Reserve Account.** The Association, through the Board, shall establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Article 14 for maintenance, repair or replacement of the Common Elements. This fund shall be replenished on a periodic basis and shall also be utilized for expenses relating to any facilities made available to the Association that must be replaced on a periodic basis.

12.7 **Implied Rights and Obligations.** The Association will perform all of the duties and obligations imposed on it expressly by the Association Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Association Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Association Documents and/or Colorado law, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Association Documents, or (iii) reasonably necessary to effectuate any such right or privilege.

13. **Insurance.**

13.1 **General Insurance Provisions.** The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Article will be included in Common Expenses:

13.1.1 **Property Insurance Coverage.** The Association will obtain and maintain

property insurance in amounts, against risks, and containing provisions the Board reasonably determines from time to time. At a minimum, the Association's insurance will insure against all risks of direct physical loss for 100% of the full replacement cost (at the time the insurance is purchased and at the renewal date) of (1) the Units, but not the finished interior surfaces of the walls, floors and ceilings of the Units or the improvements or betterments installed in the Units; (2) the Common Elements and all fixtures, improvements and alterations situated on or constituting a part of the Common Elements; (3) the Limited Common Elements; and (4) any personal property of the Association situated in the Common Elements or used in the operation or maintenance of the Common Elements. The Association's insurance may exclude land, excavations, foundations and other items normally excluded from property policies and may provide for a deductible in an amount not to exceed a reasonable and prudent amount as determined by the Board. The Association's property insurance will be maintained in the name of the Association, for the use and benefit of all Owners, who shall be named as additional insureds, and Mortgagees, who may be named as additional insureds, as their interests may appear. To the extent available such property insurance also will (i) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (ii) permit a waiver of claims by the Association, and provide for a waiver of subrogation rights by the insurer as to claims, against each Owner and the members of the Owner's household; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iv) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect(s) not to restore the damage in accordance with the provisions of this Declaration of the Act; (v) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) provide that it may not be canceled, nor may coverage be reduced, without thirty (30) days prior written notice to the Association and all additional insureds names in the policy; and (vii) include so-called "inflation guard," "building ordinance or law" "steam boiler and machinery coverage" endorsements. If, as a result of any improvements or alterations made to or concerning a Unit by its Owner, the premium for the Association's property insurance policy is increased to an amount exceeding what the premium should have been if the Owner had not made the improvements or alterations, the Board may assess the amount of the increase in premium against the Owner's Unit as part of its Assessment.

13.1.2 **Liability Insurance.** The Association will obtain and maintain

Comprehensive Liability Insurance for bodily injury and property damage for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Elements. Such liability insurance will have a combined single occurrence limit of not less than \$5,000,000 and, to the extent available on reasonable terms, will (i) be on a commercial general liability form; (ii) contain a "severability of interest" or "cross-liability" endorsements which precludes the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iii) contain a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents, Owners and members of their households; (iv) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (v) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use ownership or maintenance of the Common Elements; and (vii) provide that it may not be canceled, nor may coverage be reduced, without forty-five (45) days' prior written notice to the Association and all additional insureds named in the policy. The liability insurance required to be maintained under this Section will not include coverage for any liability arising out of the ownership, operation, use or maintenance of any Unit.

- 13.1.3 **Worker's Compensation and Employer's Liability.** The Association will obtain and maintain worker's compensation and employer's liability insurance as determined from time to time by the Board. At a minimum, the Association will maintain such insurance in amounts and with coverages required by applicable law.
- 13.1.4 **Directors and Officers' Insurance.** The Association will obtain and maintain directors' and officers' liability coverage in an amount determined by the Board from time to time.
- 13.1.5 **Fidelity Insurance.** The Association will obtain and maintain fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the Association's directors, officers, managing agents, trustees, employees or volunteers who manage the funds collected and held for the benefit of the Association. The policy will name the

Association as the insured (or obligee) and include a provision requiring at least thirty (30) days' prior written notice to the Association before any cancellation of, or material modification in, the policy and provide coverage in an amount equal to at least three months' General Assessments against all Units, based on the General Assessments most recently approved by the Board. If the Association engages a Managing Agent that handles funds of the Association, the Managing agent will also maintain fidelity insurance satisfying the foregoing requirements of this Section and the Act, and provide evidence of said coverage to the Board on an annual basis.

13.1.6 **Other Insurance.** The Association may obtain and maintain other insurance as the Board, from time to time, deems appropriate to protect the Association or the Owners.

13.1.7 **Licensed Insurers.** All policies of insurance required to be maintained by the Association will be placed with insurers licensed in the State of Colorado. The carrier shall be required to provide to the Board at the inception of the policies and on each anniversary date, a summary that includes a description of the type of policy, the coverage and limits of coverage, the amount of annual premium and the policy renewal dates. If obtainable without additional expense, the licensed insurance broker or agent shall certify that the policy complies with and satisfies the requirements of this Section.

13.1.8 **Owner's Insurance.** Each Owner has the following responsibilities with respect to insurance:

(a) **Property Insurance.** Each Owner will keep and maintain (at its expense), property insurance upon the Owner's Unit to the extent not otherwise covered by the Association's insurance described above, and all personal property and fixtures within the Owner's Unit, in such amounts, and against such risks, and containing such provisions, as the Owner may reasonably determined from time to time. Such property insurance will (i) permit a waiver of claims by the Owner and provide for a waiver of subrogation rights by the insurer as to claims, against the Association, its directors, officers, employees and agents, the other Owners and the members of such Owners' household; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association carries; and (iii) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect not to restore the damage in accordance with the provisions of this Declaration or the Act. All

insurance carried under this Section will provide that it may not be canceled, nor may coverage be reduced, without thirty (30) days' prior written notice to the Association and, notwithstanding that each Owner may select the amount and type of insurance, for purposes of the waiver of claims set forth below, each Owner is deemed to have elected to obtain such insurance on a 100% replacement cost basis.

- (b) **Liability Insurance.** Each Owner will maintain at its expense, bodily injury and property damage liability insurance for the benefit of the Owner, naming the Association as additional insured and any other additional insured(s) it names, in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property; provided that such liability insurance will (i) have a combined single occurrence limit of not less than \$500,000; (ii) be written as a primary policy, not contributing with and supplemental to any coverage that the Association or another Owner carries; (iii) insure the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Owner's Unit; and (iv) contain a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents, owners and members of their households.
- (c) **Other Insurance.** Each Owner may obtain additional insurance, at its own expense, affording personal property, condominium assessment, loss of rents, personal liability and any other coverage obtainable, to the extent and in an amount the Owner deems necessary to protect its interests. Any such insurance will contain waivers pursuant herewith and will provide that it is without contribution as against the insurance maintained by the Association.
- (d) **Assignment of Proceeds.** If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable under any policy of insurance carried by the Association due to the existence of any insurance carried by an Owner, that Owner is liable to the Association to the extent of the reduction and will pay the amount of the reduction to the Association upon demand; such Owner also hereby assigns the proceeds of its insurance, to the extent of such reduction, to the Association.

13.1.9 **Certificates of Insurance; Notices of Unavailability.** Each Owner will provide to the Association no less than ten (10) days subsequent to any purchase of a Unit or expiration of any coverage, certificates of insurance

evidencing the insurance required to be carried hereunder. The Association will provide each Owner certificates of insurance evidencing the insurance required to be carried by the Association hereunder and naming each Owner as an additional insured under such policies. If the insurance described above is not reasonably available for Owner coverages, or if any policy of such insurance is canceled or not promptly renewed and the Association does not obtain a replacement policy for it, the Association promptly will give notice of that fact to all Owners and the Board will use reasonable best efforts to achieve a similar result.

13.1.10 **Waiver of Claims.** The Association will make no claim against any Owner or the members of the Owner's household, for any loss, damage, injury or liability; no Owner will make any claim against the Association, its directors, officers, employees or agents, or any other Owner or member of such Owner's household for any property loss or damage to property, and all such claims are hereby waived, to the extent that the loss, damage injury or liability is or would be covered by any insurance policy that is required under this Declaration (a) to be maintained by or for the benefit of the waiving Persons (assuming in the case of property insurance policies that such insurance policy is maintained on a 100% replacement costs basis), and (b) to provide for a waiver of subrogation rights by the insurer. For purposes of this Section, the deductible or self-insured retention amount under any property insurance policy required to be, or in fact, maintained by a waiving Person is deemed to be covered by the policy so that, in addition to waiving claims for amounts in excess of the deductible or self-insured retention (up to the covered limits or deemed coverage limits, of the policy), the waiving Person waives all claims for amounts within the deductible or self-insured retention.

13.2 **Insurance Proceeds.** Any loss covered by the property insurance policy described in this Section must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of this Section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the Project is terminated due to a complete loss event.

14. **Assessments.**

14.1 **Obligation.** Each Owner is obligated to pay to the Association (i) the Annual Assessments; (ii) Special Assessments and (iii) Default Assessments imposed by the Board to meet the Common Expenses.

14.2 **Budget.** The Board shall have the responsibility and authority to propose, adopt and enforce a budget for the Association each year. Within thirty (30) days after the adoption of any budget, the Board shall mail or otherwise deliver a copy of the budget to all the Owners. The adopted budget shall be subject to ratification or rejection at the annual meeting or any special meeting of the Owners. However, the adopted budget shall be enforceable unless specifically rejected by a majority of the Owners. In the event that the adopted budget is rejected, the periodic budget last adopted or ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Board shall adopt a budget as provided herein no less frequently than annually. The Board shall levy and assess the Annual Assessments in accordance with the annual budget.

14.3 **Annual Assessments.** Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, including, but not limited to, common area furniture and furnishings, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, care of grounds and landscaping within the Common Elements, routine repairs, replacements and renovations within and of the Common Elements, wages, any common water and utility charges for the Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles, routine maintenance, and repairs and replacement of improvements within the Common Elements on a periodic basis, as determined by the Board.

Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month. The omission or failure of the Board or the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Board shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Annual Assessments are due and payable no later than the 15th of each calendar month. Assessment amounts due shall bear interest at the rate of eighteen percent (18%) per annum from the date due, compounded annually. Late charges and collection matters shall be in accordance with policy(ies) adopted by the Board from time to time.

14.4 **Apportionment of Annual Assessments.** The Annual Assessments shall be

allocated among the Units on the basis of the Allocated Interests for Common Expenses set forth on Exhibit B attached hereto; provided, however, that the Board reserves the right to allocate any and all expenses relating to fewer than all of the Units to the Owners of those affected Units as a Limited Common Element expense, a reimbursable expense, or otherwise.

14.5 **Special Assessments.** In addition to the Annual Assessments, the Board may levy in any fiscal year one or more Special Assessments, payable over such a period as the Board may determine, for the purpose of deferring, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense or purchase incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed hereto shall be assessed to owners in proportion to their Allocated Interests in the General Common Elements or Limited Common Elements, as applicable. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been mailed to the registered mailing address of the respective Owner on file with the Association. A Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

14.6 **Special Allocations.** Any amounts assessed under this Declaration shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Board to levy Assessments only against the Owners of Units which require extraordinary maintenance, repair or restoration work. Any extraordinary insurance costs incurred by the Association because of the value of a particular Owner's Unit or the actions of a particular Owner (or his/her/its agents, servants, guests, tenants or invitees) shall be borne by that Owner.

14.7 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be classified as a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration and policy(ies) adopted by the Board from time to time, commensurate with Colorado law. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

14.8 **Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before its due date shall be delinquent. Such delinquent amounts, together with fines, interest, costs, and reasonable attorneys' (and legal assistants') fees and other charges allowed under the Act shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such Assessment is made until paid. Each such Assessment shall be the individual obligation of the

Owner of such Unit as of the time the Assessment falls due, and two or more Owners of a Unit shall be jointly and severally liable for such obligations. No Owner may exempt himself/herself/itself from liability for any Assessments by abandonment or leasing of his/her/its Unit or by waiver of the use or enjoyment of the Common Elements. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- 14.8.1 Assess a late charge for each delinquency in such amount as may be provided in the policy(ies) adopted by the Board from time to time and as the Board deems appropriate;
- 14.8.2 Assess an interest charge from the due date at the yearly rate of six (6) points above the prime rate charged by the Association's bank, or such other lawful rate as the Board may establish, subsequent to expiration of any cure rights during which time the delinquent interest rate shall apply;
- 14.8.3 Suspend the voting rights of the Owner during any period of delinquency;
- 14.8.4 Suspend the rights of the Owner, and the Owner's family, guests, lessees and invitees, to use Common Element facilities during any period of delinquency;
- 14.8.5 Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- 14.8.6 Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and/or
- 14.8.7 Proceed with foreclosure as set forth in more detail below and as provided by Colorado law.

Suit to recover a money judgment for unpaid Assessments and related charges may be maintained without foreclosing or waiving the Assessment liens provided hereunder. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

14.9 **Payment by Mortgagee.** Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and

expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

14.10 **Successor's Liability for Assessment.** All successors to the fee simple title of a Unit will be liable for Assessments levied during the prior Owner's ownership of the Unit. Any successor may rely on the statement of status of Assessments given by or on behalf of the Association. Any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, shall take the Unit free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, except as provided in the Act.

14.11 **Reallocation of Assessments Secured by Extinguished Lien.** The sale or transfer of any Unit to enforce any of the liens to which the lien for Assessments is subordinate shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer to the extent provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Board. However, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

14.12 **Protection of Association's Lien.** The Board or its representative, acting on behalf of the Association, may protect the Association's lien for Assessments against any Unit by submitting a bid at any sale held for delinquent taxes payable with respect to the Unit.

14.13 **Failure to Assess.** The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

14.14 **Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board and upon fourteen (14) days' prior written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

14.15 **Maintenance Accounts; Accounting.** If the Association delegates powers of the Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or Managing Agent must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve or working capital accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

15. **Use and Activity Restrictions; Power of Association; Rules & Regulations.**

15.1 **Association Power.** The Association shall have the right and power to prohibit storage or other activities deemed, by the standard of a reasonable person, to be unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements.

15.2 **Permitted Uses of Units.** Subject to the provisions of Section 3.8.6, all Units may be used for any purpose authorized by the applicable zoning and land use regulations of the Town of Carbondale.

15.3 **Conveyance of Units.** All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

15.4 **Use of Common Elements.** There shall be no physical obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Association.

15.5 **Prohibition of Increases in Insurable Risks and Certain Activities; Indemnification.** Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body. No damage to or waste of the Common Elements shall be committed by any Owner, or by any member of the Owner's family or by any guest, invitee, or contract purchaser of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by it, the members of its family or entity, or such Owner's guests, invitees, tenants or contract purchasers. Each Owner will be liable to and will protect, defend, indemnify and hold harmless the Association and the other Owners from and against any and all damages, claims, demands,

liens, losses, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever (collectively referred to as "Indemnity Claims") suffered or incurred by, or threatened or asserted against, the Association or any other Owner as a result of or in connection with the (i) willful misconduct, negligence or breach; (ii) any repair, restoration, replacement, alteration or other construction, demolition, installation or removal work on or about the Project contracted for, or performed by, the indemnifying Owner or its permittees; and (iii) the operation, use, ownership or maintenance of the indemnifying Owner's unit by the indemnifying Owner or its permittees. The indemnifying Owner will pay for all Indemnity Claims suffered or incurred by the Association for which the indemnifying Owner is responsible promptly upon receipt of a demand for payment from the Association. The amount of the Indemnity Claims will constitute Special Assessments against the indemnifying Owner's Unit. If the indemnifying Owner fails to make such payment within 30 days after receipt of the Association's demand for it, the Association may take whatever lawful action it deems necessary to collect the payment including, without limitation, foreclosing its lien or instituting an action at law or in equity. Nothing in this Declaration relieves any Person from liability for its own acts or omissions. Nothing contained in this Section will be construed to provide for any indemnification which violates applicable laws, voids any or all of the provisions of this Section or negates, abridges, eliminates or otherwise reduces any other indemnification or right which the Association or the Owner have by law.

15.6 **Structural Alterations and Exterior Appearance.** No structural alterations to any Unit or any Common Element, and no structural alterations or enclosures to any windows, doors, patios or balconies, shall be made by any Owner without the prior written approval of the Board, which consent may be reasonably withheld, and without compliance with this Declaration for renovations.

15.7 **Signs and Exterior Decorations.** No signs of any kind shall be displayed to the public view on or from any portion of a Unit without first obtaining the written approval of the Board. The size, number, design and location of such signs requiring approval shall be approved by the Board. No exterior decorations that are visible for public view from outside the Unit will be allowed without first obtaining the written approval of the Board. American flags and service flags are allowed to the extent provided by Colorado and federal law, however, the Board may adopt reasonable rules and regulations regarding the size and manner of display of flags.

15.8 **Overloading.** The Project may not be used for any use beyond the maximum loads the floors of the Project are designed to carry and no apparatus, equipment, fixtures or other property of any nature may be located within the Project if the same, singularly or in the aggregate, would violate the maximum loads that the structural flooring in the Project is designed to support.

15.9 **Animals and Pets.** No animals, livestock, insects, rodents, poultry, reptiles, birds or other pets may be kept within the Units or Common Elements, except that a Unit Owner may have up to two dogs and/or cats. No pet may be kept or maintained on any balcony or patio. If a pet becomes obnoxious to any other Owner, its tenants or their respective invitees, the Owner or

the person having control (or lack thereof) over the animal will be given a written notice to correct the problem by the Association. If such problem is not corrected, the Owner, upon written notice from the Association, may be required to remove the animal from the Project permanently. The Owner, Owner's tenants or invitees having control over the pet are responsible for cleaning up after the pet and will hold the Association harmless from any liability, claim, damage, cost or expense resulting from any action or inaction of their pet. Any time a pet is outside the Unit or on a Common Element or Limited Common Element, it must be accompanied by its Owner, Owner's tenant or invitee, and on a leash and otherwise under control. The Association Rules and Regulations shall further describe pet restrictions.

15.10 **Trash.** No trash, ashes, building materials, firewood or other unsightly items should be thrown, dumped or stored on the Project, except as designated by the Association. There shall be no burning or other disposal of refuse out of doors.

15.11 **Construction Rules and Regulations.** All Owners and contractors shall comply with the construction-related rules and regulations regulating any construction activities, whether engaged in the activities contemplated by Article 4 or this Article (repairs to existing improvements). Such regulations may affect, without limitation, the following: trash and debris removal; restoration of damaged property; conduct and behavior of contractors, subcontractors and Owners' representatives on the Project at any time; fire protection; completion and compliance deposit; and reimbursement to the Association for professional fees related to approval of any construction activities, as deemed reasonably necessary by the Board.

15.12 **Compliance with Laws.** Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Project. Further, no Owner shall dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Project or dispose of any material on the Project that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

15.13 **Antennae.** Except for equipment within easements authorized by Section 10.9, above, no exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted outside any Unit without first obtaining the written consent of the Board. The Association may install one or more exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device for the Project.

15.14 **Nuisance.** No obnoxious or offensive activity shall be carried on within the Project, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Project so as to be offensive or detrimental to any other part of the Project or its occupants.

15.15 **Leasing.** If an Owner leases a Unit, the Owner shall be liable for any violation of the Association Documents committed by the Owner's tenant. The Owner shall have the right to

obtain reimbursement from the tenant for any sums paid by the Owner on behalf of the tenant. Any lease of a Unit for a term of 30 days or more must be in writing and must state that it is subject to the requirements of the Association Documents. Any lease of a Unit for a term of 30 days or more must contain compatible use and activity restrictions as are provided for in the Association Documents.

15.16 **Building Security and Rights of Entry.** Owners, their tenants and invitees may enter and exit the Project at any time and the Association shall not be deemed under any circumstances to guarantee the safety and security of the Owners, their tenants and invitees or the security of the personal property of such persons. The Association hereby disclaims all responsibility to ensure the security and safety of persons and property within the Project and no Owner or Person shall be entitled to rely upon the appearance or presence of any security or access control devices within the Project as a guarantee of safety or security.

15.17 **Minimum Heating.** The Units must be heated as necessary to maintain a minimum temperature of 55 degrees Fahrenheit from October 1 through May 30 every year. The Association may enter any Unit to inspect or confirm the same.

15.18 **Barbecue Grills.** The Residential Unit may place a gas barbecue/grill on an exterior deck. No charcoal grills are permitted. The Commercial Units are prohibited from having grills of any kind.

15.19 **Enforcement; Modifications.** The Board, acting on behalf of the Association, may take such action as it deems advisable to enforce these Covenants as provided in this Declaration. In addition, the Board and the Managing Agent shall have a right of entry on any part of the Project for the purposes of enforcing this Section, and any costs incurred by the Managing Agent acting on behalf of the Association or the Board in connection with such enforcement which remains unpaid 30 days after the Board has given notice of the cost to the Owner and otherwise complied with the Act shall be subject to interest at the post-cure default rate described above from the date of the advance by the Managing Agent acting on behalf of the Association or the Board through the date of payment in full by the Owner, and shall be treated as a Default Assessment enforceable as provided in this Declaration. The Board may delegate to the Managing Agent appropriate authority from time to time to act on behalf of the Board and to reasonably take such enforcement and other actions as the Board might otherwise take under the circumstances. The Covenants contained herein may be modified and supplemented as provided in the Rules and Regulations adopted by the Board from time to time.

16. **Owner Acknowledgment and Waivers.**

16.1 **Security.** THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROJECT, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE,

ACKNOWLEDGE THAT THE ASSOCIATION IS NOT AN INSURER AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION MAKES NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

16.2 **No View Easement.** There is no easement or other right, express or implied, for the benefit of the Unit or any Owner for light, view or air created by this Declaration or as a result of the Owner owning the Unit.

16.3 **Mountain Conditions.** Each Owner acknowledges that ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to, (i) dripping water onto decks and porches for snowmelt; (ii) snow and ice build-up on roofs, decks and porches during winter months, and the need to remove snow and ice to prevent leaking or damage to these structures; (iii) the need to maintain the internal temperature of the Unit at a minimum of 55 degrees in order to prevent broken pipes; and (iv) other inconveniences arising from the sometimes severe winter conditions in the Rocky Mountains. As such, each Owner agrees to abide by the Covenants insofar as maintenance, repair, replacement and operation of its Unit(s).

16.4 **Sound Transmission.** Sound and impact noise transmission in a building(s) such as the Project is hard to control, and noises from adjoining or nearby structures and surrounding development and/or mechanical equipment can and will be heard in the Units. The Association is not responsible in any way for sound or impact noise transmission.

16.5 **Mold Disclosure.** Molds, mildew, fungi, bacteria and microbiologic organisms (collectively "Molds") are present in soil, air and elsewhere in the environment. Molds can proliferate in various environments including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Molds. Due to various reasons, including the varying sensitivities of different individuals to various types of Molds and other contaminants, as of the date of this Declaration there currently exist no state or federal standards regarding acceptable levels of exposure to Molds. EACH OWNER ACKNOWLEDGES THAT DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PAST, CURRENT OR FUTURE PRESENCE OR ABSENCE OF MOLDS IN OR IN THE VICINITY OF ITS UNIT, ANY COMMON ELEMENT WALL(S) LOCATED WITHIN ITS UNIT, OR ANY LIMITED COMMON ELEMENT ALLOCATED TO ITS UNIT OR IN ANY OTHER PORTION OF THE COMMUNITY. The provisions of this paragraph will be binding upon the Owners to the fullest extent permitted by applicable law, as may be in effect from time to time.

16.6 **Inspection by Others, Waiver of Post Inspection Liability.** It is hereby expressly understood and agreed by Declarant and by any Owner acquiring a Unit that Declarant

relies upon governmental inspectors and other qualified subcontractors and tradesman to inspect the construction of the Unit and the Common Elements in order to verify compliance with construction plans and with any and all building code requirements applicable to commercial and residential construction. Declarant and each Owner further expressly understand and agree that, with respect to the Units and the Common Elements and the Limited Common Elements, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible government agency, Declarant will be deemed to have used its best efforts to construct such Units and Common Elements in substantial compliance with the construction plans and all applicable building code requirements. EXCEPT AS OTHERWISE MAY BE PROVIDED IN A PURCHASE AND SALE OR OTHER AGREEMENT BETWEEN DECLARANT AND AN OWNER, EACH OWNER, BY ACQUIRING AN OWNERSHIP INTEREST, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST DECLARANT AND ITS AFFILIATES ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION, AND ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE UNITS OR THE COMMON ELEMENTS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS, COMMON ELEMENTS OR LIMITED COMMON ELEMENTS; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT. TO THE EXTENT THAT ANY SUBSTANTIAL OR MATERIAL NONCOMPLIANCE WITH APPLICABLE BUILDING CODES OR WITH THE CONSTRUCTION PLANS IS DISCOVERED WITH REGARD TO ANY UNIT OR THE COMMON ELEMENTS, THE PROVISIONS OF THIS ARTICLE 12 WILL GOVERN SUCH MATTER. THE PROVISIONS OF THIS SECTION 16.6 WILL BE BINDING UPON THE OWNERS AND THE ASSOCIATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

16.7 Testing for Construction Defects.

16.7.1 The Association will not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing or invasive testing of any kind for defects in construction of any Unit, Common Element or Limited Common Element without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board of Directors will rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Association will not be obligated to authorize or undertake such testing.

16.7.2 In determining whether to authorize such testing, the Board of Directors will be governed by the following considerations:

- a. Whether the Association's position is strong enough to justify taking any other or further action;
- b. Whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; and
- c. Whether it is in the Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria to pursue the matter further.

16.7.3 Notwithstanding the foregoing, under no circumstance with the Association authorize such testing as is contemplated under Section this Article 16 unless the nature of the suspected defect is such that:

- a. It poses a significant risk to life, health, safety or personal property; and
- b. It threatens or affects the structural integrity, functionality or performance of the Property (or a portion thereof) for its intended use.

16.7.4 In the event that the Board of Directors undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant and others responsible for the construction will be entitled to notice of the alleged defect, access to the area of the alleged defect and an opportunity to inspect the area and repair any defect that is found to exist. Declarant and others responsible for construction will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

16.7.5 In the event that testing discloses any defects, Declarant and others responsible for construction will be given a reasonable amount of time, based on the nature and extend of the defect, to repair or correct the condition. If Declarant or others responsible for construction fail to repair or correct the condition, the Board of Directors will have the right, but not the obligation, to proceed with a "Claim" pursuant to this Article. In determining whether to proceed with such a Claim, the Board will be governed by the same standards as set forth in Section 16.11 below.

16.8 **Consensus for Condominium Association Litigation.** Except as provided in this Section 16.8, the Association will not commence a judicial or administrative proceeding, including, without limitation, any proceeding required under Section 16.10 below, without (a) the approval of the Owners to which at least 67% of the votes in the Association are allocated; and (b) the affirmative vote of Declarant so long as Declarant owns any Unit. This Section 16.8 will not apply, however, to: (i) actions brought by the Association to enforce the terms of this Declaration, the Bylaws, the Rules, the Design Guidelines or the Construction Guidelines (including, without limitation, the foreclosure of liens); (ii) the imposition

and collection of Assessments; (iii) proceedings involving challenges on ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it. This Section 16.8 will not be amended unless such amendment is approved by at least 67% of the votes in the Association and pursuant to the same procedures, necessary to institute proceedings, as provided for herein.

Prior to the Association of any Owner's commencing any judicial or administrative proceeding which arises out of an alleged defect of any Common Element, Limited Common Element or Unit, Declarant and others responsible for the construction will have the right to be heard by the Owners and to access, inspect, correct the condition of, or redesign any portion of the Common Elements, Limited Common Elements or Units, including any improvement as to which a defect is alleged. In addition, the Association or the Owner will notify the builder who constructed the subject improvement prior to retaining any other expert as an expert witness or for other litigation purposes.

16.9 Alternative Method for Resolving Disputes. In accordance with and in furtherance of C.R.S. §38-33.3-124, Declarant; the Association, its officers, directors, and committee members; any Owner; all persons subject to this Declaration; and any person not otherwise subject to this Declaration who agrees to submit to this Section 16.9 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 16.10 of this Declaration (each, a "Claim"), to the procedures set forth in Section 16.6 of this Declaration.

16.10 Claims. Unless specifically exempted below, all Claims arising out of or related to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration or relating to the design or construction of the Units, the Common Elements or the Limited Common Elements (including, without limitation any soils related issues) will be subject to the provisions of Section 16.6 of this Declaration.

Notwithstanding the above, unless all parties thereto otherwise agree, the following will not be Claims and will not be subject to the provisions of Section 16.6 of this Declaration:

- (a) Any suit by the Association against any Bound Party to enforce the provisions of Article 14 (Assessments);
- (b) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 15; and
- (c) Any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 16.6.

16.11 **Mandatory Procedures.**

- (a) *Notice.* Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) (Claimant and Respondent are hereinafter referred to individually, as a “Party”, or collectively as the “Parties”) will notify each Respondent in writing (the “Notice”), stating plainly and concisely (i) the nature of the Claim including the persons involved and Respondent’s role in the Claim; (ii) the legal basis of the Claim (i.e. the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.
- (b) *Negotiation and Mediation.*
 - a. The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in negotiation.
 - b. If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties)(“Termination of Negotiations”), Claimant will have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Parties, or if the Parties cannot agree then as designated jointly by each of the Parties’ desired mediation service, and providing dispute resolution services in the Eagle County, Colorado area.
 - c. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant will be deemed to have waived the Claim and Respondent will be released and discharged from any and all liability to Claimant on account of such Claim, *provided, however*, that nothing herein will release or discharge the Respondent from any liability to any person other than Claimant.
 - d. Any settlement of the Claim through mediation will be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator will issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice will set forth that the Parties are at an impasse and the date that the mediation was terminated.
 - e. Within five business days of the Termination of Mediation, Claimant will make a final written settlement demand (“Settlement Demand”)

to Respondent, and Respondent will make a final written settlement offer (“Settlement Offer”) to Claimant. If Claimant fails to make a Settlement Demand, Claimant’s original Notice will constitute the Settlement Demand. If Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a “zero” or “take nothing” Settlement Offer.

(c) *Final and Binding Arbitration.*

- a. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, Claimant will have 15 additional days to submit the Claim to arbitration. If not timely submitted to arbitration or if Claimant fails to appear for the arbitration proceeding, the Claim will be deemed abandoned, and Respondent will be released and discharged from any and all liability to Claimant arising out of such Claim; *provided, however*, that nothing herein will release or discharge Respondent from any liability to persons other than Claimant.
- b. This Section 16.6(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the “Award”) will be final and binding with no right to appeal, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) *Allocation of Costs of Resolving Claims.*

- a. Except as provided for below, each Party, including, without limitation, any Owner and the Association, will share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding (“Post Mediation Costs”). Under no circumstances will either Party be entitled to recover its attorneys’ fees from the other party (except as specifically provided under C.R.S. §38-33.3-123). BY ACQUIRING AN OWNERSHIP INTEREST AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS’ FEES (EXCEPT AS SPECIFICALLY PROVIDED UNDER C.R.S. §38-33.3-123) IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS SECTION 16.6(d).
- b. Any Award which is equal to or more favorable to Claimant than Claimant’s Settlement Demand will cause Claimant’s Post Mediation Costs to be added to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent’s Settlement Offer will award to such Respondent its Post Mediation Costs. With respect to any Award which is less favorable to Claimant than Claimant’s Settlement

Demand yet more favorable to the Claimant than Respondent's Settlement Offer, each Party will bear its own Post Mediation Costs.

- (e) *Limitation on Damages.* No Party, including, without limitation, any Owner and the Association, will be entitled to receive any award of damages in connection with the arbitration of a Claim other than such Party's actual damages, and Declarant, the Association and any Owner will be deemed to have waived the right to receive any damages in a dispute other than actual damages, including, without limitation, attorneys' fees (except as specifically provided under C.R.S. §38-33.3-123), special damages, consequential damages, and punitive or exemplary damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, BY ACQUIRING AN OWNERSHIP INTEREST AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER SECTION 16.6(c), THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODE (LOCAL, STATE OR FEDERAL), CONSTRUCTION DEFECTS (INCLUDING SOILS RELATED ISSUES), MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.
- (f) *Multiple Party Claims.* Multiple Party Claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple Party Claims that are substantially identical; and (ii) arbitrate multiple Claims as a class action in accordance with the rules and procedures adopted by Construction Arbitration Services, Inc.
- (g) *Enforcement of Resolution.* If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 16.6(b) above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section 16.6. In such event, the Party taking action to enforce (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys'

fees and court costs to the extent specifically provided under C.R.S. §38-33.3-123.

16.12 **Legal Proceedings.** Subject to the provisions of Sections 16.2 through 16.6 of this Declaration, the Association will have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration, the Bylaws and the Rules. The decisions to institute legal proceedings by seeking the approval of the Owners to which at least 67% of the votes in the Association are allocated, pursuant Exhibit B of this Declaration, will be in the sole discretion of the Board of Directors and will be governed by the considerations detailed in Section 16.3, if applicable. Failure to commence such legal proceedings will not constitute a waiver of any such rights. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THIS DECLARATION WITH RESPECT TO OWNERS, INCLUDING, WITHOUT LIMITATION, SECTIONS 16.6(c), 16.6(e) AND 16.6(f), WILL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO THE ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY THE ASSOCIATION UNDER THIS SECTION 16.7. THE PROVISIONS OF SECTIONS 12.6 THROUGH 16.7 WILL BE BINDING UPON THE OWNERS AND THE ASSOCIATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

17 **Damage or Destruction; Casualty.**

17.1 **Description.** If any Unit or Common Element is damaged or destroyed by fire or other casualty (a "*Casualty*"), this Article shall apply. Promptly after any Casualty occurs, the Board will obtain at least two bids from licensed contractors for the full and lawful repair and restoration of all damaged Units and Common Elements. Upon receiving the bids and after sufficient discussions with the adjuster for the Association's insurer, the Board will notify the Owners of the amounts of the bids, the probable amount of insurance proceeds and other funds (such as funds in the Reserve Account) that are available for restoration, and whether, based on that information, the Board believes a restoration deficit will result if the Owners elect to fully restore all damaged Units and Common Elements. In the notice, the Board will also call a meeting of the Owners to vote on the question of whether to fully restore all damaged Units and Common Elements. The Association will fully restore the damaged Units and Common Elements to their condition prior to the Casualty and as required by law, and the Board will promptly enter into construction contracts and proceed with the restoration work, unless at the meeting:

- (a) The Project is terminated pursuant to Article 19 below; or
- (b) At least 67% of all Owners, including the Owner of any Unit whose boundaries will be changed or the use or enjoyment of which will be prevented or materially impaired as a result of not fully restoring all damaged Units and Common Elements, vote (i) not to fully restore all damaged Units and Common Elements and not to terminate the Project; (ii) to approve

plans and specifications for a limited restoration that will restore the damaged area to a condition compatible with the remainder of the Project and that may include, without limitation, demolition, restoration or alteration of all or part of any damaged Unit or Common Element; and (iii) to adopt, if applicable, an amendment to this Declaration (including the Map) to reflect the conversion of all or part of one or more damaged Unit(s) to Common Elements or of all or part of one or more damaged Common Element(s) to one or more Unit(s) and the corresponding reallocation of the Allocated Interests allocated to the Units pursuant to this Declaration (which reallocation will be based on the same formula set forth in this Declaration for determining the Allocated Interests).

If the Project is terminated, the Association will perform limited restoration of the Units and Common Elements as necessary to return them to a safe, lawful and saleable condition. If the Owners vote not to fully restore all damaged Units and Common Elements and not to terminate the Project, the Association will perform the limited restoration and record the amendment to this Declaration, if any, approved by the requisite number of Owners pursuant to Section 17.1(b) above. If, however, the Owners elect to fully restore all damaged Units and Common Elements, the Board will assess a Special Assessment in accordance with this Declaration to the extent necessary to cover any restoration deficit.

17.2 Disposition of Insurance Proceeds. All proceeds of property insurance received by or disbursed to the Association in connection with a Casualty will be applied first to the full or limited restoration of the damaged Units and Common Elements, as provided in Section 17.3 and then, if any insurance proceeds remain after the full or limited restoration, the excess proceeds will be paid to the Owners, subject to the rights of their First Mortgagees, as follows:

(a) if the Owners elect not to fully restore all damaged Units and Common Elements and to terminate the Project pursuant to Article 19 below, then each Owner will be paid its Unit's Termination Allocation of the excess proceeds pursuant to Section 19.3;

(b) if the Owners elect not to fully restore all damaged Units and Common Elements and not to terminate the Project, then any of such excess proceeds attributable to any damaged Units that are not restored or to any Common Elements that are not restored and were necessary for the use and enjoyment of any Units that are not fully restored will be paid to the Owners of these Units to the extent of the insurance coverage allocated to those Units or Common Elements, and each Owner will be paid its Unit's Allocated Interest of the remainder of the excess proceeds, if any; or

(c) if the Owners elect to fully restore all damaged Units and Common Elements, then each Owner will be paid its Unit's Allocated Interest of the excess proceeds.

17.3 Manner of Restoration. The restoration of any Unit or Common Element under this Article is subject to the following requirements:

(a) Plans. Except in the case of a limited restoration in accordance with Section 17(b) above, the restoration will be completed in accordance with the as-built plans and specifications of the Unit or Common Element immediately prior to the damage.

(b) Requirements. The Association will:

(i) obtain all necessary permits and governmental authorizations for the restoration;

(ii) comply with all applicable zoning and building codes and other applicable laws, ordinances and restrictive covenants;

(iii) perform the restoration in a diligent, good and workmanlike manner, free and clear of all mechanics' and materialmen's liens and other claims;

(iv) during the construction process, to the extent required by good construction practices, keep the area affected thereby in a safe, neat and clean condition;

(v) minimize any impact from the construction process on other Units or Common Elements or other portions of the Project or the Property; and

(vi) perform any restoration or construction work, or cause such work to be performed, in a manner that maintains harmonious labor relations and does not interfere unreasonably with or delay the work of any other contractors then working anywhere on the Project or the Property.

(c) Coordination by Association. The Association has full authority and responsibility to coordinate the manner of completion and scheduling of any restoration under this Article to ensure the completion of the restoration in an efficient manner. Each Owner will cooperate and cause its contractors and agents to cooperate in the Association's coordination of any restoration. As used in this Article, a "restoration" will include any repair, replacement, restoration, reconstruction, construction or demolition required as a result of any damage or destruction.

17.4 No Abatement. Each Unit will continue to be subject to Assessments following any damage to or destruction of any portion of the Project, without abatement or modification as a result of the damage or destruction.

18. Condemnation.

18.1 Taking of Condominiums. If all or a part of any Unit or the use of, but not title to, any Limited Common Element allocated to the Unit, is taken by the exercise of the power of eminent domain or is conveyed in lieu of such exercise (collectively, "***Taking***"), the Owner of the Unit is solely responsible for negotiating with the condemning authority concerning the award for the Taking and may receive the award after the liens of all Mortgagees on the affected

Unit or portion of it are satisfied or otherwise discharged. If only part of a Unit is acquired by a Taking, the Owner of the Unit is responsible for restoring the Unit as necessary to return the Unit to a safe and lawful condition that does not adversely affect the use or enjoyment of the other Units or Common Elements or detract from the general character or appearance of the Project. The plans and specifications for the restoration are subject to the Board's prior approval. The restoration will be completed in accordance with the approved plans and specifications and the provisions set forth in the Casualty Section above, as if the Owner of the Unit to be restored were the Association. If a condemning authority acquires by a Taking all or a part of one or more Units in such a manner that such Unit(s) is or are no longer subject to this Declaration, then the Association will consider and pass an amendment to this Declaration as provided herein, revising the Allocated Interest of each of the remaining Units, and, if necessary, the allocation of any Limited Common Element previously allocated to the Unit(s) that is or are no longer subject to this Declaration.

18.2 **Taking of Common Elements.** A "*Common Element Taking*" means any Taking by which a condemning authority acquires title to any Common Element. The Board is solely responsible for negotiating, and may negotiate with the condemning authority on behalf of all Owners concerning, the amount of the award for any Common Element Taking, and the Board's acceptance of an award is binding on all Owners. If a Common Element Taking occurs, the Association is responsible for restoring the remaining Common Elements as necessary to return them to a safe and lawful condition that does not adversely affect the use or enjoyment of the Units or other Common Elements or detract from the general character or appearance of the Project. If the net award (*i.e.*, net of costs of collection) received by the Association from any Common Element Taking exceeds the amount actually incurred by it in connection with any required restoration of the Common Elements, the Association will pay or credit each Owner with its Unit's Termination Allocation of the excess condemnation award, as if the award resulted from a sale of the Project pursuant to the Termination Article set forth below; *provided, however*, that the valuation date used to determine the fair market value of each Unit pursuant to the Termination Article below for purposes of determining the Termination Allocations will be the date immediately preceding the earlier of the date that title or the date that possession is transferred to the condemning authority in connection with the Common Element Taking. If the net amount of the award so received is insufficient to effect such restoration, the Board may assess a Special Assessment to cover the restoration deficit.

19. **Termination; Obsolescence.**

19.1 **Termination Agreement.** The Project may be terminated only pursuant to a written agreement to terminate executed and acknowledged (or ratified and acknowledged in writing) by the Owners of Units to which 67% of the votes in the Association are allocated (a "*Termination Agreement*"). A Termination Agreement is effective when (a) the requisite number of Owners have executed and acknowledged it or a ratification of it, and (b) the Termination Agreement and all ratifications, if any, are recorded. A Termination Agreement will state a date after which it is automatically void unless it is effective by that date. A Termination Agreement will also state that, when it becomes effective, the Project is deemed

terminated and the Association will sell the Project, including all Units and Common Elements, on behalf of all Owners, upon terms and conditions of sale approved by the Board, *provided* that those terms will be at least as favorable as the minimum terms set forth in the Termination Agreement.

19.2 **Sale of Unit Component.** When a Termination Agreement becomes effective, the Project is deemed terminated, the Association will sell the entire Project (*i.e.*, all Units and all Common Elements) for the benefit of the Owners, and the resulting sales proceeds will be allocated in accordance with this Article. Upon approval of a Termination Agreement, (a) each Owner (including dissenting Owners) is deemed to grant the Association, acting through its officers under the authority of the Board, an irrevocable power of attorney, coupled with an interest, to sell the Project for the benefit of the Owners, and (b) accordingly, the Association has full and complete authority, right and power to make, execute and deliver any contract, deed or other instrument necessary and appropriate to accomplish that purpose. Notwithstanding the termination of the Project, the Association (and its officers and the Board) will continue to exist and hold office, respectively, with all of its and their powers specified in this Declaration and the Bylaws (including, without limitation, the power to impose Assessments) until the Project is sold and all proceeds (*i.e.*, sales proceeds and, if applicable, insurance proceeds or condemnation proceeds) are distributed. Unless otherwise specified in the Termination Agreement or otherwise precluded by law, until a sale of the Project is concluded, each Owner has an exclusive right to occupy its former Unit and remains liable for all Assessments and other obligations imposed on the Owner pursuant to this Declaration.

19.3 **Proceeds.** The Association will pay to each Owner its Unit's Termination Allocation of the net proceeds of the sale of the Project following termination of the Project (together with any insurance proceeds or condemnation proceeds). However, no payment will be made to an Owner until all liens on its Condominium are paid out of the Owner's share of the proceeds, in the order of priority of such liens. A Unit's "***Termination Allocation***" means the percentage obtained by dividing the fair market value of the Condominium of which the Unit is a part by the total fair market values of all of the Condominiums. The valuation date used in determining the fair market value of each Condominium is the date immediately prior to the date the Termination Agreement becomes effective (or, if the termination is attributable to a Casualty where the Owners elect to terminate the Project, the valuation date is the date immediately prior to the date on which the Casualty occurred). The fair market value of each Condominium as of the appropriate valuation date will be determined by one or more independent appraisers selected by the Board. The Association will distribute to the Owners the values determined by the independent appraisers. Those values are final and binding on all Owners for purposes of establishing the Termination Allocations unless within 30 days after distribution they are disapproved in writing by the Owners of Units to which at least 25% of the votes in the Association are allocated.

20. **Mortgagee's Rights.** The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and

applicable, necessary or proper, the provisions of this Section apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

20.1 **Distribution of Insurance or Condemnation Proceeds.** In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a Mortgage against the Unit.

20.2 **Right to Pay Taxes and Charges.** Mortgagees who hold Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

21. **Enforcement of Covenants.**

21.1 **Violations Deemed a Nuisance.** Every violation of this Declaration or any other of the Association Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these covenants will be available.

21.2 **Failure to Comply.** Failure to comply with the Association Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

21.3 **Who May Enforce.** Any action to enforce the Association Documents may be brought by the Association or the Board in the name of the Association on behalf of the Owners, or any aggrieved Owners. Such an action may be brought by the Board, the Association or any Owner.

21.4 **Remedies.** In addition to the remedies set forth in this Section, any violation of the Association Documents shall give to the Board or to the Association, through the Managing Agent or other representative, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest of the Owners and meaning of the Association Documents. If the offense occurs in any easement, walkway, Common Elements or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

21.5 **Nonexclusive Remedies.** All the remedies set forth herein are cumulative and

not exclusive.

21.6 **No Waiver.** The failure of the Association, the Board, or any aggrieved Owner to enforce the Association Documents will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Association Documents at any future time.

21.7 **No Liability.** No member of the Board or any Owner will be liable to any other Owner for the failure to enforce any of the Association Documents at any time.

21.8 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the Association Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Association Documents or the restraint of violations of the Association Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistants' fees) as may be incurred, or if suit is brought, as may be determined by the court.

22. **Resolution of Disputes.** If any dispute arises between Members or between Members and the Association, or if any question arises relating to the interpretation, performance or nonperformance, violation, or enforcement of the Association Documents the Board will encourage the use of alternative dispute resolution procedures as provided in Article 24 below, but the Association will not be deemed to have compromised or waived its right to seek judicial relief under any circumstances.

23. **Duration of Covenants and Amendment.**

23.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

23.2 **Amendment.** This Declaration, or any provision of it, may be amended at any time by Owners holding at least sixty-seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment.

23.3 **Revocation.** This Declaration shall not be revoked nor shall the Project created hereby be terminated (except as otherwise provided herein with respect to a total destruction; Termination; or Obsolescence).

24. **Enforcement; Dispute Resolution.**

- (a) This Declaration and the Bylaws constitute a general scheme benefiting each Unit and the Project as a whole and may be enforced by the Association or an aggrieved

Owner. A violation of any of the provisions of this Declaration causes irreparable damage to the Project. Therefore, subject to the terms and conditions of this Section, and except as otherwise expressly provided elsewhere in this Declaration, the Association and any aggrieved Owner may prosecute a proceeding at law or in equity against any Person violating or attempting to violate the provisions of this Declaration or the Bylaws, including, without limitation, an action for a temporary restraining order, preliminary injunction and permanent injunction.

- (b) The Association may recover from any Person violating or attempting to violate any provision of this Declaration or the Bylaws reasonable attorneys' fees and other legal costs incurred by the Association in successfully enforcing the provision, regardless of whether suit is initiated. If the Person is an Owner, the amount of the fees and costs constitute a lien against the Owner's Unit which may be foreclosed in accordance with Article 14. In addition, any noncompliance by an Owner with the Association Documents, shall enable the Association to (i) temporarily suspend the Owner's right to use or enjoy any of the Common Elements; (ii) impose monetary penalties; and (iii) impose other appropriate measures; provided, however, that before imposing any of those measures (other than late charges, interest and reasonable collection costs relating to delinquent payments), the Board will promulgate Rules and Regulations relating to those measures including provisions affording a defaulting Owner notice of the claimed default and an opportunity to be heard by the Board prior to the imposition of the disciplinary measure.
- (c) Before an aggrieved Owner may prosecute any proceeding at law or in equity enforcing the provisions of this Declaration or seeking other relief relating to a violation or attempted violation of the provisions of this Declaration, the Owner will first give written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration. The Board may initiate a proceeding at law or in equity to enforce the provisions of this Declaration, to prevent a violation or to obtain damages for damage to the Common Elements resulting from the violation, or may otherwise enforce the provisions of this Declaration. The aggrieved Owner may exercise any of its rights under this Section if (i) the violation or attempted violation results or would result in direct and immediate physical damage to the Owner's Unit, or (ii) the Association fails to enforce or cause enforcement of the violated provisions of this Declaration within 60 days after the Board receives the Owner's notice.

25. **General Provisions.**

25.1 **Precedence of Act.** Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

25.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full

force and effect.

25.3 **Conflicts Between Documents.** In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

25.4 **Construction.** In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

25.5 **Headings.** The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

25.6 **Waiver.** No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

25.7 **Limitation of Liability.** Neither the Association nor any officer or member of the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Association Documents if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles and Bylaws.

25.8 **Counterparts.** This Declaration and the required approvals and joinders to it may be executed in two or more counterparts which when taken together shall evidence the agreement of the Association, the Owners and all other parties approving or joining in this Declaration.

25.9 **Provisions Run with Property.** Each Unit, Owner, permittee and Mortgagee are subject to all provisions of this Declaration and the provisions are covenants running with the land or equitable servitudes, as the case may be, and bind every Persons having any interest in the Project and inure to the benefit of every Owner.

25.10 **Association as Attorney-in-Fact.** Except as otherwise provided herein, this Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property and the Project in the event of its destruction, damage, obsolescence, or condemnation, including the repair, replacement and improvement of any Units, Common Elements or other portions thereof which may have been destroyed, damaged, condemned, or become obsolete. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project and Property upon its damage, destruction, obsolescence, or condemnation as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted.

SIGNATURE ON FOLLOWING PAGE

This Declaration is executed as of the Effective Date.

Declarant

311 Main, LLC, a Colorado limited liability company

By: _____

Print Name: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me on this ____ day of _____, 2019, by _____, as _____ of 311 Main, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A
(Legal Description)

Lots 22 and 23, Block 11, Town of Carbondale, County of Garfield, State of Colorado

EXHIBIT A-1

(EXCEPTIONS)

EXISTING LEASES AND TENANCIES, IF ANY.

ANY AND ALL RIGHTS OF THE OWNER OF THE PROEPRTY ADJOINING THE SUBJECT PROPERTY ARISING FROM THE EXISTENCE OF A PARTY WALL PARTLY LOCATED ON THE SUBJECT PROPERTY.

RIGHT OF PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 29, 1911, IN BOOK 71 AT PAGE [524](#).

RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 29, 1911, IN BOOK 71 AT PAGE [524](#).

TERMS, CONDITIONS AND PROVISIONS OF EASEMENT IN DEED RECORDED NOVEMBER 04, 1971 IN BOOK 424 AT PAGE [344](#).

ANY COVENANTS, AGREEMENTS, ASSESSMENTS AND/OR EASEMENTS FOR PUBLIC UTILITIES, SEWER, DRAINAGE AND OTHER INCIDENTAL PURPOSES THAT AFFECT THE COMMON ELEMENTS ONLY, AS SHOWN ON THE MAP OF SAID CONDOMINIUM RECORDED _____ UNDER RECEPTION NO. _____.

ALL MATTERS CONTAINED IN INSTRUMENT(S) SETTING FORTH; COVENANTS, CONDITIONS, RESTRICTIONS, LIABILITIES, OBLIGATIONS, RESERVATIONS AND EASEMENTS; RECORDED AT: _____ BUT "OMITTING ANY COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN UNLESS AND ONLY TO THE EXTENT SAID COVENANT (A) IS EXEMPT UNDER CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS."

EXHIBIT B

Pursuant to Sections 2.2, 2.12 and 14.4, the Common Expenses will be allocated as follows: 80% of all Common Expenses are allocated to the Commercial Units. 20% of the Common Expenses will be paid by the Residential Unit.

ALLOCATED INTERESTS FOR COMMON EXPENSES		
UNIT NUMBER	UNDIVIDED INTEREST IN COMMON ELEMENTS and VOTING INTEREST ALLOCATED TO THE UNIT*	UNDIVIDED INTEREST IN COMMON ELEMENTS and VOTING INTEREST ALLOCATED TO THE UNIT
101	16.8%	0
102	20.8%	0
201	16.8%	0
202	10.4%	0
203	15.2%	0
301	0	20%
TOTAL - 6	80%	20%

*The percentage is based upon the square footage of the applicable Commercial Unit and then adjusted for the 80% payable by the Commercial Units.

ALLOCATED INTERESTS FOR LIMITED COMMON EXPENSES		
UNIT NUMBER	UNDIVIDED INTEREST IN LCE-C**	UNDIVIDED INTEREST IN LCE-R
101	21%	0
102	26%	0
201	21%	0
202	13%	0
203	19%	0
301	0	100%
TOTAL - 6	100%	100%

**Based upon the square footage of only the Commercial Units.

UNIT NUMBER	SQUARE FOOTAGE OF UNIT
101	1018
102	1287
201	1087
202	646
203	916
301	3572



**TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623**

Planning Commission Agenda Memorandum

Meeting Date: 10-24-2019

TITLE: Thompson Park – Combined Preliminary/Final Subdivision Plat for Parcel 2, Thompson Park Subdivision

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS: Thompson Park Land Use Application

BACKGROUND

This is an application for a combined Preliminary and Final Plat for Parcel 2 of the Thompson Park Subdivision. The Commission is required to hold a public hearing and either recommend approval or recommend denial. The Commission may also continue the public hearing.

The Thompson Park property was annexed into the Town in 2012. The property was zoned Residential/Medium Density (R/MD). The Historic House parcel was zoned Open Space (O).

The Board of Trustees approved the Master Subdivision Improvements Agreement (SIA) for the Thompson Park Subdivision in May of 2015. This subdivision created Parcels 1, 2, 3, 4 and the Historic House Parcel. Parcel 1 was purchased by Ross Montessori and subsequently was developed as a school. The Historic House Parcel was dedicated to the Town. Parcels 2, 3, and 4 were set aside for future phases of residential development.

In April of 2018, the Planning Commission approved a Subdivision Conceptual Plan for Parcel 2, Parcel 3 and Parcel 4 of the Thompson Park Subdivision. At that time, the Planning Commission also reviewed the Major Site Plan Review, Conditional Use Permit, and Amendment to the Thompson Park Annexation and Development Agreement for the three parcels and recommended approval. In June of 2018, the Board approved those items. The approval allows the development of 33 townhomes/multifamily units on Parcels 2 and 3 and 7 and single family units on Parcel 4.

In June of 2018, the Board also approved a Development Improvements Agreement to allow construction to proceed on Parcel 2. This approval allows the construction of 27 dwelling units. There would be two duplexes, two triplexes, three fourplexes and one five plex. Five of the units would be affordable housing units.

Since that time, the majority of the public improvements have been constructed. In addition, building permits have been issued for the two duplexes and the two triplexes.

In 2018, the Planning Commission and the Board reviewed the Major Site Plan Review to ensure it complied with the UDC, the Thompson Park Development Plan, and Annexation Agreement. The following items were reviewed at that time:

- Ø Zoning
- Ø Lot Area Per Dwelling Unit
- Ø Setbacks
- Ø Maximum Impervious Lot Coverage (UDC Section 3.7-2)
- Ø Building Height
- Ø Landscaping and Screening (UDC Section 5.4)
- Ø Street Trees
- Ø Screening (UDC Section 5.4.5)
- Ø Streets (UDC Section 5.5.2)
- Ø Pedestrian Circulation (UDC Section 5.5.3)
- Ø Private Outdoor Space/Bulk Storage
- Ø Parking
- Ø Shading Analysis
- Ø Architectural Design of Buildings and Structures
- Ø Park and Recreation Space, Trails, and Facilities
- Ø Transportation Impact Fees
- Ø Park Development Fees
- Ø Transfer Assessment
- Ø Water Rights

This application is simply subdividing the units into individual lots. There are no changes to the site plan or building elevations approved through the Major Site Plan Review process.

PRELIMINARY AND FINAL SUBDIVISION

The Planning Commission approved a Subdivision Conceptual Plan on April 26, 2018. UDC Section 2.6.3.A. states that a conceptual plan represents a general land use plan and layout for the area to be proposed, to be included within a subdivision. It allows for an evaluation of a proposed subdivision before detailed planning and engineering work is undertaken and before substantial expenses are incurred.

The applicant has now submitted a combined application for Preliminary and Final Subdivision Plat. Technically, the Planning Commission is the approving authority for a

Preliminary Plat and the Board is the approving authority for Final Plat. However, these items have been combined so it is a one step process.

The subdivision plat would create 24 lots. The lots would range from 2,351 sq. ft. to 10,454 sq. ft.

A duplex is being constructed on Lot 1. The residential units in the duplex are stacked. A condominium plat will be submitted in the future to divide that building into two condominium units. A triplex is being constructed on Lot 2. These units are also stacked so a condominium plat will be submitted for that as well. The balance of the units are attached single family dwelling units (townhomes).

The UDC provides that in the R/MD zone district that the lot width, lot depth, minimum lot area and side yard setbacks may vary if approved through a subdivision process to allow townhomes to be subdivided. Staff has reviewed the zoning parameters and the lot configurations. Both are in compliance with the UDC.

Chapter 17.06 of the UDC includes design standards for subdivisions. This includes roads, water, sewer, shallow utilities, connections, etc. These items were reviewed and approved at the time of Major Site Plan Review and are currently under construction.

The one item from Chapter 17.06 which needs to be acknowledged is the use of easements to access lots. The UDC states that use of easements shall not be allowed unless allowed by the approving authority during a subdivision process. This should be documented in the final approval documents.

Subdivision Plat

The Town Engineer and Town Attorney reviewed the subdivision plat. The plat generally looks acceptable; however, the following revisions will need to be made:

- Ø Number the lots in a circular fashion
- Ø Improve the easement labeling
- Ø Show common elements and limited common elements
- Ø Show square footage of lots in addition to acreage
- Ø Note that access easement and both trail easements are public easements
- Ø Add a plat note disclosing that future additions to Parcel 2 are limited under the current development code
- Ø Add a plat note describing maintenance obligations of future property owners

Ø Add a plat note that Lewie's Circle and Jewel's Court are public access easements and the Town is not responsible for maintenance of the road easement.

Ø Add plat notes cross referencing the Covenants, RETA and Design Guidelines

There are additional plat revisions not itemized above. Staff has included a condition that the subdivision plat be reviewed and approved by Town Staff prior to recordation.

Covenants

The Town Attorney did an initial review of the covenants. It is a similar situation as the subdivision plat. They are generally acceptable, but Town Staff would like to see some clarifications on what is considered a general common element vs. limited common elements. In addition, there would be a note that paragraph 5.7 cannot be changed without Town of Carbondale approval. Again, Staff included a condition that the final covenants be reviewed and approved by Town Staff prior to recordation.

Fire District Fees

The Annexation Agreement requires the payment of the Fire District Fees at the time of subdivision. The fees are as follows:

$$27 \text{ units} \times \$730 = \$19,710$$

School District Fees

The Annexation Agreement requires the payment of School District Fees at the time of subdivision. The fees are as follows:

22 3-bedroom units x \$1104 =	\$24,288
4 2-bedroom units x 378 =	1,512
1 1-bedroom unit x 131 =	131

Total School District Fees	\$25,931
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Affordable Housing

A housing mitigation plan was approved by the Board at the time of Major Site Plan Review. Five affordable housing units will be provided on Parcel 2. One is the duplex on Lot 1 and the other the triplex on Lot 2. The application includes deed restrictions for those five units. The Town Attorney is reviewing those documents. A condition was added that the deed restrictions be approved by the Town Attorney prior to recordation.

Design Standards

The Development Plan requires that the applicant submit Design Guidelines with each phase of the development. During the Major Site Plan Review, Staff suggested that Design Standards would not be necessary since the Town approved a development proposal for all three parcels and one developer will be building the subdivision out. However, the application included Design Guidelines. The guidelines appear to be thorough and thoughtful. They would be administered by the HOA and would be internal to Thompson Park.

Staff's only comment is that when the Major Site Plan Review was done, it was noted that no more impervious surfaces would be allowed on Parcel 2. In fact, some areas used as sidewalks or aprons had to utilize pervious surface systems in order to comply with the required pervious surfaces. In other words, future property owners will be limited to the existing footprint of the buildings as constructed and no additions can be allowed under the Town's current code. Staff would like to see notification to future property owners on the limitations for additions to buildings on Parcel 2.

Approval Criteria for Preliminary Plats

The Planning and Zoning Commission may approve a preliminary plat application that meets the following criteria:

1. The proposed subdivision complies with all applicable use, density, development, and design standards set forth in this Code that have not otherwise been modified or waived pursuant to this chapter and that would affect or influence the layout of lots, blocks, and streets. Applicants shall avoid creating lots or patterns of lots in the subdivision that will make compliance with such development and design standards difficult or infeasible.
2. The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision is 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 this 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 responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision.
8. As applicable, the proposed phasing for development of the subdivision is rational in terms of available infrastructure capacity and financing.
9. The subdivision is consistent with the approved subdivision conceptual plan, if applicable, unless detailed engineering studies require specific changes based on site conditions (in which case the applicant shall not be required to pursue another conceptual plan approval);
10. The subdivision is consistent with the Comprehensive Plan and other adopted Town policies and plans, including any adopted transportation plan or streets/roadway plan.

Final Plat Approval Criteria

The Board of Trustees may approve final plats which meet the following criteria:

1. 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;
2. The development will substantially comply with all requirements of this Code; and
3. The development will comply with applicable technical standards and specifications adopted by the Town.

FISCAL ANALYSIS

The fiscal impact implications of additional residential development on the Town were addressed at the time of annexation and zoning. No significant impacts were found at that time.

RECOMMENDATION

Staff recommends approval of the proposed application as it is in compliance with the Subdivision Conceptual Plan approved by the Planning Commission in April of 2018 and the Major Site Plan Review approved in June of 2018. Staff would recommend the following motion: **Move to recommend approval of the combined Preliminary/Final Subdivision Plat for Parcel 2 of the Thompson Park Subdivision, including the use of an easement to access the lots along Lewie's Circle and Jewel's Court.**

CONDITIONS OF APPROVAL

1. The Subdivision Plat shall be reviewed and approved by the Town prior to recordation of the Plat.
2. The covenants shall be reviewed and approved by the Town prior to recordation of the Plat.
3. The deed restrictions for the affordable housing units shall be reviewed and approved by the Town prior to recordation of the Plat.
4. The title commitment shall be reviewed and approved by the Town prior to recordation of the Plat.
5. The following Fire District Fees shall be paid to the Fire District prior to recordation of the Subdivision Plat:

$$27 \text{ units} \times \$730 = \$19,710$$

6. The following School District Fees shall be paid to the School District prior to recordation of the Subdivision Plat:

22 3-bedroom units x	\$1104 =	\$24,288
4 2-bedroom units x	378 =	1,512
1 1-bedroom unit x	131 =	131

Total School District Fees	\$25,931
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7. 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.
8. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.

FINDINGS

Approval Criteria for Preliminary Plats

1. The proposed subdivision complies with all applicable use, density, development, and design standards set forth in this Code. Applicants did not create lots or patterns of lots in the subdivision that will make compliance with such development and design standards difficult or infeasible.
2. The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision are designed to minimize the amount of land disturbance, maximize the amount of open space in the development, preserve existing trees/vegetation and riparian areas, protect critical wildlife habitat, and otherwise accomplish the purposes and intent of this 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.
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. With the conditions of approval, the application provides a clear assumption of responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision.
8. The phasing for development of the subdivision was approved during Major Site Plan Review and is rational in terms of available infrastructure capacity and financing.
9. The subdivision is consistent with the approved subdivision conceptual plan;
10. The subdivision is consistent with the Comprehensive Plan and other adopted Town policies and plans, including any adopted transportation plan or streets/roadway plan.

Final Plat Approval Criteria

1. 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;
2. The development complies with all requirements of this Code; and
3. The development complies with applicable technical standards and specifications adopted by the Town.

Prepared by: Janet Buck, Planning Director

Glenwood Springs Office
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Facsimile (970) 947-1937

GARFIELD & HECHT, P.C.
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Since 1975

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Haley Carmer
hcarmer@garfieldhecht.com

September 9, 2019

VIA HAND-DELIVERY

Janet Buck, Planning Director
City of Carbondale Planning Department
511 Colorado Avenue
Carbondale, Colorado 81623

RE: Thompson Park, LLC
Thompson Park Phase 2 Subdivision Application

Dear Ms. Buck,

Thompson Park, LLC (“Applicant”) hereby submits to the Town of Carbondale (“Town”) its combined application for preliminary and final subdivision (“Application”) of Parcel 2, Thompson Park Subdivision, according to the Thompson Park Master Plat recorded in the Garfield County real property records at Reception No. 862909. Applicant requests that all parts of its Application be reviewed concurrently. Pre-application meetings via telephone have been conducted since April 2019.

The property comprising the Thompson Park subdivision was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052. It is subject to the Annexation and Development Agreement and nine amendments thereto (“Annexation Agreement”) between the Town and Applicant and the Applicant’s predecessor, Cerise Park, LLC. The Application refers to this stage of development as “Phase 2” because, according to the First Amendment to the Annexation Agreement (Reception No. 854368), the Master Plat constitutes both the Master Plat and Phase 1 Plat required by Section 4 of the Annexation Agreement. The subdivision is also subject to the Thompson Park Development Plan (the “Plan”) that was attached as an exhibit to the original Annexation Agreement and was amended in conjunction with the seventh amendment to the Annexation Agreement. Both the Annexation Agreement and the Plan impose restrictions and requirements on the development of the Property in addition to those contained in the Uniform Development Code (“UDC”).

Appendix A provided herewith lists each provision of the Annexation Agreement and the Plan that imposes an additional requirement on Applicant at the subdivision stage and explains how Applicant has satisfied each requirement. Those provisions of the Annexation Agreement and Plan that address site plan issues were analyzed and summarized in Applicant’s 2018 major site plan application.

In July 2018, the Town Board of Trustees approved a major site plan and conceptual subdivision plan for the entire subdivision, including Parcel 2. Pursuant to those approvals, Applicant is entitled to develop 27 dwelling units on Parcel 2. Application intends to do so by subdividing Parcel 2 into 24 lots and constructing eight duplex and townhome buildings on those lots. Lots 1 and 2 will be developed with a condominiumized affordable duplex and tri-plex, respectively, creating a total of 5 affordable housing units. Applicant will seek approval of the condominium plats once the buildings have been framed and the dimensions of the units can be determined. The remaining 22 market units will be divided among six townhome buildings ranging from duplexes to five-plexes. The privately-maintained roads within Parcel 2—Jewel’s Court and Lewie’s Circle—will not be separate parcels but, rather, public access easements over lots they cross.

Several of the major site plan application requirements are the same as the subdivision application requirements. As such, Applicant has already submitted—and the Town has approved—a majority of the preliminary and final subdivision crossover requirements. For ease of reference, Appendix B lists all of the preliminary and final subdivision application requirements and explains how each has been or will be satisfied. In light of the overlapping site plan and subdivision application requirements, per our August 9, 2019 telephone conversation, only the following documents are being submitted with the Application:

1. Land Use Application Form
2. Payment for Application fees (preliminary and final subdivision fees)
3. Title Commitment as proof of ownership of Parcel 2
4. Preliminary/Final Subdivision Plat documents
 - Final Plat
 - Proposed Declaration of Covenants, Conditions, Easements and Restrictions For Thompson Park Subdivision, including Design Review Guidelines as a separate document
 - List of adjacent property owners and their addresses
 - Utility Plan¹
5. Additional Documents
 - Proposed affordable housing deed restriction
 - Detailed design guidelines with list of approved plant species
 - Proposed Planning & Zoning Public Notice

Applicant has provided a total of 8 copies of all of the final plat and required plans, 4 of which are 24x36 and 4 of which are 11x17. Seven copies of all other documents have also been provided. All Application materials will be provided electronically as well.

Please contact me if you need additional information or have questions regarding any of the foregoing materials. Applicant respectfully requests that the Application be considered at the October 10, 2019 Planning & Zoning Commission meeting. We look forward to working with the Town as we proceed through the application process.

¹ The utility plans provided herewith are the construction plans used to install the water and sewer facilities. Applicant’s project manager has confirmed that the utilities have been constructed in accordance with the plans. However, the plans are not intended to be the final as-built plans required under the Parcel 2 Development Improvements Agreement in connection with the Town’s acceptance of the publicly-dedicated utilities. Such final as-built plans will be submitted once all utility connections and a field survey have been completed.

Sincerely,

GARFIELD & HECHT, P.C.

A handwritten signature in black ink, appearing to read "Haley Carmer". The signature is fluid and cursive, with the first name "Haley" and last name "Carmer" clearly distinguishable.

By: Haley Carmer
Attorneys for Cerise Park, LLC

Enclosures

APPENDIX A
ANNEXATION AGREEMENT (“AA”) AND DEVELOPMENT PLAN (“DP”)
SUBDIVISION REQUIREMENTS

Section	Agreement Text	Applicant Response
AA 5(B)	An SIA approved by the Town Attorney shall be required for any Phase Plat approval associated with the Project. . . . Along with each SIA, the Developer shall provide to the Town a letter of credit or other security in a form consistent with the Town Code to secure the proper construction and installation of the public improvements	A Development Improvements Agreement for the Parcel 2 public improvements was prepared and approved in connection with the 2018 major site plan application. The Development Improvements Agreement was recorded as an exhibit to the site plan approval ordinance—Ordinance 11, Series 2018—on November 11, 2018, at Reception No. 914139. Financial security for the public improvements in the form of a letter of credit was provided to the Town on October 31, 2018.
AA 7(C)	Prior to recordation of each Phase Plat, Developer shall pay a transportation impact fee for each platted lot or unit shown on the Phase Plat. . . . Developer shall receive a credit against future transportation impact fees . . . for all costs incurred with respect to Highway 133 Improvements.	In connection with the Master Plat, Applicant’s predecessor completed the Highway 133 Improvements called for in the Annexation Agreement and dedicated those improvements to the Town, which have been accepted. The costs incurred by Applicant’s predecessor with respect to the Highway 133 improvements satisfy Applicant’s transportation impact fee obligations.
AA 10(B) & (C)	Affordable housing deed restriction	Applicant is submitting three versions of an affordable housing deed restriction with its Application. Because three different affordable housing categories are required to be located on Parcel 2 per the Eighth Amendment to the Annexation Agreement, there is a separate agreement for each category. The Declaration also references the affordable housing restriction (Sec. 4.15). The form of the deed restrictions included with the Application was approved by the Town in connection with a prior Parcel 2 subdivision application.

AA 11	Developer agrees to impose a real estate transfer assessment requiring the seller of any free market residential unit or lot to pay the Town a real estate transfer assessment of .5% of the gross sales price at the time of initial sale, and 1% of the gross sales price of each subsequent sale.	In connection with the major site plan approval, Applicant agreed to increase the initial RETA to 1%. That agreement is reflected in the Eighth Amendment to the Annexation Agreement. The RETA covenant was recorded against all subdivision parcels on July 10, 2019, at reception no. 922724. The Declaration also includes a provision regarding the RETA that references the separately recorded covenant (Sec. 4.14).
AA 12(A)	For each Phase of the Project, the Developer shall pay a fire district impact fee to the Carbondale and Rural Fire Protection District determined in accordance with the Fire District's schedule of fees prior to the recordation of the Phase Plat for such Phase.	Applicant will pay the fire district impact fee of \$730 per unit pay prior to recording the Phase Plat for Parcel 2.
AA 12(B)	For each Phase of the Project, the Developer shall pay a school district impact fee to Roaring Fork School District, RE 1 determined in accordance with the School District's schedule of fees prior to the recordation of the Phase Plat for such Phase	Applicant will pay the school impact fee to the Roaring Fork School District RE-1 prior to recordation of the Phase Plat Parcel 2. At present, the fee is as follows: \$162 per 1-bedroom unit, \$219 per 2-bedroom unit, and \$656 per 3-bedroom unit.
AA 13(A)	Developer shall submit a complete draft of a master declaration of restrictive covenants to be established for each Phase with each Phase Plat application.	The Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision is being submitted as part of the Application.
AA 13(D)	The Developer shall include in the restrictive covenants, and as a plat note on each Phase Plat, a prohibition of installation of solid fuel burning fireplaces, stoves, appliances or other devices.	Section 4.16 of the Declaration prohibits solid fuel burning appliances within the subdivision. A plat note regarding the same appear on the Phase Plat for Parcel 2.
AA 14(B)(3)	Developer shall include upon all Phase Plats and within the Governing Documents language regarding the raw water irrigation requirement and total irrigable acres within the Subdivision and each plat.	The required language, as amended ¹ by the first amendment to the annexation agreement, appears in Section 4.17 of the Declaration and is included as a plat note on the Phase Plat for Parcel 2.

¹ The First Amendment to the Annexation Agreement reduced the total amount of irrigated area within the Subdivision to 4.71 acres and total residential lawn and garden irrigation area to 2.3 acres in light of the allocation of 1.0 acres of irrigation to Parcel 1 that is now the Ross Montessori School.

AA 16(B)	All fees in lieu of water rights shall be paid at the time of recordation of a Phase Plat	A water rights dedication fee in the amount of \$29,558 was paid in July 2018 in connection with the issuance of a building permit for Parcel 2
AA 16(F)(1)	With each Phase Plat application, the Developer shall provide a map to the Town showing the location of acreage to be irrigated in the future by the Town's raw water system and the location of acreage to be dried up.	All of the irrigated areas on Parcel 2, including those within public rights-of-way, will be irrigated using the private raw water irrigation system to be installed by Applicant. This issue was analyzed and approved in connection with the 2018 major site plan approval.
16(F)(4)	Developer shall provide detailed designs with each Phase Plat application for the irrigation system(s) intended to serve development within such Phase.	This issue was analyzed and approved in connection with the 2018 major site plan approval.
DP 10(A) 1 thru 8	Architectural Design of Buildings and Structures	Applicant architectural and landscape design guidelines, which include a list of approved plant species, are included with the Application. Those guidelines are incorporated by reference into the Thompson Park Subdivision declaration at Section 4.4.

APPENDIX B
PRELIMINARY AND FINAL SUBDIVISION
APPLICATION REQUIREMENTS

Application Requirement	Applicant Response
PRELIMINARY SUBDIVISION	
Preliminary Plat	Town staff has advised that no preliminary plat is required for this Application because the information specific to the preliminary plat (e.g., drainage, topography, solar plan, etc.) was analyzed and approved in connection with the 2018 major site plan application.
Proposed covenants	The Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision is submitted as part of the Application.
Adjoining Property Owners	A list of property owners adjoining Parcel 2 as well as those within 300 feet of the property is submitted as part of the Application
Shading and Solar Access	This issue was reviewed and approved in connection with the 2018 major site plan application.
Evidence of Title and Ownership	A current title commitment is submitted as part of the Application.
Consistency with conceptual subdivision plan	<p>The final subdivision plat and conceptual subdivision plan approved by the Town in 2018 are consistent because both:</p> <ul style="list-style-type: none"> • Subdivide Parcel 2 into 24 lots • Create the privately-maintained roads as publically-dedicated easements, not separate parcels • Reflect the same lot configuration <p>The Parcel 2 open space areas shown on the conceptual plan were not designated as separate lots. Instead of making those areas separate lots on the Final Plat, they have been incorporated into Lots 1, 2, 3, 4, 5, 6, 9, 11, 12, 14, 17, and 19 and are designated as an open space easement that will be managed by the HOA and available for use by all subdivision owners.</p>

Utility Plan	A utility plan showing the current location of the utilities being constructed on Parcel 2 is submitted as part of the Application.
Street Profile	This issue was reviewed and approved in connection with the 2018 major site plan application.
Drainage Plan	This issue was reviewed and approved in connection with the 2018 major site plan application.
Irrigation Plan	This issue was reviewed and approved in connection with the 2018 major site plan application.
Land Dedication & Park Development Fee	The open space dedication and park development fee requirements imposed by the Town's municipal code and the Annexation Agreement were satisfied through (a) the conveyance of the Historic House Parcel to the Town; (b) the dedication of public pedestrian and bike trails throughout the subdivision; (c) payment of \$31,500 at the time of recordation of the Master Plat; and (d) the improvements Applicant's predecessor made to the Historic House Parcel pursuant to the Master Plat SIA.
FINAL SUBDIVISION	
Final Plat	A final plat including all of the elements required under the UDC is submitted as part of the Application.
Covenants	The Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision is submitted as part of the Application.
Engineered plans and cost estimate for public improvements, including dedicated land, rights-of-way or easements	This issue was reviewed and approved in connection with the 2018 major site plan application.
Draft subdivision improvements agreement	A Development Improvements Agreement for the Parcel 2 public improvements was prepared and approved in connection with the 2018 major site plan application. The Development Improvements Agreement was recorded as an exhibit to the site plan approval ordinance—Ordinance 11, Series 2018—

	on November 11, 2018, at Reception No. 914139. Financial security for the public improvements in the form of a letter of credit was provided to the Town on October 31, 2018.
Agreement to convey ownership of public improvements to the Town	This requirement is included in the existing Development Improvements Agreement.
Land Dedication & Park Development Fee	See description above



Town of Carbondale
511 Colorado Ave
Carbondale, CO 81623
(970)963-2733

Pre-Application Meeting Date _____
Fees _____ Date Pd _____

Land Use Application

PART 1 – APPLICANT INFORMATION

Applicant Name: Thompson Park, LLC Phone: 970-947-1936
Applicant Address: c/o Garfield & Hecht, P.C., 901 Grand Avenue, #201, Glenwood Springs, CO 81601
E-mail: hcarmer@garfieldhecht.com
Owner Name: Thompson Park, LLC Phone: same as above
Address: same as above
E-mail: same as above
Location of Property: provide street address and either 1) subdivision lot and block; or 2) metes and bounds:
Parcel 2, Thompson Park Subdivision Master Plat recorded May 19, 2015, as Reception No. 862909

PART 2 – PROJECT DESCRIPTION

General project description: Subdivision of Parcel 2 into 24 lots. A condominiumized duplex and triplex will be constructed on 2 of the lots, and townhomes will be constructed on the other 22 lots.

Size of Parcel: 2.2 acres # Dwelling Units: 27 Sq Ftg Comm: 0

Type of Application(s): preliminary and final subdivision (UDC Sec.2.6.4 & 2.6.5)

Existing Zoning: Residential/Medium Density (R/MD) Proposed Zoning: N/A

PART 3 – SIGNATURES

I declare that I have read the excerpt from the Town of Carbondale Municipal Code Article 8 Land Use Fees. I acknowledge that it is my responsibility to reimburse the Town for all fees incurred as a result of this application.

I declare that the above information is true and correct to the best of my knowledge.

Applicant Signature

Date

Signature of all owners of the property must appear before the application is accepted.

Owner Signature

Date

Owner Signature

Date

STATE OF Wisconsin)
COUNTY OF milwaukee) ss.

The above and foregoing document was acknowledged before me this 6th day of

September 2019, by David M. Bauer

Witness my hand and official
My commission expires: 12/14/2022



Notary Public



TITLE COMPANY
of the rockies

1620 Grand Avenue
Bldg Main Floor 1
Glenwood Springs, CO 81601
Phone: 970-945-1169 Fax: 844-269-2759
www.titlecorockies.com

Commitment Ordered By:

David McConaughy
Garfield & Hecht, P.C.
The Denver Centre
420 Seventh Street, Suite 100
Glenwood Springs, CO 81601
Phone: 970-945-1936 Fax: 970-947-1937
email: dmconcaughy@garfieldhecht.com

Inquiries should be directed to:

Mary Scheurich
Title Company of the Rockies
1620 Grand Avenue
Bldg Main Floor 1
Glenwood Springs, CO 81601
Phone: 970-945-1169 Fax: 844-269-2759
email: MScheurich@titlecorockies.com

Commitment Number: 0600437-C8**Buyer's Name(s):****Seller's Name(s):** Cerise Park, LLC, a Delaware limited liability company**Property:**

1605 Highway 133, Carbondale, CO 81623
THOMPSON PARK SUBDIVISION, County of Garfield, State of Colorado.

TITLE CHARGES

These charges are based on issuance of the policy or policies described in the attached Commitment for Title Insurance, and includes premiums for the proposed coverage amount(s) and endorsement(s) referred to therein, and may also include additional work and/or third party charges related thereto.

If applicable, the designation of "Buyer" and "Seller" shown below may be based on traditional settlement practices in Garfield County, Colorado, and/or certain terms of any contract, or other information provided with the Application for Title Insurance.

Owner's Policy Premium:	\$0.00
Loan Policy Premium:	\$0.00
Additional Lender Charge(s):	
Additional Other Charge(s):	
Tax Certificate:	\$25.00
Total Endorsement Charge(s):	
TBD Charge(s):	\$370.00
TOTAL CHARGES:	\$395.00



**ALTA Commitment For Title Insurance
(Adopted 06-17-06) (Revised 08-01-2016)**

**COMMITMENT FOR TITLE INSURANCE
ISSUED BY
WESTCOR LAND TITLE INSURANCE COMPANY**

NOTICE

IMPORTANT-READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment Conditions, WESTCOR LAND TITLE INSURANCE COMPANY, a South Carolina Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within six (6) months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

IN WITNESS WHEREOF, WESTCOR LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed and by these presents to be signed in facsimile under authority of its by-laws, effective as of the date of Commitment shown in Schedule A.

Issued By:



The Title Company of the Rockies
1620 Grand Avenue Bldg Main, Floor 1
Glenwood Springs, CO 81601
Phone: 970-945-1169

WESTCOR LAND TITLE INSURANCE COMPANY



By: Mary O'Donnell

President

Attest: [Signature]

Secretary

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at < <http://www.alta.org/>>.*

Joint Notice of Privacy Policy
of
Westcor Land Title Insurance Company
and
The Title Company of the Rockies

Westcor Land Title Insurance Company ("WLTIC") and **The Title Company of the Rockies** value their customers and are committed to protecting the privacy of personal information. In keeping with that philosophy, we each have developed a Privacy Policy, set out below, that will endure the continued protection of your nonpublic personal information and inform you about the measures WLTIC and **The Title Company of the Rockies** take to safeguard that information. This notice is issued jointly as a means of paperwork reduction and is not intended to create a joint privacy policy. Each company's privacy policy is separately instituted, executed, and maintained.

Who is Covered

We provide our Privacy Policy to each customer when they purchase a WLTIC title insurance policy. Generally, this means that the Privacy Policy is provided to the customer at the closing of the real estate transaction.

Information Collected

In the normal course of business and to provide the necessary services to our customers, we may obtain nonpublic personal information directly from the customer, from customer-related transactions, or from third parties such as our title insurance agent, lenders, appraisers, surveyors and other similar entities.

Access to Information

Access to all nonpublic personal information is limited to those employees who have a need to know in order to perform their jobs. These employees include, but are not limited to, those in departments such as closing, legal, underwriting, claims and administration and accounting.

Information Sharing

Generally, neither WLTIC nor **The Title Company of the Rockies** shares nonpublic personal information that it collects with anyone other than those individuals necessary needed to complete the real estate settlement services and issue its title insurance policy as requested by the consumer. WLTIC or **The Title Company of the Rockies** may share nonpublic personal information as permitted by law with entities with whom WLTIC or **The Title Company of the Rockies** has a joint marketing agreement. Entities with whom WLTIC or **The Title Company of the Rockies** have a joint marketing agreement have agreed to protect the privacy of our customer's nonpublic personal information by utilizing similar precautions and security measures as WLTIC and **The Title Company of the Rockies** use to protect this information and to use the information for lawful purposes. WLTIC or **The Title Company of the Rockies**, however, may share information as required by law in response to a subpoena, to a government regulatory agency or to prevent fraud.

Information Security

WLTIC and **The Title Company of the Rockies**, at all times, strive to maintain the confidentiality and integrity of the personal information in its possession and has instituted measures to guard against its unauthorized access. We maintain physical, electronic and procedural safeguards in compliance with federal standards to protect that information.

The WLTIC Privacy Policy can be found on WLTIC's website at www.wltic.com

COMMITMENT FOR TITLE INSURANCE

Issued by



as agent for

Westcor Land Title Insurance Company

SCHEDULE A

Reference:

Commitment Number: 0600437-C8

1. Effective Date: **May 31, 2019, 7:00 am** Issue Date: **June 12, 2019**

2. Policy (or Policies) to be issued:

ALTA Owner's Policy (6-17-06)

Policy Amount:
Premium:

Amount to be Determined
Amount to be Determined

Proposed Insured: **Thompson Park, LLC**

3. The estate or interest in the land described or referred to in this Commitment is **Fee Simple**.

4. The Title is, at the Commitment Date, vested in:

Thompson Park, LLC

5. The land referred to in this Commitment is described as follows:

FOR LEGAL DESCRIPTION SEE SCHEDULE A CONTINUED ON NEXT PAGE

Countersigned

The Title Company of the Rockies

By: _____

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SCHEDULE A (continued)

LEGAL DESCRIPTION

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

Parcels 2, 3 and 4,
THOMPSON PARK SUBDIVISION MASTER PLAT, according to the Plat thereof filed May 19, 2015 as
[Reception No. 862909](#).

Upon compliance with Requirement No. 10, the Legal Description will read as follows:

Lot____,
_____, according to the Plat thereof filed _____, 2019 at Reception No. _____.

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COMMITMENT FOR TITLE INSURANCE

Issued by

Westcor Land Title Insurance Company

SCHEDULE B, PART I Requirements

The following are the requirements to be complied with prior to the issuance of said policy or policies. Any other instrument recorded subsequent to the effective date hereof may appear as an exception under Schedule B of the policy to be issued. Unless otherwise noted, all documents must be recorded in the office of the clerk and recorded of the county in which said property is located.

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Evidence satisfactory to the Company or its duly authorized agent that all dues and/or assessments levied by the Homeowners Association have been paid through the date of closing.
6. Partial Release by the Public Trustee of Garfield County releasing subject property from the lien of the Deed of Trust from Thompson Park LLC for the use of National Exchange Bank and Trust, to secure \$2,500,000.00, dated September 26, 2018, and recorded September 27, 2018 at Reception No. 912219.
7. NOTE: The above Deed of Trust secures a revolving line of credit.
8. Partial Release by the Public Trustee of Garfield County releasing subject property from the lien of the Deed of Trust from Thompson Park LLC for the use of National exchange Bank and Trust, to secure \$6,500,000.00, dated September 26, 2018, and recorded September 27, 2018 at Reception No. 912263.

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NOTE: Disburser's Notice by National Exchange Bank and Trust, recorded October 17, 2018 at Reception No. 913080.

NOTE: The above Deed of Trust secures a revolving line of credit.

9. Termination Statement for Financing Statement from Thompson Park LLC, debtor(s), to National Exchange Bank and Trust, secured party, recorded September 27, 2018 at Reception No. 912264, giving notice of a security interest under the Uniform Commercial Code.
10. Record Plat of _____.

THE COMPANY RESERVES THE RIGHT TO CONDUCT AN ADDITIONAL SEARCH OF THE RECORDS IN THE OFFICE OF THE CLERK AND RECORDER FOR GARFIELD COUNTY, COLORADO FOR JUDGMENT LIENS, TAX LIENS OR OTHER SIMILAR OR DISSIMILAR INVOLUNTARY MATTERS AFFECTING THE GRANTEE OR GRANTEES, AND TO MAKE SUCH ADDITIONAL REQUIREMENTS AS IT DEEMS NECESSARY, AFTER THE IDENTITY OF THE GRANTEE OR GRANTEES HAS BEEN DISCLOSED TO THE COMPANY.

NOTE: THIS COMMITMENT IS ISSUED UPON THE EXPRESS AGREEMENT AND UNDERSTANDING THAT THE APPLICABLE PREMIUMS, CHARGES AND FEES SHALL BE PAID BY THE APPLICANT IF THE APPLICANT AND/OR ITS DESIGNEE OR NOMINEE CLOSES THE TRANSACTION CONTEMPLATED BY OR OTHERWISE RELIES UPON THE COMMITMENT, ALL IN ACCORDANCE WITH THE RULES AND SCHEDULES OF RATES ON FILE WITH THE COLORADO DEPARTMENT OF INSURANCE.

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SCHEDULE B, PART II Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

Any loss or damage, including attorney fees, by reason of the matters shown below:

1. Any facts, right, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession thereof.
2. Easements or claims of easements, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the Public Records or attaching subsequent to the effective date hereof, but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as reserved in United States Patent recorded February 7, 1894 in [Book 12 at Page 295](#), October 10, 1894 in [Book 12 at Page 334](#), October 26, 1897 in [Book 12 at Page 465](#) and November 10, 1947 in [Book 232 at Page 435](#).

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8. Right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent recorded February 7, 1894 in [Book 12 at Page 295](#), October 10, 1894 in [Book 12 at Page 334](#), October 26, 1897 in [Book 12 at Page 465](#) and November 10, 1947 in [Book 232 at Page 435](#).
9. Matters disclosed in Deed recorded March 20, 1893 in [Book 32 at Page 389](#).
10. Public Service Company of Colorado Deed of Easement recorded March 27, 1997 at [Reception No. 506297](#).

NOTE: Quitclaim Deed recorded September 13, 2016 at [reception No. 882286](#).

11. Terms, agreements, provisions, conditions and obligations as contained in Resolution No. 2008-30 recorded February 21, 2008 as [Reception No. 743343](#).
12. Easements, rights of way and all other matters as shown on the Plat of TLCCO Property Exemption Plat, filed April 8, 2008 as [Reception No. 746205](#).

NOTE: Partial Release of Easement recorded August 25, 2016 at [Reception No. 881509](#).

13. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 3, Series of 2012, recorded March 16, 2012 as [Reception No. 816052](#).
14. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 4, Series of 2012, recorded March 16, 2012 as [Reception No. 816054](#).
15. Annexation and Development Agreement, recorded March 16, 2012 as [Reception No. 816055](#), Second Amendment recorded March 28, 2014 as [Reception No. 847651](#), Third Amendment recorded July 9, 2014 as [Reception No. 851166](#), Second Amendment recorded August 15, 2014 as [Reception No. 852656](#), First Amendment recorded October 6, 2014 as [Reception No. 854368](#), Fourth Amendment recorded February 25, 2015 as [Reception No. 859604](#), Fifth Amendment recorded February 25, 2015 as [Reception No. 859605](#), and Sixth Amendment recorded May 19, 2015 at [Reception No. 862912](#), seventh Amendment recorded July 28, 2016 at [Reception No. 880318](#), rerecorded August 16, 2016 at [Reception No. 881125](#) and eighth amendment recorded November 14, 2018 at [Reception No. 914138](#).

NOTE: Acknowledgement and Consent to Assignment recorded September 27, 2018 at [Reception No. 912248](#).

16. All Matters disclosed on the Thompson Park Subdivision Master Plat recorded May 19, 2015 as [Reception No. 861840](#).

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17. Easements, rights of way and all other matters as shown on the Plat of Thompson Park Subdivision Master Plat, filed May 19, 2015 at [Reception No. 862909](#).
18. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 9, Series of 2015 recorded May 19, 2015 at [Reception No. 862908](#).
19. Terms, agreements, provisions, conditions and obligations as contained in Master Subdivision Improvements Agreement recorded May 19, 2015 at [Reception No. 862913](#), thereafter first amendment recorded January 6, 2016 at [Reception No. 872184](#).
20. Easement and right of way for utility line purposes, as granted by Cerise Park, LLC to Public Service Company of Colorado, by instrument recorded September 13, 2016 at [Reception No. 882287](#), said easement being more particularly described therein.
21. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 11, Series of 2018 recorded November 14, 2018 at [Reception No. 914139](#).
22. Easements, rights of way and all other matters as shown on the Plat of _____, filed _____, 2019 at Reception No. _____.

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DISCLOSURE STATEMENTS

Note 1: Colorado Division of Insurance Regulations 3-5-1, Paragraph C of Article VII, requires that "Every Title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the Title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed." (Gap Protection)

Note 2: Exception No. 4 of Schedule B, Section 2 of this Commitment may be deleted from the Owner's Policy to be issued hereunder upon compliance with the following conditions:

1. The Land described in Schedule A of this commitment must be a single-family residence, which includes a condominium or townhouse unit.
2. No labor or materials may have been furnished by mechanics or materialmen for purpose of construction on the Land described in Schedule A of this Commitment within the past 13 months.
3. The Company must receive an appropriate affidavit indemnifying the Company against unfiled mechanic's and materialmen's liens.
4. Any deviation from conditions A through C above is subject to such additional requirements or Information as the Company may deem necessary, or, at its option, the Company may refuse to delete the exception.
5. Payment of the premium for said coverage.

Note 3: The following disclosures are hereby made pursuant to §10-11-122, C.R.S.:

- (i) The subject real property may be located in a special taxing district;
- (ii) A certificate of taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent; and
- (iii) Information regarding special districts and the boundaries of such districts may be obtained from the County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note 4: If the sales price of the subject property exceeds \$100,000.00, the seller shall be required to comply with the disclosure or withholding provisions of C.R.S. §39-22-604.5 (Non-resident withholding).

Note 5: Pursuant to C.R.S. §10-11-123 Notice is hereby given:

- (a) If there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate then there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property, and
- (b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note 6: Effective September 1, 1997, C.R.S. §30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one-half inch the clerk and recorder may refuse to record or file any document that does not conform.

Note 7: Our Privacy Policy:

We will not reveal nonpublic personal customer information to any external non-affiliated organization unless we have been authorized by the customer, or are required by law.

Note 8: Records:

Regulation 3-5-1 Section 7 (N) provides that each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law.

Note 9: Pursuant Regulation 3-5-1 Section 9 (F) notice is hereby given that "A title entity shall not earn interest on fiduciary funds unless disclosure is made to all necessary parties to a transaction that interest is or has been earned. Said disclosure must offer the opportunity to receive payment of any interest earned on such funds beyond any administrative fees as may be on file with the division. Said disclosure must be clear and conspicuous, and may be made at any time up to and including closing."

Be advised that the closing agent will or could charge an Administrative Fee for processing such an additional services request and any resulting payee will also be subjected to a W-9 or other required tax documentation for such

purpose(s).

Be further advised that, for many transactions, the imposed Administrative Fee associated with such an additional service may exceed any such interest earned.

Therefore, you may have the right to some of the interest earned over and above the Administrative Fee, if applicable (e.g., any money over any administrative fees involved in figuring the amounts earned).

Note 10: Pursuant to Regulation 3-5-1 Section 9 (G) notice is hereby given that “Until a title entity receives written instructions pertaining to the holding of fiduciary funds, in a form agreeable to the title entity, it shall comply with the following:

1. The title entity shall deposit funds into an escrow, trust, or other fiduciary account and hold them in a fiduciary capacity.
2. The title entity shall use any funds designated as “earnest money” for the consummation of the transaction as evidenced by the contract to buy and sell real estate applicable to said transaction, except as otherwise provided in this section. If the transaction does not close, the title entity shall:
 - (a) Release the earnest money funds as directed by written instructions signed by both the buyer and seller; or
 - (b) If acceptable written instructions are not received, uncontested funds shall be held by the title entity for 180 days from the scheduled date of closing, after which the title entity shall return said funds to the payor.
3. In the event of any controversy regarding the funds held by the title entity (notwithstanding any termination of the contract), the title entity shall not be required to take any action unless and until such controversy is resolved. At its option and discretion, the title entity may:
 - (a) Await any proceeding; or
 - (b) Interplead all parties and deposit such funds into a court of competent jurisdiction, and recover court costs and reasonable attorney and legal fees; or
 - (c) Deliver written notice to the buyer and seller that unless the title entity receives a copy of a summons and complaint or claim (between buyer and seller), containing the case number of the lawsuit or lawsuits, within 120 days of the title entity's written notice delivered to the parties, title entity shall return the funds to the depositing party.”

Title Company of the Rockies

Disclosures

All documents received for recording or filing in the Clerk and Recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The Clerk and Recorder will refuse to record or file any document that does not conform to the requirements of this section. Pursuant to C.R.S. 30-10-406(3)(a).

The company will not issue its policy or policies of title insurance contemplated by this commitment until it has been provided a Certificate of Taxes due or other equivalent documentation from the County Treasurer or the County Treasurer's authorized agent: or until the Proposed Insured has notified or instructed the company in writing to the contrary. Pursuant to C.R.S. 10-11-122.

No person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been received and are available for immediate withdrawals as a matter of right. Pursuant to C.R.S. 38-35-125(2).

The Company hereby notifies the proposed buyer in the current transaction that there may be recorded evidence that the mineral estate, or portion thereof, has been severed, leased, or otherwise conveyed from the surface estate. If so, there is a substantial likelihood that a third party holds some or all interest in the oil, gas, other minerals, or geothermal energy in the subject property. Such mineral estate may include the right to enter and use the property without the surface owner's permission. Pursuant to C.R.S. 10-11-123.

If this transaction includes a sale of property and the sales price exceeds \$100,000.00, the seller must comply with the disclosure/withholding requirements of said section. (Nonresident withholding) Pursuant to C.R.S. 39-22-604.5.

Notice is hereby given that: The subject property may be located in a special taxing district. A Certificate of Taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent. Information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor. Pursuant to C.R.S. 10-11-122.

Notice is hereby given that: Pursuant to Colorado Division of Insurance Regulation 8-1-2;

"Gap Protection" -When this Company conducts the closing and is responsible for recording or filing the legal documents resulting from the transaction, the Company shall be responsible for all matters which appear on the record prior to such time or recording or filing; and

"Mechanic's Lien Protection" - If you are the buyer of a single family residence, you may request mechanic's lien coverage to be issued on your policy of Insurance. If the property being purchased has not been the subject of construction, improvements or repairs in the last six months prior to the date of this commitment, the requirements will be payment of the appropriate premium and the completion of an Affidavit and Indemnity by the seller. If the property being purchased was constructed, improved or repaired within six months prior to the date of this commitment the requirements may involve disclosure of certain financial information, payment of premiums, and indemnity, among others. The general requirements stated above are subject to revision and approval by the Company. Pursuant to C.R.S. 10-11-122.

Notice is hereby given that an ALTA Closing Protection Letter is available, upon request, to certain parties to the transaction as noted in the title commitment. Pursuant to Colorado Division of Insurance Regulation 8-1.

Nothing herein contained will be deemed to obligate the Company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.

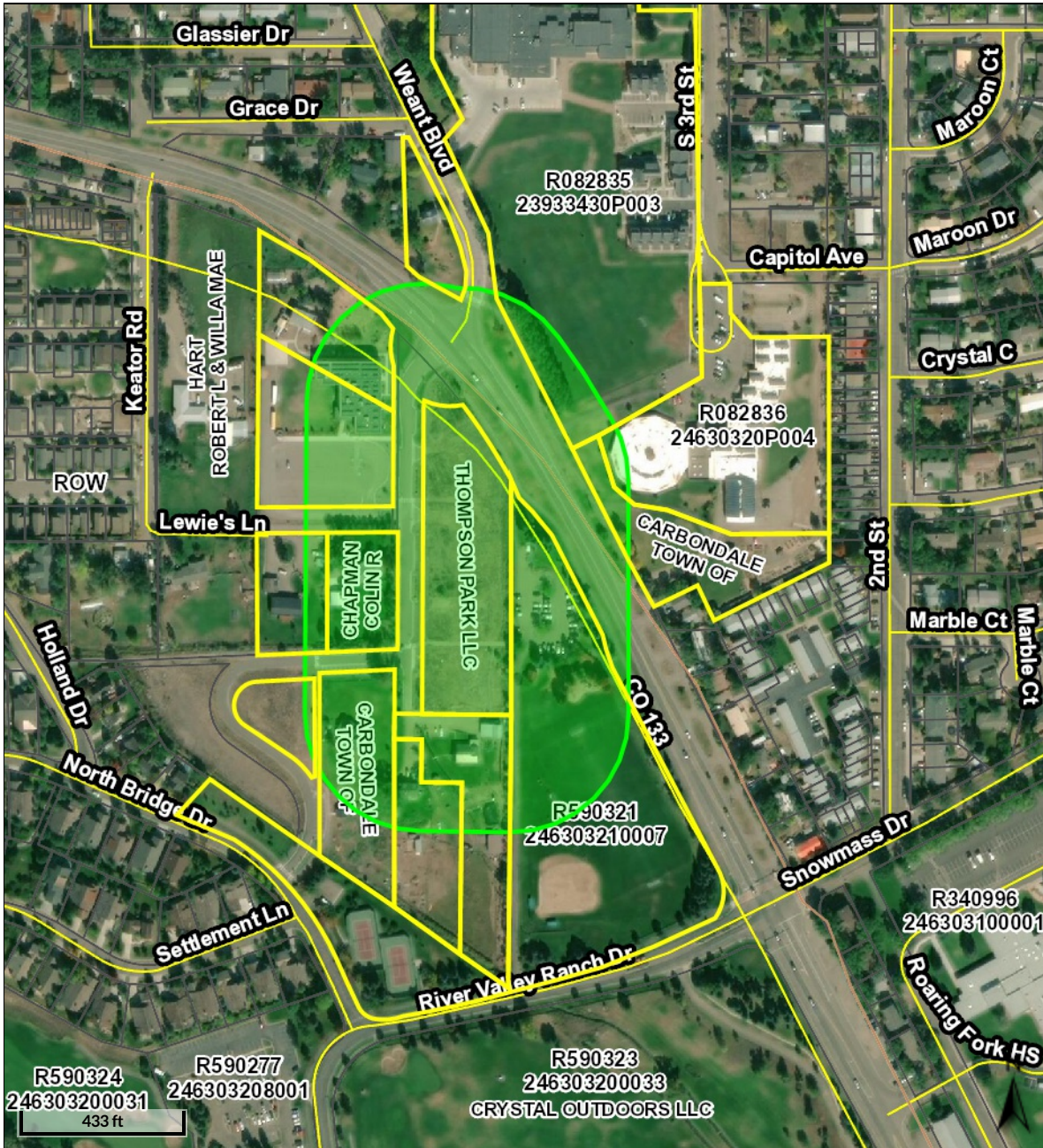
Thompson Park Subdivision, Parcel 2
Adjacent Property Owners and Owners within 300 Feet

Parcel Id	Owner Name	Owner Mailing Address	City, State, Zip
R082837	CARBONDALE, TOWN OF	511 COLORADO AVENUE	CARBONDALE CO 81623
R082836	CARBONDALE, TOWN OF	511 COLORADO AVENUE	CARBONDALE CO 81623
R042743	CARBONDALE, TOWN OF	511 COLORADO AVENUE	CARBONDALE CO 81623-2104
R083574	CARBONDALE, TOWN OF	511 COLORADO AVENUE	CARBONDALE CO 81623
R590321	CARBONDALE, TOWN OF	511 COLORADO AVENUE	CARBONDALE CO 81623-2104
R090001	CHAPMAN, COLIN R	1537 HIGHWAY 133	CARBONDALE CO 81623
R090015	MARK ROSS MONTESSORI FOUNDATION	109 LEWIES LANE	CARBONDALE CO 81623
R090061	MARK ROSS MONTESSORI FOUNDATION	109 LEWIES LANE	CARBONDALE CO 81623
R082835	ROARING FORK SCHOOL DISTRICT, NO. RE-1	1405 GRAND AVE	GLENWOOD SPRINGS CO 81601
R083575	THOMPSON PARK LLC	833 E MICHIGAN STREET SUITE 1500	MILWAUKEE WI 53202
R083576	THOMPSON PARK LLC	833 E MICHIGAN STREET SUITE 1500	MILWAUKEE WI 53202
R083345	THOMPSON, LEWIS R & JACQUELYN	PO BOX 24	CARBONDALE CO 81623
R083344	THOMPSON, LEWIS R & JACQUELYN	PO BOX 24	CARBONDALE CO 81623
R090027	VAUGHAN, MATTHEW S & KATHLEEN M	1535 HIGHWAY 133	CARBONDALE CO 81623



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Overview



Legend

- Parcels
- Roads
- Highways
 - Limited Access
 - Highway
 - Major Road
 - Local Road
 - Minor Road
 - Other Road
 - Ramp
 - Ferry
 - Pedestrian Way
- Parcel/Account Numbers
- Owner Name
- Lakes & Rivers

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**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
THOMPSON PARK SUBDIVISION**

This Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision (this "Declaration") is made this ____ day of _____, 2019, by Thompson Park, LLC, a Colorado limited liability company ("Declarant").

RECITALS

- A. Capitalized terms used in this Declaration are defined in Section 1.1.
- B. Declarant owns the Property, which is real property located in the Town of Carbondale, County of Garfield, State of Colorado.
- C. By recording this Declaration, Declarant By the filing of this Declaration, Declarant serves notice that upon the further filing of one or more notices of applicability pursuant to the requirements of Section 16.02 hereof, Portions of the Property identified in such notice or notices will be subjected to the terms and provisions of this Declaration. Once such notices of applicability have been recorded, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Declaration.
- D. The law which governs the type of association described herein is the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, as the same may be amended from time to time (the "Act"). The development contemplated herein is a "common interest community" (as such term is defined in the Act). The type of common interest community is a "planned community" (as such term is defined in the Act) because portions of the real estate are designated for ownership by an owners' association. In the event of any conflict or inconsistency between the provisions of the Act and this Declaration, the provisions of the Act shall govern.

DECLARATION

NOW, THEREFORE, it is hereby declared that those portions of the Property, as and when subjected to this Declaration pursuant to Section 7.4, below, shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions, easements, and restrictions and the Act, as may be amended from time to time. With respect to each portion of the Property subjected hereto as provided herein, this Declaration shall: (i) run with the subjected portion(s) of the Property at law; (ii) bind all Persons having or acquiring interest in the subjected portion(s) of the Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of the subjected portion(s)

of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by each Owner and his or her heirs, successors in interest and assigns; and the Association and its successor in interest.

Article 1: Definitions and Exhibits

Section 1.1 **Definitions.** The following initially capitalized terms when used in this Declaration shall have the meanings specified below:

“Act” means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes §§ 38-33.3-101, *et seq.*, as amended from time to time. In the event the Act is repealed, the terms of the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

“Allocation Percentage” means the share of any Assessments to be allocated to each Lot or Unit, as amended from time to time. The formula for determining the Allocation Percentage is set forth in Section 6.9.

“Declaration” means this Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision as it is amended from time to time.

“Annual Budget” is defined in Section 6.1.

“Articles” means the Articles of Incorporation of the Association that have been filed in the office of the Secretary of State of Colorado, as amended from time to time.

“Assessments” mean Common Assessments, Special Assessments, and Specific Assessments.

“Association” means Thompson Park Homeowners Association, Inc., a Colorado nonprofit corporation, presently formed.

“Board or Board of Directors” means the board of directors of the Association.

“Bylaws” means the duly adopted Bylaws of the Association, as amended from time to time.

“Common Assessments” is defined in Section 6.3.

“Common Elements” means any real property or easement interest in real property together with all Improvements thereon and personal property owned or held by the Association for the primary benefit of all or some of the Owners and the Property as a whole or a portion thereof, and this term includes both General Common Elements and Limited Common Elements.

“Common Expenses” means, except for those costs and expenses expressly excluded below, all costs and expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws including, without limitation: all costs of insuring, operating, managing, administering, securing, protecting, cleaning, maintaining, repairing, renewing, replacing or restoring (to the extent not covered by insurance or condemnation proceeds) the Common Elements and public rights-of-way and open ditch channels within the Property; taxes on any property owned by the Association, if payable by the Association; and funding of working capital and reasonable reserves for such costs and expenses.

“Declarant” means Thompson Park, LLC, and its successors and assigns. No party other than Thompson Park, LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the Office of the Clerk and Recorder of Garfield County, Colorado, a written assignment from Thompson Park, LLC of all or a portion thereof.

“Declarant Control Period” means that period of time during which Declarant controls the operation and management of the Association, including the right to appoint and remove all members of the Board and the officers of the Association. The duration of the Declarant Control Period is from the date this Declaration is recorded until the earlier to occur of: (i) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; (ii) two (2) years after any right to add portions of the Property was last exercised Declarant; or (iii) one-hundred and twenty (120) days after the conveyance of seventy-five percent (75%) of all Lots that may be created out of the Property have been conveyed to Owners other than the Declarant.

“Delinquency Costs” is defined in Section 6.10.

“Deed Restriction Agreement” means the Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy, and Resale of Certain Lots within the Thompson Park Subdivision, Town Of Carbondale, Garfield County, Colorado (**“Deed Restriction Agreement”**). Deed Restriction Agreements will be recorded against Units as phases of the Property are platted and the same are added to the Development as provided in Section 7.4.

“Deed Restricted Unit” means those Units within the Development that are subject to a Deed Restriction Agreement. Units within the Development may become Deed Restricted Units as additional phases are platted.

“Design Guidelines” means the detailed design guidelines required by Section 10 of the Development Plan and recorded as Reception No. _____, as may be amended from time to time.

“Development” means the portion of the Property described in Exhibit A that has been made subject to this Declaration through the filing of a Notice of Applicability.

“Development Plan” means the Thompson Park Development Plan approved by the Town of Carbondale and attached as Exhibit A to the Seventh Amendment to the Annexation and Development Agreement Relating to the Thompson Park Property, Town of Carbondale, dated June 22, 2016, recorded as Reception No. 880318, and rerecorded at Reception No. 881125, as may be amended with approval of the Town of Carbondale.

“Director” means a member of the Board.

“Dwelling” means a Unit or other Improvement or portion thereof containing sleeping, bath, and kitchen facilities that is designed and used for occupancy as a dwelling on a Lot. A residence may be either a detached single-family dwelling or an individual residential unit within a multi-family building, which building may span several Lots and include Party Walls.

“First Mortgagee” means the legal holder of a Mortgage with first priority over other Mortgages.

“Fiscal Year” means the fiscal year of the Association set from time to time by the Board pursuant to the Bylaws.

“Free Market Lot” means any Lot that is not a Deed Restricted Unit.

“Future Development Parcels” means Parcels 3 and 4 as shown on the Master Plat and any other parcel shown on any Plat and designated thereon as “RESERVED FOR FUTURE DEVELOPMENT.”

“General Common Element” means a Common Element owned or held by the Association for the benefit of all of the Owners and the Property as a whole.

“Guest” means any Person rightfully present on or in rightful possession of any portion of the Property, including, without limitation, (a) a tenant of an Owner or of the Association or (b) an agent, employee, contractor, licensee, invitee, shareholder, partner, Owner or guest of an Owner, the Association or a tenant of either of them.

“Improvement(s)” means all structures, facilities, installations, improvements to property, changes in property, and appurtenances thereto, of every type, kind or nature, including, without limitation, buildings, road, driveways, walkways, fences, walls, patios, decks, gardens, landscaping, re-vegetation, and removal of vegetation, changes in grade, excavations, berms, ditches, culverts, poles, outdoor lighting, antennas and signs.

“Law” means all laws, statutes, ordinances, resolutions, orders, codes, rules, regulations, judgments, decrees and other requirements (including requirements under permits, licenses,

consents and approvals) of any federal, state, county, city, town or other governmental authority having jurisdiction over the Property or any activity on the Property.

“Lessee” means any Person or Persons who is the lessee of a Lot under a lease.

“Limited Common Element” means a Common Element owned and maintained by the Association for the benefit of one or more Lots but fewer than all of the Lots, including but not limited to individual yards or driveways. The Plat shall identify the specific Lot or Lots benefited by each Limited Common Element.

“Livestock” means animals, other than cats or dogs, customarily raised or kept on ranches or farms for profit including, without limitation, horses.

“Lot” means each of the lots or parcels shown on any Plat of the Property. All of the Lots, Units, and Future Development Parcels together with the Common Elements comprise the **“Property.”**

“Master Plat” means the Thompson Park Subdivision Master Plat recorded in the Office of the Garfield County Clerk and Recorder on May 19, 2015, as Reception No. 862909.

“Member” means a member of the Association, and **“Membership”** means the rights and obligations associated with being a Member.

“Mortgage” means any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure an evidence of debt or the performance of an obligation which is required to be released upon the payment of such debt or the performance of such obligation.

“Notice of Applicability” means the notice recorded in the Records subjecting a portion of the Property to this Declaration in accordance with Section 7.4 hereof.

“Notice to Comply” is defined in Section 7.12.

“Owner” means a Person or Persons who is the owner of fee simple title of Record to a Lot or Unit from time to time, but excluding the Association. The term “Owner” shall not include (a) a contract purchaser except a contract vendee under an installment land sales contract; (b) the vendor under an installment sales contract; or (c) a Person holding an interest in a Lot or Unit merely as security for the performance of an obligation, unless and until such a security holder becomes an owner in fee simple of such Lot or Unit.

“Party Wall” means any common wall adjoining two or more Dwellings along the boundary between Lots or Units and shall be deemed to include the roofing underlying the portion of the roof over, and the utility lines within, a common wall.

“Permitted” means allowed pursuant to or not inconsistent with the provisions of this Declaration, the Bylaws, the Rules (if any) and in compliance with Law.

“Person” means any individual, corporation, partnership (general or limited, with or without limited liability), limited liability company, estate, trust, business trust, association or any other legal entity.

“Plat” means a subdivision plat or condominium map or plat that is recorded in the Records in order to subdivide the Property into Lots and/or Units. Up to five subdivision Plats, not including the Master Plat, may be recorded, and each such Plat may be amended or supplemented from time to time as necessary.

“Property” means the real property legally described on Exhibit A along with any and all Improvements now in place or hereafter constructed thereon. Such real property or portions thereof may be made subject to this Declaration, from time to time, by the filing of one or more Notices of Applicability.

“Record(s)” means the real property records of Garfield County, Colorado.

“Reserve Fund” is defined in Section 6.1.

“Restrictions” or **“Governing Documents”** means (i) this Declaration, as amended from time to time, (ii) the Articles and Bylaws in effect from time to time, (iii) the Rules (if any) in effect from time to time; (iv) any Policies and Procedures; (v) the Development Plan; and (vi) the Design Guidelines in effect from time to time.

“RETA” means the real estate transfer assessment due upon sale of the Lots or Units pursuant to the document recorded in the Records on July 10, 2019 as Reception No. 922724 (the **“RETA Covenant”**) or as the RETA Covenant may be amended in the future if authorized by the Town of Carbondale.

“Rules” or **“Rule”** means the rules and regulations adopted by the Board pursuant to Section 5.6 as such rules and regulations are adopted and amended from time to time.

“Special Assessments” is defined in Section 6.4.

“Specific Assessments” is defined in Section 6.5.

“Thompson Park” means the planned community located on the Property that may be subject to this Declaration upon the recordation of a Notice of Applicability.

“Unit” means a condominium unit within an Improvement constructed on a Lot that is deemed a separate estate in an individual air space unit, the horizontal and vertical boundaries of which are created and defined by a Plat.

Section 1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Declaration.

- Exhibit A - Legal Description of the Property
- Exhibit B - Schedule of Percentages upon development and annexation of entire Property

Article 2: The Community.

Section 2.1 Purposes. These covenants and restrictions are made for the purposes of creating and keeping the Property insofar as possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance; guarding against fires and unnecessary interference with the natural beauty of the Property, all in accordance with the Act.

Section 2.2 Name. The name of the Association is Thompson Park Homeowners Association, Inc.

Section 2.3 Election of CCIOA. The Declarant and the Association have elected to subject Thompson Park to the entire Act and hereby subject the Property to all of the provisions contained in the Act notwithstanding the number of Lots created by the initial Plat.

Section 2.4 Legal Description. Any contract of sale, deed lease, deed of trust, mortgage, will or other instrument affecting a Lot shall legally describe it substantially as follows:

“Lot ____, [Unit ____ if applicable], THOMPSON PARK SUBDIVISION, PHASE ____, according to the _____ Plat recorded _____, 20__ at Reception No. _____, in the real estate records of Garfield County, State of Colorado and according to the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision recorded _____, 2019, at Reception No. _____ of the real estate records of Garfield County, State of Colorado.”

Article 3: Easements.

Section 3.1 Easements Described on Plat and in Declaration. All of the Property is subject to the easements shown, created, served, or granted on the Master Plat, any Plat, and in this Declaration.

Section 3.2 Utility Easements. There is hereby reserved to the Association the following rights: (i) grant of nonexclusive easements for underground utilities, including, without limitation, for the installation, relocation, operation, maintenance, repair and

replacement of lines, pumps, pipes, transformers, tanks, wires, conduits, culverts, pedestals and other facilities or systems and for ingress and egress to and from the same over and across the Property, and (ii) without extinguishing the aforementioned general easement, from time to time to substitute one or more specific easements for the use by utility companies or others by recording an instrument in the real estate records of Garfield County. Where necessary, the Board shall have the right, without obtaining consent of any Owner or Lienholder, to amend the Plat to reflect any relocations of existing easements on the Plat or the granting of new easements for any of the purposes permitted hereunder.

Section 3.3 Common Elements. All Improvements constructed within the areas affected by the Easements, excepting those Improvements constructed and maintained by Owners, are Common Elements.

Section 3.4 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of any easement area or any other portion of the Property to or for the general public for any public purpose whatsoever.

Section 3.5. Easements for Encroachments. If any portion of the Common Elements encroaches upon any Lot or Unit, or if any Lot or Unit encroaches upon any other Lot or Unit or upon any portion of the Common Elements, as a result of the construction of any Improvement or otherwise, or if any such encroachment shall occur hereinafter as a result of settling or shifting of any Improvement, a valid easement shall exist for the encroachment and for the maintenance of the same so long as such Improvement stands. In the event any Improvement, Lot, Unit, adjoining Lot or Unit, or adjoining Common Element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Lot or Unit, or of any Lot or Unit upon any other Lot, Unit, or portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such Improvement shall stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or upon title to the Lots or Units so as to impair merchantability of title. Any such easement shall burden the Lot, Unit, or Common Elements encroached upon and benefit the Lot, Unit, or Common Elements on which the encroaching Improvement is located or which is benefited by the encroaching Improvement. Notwithstanding the foregoing, in no event shall an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lot(s) or Unit(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of the Owner claiming the benefit of such easement.

Section 3.6 Rules. The Board may adopt and enforce Rules pursuant to this Declaration governing the use of all easements created under this Declaration for the benefit of the Owners and their Guests.

Section 3.7 Association Easements Over the Lots. There is hereby created and established for the benefit of the Association easements over, across, within and through the Lots and Units as may be necessary for the Association to perform the duties and functions it is obligated or permitted to perform under this Declaration.

Section 3.8 Roadways and Trails. The Plat(s) may include easements for private roadways, alleys, paths, or trails as Common Elements to be owned, maintained, and insured by the Association, and each Owner shall have a right of ingress and egress over and across any such roadways, alleys, paths, or trails; provided, however, that such roadways, alleys, paths, or trails may be designated on a Plat as being publically accessible. If any roadways, alleys, paths, or trails are designated on a Plat as Limited Common Elements, then easement rights of Owners shall be limited to those Owners of Lots or Units specifically benefited by such Limited Common Elements.

Section 3.9. Party Walls.

3.9.1 The cost of reasonable repair and maintenance of a Party Wall shall be a joint expense of the Owners of the Dwellings sharing such Party Wall, and each such Owner shall have a perpetual easement in and to that part of the Property on which the Party Wall is located, regardless of the precise location of the Lot or Unit boundary with respect to such Party Wall, for Party Wall purposes, including maintenance, repair, and inspection. No Owner shall alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when initially constructed.

3.9.2 In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, then the Owners of the Dwellings sharing such Party Wall shall bear equally the expense to repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient, and such Owners, their successors and assigns shall the right to the full use of said wall so repaired and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of said wall, such responsible party shall bear the cost of repair and reconstruction to the extent such Owner's negligence or misconduct caused such damage.

3.9.3 The Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring sewage, water, utilities, and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient, and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural support or the sound transmission coefficient of the Party Wall.

3.9.4 Declarant hereby grants to the Association and its representatives and agents a nonexclusive easement to enter upon and use the Property on which a Party Wall is

located as may be necessary or appropriate to perform the duties and functions that the Association may be obligated or permitted to perform under this Declaration.

3.9.5 Nothing in this Section 3.9 shall be construed as a waiver of any applicable insurance coverage for damage to any Party Wall.

Section 3.10 Open Space Easements. The Open Space Easements identified on any Plat shall be considered Common Elements to be owned, maintained, and insured by the Association. Each Owner shall be entitled to enter upon and use such Open Space Easements, and the Association shall have the right to adopt Rules regarding use of the Open Space Easements.

Article 4: Covenants, Conditions and Restrictions.

Section 4.1 Generally. Except as otherwise expressly provided in this Declaration, each Lot and Unit shall be owned, used, and conveyed subject to the covenants, conditions and restrictions of this Article 4. This Section 4.1 is not intended and shall not be construed to limit the effect of any provision contained in any other Article of this Declaration.

Section 4.2 Compliance with Law. Nothing shall be done or kept on any Lot in violation of Law, and each Lot shall be used, kept and maintained in compliance with Law.

Section 4.3 Permitted Use of the Lots and Units Generally. Except to the extent expressly permitted by this Declaration, the Lots shall be improved with and used solely for Dwellings. No commercial activities other than home occupations shall be permitted on the Lots or within Units. Rental of a Dwelling for any period shall not be considered a commercial use. Lot and Unit Owners shall be entitled to the quiet use and enjoyment of their Lot and Unit and shall not interfere with the right of other Owners to the same.

Section 4.4 Design Review. Every Improvement on any Lot shall comply with the Design Guidelines to the extent applicable to such Lot. In the event of any conflict between this Declaration and the Design Guidelines, the Design Guidelines shall control. The Architectural Control Committee ("Committee" or "ACC") required by Section 10 of the Development Plan shall administer and implement the Design Guidelines. Prior to construction of any Improvement, except for landscaping or non-structural Improvements located entirely within a structure or within any private courtyard on a Lot, an Owner shall apply to the Committee for approval. The Committee, upon prior approval from the Board, shall have the authority to adopt Rules concerning the submittal and review process which may include (among other things) fees, a requirement for plans stamped by a licensed architect or engineer, and a requirement for the applicant to reimburse the Association for the costs of any architect or other professional consultant retained by the Committee to review an application. The Town of Carbondale shall also have the right, but not the obligation, to enforce the Design Guidelines if the Declarant or Committee fails to do so. The design review process shall not apply to construction or

landscaping by Declarant. The initial Design Guidelines are recorded at Reception No. _____ and incorporated into this Declaration by reference.

Section 4.4.1 Architectural Control Committee. The Committee shall consist of three members. The Declarant shall appoint the members of the initial Committee and control appointments to the Committee until such time as all seven single-family dwellings approved for Parcel 4 of the Property have been constructed. Thereafter, the Board shall appoint additional and replacement members of the Committee. Committee members may but need not be Members of the Association. At least one member of the Committee shall be an architect, engineer, or contractor or have experience in one of those fields. Each Committee member shall serve for a two-year term, except that one member of the first Committee appointed by the Declarant shall serve a one-year term then two-year terms thereafter. The Committee may adopt additional rules and regulations regarding the number and terms of Committee members and meeting and application procedures, provided that such additional rules are ratified by the Board.

Section 4.4.2 Amendments. The Design Guidelines may be amended by the Committee from time to time. An amendment to the Design Guidelines shall not constitute an amendment to this Declaration; such amendment is therefore not subject to Section 9.2 of this Declaration.

Section 4.4.3 Non-Liability for Design Review. The Committee will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, Board, Association, Declarant, nor any individual member thereof will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent that the Committee, Board, Association, Declarant, or any individual member thereof acted with malice or performed any intentional wrongful acts. Approval by the Committee does not necessarily assure approval by the appropriate governmental body or the Town of Carbondale. Notwithstanding that the Committee has approved plans and specifications, neither the Committee, Board, Association, Declarant, nor any of members thereof, will be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of, or the construction of, any Improvement(s). Neither the Committee, Board, Association, Declarant, nor any member, agent, employee, or consultant thereof, will be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, the Design Guidelines, the Development Plan, or the Rules, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Association will defend and indemnify the Committee, Board, Declarant, and individual members thereof in any suit or proceeding which may arise by reason of the Committee's decisions; provided, however, that the Association will not be obligated to indemnify the Committee, Board,

Declarant, or members of either to the extent that any such person is adjudged to be liable for malice or intentional wrongful acts in the performance of his or her design review duties, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 4.5 Domestic Pets. Owners are allowed to have and keep household pets, such as dogs and cats, and the same are allowed on the Property. All pets must be under the Owner's physical control at all times, including the use of leashes when on Common Elements. Owners shall be responsible for immediately cleaning up after their pets. Livestock is not permitted on the Property. The Association may adopt additional Rules regarding pets, including, but not limited to, limiting the number of pets per Owner.

Section 4.7 Utility Facilities. Only utility facilities for utility services approved by the Board and of the type necessary and customary for the uses permitted on the Lots shall be constructed or installed on any Lot or Unit. All utility facilities on each Lot shall be placed underground, except such utility facilities as are required by their function, by the providers of the Utilities Services or by Law to be above ground. To the extent not underground, utility facilities shall be shielded from view with natural materials and made as unobtrusive as is reasonably possible. Utility facilities should be installed in a manner that minimizes disturbance of the natural environment.

Section 4.8 Fences. Except for any Limited Common Elements specifically designated as fenced areas on the Plat, fences are not permitted to be constructed on the Lots or Common Elements without prior written approval by the Architectural Control Committee and in accordance with the Design Guidelines, which approval may be withheld in the Committee's sole discretion. All approved fences shall be constructed in compliance with the architectural site plans recorded with the Plat(s). Chain link fences are not allowed under any circumstances.

Section 4.9 Temporary Buildings. No boat, mobile home, tent, trailer or modular building or other temporary building shall be permitted on any Lot, except for any builder's construction trailer or similar structure approved pursuant to Section 4.12, below, which shall be removed promptly upon completion of the subject Improvement on the Lot.

Section 4.10 Repair of Improvements. No Improvement on any Lot that has been damaged or partially or totally destroyed by fire, earthquake, or other cause shall be allowed to remain in such state for more than six months following the date of damage or destruction, unless such damage is non-structural and not visible from the exterior of a building. Upon the occurrence of any such damage or destruction, to the extent it may be the responsibility of the Owner of the Lot or Unit to remedy the damage or destruction, the Owner shall promptly and with reasonable diligence, after acquiring any approvals from the Board or Committee required

by this Declaration, either rebuild the Improvement or raze the Improvement and restore the land on which the Improvement was located to the condition the land was in prior to the damage or destruction.

Section 4.11 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, nothing herein shall prohibit exporting and hauling of gravel, aggregate or earth that may be excavated or generated in connection with standard practices incidental to the construction of Improvements.

Section 4.12 Exception for Construction. During the course of construction of any Improvements that is permitted on a Lot, the Board shall have the authority to grant temporary waivers to any of the restrictions of this Article 4 to the extent reasonably necessary to permit such work to be undertaken in a reasonable manner, provided that nothing is done in the course of such work that shall result in the violation of any restriction in this Article 4 upon the completion of the Improvement.

Section 4.13 Exemption for Association. The Association shall not be subject to the provisions of this Article 4.

Section 4.14 Transfer Assessment. All sales, transfers, or conveyances of any Lot or Unit shall be subject to payment of the RETA pursuant to the terms of the RETA Covenant and subject to the exceptions stated therein, which are incorporated in this Declaration by reference.

Section 4.15 Deed Restricted Housing. The Deed Restricted Units have been designated for deed-restricted affordable housing and shall be subject to additional restrictions to be included in the recorded deeds for such Units and the applicable Deed Restriction Agreement.

Section 4.16 Fireplaces. Solid fuel burning fireplaces, stoves, appliances, and other devices are prohibited. Gas-burning fireplaces, grills, and similar devices are permitted, as are charcoal-burning grills.

Section 4.17 Irrigation. **ALL LAWN AND GARDEN, COMMON SPACE, OPEN SPACE AND PARKLAND IRRIGATION USES WITHIN THOMPSON PARK SHALL BE FROM A SEPARATE RAW WATER IRRIGATION SYSTEM OR SYSTEMS THAT SHALL NOT BE CONNECTED TO THE DOMESTIC IN-HOUSE SUPPLY FOR ANY BUILDING UNIT OR DWELLING OR TO THE NON-POTABLE IRRIGATION SYSTEM THAT SERVES THE HISTORIC HOUSE PARCEL (AS SHOWN ON THE MASTER PLAT). TOTAL IRRIGATED AREAS WITHIN THOMPSON PARK, INCLUDING IRRIGATION OF THE HISTORIC HOUSE PARCEL, SHALL NOT EXCEED 4.71 ACRES, AND TOTAL RESIDENTIAL LAWN AND GARDEN IRRIGATION SHALL NOT EXCEED 2.3 ACRES. EACH LOT OR UNIT LOCATED WITHIN AREAS A, B OR C (AS SHOWN ON THE MASTER PLAT) SHALL HAVE NO MORE THAN 2500 SQUARE FEET OF IRRIGATED LAWN AND GARDEN AREA; EACH LOT OR UNIT LOCATED WITHIN**

AREAS D OR E SHALL HAVE NO MORE THAN 3500 SQUARE FEET OF IRRIGATED LAWN AND GARDEN AREA; AND EACH LOT OR UNIT WITHIN AREAS F AND G SHALL HAVE NO MORE THAN 5000 SQUARE FEET OF IRRIGATED LAWN AND GARDEN AREA. The raw water irrigation system and all parts and components thereof, including any and all pump stations, shall be owned and operated by the Association and shall be considered a General Common Element. This Section 4.17 shall not be amended without the prior written consent of the Town of Carbondale.

Section 4.18 Off-Street Parking. The Owner of a Lot or Unit containing an enclosed garage or carport or surface parking space shall be required to park the Owner's vehicle(s) in the parking spaces provided therein, and Owner shall not park the Owner's vehicle(s) on the street in front of the Lot or Unit. The Board shall have the authority to adopt additional Rules regarding parking and the enforcement thereof.

Section 4.19 Solar Devices and Design. All Dwellings located within the Property shall be designed and constructed to accommodate solar energy devices as provided for in the Design Guidelines. All provisions in this Declaration and the Design Guidelines regarding solar energy devices shall comply with applicable state statutes regarding the same, including, but not necessarily limited to, C.R.S. § 38-30-168. Any Owner desiring a solar energy device on his or her Dwelling shall be responsible for repairing any leaks or other damage caused by the solar energy device. Free-standing solar energy devices are not permitted. This Section 4.19 shall not be removed from this Declaration without approval from the Town of Carbondale.

Section 4.20 Marijuana Use. It is prohibited to smoke, sell, grow, or manufacture marijuana, cannabis, and/or products derived therefrom for the purposes of medicinal or recreational use on the Property; provided, however, that the same may be possessed, smoked, or consumed within a Dwelling.

Section 4.21 Rentals. The Owner of a Free Market Lot shall have the right to rent or lease the same upon such terms and conditions as the Owner may deem advisable unless provided otherwise in the Rules. The leasing of Deed Restricted Units shall be subject to and comply with the Town of Carbondale Community Housing Guidelines in effect from time to time. All leases of any Dwelling in the Development shall (i) be in writing; (ii) provide that the lease is subject to the terms of this Declaration; (iii) only allow the uses authorized in this Declaration; and (iv) state that failure of a lessee to comply with the terms of the Governing Documents shall be a default under the lease and be enforceable by the Association.

Section 4.22 Nuisances. No nuisances shall be allowed on the Property, nor any use or practice which is improper, offensive, unlawful, or the source of annoyance to residents or which interferes with the peaceful enjoyment of possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard to exist.

Article 5: Association

Section 5.1 Organization. The Association is a non-profit Colorado corporation created for the purpose of administering and managing certain aspects of Thompson Park pursuant to its Articles and Bylaws and any other Rules or restrictions. Neither the Articles, Bylaws, Rules, nor other restrictions promulgated by the Association shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between this Declaration and the Articles, Bylaws or other restrictions, this Declaration shall control.

Section 5.2 Ownership Generally. Every Owner shall be a Member of the Association. When an Owner consists of more than one Person, all such Persons shall, collectively, constitute one Member of the Association and all such Persons shall be jointly and severally obligated to perform the responsibilities of Owner. Membership in the Association shall automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association shall recognize a new Owner as a Member upon presentation of satisfactory evidence of Record of the sale, transfer, succession, disposition, foreclosures or other transfer of a Lot or Unit to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Lot or Unit. Any attempted prohibited transfer of a Membership shall be void and shall not be recognized by the Association.

Section 5.3 Voting Classes and Allocation of Votes. Each Member shall have voting rights in the Association. The vote of any Member owning a Deed Restricted Unit or a Free Market Lot shall amount to one (1) vote. Members' voting rights shall not be altered without prior approval from the Town of Carbondale Board of Trustees. If a Lot or Unit is owned by two or more Persons, then, pursuant to Section 5.2, such Persons shall constitute one Member, and shall share and jointly control, pursuant to the Bylaws, the voting rights allocated to such Lot or Unit.

Section 5.4 Board of Directors. The affairs of the Association shall be governed by the Board, which may, by resolution, delegate any portion of its authority to an executive committee or an officer or managing agent of the Association. Except as otherwise specifically provided by Law or in this Declaration, the Articles, or the Bylaws, the Board may exercise all rights and powers of the Association without a vote of the Members. The qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be appointed or elected and the manner in which Directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws.

Section 5.5 Bylaws. The Board may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws shall not be inconsistent with the provisions of this Declaration. The Bylaws may include, without limitation, provisions regarding the appointment or election of the Board and the appointment or election of officers of the Association, subject to the terms of this Declaration.

Section 5.6 Adoption of Rules. This Declaration, the Articles, the Bylaws, and the Design Guidelines establish a framework of affirmative and negative covenants, conditions, easements and restrictions that govern Thompson Park. The RETA Covenant and Deed Restriction Agreement also impose additional restrictions on all or some of the Lots. The Board shall be authorized to and shall have the power to adopt, amend and enforce rules applicable within Thompson Park with respect to any Lot, Unit, Common Element or function of the Association, and to implement the provisions of this Declaration, including but not limited to, Rules to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate animals; to assure fullest enjoyment of use; to regulate signs; to regulate use of any and all Common Elements to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within the Property; and to protect and preserve property and property rights. No Rule shall conflict with the terms of this Declaration, the Bylaws, the Articles, RETA Covenant, Deed Restriction Agreement, or Design Guidelines. The Rules may be modified, cancelled, limited or exceptions created thereto, or expanded from time to time. Any amendment of or addition to the Rules may be made upon the affirmative vote of a majority of the Board. Except as may be set forth in this Declaration, all Rules shall comply with the following provisions:

- (a) The Rules shall be reasonable and shall be uniformly applied.
- (b) The Association may prohibit activities not normally associated with property restricted to residential use, and the Association may also restrict or prohibit any activities that create monetary costs for the Association or other Lots or Units, that generate excessive noise or traffic, that create unsightly conditions visible outside of a Lot, or that create a nuisance or source of annoyance.
- (c) No Rule shall, by singling out a particular Owner, Lot, or Unit, alter the rights to use the Common Elements to the detriment of such Owner, Lot, or Unit. Nothing in this provision shall prevent the Association from changing Common Elements available, from adopting generally applicable Rules for the use of Common Elements or from denying use privileges to those who are delinquent in paying Assessments, misuse the Common Elements or violate the Restrictions. This provision does not affect the right to levy and collect Assessments pursuant to other terms of this Declaration.
- (d) No Rule shall require the consent of the Association for transferring title to any Lot or Unit; provided that no transfer is permitted without compliance with the RETA Covenant or Deed Restriction Agreement, if applicable, according to their terms.

Section 5.7 Functions and Duties of the Association. The Association shall perform each of the following duties for the benefit of its members:

(a) Maintenance of the Common Elements. The Association shall operate, keep and maintain the Common Elements in good condition and repair and in compliance with Law and the Restrictions. The Association shall improve, construct, replace or repair the Common Elements or any part thereof when necessary or desirable to do so in its judgment and discretion. Notwithstanding any other provisions of this Declaration, if any repairs to any Common Elements are necessitated by the negligent, reckless or intentionally wrongful act or omission of any Owner or a guest of an Owner, then such repairs shall be undertaken by the Association at the sole cost and expense of such Owner and such costs and expenses shall be assessed as a Specific Assessment against the Lot or Unit of such Owner. Notwithstanding the Allocation Percentages, the Board shall have the authority to assess any special costs of maintaining Limited Common Elements to the Lot(s) benefited by such Limited Common Elements.

(b) Additional Maintenance. In addition to the Association's Common Element maintenance obligations, the Association shall also be responsible, in perpetuity, for the irrigation and maintenance of the landscape strips and irrigation systems within the public rights-of-way in Thompson Park. The Association shall also be responsible, in perpetuity, for maintaining, repairing, and/or replacing, as necessary, the open ditch channels that run through the Property. Said maintenance shall include, but not be limited to, annual cleaning of the channels to remove silt and debris and cleaning bar screens and pipeline inlets.

(c) Other Functions. The Association shall perform the other functions specifically required to be performed by the Association pursuant to the Restrictions, including, without limitation, determining, levying and collecting Assessments and enforcing the terms of the Restrictions as the Association deems appropriate.

Section 5.8 Powers and Authority. The Association shall have the following powers and authority:

(a) Assessments. To determine, levy and collect Assessments.

(b) Charges and Fees. To determine, levy and collect charges and fees for the violation of the Restrictions.

(c) Rules. To make, establish and promulgate Rules. Owners and Guests shall be subject to the Rules and such Rules shall have the same purpose and effect as the covenants, conditions and restrictions included in this Declaration and shall be treated as incorporated herein.

(d) Bylaws. To adopt and amend the Bylaws.

(e) Enforcement. To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in the Restrictions, and to perform all

other acts reasonably necessary to enforce any of the provisions of the Restrictions, including, without limitation, the suspension of Membership privileges and the imposition of fines on Owners or Guests who violate or permit violations of the Restrictions.

(f) Management Company. To retain the services of a professional management company to manage some or all of the affairs of the Association.

(g) Borrowing. To borrow money and to incur indebtedness for the purposes of the Association.

(h) Assignment. To assign its right to future income, including the right to receive Assessments.

(i) Sale of Common Elements. To convey or subject to a lien or encumbrance any Common Elements.

(j) Insurance. To maintain the insurance coverage pursuant to Section 8.1.

(k) Contracts. To make contracts and incur liabilities in furtherance of its purposes.

(l) Additional Improvements. To cause additional Improvements to be made as part of the Common Elements, including the construction of any capital asset for the benefit of some or all of the Lots, Units, or Owners, including, without limitation, access roads, paths, walkways and landscaping changes; improvements (including without limitation, removal of trees and other vegetation) and appurtenances; recreational areas and facilities, picnic areas, playgrounds, shelters, exercise facilities, trash enclosures; postal facilities; parking areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and Improvements useful or necessary to benefit Owners or to provide the services of the Association.

(m) Property. To acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property.

(n) Sanctions. To impose and receive charges for late payments of Assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether or not suit is initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Restrictions, including suspension of Membership privileges.

(o) Charges. Impose and receive reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments.

(p) Indemnification. Provide for the indemnification of the Association's officers and Board and maintain Directors' and Officers' liability insurance.

(q) Professional Services. To obtain and pay for legal, accounting and other professional services.

(r) Performance through Others. To perform any of its functions by, through or under contractual arrangements, licenses, or other arrangements with any governmental, quasi-governmental or private entity as may be necessary or desirable.

(s) Lawsuits. To institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Thompson Park, including construction defect cases, provided that the Association shall comply with the procedures set forth in C.R.S. § 38-33.3-303.5 and Section 5.11, below, prior to initiating a construction defect lawsuit.

(t) Law. To exercise any right or privilege provided to the Association by Law.

(u) Other. To carry out all other duties, functions or rights of the Association as set forth in the Restrictions from time to time.

(v) Implied Authority. To exercise any power or authority as may be necessary, convenient or desirable to fulfilling or exercising any duty, function or power that the Association may otherwise have or enjoy under the terms of this Declaration.

Section 5.9 Financial Statement. The Board shall provide a financial statement (which need not be audited) for the immediately preceding Fiscal Year, free of charge, to a Member so requesting or to any First Mortgagee of a Lot so requesting within a reasonable time after written request therefor by any such party, to the extent available.

Section 5.10 Association Books and Records. The Association shall make available to Owners current copies of this Declaration, the Articles, Bylaws, Rules, Design Guidelines, books, records and financial statements of the Association as required by Section 317 of the Act. Such records shall be made available for inspection upon request during normal weekday business hours or under other reasonable circumstances. The Association may impose a reasonable charge for copies as provided by Section 317 of the Act.

Section 5.11 Testing for Construction Defects.

(a) The Association will not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing, or invasive testing of any kind, for defects in construction of any Improvement, Dwelling, Unit, Common Element or Limited Common Element without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board will rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Association will not be obligated to authorize or undertake such testing.

(b) In determining whether to authorize such testing, the Board will be governed by the following considerations:

- i. Whether the Association's position is strong enough to justify taking any other or further action;
- ii. Whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; and
- iii. Whether it is in the Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria to pursue the matter further.

(c) Notwithstanding the foregoing, under no circumstance will the Association authorize such testing as is contemplated under Section 5.11(a) unless the nature of the suspected defect is such that:

- i. It poses a significant risk to life, health, safety or personal property; and
- ii. It threatens or affects the structural integrity, functionality or performance of the Property (or a portion thereof) for its intended use.

(d) In the event that the Board undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant and/or others responsible for the construction will be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area and repair any defect that is found to exist. Declarant and/or others responsible for construction will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

(e) In the event that testing discloses any defects, Declarant and/or others responsible for construction will be given a reasonable amount of time, based on the nature and extend of the defect, to repair or correct the condition. If Declarant or others responsible

for construction fail to repair or correct the condition, the Board will have the right, but not the obligation, to proceed with a "Claim" pursuant to this Article.

ARTICLE 6: Financial Matters and Assessments

Section 6.1 Annual Budget. The Board shall cause to be prepared and adopted annually, prior to the beginning of each Fiscal Year, a budget for the Association (the "**Annual Budget**"). The Annual Budget shall include all of the following: (i) the estimated Common Expenses and revenues of the Association for such Fiscal Year, in reasonable detail as to the various categories of expenses and revenues; (ii) the current cash balance in any reserve fund established and maintained by the Association for the purpose of funding the periodic repair or replacement of any of the Common Elements, including without limitation landscaping, irrigation systems, and private roads, and for unbudgeted and unplanned Common Expenses incurred by the Association from time to time (the "**Reserve Fund**"), (iii) an estimate of the amount required to be spent during such Fiscal Year from the Reserve Fund; and (iv) a statement of the amount required to be added to the Reserve Fund during such Fiscal Year to cover anticipated withdrawals and adequately address contingencies and anticipated needs in future Fiscal Years.

Section 6.2 Assessments. There shall be three types of Assessments: (a) Common Assessments as described in Section 6.3; (b) Special Assessments as described in Section 6.4; and (c) Specific Assessments as described in Section 6.5. Each Owner, by adoption of this Declaration or by accepting a deed or other instrument of conveyance for any Lot or Unit, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration and the other applicable Restrictions.

Section 6.3 Common Assessments. The Owner of each Lot or Unit is liable for and subject to assessments for a portion of the Common Expenses equal to the Owner's Allocation Percentage (the "**Common Assessments**"). The Common Assessments shall be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Payment. The Board shall assess Common Assessments against the Owner of each Lot or Unit based on the Annual Budget in accordance with the Allocation Percentage. Each Owner is obligated to pay the Association the Common Assessments made against such Owner's Lot or Unit, and the payment shall be due on the first day of each fiscal quarter, in (4) equal installments, or in another reasonable manner designated by the Board which may be implemented without amending this Declaration. The Board's failure to fix the Common Assessments prior to the commencement of any Fiscal Year shall not be deemed a waiver or modification of any of the provisions of this Declaration or a release of any Owner from its obligations to pay Common Assessments or any installments of them for that Fiscal Year, but the Common Assessments fixed for the preceding Fiscal Year shall continue until the Board fixes the new Common Assessment.

(b) Adjustment. To the extent that payments of Common Assessments during the balance of any Fiscal Year are inadequate or more than required to meet the Association's obligations intended to be covered by such Common Assessments, the Board may amend the Annual Budget and increase the Common Assessments for the balance of such Fiscal Year by giving not less than 30 days' prior notice to all Owners. Alternatively, in the event that payments of Common Assessments during the balance of any Fiscal Year are more than required to meet the Association's obligations, the Association may, at its discretion, put the surplus into the Reserve Fund instead of amending the Annual Budget as provided in this subsection.

(c) Reconciliation. After the end of each Fiscal Year, the Board may reconcile the actual Common Expenses incurred by the Association during that Fiscal Year against the Common Assessments that the Association received and intended to cover such Common Expenses. To the extent that the Owners have paid more than the actual Common Expenses, the Board may either (i) credit the overpayments against the Owners' Common Assessments for the next Fiscal Year; or (ii) deposit the overpayments into the Reserve Fund.

Section 6.4 Special Assessment. The Association may levy from time to time one or more special assessments ("**Special Assessments**") for the purpose of defraying in whole or in part the cost of any construction, maintenance, repair, improvement, modification, restoration, unexpected repair or replacement of any Common Element or for carrying out the other responsibilities or functions (whether required or discretionary) of the Association in accordance with this Declaration. Each Special Assessment shall be allocated in accordance with the Allocation Percentage. Each Owner shall pay all Special Assessments assessed against the Owner's Lot or Unit. Special Assessments shall be paid at the time(s) and in the manner reasonably determined by the Board. The Board may require that Special Assessments be paid before the service, improvement or other item for which the Special Assessment is being levied is provided.

Section 6.5 Specific Assessments. The Association shall have the power to levy assessments against one or more particular Lot(s) or Unit(s) as follows ("**Specific Assessments**"):

(a) to cover costs incurred in bringing the Lot or Unit into compliance with the terms of the Restrictions, or costs incurred as a consequence of the conduct of the Owner or such Owner's Guests;

(b) to cover necessary costs or expenses incurred by the Association that benefit one or more Lots or Units but fewer than all Lots and Units, such as repair and maintenance of Limited Common Elements or otherwise; and

(c) to cover any costs or expenses that are recoverable as Specific Assessments pursuant to other provisions of this Declaration.

Section 6.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner shall become liens against such Owner's Lot or Unit which may be foreclosed or otherwise collected as provided in this Declaration.

Section 6.7 Working Capital Fund. Upon the transfer of a Lot or unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Common Assessments will be paid to the Association for the Association's working capital fund, unless the Declarant determines otherwise. The Board, in its discretion, may allocate all or a portion of any working capital fee to the Association's Reserve Fund. Upon termination of the Declarant Control Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Lot or Unit. Each working capital contribution will be collected upon the conveyance of the Lot or Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Lot or unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, to an entity owned or controlled by Owner, or to the Owner's spouse, child, or parent; or (iv) transfers made for estate planning purposes. Contributions to the fund are not advance payments of Common Assessments and are not refundable.

Section 6.8 Commencement of Assessments. The obligation to pay Common Assessments, Special Assessments and Specific Assessments is a continuing obligation.

Section 6.9 Allocation Percentage. The Allocation Percentage of each Owner shall mean the share of any Assessments to be allocated to each Lot or Unit. Subject to the Board's right to assess Assessments as provided in this Section 6, a Lot or Unit's Allocation Percentage is determined by the percentage equivalent of a fraction, the numerator of which shall be the finished square footage area of each Owner's Dwelling and the denominator of which shall be the total of the finished square footage area of all Dwellings within the Development. As portions of the Property are annexed into the Development and made subject to the terms and provisions of this Declaration by the recording of one or more Notices of Applicability in accordance with Section 7.4 hereof, the Lots or Units included in such annexed portion of the Property will be automatically assigned Allocation Percentages in accordance with the formula set forth in this Section 6.9, and the Notice of Applicability will reflect such allocations. Since Declarant intends to annex portions of the Property and Lots and Units in phases, the initial Lots and Units added to this Declaration will be allocated a higher Allocation Percentage than would otherwise be allocated to the Lots and Units if all of the Property was made subject to this Declaration at a single point in time. However, as additional Lots and Units are annexed into the Development and subjected to this Declaration, the Allocation Percentages previously allocated

to the Lots and Units then subject to this Declaration will be reduced. The Notice of Applicability for each portion of the Property added to this Declaration will include the Allocation Percentages assigned to all Lots and Units within the Development after giving effect to the Lots and/or Units then being made subject to the Declaration. A schedule of Allocation Percentages which will apply to each Lot or Unit when all of the Property is annexed and subjected to the terms and provisions of this Declaration is attached hereto as Exhibit B. Exhibit B is an estimate only; final Allocation Percentages cannot be definitively determined until each and every Improvement is constructed.

Section 6.10 Payment of Assessment; Notice and Acceleration. Each Owner shall pay all Assessments assessed against such Owner's Lot or Unit by the Association in accordance with the terms of this Declaration. Each Assessment is a separate, distinct and personal debt and obligation of the Owner against whose Lot or Unit the Assessment is assessed. All Assessments are payable in full without offset for any reason whatsoever. Each Owner's obligation to pay Assessments is entirely independent of any obligation of the Association to the Owner or any other Owner to that Owner. Any Assessment or installment of an Assessment not paid within five days after it becomes due is delinquent. If an Assessment or installment of an Assessment is delinquent, the Association may recover all of the following (collectively, the "**Delinquency Costs**"): (a) interest from the date due at the rate of 18% per annum; (b) late charges and other monetary penalties imposed by the Association pursuant to any Governing Document; and (c) all collection and enforcement costs, including reasonable attorneys' fees and expenses, incurred by the Association. If an Assessment or installment of an Assessment is delinquent, the Association may notify the Owner of the delinquency and state in the notice (i) the amount of the delinquent Assessment or installment; (ii) the Delinquency Costs accrued to date; and (iii) the date by which the delinquent Assessment or installment and all associated Delinquency Costs must be paid. If the Association gives such a notice and the delinquent Assessment or installment of an Assessment and all associated Delinquency Costs are not paid in full by the due date specified in the notice, then the Association, at its option, may declare all unpaid installments of the subject Assessment for the current Fiscal Year to be immediately due and payable in full without further demand or notice and may enforce the collection of the Assessment (including any installments whose due dates were accelerated).

Section 6.11 Enforcement of Assessments. If any Assessment is not fully paid within five (5) days after the same becomes due and payable, then as often as the same may happen, (i) Delinquency Costs shall begin to accrue from the date due until the date of payment, (ii) the Association may accelerate the remaining payments in accordance with Section 6.10, (iii) the Association may thereafter bring an action at law or in equity or both against any Owner personally obligated to pay the same, and (iv) the Association may bring an action to foreclose its lien against the particular Lot or Unit as provided in the Act and herein in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

- (a) Suit. The Association may bring a suit or suits at law to enforce the Owner's obligation to pay a delinquent Assessment (including any installments whose due dates are accelerated by the Association pursuant to Section 6.10) and associated Delinquency Costs. Each action shall be brought in the name of the Association. The judgment rendered in the action shall include costs and reasonable attorneys' fees in an amount adjudged by the court against the defaulting Owner. Upon full satisfaction of the judgment, the Association, by one of its officers, shall execute and deliver to the judgment debtor an appropriate satisfaction of the judgment.
- (b) Lien and Foreclosure. Assessments (including any installments whose due dates are accelerated by the Association pursuant to Section 6.10) and associated Delinquency Costs constitute a continuing mortgage lien on the Lots or Units against which they are assessed from the date due. Such lien shall be perfected upon the Recording of this Declaration and no further claim shall be required. If an Assessment is delinquent, if the Association gives a notice concerning the delinquency and if the delinquent Assessment is not paid in full by the due date specified in the notice, then the Association may foreclose the lien securing the Assessment, any installments whose due dates are accelerated by the Association pursuant to Section 6.10, and any associated Delinquency Costs in accordance with the laws of the State of Colorado. The Association may undertake and conduct such foreclosure in the manner for foreclosure of mortgages under the laws of Colorado.
- (c) Further Actions by Association. The foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installment thereof which are not fully paid when due or for any subsequent default Assessments). Except as limited by the Deed Restriction Agreement, the Association shall have the power and right to bid in or purchase any Lot or Unit at foreclosure or any other sale and to acquire and hold, lease, or mortgage the Lot or Unit and to convey, or otherwise deal with the Lot acquired in such proceedings.
- (d) The remedies provided above are not exclusive of any other remedies provided for in favor of the Association under the other terms of the Restrictions or otherwise available to the Association under law or in equity. By electing to pursue one or more available remedies, the Association shall not be deemed to have waived its right to pursue any other remedies that may be available to it for a failure by an Owner to pay any Assessment.

Section 6.12 Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments levied against the Lot or Unit, and

notwithstanding the Association's perpetual lien upon a Lot or Unit for such Assessments, all purchasers shall be jointly and severally liable with the prior Lot or Unit Owner(s) for any and all unpaid Assessments against such Lot or Unit, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date on which the purchaser becomes the Owner of a Lot or Unit. For Assessment purposes, the date a purchaser becomes a Lot or Unit Owner shall be determined as follows:

- (a) In the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Lot or Unit Owner shall be deemed to be upon the expiration of all applicable redemption periods;
- (b) In the event of a conveyance or transfer by deed in lieu of foreclosure, a purchaser is deemed to become the Lot or Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title to the Lot or Unit, irrespective of the date the deed is recorded; and
- (c) In the event of a conveyance or transfer by deed, a purchaser shall be deemed to become the Lot or Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Lot or Unit, irrespective of the date the deed is recorded.

However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions set forth herein.

Section 6.13 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of a deed or other instrument of a transfer of a Lot or Unit, each Owner irrevocably waives the homestead exemption provided in C.R.S. §38-41-201, as amended. The Association's perpetual lien on a Lot or Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and
- (b) To the extent permitted under the Act, the lien of any First Mortgagee, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been subsequent to the date of the attachment of the Association's liens (except that the Association's priority lien under the Act shall remain superior to the First Mortgagee).

All other persons or entities not holding the liens described in (a) or (b) above and obtaining a lien or encumbrance on any Lot or Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorney's fees as provided herein, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of a Lot or Unit, including but not limited to a foreclosure sale, shall not affect the Association's lien on such Lot or Unit for assessments, interest, late charges, costs, expenses and attorney's fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Lot or Unit from liability for, or the Lot or Unit from the lien of, any Assessments made after the sale or transfer.

Section 6.14 Owners not Exempt from Liability. No Owner is exempt from liability for payment of Assessment by waiver of the use or enjoyment of any portion of the Common Elements, by abandonment of its Lot or Unit, or otherwise.

Section 6.15 Reallocation. If any Assessment remains unpaid for more than six months after it is first due, the Association may treat the unpaid Assessment as a Common Expense to be assessed against all Lots or Units other than Deed Restricted Units; provided, however, that if the Association subsequently collects all or any part of the unpaid Assessment, through foreclosure of its lien or otherwise, then any Owner who has paid a portion of the unpaid Assessment as a Common Expense is entitled to a credit (in an amount equal to its pro rata share of the amount of the unpaid Assessment that the Owner paid that was subsequently collected by the Association) against any Common Assessments subsequently due from that Owner.

Section 6.16 Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

Section 6.17 Disputes and Records. Any Owner or an Owner's authorized representative may inspect the books and records of the Association during regular business hours upon reasonable notice. If an Owner disputes the amount of any Assessment against its Lot or Unit and is unable to resolve the issue through an inspection of the Association's books and records, the Owner will continue to pay in a timely manner the full amount of the disputed Assessment until, if ever, it is finally determined that the amount is incorrect (in which case the

Association will promptly refund any overpayment). If the Owner fails to pay the disputed Assessment while the dispute is pending, the Association may immediately pursue any of its remedies for the failure (including, without limitation, suit against the Owner and/or foreclosure of the Association's lien against the Owner's Lot or Unit), and the pendency of the dispute is not a bar or defense to any actions by the Association.

Section 6.18 Certificate. Within 21 calendar days after receiving a written request from any Owner, Mortgagee or designee of either of them, or any title company, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent, the Association will furnish to the requesting party a certificate executed on behalf of the Association and addressed to the requesting party, stating that any unpaid Assessment due from the requesting Owner or Owner of the Lot or Unit encumbered by the requesting Mortgagee's Mortgage, or stating that there are no unpaid Assessments due from such Owner, as the case may be. A certificate furnished by the Association pursuant to this Section 6.18 is binding upon the Owner and the Association. The Association may charge the Owner of any Lot or Unit for which such a certificate is furnished pursuant to this Section 6.18, and the Owner will pay as a Specific Assessment, a reasonable fee for the preparation of the certificate in an amount determined by the Association from time to time.

ARTICLE 7: Declarant's Reserved Rights

Section 7.1 Construction and Marketing. Declarant, for itself and its successors and specific assigns, hereby retains a right and easement of ingress and egress over, in, upon, and across the Property and all other real property owned by Declarant as depicted on the Master Plat, and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the complete construction of all Improvements and sale of all Lots and Units and future Lots and Units proposed for the Property and other parcels shown on the Master Plat as approved by the Town of Carbondale including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs. Declarant, for itself and its successors and specific assigns, hereby retains the right to maintain any Lot(s) or Unit(s) as sales offices, management offices, or model residences so long as Declarant, or any successor Declarant, continues to own, lease, or control a Lot or Unit. The use by Declarant of any Lot or Unit as a model residence, office, or other use shall not affect the Lot or Unit's designation as a separate Lot or Unit subject to Assessments. Notwithstanding any other provision of this Declaration, Declarant shall have the right to construct all types of Improvements, including without limitation new Dwellings or Units on any of the Lots, without restriction by the Association or the Owners and without any requirement for any type of permission or pre-approval. The design review process described above in Section 4.4 shall not apply to any construction of homes or any other Improvements whatsoever by Declarant.

Section 7.2 Reservation for Expansion. Declarant hereby reserves to itself and the Association and/or Owners in all future phases of Thompson Park Subdivision as shown on the

Master Plat an easement and right-of-way over, upon and across the Property, including the Future Development Parcels, for construction, utilities, drainage, irrigation, and ingress and egress to and from all parcels shown on the Master Plat, and for use of the Common Area as may be reasonably necessary or incident to the construction of Improvements on the Lots or future Lots that may be created on the Property. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the Records.

Section 7.3 Supplemental Declaration and Development Rights. Declarant shall have the right to create additional Lots, Units, and Common Elements within the Future Development Parcels, which Lots, Units, and Common Elements shall become part of the Development and be subject to this Declaration upon the recordation of a Notice of Applicability as provided in Section 7.4, below, and to record one or more additional Plats regarding the same. The Future Development Parcels as shown on the Master Plat and any other Plat may be developed and platted in any order determined by Declarant in its sole discretion. Declarant or the Association may annex real property adjacent to the Property into Thompson Park according to the procedures set forth in the Act upon prior approval of such annexation by the Town of Carbondale Board of Trustees and the owner of the subject property. Following annexation, a Notice of Applicability regarding the annexed property shall be recorded in order to subject the same to this Declaration. The rights of Declarant and any successor or specific assign to exercise such rights to annex additional real property shall expire 50 years after the date of recording of this Declaration.

Section 7.4 Notice of Applicability. Recording this Declaration serves to provide notice that at any time, and from time to time, all or any portion of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration will apply to and burden a portion or portions of the Property upon the recording of a Notice of Applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Declaration. To be effective, a Notice of Applicability must be executed by the Declarant and the record title owner of the Property being made subject to this Declaration if such Property is not owned by the Declarant. To make the terms and provisions of this Declaration applicable to a portion of the Property, Declarant will be required only to cause a Notice of Applicability to be recorded in substantially the form set forth in Exhibit C hereto.

To the extent required by applicable law, a Notice of Applicability will constitute an amendment to this Declaration and may be executed unilaterally by the Declarant provided that Declarant is the owner of the Property described in the Notice of Applicability. If all or a portion of the Property described in the Notice of Applicability is not owned by the Declarant, only the owner of such portion and the Property and the Declarant must execute the Notice of Applicability.

Section 7.5 No Amendment. The terms and provisions of this Article 7 inure to the benefit of Declarant, are enforceable by Declarant, and shall not be amended without the express written consent of Declarant and without regard to whether Declarant owns any portion of the Property at the time of such amendment.

Section 7.6 Declarant Control Period. Notwithstanding anything to the contrary, Declarant, or its successors or assigns, will have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be a deemed removal of the Board Member being replaced by such appointment) until expiration or termination of the Declarant Control Period. The same is true regarding members of the Architectural Control Committee. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board and Committee before termination of the Declarant Control Period. In that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Committee, Board, or Association, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 7.8 Financial Contributions. Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded annually, from the date it is made until the date of its repayment, at the statutory rate of eight percent (8%).

ARTICLE 8: Insurance and Indemnity

Section 8.1 Association's Insurance. The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Section 8.1 shall be included in the Common Expenses:

(a) Property Insurance. The Association shall maintain property insurance covering risks of direct physical loss for all insurable Common Elements, if any, with limits sufficient to cover the full replacement costs of such insurable Common Elements less applicable deductibles at the time insurance is purchased and at each renewal date. The Association's property insurance may exclude land, excavations, foundations and other items normally excluded from property policies. The Association's property insurance shall be maintained in the name of the Association. To the extent available on reasonable terms, such property insurance also shall (i) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iii) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (iv) provide that it may not be cancelled, nor may coverage be reduced, without 30 days prior notice to the Association;

(v) include a so-called “inflation guard” endorsement; and (vi) provide for a waiver of subrogation by the insurer as to claims against each Owner and each Owner’s Guests.

(b) Liability Insurance. The Association shall maintain bodily injury and property damage liability insurance for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising from their Membership in the Association. To the extent available on reasonable terms, such liability insurance shall (i) have a per occurrence limit of not less than \$1,000,000.00; (ii) be on a commercial general liability form; (iii) contain a “severability of interest” or “cross-liability” endorsement which precludes the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iv) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (v) provide that no act or omission by any Owner, unless acting within the scope of such Owner’s authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements; and (vii) provide that it may not be cancelled, nor may coverage be reduced, without 30 days’ prior notice to the Association and all additional insureds named in the policy.

(c) Worker’s Compensation and Employer’s Liability. If the Association has any employees, then it shall maintain worker’s compensation and employer’s liability insurance as determined from time to time by the Board. At a minimum, the Association shall maintain such insurance in amounts and with coverages required by applicable law.

(d) Automobile Insurance. If the Association operates owned, hired or non-owned vehicles, the Association shall maintain comprehensive automobile liability insurance at a limit of liability of not less than \$300,000.00 for combined bodily injury and property damage.

(e) Other Insurance. The Association may procure and maintain other insurance as the Board from time to time deems appropriate to protect the Association or the Owners or as may be required by the Act.

(f) Licensed Insurers. All policies of insurance required to be maintained by the Association shall be placed with insurers licensed in the State of Colorado.

Section 8.2 Owner’s Insurance. Each Owner of a Lot or Unit shall obtain insurance, at the Owner’s expense, to the extent and in the amount the Owner deems necessary to protect its interests; provided, however, that such insurance shall, at a minimum, cover all interior fixtures, fittings, flooring, ceilings, and walls of the Owner’s Dwelling.

Section 8.3 Association’s Indemnity. The Association shall be liable to and shall protect, defend, indemnify and hold harmless each Owner from and against any and all damages, claims, demands, liens (including, without limitation, mechanics’ and materialmen’s liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys’ fees,

court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever suffered or incurred by, or threatened or asserted against, the Owner as a result of or in connection with the use, enjoyment or ownership of the Common Elements by the Association, and its directors, officers, agents and employees acting within the scope of their authority, and to the extent not covered by Section 8.4, by licensees, permittees or other third parties using the Common Elements. Nothing contained in this Section 8.3 shall be construed to provide for any indemnification that violates Law or voids any or all of the provisions of this Section 8.3.

Section 8.4 Owners' Indemnity. Each Owner of a Lot or Unit shall be liable to and shall protect, defend, indemnify and hold harmless the Association, the Board, and each other Owner from and against any and all damages, claims, demands, liens (including, without limitation, mechanics' and materialmen's liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever suffered or incurred by, or threatened or asserted against, the Association, the Board, or any such other Owner as a result of or in connection with the use, enjoyment or ownership of any portion of such indemnifying Owner's Lot or the Common Elements by the indemnifying Owner or its Guests and caused by the negligence, recklessness or intentionally wrongful acts or omissions of the indemnifying Owner or its Guests. Nothing contained in this Section 8.4 shall be construed to provide for any indemnification that violates Law or voids any or all of the provisions of this Section 8.4. All amounts owed by an Owner of a Lot to the Association pursuant to this Section 8.4 shall be expenses for which the Association may levy Specific Assessments against such Owner's Lot.

Section 8.5 Proceeds and Adjustment. The Board is solely responsible for adjustment of any losses under insurance policies maintained by the Association and is hereby irrevocably appointed the agent of all Owners, Mortgagees and other Persons having an interest in Thompson Park for purposes of adjusting all claims arising under insurance policies maintained by the Association and executing and delivering releases when claims are paid. The Association may receive all proceeds of any insurance policy maintained by the Association, except other insured parties under liability insurance policies shall be entitled to proceeds arising out of their insured losses.

ARTICLE 9: Miscellaneous Provisions

Section 9.1 Term of Declaration. Except as provided below in this Section 9.1, all provisions of this Declaration shall continue in effect in perpetuity unless this Declaration is terminated by written ballot of 75% of the Owners. The termination of this Declaration shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary of the Association, stating that this Declaration has been terminated by the Owners as provided herein. Notwithstanding the foregoing, for so long as Declarant owns any Lot, Unit, or any additional parcel shown on the Master Plat subject to Declarant's reserved rights set forth above in Article 7, this Declaration shall not be terminated without the written consent of Declarant.

Section 9.2 Amendment. Except as otherwise provided in this Declaration, including that the Town of Carbondale must approve any change to the definition of "Allocation

Percentage” or to Sections 4.17 and 5.3, above, any provision of this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by the Owners holding at least 67% of the voting power of the Association. The amendment shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary setting forth the amendment in full and certifying that the amendment or repeal has been approved by the Owners as provided herein.

Section 9.3 Notice. Any notice permitted or required to be given under this Declaration shall be in writing and shall be deemed properly given and received on the earlier of: (a) when actually received if delivered personally, by messenger service, by e-mail, facsimile, or otherwise; (b) on the next business day after deposit for delivery (specifying next day delivery) with any recognized overnight courier service; or (c) three business days after mailing, by registered or certified mail, return receipt requested. All such notices shall be furnished with delivery or postage charges paid, addressed (which term, for purposes of this Section 9.4, shall include the facsimile number in the case of a notice given by facsimile) as follows: (i) to the Association or Board at the address established for the Association by the Board; and (ii) to an Owner of a Lot or Unit at the address for such Person maintained in the Association’s records; provided, however, that if the Association does not provide an address for an Owner, then notice to such person may be given in any manner in which notice is permitted to be given to a Person under the Law of the State of Colorado in connection with the foreclosure of mortgages, including publication. Each Owner shall give notice to the Association at its mailing or street address and, with each change of its address, shall give notice of such change promptly, in the manner provided for giving notice to the Association in this Section 9.3.

Section 9.4 Persons Entitled to Enforce this Declaration. The Association and any Owner (including Declarant so long as it owns any of the real property shown on the Master Plat) shall each have the right to enforce any or all of the Restrictions contained in this Declaration against all or any portion of the Property and the Owner(s) thereof; provided, however, that no Owner shall be permitted to bring any enforcement action under this Declaration unless the Association declines to bring a similar action. The Association shall be deemed to have declined to bring an enforcement action if (a) an Owner gives notice to the Association in accordance with Section 9.3, that such Owner intends to bring an enforcement action (which notice shall specify the Restriction at issue and shall briefly summarize the circumstances prompting such action), and (b) the Association gives notice to such Owner, in accordance with Section 9.3, that the Association declines to enforce the Restriction or the Association fails to initiate an enforcement action or otherwise cause compliance with the Restriction within 60 days after the date of such Owner’s notice to the Association. The right of enforcement shall include the right to bring an action for damages as well as any equitable relief, including any action to enjoin any violation or specifically enforce the Restriction or other provision of this Declaration.

Section 9.5 Violations Constituting a Nuisance. Any violation of any Restriction or other provisions of this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 9.6 Violations of Law. Any violation of Law pertaining to the ownership, occupation or use of any of the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 9.7 Remedies Cumulative. Each remedy that is provided under this Declaration is cumulative and not exclusive.

Section 9.8 No Implied Waivers. Failure to enforce any Restriction or other provision of this Declaration shall not operate as a waiver of that Restriction or provision or of any other Restriction or provision of this Declaration.

Section 9.9 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the party determined by the court or arbitrator, as the case may be, to be the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expenses.

Section 9.10 Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purposes of this Declaration. With respect to matters addressed by more than one restriction, the more restrictive shall be interpreted to override the less restrictive. The term "including," unless otherwise specified, shall be interpreted in its broadest sense to mean "including without limitation."

Section 9.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado. In the event of court action to enforce this Declaration, the exclusive venue shall be the county court or district court of Garfield County, Colorado.

Section 9.12 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 9.13 Registration by Owner of Mailing Address. Each Owner shall register their mailing address with the Association, including an e-mail address if available. Assessment statements and all other notices or demands intended to be served upon an Owner shall be sent via e-mail if one is available, or otherwise by regular U.S. Mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices

intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association.

Section 9.14 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 9.15 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration. Reference to Articles, Sections and Exhibits in this Declaration are to the indicated provisions and Exhibits of this Declaration unless otherwise specified.

Executed this ____ day of _____, 2019.

Thompson Park, LLC, a Colorado limited liability company

By: _____

Print Name: _____

Title: _____

State of _____)
) ss.
County of _____)

The foregoing instrument, Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision, was acknowledged before me this ____ day of _____, 2019, by _____ as Manager of Thompson Park, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
Property Legal Description

Parcels 2, 3, and 4 of the THOMPSON PARK SUBDIVISION according to the MASTER PLAT thereof recorded May 19, 2015, as Reception No. 862909, Garfield County, Colorado.

DRAFT

EXHIBIT B
Allocation Percentages

DRAFT

EXHIBIT B

	Lot/Unit #	Lot/Unit Sq.Ft	Allocation Percentage
	Parcel 2		
1	100 - A	1381	1.60%
2	100 - B	1392	1.61%
3	202 - A	1202	1.39%
4	202 - B	1312	1.52%
5	202 -C	1198	1.39%
6	203	2211	2.56%
7	204	2211	2.56%
8	205	2181	2.53%
9	206	2213	2.56%
10	207	2216	2.57%
11	208	2213	2.56%
12	209	2212	2.56%
13	210	2210	2.56%
14	211	2210	2.56%
15	212	2210	2.56%
16	213	2213	2.56%
17	214	2213	2.56%
18	215	2210	2.56%
19	216	2181	2.53%
20	217	2216	2.57%
21	218	2212	2.56%
22	219	2181	2.53%
23	220	2181	2.53%
24	221	2181	2.53%
25	222	2216	2.57%
26	223	2212	2.56%
27	224	2181	2.53%
	Parcel 3		
28	1-A	1202	1.39%
29	1-B	1312	1.52%
30	1-C	1202	1.39%
31	2	2181	2.53%
32	3	2211	2.56%
33	4	2211	2.56%
	Parcel 4		
34	1	3000	3.48%
35	2	3000	3.48%
36	3	3000	3.48%
37	4	3000	3.48%
38	5	3000	3.48%

39	6	3000	3.48%
40	7	3000	3.48%
Total sq. ft.		86,288	100.00%

EXHIBIT C

Form Notice of Applicability

NOTICE OF APPLICABILITY

THIS NOTICE OF APPLICABILITY (“Notice”) is executed this ____ day of _____, 20__, by Thompson Park, LLC, a Colorado limited liability company (“Declarant”) [and _____ (“Owner”)]ⁱ. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Declaration (defined below).

WHEREAS, Declarant is the declarant identified in the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision recorded _____, 2019, in the Garfield County Real Property Records at Reception No. _____ (“Declaration”); and

WHEREAS, Declarant [Owner] is the owner of the real property legally described as follows, to wit:

Lot __ - Lot __, Phase __, Thompson Park Subdivision, according to the plat thereof recorded _____, 20__, at Reception No. _____.

(the “Annexed Property”); and

WHEREAS, the Annexed Property is part of the Property described in Exhibit A to the Declaration; and

WHEREAS, pursuant to Section 7.4 of the Declaration, Declarant [and Owner] desire to include the Annexed Property in the Development and subject the same to the Declaration.

1. The Annexed Property is hereby annexed into and made a part of the Development and is now subject to all provisions, covenants, conditions, and restrictions set forth in the Declaration.

2. The plat creating the Annexed Property was recorded at Reception No. _____ and is incorporated herein by reference.

3. The Allocation Percentages of all Lots subject to the Declaration after giving effect to the Annexed Property described in the Notice are as follows:

Lot Number	Allocation Percentage

DATED as of the date first set forth above.

DECLARANT

Thompson Park, LLC, a Colorado limited liability company

By:
Title:

STATE OF _____)
)ss
COUNTY OF _____)

Acknowledged before me this ____ day of _____, 20__ by
_____ as _____ of Thompson Park, LLC, a Colorado
limited liability company.

[OWNER

By:
Title:

STATE OF _____)
)ss
COUNTY OF _____)

Acknowledged before me this ____ day of _____, 20__ by
_____.]

ⁱ Bracketed provisions should be modified or deleted as necessary.

**ARCHITECTURAL DESIGN GUIDELINES
FOR
THOMPSON PARK SUBDIVISION,
TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO**

Article I – Introduction

Section 1.1 It is the intention of the Declarant of the Thompson Park Subdivision to construct all of the residential units proposed in the Thompson Park Subdivision. In addition, the Declarant will install all landscaping and irrigation systems for the public rights of way and other designated landscape areas within the Subdivision. The purpose of these Architectural Design Guidelines (“Guidelines”) is to provide a framework for the consideration of future additions and alterations, which may be proposed by the initial buyers of the Lots or Units and by subsequent Owners.

Section 1.2 The authority and discretion to approve or disapprove any proposed additions or alterations to the Dwellings or other Improvements or to the landscaped areas designated for maintenance by the Thompson Park Homeowners Association, Inc. (the “HOA”) shall rest exclusively with the Architectural Control Committee (“Committee”). Additionally, the Town of Carbondale shall have the right, but not the obligation, to enforce these Guidelines if the Committee or HOA fail to do so. The Committee shall consider all such additions or alterations in light of Article III of these Guidelines, but may, in addition, consider such additional circumstances and facts, as it deems appropriate in arriving at its final decision to approve or disapprove.

Section 1.3 – All capitalized terms used in these Guidelines that are not defined herein shall have the meaning assigned to them in the Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision (“Declaration”).

Article II – Application Procedures

Section 2.1 Application for Approval. Any owner and/or the owner’s representative proposing landscaping or construction (“Applicant”) which is subject to the review and approval of the Committee may be required to submit the following items, together with such other additional information as the Committee may request, depending upon the scope and impact of the proposed improvements. It is recommended that the Applicant schedule a preliminary meeting with the Committee to determine which, if any, of the following items may be required:

- A. Site Plan, at a scale of not less than 1/8” = 1’-0” showing the Lot and the following information:
 - 1. Property lines and dimensions, and building setback lines, as shown on the recorded plat.
 - 2. Location of the proposed improvement for which approval is sought and its relationship to property lines. Location of existing structures on adjacent lots should be indicated.
 - 3. Driveway, parking and walkway locations and the width, grades and proposed surface material of each.
 - 4. Footprint of the improvement.

- B. Grading. The Declarant will establish finished grades of the Lot in question in accordance with the approved drainage plan. Said drainage plan shall not be altered without prior written consent of the Declarant.
1. Existing grades on the Lot, as well as proposed finished grades of any ground, shall not be altered.
 2. Any existing and proposed drainage channels and patterns, swales, culverts, catch basins or subsurface drainage systems shall not be altered.
 3. The location on the Lot of any benchmark used to set elevations shall not be altered.
- C. Architectural Drawings, including, but not limited to, the following:
1. Floor plans at a scale of not less than $3/16"=1'$ showing all floors and spaces intended to be used or occupied. Indicate room dimensions and square footage of each floor, and finished floor elevations on the main floor.
 2. Exterior elevations at a scale of not less than $3/16"=1'$ showing all exterior elevations and surfaces of the proposed improvements, including the roof and any appurtenances thereto, such as skylights, chimneys and venting, and all proposed finish grades relative to each elevation as indicated on the grading plan.
 3. Cross-sections taken through the proposed improvement at its highest point indicating the height of the structure above both natural and proposed grade.
 4. Exterior walls - clearly show the texture, color and type of material, as well as the pattern or direction of any exterior wall surfaces. Also indicate the type, material and color of any trim, doors, windows, fascia, decking and handrails. Color and material samples are required.
 5. Roof plan showing roof pitch, valleys, hips, gables and drip lines, materials, color, and the location of any protrusion beyond the surface of the roof, including, but not limited to, chimneys, parapets, facades, and skylights. Color and material samples are required.
 6. Exterior lighting shall be indicated where it occurs, together with type of fixtures, direction of light to be emitted, and information on whether such lighting is recessed or surface mounted. All exterior lighting fixtures must conform to the Town of Carbondale Lighting Ordinance.
 7. The Committee may require submission of such additional plans and other information (including models), as it may deem appropriate to the approval process.
- D. Landscape Drawings. Each Lot contains landscaped areas installed by the Declarant and maintained by the HOA, as well as landscaped areas installed and maintained by each homeowner. Any proposed alterations to the landscaping in those areas maintained by the HOA and visible to other properties in Thompson Park shall be subject to review by the Committee. In that instance, a landscape plan shall be prepared by a landscape architect or professional landscape company and shall include:
1. A planting plan at a scale of not less than $1/8" = 1'-0"$ showing the arrangement of all trees, shrubs, groundcovers, seeded lawn areas, sodded lawn areas and natural grass areas. A plant list or other indication of species, variety, size, quantity, spacing and location of all plant materials proposed for use on the project shall be included.
 2. A plan indicating all proposed changes to the automated irrigation system.

Section 2.2 Optional Preliminary Review. Prior to submitting any plans or specifications for approval, an Applicant may obtain a preliminary review of any proposed construction or landscaping

from the Committee upon request. The purpose of the preliminary review is to give the Applicant and/or its representatives an opportunity to discuss specific design concerns with the Committee, obtain interpretations and answers to questions concerning the Guidelines, and to establish the extent of submittal documentation necessary.

This procedure is informal, and no preliminary approval by the Committee shall obligate the Committee to approve final plans and specifications for the project after a formal submittal as provided for in paragraph 2.1. The information, plans, and specifications provided to the Committee at the preliminary review stage shall be at the discretion of the applicant, but should include sufficient information and graphic representations to allow the Committee to be helpful in the development of an acceptable construction and/or landscape plan.

Section 2.3 Fees. The application for preliminary design review, or for final approval of any landscaping or construction plan shall be accompanied by a deposit in the amount of \$500.00, which may from time-to-time be amended as deemed necessary by the HOA. In addition, the Applicant shall be responsible for payment of all reasonable fees and expenses charged by consultants retained by the Committee to advise the Committee with respect to the applicant's proposals. The Applicant's deposit shall be credited against such fees and expenses. An Applicant's financial obligations set forth in this Section 2.3 shall be enforced according to the provisions set forth in Article 6 of the Declaration.

Section 2.3 Inspection. Submittal of an application grants the Committee the authority to make an onsite inspection of the Lot on which the improvements are proposed. Further, the Applicant shall notify the Committee when the improvements have been completed, allowing the Committee to inspect and confirm that the improvements were completed in compliance with approved plans and specifications.

Section 2.4 Notification of Action. Upon receipt of a completed application for approval, the Committee shall have thirty (30) days in which to complete its review of the application, and to notify the Applicant, in writing, of its decision to approve or disapprove, and if disapproved, to set forth the reasons therefor.

Section 2.5 Expiration of Approval. Except as provided to the contrary for landscape completion in these Guidelines, after approval of any development plan, the Applicant shall commence with the installation or construction of the improvements within six (6) months and shall complete them within one (1) year from the approval date. Failure to do so will cause the approval to expire unless, prior to expiration, the Applicant petitions for, and receives, an extension from the Committee, which may be granted, in the sole discretion of the Committee.

Section 2.6 Application Form. Application for approval by the Committee shall be completed on forms provided by the Committee, and shall be signed by all record owners of title to the Lot on which the proposed improvements will be constructed or installed.

Section 2.7 Limitations on Architectural Design Committee Approval. In considering and approving any application for architectural design review, the Committee does not consider, and neither the Committee nor the HOA assume any responsibility for, the following:

- A. The structural capacity of the proposed improvements, nor the suitability of any proposed materials, building techniques or other aspects of the improvements relating to habitability or suitability for the intended purpose of the Applicant;
- B. Compliance with any applicable building codes, or any other statutes, ordinances, rules or regulations promulgated and made applicable to the Applicant's property by any city, county, state or federal government, or any agency, department, bureau or other political subdivision thereof; or
- C. Suitability of the proposed site of any improvements in relation to manmade or natural hazards, including, without limitation, geological instability, ground compaction, drainage or flood hazards.

Article III – Design Criteria

Section 3.1 Architectural Design. The design of any proposed additions or alterations to a structure within the Thompson Park Subdivision shall be consistent with the style and character established by the original structures built by the Declarant in the Subdivision.

Section 3.2 Solar Collectors. Sloping roofs suitable and intended for the installation of roof-mounted solar collectors have been incorporated into the original dwelling units. Installation of roof-mounted solar collectors on said roofs, installed parallel to the roof and projecting no more than required to achieve a waterproof and structurally adequate mounting, are permitted without Committee approval. Installation of rack-mounted solar collectors on roofs not sloped or oriented for roof-mounted solar collectors as well as free standing solar collectors are prohibited.

Section 3.3 Exterior Wall Materials. Additions and alterations shall use exterior wall materials consistent with, and substantially similar to the exterior finish materials used in the initial construction.

Section 3.4 Windows. Windows used in additions and alterations shall substantially match the material, color and profile of the windows used in the initial construction.

Section 3.5 Pet Enclosures. All dog runs, pens, and other pet enclosures shall be immediately adjacent to the dwelling, and landscaped or otherwise screened or fenced so as to obscure them from view from neighboring lots or adjacent streets. All such pet enclosures must receive approval by the Committee prior to construction.

Section 3.6 Exterior Lighting. All exterior lighting shall be shielded and directional and the light source should not be visible from neighboring properties or adjoining streets. All exterior lighting must meet the requirements of Carbondale's Lighting Ordinance. All exterior lighting proposed in any additions or alterations shall require the approval of the Committee prior to installation, and all plans submitted for approval shall show clearly the location, and type of light fixtures proposed, together with any other information which may be helpful to the Committee in reviewing the application.

Section 3.7 Fencing. Fencing may be installed at the heights and in the locations indicated on the approved Thompson Park Subdivision Plat documents. All fencing shall be natural finish cedar, which

may only be treated with clear sealers that do not impart a color to the natural wood finish. All fencing must be installed in accordance with the requirements of Table 5.4-3 of the Town of Carbondale Unified Development Code. A site plan demonstrating compliance with these Guidelines shall be submitted for review and approval prior to installation.

Section 3.8 Landscaping. Those areas of the Lot with landscaping installed and maintained by an owner are not subject to the landscape requirements of these Guidelines. In those areas, owners are, however, strongly encouraged to use native and low-water-use species in order to promote water conservation. Applicants proposing landscaping changes in areas of the Lot with landscaping maintained by the HOA shall submit plans demonstrating conformance with the following Guidelines:

- A. All lawns shall be low-water species.
- B. List of approved shrubs: See Exhibit “A” hereto.
- C. List of approved trees: See Exhibit “A” hereto.
- D. The existing irrigation system shall be altered and or expanded as necessary to properly irrigate the proposed plantings, and the Applicant shall demonstrate to the satisfaction of the Committee that the amount of water to be used to irrigate the proposed plantings does not exceed the amount of water used prior to irrigation of the proposed plantings.
- E. The Applicant shall obtain from the landscaping contractor a two (2) year warranty on all trees and shrubs and grant to the HOA the same right to invoke the warranty as the Applicant.
- F. All costs associated with accomplishing proposed changes to the landscaping within the areas maintained by the HOA shall be borne by the Applicant proposing said changes.

Section 3.9 Terraces. To protect and ensure owners’ privacy from adjacent units, owners may construct rooftop terraces upon application to and approval from the Committee.

- A. Terraces may only be constructed within the roof areas designated on the approved schematic architectural plans for any phase of development of the Thompson Park Subdivision.
- B. The design of any rooftop terrace must be sympathetic to and compliment the architectural character of the existing buildings within the Subdivision.
- C. Applications for the construction of any proposed rooftop terraces are subject to the review and approval process set forth in Article II of these Guidelines.

Article IV – Miscellaneous

Section 3.1 Amendment. These Guidelines may be amended from time to time as deemed necessary by the Committee in its discretion. All approved amendments shall be recorded in the real property records of the office of the Garfield County Clerk & Recorder.

Section 3.2 Non-Liability for Design Review. The Committee will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, nor the HOA, nor any individual Committee or HOA board member will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent that the Committee or any individual Committee member acted with malice or performed any intentional wrongful acts. Approval by the Committee does not necessarily assure approval by the appropriate governmental body or the Town of Carbondale. Notwithstanding that the Committee has approved plans and specifications, neither the Committee, nor the HOA, nor any of their members will be responsible or liable to any Applicant, owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of any application or the construction of any Improvement(s). Neither the HOA, nor the Committee, nor any agent thereof, nor Declarant, nor any of Declarant's partners employees, agents, or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of the Thompson Park Declaration, these Guidelines, the Development Plan for the Subdivision, or the Subdivision rules, nor for any structural or other defects in any work done according to such plans and specifications. In all events the HOA will defend and indemnify the Committee members in any such suit or proceeding which may arise by reason of the Committee's decisions; provided, however, that the HOA will not be obligated to indemnify a member of the Committee to the extent that any such member is adjudged to be liable for malice or intentional wrongful acts in the performance of his or her duty as a member of the Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

EXHIBIT A
APPROVED PLANT SPECIES

EVERGREEN TREES:

Botanical Name	Common Name
Abies concolor	White Fir
Picea pungens	Colorado Blue Spruce
Pinus aristata	Bristlecone Pine
Pinus nigra	Austrian Pine
Pseudotsuga menziesii	Douglas Fir

DECIDUOUS TREES:

Shade Trees

Botanical Name	Common Name
Acer platanoides (Varieties: Columnar, Deborah, Emerald Queen)	Norway Maple
Gleditsia triacanthos inermis (Varieties: Imperial, Skyline and Shademaster)	Honeylocust
Populus tremuloides	Quaking Aspen
Sorbus aucuparia	European Mountain Ash
Tilia Americana 'Redmond'	Redmond Linden

DECIDUOUS TREES:

Ornamental Trees

Botanical Name	Common Name
Acer ginnala 'Flame'	Amur Flame or Ginnala Maple
Acer grandidentatum	Bigtooth Maple
Acer tataricum (Varieties: Hot Wings, Pattern Perfect)	Tatarian Maple
Crataegus viridis 'Winter King'	Winter King Hawthorn
Prunus virginiana 'Shubert'	Shubert or Canada Red Chokecherry

**EVERGREEN
SHRUBS:**

Botanical Name	Common Name
Picea pungens ‘Glauca Globosa’	Dwarf Globe Spruce
Pinus mugo (Varieties: Big Tuna, Miniature, Dwarf, Slowmound, White Bud)	Mugo varieties
Buxus (Use in protected north and east facing locations. Varieties: Green Velvet, Winter Gem and Julia Jane)	Boxwood

DECIDUOUS SHRUBS:

Botanical Name	Common Name
Acer glabrum	Rocky Mountain Maple
Berberis thunbergii var.	Barberry
Buddleja davidii var.	Compact Butterfly Bush
Cornus sericea (Varieties: Arctic Fire, Bailey, Cardinal, (Use in protected locations)	Dogwood varieties Rock Cotoneaster
Cotoneaster lucidus	Peking / Hedge Cotoneaster
Forsythia (Varieties: Arnold Dwarf, Northern Sun, Show Off, Sunrise’)	Forsythia varieties
Lonicera	Honeysuckle varieties
Perovskia atriplicifolia	Russian Sage
Prunus besseyi	Western Sand Cherry
Prunus x cistena	Purple Leaf Plum
Prunus tomentosa	Nanking Cherry
Prunus virginiana	Chokecherry
Rosa foetida ‘Bicolor’	Austrian Copper Rose
Rosa Hugonis	Father Hugo Shrub Rose
Rosa Morden var.	Morden Varieties Shrub Rose

DECIDUOUS SHRUBS Cont:

Botanical Name	Common Name
Salix purpurea nana	Dwarf Arctic Willow
Spirea	Spirea
Syringa vulgaris	Lilac varieties
Viburnum x burkwoodii	Burkwood Viburnum
Viburnum carlesii	Koreanspice Viburnum
Viburnum dentatum	Arrowwood Viburnum
Viburnum lantana	Mohican Wayfaring Tree
Viburnum opulus 'Roseum'	Snowball Viburnum
Viburnum trilobum 'Bailey Compact'	Compact American Cranberrybush
Viburnum trilobum 'Wentworth'	Wentworth Highbush Viburnum

**DEED RESTRICTION
THOMPSON PARK SUBDIVISION, PHASE 2
TOWN OF CARBONDALE, COLORADO**

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON
PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY,
COLORADO**

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and executed this __ day of _____, 2019, (the "Effective Date"), by Thompson Park, LLC, a Colorado limited liability company and/or its assigns (the "Declarant"), for the benefit of and enforceable by the Board of Trustees of the Town of Carbondale, Colorado (the "Town") and the Garfield County Housing Authority ("GCHA"), a duly constituted housing authority established pursuant to Colorado law (the Town and GCHA together, the "Beneficiaries").

R E C I T A L S

WHEREAS, the Declarant is the owner of 100% of the real property described in the Thompson Park Subdivision Phase 2 Plat, recorded in the Garfield County real property records at Reception No. _____ ("Property"); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 plat have been condominiumized pursuant to the condominium plat recorded in the Garfield County real property records at Reception No. _____, resulting in the creation of five condominium units (the "Units"); and

WHEREAS, the Property was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052;

WHEREAS, the Declarant's predecessor and the Town entered into an Annexation and Development Agreement ("Annexation Agreement"), Reception No. 816055, setting forth additional terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, on November 8, 2018, Declarant and the Town entered into an Eighth Amendment to the Annexation Agreement, which amendment was recorded at Reception No. 914138; and

WHEREAS, Section 10 of the Annexation Agreement, as amended by the Eighth Amendment, requires that 20% of the units or lots developed on the Property be deed-restricted for affordable housing, with two units or lots being affordable to purchasers earning not more than 100% of the Garfield County area median income ("AMI"); and

WHEREAS, as indicated on the Phase 2 plat and condominium plat, the Property comprises 27 residential units; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement's affordable housing requirements by restricting the use of Units ___ and ___ of the Property ("Restricted Lots") as hereinafter described.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare, covenant, and agree as follows:

SECTION 1 **DEFINITIONS**

A. The following definitions shall apply to the terms used in this Agreement:

1. "Area of Eligibility" shall mean the Roaring Fork Valley and the area encompassing Aspen, Colorado, to Parachute, Colorado, including Redstone, Colorado, and Marble, Colorado.

2. "Date of Intent to Sell" shall mean the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when a Restricted Lot is first offered for sale by an Owner or the Declarant, as applicable.

3. "Guidelines" shall mean the Town's Community Housing Guidelines as amended from time to time and in effect at the time of sale of a Restricted Lot; provided, however, that as to Declarant, the terms of the Annexation Agreement shall control.

4. "Initial Sale Price" shall mean any sale price that is within the range established by the Guidelines for Qualified Buyers, and, in any event, that will not exceed thirty percent (30%) of household income for housing costs, including principal, interest, taxes, insurance and Homeowner Association fees, established by the AMI closest in time to the Date of Intent to Sell for the initial sale of a Restricted Lot.

5. "Institutional Lender" shall mean any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.

6. "Qualified Buyer" or "Qualified Buyers" shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred percent (100%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.

7. "Owner," as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an "Owner" hereunder only during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

8. "Permitted Capital Improvements" is defined on **Exhibit A** attached hereto and incorporated herein by this reference.

9. "Required Improvements" shall mean any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency.

SECTION 2

DECLARATION

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Restricted Lots shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Lot, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who purchase a Restricted Lot shall be Qualified Buyers, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries.

B. Declarant hereby restricts the acquisition or transfer of a Restricted Lot to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Lot in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Lot, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying a Restricted Lot to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee's acknowledgement and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of such Memorandum of Acceptance is attached hereto as **Exhibit B**.

SECTION 3
USE AND OCCUPANCY OF THE RESTRICTED LOT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Lot is limited exclusively to housing for Qualified Buyers owning the Restricted Lot and their families. Each Restricted Lot shall be utilized as an Owner's sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Lot, must: (a) occupy the Restricted Lot as his or her sole place of residence, as explained in the Guidelines, during the time that he or she is the Owner of a Restricted Lot; (b) not engage in any business activity on or in such Restricted Lot, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines for the duration of the Owner's ownership of the Restricted Lot; and (d) sell, convey, or otherwise transfer such Restricted Lot only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Lot as his or her sole and exclusive place of residence, the Restricted Lot shall be offered for sale pursuant to the provisions of **Section 4(H)** of this Agreement. The Owner shall be deemed to have ceased utilizing the Restricted Lot as his or her sole and exclusive place of residence by becoming a resident elsewhere, either within or outside the Area of Eligibility, by residing on the Restricted Lot for fewer than nine (9) months per calendar year without the express written approval of the GCHA, or as otherwise provided in the Guidelines. Where the provisions of this **Section 3(C)** apply, the GCHA may require the Owner to rent the Restricted Lot in accordance with the provisions of **Section 5**, below.

D. If an Owner of a Restricted Lot must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Lot during such absence, a leave of absence may be granted by the GCHA for up to one (1) year upon clear and convincing evidence demonstrating a bona fide reason for leaving and a commitment to return to the Area of Eligibility. A letter must be sent to the GCHA at least thirty (30) days prior to leaving, requesting permission to rent the Restricted Lot during the leave of absence. Notice of such intent, and the ability to comment, shall be provided to any applicable homeowners' association at the time of request to the GCHA. The leave of absence shall be for one (1) year and may, at the discretion of the GCHA, be extended for an additional one (1) year; but in no event shall the leave exceed two (2) years. The Unit may be rented during the one (1) or two (2) year period in accordance with **Section 5**, below.

SECTION 4
SALE OF RESTRICTED LOT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:

1. Deliver a written notice of its intent to sell a Restricted Lot (the “Notice of Sale”) to the Town and GCHA prior to offering the Restricted Lot for sale; and
2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and
3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list the Restricted Lot for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual resale price. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

C. In no event shall a Restricted Lot be sold by an Owner for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Restricted Lot paid by the Owner selling the Restricted Lot divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982 84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics (“Consumer Price Index”), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements and/or Required Improvements. In determining the improvement costs, only the Owner's actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner's “sweat equity” or to any appreciation in the value of the improvements. Notwithstanding the foregoing, in no event shall the Maximum Resale Price be less than the Owner's purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements and Required Improvements (except as limited in Paragraph C of this Section 4). The full amount of any monetary grant from a federal, state, or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale Price.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA, OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

D. To qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;
2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and
3. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements.

Notwithstanding anything else contained in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller's customary closing costs or to accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective Qualified Buyer.

G. Prior to an Owner's entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall not enter into a sales contract for the sale of a Restricted Lot with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with **Section 4(C)**. The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (hereinafter referred to as "Non-

Qualified Transferee(s)”), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to a Restricted Lot, the Restricted Lot shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in **Section 4(B)** above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Restricted Lot shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Restricted Lot. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.
2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.
3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.
4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.
5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.

SECTION 5
RENTAL OF A RESTRICTED LOT

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA's conditions of approval, rent a Restricted Lot. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy, and all other qualifications established by the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be "Owner's cost" prorated on a monthly basis. "Owner's cost," as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner's assessments, utilities remaining in Owner's name, plus an additional Twenty Dollars (\$20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including **Section 3**.

B. Nothing herein shall be construed to require the Declarant, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Lot between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be

construed as a waiver or relinquishment of the Town's or GCHA's right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 7

GRIEVANCE PROCEDURES

A. A grievance is any dispute that a tenant or Owner may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant's or Owner's rights, duties, welfare, or status. A grievance may be presented to a special review committee established by the Town and GCHA (hereinafter referred to as the "Committee" under the following procedures).

B. Filing a Grievance.

1. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.
2. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.
3. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.
4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.
2. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.
3. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.
4. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee

shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

SECTION 8

REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Lot, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney's fees.

C. Each and every conveyance of a Restricted Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

D. In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of a Restricted Lot by an Owner, or as specified in **Section 4(H)**. The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner's purchase price of the Restricted Lot as referred to in **Section 4** of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in **Section 4** of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9

DEFAULT/FORECLOSURE

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, "First Deed of Trust" means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Restricted Lot to secure a loan used to purchase the Restricted Lot. An Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Restricted Lot, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.

B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a Qualified Buyer of a Restricted Lot.

C. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering a Restricted Lot, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Thompson Park Homeowners Association for general or special assessments. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment or breach.

D. Upon notification of a default as provided in **Section 9(C)**, above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of a Restricted Unit pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner's financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to **Section 4** of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in **Section 9(C)**, above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney's fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Restricted Lot. Otherwise, Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Restricted Lot. The provisions of this **Section 9(E)** are not subject to the provisions of **Section 9(A)** limiting the amount of secured indebtedness.

F. The Town shall be a “person with an interest in the property.....” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 *et seq.* Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town’s sole discretion, to purchase the Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Restricted Lot, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the Town timely exercises its option, the closing on the purchase of the Restricted Lot shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Restricted Lot free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to cure the default by paying off the indebtedness secured by the Restricted Lot which is the subject of the pending foreclosure action, then to Owner’s closing costs, then to the payment of other indebtedness secured by the Restricted Lot, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town’s option to purchase the Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town’s option to purchase the Restricted Lot in the event that any subsequent NED is filed.

G. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Restricted Lot made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Restricted Lot if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of **Section 4(H)** of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.

SECTION 10
GENERAL PROVISIONS

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:
c/o Garfield & Hecht, P.C.
901 Grand Avenue, Suite 201
Glenwood Springs, Colorado 81601

To Town:
Town of Carbondale, Colorado
511 Colorado Avenue
Carbondale, Colorado 81623

To Owner: as set forth in each recorded Memorandum of Acceptance for each Restricted Lot

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule

restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner's or lender's rights under this Agreement, and when such amendment has been approved by the Town.

N. Attorney's Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.

DECLARANT:

THOMPSON PARK, LLC, a Colorado limited liability company

By: Lubar & Co., Co-Manager of Thompson Park, LLC

By: _____
David Bauer, Treasurer

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

The foregoing instrument was signed before me this _____ day of _____, 2019, by David Bauer, Treasurer of Lubar & Co., Co-Manager of Thompson Park, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

By: _____
Katherine Gazunis, Executive Director
Garfield County Housing Authority

Cathy Derby, Town Clerk

[illegible]

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this ____ day of _____, 2019.

Witness my hand and official seal.
My commission expires:

Notary Public

EXHIBIT A
PERMITTED CAPITAL IMPROVEMENTS

1. The term “Permitted Capital Improvements” as used in the Agreement shall only include the following:

- a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacements, and/or maintenance improvements;
- b. Improvements for energy and water conservation;
- c. Improvements for the benefit of seniors and/or handicapped persons;
- d. Improvements for health and safety protection devices;
- e. Improvements to add and/or finish permanent/fixed storage space;
- f. Improvements to finish unfinished space;
- g. Garages;
- h. The cost of adding decks and any extension thereto;
- i. Landscaping; and
- j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:

- a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;
- b. Improvements required to repair, replace, and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting, and other similar items; or
- c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined in the Agreement.

EXHIBIT B

MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND
AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN
LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF
CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _____ (“Owner”) has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: _____, according to the Final Plat thereof recorded _____ (date), as Reception No. _____ (“Property”), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner acknowledges and agrees to the terms, conditions, and restrictions found in that certain instrument entitled **DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO** recorded on _____ as Reception Number _____ in the Office of the Clerk and Recorder of Garfield County, Colorado (“Agreement”); and

NOW, THEREFORE, as required by the Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Owner agrees and acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions, and requirements thereof. In particular, Owner acknowledges and agrees that the Town of Carbondale shall be entitled to exercise the rights and options as set forth in Section 9 of the Agreement in the event of a default as described therein, and that the Owner will be required to document the cost of and obtain approval for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows

- a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is \$_____.
- b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:

3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER

Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

OWNER:

Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

**DEED RESTRICTION
THOMPSON PARK SUBDIVISION, PHASE 2
TOWN OF CARBONDALE, COLORADO**

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS AND UNITS WITHIN THE
THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD
COUNTY, COLORADO**

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and executed this __ day of _____, 2019, (the "Effective Date"), by Thompson Park, LLC, a Colorado limited liability company and/or its assigns (the "Declarant"), for the benefit of and enforceable by the Board of Trustees of the Town of Carbondale, Colorado (the "Town") and the Garfield County Housing Authority ("GCHA"), a duly constituted housing authority established pursuant to Colorado law (the Town and GCHA together, the "Beneficiaries").

R E C I T A L S

WHEREAS, the Declarant is the owner of 100% of the real property described in the Thompson Park Subdivision Phase 2 Plat, recorded in the Garfield County real property records at Reception No. _____ ("Property"); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 plat have been condominiumized pursuant to the condominium plat recorded in the Garfield County real property records at Reception No. _____, resulting in the creation of five condominium units; and

WHEREAS, the Property was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052;

WHEREAS, the Declarant's predecessor and the Town entered into an Annexation and Development Agreement ("Annexation Agreement"), Reception No. 816055, setting forth additional terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, on November 8, 2018, Declarant and the Town entered into an Eighth Amendment to the Annexation Agreement, which amendment was recorded at Reception No. 914138; and

WHEREAS, Section 10 of the Annexation Agreement, as amended by the Eighth Amendment, requires that 20% of the units or lots developed on the Property be deed-restricted for affordable housing, with one unit or lot being affordable to purchasers earning not more than 120% of the Garfield County area median income ("AMI"); and

WHEREAS, as indicated on the Phase 2 plat and condominium plat, the Property comprises 27 residential units; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement's affordable housing requirements by restricting the use of Unit __ of the Property ("Restricted Lot") as hereinafter described.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare, covenant, and agree as follows:

SECTION 1 **DEFINITIONS**

A. The following definitions shall apply to the terms used in this Agreement:

1. "Area of Eligibility" shall mean the Roaring Fork Valley and the area encompassing Aspen, Colorado, to Parachute, Colorado, including Redstone, Colorado, and Marble, Colorado.

2. "Date of Intent to Sell" shall mean the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when a Restricted Lot is first offered for sale by an Owner or the Declarant, as applicable.

3. "Guidelines" shall mean the Town's Community Housing Guidelines as amended from time to time and in effect at the time of sale of a Restricted Lot; provided, however, that as to Declarant, the terms of the Annexation Agreement shall control.

4. "Initial Sale Price" shall mean any sale price that is within the range established by the Guidelines for Qualified Buyers, and, in any event, that will not exceed thirty percent (30%) of household income for housing costs, including principal, interest, taxes, insurance and Homeowner Association fees, established by the AMI closest in time to the Date of Intent to Sell for the initial sale of a Restricted Lot.

5. "Institutional Lender" shall mean any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.

6. "Qualified Buyer" or "Qualified Buyers" shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred twenty percent (120%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.

7. "Owner," as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an "Owner" hereunder only during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

8. "Permitted Capital Improvements" is defined on **Exhibit A** attached hereto and incorporated herein by this reference.

9. "Required Improvements" shall mean any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency.

SECTION 2

DECLARATION

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Restricted Lot shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Lot, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who purchase a Restricted Lot shall be Qualified Buyers, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries.

B. Declarant hereby restricts the acquisition or transfer of a Restricted Lot to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Lot in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Lot, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying a Restricted Lot to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee's acknowledgement and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of such Memorandum of Acceptance is attached hereto as **Exhibit B**.

SECTION 3
USE AND OCCUPANCY OF A RESTRICTED LOT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Lot is limited exclusively to housing for Qualified Buyers owning the Restricted Lot and their families. Each Restricted Lot shall be utilized as an Owner's sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Lot, must: (a) occupy the Restricted Lot as his or her sole place of residence, as explained in the Guidelines, during the time that he or she is the Owner of a Restricted Lot; (b) not engage in any business activity on or in such Restricted Lot, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines for the duration of the Owner's ownership of the Restricted Lot; and (d) sell, convey, or otherwise transfer such Restricted Lot only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Lot as his or her sole and exclusive place of residence, the Restricted Lot shall be offered for sale pursuant to the provisions of **Section 4(H)** of this Agreement. The Owner shall be deemed to have ceased utilizing the Restricted Lot as his or her sole and exclusive place of residence by becoming a resident elsewhere, either within or outside the Area of Eligibility, by residing on the Restricted Lot for fewer than nine (9) months per calendar year without the express written approval of the GCHA, or as otherwise provided in the Guidelines. Where the provisions of this **Section 3(C)** apply, the GCHA may require the Owner to rent the Restricted Lot in accordance with the provisions of **Section 5**, below.

D. If an Owner of a Restricted Lot must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Lot during such absence, a leave of absence may be granted by the GCHA for up to one (1) year upon clear and convincing evidence demonstrating a bona fide reason for leaving and a commitment to return to the Area of Eligibility. A letter must be sent to the GCHA at least thirty (30) days prior to leaving, requesting permission to rent the Restricted Lot during the leave of absence. Notice of such intent, and the ability to comment, shall be provided to any applicable homeowners' association at the time of request to the GCHA. The leave of absence shall be for one (1) year and may, at the discretion of the GCHA, be extended for an additional one (1) year; but in no event shall the leave exceed two (2) years. The Unit may be rented during the one (1) or two (2) year period in accordance with **Section 5**, below.

SECTION 4
SALE OF RESTRICTED LOT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:

1. Deliver a written notice of its intent to sell a Restricted Lot (the “Notice of Sale”) to the Town and GCHA prior to offering the Restricted Lot for sale; and
2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and
3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list the Restricted Lot for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual resale price. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

C. In no event shall a Restricted Lot be sold by an Owner for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Restricted Lot paid by the Owner selling the Restricted Lot divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982 84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics (“Consumer Price Index”), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements and/or Required Improvements. In determining the improvement costs, only the Owner's actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner's “sweat equity” or to any appreciation in the value of the improvements. Notwithstanding the foregoing, in no event shall the Maximum Resale Price be less than the Owner's purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements and Required Improvements (except as limited in Paragraph C of this Section 4). The full amount of any monetary grant from a federal, state, or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale Price.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA, OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

D. To qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;
2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and
3. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements.

Notwithstanding anything else contained in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller's customary closing costs or to accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective Qualified Buyer.

G. Prior to an Owner's entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall not enter into a sales contract for the sale of a Restricted Lot with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with **Section 4(C)**. The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (hereinafter referred to as "Non-

Qualified Transferee(s)”), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to a Restricted Lot, the Restricted Lot shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in **Section 4(B)** above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Restricted Lot shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Restricted Lot. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.
2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.
3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.
4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.
5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.

SECTION 5
RENTAL OF A RESTRICTED LOT

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA's conditions of approval, rent a Restricted Lot. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy, and all other qualifications established by the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be "Owner's cost" prorated on a monthly basis. "Owner's cost," as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner's assessments, utilities remaining in Owner's name, plus an additional Twenty Dollars (\$20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including **Section 3**.

B. Nothing herein shall be construed to require the Declarant, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Lot between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be

construed as a waiver or relinquishment of the Town's or GCHA's right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 7

GRIEVANCE PROCEDURES

A. A grievance is any dispute that a tenant or Owner may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant's or Owner's rights, duties, welfare, or status. A grievance may be presented to a special review committee established by the Town and GCHA (hereinafter referred to as the "Committee" under the following procedures).

B. Filing a Grievance.

1. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.
2. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.
3. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.
4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.
2. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.
3. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.
4. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee

shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

SECTION 8

REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Lot, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney's fees.

C. Each and every conveyance of a Restricted Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

D. In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of a Restricted Lot by an Owner, or as specified in **Section 4(H)**. The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner's purchase price of the Restricted Lot as referred to in **Section 4** of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in **Section 4** of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9

DEFAULT/FORECLOSURE

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, "First Deed of Trust" means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Restricted Lot to secure a loan used to purchase the Restricted Lot. An Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Restricted Lot, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.

B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a Qualified Buyer of a Restricted Lot.

C. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering a Restricted Lot, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Thompson Park Homeowners Association for general or special assessments. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment or breach.

D. Upon notification of a default as provided in **Section 9(C)**, above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of a Restricted Unit pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner's financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to **Section 4** of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in **Section 9(C)**, above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney's fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Restricted Lot. Otherwise, Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Restricted Lot. The provisions of this **Section 9(E)** are not subject to the provisions of **Section 9(A)** limiting the amount of secured indebtedness.

F. The Town shall be a “person with an interest in the property.....” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 *et seq.* Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town’s sole discretion, to purchase the Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Restricted Lot, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the Town timely exercises its option, the closing on the purchase of the Restricted Lot shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Restricted Lot free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to cure the default by paying off the indebtedness secured by the Restricted Lot which is the subject of the pending foreclosure action, then to Owner’s closing costs, then to the payment of other indebtedness secured by the Restricted Lot, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town’s option to purchase the Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town’s option to purchase the Restricted Lot in the event that any subsequent NED is filed.

G. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Restricted Lot made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Restricted Lot if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of **Section 4(H)** of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.

SECTION 10
GENERAL PROVISIONS

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:
c/o Garfield & Hecht, P.C.
901 Grand Avenue, Suite 201
Glenwood Springs, Colorado 81601

To Town:
Town of Carbondale, Colorado
511 Colorado Avenue
Carbondale, Colorado 81623

To Owner: as set forth in each recorded Memorandum of Acceptance for each Restricted Lot

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule

restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner's or lender's rights under this Agreement, and when such amendment has been approved by the Town.

N. Attorney's Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.

DECLARANT:

THOMPSON PARK, LLC, a Colorado limited liability company

By: Lubar & Co., Co-Manager of Thompson Park, LLC

By: _____
David Bauer, Treasurer

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

The foregoing instrument was signed before me this _____ day of _____, 2019, by David Bauer, Treasurer of Lubar & Co., Co-Manager of Thompson Park, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

By: _____
Katherine Gazunis, Executive Director
Garfield County Housing Authority

The above and foregoing document was acknowledged before me by Katherine Gazunis
this ____ day of _____, 2019.

Notary Public

By: _____
Dan Richardson, Mayor

Cathy Derby, Town Clerk

[illegible]

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this ____ day of _____, 2019.

Witness my hand and official seal.
My commission expires:

Notary Public

EXHIBIT A
PERMITTED CAPITAL IMPROVEMENTS

1. The term “Permitted Capital Improvements” as used in the Agreement shall only include the following:

- a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacements, and/or maintenance improvements;
- b. Improvements for energy and water conservation;
- c. Improvements for the benefit of seniors and/or handicapped persons;
- d. Improvements for health and safety protection devices;
- e. Improvements to add and/or finish permanent/fixed storage space;
- f. Improvements to finish unfinished space;
- g. Garages;
- h. The cost of adding decks and any extension thereto;
- i. Landscaping; and
- j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:

- a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;
- b. Improvements required to repair, replace, and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting, and other similar items; or
- c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined in the Agreement.

EXHIBIT B

MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND
AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN
LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF
CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _____ (“Owner”) has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: _____, according to the Final Plat thereof recorded _____ (date), as Reception No. _____ (“Property”), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner acknowledges and agrees to the terms, conditions, and restrictions found in that certain instrument entitled **DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO** recorded on _____ as Reception Number _____ in the Office of the Clerk and Recorder of Garfield County, Colorado (“Agreement”); and

NOW, THEREFORE, as required by the Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Owner agrees and acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions, and requirements thereof. In particular, Owner acknowledges and agrees that the Town of Carbondale shall be entitled to exercise the rights and options as set forth in Section 9 of the Agreement in the event of a default as described therein, and that the Owner will be required to document the cost of and obtain approval for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows

- a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is \$_____.
- b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:

3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER

Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

OWNER:

Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

**DEED RESTRICTION
THOMPSON PARK SUBDIVISION, PHASE 2
TOWN OF CARBONDALE, COLORADO**

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS AND UNITS WITHIN THE
THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD
COUNTY, COLORADO**

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and executed this __ day of _____, 2019, (the "Effective Date"), by Thompson Park, LLC, a Colorado limited liability company and/or its assigns (the "Declarant"), for the benefit of and enforceable by the Board of Trustees of the Town of Carbondale, Colorado (the "Town") and the Garfield County Housing Authority ("GCHA"), a duly constituted housing authority established pursuant to Colorado law (the Town and GCHA together, the "Beneficiaries").

R E C I T A L S

WHEREAS, the Declarant is the owner of 100% of the real property described in the Thompson Park Subdivision Phase 2 Plat, recorded in the Garfield County real property records at Reception No. _____ ("Property"); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 plat have been condominiumized pursuant to the condominium plat recorded in the Garfield County real property records at Reception No. _____, resulting in the creation of five condominium units; and

WHEREAS, the Property was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052;

WHEREAS, the Declarant's predecessor and the Town entered into an Annexation and Development Agreement ("Annexation Agreement"), Reception No. 816055, setting forth additional terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, on November 8, 2018, Declarant and the Town entered into an Eighth Amendment to the Annexation Agreement, which amendment was recorded at Reception No. 914138; and

WHEREAS, Section 10 of the Annexation Agreement, as amended by the Eighth Amendment, requires that 20% of the units or lots developed on the Property be deed-restricted for affordable housing, with two units or lots being affordable to purchasers earning not more than 150% of the Garfield County area median income ("AMI"); and

WHEREAS, as indicated on the Phase 2 plat and condominium plat, the Property comprises 27 residential units; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement's affordable housing requirements by restricting the use of Units ___ and ___ of the Property ("Restricted Lots") as hereinafter described.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare, covenant, and agree as follows:

SECTION 1 **DEFINITIONS**

A. The following definitions shall apply to the terms used in this Agreement:

1. "Area of Eligibility" shall mean the Roaring Fork Valley and the area encompassing Aspen, Colorado, to Parachute, Colorado, including Redstone, Colorado, and Marble, Colorado.

2. "Date of Intent to Sell" shall mean the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when a Restricted Lot is first offered for sale by an Owner or the Declarant, as applicable.

3. "Guidelines" shall mean the Town's Community Housing Guidelines as amended from time to time and in effect at the time of sale of a Restricted Lot; provided, however, that as to Declarant, the terms of the Annexation Agreement shall control.

4. "Initial Sale Price" shall mean any sale price that is within the range established by the Guidelines for Qualified Buyers, and, in any event, that will not exceed thirty percent (30%) of household income for housing costs, including principal, interest, taxes, insurance and Homeowner Association fees, established by the AMI closest in time to the Date of Intent to Sell for the initial sale of a Restricted Lot.

5. "Institutional Lender" shall mean any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.

6. "Qualified Buyer" or "Qualified Buyers" shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred fifty percent (150%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.

7. "Owner," as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an "Owner" hereunder only during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

8. "Permitted Capital Improvements" is defined on **Exhibit A** attached hereto and incorporated herein by this reference.

9. "Required Improvements" shall mean any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency.

SECTION 2

DECLARATION

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Restricted Lots shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Lot, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who purchase a Restricted Lot shall be Qualified Buyers, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries.

B. Declarant hereby restricts the acquisition or transfer of a Restricted Lot to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Lot in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Lot, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying a Restricted Lot to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee's acknowledgement and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of such Memorandum of Acceptance is attached hereto as **Exhibit B**.

SECTION 3
USE AND OCCUPANCY OF A RESTRICTED LOT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Lot is limited exclusively to housing for Qualified Buyers owning the Restricted Lot and their families. Each Restricted Lot shall be utilized as an Owner's sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Lot, must: (a) occupy the Restricted Lot as his or her sole place of residence, as explained in the Guidelines, during the time that he or she is the Owner of a Restricted Lot; (b) not engage in any business activity on or in such Restricted Lot, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines for the duration of the Owner's ownership of the Restricted Lot; and (d) sell, convey, or otherwise transfer such Restricted Lot only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Lot as his or her sole and exclusive place of residence, the Restricted Lot shall be offered for sale pursuant to the provisions of **Section 4(H)** of this Agreement. The Owner shall be deemed to have ceased utilizing the Restricted Lot as his or her sole and exclusive place of residence by becoming a resident elsewhere, either within or outside the Area of Eligibility, by residing on the Restricted Lot for fewer than nine (9) months per calendar year without the express written approval of the GCHA, or as otherwise provided in the Guidelines. Where the provisions of this **Section 3(C)** apply, the GCHA may require the Owner to rent the Restricted Lot in accordance with the provisions of **Section 5**, below.

D. If an Owner of a Restricted Lot must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Lot during such absence, a leave of absence may be granted by the GCHA for up to one (1) year upon clear and convincing evidence demonstrating a bona fide reason for leaving and a commitment to return to the Area of Eligibility. A letter must be sent to the GCHA at least thirty (30) days prior to leaving, requesting permission to rent the Restricted Lot during the leave of absence. Notice of such intent, and the ability to comment, shall be provided to any applicable homeowners' association at the time of request to the GCHA. The leave of absence shall be for one (1) year and may, at the discretion of the GCHA, be extended for an additional one (1) year; but in no event shall the leave exceed two (2) years. The Unit may be rented during the one (1) or two (2) year period in accordance with **Section 5**, below.

SECTION 4
SALE OF RESTRICTED LOT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:

1. Deliver a written notice of its intent to sell a Restricted Lot (the “Notice of Sale”) to the Town and GCHA prior to offering the Restricted Lot for sale; and
2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and
3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list the Restricted Lot for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual resale price. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

C. In no event shall a Restricted Lot be sold by an Owner for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Restricted Lot paid by the Owner selling the Restricted Lot divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982 84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics (“Consumer Price Index”), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements and/or Required Improvements. In determining the improvement costs, only the Owner's actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner's “sweat equity” or to any appreciation in the value of the improvements. Notwithstanding the foregoing, in no event shall the Maximum Resale Price be less than the Owner's purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements and Required Improvements (except as limited in Paragraph C of this Section 4). The full amount of any monetary grant from a federal, state, or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale Price.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA, OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

D. To qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;
2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and
3. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements.

Notwithstanding anything else contained in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller's customary closing costs or to accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective Qualified Buyer.

G. Prior to an Owner's entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall not enter into a sales contract for the sale of a Restricted Lot with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with **Section 4(C)**. The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (hereinafter referred to as "Non-

Qualified Transferee(s)”), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to a Restricted Lot, the Restricted Lot shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in **Section 4(B)** above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Restricted Lot shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Restricted Lot. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.
2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.
3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.
4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.
5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.

SECTION 5
RENTAL OF A RESTRICTED LOT

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA's conditions of approval, rent a Restricted Lot. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy, and all other qualifications established by the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be "Owner's cost" prorated on a monthly basis. "Owner's cost," as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner's assessments, utilities remaining in Owner's name, plus an additional Twenty Dollars (\$20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including **Section 3**.

B. Nothing herein shall be construed to require the Declarant, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Lot between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be

construed as a waiver or relinquishment of the Town's or GCHA's right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 7

GRIEVANCE PROCEDURES

A. A grievance is any dispute that a tenant or Owner may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant's or Owner's rights, duties, welfare, or status. A grievance may be presented to a special review committee established by the Town and GCHA (hereinafter referred to as the "Committee" under the following procedures).

B. Filing a Grievance.

1. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.
2. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.
3. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.
4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.
2. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.
3. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.
4. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee

shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

SECTION 8 **REMEDIES**

A. This Agreement shall constitute covenants running with the Restricted Lot, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney's fees.

C. Each and every conveyance of a Restricted Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

D. In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of a Restricted Lot by an Owner, or as specified in **Section 4(H)**. The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner's purchase price of the Restricted Lot as referred to in **Section 4** of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in **Section 4** of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9 **DEFAULT/FORECLOSURE**

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, "First Deed of Trust" means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Restricted Lot to secure a loan used to purchase the Restricted Lot. An Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Restricted Lot, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.

B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a Qualified Buyer of a Restricted Lot.

C. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering a Restricted Lot, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Thompson Park Homeowners Association for general or special assessments. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment or breach.

D. Upon notification of a default as provided in **Section 9(C)**, above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of a Restricted Unit pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner's financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to **Section 4** of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in **Section 9(C)**, above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney's fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Restricted Lot. Otherwise, Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Restricted Lot. The provisions of this **Section 9(E)** are not subject to the provisions of **Section 9(A)** limiting the amount of secured indebtedness.

F. The Town shall be a “person with an interest in the property.....” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 *et seq.* Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town’s sole discretion, to purchase the Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Restricted Lot, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the Town timely exercises its option, the closing on the purchase of the Restricted Lot shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Restricted Lot free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to cure the default by paying off the indebtedness secured by the Restricted Lot which is the subject of the pending foreclosure action, then to Owner’s closing costs, then to the payment of other indebtedness secured by the Restricted Lot, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town’s option to purchase the Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town’s option to purchase the Restricted Lot in the event that any subsequent NED is filed.

G. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Restricted Lot made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Restricted Lot if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of **Section 4(H)** of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.

SECTION 10
GENERAL PROVISIONS

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:
c/o Garfield & Hecht, P.C.
901 Grand Avenue, Suite 201
Glenwood Springs, Colorado 81601

To Town:
Town of Carbondale, Colorado
511 Colorado Avenue
Carbondale, Colorado 81623

To Owner: as set forth in each recorded Memorandum of Acceptance for each Restricted Lot

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule

restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner's or lender's rights under this Agreement, and when such amendment has been approved by the Town.

N. Attorney's Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.

DECLARANT:

THOMPSON PARK, LLC, a Colorado limited liability company

By: Lubar & Co., Co-Manager of Thompson Park, LLC

By: _____
David Bauer, Treasurer

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

The foregoing instrument was signed before me this _____ day of _____, 2019, by David Bauer, Treasurer of Lubar & Co., Co-Manager of Thompson Park, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

By: _____
Katherine Gazunis, Executive Director
Garfield County Housing Authority

The above and foregoing document was acknowledged before me by Katherine Gazunis
this ____ day of _____, 2019.

Notary Public

By: _____
Dan Richardson, Mayor

Cathy Derby, Town Clerk

[illegible]

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this ____ day of _____, 2019.

Witness my hand and official seal.
My commission expires:

Notary Public

EXHIBIT A
PERMITTED CAPITAL IMPROVEMENTS

1. The term “Permitted Capital Improvements” as used in the Agreement shall only include the following:

- a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacements, and/or maintenance improvements;
- b. Improvements for energy and water conservation;
- c. Improvements for the benefit of seniors and/or handicapped persons;
- d. Improvements for health and safety protection devices;
- e. Improvements to add and/or finish permanent/fixed storage space;
- f. Improvements to finish unfinished space;
- g. Garages;
- h. The cost of adding decks and any extension thereto;
- i. Landscaping; and
- j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:

- a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;
- b. Improvements required to repair, replace, and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting, and other similar items; or
- c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined in the Agreement.

EXHIBIT B

MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND
AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN
LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF
CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _____ (“Owner”) has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: _____, according to the Final Plat thereof recorded _____ (date), as Reception No. _____ (“Property”), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner acknowledges and agrees to the terms, conditions, and restrictions found in that certain instrument entitled **DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO** recorded on _____ as Reception Number _____ in the Office of the Clerk and Recorder of Garfield County, Colorado (“Agreement”); and

NOW, THEREFORE, as required by the Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Owner agrees and acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions, and requirements thereof. In particular, Owner acknowledges and agrees that the Town of Carbondale shall be entitled to exercise the rights and options as set forth in Section 9 of the Agreement in the event of a default as described therein, and that the Owner will be required to document the cost of and obtain approval for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows

- a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is \$_____.
- b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:

3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER

Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

OWNER:

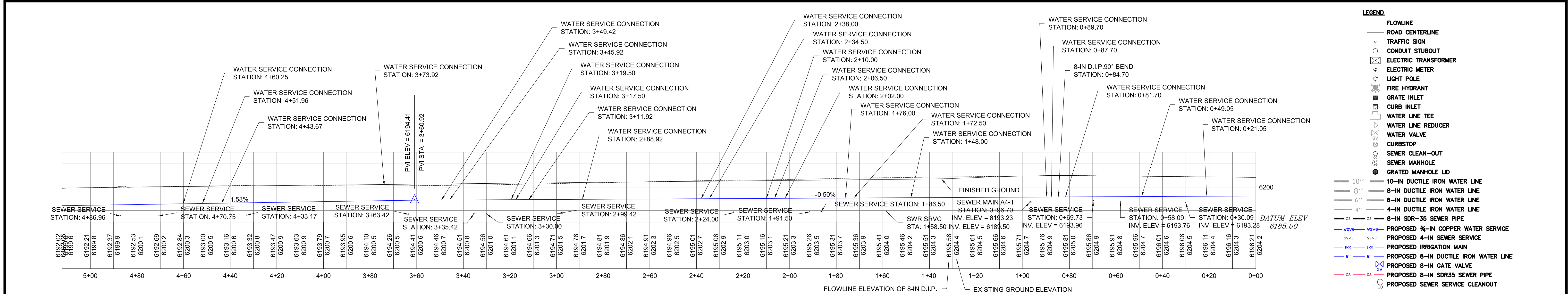
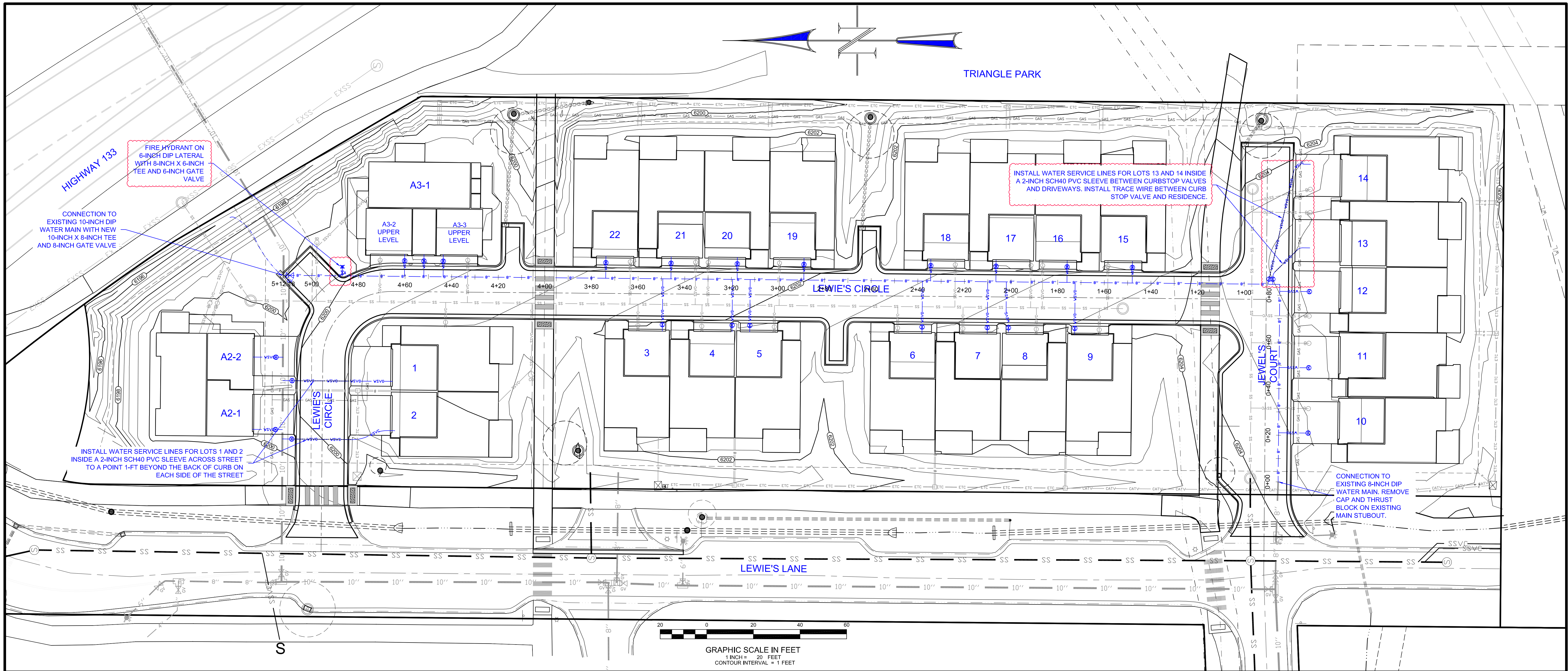
Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public



NOTE:
THE TOWN OF CARBONDALE IS RESPONSIBLE FOR THE MAINTENANCE AND REPLACEMENT FOR THAT PORTION OF WATER SERVICE PIPELINES SITUATED BETWEEN THE WATER MAIN PIPELINE AND THE CURB STOP VALVE. THE PROPERTY OWNER IS RESPONSIBLE FOR THE MAINTENANCE AND REPLACEMENT OF THAT PORTION OF WATER SERVICE PIPELINES LOCATED BETWEEN THE CURB STOP VALVE AND THE RESIDENCE.

REV NO.	DATE	REVISION	MADE BY	CHKD BY	APPD BY
2	8/27/18	Add Fire Hydrant at STA 4+87; Revise Water Service Pipelines for Lots 13 & 14	MUG		
1	6/19/18	Revisions to Address Town Public Works Comments	MUG		



WATER PLAN AND PROFILE

SCALE: 1" = 20'	DATE: MAY 21, 2018	DRAWN BY: MUG
SHEET: 5 OF 12	PROJECT: 07658-2017	CHKD BY:
DRAWING: BASE SITEPLAN LAYERS-20181015.dwg		
DIRECTORY: H:\07658\2017\Design\		



THOMPSON PARK - PHASE 2 FINAL PLANS

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970/945-2550 WWW.GAMBAENGINEERING.COM
113 NINTH ST., STE. 214 P.O. BOX 1458 GLENWOOD SPRINGS, CO 81602

SHEET NO.

5

PUBLIC NOTICE

PLEASE TAKE NOTICE that the Town of Carbondale Planning & Zoning Commission, Garfield County, State of Colorado, will conduct a public hearing to consider an application submitted by Thompson Park, LLC ("Applicant") for approval of a preliminary and final subdivision application ("Application"), for the property legally described as Parcel 2, THOMPSON PARK SUBDIVISION, according to the MASTER PLAT thereof filed May 19, 2015, as Reception No. 862909, Garfield County, Colorado, consisting of approximately 2.20 acres ("Property"). Thompson Park, LLC is the owner of the Property. Applicant is proposing to subdivide Parcel 2 into 24 lots and build 27 residential units thereon. A total of five units on Parcel 2 will be deed-restricted for affordable housing.

A public hearing on the Application is scheduled for October ____, 2019, at 6:00 PM, at Carbondale Town Hall, 511 Colorado Ave., Carbondale, Colorado. All interested parties have the right to appear at said hearing and to be heard on the Application. Copies of the Application are on file in the Town Planning Department office, Town Hall, 511 Colorado Ave., Carbondale, Colorado and may be examined by interested persons during regular working hours, 8:00 am through 5:00 pm, Monday through Friday.

The application may also be reviewed on the Town's website at www.carbondalegov.org.

Janet Buck
Planning Director

Publish 1x September __, 2019



**TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623**

Board of Trustees Agenda Memorandum

Meeting Date: 10/22/2019

TITLE: Planning Department Administrative Report

SUBMITTING DEPARTMENT: Planning Department

Thompson Park – In July of 2018, the Board approved the Major Site Plan Review to allow 40 residential units in Thompson Park. There would be 27 units on Parcel 2 with a mixture of duplexes, triplexes and attached single family homes. Since then, infrastructure has commenced on Parcel 2. Building permit applications for two of the duplexes and two of the triplexes have been issued and construction on the units have begun. A Preliminary and Final Plat application to divide the individual units in Parcel 2 has been submitted. It is scheduled for a public hearing before the Planning Commission on October 24, 2019 as well as a public hearing before the Board on November 12, 2019

Town Center – Staff continues to meet with potential buyers for portions of the Town Center property.

City Market – Work on the infrastructure for the Carbondale Marketplace (City Market) subdivision is well underway. The foundation and underground plumbing for City Market is nearing completion. It is anticipated that the masons will be coming to town towards the end of the month. Once they begin their work, the walls will start coming up quickly.

Stein Development – A new Major Site Plan Review application has been submitted for the property located at the northeast corner of Main Street and Highway 133. The proposal is for a mixed-use building with 3,881 sq. ft. of commercial space, 18 efficiency apartments and 9 two-bedroom units for a total of 27 units. All of the residential units would be rentals. Five units would be deed restricted for affordable housing units. This item went to the Planning Commission on October 10, 2019. The hearing was continued to November to allow a bit of fine tuning and for Staff to prepare findings and conditions. This will come before the Board at a public hearing on December 10, 2019.

1st Bank – The Certificate of Occupancy has been issued for 1st Bank. It is the first commercial building to be constructed under the UDC.

Sopris Lodge Assisted Living Community - The building permit has been issued and construction has started on this project. The independent living building is being framed. The foundation for the memory care building is close to completion and the framers will most likely move to that building in the near future.

728 Euclid – A public hearing was held on June 10, 2019 before the Board of Adjustment (BOA) for the consideration of an appeal of the Building Official's decision to issue a building permit for a structure at 728 Euclid Avenue. At the June 10, 2019 hearing, the property owner was directed by the BOA to submit conceptual redesigns of his building plans and the hearing was continued to August 19, 2019 to afford time for the property owner to comply. At the August 19, 2019 meeting, the BOA determined that the designs would not comply with the OTR's Purpose Statement and moved to continue the hearing until December 3, 2019, so that the property owner could take steps to come into compliance prior to the BOA rendering a final decision.

415 Village Road Condominium Exemption - The Planning Commission recommended approval of a Condominium Exemption for the Village Road North Townhomes Project so that the seven residential units can be sold individually. Two of the units are deed restricted and are part of the Town's Affordable Housing Program. The Board approved the application at the September 10th meeting.

Brothers Subdivision Exemption - 415 8th Street – The duplex and a single-family residence at 415 N. 8th Street are nearing completion and have been issued Certificates of Occupancy. The subdivision plat for this property has been recorded to allow each unit to be sold individually. The orientation of the buildings to the south is in anticipation of the future Industry Way extension between Merrill and Highway 133.

Crystal Acres PUD Amendment - The Planning Commission held two hearings, one in July and the second in August to review the proposed revisions to the Crystal Acres PUD. Specifically, the applicants would like to add language to the PUD to better define what a Primitive Trail is, add construction methods and better define what is allowed and what is not allowed in the Platted Riparian Zone. The P&Z recommended approval of the changes and the BOT will be reviewing the amendment at the October 22 Meeting.

403 and 417 Crystal Canyon Drive Minor Plat Amendment - The Planning Commission approved a minor plat amendment to combine two separate lots into one lot.

2020 Census County – Aspen to Parachute – Planning Staff has been participating in regional discussions on how to ensure there is an accurate count in our region during the 2020 census.

American Planning Association – Colorado Chapter – Staff attended the APA State conference which was held in Snowmass Village from September 18-20. The conference was well attended by planners from all corners of the state.

Property Inquiries – A number of properties were placed on the market around Town. As a result, Planning and Building Staff have been fielding numerous inquiries on those properties.

Prepared By: John Leybourne and Janet Buck

JH
Town Manager