



Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

AGENDA
PLANNING & ZONING COMMISSION
THURSDAY, June 25, 2020
7:00 P.M. Virtual Meeting *

1. CALL TO ORDER
2. ROLL CALL
3. 7:00 p.m. – 7:05 p.m.
Minutes of the June 11, 2020 meeting.....Attachment A
4. 7:05 p.m. – 7:10 p.m.
Public Comment for Persons not on the agenda (See instructions below)
5. 7:10 p.m. - 7:15 p.m.
Resolution 5, Series of 2020 - 55 N. 7th Street/ Special Use Permit Large Day Care...Attachment B
6. 7:15 p.m. – 7:30 p.m.
Virtual CONTINUED HEARING –Thompson Park Condo Exemption/Lots 1&2....Attachment C
Applicant: Thompson Park LLC
Location: 108/110, 202 A, B, C Lewie’s Circle
7. 7:30 p.m. – 7:50 p.m.
Virtual HEARING – Subdivision Exemption..... Attachment D
Applicant: Almdin Holdings LLC
Location: 156/160 Twelfth Street
8. 7:50 p.m. – 7:55 p.m.
Staff Update
9. 7:55 p.m. – 8:00 p.m.
Commissioner Comments
10. 8:00 p.m. – ADJOURN

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

ATTENTION: Due to the continuing threat of the spread of the COVID-19 Virus, all regular Carbondale P & Z Meetings will be conducted virtually. If you have a comment concerning one or more of the Agenda items please email msikes@carbondaleco.net by 4:00 pm on June 25, 2020.

If you would like to comment during the meeting please email msikes@carbondaleco.net with your full name and address by 4:00 pm on June 25, 2020. You will receive instructions on joining the meeting on line prior to 7:00 p.m. Also, you may contact msikes@carbondaleco.net to get a phone number to listen to the meeting, however, you will be unable to make comments.

Upcoming P & Z Meetings:

7-16-20 – 35 N. 7th Street (Main Street PUD) Rezoning

MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday June 11, 2020

Commissioners Present:

Michael Durant, Chair
Ken Harrington, Vice-Chair
Jay Engstrom
Marina Skiles
Nick Miscione
Erica Stahl Golden (2nd Alternate)

Staff Present:

Janet Buck, Planning Director
Mary Sikes, Planning Assistant
Kae McDonald

Commissioners Absent:

Jeff Davlyn
Jade Wimberley
Nicholas DiFrank (1st Alternate)

Other Persons Present Virtually

Angela Loughry, Architect
Mark Chain, 811 Garfield Avenue
Michelle Oger, Director, Blue Lake Preschool
Riley Soderquist, Carbondale Center Place
Jack Schrager, Carbondale Center Place
Yancy Nichol, Engineer
Michael Noda, Architect, 3560 Walnut Street, Denver, CO
Daniel Wilde, Architect, 3560 Walnut Street, Denver, CO
Andrea Korber, Architect
Dr. Ronald Stein, 1624 W. Olive Avenue, Burbank, CA

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

March 21, 2020 Minutes:

Ken made a motion to approve the March 21, 2020 minutes. Jay seconded the motion and they were approved unanimously.

March 28, 2020 Minutes:

Jay made a motion to approve the March 28, 2020 minutes. Marina seconded the motion and they were approved unanimously with Nick abstaining.

Resolution 4, Series of 2020 – Minor Site Plan Review and Special Use Permit/ADU – 415 Sopris Avenue

Ken made a motion to approve Resolution 4, Series of 2020, approving the Minor Site Plan Review/Special Use Permit at 415 Sopris Avenue. Nick seconded the motion and it was approved unanimously.

Public Comment – Persons Present Not on the Agenda

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

VIRTUAL CONTINUED HEARING – Special Use Permit for Large Day Care and Fence Variance

Location: 55 N. Seventh Street

Applicant: Blue Lake Preschool

Janet stated that the P&Z considered this application at the May 28th meeting and after discussion the Commission continued the hearing for tonight. She said that the applicant did get the plans revised and submitted to the Town by the deadline and in fact they were early. She said that the comments reflected all the requests made by Staff, having all of the parking in the alley be head-in. She said that they meet the parking code with the parking on site without the parking from CMC. She said that they do have some compact spaces but that there is an extra strip of land behind those spaces so we could consider those in compliance.

Janet said that the Public Works Director reviewed the new plans and that he recommended approval, with the alley parking looking great.

Janet said that there was a fence variance that's related to this application, which was discussed at the last meeting and that the Commission seemed to agree in the increase of six inches in height was acceptable.

Marina said that after going through the minutes and the Staff report that it is very clear and that she appreciates all of the background information.

Mark Chain said that Janet covered things very well and that he had nothing of importance to say.

Angela Loughry said that we are mainly here to answer any questions about the re-arranged parking and new plan that we are proposing.

Jay said that he appreciated the applicants working with us on the P1 and P2 parking spaces. He asked if there was extra space behind the compact parking so that cutting out some of the playground and addition could be avoided.

Angela explained that making the spaces sixteen feet that we didn't lose one infant capacity. She said that it was more about turning radius and being able to turn into that space is how that came about.

Erica said that her question was similar to Jay's and that she wanted to know if there were any consequences for adjusting the parking to be head-in. She asked if the future plans for the playground area were impacted.

Angela said that they were able to keep all of their capacities in our future. She said everything got a little smaller, including playground spaces and that we were still able to maintain the teachers' areas.

Michael said that it is worth while saying that a daycare center is a use that the code considers to be a special use and provides special scrutiny and that Staff had some legitimate concerns with the parking in the original application. He said that he believes that they have been adequately addressed now. He said that we talked about the variance and that the variance meets all of the criteria that are required.

Motion

Ken made a motion to approve the Special Use Permit for a Large Day Care, including approval of the fence variance and approving five parking spaces to back directly into the alley right-of-way with the conditions and findings in the Staff report. Jay seconded the motion and it was approved unanimously.

Michael stated that this application could be appealed and that the Commission looks at whether an application complies with the code and as such we are compelled to grant your request.

Michael thanked Angela and Mark for getting the parking situation resolved.

VIRTUAL HEARING – Zone Text Amendment to Section 5.8, Off-Street Parking Unified Development Code (UDC) – Self-Storage Facilities

Location: Town Wide

Applicant: Town of Carbondale

Janet said that this is a public hearing and that the Planning Commission did discuss this at two other meetings. She said that at the first one in February that we all agreed once we started looking at the off-street parking requirements for self-storage facilities that they were very high. She said that in March that she brought back an idea for a recommendation for a change in the amendments based on the comparisons from other municipalities that had been put together by Jack and Riley. She said that at the March meeting the Commission discussed that there might be different parking requirements based on whether it is an external unit or an internal unit. She said that it was because the external units would have parking in front of the garage doors.

Janet said that the Commission asked her to bring back a hybrid and that she included three scenarios in the Staff report. She said that one is the existing UDC requirements where she took a 92,900 square foot building and divided it by our current parking requirements which required seventy-four parking spaces, which we all agreed was too high.

Janet said that scenario two which is one parking space for four thousand square feet for internal units, with one base space plus one parking space per one hundred external units. She said that she calls this her hybrid scenario.

Janet said that scenario three was no differentiation between the unit type where you start with five parking spaces and then you have one parking space for every sixty units, whether it's internal or external. She said that scenario two and three came out fairly close.

Janet said that she likes the simplicity of scenario three but that she is open to the Commission's discussion and that she knows that it is a big difference between internal and external.

Janet said that she has included red lines for both scenarios. She said that she has a motion in the Staff report but that she left the motion blank. She said that she recommends approval of the zone text amendment for the off-street parking requirements as shown in scenario two or three. She told the Commission to feel free to make adjustments to the two scenarios.

Jay asked with the internal units that is it only accounting for the square footage and not the number of units. He said that this is something to consider.

Janet said that looking at the parking comparison that she took that from what other communities do and that they all look at the square footage. She said that Prescott is one per four thousand, Kearney, Nebraska was one per five thousand, Ogden, Utah one per five thousand. She said that in a lot of communities that parking is really minimal.

Riley Soderquist stated that the scenarios that Janet has laid out are good and at this point we would like to hear what the Commission thinks about it. He said that Jay brings up a good point about counting the units instead of looking at square footage alone. He said that what we are looking for is a reduction based on what it is now.

Jack Schrager said that the only thing he would add is that we looked at a comparison to what other municipalities do as well as data from the existing Sopris Self Storage and the number of existing units as a benchmark for demand. He said that we propose a solution based on the number of units because we have more data on that, but we are open to whatever the Commission decides is a good solution.

Michael said that if we were to go to a unit base opposed to a square footage base how would the unit distribution work. He said where do we stand in terms of the number of small units that are easy and cheap to rent verses the number of super large units that still won't generate a lot of traffic but constitute a lot of square footage but are in less demand.

Jack said that they haven't had a lot of detailed discussions with Dr. Stein about the planned unit mix is. He said that from the discussions that they have had that the incremental units will have a somewhat similar unit mix as the existing ones. He said that we looked at the maximum number of cars that were in the facility each day over the course of several months, which were indicative of the demand for internal units because the number of visitors is independent of what the parking setup is. He said that

he thinks what we proposed should be sufficient based on the data that we have. He said that Janet's proposal is more conservative than what we proposed.

Ken said that he may be referring to both scenarios.

Dr. Ron Stein, **1624 W. Olive Avenue, Burbank, CA** said that each unit is usually around a hundred and fifty square feet.

Michael said that is 10 x 15 and that 10 x 10 is about the normal size out at Carbondale Storage out in the county on 100 Road.

Michael asked Jack and Riley if there would be any preference to units verses...you said that Janet's proposal was more conservative but that you think that the numbers could come down a little more.

Jack said that we are very happy with what Janet proposed and if that's approved, we have no issues. He said that Janet's recommendation would require more parking than we originally proposed.

Andrea Korber, **57 Village Lane** said that she supports the proposal.

Motion to close the comment portion of the public hearing

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

Ken said that he agrees with the applicant and that he likes the reduction but that we are asking for more parking than is needed. He said that it is an inconvenience to the community to have too few parking spaces and it is also an inconvenience to have too many parking spaces. He said that they still have a requirement for a loading zone because of the nature and size of the building.

Janet said yes.

Ken said so that is why we are getting up higher than we should. He said that he is leaning towards scenario two because this is for all varieties of self-storage and some might be mixed, and some might be external only. He said that external only do not generate a lot of parking requirements because there is a parking space in front of each of the garages. He said that if you go to scenario three you are going to have five spaces plus one based upon the units and then you will have quite a few parking spaces that you don't need for an external storage facility. He said that he would say go to one space to either five thousand or six thousand for the internal units. He said that for the external units three plus one per one hundred.

Jay said that he agrees with Ken and that he hates excess parking so if we could cut down on unnecessary parking that he is all for it. He said that he likes the idea of scenario three, scenario two makes sense to separate the internal from the external but how much of a difference it really makes. He said that having a minimum of six spaces

seems a little high, five spaces plus one for every sixty so if you had fifty units that's six parking spots. He said that he would propose scenario three, but we have four spaces plus one for every hundred.

Erica said that what Jay described makes some sense to her and that she's had plenty of storage units in town and that she was just trying to think of how often there are many cars. She said that there haven't ever been many cars. She said that she would be on board with reducing the number and that she understands there needs to be a basic number and accessible spaces as well. She said that she would be on board with what Jay just mentioned.

Nick said that he was in favor of scenario three over two simply because it's easier to follow. He said that he is in favor of simplifying the code wherever possible, the language of the code. He said that he does agree with Ken that five space base may be a little too high but that he thinks that scenario three is sufficient.

Marina said that she agrees and that scenario three is her favorite, in light of what we approved two weeks ago, which is a vast amount of parking over by City Market. She said that creating a space that's actually what people will use day to day in a realistic manner is more amenable to what we are trying to achieve in Carbondale. She said that she appreciates the efforts to minimize the parking. She said that she likes Jay's model of modified version three of what Janet put together.

Michael said that for a short time this year that he rented a space at Carbondale Mini Storage, which is out on 100 Road out of town in the county. He said that it is a pretty large facility with all external units, and he seemed to recall that near the office that they had four or five spaces for customers with three or four spaces for staff. He said that inside of the security zone where the storage units were there was no parking, everyone parked in front of their unit. He said that is the kind of direction that we would go in taking a bare bones approach to it.

Further discussion ensued on the number of parking spots required.

Motion

Ken made a motion to approve the zone text amendment to revise off-street parking requirements for the "Self-Storage Facility (mini-storage)" using category as shown in modified Scenario three, three spaces and one per one hundred. Jay seconded the motion and it was approved unanimously.

VIRTUAL HEARING – Rezoning

Location: 900-958 Highway 133 and 1201 Colorado Avenue (Sopris Shopping Center and Sopris Shopping Center and Sopris Self Storage

Applicant: Carbondale Center Place LLC by Mark Chain

Janet said that this is an application for a rezoning and that the Commission is required to hold a public hearing and make a recommendation to the Board to approve it with conditions or recommend denial. She said that this parcel is the Sopris Shopping Center

and also the Stein Mini-Storage just to the east of it. She said that it is a little over four acres. She said the proposal and long term plan is to demolish the Sopris Shopping Center and keep the mini-storage units as they stand and put a mixed-use building on the west side of the property with seventy-six residential units and ten thousand square feet of commercial. She said that they would build a new self-storage facility to the west of the existing self-storage facilities.

Janet said that right now the property is zoned PC on the west side and that is an obsolete zone district. She said that the mini-storage section is zoned Stein Mini-Storage PUD. She said that even though there are two zone districts on this property there is no boundary because it is one lot. She said that the rezoning is what is in front of you. She said that what she did as she was reviewing the application is that she ran through all of the development parameters to make sure there were no fatal flaws in the number of units, setbacks, common open space. She said that she did this to provide feedback as far as the development standards. She said that this is a rezoning and that they are required to submit a conceptual plan. She said that if they go to the Board and if the rezoning is approved, then they would come back with another submittal with the Subdivision to divide the west side of the property, which would be the mixed-use side from the east side or the self-storage side. She said that they would come back with Major Site Plan Review at that point. She said that an important part of the rezoning process is this is when you provide direction on the conceptual plan and provide them feedback so when they put together their Major Site Plan Review application they can take all of that in.

Janet stated that this zoning is considered New Urban in the Comp Plan. She said that we have rezoned 1201 Main Street and Lot 1 to the Mixed-Use recently. She said that other consideration of rezoning is that we are trying to get rid of Planned Unit Developments (PUD's).

Janet said that she won't go over all of the development standards because the applicants are going to show an extensive presentation on the design of the building. She said that she likes a lot of design of the building, the commercial along Colorado Avenue, south side of the mini-storage looks great and that it looks like the downtown mercantile. She said some of the larger hot spots that she picked up is the length of the mixed-use building. She said that she included a comparison of some of our larger buildings. She said that this proposal is at 385 feet in length and that the old City Market is 289 feet and Sopris Liquors is about 223 feet. She said that there needs to be some visual relief along the highway and that the building will be ten feet from the property line.

Janet said that the private common open space for the mixed-use building needs to be shifted so that it's closer to the mixed-use building. She said that, if the building were separated into two buildings, they could put the open space somewhere in between there.

Janet said that the building design itself, there is commercial on the north and south sides. She said that on the ground floor there are residential units and that a suggestion

for the development team would be making it look a little more like commercial, like live-work or that type of use.

Janet said that overall, she is supportive of the rezoning application and that we have been trying to go to Mixed-Use and get rid of the PC zone district as well as PUD's.

Janet said that she would like to see some changes in the building design and the private common open space.

Ken asked if we approve the recommendation how do we separate the rezoning from the Preliminary Site Plan Review.

Janet said that was strictly before you is the rezoning and that there is no action on the Site Plan Review. She said that is more to think about what the code says as far as development standards to understand what the code is trying to achieve.

Janet said that she put the criteria in the Staff report and that she is going to point out what is important is if the Commission feels the design needs some changes it can be conditioned to make those changes.

Marina asked if there is a separate hearing for the private outdoor space and the architecture.

Janet answered yes.

Marina asked if we give those comments now so they can come back with...

Janet said yes.

Marina clarified that we could approve the rezoning if we decide to and that we can give suggestions on how this can be improved so that it will be approved in the future.

Janet said yes.

Ken asked if they would be suggestions or would they be conditions.

Janet said that they could be conditions especially with the bigger ones, mass and scale.

Ken said that it takes time to develop the language for a condition.

Jay suggested that if we just make recommendations that it gets the point across for what we would approve and what we wouldn't approve.

Erica asked if there would be a presentation and that she was just trying to catch up because she was new.

Jay asked if they are subdividing into one mixed-use and one commercial space or is it still one lot.

Janet said that it is still one lot, half would be mixed-use, and half would be CT. She said that what we would do is have the rezoning contingent upon approval of the Subdivision and Major Site Plan Review. She said that it is kind of a two-step process and that down the road that lot would be split into two.

Jay asked what the zoning of the storage units that are to the east and would it make more sense to do a lot line adjustment instead of subdividing.

Janet said that it couldn't be a lot line adjustment because it is one lot and that it would have to be a subdivision.

Jay asked if the existing storage units were on the same lot.

Janet said yes.

Marina asked if rezoning the whole lot to Mixed-Use allows all of the function on one single lot.

Janet explained that the west side of the lot would be Mixed-Use, and the east side would be CT and that they would come back with a subdivision to create a lot down the zoning boundary.

Michael asked if the east side of the site where the mini-storage is located is currently zoned CT and will remain CT.

Mark Chain said that the storage is zoned Stein PUD.

Ken said that by doing this we will get rid of a PUD.

Michael said that the whole lot is zoned PUD and if this is approved the mini-storage will be zoned CT and where the shopping center is now will be Mixed-Use.

Mark said that it will be Mixed-Use and right now the shopping center portion is zoned Planned Community Commercial, the obsolete zone district.

Marina asked if we were rezoning and subdividing.

Mark explained that it will become a Major Site Plan Review equivalent to Subdivision Exemption with a lot split. He said that that the lot line is shown in your documents with a red line just to the west of the proposed storage building.

Michael said keep in mind that when you talk about a subdivision you have one site and that within the subdivision you have more than one site and that is not what we are doing here. He said that we are designating a site to having two different zone districts.

Nick asked if we are adding an unnecessary step and could we just do this during the Major Site Plan Review as opposed to breaking it up into two separate steps.

Marina said unless we use this as a resource to give them feedback.

Janet said that they will have a higher level of detail when they come back for the Major Site Plan Review. She said that the reason that they want to do the rezoning first is to see if people are even open to these concepts before they go into the detail and expense of creating the engineering that is needed for the Subdivision and Major Site Plan Review.

Michael said that if you look in the Staff report the bar for rezoning is pretty low. He said that the new zoning has to conform with the Comp Plan, and it can't screw anything up as well as a perceived benefit to the community. He said that it is important to do the rezoning first.

Mark Chain said that he is representing Carbondale Center Place and that the entire team is here. He said that the owner of the property is Stein Properties and that Dr. Stein is present. He said that Tom Siliano works with him. He said that we have Jack Schrager and Riley Soderquist from Carbondale Center Place. He said for the architecture neo Studio, Michael Noda and Daniel Wilde. He said that we have the engineers on the phone.

Mark said that the discussion with where the lot line adjustment fits in was very well spoken and that Michael hit it right on the head. He said why go and invest everything in the engineering and design when it's a lot of money. He said that with the Overlook, the Carbondale industrial park near Town Hall was a PUD in 2008 and the Public Works Director at that time wanted to know exactly what the vertical elevation was of the curve. He said that would have taken hundreds of thousands of dollars to get there and they spent almost that much any way. He said that tonight is the rezoning and that the Commission is the recommending body and that the Board will be the decision maker. He said that assuming that the rezoning is approved then there will be a Major Site Plan Review with a Subdivision Exemption and a couple of other minor application like a Conditional Use Permit for storage or Alternative Compliance related to landscaping. He said that this is difficult to focus on the rezoning but not getting into the weeds of the Major Site Plan Review. He said that we do want to hear your ideas or fatal flaws and that we are pretty confident. He said that at the end of the night we want to come back and focus on the rezoning element itself.

Mark said that the Sopris Shopping Center itself was the main commercial driver back in the town in the sixties. He said that it started out as a lumber yard and in the early eighties it was where the grocery store was. He said that the shopping center has evolved over the years and that the supermarket moved to where it is now. He said that the shopping center is about thirty thousand square feet. He said that the storage came in, in the late eighties, and that it is about twenty-six thousand square feet. He said that the main building is about fifteen feet and the other buildings are about eleven feet.

Mark said that the New Urban is what the Planning Commission used to help formulate a lot of the zoning dimensional criteria for the Mixed-Use zone district. He said to be pedestrian bike oriented, with parking behind and buildings up close to the sidewalks and streets.

Mark said the concept itself for the mixed-use area where the shopping center is now is going to change to Mixed-Use zoning and we think that it complies with the Comp Plan and UDC. He said that the residential total is seventy-six units and two commercial pods. He said that Janet did have some concerns or brought up the fact that there are weighted towards efficiency apartments and one-bedroom apartments. He said that part of that is because some of the recent approvals out on west Main Street in Carbondale is almost fifty percent two- and three-bedroom mix. He said that some of the rental areas in Carbondale have a lot of your larger condominiums and houses. He said that smaller units seem to be in demand from what has been approved in Glenwood Springs, which seems to be filling up quite quickly.

Mark said that we think that this whole development will conform with the Highway 133 access plan. He said that it makes it safer for the entry from Colorado Avenue.

Mark said that the self-storage would be changed to CT zoning. He said that CT does allow a buffer from the industrial properties to the north and the multi-family to the east and south. He said that the good thing about the commercial transitional zoning is that that for some reason there is a need or desire to move that from storage or something else it could be commercial or residential. He said there would be one new building being constructed.

Mark said that there were details in the packet of comparisons to the Comp Plan. He said that we went through the points and that we meet the standards. He said that the connectivity talks about having a lot of connections out to the Highway 133 bike path. He said that one of the comments was that there are eleven sidewalks coming out to that path and is that what you really want.

Mark said that we think that we comply with the Comprehensive Plan, which is one of the largest criteria.

Mark said went over the rezoning approval criteria. He said that we have addressed this for both the Mixed-Use area and for the storage area.

Mark said that we may be a little short on what the common open space requirement is right now where the large area open space area is in the interior of the project is. He said for the total open space we are around twenty-two thousand square feet or about twenty-five percent landscaping for the entire Mixed-Use project.

Mark said that regarding Janet's concerns of the length of the building and being close to the highway that is one of the reasons for the design standards for a change in materials and texture. He said that he thinks that all of the standards will be met. He

said that he isn't sure about the live/work concept and that the Mixed-Use zoning does allow changes in the use as necessary to have flexibility.

Mark said that regarding suggestions verses conditions for some kind of approval, he said that he would like to keep those to suggestions so that if for some reason the design changes, what is a condition may be difficult to meet.

Michael Noda at neo Studio, 3560 Walnut Street, Denver CO thanked Janet for her comprehensive report. He said that she was very open to the development group to sit down and go over concepts as we designed them and that she gave us really good comments. He said that based on her comments and engineering requirements for the site is what we are going to present in concept today. His presentation included the following;

- Current zoning and proposed changes to the zoning.
- Site plan showing the division of the Mixed-Use and CT zone districts.
- Retail locations to the north and south of the Mixed-Use project.
- Entrances on Highway 133 and Colorado Avenue.
- CT zone's three existing buildings and the proposed new multi-level storage facility with the location of the elevators.
- Location of common open space in area with solar exposure.
- Architectural concepts with perspective from the highway.
- Connections to the bike path.
- The step back of the storage building to break up massing with stucco, brick, and metal paneling.

Daniel Wilde, Architect, 3560 Walnut Street, Denver, CO finished up their presentation showing the following;

- A 3D tour of the Mixed-Use building.
- The mercantile façade of the new storage building.
- An aerial view of the site showing the location of the buildings, parking, sidewalks, and the common open space.
- Elevations of the new storage building.
- Comparisons to surrounding properties and their sizing.

Mark Chain complemented naos for their sidewalks and pedestrian access.

Commission Discussion

- Egress/Ingress on Colorado Avenue with explanation from Yancy Nichol.
- Concern related to traffic flow to the north retail building.
- Types of business in commercial spaces.
- Need for loading and unloading to residential and commercial buildings.
- Noted the least amount of parking is near the retail buildings.

- Future plan of Industry Place with a round-about and the timeline of the Access Plan.
- Southern corner appears to almost touches the road.
- Length of building along Highway 133 and setbacks.
- Location of the retail buildings for pedestrian and bicycle access.
- Lumberyard design was so impressive, but we are not there yet with this.

There were no members of the public present virtually to comment.

Motion to close the comment portion of the public hearing

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

Commissioner Comments

- Residential activity and front yards along the highway out of place and noisy.
- Triangle of outdoor space could use enhancement.
- Shared outdoor space better suited to the southern end of the property.
- Reverse gym and club room on the east with the residential units on the west.
- Distribution of massing along the highway.
- Residential on the east side opening to common open space and outdoor retail seating possibilities near parking makes more sense.
- Storage building is restricting options for mixed-use building.
- Walking across the parking lot to get to common open space lends itself to dog walking but not to a gathering space.
- Shared outdoor space seems like an after-thought.
- Jamming way too much on this site.
- Play area near parking lot is dangerous.
- More units with efficiency layouts generate more traffic than one- and two-bedroom units.
- Length of the building and changing the façade on the west side is needed, drop third or second floor.
- Reduce storage building size to help with connectivity and parking.
- More storage will be needed with smaller units.
- Effective green space is needed.
- Vegetation screening preferred over sidewalk connections.
- Elevate first floor.
- No snow storage area indicated.

- Triangular lot and new urban code hems you into what you do and it could be 100% residential.

Rezoning Comments from Commission

Ken stated that the rezoning is appropriate.

Jay agreed.

Marina said that she approves the rezoning.

Erica said that she agrees on the rezoning. She said is there a reason that the lot line needs to be straight.

Nick said that he is in favor of rezoning.

Michael read through the criteria for the rezoning.

Janet read another condition to add; Final approval of the rezoning is contingent upon approval of the Subdivision and Major Site Plan Review. She said that she had not included that in the report.

Michael said that the rezoning has value so if we approve the rezoning but if they can't make this project work, they still have something that is more valuable tomorrow than it is today. He said that if we make the rezoning contingent on the success of this project then a future buyer will have to come back in and bear the cost of rezone all over again.

Further discussion ensued about the rezoning process.

Motion

Ken made a motion to recommend approval of the rezoning with the four conditions and findings in the Staff report. Marina seconded the motion and it was approved unanimously.

Yes: Ken, Marina, Nick, Erica, Jay

No: Michael

Michael said that the condition regarding contingency is too much of a burden to the developer and that is wrong to tie this to what we want to have happen.

Michael thanked the applicants for all their hard work.

Further discussion ensued about lot lines and conditions.

Staff Update

Janet said that City Market is paving this week.

Janet said that we will be getting three building permits in for Lot 1 along west Main Street.

Janet said that they are almost done with the public improvements for City Market except the tie-in for Hendrick and Shorty Pabst.

Janet said that City Market is still looking at getting their CO within the next month. She said that once that City Market gets the parking lot paved then Lot 1 will start getting cleaned up, which will be great.

Janet said that the next meeting will be a little subdivision and Thompson Park condominiumization. She said that there will be another coming for a self-storage north of the substation.

Commissioner Comments

Marina said that the last application for the lumber yard was stellar.

Ken said that although he loves the Paris motif, he thinks Michaels background wins the award for the day.

Michael thanked the Commission and said that they all brought a unique perspective and that it's all going to be better as a result. He said that he is sorry if he got a little short about the traffic discussion but that was out of our purview.

Motion to Adjourn

A motion was made by Marina to adjourn. Jay seconded the motion and the meeting was adjourned at 10:00 p.m.

**SPECIAL USE PERMIT
TOWN OF CARBONDALE, COLORADO**

**A SPECIAL USE PERMIT AUTHORIZING A LARGE DAY CARE FACILITY
TO BE OPERATED 55 N. 7TH STREET, CARBONDALE COLORADO.
(Lots 1-4, Block 21, Town of Carbondale and the south 15 feet of Lots 1, 2, 3, 4,
and 5, Block 7, Weaver's Addition to the Town of Carbondale)**

A. Recitals.

1. Blue Lake Preschool, Inc., (the "Applicant") has made application for a special use permit for a Large Day Care Facility, as defined in Section 8.3 of the Unified Development Code, for property located at 55 N. 7th Street ("subject property").
2. The application included a variance from the maximum fence height of 42" in the front yard setback to allow a 4 ft. high fence.
3. The subject property is zoned as part of the Commercial/Transitional (C/T) zone district pursuant.
4. A Large Day Care may be allowed as a special use within the C/T zone district pursuant to Chapter 17.04 of the Unified Development Code.
5. After all required public notices, the Planning and Zoning Commission held public hearings on May 28, 2020 and June 11, 2020 concerning this application during which it heard and considered comments from Town staff, legal counsel, the applicant and members of the public
6. Having considered the application and closed the public hearing, the Planning and Zoning Commission finds as follows with respect to this special use permit application and fence variance:

Special Use Permit

- a. The special use meets the purposes of the zone district in which it is located and all of the criteria and regulations specified for such use in that zone district, with the exception of the 48" fence in the front yard setback and the design of the five parking spaces which allow vehicles to back out onto the alley right-of-way. Both those items have been acknowledged and approved by the Planning Commission.
- b. The special use shall comply with all applicable fire, building, occupancy and other municipal code provisions adopted by the Town of Carbondale for the protection of public health, safety and welfare;
- c. The special use adequately mitigates traffic impacts in the neighborhood;
- d. The special use shall not have an adverse effect upon the character of surrounding uses.
- e. Impacts of the proposed use on adjacent properties and the surrounding neighborhood have been minimized in a satisfactory manner.

- f. The impacts of the use, including but not limited to its design and operation, parking and loading, traffic, noise, access to air and light, impacts on privacy of adjacent uses, and others, shall not create a nuisance and such impacts will be borne by the owners on which the proposed use is located rather than by adjacent properties or the neighborhood.
- g. Access to the site is adequate for the proposed use, considering the width of adjacent streets and alleys, and safety.
- h. The project is in scale with the existing neighborhood as it develops in the immediate future.

Fence Variance

- a. The structure is a residential dwelling unit which is being remodeled to accommodate the Large Day Care use;
- b. The lot is located in the Weaver's Addition;
- c. The applicant did not create the situation by his/her own actions as the State of Colorado requires a 48" high fence for Day Care uses;
- d. The new fence could not be reasonably placed in another location;
- e. The 48" high fence is designed in a reasonable fashion as it exceeds the allowed height of 42" and results in the variance requested being the minimum amount required in order to achieve the purpose of the variance request;
- f. The variance requested does not harm the public or injure the value of adjacent properties as the allowance is minimal; and
- g. The granting of a variance is consistent with the spirit and purpose of the Code.

B. Approval of a Special Use Permit for a Large Day Care.

The Planning Commission of the Town of Carbondale, Colorado hereby approves a variance from the maximum height of 42" to allow a 4 ft. high fence in the front yard and a special use permit, authorizing the operation of a Large Day Care upon the subject property subject to the conditions set forth herein and all applicable provisions of the Carbondale Municipal Code pertinent to the operation of a Large Day Care.

C. Conditions of Approval.

- 1. The Special Use Permit shall be limited to a Large Day Care facility with an enrollment of up to 36 children.
- 2. Three bicycle parking spaces shall be installed prior to issuance of a Certificate of Occupancy.

3. The five parking spaces off the alley shall be surfaced with impervious surface materials such as asphalt, chip and seal over road base, etc. In addition, the parking spaces shall be striped.
4. The four parallel parking spaces in front of the structure in the Seventh Street right-of-way shall remain available for public parking and shall not be designated for day care use.
5. A bollard shall be installed to protect the utility pole guy wire as shown on the revised site plan dated May 26, 2020 prior to issuance of a Certificate of Occupancy.
6. There shall be no signage placed on Seventh Street for the specific use of parking spaces for the Preschool.
7. No use of the alley is allowed for drop-off and pick-up.
8. The Parent Handbook and Registration Agreement shall include the following language:
 - a. Be respectful to the neighborhood when dropping off and picking up children.
 - b. Understand that parking may not always be available in front of the day care as those spaces are public parking spaces.
 - c. No use of the alley is allowed for drop-off and pick-up.
 - d. No Double Parking or Queuing in travel lanes.
9. Payment of water and sewer tap fees and water rights fees may be due at the time of building permit due to the change in use of the property from a single family home to a Large Day Care.
10. All representations of the applicant made before the Town during public hearings shall be considered a condition of approval.
11. The applicant shall reimburse the Town for all applicable development review fees set forth in the Municipal Code.

D. Transfer, Duration and Revocation of the Permit.

This Special Use Permit shall be subject to all provision if of Unified Development Code Section 2.5.2 related to transferability, duration, and revocation.

E. Fees.

1. Prior to commencement of operation of the facility, the Applicant shall reimburse the Town for all applicable development review fees and reimbursable expenses, as set forth in the Unified Development Code.

F. Recordation.

This Special Use Permit shall be recorded in the Garfield County real property records at the Applicant's expense within 30 days of its approval by the Planning and Zoning Commission. Thereafter, the terms and conditions of this permit shall run with title to the subject property until operation of a Large Day Care Facility is permanently ceased thereon in accordance with Section 2.5.2.C of the Unified Development Code.

Duly adopted by vote of the Planning and Zoning Commission of the Town of Carbondale at its regular meeting on June 25, 2020.

THE TOWN OF CARBONDALE

By: _____
Michael Durant, Chair



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

Planning Commission Agenda Memorandum

Meeting Date: 6-25-20

TITLE: Thompson Park – Condominiumization
Lots 1 and 2 Parcel 2, Thompson Park Subdivision

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS: Resolution 5, Series of 2020 – Lot 1
Resolution 6, Series of 2020 – Lot 2
Thompson Park Land Use Application

BACKGROUND

This is a Condominiumization application for Parcel 2 of the Thompson Park Subdivision. The Planning Commission is required to hold a public hearing and either approve the application or deny it. 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).

In 2018 and 2019, the Town approved a Major Site Plan Review and Subdivision Plat for Parcel 2 to allow the construction of 27 dwelling units. There will be two duplexes, two triplexes, three fourplexes and one five plex. Five of the units would be affordable housing units.

Two of the affordable housing units are located in a duplex on Lot 1. The other three are located in the triplex located on Lot 2. Both have been constructed and are nearing Certificate of Occupancy (CO). A number of free market units are under construction as well.

DISCUSSION

The recorded Development Improvements Agreement includes a condition that no CO shall be issued for free market units on Parcel 2 until the Deed Restrictions for the affordable housing units are recorded and that they receive their CO.

This condominium application will achieve that goal in that it is creating five separate condominium units with the plat. The Deed Restrictions associated with each unit are part of the application.

This condominium application will not change what was already approved during the Major Site Plan Review process. All of the zoning parameters including building design, setbacks, parking, storage area, private outdoor space, etc. were reviewed at that time.

Description of Units

Lot 1

The duplex unit is located on Lot 1. Lot 1 is a 10,454 sq. ft. parcel located along Highway 133 and Lewie's Lane. There are two units in the building: Unit 108 and Unit 110

Unit 108 is located on the first floor. Unit 110 is located on the second floor. Both are two-bedroom, two bath, 878 sq. ft. units.

Each unit has an enclosed garage, storage area, and patio areas which are Limited Common Elements associated with each unit. The land is considered a General Common Element.

The units are deed restricted as follows:

Unit 108 – 150% AMI or Category 4

Unit 110 – 150% AMI or Category 4

Lot 2

The triplex is located on Lot 2. Lot 2 is an 8,494 sq. ft. parcel located along Lewie's Circle and Highway 133.

Unit 202A is located on the first floor. It is an 815 sq. ft. unit.

Unit 202 B is located on the second floor and it is an 800 sq. ft. unit.

Unit 202C is also on the upper floor and it is 819 sq. ft.

All three units have enclosed garages, deck or patio areas and storage areas which are Limited Common Elements associated with each unit. The land is considered a General Common Element.

The units are deed restricted as follows:

Unit 202 A – 100% or Category 2

Unit 202B – 100% or Category 2
Unit 202C – 120% or Category 3

Subdivision Plat

Each lot has a condominium plat associated with it. The plats are thorough and include all of the necessary labels, certificates, and cross references. The Public Works Director has requested some minor changes on the labeling so that the plats match up to the recorded Parcel 2 Subdivision Plat. Staff has included a condition that the final condominium plat be reviewed and approved by Staff prior to recordation.

Declarations

The condominiums will be governed by the Thompson Park Declaration of Covenants, Conditions, Easements and Restrictions. This document was recorded in November of 2019 together with the Subdivision Plat for Parcel 2.

One of the conditions of approval from 2018 was that the owners of the affordable housing units will have an equal vote on Association matters, but the assessments paid by the owners of the deed restricted units are limited to 50% of that paid by owners of free market units in Thompson Park. This is reflected in documents.

The Association will need to be active as it will be responsible for maintaining the landscape within the public rights-of-way, the irrigation ditches and irrigation ditches, and Lewie's Circle. It will also responsible for maintaining all areas outside of the building envelopes on Lots 1 and 2 including yards, driveways, sidewalks, and roadways. This will also apply to the other lots on Parcel 2.

Deed Restrictions

The Town Attorney is reviewing the deed restrictions for the affordable housing units. Staff has included a condition that those documents be subject to final review and approval by the Town Attorney.

Fees

The Fire District and School District fees for all 27 units on Parcel 2 were paid at the time of recordation of the Parcel 2 subdivision plat. Water rights were paid prior to issuance of a building permit. No additional fees are due.

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 approve Resolution No. 5, Series of 2020 and Resolution No. 6, Series of 2020 approving the Condominium Application for Lot 1 and Lot 2 of the Thompson Park Subdivision Phase 2 with the following findings and conditions.**

CONDITIONS OF APPROVAL

1. The Condominium Plats shall be reviewed and approved by the Town prior to recordation of the Plats.
2. The deed restrictions for the affordable housing units shall be reviewed and approved by the Town prior to recordation of the Plats.
3. 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.
4. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.

FINDINGS

1. The subject property is suitable for subdivision within the meaning of Chapter 17.06:*Subdivision*;
2. All public utilities are in place on the subject property;
3. Each lot has the necessary dedicated public access required by this code at the time of the condominium exemption application;
4. The condominium plat shall comprise and describe not more than three lots and is no more than five acres in size; and
5. 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*.

Prepared by: Janet Buck, Planning Director

RESOLUTION NO. 5
SERIES OF 2020

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE TOWN
OF CARBONDALE, COLORADO, APPROVING CONDOMINIUMIZATION OF A
DUPLEX FOR PROPERTY LOCATED IN THE TOWN OF CARBONDALE,
COLORADO

WHEREAS, Thompson Park, LLC ("Owner") requested approval of a Condominium Exemption Application to condominiumize an existing duplex into two units. The duplex is located on Lot 1, Thompson Park Subdivision Phase 2, according to the final plat thereof recorded November 18, 2019 as Reception No. 928316, Carbondale, Colorado (Property);

WHEREAS, the Planning and Zoning Commission of the Town of Carbondale reviewed this application during a Public Hearing on June 25, 2020 and approved said application on the terms and conditions set forth below;

NOW, THEREFORE BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF CARBONDALE, COLORADO, that the Condominium Exemption is hereby approved, subject to the following conditions and findings:

Conditions of Approval

1. The Condominium Plats shall be reviewed and approved by the Town prior to recordation of the Plats.
2. The deed restrictions for the affordable housing units shall be reviewed and approved by the Town prior to recordation of the Plats.
3. 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.
4. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.

Findings for Approval

1. The subject property is suitable for subdivision within the meaning of Chapter 17.06: *Subdivision*;
2. All public utilities are in place on the subject property;

3. Each lot has the necessary dedicated public access required by this code at the time of the condominium exemption application;
4. The condominium plat shall comprise and describe not more than three lots and is no more than five acres in size; and
5. 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*.

INTRODUCED, READ, AND PASSED THIS ____ day of _____, 2020.

PLANNING AND ZONING COMMISSION OF
TOWN OF CARBONDALE

By: _____
Michael Durant
Chair

RESOLUTION NO. 6
SERIES OF 2020

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE TOWN
OF CARBONDALE, COLORADO, APPROVING CONDOMINIUMIZATION OF A
TRIPLEX FOR PROPERTY LOCATED IN THE TOWN OF CARBONDALE,
COLORADO

WHEREAS, Thompson Park, LLC ("Owner") requested approval of a Condominium Exemption Application to condominiumize an existing triplex into three units. The triplex is located on Lot 2, Thompson Park Subdivision Phase 2, according to the final plat thereof recorded November 18, 2019 as Reception No. 928316, Carbondale, Colorado (Property);

WHEREAS, the Planning and Zoning Commission of the Town of Carbondale reviewed this application during a Public Hearing on June 25, 2020 and approved said application on the terms and conditions set forth below;

NOW, THEREFORE BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF CARBONDALE, COLORADO, that the Condominium Exemption is hereby approved, subject to the following conditions and findings:

Conditions of Approval

1. The Condominium Plats shall be reviewed and approved by the Town prior to recordation of the Plats.
2. The deed restrictions for the affordable housing units shall be reviewed and approved by the Town prior to recordation of the Plats.
3. 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.
4. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.

Findings for Approval

1. The subject property is suitable for subdivision within the meaning of Chapter 17.06: *Subdivision*;
2. All public utilities are in place on the subject property;

3. Each lot has the necessary dedicated public access required by this code at the time of the condominium exemption application;
4. The condominium plat shall comprise and describe not more than three lots and is no more than five acres in size; and
5. 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*.

INTRODUCED, READ, AND PASSED THIS ____ day of _____, 2020.

PLANNING AND ZONING COMMISSION OF
TOWN OF CARBONDALE

By: _____
Michael Durant
Chair

Glenwood Springs Office
901 Grand Avenue, Suite 201
Glenwood Springs, Colorado 81601
Telephone (970) 947-1936
Facsimile (970) 947-1937

GARFIELD & HECHT, P.C.

ATTORNEYS AT LAW
Since 1975

www.garfieldhecht.com

Haley Carmer
hcarmer@garfieldhecht.com

May 21, 2020

VIA HAND-DELIVERY

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

RE: Thompson Park, LLC
Thompson Park Condominium Exemption Application

Dear Ms. Buck,

Thompson Park, LLC ("Applicant") hereby submits to the Town of Carbondale ("Town") its application for condominium exemption ("Application") for Lots 1 and 2, Parcel 2, Thompson Park Subdivision, according to the Phase 2 final plat recorded in the Garfield County real property records on November 18, 2019, at Reception No. 928316. A pre-application meeting was held via telephone on May 15, 2020.

As you know, 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. In July 2018, the Town Board of Trustees ("Board") 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, five of which must be deed-restricted affordable housing. Of those five units, two are to be Category 2 units, one is to be a Category 3 unit, and two are to be Category 4 units. In November 2019, the Board approved the final subdivision plat for Phase 2, which divided Parcel 2 into 24 lots. Applicant has constructed a duplex building (Building 1) on Lot 1 and a triplex building (Building 2) on Lot 2 and now desires to condominiumize those buildings to create a total of 5 condominium units between them.

All five of the units to be created through the Application will be used as residential deed-restricted affordable housing units. Each unit in Building 1 will have two bedrooms and two bathrooms, while each unit in Building 2 will have two bedrooms and one bathroom. The two units in Building 1 will be deed-restricted as Category 4 affordable units, and the Category 2 and 3 units will be in Building 2. As shown on the condominium maps included with the Application, each unit has an appurtenant one or two-car garage allocated to the unit as a limited common element. Other limited common elements include the decks and patio areas accessible from each unit, an attic storage area for one of the Building

1 units, and separate storage units for each Building 2 unit. Finally, all land outside the building and patio footprints on Lots 1 and 2 is designated as a general common element.

The condominium units proposed in the Application will be part of and governed by the Thompson Park Homeowners Association, Inc. and subject to the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision. The Association was incorporated prior to the recordation of the Phase 2 plat, and the Declaration has been recorded as well. Pursuant to prior approvals related to the subdivision, owners of affordable and market units will have an equal vote on Association matters, but assessments paid by affordable unit owners will be at least half that paid by market unit owners. Those provisions are reflected in the Declaration. Along with the recordation of the condominium maps for each lot, Applicant will record affordable housing deed restrictions for each unit. Drafts of the deed restrictions are included with the Application.

Both Building 1 and Building 2 have been constructed. Access to the buildings is off of Lewie's Circle, which is a privately-maintained public access easement created by the Phase 2 plat. Lewie's Circle connects to Lewie's Lane, a publically-dedicated street. Utility lines for water, sewer, electricity, and other public utilities have been installed within and adjacent to the buildings. The Association will be responsible for maintaining all of the general and limited common elements on Lots 1 and 2, except that individual owners will be responsible for snow removal from patios and decks and for the repair and maintenance of the interior of their garages and storage areas.

Pursuant to Ordinance No. 15-2019 which approved the Phase 2 plat, Applicant paid fire district and school district impact fees for all 27 units prior to recording the plat. Additionally, water rights dedication fees for full development of Parcel 2 were paid prior to the first building permit being issued for construction on Parcel 2. As such, no additional impact fees need to be paid in connection with this Application. As discussed during the pre-application meeting, engineering plans are not being submitted with this Application because plans for Lots 1 and 2 and the rest of Parcel 2 were submitted with and approved as part of the site plan and subdivision approvals. Accordingly, the following documents are being submitted with the Application:

1. Land Use Application Form
2. Payment for Application fees (\$300.00)
3. List of property owners within 300 feet
4. Title Commitment as proof of ownership of Lots 1 and 2
5. Draft condominium maps for Buildings 1 and 2
6. Recorded Declaration of Covenants, Conditions, Easements and Restrictions For Thompson Park Subdivision
7. Proposed 100%, 120%, and 150% AMI affordable housing deed restrictions
8. Proposed Planning & Zoning Public Notice (electronic copy only)

Applicant has provided a total of 8 copies of the condominium maps, 4 of which are 24x36 and 4 of which are 11x17. Four 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

June 25, 2020 Planning & Zoning Commission meeting. We look forward to working with the Town as we proceed through the application process.

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 Thompson Park, LLC

Enclosures



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, c/o Garfield & Hecht, P.C. Phone: 970-947-1936

Applicant Address: 901 Grand Avenue, Suite 201

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:
Lot 1 and Lot 2, Thompson Park Subdivision Phase Two according to the plat recorded at Reception No. 928316

PART 2 – PROJECT DESCRIPTION

General project description:

condominiumization of a duplex on Lot 1 and and a triplex on Lot 2 into a total of 5 residential condo units

Size of Parcel: Lot 1 - .24 acres Lot 1 - 2 units
Lot 2 - .195 acres # Dwelling Units: Lot 2 - 3 units Sq Ft Comm: 0

Type of Application(s): subdivision - condominium exemption

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.

Halley Carmer
Applicant Signature

5/21/2020
Date

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

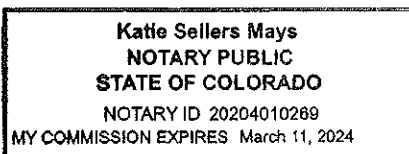
DMB May 21, 2020
Owner Signature Date

Owner Signature Date

STATE OF COLORADO)
COUNTY OF GARFIELD) ss.

The above and foregoing document was acknowledged before me this 21st day of May 2020, by Halley Carmer

Witness my hand and official
My commission expires:



Katie Sellers Mays
Notary Public



Garfield County, CO

Property Results

26 Results

☐ Show Property Photos

Account Number ▾	Owner ▾	Property Address ▾	Map
R042743	CARBONDALE, TOWN OF	0	Map
R082835	ROARING FORK SCHOOL DISTRICT, NO. RE-1	0	Map
R082836	CARBONDALE, TOWN OF	520 S THIRD ST	Map
R082837	CARBONDALE, TOWN OF	0	Map
R084404	THOMPSON PARK LLC	0	Map
R084405	THOMPSON PARK LLC	0	Map
R084406	THOMPSON PARK LLC	204 LEWIES CIR	Map
R084407	THOMPSON PARK LLC	206 LEWIES CIR	Map
R084408	THOMPSON PARK LLC	208 LEWIES CIR	Map
R084409	THOMPSON PARK LLC	210 LEWIES CIR	Map
R084410	THOMPSON PARK LLC	212 LEWIES CIR	Map
R084411	THOMPSON PARK LLC	214 LEWIES CIR	Map
R084420	THOMPSON PARK LLC	215 LEWIES CIR	Map
R084421	THOMPSON PARK LLC	213 LEWIES CIR	Map
R084422	THOMPSON PARK LLC	211 LEWIES CIR	Map
R084423	THOMPSON PARK LLC	209 LEWIES CIR	Map
R084424	THOMPSON PARK LLC	207 LEWIES CIR	Map
R084425	THOMPSON PARK LLC	205 LEWIES CIR	Map
R084426	THOMPSON PARK LLC	111 LEWIES CIR	Map
R084427	THOMPSON PARK LLC	113 LEWIES CIR	Map
R090001	CHAPMAN, COLIN R	1537 133 HWY	Map
R090015	MARK ROSS MONTESSORI FOUNDATION	1539 133 HWY	Map
R090027	VAUGHAN, MATTHEW S & KATHLEEN M	1535 133 HWY	Map
R090061	MARK ROSS MONTESSORI FOUNDATION	109 LEWIES LN	Map
R340209	CEVETTE, DANIEL W & JULIE A	580 GRACE DR	Map
R590321	CARBONDALE, TOWN OF	0	Map

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Garfield County, CO

Property Results

28 Results

☐ Show Property Photos

Account Number	Owner	Property Address	Map
R042743	CARBONDALE, TOWN OF	0	Map
R082835	ROARING FORK SCHOOL DISTRICT, NO. RE-1	0	Map
R082836	CARBONDALE, TOWN OF	520 S THIRD ST	Map
R082837	CARBONDALE, TOWN OF	0	Map
R084404	THOMPSON PARK LLC	0	Map
R084405	THOMPSON PARK LLC	0	Map
R084406	THOMPSON PARK LLC	204 LEWIES CIR	Map
R084407	THOMPSON PARK LLC	206 LEWIES CIR	Map
R084408	THOMPSON PARK LLC	208 LEWIES CIR	Map
R084409	THOMPSON PARK LLC	210 LEWIES CIR	Map
R084410	THOMPSON PARK LLC	212 LEWIES CIR	Map
R084411	THOMPSON PARK LLC	214 LEWIES CIR	Map
R084412	THOMPSON PARK LLC	216 LEWIES CIR	Map
R084413	THOMPSON PARK LLC	218 LEWIES CIR	Map
R084419	THOMPSON PARK LLC	217 LEWIES CIR	Map
R084420	THOMPSON PARK LLC	215 LEWIES CIR	Map
R084421	THOMPSON PARK LLC	213 LEWIES CIR	Map
R084422	THOMPSON PARK LLC	211 LEWIES CIR	Map
R084423	THOMPSON PARK LLC	209 LEWIES CIR	Map
R084424	THOMPSON PARK LLC	207 LEWIES CIR	Map
R084425	THOMPSON PARK LLC	205 LEWIES CIR	Map
R084426	THOMPSON PARK LLC	111 LEWIES CIR	Map
R084427	THOMPSON PARK LLC	113 LEWIES CIR	Map
R090001	CHAPMAN, COLIN R	1537 133 HWY	Map
R090015	MARK ROSS MONTESSORI FOUNDATION	1539 133 HWY	Map
R090027	VAUGHAN, MATTHEW S & KATHLEEN M	1535 133 HWY	Map
R090061	MARK ROSS MONTESSORI FOUNDATION	109 LEWIES LN	Map
R590321	CARBONDALE, TOWN OF	0	Map

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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Developed by



Version 2.3.60



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:

Inter-Mountain Engineering
PO Box 978
Avon, CO 81620

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: TBD 0602335 - C

Buyer's Name(s): Purchaser with contractual rights under a purchaser agreement with the vested owner identified at Item 4 below

Seller's Name(s): Thompson Park, LLC, a Colorado limited liability company

Property: Lot 1 Thompson Park, Carbondale, CO 81623
Lot 1, Thompson Park Subdivision, Garfield County, Colorado
Lot 2 Thompson Park, Carbondale, CO 81623
Lot 2, Thompson Park Subdivision, Garfield County, 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:	
Total Endorsement Charge(s):	
TBD Charge(s):	\$250.00
TOTAL CHARGES:	\$250.00



**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:



TITLE COMPANY
of the rockies

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: TBD 0602335 - C

1. Effective Date: **January 03, 2020, 7:00 am** Issue Date: **January 13, 2020**

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: **Purchaser with contractual rights under a purchaser agreement with the vested owner identified at Item 4 below**

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, a Colorado limited liability company

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:

Susan Sarver

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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:

Lots 1 and 2,
THOMPSON PARK SUBDIVISION, PHASE 2,
according to the Plat thereof filed November 18, 2019 at [Reception No. 928316](#).

For each policy to be issued as identified in Schedule A, Item 2, the Company shall not be liable under this commitment until it receives a specific designation of a Proposed Insured, and has revised this commitment identifying that Proposed Insured by name. As provided in Commitment Condition 4, the Company may amend this commitment to add, among other things, additional exceptions or requirements after the designation of the Proposed Insured.

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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. Evidence satisfactory to the Company or its duly authorized agent that the "transfer fee" to the Town of Carbondale, imposed by Declaration of Covenants - Real Estate Transfer Assessment ("RETA") for Thompson Park Subdivision, recorded July 10, 2019 as [Reception No. 922724](#), has been paid.
7. 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 as [Reception No. 912219](#).

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

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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 as [Reception No. 912263](#).

NOTE: Disburser's Notice by National Exchange Bank and Trust, recorded October 17, 2018 as [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. Statement of Authority for Thompson Park, LLC, a Colorado limited liability company, recorded September 26, 2018 as [Reception No. 912218](#), discloses that the names and addresses of the manager(s) or member(s) authorized to act on behalf of the limited liability company are as follows:
11. Deed from Thompson Park, LLC, a Colorado limited liability company to Purchaser with contractual rights under a purchaser agreement with the vested owner identified at Item 4 below.

NOTE: Duly executed real property transfer declaration, executed by either the Grantor or Grantee, to accompany the Deed mentioned above, pursuant to Article 14 of House Bill No. 1288-CRA 39-14-102.

24-month Chain of Title: The only conveyance(s) affecting said land recorded within the 24 months preceding the date of this commitment is (are) as follows:

SPECIAL WARRANTY DEED recorded September 26, 2018 as [Reception No. 912217](#).

NOTE: If no conveyances were found in that 24 month period, the last recorded conveyance is reported. If the subject land is a lot in a subdivision plat less than 24 months old, only the conveyances subsequent to the plat are reported.

12. Recordation of Plat for Condominium Map and Declarations.

EXCEPTION NO. 5 UNDER SCHEDULE B, SECTION 2 OF THIS COMMITMENT WILL NOT APPEAR IN THE POLICY OR POLICIES TO BE ISSUED PURSUANT HERETO, PROVIDED THAT (A) THE DOCUMENTS CONTEMPLATED BY THE REQUIREMENTS SET FORTH IN SCHEDULE B, SECTION 1 OF THIS COMMITMENT ARE SUBMITTED TO AND APPROVED AND RECORDED BY THE COMPANY OR ITS DULY AUTHORIZED

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AGENT, AND (B) AN EXAMINATION OF THE RECORDS IN THE OFFICE OF THE CLERK AND RECORDER FOR GARFIELD COUNTY, COLORADO BY THE COMPANY OR ITS DULY AUTHORIZED AGENT DISCLOSES THAT NO DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS HAVE BEEN RECORDED IN SUCH RECORDS SUBSEQUENT TO THE EFFECTIVE DATE HEREOF.

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 CLOSSES 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](#), Ninth Amendment recorded June 6, 2019 as [Reception No. 921277](#).

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. Declaration of Covenant - Real Estate Transfer Assessment, Thompson Park Subdivision, recorded July 10, 2019 at [Reception No. 922724](#).
23. Terms, agreements, provisions, conditions and obligations as contained in Collateral Assignment of Declarant Rights, recorded November 12, 2019 at [Reception No. 928045](#).
24. Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision, recorded November 18, 2019 as [Reception No. 928313](#).
25. Terms, agreements, provisions, conditions and obligations as contained in Architectural Design Guidelines for Thompson Park Subdivision, recorded November 18, 2019 at [Reception No. 928314](#).
26. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 15, Series of 2019, recorded November 18, 2019 at [Reception No. 928315](#).
27. Easements, rights of way and all other matters as shown on the Plat of Thompson Park Subdivision, Phase 2, recorded November 18, 2019 at [Reception No. 928316](#), Subordination by Lienholder recorded November 18, 2019 at [Reception No. 928317](#).

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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.

[illegible]

Owner: Thompson
700 17th Street
Suite 200
Denver, CO 80202

By: Jacques A. Machol III, Co-Manager

COUNTY OF)
) ss.
)

The foregoing Certificate of Dedication and Ownership was acknowledged before me this _____ day of _____, A.D., 2020.

My commission expires: _____

Witness my hand and official seal.

Notary Public

1. James S. Kuhnle do hereby certify that, as a Registered Professional Land Surveyor licensed under the laws of the State of Colorado, that this is a true, correct and complete reproduction of the original of the *1890s General Condemnation Map in the Town of Carbonade, County of Pitkin, of Thompson Park, Duplex Condominium Map in the Town of Carbonade, County of Pitkin, State of Colorado*, as laid out, plotted, delineated and shown herein, that such Condemnation Map was made from an accurate survey of said property by me and under my supervision and correctly shows the location and dimensions of all lots, easements and applicable regulations governing the subdivision of land.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of May, 2020.

Lot 1, Thompson Park Subdivision Phase 2 as recorded in the Office of the Garfield County Clerk and Recorder under Reception No. 928316 containing 0.240 acres more or less.

James S. Kunkel
License Number 23089

CURVE TABLE

FOUND #5 REBAR WITH 1-1/2" ALUMINUM CAP
STAMPED L.S. 23089

FOUND #5 REBAR WITH 1-1/2" ALUMINUM CAP
STAMPED L.S. 23089

FOUND NAIL AND 1" WASHER DRILLED INTO ASPHALT
STAMPED L.S. 23089

<u>Lot</u>	<u>Sq. Ft.</u>	<u>Acres</u>	<u>Land Use</u>
1	10,254	0.240	Condominium

ROUND NAIL AND 1" WASHER DRILLED INTO ASPHALT

1. The purpose of this plat is to condominiumize the residential building located on Lot 1 in the two residential condominium units.
2. Date of survey: March 8, 2020.
3. The units of these measurement are U.S. Survey Feet.
4. The basis of bearings is on assumed line bearing S00°10'22"W between #5 rebar with a 1-1/2" aluminum cap stamped LS 23089 and a 1" brass cap stamped LS 23089 as shown hereon.
5. Easements are based on the site benchmark which is the top nut of a five hydrant housing 24 inches in diameter.
6. Property line and right-of-way information was used on Title Company of the Rockies Commitment No. 0602305-C having an effective date of January 5, 2020.
7. Lot 1 and the condominium units created by this map are subject to the terms, conditions, notes, assessments, and restrictions reflected on the Thompson Park Subdivision Phase 2 plat recorded on the Garfield County Clerk and Recorder on November 18, 2019, at Reception No. 9263156.
8. Pursuant to the Notice of Applicability recorded at Reception No. _____, interest conveyed to be governed by the Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision, recorded at Reception No. 926315, and the associated Design Budgeting, assessment, and collection procedures for the purposes of funding common expenses, including upkeep of private common areas, as well as operation, maintenance, repair and replacement of certain infrastructure located within public rights-of-way.
9. All of the undisputed areas within public rights-of-way.
10. Units 108 and Unit 110 which are created by this plat are subject to the deed restrictions recorded in the Office of the Garfield County Clerk and Recorder on _____ at Reception No. _____ and _____, respectively. Said deed restrictions establish income, qualifications and occupancy, and restrictions to prevent the overcrowding of the Units.
11. Any improvements made within the wildlife assessment, recorded under Reception No. _____, shall be subject to the risk of the property owner if the town needs to mention its wildlife infrastructure.
12. All land outside the building footprint on Lot 1 is dedicated to the Thompson Park portion of the lot located within the Access Easement.
13. The Association shall be responsible for mowblasting (including snow removal), open space outside the building envelope on Lot 1, which areas include all yards, driveways, grass areas, and parking areas. Owners are responsible for snow removal from decks, patios, and front door walkways.
14. The Limited Common Elements created by this plat include the roof and exterior of the building located on Lot 1 and the appurtenant areas (including stairs, patios, and attic building envelope) depicted on Pages 2 and 3 hereof. The Thompson Park Homeowners Association shall be responsible for repairing and maintaining the Limited Common Elements created hereby as described in the declaration referenced in Note 5.
15. The owners of the Units to which the garage and attic Limited Common Elements are appurtenant shall be jointly responsible for the repair and maintenance of the interior of the garage and attic. The owners of the Units shall jointly be responsible for the interior of the garage. In no event may the garage be separately owned, conveyed, leased, or transferred.

This Plot was approved by the Planning and Zoning Commission of the Town of Carbondale, Garfield County, Colorado on the _____ day of _____, A.D., 2020.

Chair

This Plat was filed for record in the Office of the Clerk and Recorder of Garfield County, Colorado this _____ day of _____, 2020, at _____ o'clock _____ M., at Reception No. _____.

Clerk and Recorder

by _____
Deputy _____


**Inter-Mountain
ENGINEERING**
Civil Engineers & Surveyors
 P.O. BOX 978, AVON, CO 81620 PH: (970)949-5072 FAX: (970)949-9339
 9618 BROOK HILL LANE, LONE TREE, CO 80124 EMAIL: INFO@INTER-MTN.NET

SHEET NO. <div style="font-size: 2em; font-weight: bold;">1 OF 3</div>	DESIGNED BY: DRAWN BY: SPJ CHECKED BY: USK DATE ISSUED: 5-4-20 PROJECT NO.: 19-0026	<div style="text-align: center; font-size: 1.5em; font-weight: bold;">CONDOMINIUM MAP</div> <div style="text-align: center;"> THOMPSON PARK DUPLEX CONDOMINIUM TOWN OF CARBONDALE COUNTY OF GARFIELD, STATE OF COLORADO </div>	CLIENT: THOMPSON PARK, LLC <p style="font-size: 0.8em;"> This document was prepared for the exclusive use of the Client specified hereon. The use of this document or the information contained herein by any other person or entity is not authorized. In the event that any other person or entity desires to use this document or the information contained herein for any purpose they must first obtain written authorization from Inter-Mountain Engineering. This document and any information contained herein is intended to be used within one year of the date hereof. Use after that period is not authorized. </p>

Floor plan of the second floor of a building. The plan shows two main units, Unit 108 and Unit 109, and a central staircase. Unit 108 is located on the right side of the plan, measuring 21.0' by 11.5'. Unit 109 is located on the left side of the plan, measuring 23.3' by 19.4'. The staircase is located in the center, measuring 10.0' by 9.4'. The plan also shows various rooms, including a living area, a kitchen, a dining area, a bedroom, a bathroom, and a garage. The overall dimensions of the building are 21.0' by 23.3'.

Floor plan of Unit 110 showing layout, dimensions, and area calculations.

Unit 110
679 S.F.

L.C.E. ATTIC
UNIT 110
427 S.F.

L.C.E. DECK (INCLUDING STAIRS)
UNIT 110
145 S.F.

Dimensions (feet):

- Overall width: 21.0'
- Overall depth: 43.0'
- Attic width: 21.0'
- Attic depth: 11.5'
- Deck width: 9.0'
- Deck depth: 22.5'
- Stair width: 1.0'
- Stair depth: 1.0'

AREA SUMMARY

<u>UNIT 108</u>	878
L.C.E. GARAGE	413
L.C.E. PATIO	301
<u>UNIT 110</u>	878
L.C.E. GARAGE	413
L.C.E. ATTIC	431
L.C.E. DECK	145
(INCLUDING STAIRS)	

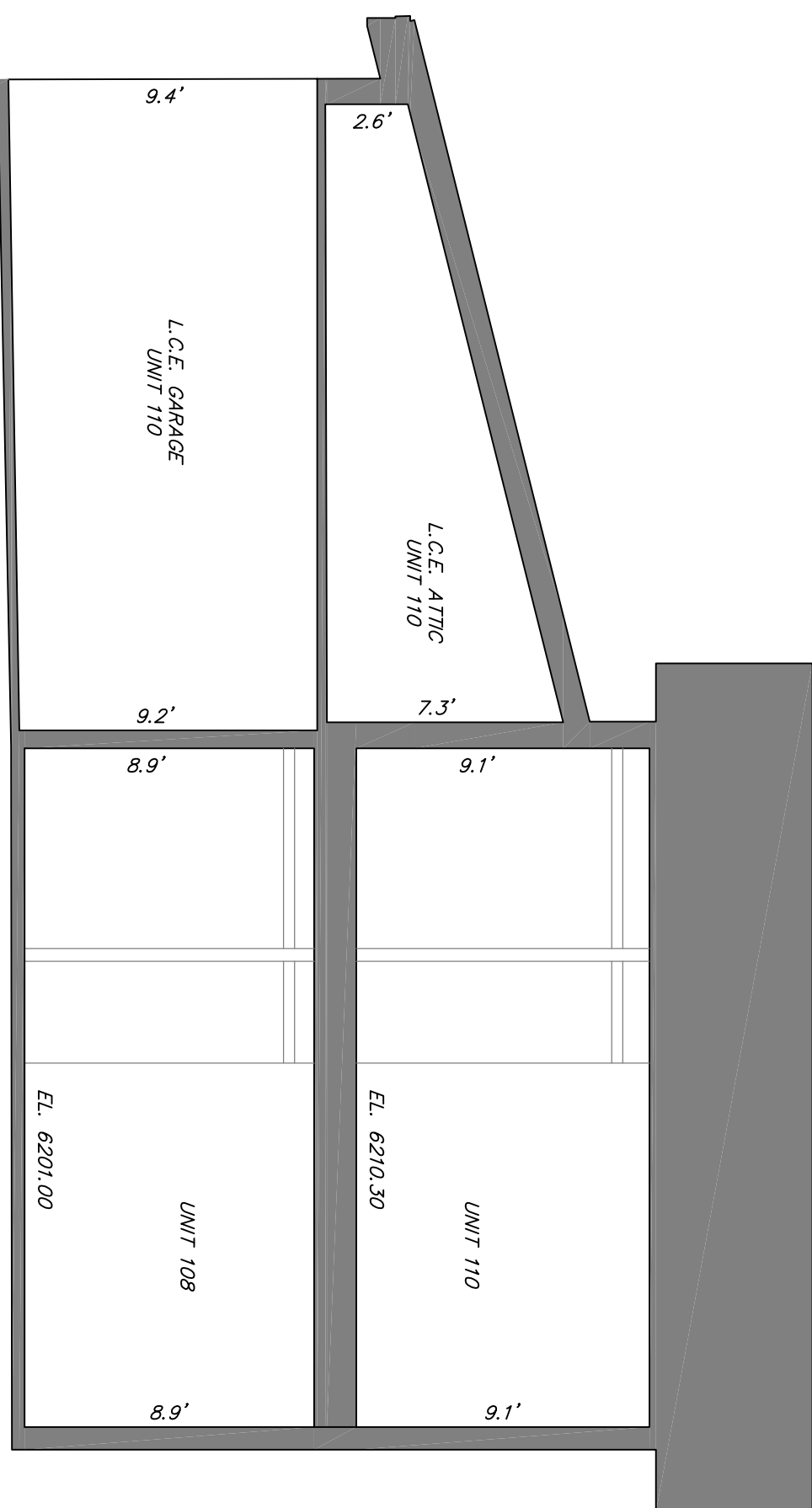
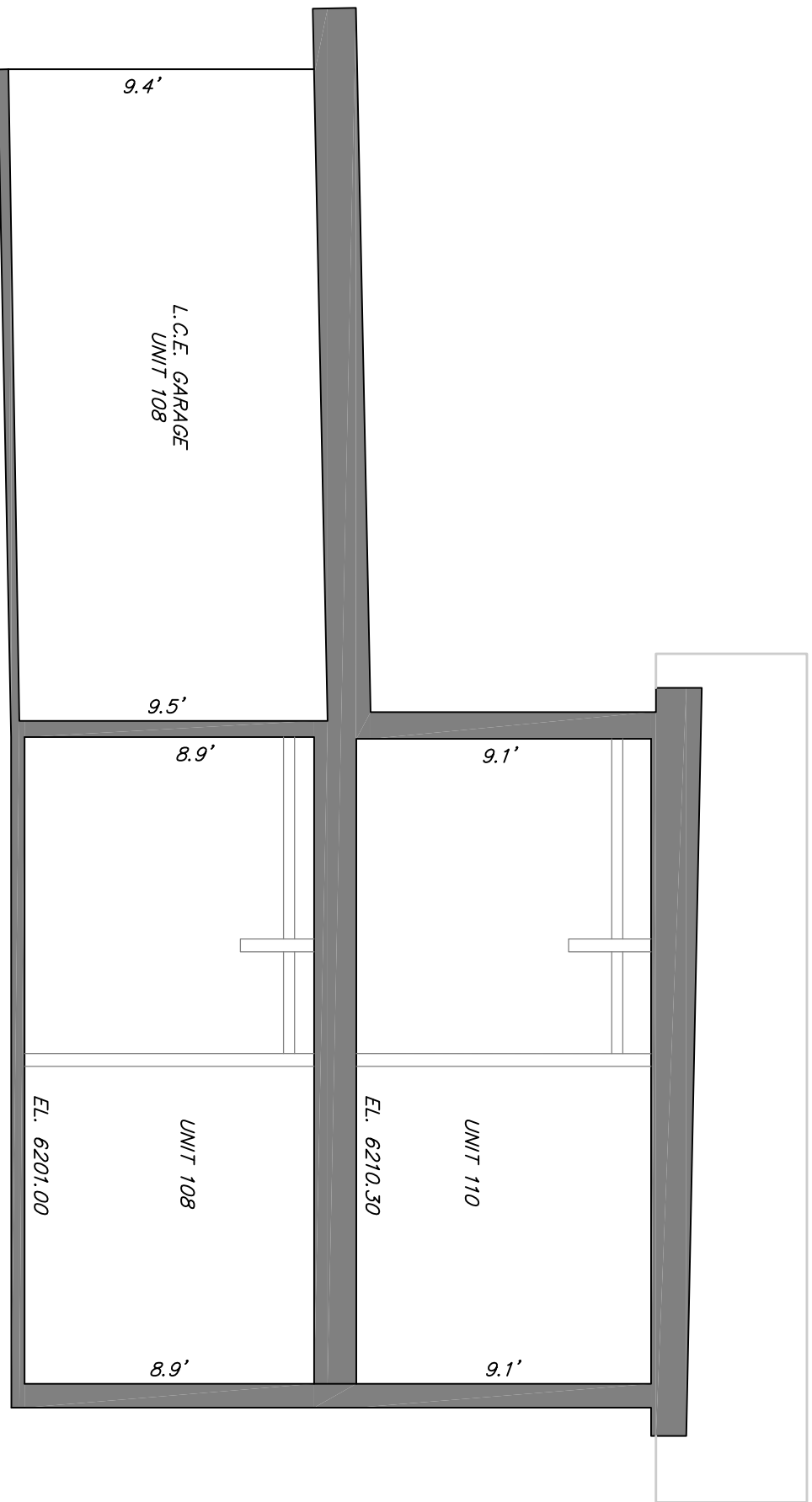
AREA SUMMARY

<u>UNIT 108</u>	878
L.C.E. GARAGE	413
L.C.E. PATIO	301
<u>UNIT 110</u>	878
L.C.E. GARAGE	413
L.C.E. ATTIC	431
L.C.E. DECK	145
(INCLUDING STAIRS)	



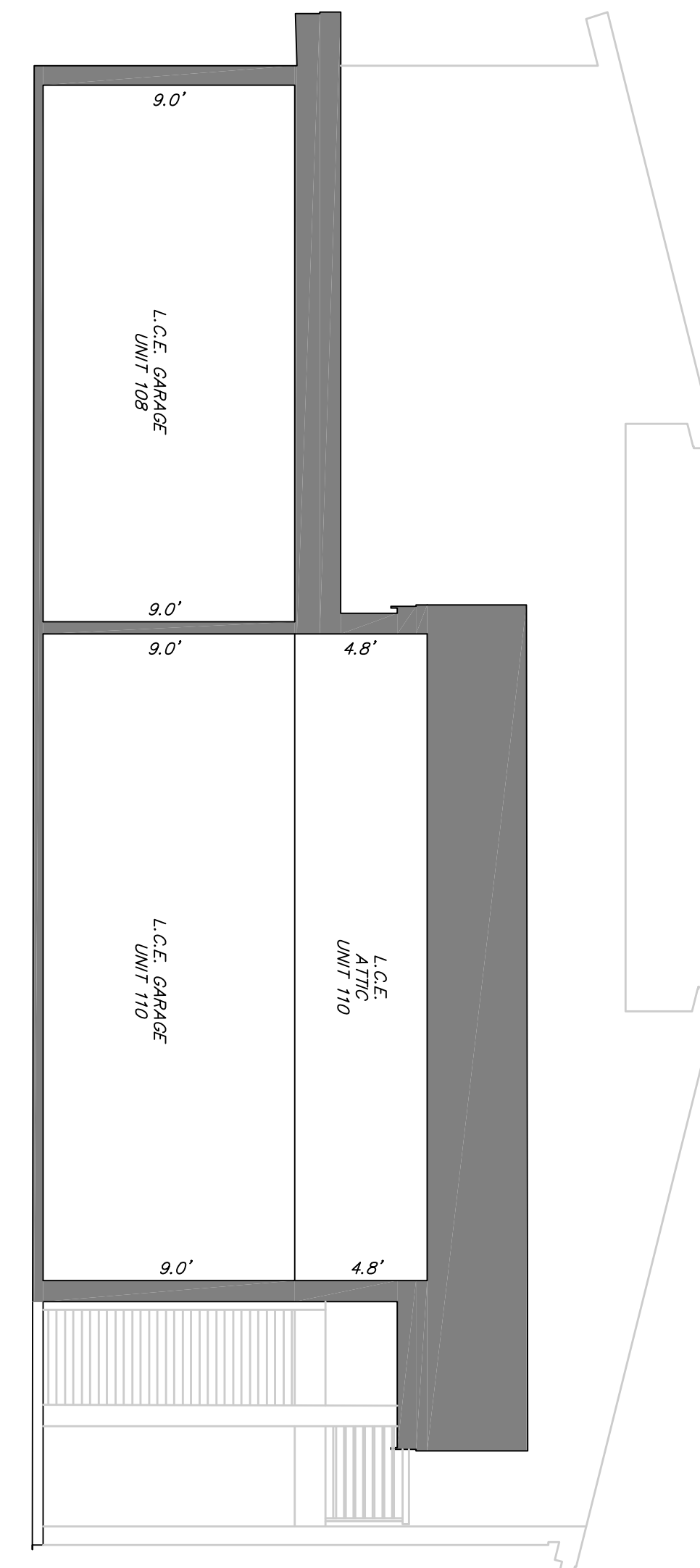
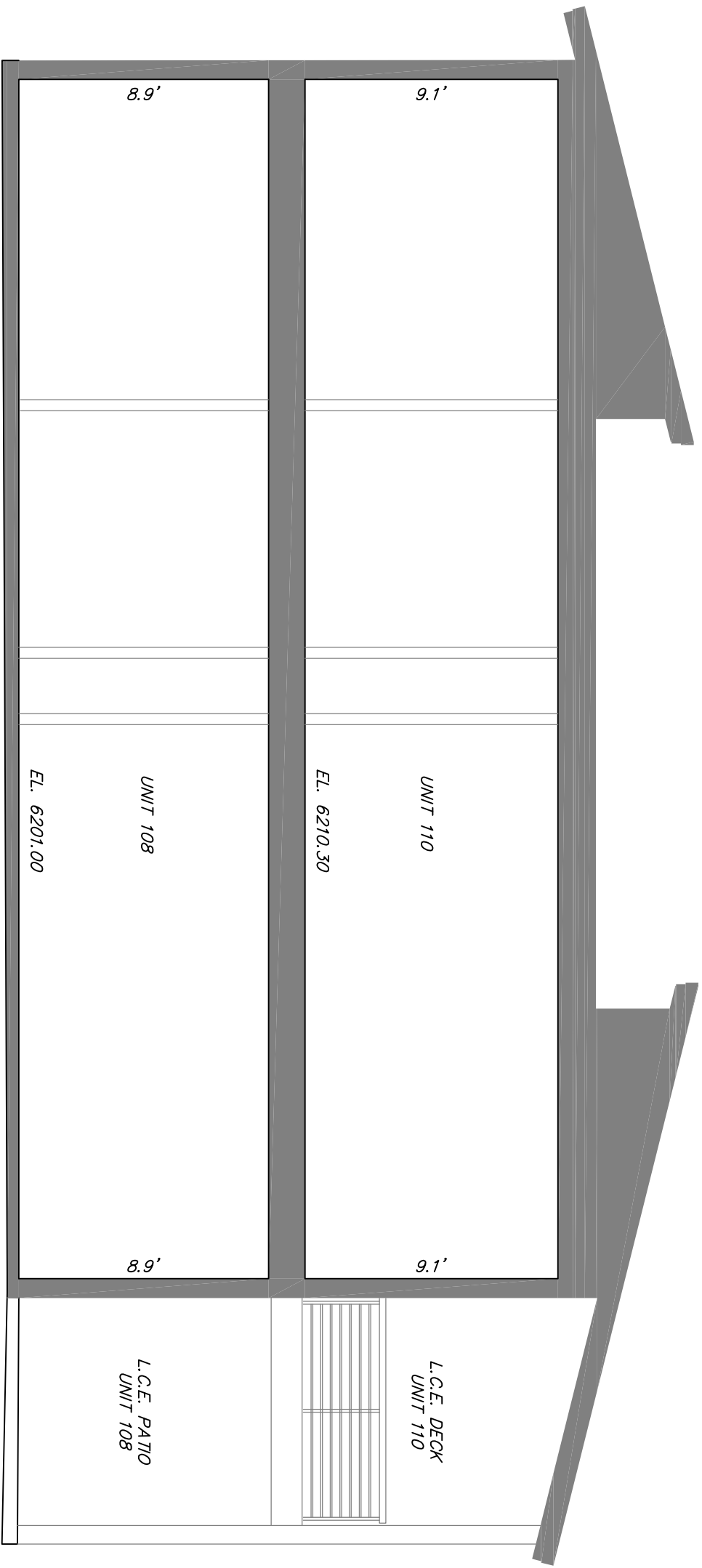
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.

THOMPSON PARK DUPLEX CONDOMINIUM MAP
LOT 1, THOMPSON PARK SUBDIVISION PHASE 2
LOCATED IN THE NW 1/4, SECTION 3, TOWNSHIP 8 SOUTH
RANGE 88 WEST OF THE 6TH P.M.
TOWN OF CARBONDALE, COUNTY OF GARFIELD
STATE OF COLORADO



BUILDING SECTION A

BUILDING SECTION B



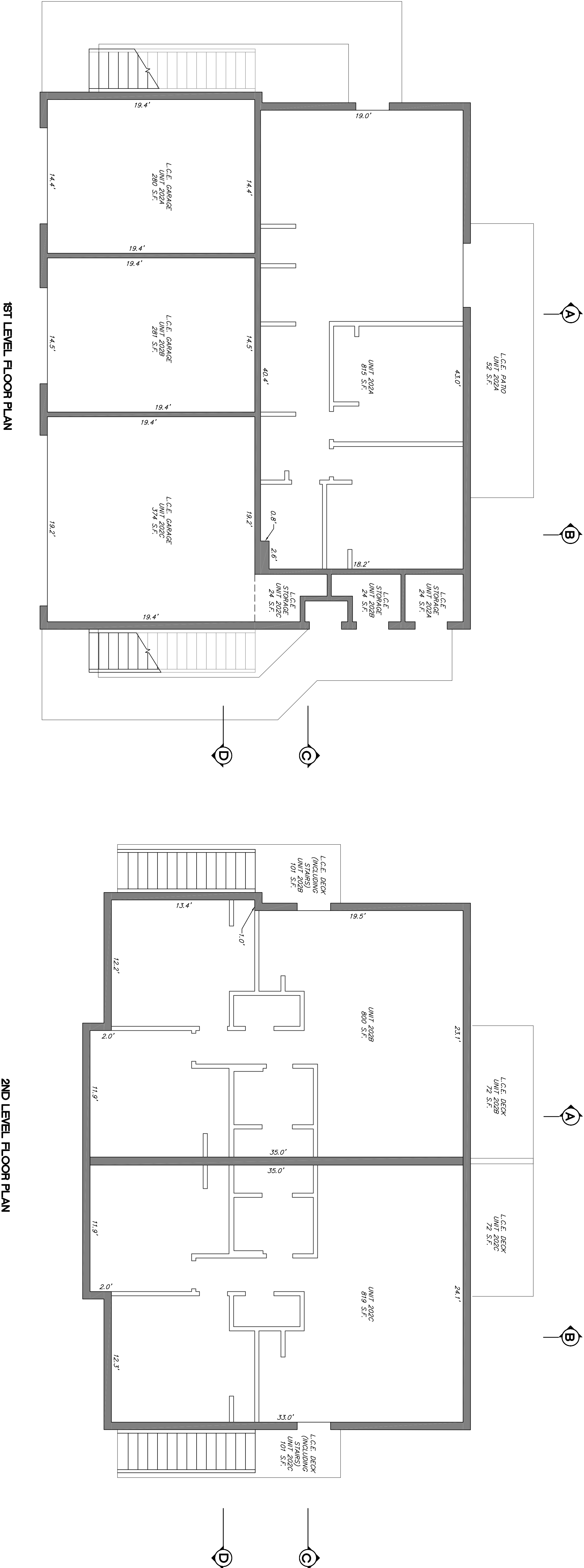
BUILDING SECTION C

BUILDING SECTION D

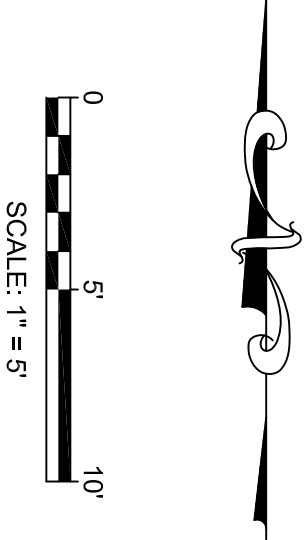
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event shall the period of limitation be extended by any statute of repose or any other law. This notice is given to you for your information and to advise you that if you do not commence any legal action within the time specified in this notice, you may be barred from bringing any such action. The date of certification shown hereon.

C:\PROFBOX (ME)\CAD\CIVIL 3D\190026\DWGS\190026 CONDO MAP DUPLEX.DWG

THOMPSON PARK TRIPLEX CONDOMINIUM MAP
LOT 2, THOMPSON PARK SUBDIVISION PHASE 2
LOCATED IN THE NW 1/4, SECTION 3, TOWNSHIP 8 SOUTH
RANGE 88 WEST OF THE 6TH P.M.
TOWN OF CARBONDALE, COUNTY OF GARFIELD
STATE OF COLORADO

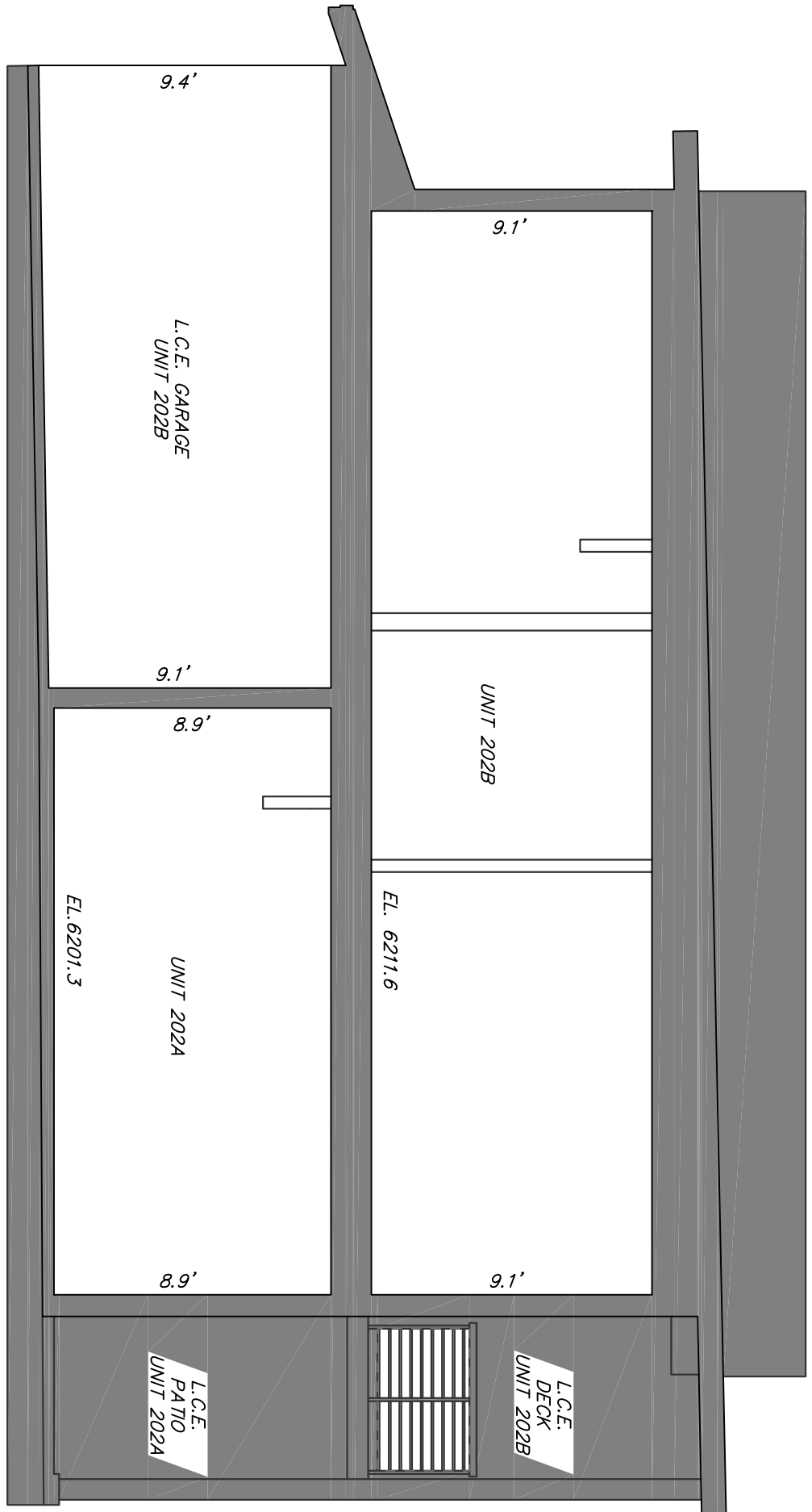


AREA SUMMARY					
Unit	Sq. Ft.	L.C.E. Garage	L.C.E. Patio	L.C.E. Deck	L.C.E. Storage
202A	815	280	52	N/A	24
202B	800	291	N/A	173	24
202C	819	374	N/A	173	24

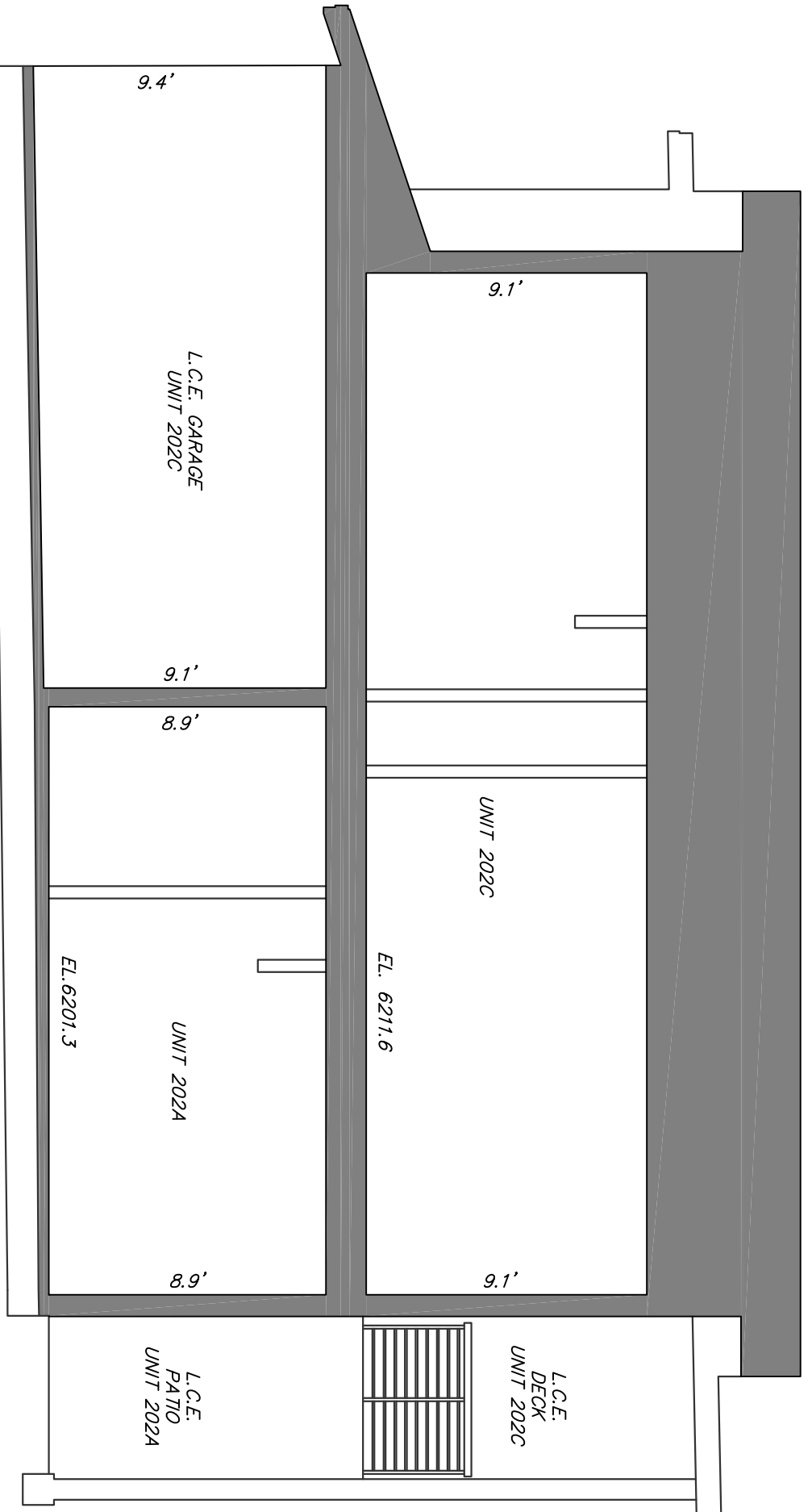


NOTICE: According to Colorado law, you must commence your cause of action for a claim of construction defect within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of completion shown herein.

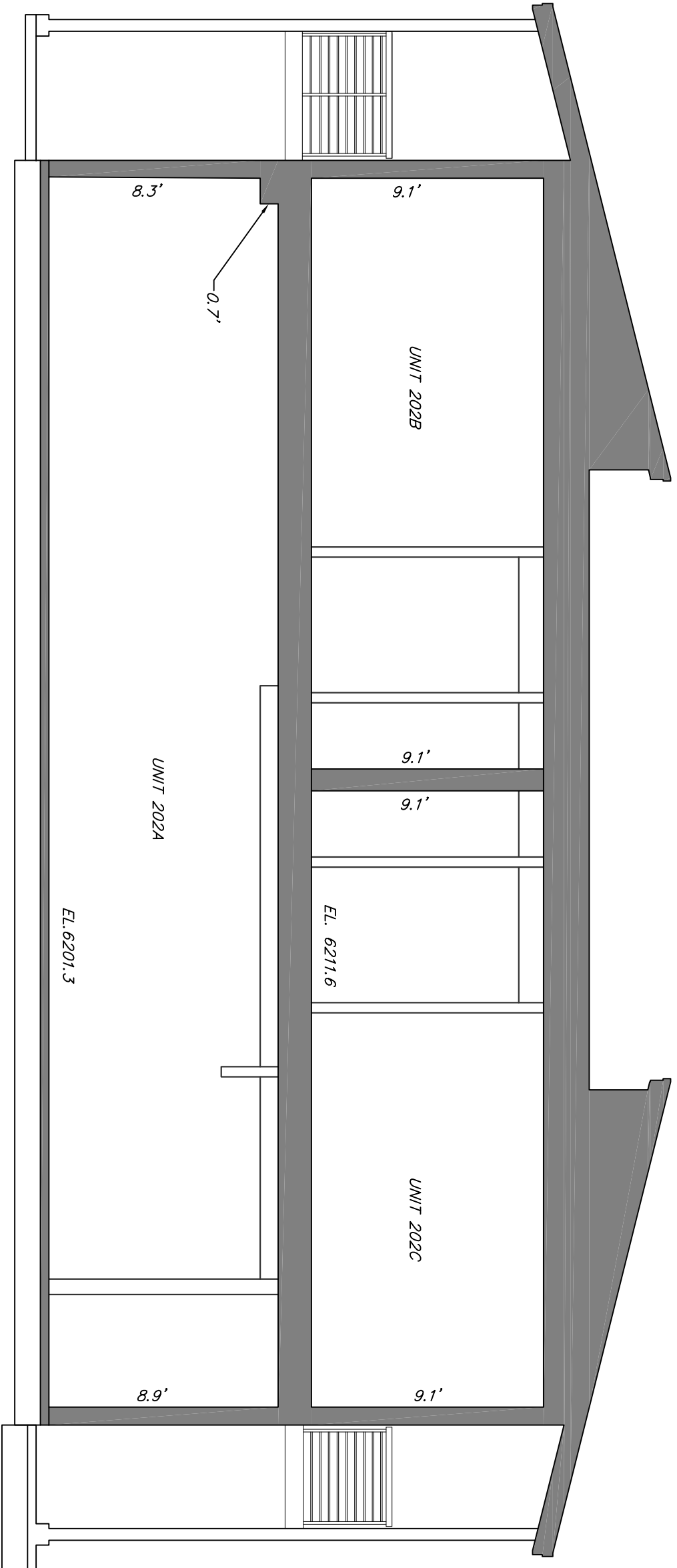
THOMPSON PARK TRIPLEX CONDOMINIUM MAP
LOT 2, THOMPSON PARK SUBDIVISION PHASE 2
LOCATED IN THE NW 1/4, SECTION 3, TOWNSHIP 8 SOUTH
RANGE 88 WEST OF THE 6TH P.M.
TOWN OF CARBONDALE, COUNTY OF GARFIELD
STATE OF COLORADO



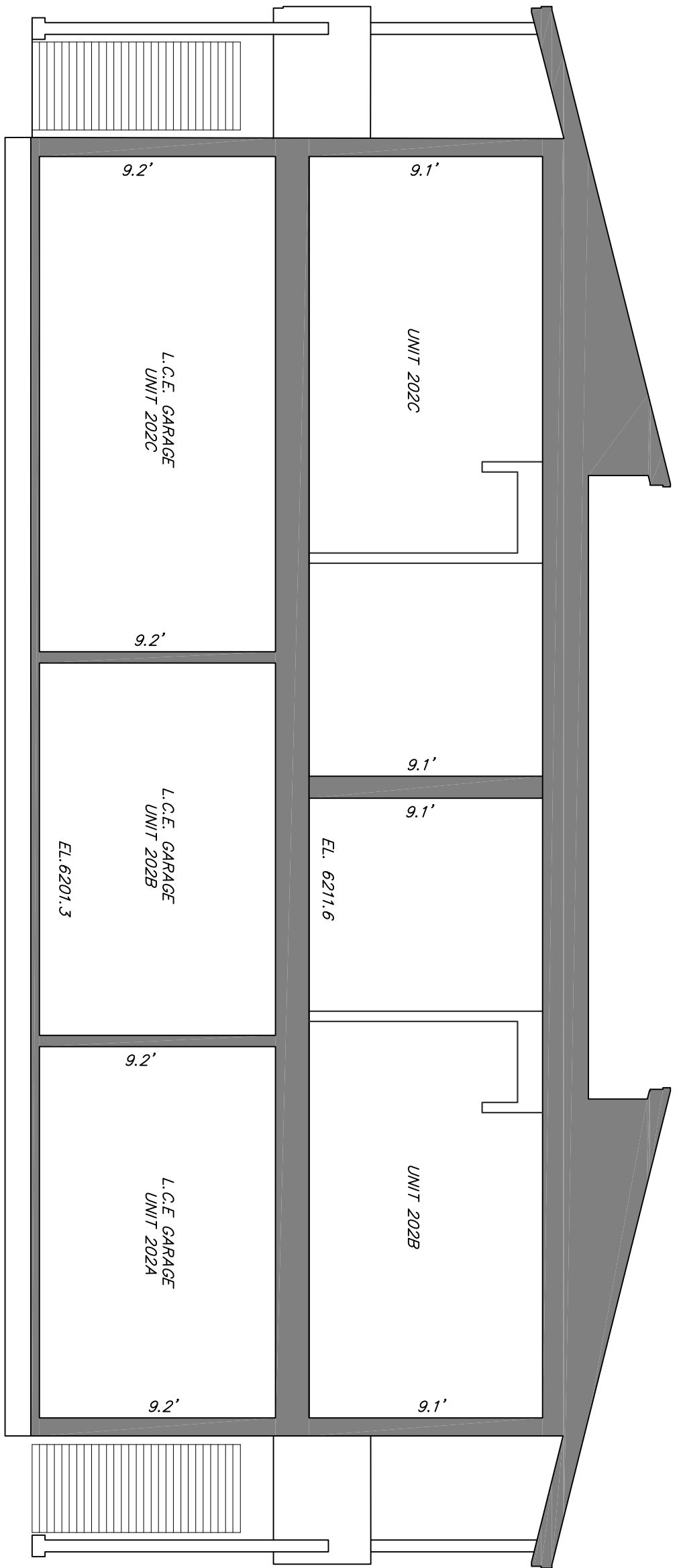
BUILDING SECTION A



BUILDING SECTION B



BUILDING SECTION C



BUILDING SECTION D



NOTICE: According to Colorado law, you must commence your cause of action for a claim of construction defect 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 herein.

**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 15th day of November, 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 any 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. This definition shall not be amended to exclude expenses related to the public rights-of-way and open ditch channels without prior approval from the Town of Carbondale.

“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 on even date herewith, 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 Dwelling 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. A Dwelling includes any attached garage.

“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, held, or maintained by the Association pursuant to Section 5.7(a) hereof for the benefit of all of the Owners and the Property as a whole. Such General Common Elements include, but are not necessarily limited to, all Open Space Easements, access easements (including the Improvements therein such as curb, gutter, and paved street surfaces), trail easements, sidewalks, landscape areas maintained by the Association in public rights-of-way, central irrigation systems, and any other General Common Element designated herein or on any Plat. This definition shall not be amended to exclude access easements (including the Improvements therein such as curb, gutter, and paved street surfaces), sidewalks, landscape areas maintained by the Association in public rights-of-way, and central irrigation systems without the prior approval of the Town of Carbondale.

“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, family member, 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, roads, 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 or maintained by the Association pursuant to Section 5.7(a) hereof for the benefit of one or more Lots but fewer than all of the Lots, including but not limited to the yards, driveways, patios, and decks located on any Lot and any other Limited Common Element designated herein or on a Plat. Each Plat shall identify the 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 contact 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.”

Section 2.5 No Partition or Subdivision. Common Elements shall be owned by the Association as herein provided and shall remain undivided, and no Owner or other Person shall bring any action for partition or division of the Common Elements. Similarly no action shall be brought for the subdivision or physical partition of a Unit or Dwelling between or among the Owners thereof.

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 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, excepting only those easements identified herein or on a Plat as being available for public use.

Section 3.4 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 3.5 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 3.6 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, including, but not limited to, its maintenance obligations.

Section 3.7 Roadways and Trails. The Plat(s) may include easements for private roadways, alleys, paths, or trails as General Common Elements to be owned, maintained, and insured by the Association; provided however, that those trials that have been dedicated to the Town of Carbondale will be owned, maintained, and insured by the Town. 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 publicly 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 3.8 Party Walls.

3.8.1 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.

3.8.2 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.

3.8.3 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.

3.8.4 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.

3.8.5 Nothing in this Section 3.9 shall be construed as a waiver of any applicable insurance coverage for damage to any Party Wall.

Section 3.9 Open Space Easements. The Open Space Easements identified on any Plat shall be considered General Common Elements to be owned, maintained, and insured by the Association for the benefit of all Owners. 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. Open Space Easements may also be used for snow storage by the Association as shown on the Plat(s); provided, however, that no snow storage shall occur within 10 feet of any building.

Section 3.10 Emergency Access. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon and in all Lots and Units as necessary for the making of emergency repairs or reconstruction to the Improvements within the Property. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time provided that a reasonable effort is made, under the circumstances, to give notice of such intended entry to an Owner or Guest. The Association and its agents are hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Dwelling in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and damage results from the willful act or negligence of an Owner or Guest, in which event such Owner shall be solely responsible for the costs of repairing/restoring

such damage. These costs may be levied, assessed, and collected by the Board of Directors as a Specific Assessment pursuant to the provisions of this Declaration.

Section 3.11 Emergency Services Easement. There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or Persons, now or hereafter serving the Property and its Owners and Guests, a perpetual, non-exclusive Emergency Services Easement over, upon, along, and across all Lots, Units, Dwellings, and areas within the Property, for use in the lawful performance of their duties.

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 on even date herewith 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 Dwelling.

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.

Section 4.23 Owner Maintenance. Each Owner shall be responsible for maintaining, repairing, and improving as necessary all interior elements and features of the Owner's Dwelling

including interior non-supporting walls, ceilings, floors, improvements, fixtures, equipment, appliances and appurtenances, and for repairing and replacing all windows within the Dwelling. Each Owner shall also be responsible for the installation, maintenance, repair and replacement of such Dwelling's garage door opener. As provided in Section 5.7(a) hereof, the Association, not the Owners, is responsible for maintaining, repairing, replacing, and improving the Common Elements, except that each Owner is responsible for snow removal from decks and patios. In addition, each Owner shall be responsible for any damage to other Dwellings or any Common Elements resulting from the Owner's failure to perform or negligent performance of the Owner's maintenance and repair responsibilities as set forth in this Section 4.23. Each Owner shall perform the Owner's maintenance and repair responsibilities in such manner as shall not unreasonably disturb or interfere with other Owners or Guests.

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. The Association shall be responsible for (i) maintaining and repairing the structural elements, exterior, and roofs of all Dwellings; (ii) landscaping and maintaining the landscaping throughout the Property; (iii) landscaping, irrigating, and maintaining the landscape in public rights-of-way; (iv) maintaining (including snow removal), repairing, altering, replacing, and improving, when necessary or desirable in the Association's discretion, all General Common Elements including, without limitation, Open Space Easements, irrigation systems, drainage systems, water features, streets, roads, curbs, street gutters, sidewalks, public walkways, parking areas, common lighting, and common utilities; (v) maintaining (including snow removal), repairing, altering, replacing, and improving, when necessary or desirable in the Association's discretion, all Limited Common Elements, including, without limitation, driveways, yards, decks, patios, porches, and private walkways, provided, however, that the Owners shall be responsible for snow removal from their decks, patios, and private walkways; (vi) maintaining and repairing common utility lines within Dwellings or other Improvements; and (vii) maintaining, repairing, improving, replacing, painting, staining, or other resurfacing, when necessary, the exterior portions of all Dwellings, including the exterior doors, garage doors, decks, balconies, porches, planters, patios, and private walkways of the Dwellings. No individual Owner shall have any right to do any of such things (other than limited snow removal as provided above) without the express prior written consent of the Board of Directors. The Association shall have the sole discretion to determine the time and manner in which the above-described maintenance and improvements shall be performed, as well as the color or type of materials used.

If the need for such maintenance or repair results from the willful or negligent act of or from damage or destruction caused by an Owner or Guest, the Board of Directors shall have the right to perform such maintenance or repair and levy and collect a Specific Assessment upon the Owner and the Owner's Unit or Lot for the costs and expenses incurred by the Association in

connection therewith. The costs of maintenance and repair of Limited Common Elements shall be charged to the Owners entitled to use 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 within the Property. 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. This Section 5.7(b) shall not be amended without approval from the Town of Carbondale Board of Trustees.

(c) Mechanic's Liens on Common Elements. Declarant shall be responsible for the release of mechanics' liens filed with respect to Common Elements, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Association shall be responsible for the release of mechanics' liens filed with respect to Common Elements, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Dwelling at the instance of the Owner thereof shall be the basis for filing a lien against the Common Elements. No labor performed or materials furnished with respect to a Common Element at the instance of the Association shall be the basis for filing a lien against any Lot, Dwelling, or Unit.

(d) 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 (including a trust) 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 fraction shall be the finished square footage area (including garage space) 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. Notwithstanding the foregoing, no Deed Restricted Unit shall pay more than 50% of the average Assessment paid by all Owners within the Development, including Owners of Deed Restricted Units. Accordingly, the Assessment charged to the Owner of a Deed Restricted Unit as determined by the annual budget shall be reduced to an amount not to exceed

50% of the average annual Assessment, and the budget deficit created by such reduction shall be allocated *pro rata* among the Free Market Lots 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.

Because 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 Dwelling 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. Property insurance on the roof and exterior of all Dwellings, all Common Elements, and all Improvements on or in the Common Elements (excepting any such improvements installed by an Owner) within the Property. Such insurance shall not include or cover the finished interior surfaces of the walls, floors, and ceilings of the Dwellings. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood and earthquake risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations, and other items normally excluded from property policies, and shall include such endorsements as the Board of Directors considers appropriate from time to time.

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.

Any loss covered by the property insurance policy described in this Section 8.1(a) above 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 Association, Owners, and lienholders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payments of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely restored or Thompson Park is terminated.

(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 and/or interest in the Common Elements. 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) Directors and Officers Liability Insurance. The Association may, in its discretion, carry directors' and officers' liability insurance in such amount as the Board of Directors may deem appropriate.

(e) 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.

(f) 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. In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Guests to obtain insurance for their own benefit.

(g) 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.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration for all deductibles paid by the Association. In the event more than one Dwelling is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided that the Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of subrogation rights as against Declarant.

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, 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. Notwithstanding the foregoing, the Town of Carbondale must approve any change to (i) the definitions of Common Expenses and General Common Elements as provided in those definitions; (ii) Sections 4.17, 5.3, 5.7(a)(iii) & (iv), and 5.7(b); and (iii) the limitation on Assessments paid by Owners of Deed Restricted Units set forth in Section 6.9.

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.

[SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

Executed this 15th day of November, 2019.

Thompson Park, LLC, a Colorado limited liability company

By: _____

Print Name: Jacques Machol

Title: Co-Manager

STATE OF COLORADO)
 DENVER) ss.
COUNTY OF ~~GARFIELD~~)

The foregoing instrument, Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision, was acknowledged before me this 15th day of November, 2019, by Jacques Machol as co-manager of Thompson Park, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires:

BRUCE MECHURA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19964006952
MY COMMISSION EXPIRES APRIL 19, 2020

Notary Public

Reception#: 928313
11/18/2019 10:04:44 AM Jean Alberico
40 of 44 Rec Fee:\$228.00 Doc Fee:0.00 GARFIELD COUNTY CO

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.



Reception#: 928313
11/18/2019 10:04:44 AM Jean Alberico
41 of 44 Rec Fee:\$228.00 Doc Fee:0.00 GARFIELD COUNTY CO

EXHIBIT B
Allocation Percentages

EXHIBIT B
Allocation Percentages

Lot/Unit #	Lot/Unit Sq.Ft	Allocation Percentage
Parcel 2		
1-A*	1381	1.60%
1-B*	1392	1.61%
2-A*	1205	1.39%
2-B*	1187	1.37%
2-C*	1308	1.51%
3	2215	2.56%
4	2220	2.57%
5	2220	2.57%
6	2215	2.56%
7	2215	2.56%
8	2220	2.57%
9	2220	2.57%
10	2215	2.56%
11	2215	2.56%
12	2220	2.57%
13	2220	2.57%
14	2220	2.57%
15	2215	2.56%
16	2215	2.56%
17	2220	2.57%
18	2220	2.57%
19	2215	2.56%
20	2215	2.56%
21	2220	2.57%
22	2174	2.51%
23	2214	2.56%
24	2214	2.56%
Parcel 3		
1-A*	1205	1.39%
1-B*	1187	1.37%
1-C*	1308	1.51%
2	2215	2.56%
3	2220	2.57%
4	2174	2.51%
Parcel 4		
1	3000	3.47%
2	3000	3.47%
3	3000	3.47%
4	3000	3.47%
5	3000	3.47%
6	3000	3.47%
7	3000	3.47%
Total sq. ft.	86,519	100.00%

*Deed Restricted Unit

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")]¹. 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

**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 OR 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 OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO (“Agreement”) is made and executed this __ day of _____, 2020, (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. 928317 (“Property”); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 Plat have been condominiumized pursuant to the condominium maps recorded in the Garfield County real property records at Reception Nos. _____ and _____, 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 plats, 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, as hereinafter described, the use of Units 202-A and 202-B of the Property (each a "Restricted Unit," collectively, the "Restricted Units"), which Restricted Units are legally described on **Exhibit A** hereto.

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 an Owner or the Declarant first offers a Restricted Unit for sale, which shall include the publication of a pre-sale application by GCHA.
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 Unit; 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 Unit unless otherwise approved by the Town and GCHA.
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 Unit 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 B** 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 Units 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 Unit, 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 Unit 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 Unit to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Unit in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Unit, 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 Unit 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 C**.

SECTION 3
USE AND OCCUPANCY OF THE RESTRICTED UNIT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Unit is limited exclusively to housing for Qualified Buyers owning the Restricted Unit and their families. Each Restricted Unit shall be utilized as an Owner's sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Unit, must: (a) occupy the Restricted Unit 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 Unit; (b) not engage in any business activity on or in such Restricted Unit, 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 Unit; and (d) sell, convey, or otherwise transfer such Restricted Unit only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Unit as his or her sole and exclusive place of residence, the Restricted Unit 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 Unit 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 Unit 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 Unit in accordance with the provisions of **Section 5**, below.

D. If an Owner of a Restricted Unit must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Unit 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 Unit 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 UNIT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Unit 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 Unit (the "Notice of Sale") to the Town and GCHA prior to offering the Restricted Unit for sale; and
2. Prior to and as a condition of closing of the sale of a Restricted Unit, 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 Unit for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Unit, 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 Unit 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 Unit for sale at the Maximum Resale Price, the Restricted Unit must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Unit 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 Unit 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 Unit paid by the Owner selling the Restricted Unit 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 Unit 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 Unit 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 Unit 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 Unit 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 Unit 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 Unit, the Restricted Unit 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 Unit 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 Unit without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Unit 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 Unit. 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 Unit pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Unit 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 Unit; (2) rent all or any part of the Restricted Unit, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Unit; (4) sell, convey, or otherwise transfer the Restricted Unit except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Unit 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 Unit 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 Unit 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 UNIT

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 Unit. 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 Unit 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 Unit, 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 Unit 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 Unit, 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 Unit, 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 Unit 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 Unit 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 Unit 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 Unit to secure a loan used to purchase the Restricted Unit. 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 Unit, 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 Unit.

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 Unit, 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 Unit in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Unit, 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 Unit 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 Unit. Otherwise, Owner's

indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Restricted Unit. 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 Unit for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Unit (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 Unit, 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 that the Town timely exercises its option, the closing on the purchase of the Restricted Unit 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 Unit 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 Unit 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 Unit, 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 Unit shall terminate. Such termination shall not, however, operate to extinguish the Town's option to purchase the Restricted Unit 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 Unit 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 Unit or any transfer thereafter, provided, however, that if and when the Restricted Unit 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 Unit 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 Unit 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 Unit

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

Legal Description of Restricted Units

Unit 202-A and Unit 202-B, Thompson Park Subdivision, according to the condominium map thereof recorded in the office of the Garfield County Clerk & Recorder on _____ at Reception No. _____.

EXHIBIT B
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 C

FORM MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF 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

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 OR 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 OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO (“Agreement”) is made and executed this __ day of _____, 2020, (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. 928317 (“Property”); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 Plat have been condominiumized pursuant to the condominium maps recorded in the Garfield County real property records at Reception Nos. _____ and _____ 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 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 maps, 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, as hereinafter described, the use of Unit 202-C of the Property ("Restricted Unit"), which Restricted Unit is legally described in **Exhibit A** hereto.

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 an Owner or the Declarant first offers a Restricted Unit for sale, which shall include the publication of a pre-sale application by GCHA.

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 Unit; 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 Unit unless otherwise approved by the Town and GCHA.

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 Unit 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 B** 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 Unit 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 Unit, 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 Unit 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 Unit to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Unit in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Unit, 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 Unit 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 C**.

SECTION 3
USE AND OCCUPANCY OF A RESTRICTED UNIT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Unit is limited exclusively to housing for Qualified Buyers owning the Restricted Unit and their families. Each Restricted Unit shall be utilized as an Owner's sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Unit, must: (a) occupy the Restricted Unit 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 Unit; (b) not engage in any business activity on or in such Restricted Unit, 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 Unit; and (d) sell, convey, or otherwise transfer such Restricted Unit only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Unit as his or her sole and exclusive place of residence, the Restricted Unit 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 Unit 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 Unit 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 Unit in accordance with the provisions of **Section 5**, below.

D. If an Owner of a Restricted Unit must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Unit 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 Unit 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 UNIT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Unit 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 Unit (the "Notice of Sale") to the Town and GCHA prior to offering the Restricted Unit for sale; and
2. Prior to and as a condition of closing of the sale of a Restricted Unit, 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 Unit for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Unit, 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 Unit 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 Unit for sale at the Maximum Resale Price, the Restricted Unit must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Unit 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 Unit 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 Unit paid by the Owner selling the Restricted Unit 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 Unit 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 Unit 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 Unit 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 Unit 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 Unit 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 Unit, the Restricted Unit 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 Unit 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 Unit without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Unit 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 Unit. 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 Unit pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Unit 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 Unit; (2) rent all or any part of the Restricted Unit, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Unit; (4) sell, convey, or otherwise transfer the Restricted Unit except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Unit 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 Unit 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 Unit 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 UNIT

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 Unit. 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 Unit 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 Unit, 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 Unit 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 Unit, 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 Unit, 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 Unit 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 Unit 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 Unit 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 Unit to secure a loan used to purchase the Restricted Unit. 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 Unit, 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 Unit.

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 Unit, 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 Unit in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Unit, 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 Unit 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 Unit. Otherwise, Owner's

indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Restricted Unit. 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 Unit for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Unit (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 Unit, 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 that the Town timely exercises its option, the closing on the purchase of the Restricted Unit 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 Unit 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 Unit 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 Unit, 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 Unit shall terminate. Such termination shall not, however, operate to extinguish the Town's option to purchase the Restricted Unit 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 Unit 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 Unit or any transfer thereafter, provided, however, that if and when the Restricted Unit 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 Unit 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 Unit 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 the Restricted Unit

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 _____, 2020, 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

[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 _____, 2020.

Witness my hand and official seal.
My commission expires:

Notary Public

EXHIBIT A

Legal Description of Restricted Unit

Unit 202-C, Thompson Park Subdivision, according to the condominium map thereof recorded in the office of the Garfield County Clerk & Recorder on _____ at Reception No.

_____.

EXHIBIT B
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 C

FORM MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF 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

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 OR 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 OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO (“Agreement”) is made and executed this __ day of _____, 2020, (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. 928317 (“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 Nos. _____ and _____, 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 150% of the Garfield County area median income (“AMI”); and

WHEREAS, as indicated on the Phase 2 plat and condominium maps, 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, as hereinafter described, the use of Units 108 and 110 of the Property (each a "Restricted Unit," collectively, the "Restricted Units").

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 an Owner or the Declarant first offers a Restricted Unit for sale, which shall include the publication of a pre-sale application by GCHA.

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 Unit; 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 Unit unless otherwise approved by the Town and GCHA.

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 Unit 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 B** 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 Units 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 Unit, 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 Unit 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 Unit to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Unit in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Unit, 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 Unit 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 C**.

SECTION 3
USE AND OCCUPANCY OF A RESTRICTED UNIT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Unit is limited exclusively to housing for Qualified Buyers owning the Restricted Unit and their families. Each Restricted Unit shall be utilized as an Owner's sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Unit, must: (a) occupy the Restricted Unit 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 Unit; (b) not engage in any business activity on or in such Restricted Unit, 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 Unit; and (d) sell, convey, or otherwise transfer such Restricted Unit only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Unit as his or her sole and exclusive place of residence, the Restricted Unit 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 Unit 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 Unit 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 Unit in accordance with the provisions of **Section 5**, below.

D. If an Owner of a Restricted Unit must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Unit 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 Unit 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 A RESTRICTED UNIT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Unit 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 Unit (the "Notice of Sale") to the Town and GCHA prior to offering the Restricted Unit for sale; and
2. Prior to and as a condition of closing of the sale of a Restricted Unit, 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 Unit for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Unit, 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 Unit 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 Unit for sale at the Maximum Resale Price, the Restricted Unit must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Unit 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 Unit 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 Unit paid by the Owner selling the Restricted Unit 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 Unit 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 Unit 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 Unit 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 Unit 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 Unit 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 Unit, the Restricted Unit 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 Unit 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 Unit without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Unit 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 Unit. 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 Unit pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Unit 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 Unit; (2) rent all or any part of the Restricted Unit, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Unit; (4) sell, convey, or otherwise transfer the Restricted Unit except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Unit 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 Unit 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 Unit 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 UNIT

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 Unit. 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 Unit 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 Unit, 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 Unit 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 Unit, 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 Unit, 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 Unit 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 Unit 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 Unit 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 Unit to secure a loan used to purchase the Restricted Unit. 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 Unit, 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 Unit.

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 Unit, 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 Unit in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Unit, 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 Unit 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 Unit. Otherwise, Owner's

indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Restricted Unit. 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 Unit for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Unit (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 Unit, 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 that the Town timely exercises its option, the closing on the purchase of the Restricted Unit 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 Unit 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 Unit 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 Unit, 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 Unit shall terminate. Such termination shall not, however, operate to extinguish the Town's option to purchase the Restricted Unit 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 Unit 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 Unit or any transfer thereafter, provided, however, that if and when the Restricted Unit 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 Unit 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 Unit 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 Unit

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 _____, 2020, 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 _____, 2020.

Witness my hand and official seal.
My commission expires:

TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation

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 _____, 2020.

Witness my hand and official seal.
My commission expires:

Notary Public

EXHIBIT A

Legal Description of Restricted Units

Unit 108 and Unit 110, Thompson Park Subdivision, according to the condominium map thereof recorded in the office of the Garfield County Clerk & Recorder on _____ at Reception No. _____.

EXHIBIT B
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 C

MEMORANDUM OF ACCEPTANCE

**MEMORANDUM OF ACCEPTANCE OF 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**

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: _____

[illegible]

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



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

Planning and Zoning Commission Agenda Memorandum

Meeting Date: 6-25-2020

TITLE: 159 and 160 North 12th Street - Subdivision Exemption

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS: Land Use Application

BACKGROUND

Before you tonight is an application for a Subdivision Exemption. You are required to hold a public hearing and render a final decision. That decision may be to approve the application, deny the project, or continue the public hearing.

Owner/Applicant: LDH Holdings, LLC and DDN Holdings LLC. (Owners)
Almdin Holdings LLC (Applicant)

Property Location: 159 and 160 North 12th Street

Zone District: Commercial Transitional (CT)

Lot Size: Lot 1 = 6,098 SQ FT
Lot 2 = 10,149 SQ FT

16,247 SQ FT Proposed combined lot total

Present Land Use: Storage Yard and metal building/shop

DISCUSSION

The applicant is requesting a Subdivision Exemption to combine Lot 1 and Lot 2 of the Coco Palms Subdivision into a single lot for future development.

Lot 1 is vacant at this time. A metal building that has been used as a shop is located on Lot 2 with no changes proposed at this time. This application does not include Site Plan Review for any new development as no development is proposed at this time. It is simply a Subdivision Exemption to create a new lot.

ZONING

Lot Size and Dimensions (UDC Table 3.2-7)

The minimum lot area in the CT zone district is 3,000 sq. ft. Both of the existing and the proposed lot lots are in compliance.

The minimum lot width is 25 ft. and the minimum lot depth is 50 ft. The proposal meets the code requirements.

Setbacks (UDC Table 3.2-7)

No development is proposed for the lot at this time so setbacks are not applicable. In this case the locations and size of the setbacks seem straight forward due to the location and size of the lot. But would need to be confirmed once development is proposed through site plan review or building permit.

Maximum Impervious Surface (UDC Table 3.7-2)

The code allows 80% of maximum impervious surface in the CT zone district and requires 20% landscaped area.

The impervious ratio would need to be confirmed at building permit when the lot is developed.

Both existing lots are currently in compliance.

Utilities

Water – Water is available to the newly created Lot.

Sewer – The sewer service is available to the new lot.

Gas and Electric – The gas and electric lines extend to the lot.

Subdivision (UDC Section 2.6.6):

The Planning Commission may approve a Subdivision Exemption if it finds the following:

1. The subject property is suitable for subdivision within the meaning of Chapter 17.06;
2. All public utilities are in place on, or immediately adjacent to, the subject property;

3. Each lot has the necessary dedicated public access required by this code at the time of the subdivision exemption application;
4. 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
5. 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 Chapter 17.06.

Staff is supportive of the proposed subdivision exemption. This property is located in the Downtown/Old Town Periphery area in the 2013 Comprehensive Plan. The Comprehensive Plan states this neighborhood represents an opportunity for incremental multifamily residential infill, redevelopment and accessory dwelling units.

The UDC requires that a subdivision plat be recorded within three months of approval.

RECOMMENDATION

Staff recommends that the following motion be approved: **Move to approve the Subdivision Exemption for 156 12th street and 160 12th street with the recommended findings and conditions below.**

Recommended Conditions:

1. All representations of the Applicant and Applicant's representatives at the Public Hearing shall be considered conditions of approval of this subdivision exemption.
2. The Subdivision Exemption Plat shall be in a form acceptable to and approved by Town Staff and the Town Attorney prior to recording. Applicant shall execute and record the plat with the Garfield County Clerk and Recorder within three (3) months of approval by the Planning Commission.
3. Water rights for development may be due for the newly created Lot at the time of building permit.
4. The applicant shall be responsible for all building permit fees, tap fees and other associated fees at the time of building permit.
5. The applicant shall be responsible for the costs of recordation of the approval documents.

Recommended Findings:

Subdivision Exemption:

1. The subject property is suitable for subdivision and is in compliance with Chapter 17.06 Subdivision;
2. All public utilities are in place on, or immediately adjacent to, the property;
3. Each lot has the necessary dedicated public access off 12th Street;
4. The subdivision plat includes no more than three lots and is no more than five acres in size; and
5. The preparation of engineered design data and specifications is not needed to enable the commission to determine that the property meets the design specifications in Chapter 17.06 Subdivision.

Prepared by: John Leybourne, Planner



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: ALNDIN Holdings, LLC Phone: _____
Applicant Address: 1992 Broadway Ste 314C Boulder CO 81302
E-mail: alndinholdingsllc@gmail.com
Owner Name: Roskel Almazan Phone: 970 987 1569
Address: PO Box 1387 Carbondale CO 81623
E-mail: bobby@ramden.build
Location of Property: provide street address and either 1) subdivision lot and block; or 2) metes and bounds:
1600 N 12TH Street Carbondale CO 81632

PART 2 - PROJECT DESCRIPTION

General project description:
Lot Combination / Lot Line Adjustment
for possible future development
Size of Parcel: _____ # Dwelling Units: N/A Sq Ftg Comm: N/A
Type of Application(s): N/A
Existing Zoning: C/T Proposed Zoning: _____

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

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

Owner Signature

Date

Owner Signature

Date

STATE OF COLORADO

COUNTY OF GARFIELD

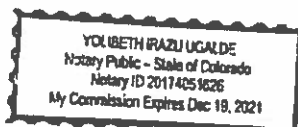
) ss

The above and foregoing document was acknowledged before me this 16 day of

September 20 19, by Yosbeth I Ugalde

Witness my hand and official

My commission expires: Dec 19, 2021



Notary Public



Town of Carbondale
Subdivision Exemption
Checklist
(970) 963-2733

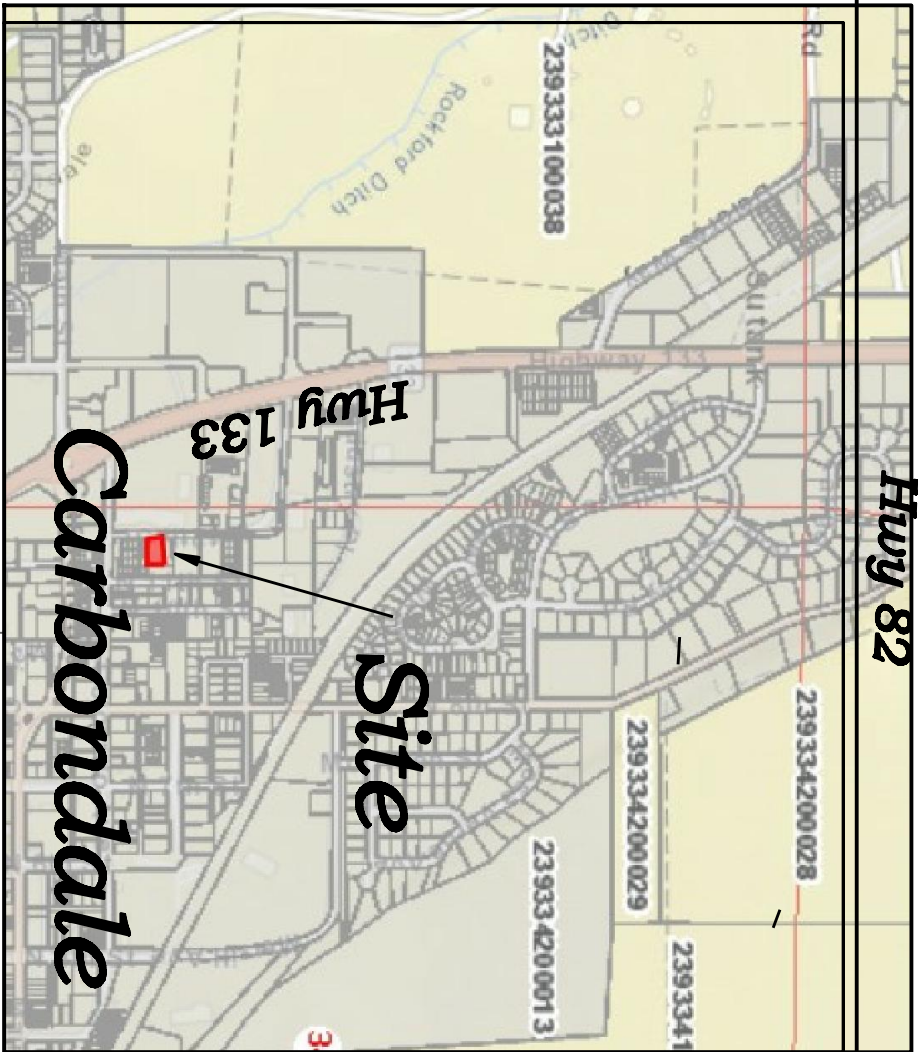
Project Name: 156 N 12TH Street
Applicant: ALMADIN LLC
Applicant Address: PO Box 1387 Carbondale CO 81633
Location: 186 N 12TH St Carbondale
Date: 3/12/20
Staff Member: _____

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

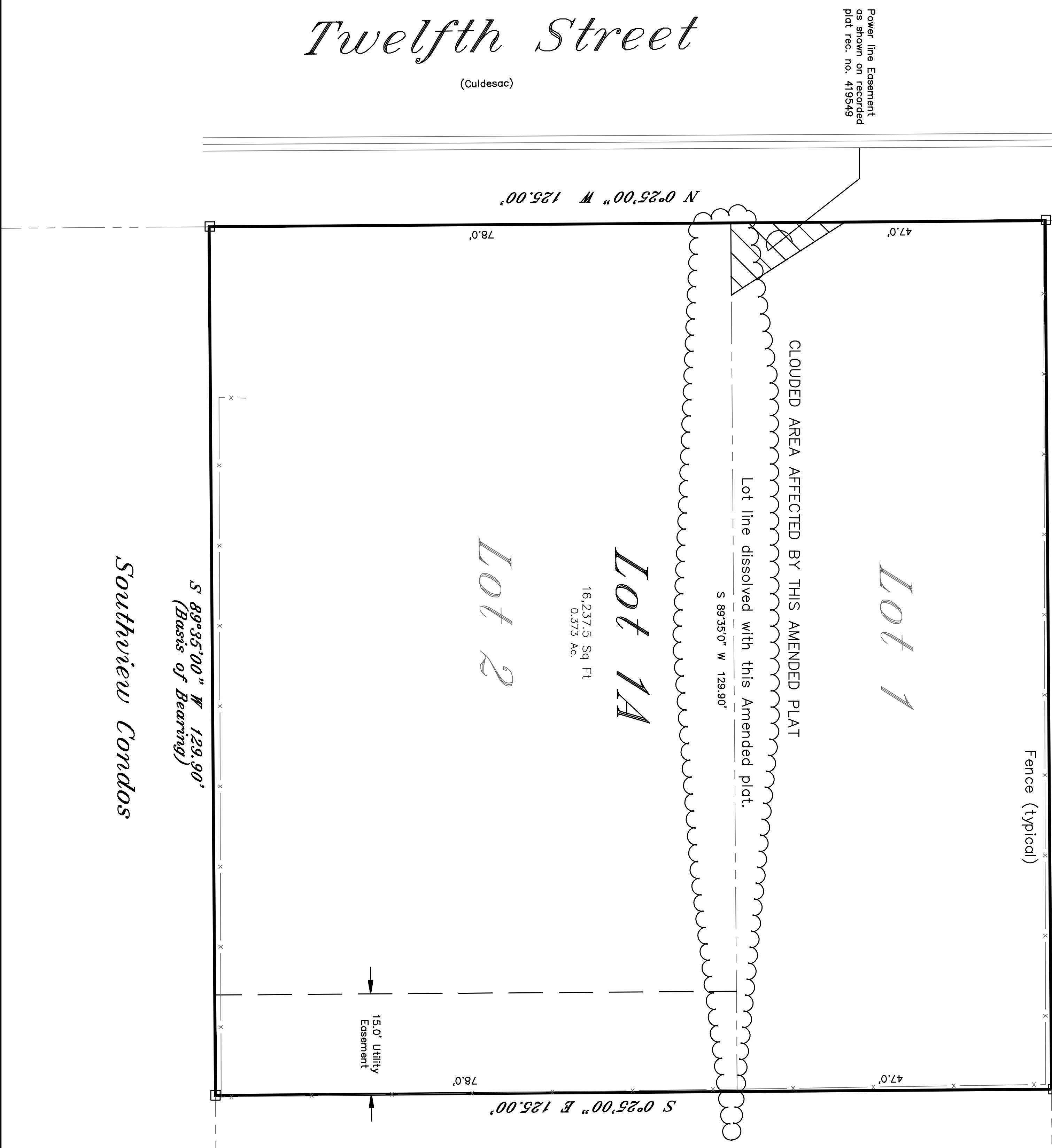
Per Section 2.3.2.B of the UDC, the Planning Director shall determine the form and number of application materials required.

Required Attachments

- ☐ Filing Fee of \$300 and Land Use Application (separate attachment)
- ☐ a. The following shall be submitted with a subdivision exemption application:
 - i. A sketch plan drawn to scale showing existing and proposed lot configurations, existing structures, existing utility lines, and dedicated public access;
 - ii. A written statement explaining why the subdivision meets the purposes of this Code;
 - iii. A written statement of the intended uses and proposed densities of each parcel in the subdivision;
 - iv. If the parcels have existing residential units or will be used for residential units, a written statement indicating how many bedrooms each unit has or will have; and
 - v. Evidence of title or ownership of the applicant to the property, including any mineral, gravel, and oil and gas leases, reservations, or separate ownerships.
- ☐ b. As a condition of processing and granting the application, the Town may require at any stage of the proceedings such engineering specification and data as are necessary to enable it to determine that the proposed subdivision will meet all of the applicable design and improvement standards in Chapter 17.06.Subdivision.
- ☐ Additional information requested at the pre-application meetings: _____



VICINITY MAP
SCALE: 1" = 1000'



AMENDED FINAL PLAT OF
Lot 1 and Lot 2, Coco Palms Estates
According to the plat thereof filed December 12, 1990 at
Reception No. 419549,
Town of Carbondale, County of Garfield, State of Colorado.
The purpose of this is to eliminate the property line and easements between
Lot 1 and Lot 2, Coco Palms Estates creating Lot 1A as shown hereon.

LEGAL DESCRIPTION—ORIGINAL

Lot 1 and Lot 2, Coco Palms Estates, According to the plat thereof filed December 12, 1990 at Reception No. 419549, containing 16,237.5 Sq Ft 0.373 Acres, more or less.

LEGAL DESCRIPTION—AMENDED

Lot 1A, a parcel of land consisting of Lot 1 according to the plat filed December 12, 1990 at Reception No. 419549 together with Lot 2 according to the plat filed December 12, 1990 at Reception No. 419549, containing 16,237.5 Sq Ft 0.373 Acres, more or less.

LEGEND AND NOTES:

- □ — INDICATES FOUND 5/8" REBAR & 1 1/4" RED PLASTIC CAP MARKED LS 14111
- DATE OF SURVEY: OCTOBER 09, 2019
- UNIT OF MEASUREMENT: US SURVEY FOOT
- BEARINGS ARE BASED UPON A FOUND 5/8" REBAR WITH 1 1/4" YELLOW PLASTIC CAP U.S. 14111 AT THE SOUTHWESTERLY CORNER AND AT THE SOUTHEASTERLY CORNER OF THE SUBJECT PARCEL, USING A BEARING OF S 89°35'00" W BETWEEN THE TWO DESCRIBED MONUMENTS AS SHOWN HEREON.
- THIS PROPERTY IS SUBJECT TO EASEMENTS, RIGHTS OF WAY AND/ OR REQUIREMENTS AS NOTED OR SHOWN ON THE FINAL PLAT OF COCO PALMS ESTATES.
- THIS PROPERTY IS SUBJECT TO APPARENT EASEMENTS FOR EXISTING UTILITIES.
- THIS SURVEY DOES NOT REPRESENT A TITLE SEARCH BY THIS SURVEYOR TO DETERMINE OWNERSHIP OR TO DISCOVER EASEMENTS OR OTHER ENCUMBRANCES OF RECORD. ALL INFORMATION PERTAINING TO OWNERSHIP, EASEMENTS OR OTHER ENCUMBRANCES OF RECORD HAS BEEN TAKEN FROM THE FINAL PLAT OF COCO PALMS ESTATES.

Certificate of Dedication and Ownership

The undersigned Almond Holdings LLC being sole owner in fee simple of all that real property being more particularly described as follows:

Lot 1 and Lot 2, Coco Palms Estates, According to the plat thereof filed December 12, 1990 at Reception No. 419549, containing 16,237.5 Sq Ft 0.373 Ac., more or less, has caused the described real property to be surveyed, laid out, platted and styled as shown on this plat and on the attached map on file in the office of the Clerk and Recorder of Garfield County, State of Colorado, and the same are hereby dedicated to the County of Garfield, State of Colorado.

EXECUTED this _____ day of _____ A.D. 2020.

By: _____
Agent
Address: _____

STATE OF _____ }
COUNTY OF _____ } ss.
The foregoing Certificate of Dedication and Ownership was acknowledged before me this _____ day of _____ A.D. 2020 by
expires: _____ My commission _____

WITNESS my hand and official seal, _____ Notary Public

PLANNING AND ZONING COMMISSION

This plat approved by the Town of Carbondale Planning and Zoning Commission this _____ day of _____ A.D. 2020.

Chairperson _____

Surveyor's Certificate

I, Jeffrey Allen Tuttle, do hereby certify that I am a Professional Land Surveyor licensed under the laws of the State of Colorado, that this Plat is a true, correct and complete Amended Final Plat of Lot 1 and Lot 2, Coco Palms Estates, as laid out, surveyed and shown on this plat and on the attached map, and that the foregoing survey of said property by me, or under my supervision, and correctly shows the location and dimensions of the lots, easements and streets as the same are staked upon the ground in compliance with applicable regulations governing the subdivision of land.

In witness whereof, I have set my hand and seal this _____ day of _____ A.D. 2020.

Professional Land Surveyor:
Jeffrey Allen Tuttle, P.L.S. #33638
923 Cooper Avenue
Glenwood Springs, CO 81601

Clerk and Recorder's Certificate:

This Plat was filed for record in the Office of the Clerk and Recorder of Garfield County, Colorado, at _____ o'clock _____ M., on this _____ day of _____ A.D., 2020 and is duly recorded as Reception No. _____

Clerk & Recorder
By: _____
Deputy

Notice:
According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you may have received notice of the survey. Any delay in filing a lawsuit to commence more than ten years from the date of the recording of this survey is barred.

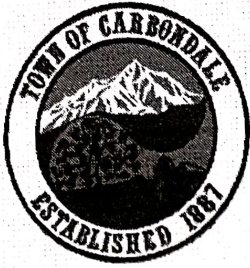
TUTTLE SURVEYING SERVICES
923 Cooper Avenue
Glenwood Springs, Colorado 81601
(970) 928-9708 (FAX 947-9007)



Amended Final Plat

156 & 160 12th Street
Carbondale, Co 81623

Drawn by: DMC
Date: 03/17/2020
Z:\2019\Carbondale



TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Authorization to Proceed with Electronic Public Hearings

On March 17, 2020, the Town of Carbondale passed Resolution No. 6, Series of 2020 (Resolution) which declared there was a local disaster in Carbondale, Colorado as a result of COVID-19, requiring emergency actions to protect public health.

Section 5 of that Resolution adopts the Emergency Participation Policy (Policy) which was attached to the Resolution as Exhibit A.

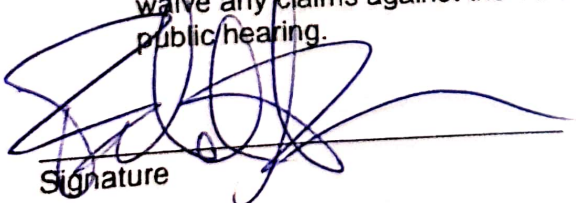
Section IV.A. of the Policy provides for Electronic Participation for quasi-judicial matters, i.e. as public hearings for land use applications. This section requires, for pending land use applications, that the Town present the applicant with options for proceeding with the application. The two options included in the resolution are as follows:


1. Conduct the public hearing under this policy with accommodations made for electronic public participation; or
2. Suspend any and all review and decisions deadlines until such time that the local disaster emergency is lifted and the Town schedules regular meetings at which a quorum will be physically present.

The resolution requires that the applicant authorize the Town, in writing, to proceed with one of the options.

If you wish to proceed with conducting the public hearing with electronic participation, please sign and date the following:

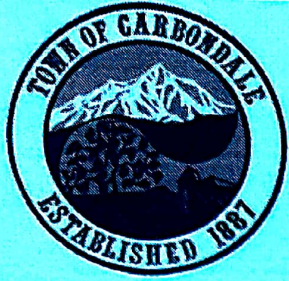
I authorize the Town to proceed with the public hearing with accommodations made for electronic participation. I acknowledge that holding a quasi-judicial hearing with electronic participation presents certain legal risks and involves an area of present legal uncertainty; however, I agree to accept such risks and uncertainties. I also agree to waive any claims against the Town concerning the use of electronic means to conduct a public hearing.


Signature


Printed Name

Project Name 156 N 12TH Street

Date 6/1/2020



Town of Carbondale Affidavit of Mailing

The undersigned certifies that he/she mailed the attached Notice of Hearing by First Class Mail, postage prepaid as required by the Carbondale Municipal Code. The people on the attached list were sent the Notice of Hearing. In addition, notices were posted on the property.

Date of Mailing:

6/6/2020

By:

Roshe Alvarado

Subscribed and sworn before me this 10 day of June, 2020.



[Signature]

Notary

My commission expires: 10/17/2020

Results:

Account Number

R044997

Parcel Number

23933430C012

Owner

CARBONDALE
CROSSINGS LLC

Address

1029 MAIN ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R044996

Parcel Number

23933430C011

Owner

CARBONDALE
CROSSINGS LLC

Address

1023 MAIN ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R042427

Parcel Number

239334394005

Owner

PAZDERA, ANDREA
LAURA

Address

1129 MAIN ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R042426

R042426

Parcel Number

239334394004

Owner

BRAVO INC

Address

1131 MAIN ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R044998

Parcel Number

23933430C013

Owner

1035 MAIN STREET LLC

Address

1035 MAIN ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R044999

Parcel Number

23933430C014

Owner

GOERNE, MICHAEL S

Address

1041 MAIN ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R045000

Parcel Number

23933430C015

Owner

KHAN, QAISAR M

Address

1047 MAIN ST
CARBONDALE 81623

Parcel Number

23933430C016

Owner

CARR, ANDREW D &
NANCY J

Address

1053 MAIN ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R042423

Parcel Number

239334394001

Owner

FULTON, COLBY JUNE

Address

1136 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R042424

Parcel Number

239334394002

Owner

CLANCY PROPERTIES,
LLC

Address

1134 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R042425

Parcel Number

239334394003

Owner

CLANCY PROPERTIES,
LLC

Address

1132 COLORADO AVE
CARBONDALE 81623

Parcel Number

23933430C027

Owner

FIRST CITIZENS BANK &
TRUST COMPANY

Address

0 CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R045006

Parcel Number

23933430C021

Owner

OH, SUSAN

Address

1002 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R045007

Parcel Number

23933430C022

Owner

PFLUGER, DEBORAH K &
BRADLEY J

Address

1008 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R045008

Parcel Number

23933430C023

Owner

SOPRIS VIEW HOLDINGS
II LLC

Address

1014 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

Owner

DEVENY, THOMAS
CLIFFORD

Address

1020 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R045010

Parcel Number

23933430C025

Owner

JOHNSON, DAVID

Address

1026 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R045011

Parcel Number

23933430C026

Owner

SOPRIS VIEW HOLDINGS
II LLC

Address

1032 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R045013

Parcel Number

23933430C028

Owner

FIRST CITIZENS BANK &
TRUST COMPANY

Address

0 CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Parcel Number

239334394008

OwnerBRAEBURN BUILDING
CONDOMINIUM ASSOC
INC**Address**

0 CARBONDALE 81623

View: [Property Record](#)[Card](#) | [Google Maps opens in a new tab](#)**Account Number**

R008144

Parcel Number

239334300087

Owner

1197 MAIN LLC

Address1197 MAIN ST
CARBONDALE 81623View: [Property Record](#)[Card](#) | [Google Maps opens in a new tab](#)**Account Number**

R341040

Parcel Number

239334353018

Owner

PALOCHAK, AMBER KATE

Address1147 COLORADO AVE
CARBONDALE 81623View: [Property Record](#)[Card](#) | [Google Maps opens in a new tab](#)**Account Number**

R341041

Parcel Number

239334353019

Owner

BRYAN, SHEILA

Address1149 COLORADO AVE
CARBONDALE 81623View: [Property Record](#)[Card](#) | [Google Maps opens in a new tab](#)

Owner

BRYAN, SHEILA

Address

1149 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R341039

Parcel Number

239334353017

Owner

MOODIE, DANICA
MANNING & SUNDEEN,
GENTIA

Address

1145 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R341038

Parcel Number

239334353016

Owner

MCKINNEY, MARC C &
SUSAN S

Address

1143 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R341037

Parcel Number

239334353015

Owner

NEWELL CARBONDALE
LLC

Address

1141 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

239334353014

Owner

BRYAN, SHEILA

Address

1139 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340636

Parcel Number

239334300030

Owner

951 COLORADO AVE LLC

Address

951 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R580230

Parcel Number

239334372001

Owner

COOK, KATHERINE S

Address

1033 COLORADO AVE
CARBONDALE 81623

Acres - 0.87

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R580231

Parcel Number

239334372002

Owner

POH FAMILY TRUST

Address

1023 COLORADO AVE
CARBONDALE 81623

Acres - 0.55

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Owner

HOFF, KARL E

Address

1013 COLORADO AVE
CARBONDALE 81623

Acres - 0.087

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R341035

Parcel Number

239334353013

Owner

FOUR RIVERS REAL
ESTATE LLC

Address

1137 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R341034

Parcel Number

239334353012

Owner

CLARK, HAL

Address

1135 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R341033

Parcel Number

239334353011

Owner

NEWELL CARBONDALE
LLC

Address

1133 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

Owner

CLARK, HAL

Address

1131 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340765

Parcel Number

239334353005

Owner

SHANTEAU, CATHERINE J

Address

1123 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340766

Parcel Number

239334353006

Owner

FORBES, GREGORY A

Address

1125 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R341030

Parcel Number

239334353008

Owner

NEWELL CARBONDALE
LLC

Address

1127 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

Owner

NEWELL CARBONDALE
LLC

Address

1129 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a
new tab](#)

Account Number

R340878

Parcel Number

239334353001

Owner

NEWELL CARBONDALE
LLC

Address

1115 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a
new tab](#)

Account Number

R340879

Parcel Number

239334353002

Owner

NEWELL CARBONDALE
LLC

Address

1117 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a
new tab](#)

Account Number

R340763

Parcel Number

239334353003

Owner

RAINBOW, VIKKI J

Address

1119 COLORADO AVE
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a](#)

Owner

NEWELL PROPERTIES LLC

Address

1121 COLORADO AVE

CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340932

Parcel Number

239334353007

Owner

SOUTHVIEW II CONDO
ASSOCIATION, INC

Address

0 CARBONDALE Acres -
0.42

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340890

Parcel Number

239334354002

Owner

BIER, JEFFREY M

Address

176 10TH ST #B
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R580109

Parcel Number

239334363001

Owner

LEVIS, THOMAS M &
MORSE, DANIELLE J

Address

177 10TH ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

239334354001

Owner

GARCIA, JOSE

Address

176 10TH ST #A

CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R580110

Parcel Number

239334363002

Owner

LORD, KYLE & RAYES,
EMILY

Address

178 11TH ST

CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340892

Parcel Number

239334354004

Owner

YORKSHIRE ESTATES
HOMEOWNERS
ASSOCIATION

Address

0 CARBONDALE

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R041547

Parcel Number

239334385002

Owner

STACEY, KIM TRUST
DATED 6/6/2011

Address

182 10TH ST #B

CARBONDALE 81623

View: [Property Record](#)

239334385001

Owner

STACEY, KIM TRUST

DATED 6/6/2011

Address

182 10TH ST #A

CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R083475

Parcel Number

239334305002

Owner

TREVOR, FELICIA &

THAPA, DAL BAHADUR

Address

187 10TH ST

CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R041549

Parcel Number

239334385004

Owner

STACEY, KIM TRUST

DATED 6/6/2011

Address

0 10TH ST CARBONDALE
81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R083474

Parcel Number

239334305001

Owner

WRIGHT, TRACIE M &

MARESH, KAREN

Address

184 N 11TH ST

CARBONDALE 81623

Owner
LAUFER, MATTHEW

Address
192 N 10TH ST
CARBONDALE 81623

View: [Property Record](#)
[Card](#) | [Google Maps opens in a new tab](#)

Account Number
R580047

Parcel Number
239334361003

Owner
PEREZ, REYES & SILVIA

Address
156 N 11TH ST
CARBONDALE 81623

View: [Property Record](#)
[Card](#) | [Google Maps opens in a new tab](#)

Account Number
R006227

Parcel Number
239334374003

Owner
SUAREZ, NELSON SALLES
& DULCE ANDREA

Address
194 N 10TH ST
CARBONDALE 81623

View: [Property Record](#)
[Card](#) | [Google Maps opens in a new tab](#)

Account Number
R580045

Parcel Number
239334361001

Owner
ALMDIN HOLDINGS LLC

Address
160 N 12TH ST
CARBONDALE 81623

View: [Property Record](#)
[Card](#) | [Google Maps opens in a new tab](#)

239334300037
Owner

MERRILL, LINDA C LIVING
TRUST

Address

203 10TH ST
CARBONDALE 81623

Acres - 7405

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R006226

Parcel Number

239334374002

Owner

JOHNSON, MATTHEW S &
ODOSKI, ADAM M

Address

196 N 10TH ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R006225

Parcel Number

239334374001

Owner

SCHER, MICHAEL & JILL

Address

198 N 10TH ST
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340402

Parcel Number

239334300038

Owner

OLIVAS, MIGUEL &
GUADALUPE

Address

207 10TH ST
CARBONDALE 81623

239334300037

Owner

CRYMBLE, ARLO DEAN

Address

211 10TH ST

CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340600

Parcel Number

239334300045

Owner

VARLEY, CAROLE A

Address

178 12TH ST

CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340339

Parcel Number

239334300034

Owner

NORRIS, BRUCE

Address

210 10TH ST

CARBONDALE 81623

Acres - 0.28

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R340854

Parcel Number

239333400014

Owner

STEIN PROPERTIES
LIMITED PARTNERSHIP

Address

958 133 HWY

CARBONDALE 81623

Acres - 3.94

239333140006

Owner

CRYER, BARRY ARTHUR

Address

0 133 HWY CARBONDALE
81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R007877

Parcel Number

239333140007

Owner

CRYER, BARRY ARTHUR

Address

0 133 HWY CARBONDALE
81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R007878

Parcel Number

239333140008

Owner

HEUER, THOMAS

Address

0 133 HWY CARBONDALE
81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

Account Number

R007879

Parcel Number

239333140009

Owner

COWGIRL, A COLORADO
LIMITED LIABILITY CO

Address

898 133 HWY #304
CARBONDALE 81623

View: [Property Record](#)

[Card](#) | [Google Maps opens in a new tab](#)

239333140018

Owner

DURGIN COMMERCIAL
CONDO, LLC

Address

181 12TH ST
CARBONDALE 81623

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Account Number

R340200

Parcel Number

239334300051

Owner

GARVIK, KENNETH W
REVOCABLE TRUST &
GARV

Address

213 10TH ST
CARBONDALE 81623

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Account Number

R083471

Parcel Number

239333140019

Owner

202 INVESTMENTS LLC

Address

181 12TH ST
CARBONDALE 81623

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Account Number

R340431

Parcel Number

239334300046

Owner

TWELFTH STREET
HOLDINGS LLC

Address

188 12TH ST
CARBONDALE 81623

Parcel Number
239334300046

Owner

TWELFTH STREET
HOLDINGS LLC

Address

188 12TH ST
CARBONDALE 81623

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Account Number

R340686

Parcel Number

239334350003

Owner

LEWIS, DAVID E &
NEWTON, MONA L

Address

0 N 10TH ST #C
CARBONDALE 81623

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Account Number

R041564

Parcel Number

239334240009

Owner

FORREST, BARBARA A

Address

202 12TH ST #301
CARBONDALE 81623

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Account Number

R041565

Parcel Number

239334240010

Owner

FORREST, BARBARA A

Address

202 12TH ST #302
CARBONDALE 81623

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Owner

FORREST, TIMOTHY J

Address

202 12TH ST #303
CARBONDALE 81623

View: [Property Record](#)

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Account Number

R041567

Parcel Number

239334240012

Owner

FORREST, TIMOTHY J

Address

202 12TH ST #304
CARBONDALE 81623

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Account Number

R340931

Parcel Number

239334350005

Owner

SOUTHVIEW CONDO
ASSOCIATION, INC

Address

0 N 10TH ST
CARBONDALE 81623

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Account Number

R007887

Parcel Number

239333140017

Owner

E T PLAZA INDUSTRIAL
PARK PLANNED
COMMUN

Address

0 133 HWY CARBONDALE
81623

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81023

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Account Number

R041568

Parcel Number

239334240013

Owner

TWELFTH STREET

CONDOMINIUMS INC

Address

202 12TH ST

CARBONDALE 81623

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Account Number

R340845

Parcel Number

239333400005

Owner

1201 CO INVESTORS LLC

Address

1201 COLORADO AVE

CARBONDALE 81623

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Account Number

Parcel Number

Owner