

WHEN RECORDED, RETURN TO:

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “Easement Agreement”) is made as of the ____ day of _____, 201__, by and between GARFIELD COUNTY COMMERCIAL INVESTMENTS, LLC, a Texas limited liability company (“Grantor”), and CARBONDALE INVESTMENTS, LLC, a Texas limited liability company (“Grantee”).

RECITALS

A. Grantor is the owner of that certain parcel of real property located in the County of Garfield, State of Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “GCCI Property”).

B. Grantee is the owner of that certain parcel of real property that is south of and adjacent to the GCCI Property (the “CI Property”), as shown on Exhibit B attached hereto. Grantee has obtained PUD zoning and preliminary plan approval for the construction of a mixed-use development, including residential, active and passive recreational and commercial uses on the CI Property.

C. To provide emergency vehicle access to the CI Property, Grantee desires an easement on across, and over the GCCI Property for the purposes of: constructing, maintaining, repairing, replacing, removing, and operating an access road and associated features (the “Easement Activity”).

D. Grantor is willing to grant Grantee easements for the Easement Activity on the terms and conditions set forth herein on across and over the GCCI Property at the locations identified on Exhibit C attached hereto and incorporated herein by this reference (the “Easement Area”).

GRANT OF EASEMENTS

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby confessed and acknowledged, Grantor and Grantee agree as follows:

1. Easements for the Easement Activity. Grantor, by these presents, does hereby grant, sell, bargain and convey to Grantee non-exclusive easements (the “Easements”) on, over and across the Easement Area (a) for the purpose of performing the Easement Activity in accordance with this Easement Agreement, (b) for emergency vehicle and pedestrian access, ingress, and egress to and from the CI Property.

2. Installation and Maintenance of Easement Activity.

(a) The Easement Activity shall be conducted by Grantee and its employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents (collectively, "Grantee's Responsible Parties") subject to and in accordance with the covenants contained in Section 5.

(b) Grantee shall have the obligation to maintain and repair any improvements installed as part of the Easement Activity (the "Grantee Improvements") at Grantee's sole cost and expense. Such maintenance and repair shall be conducted subject to and in accordance with the covenants contained in Section 4.

(c) In addition to the Easements granted pursuant to Section 1, Grantor does hereby grant, sell, bargain and convey to Grantee a temporary, non-exclusive easement (the "Temporary Construction Easement") on, over, across, and under the GCCI Property (the "Temporary Construction Easement Area"), as shown on Exhibit C, solely for activities reasonably necessary to accomplish the construction of the Grantee Improvements, including but not limited to excavation, stockpiling soil, and accessing the Easement Area. The Temporary Construction Easement shall terminate on the completion of the construction of the Grantee Improvements. The provisions of this Easement Agreement pertaining to the Easements, the Easement Area, the Easement Activity, and generally with respect to Grantee's and Grantee's Responsible Parties use of the GCCI Property and obligations under this Easement Agreement shall apply to the Temporary Construction Easement, the Temporary Construction Easement Area, the construction work thereon, and generally with respect to Grantee's and Grantee's Responsible Parties' use of the Temporary Construction Easement Area pursuant to the Temporary Construction Easement granted hereby.

3. Restoration Work. Within a reasonable time after performing any work that disturbs and/or alters the GCCI Property, Easement Area, or Temporary Construction Easement Area, Grantee shall, at its sole cost and expense, in accordance with commercially reasonable standards, restore the GCCI Property, Easement Area, or Temporary Construction Easement Area to substantially the same condition of said property and improvements prior to such Easement Activity, excepting Grantee Improvements. Grantee shall take such necessary measures to, at all times, minimize damage or disturbance caused by the Easement Activity.

4. Covenants of Grantee. In exercising the rights granted hereunder, utilizing the Easements, performing the Easement Activity, and otherwise accessing the GCCI Property (including, without limitation, the Easement Area), Grantee agrees to each of the following covenants:

(a) All Easement Activity shall be performed at Grantee's sole cost and expense.

(b) Grantee and Grantee's Responsible Parties shall enter onto the GCCI Property and utilize the Easements granted hereunder at their own risk and they further ASSUME ALL RISKS related to the same. Grantor shall have no liability to Grantee and Grantee's Responsible Parties, for any and all claims, causes, losses, liens, injuries, liabilities or

expenses of whatever kind not caused by Grantor's gross negligence or willful misconduct (including, without limitation, reasonable attorney's fees) (collectively, "Losses"), related to or arising from entry onto the GCCI Property and use of the Easements, and Grantor is hereby irrevocably and forever released from the same.

(c) In all actions undertaken on property belonging to Grantor by Grantee and any of Grantee's Responsible Parties, all work shall be completed in a prompt, good and workmanlike manner, free of all liens (including mechanic's liens) and encumbrances on the GCCI Property.

(d) Grantee shall not cause, or permit to be caused by any of Grantee's Responsible Parties, any Hazardous Materials (defined below) to be transported to, or dumped, spilled, released, stored, or deposited on, over or beneath the GCCI Property or any other lands owned by Grantor. "Hazardous Materials" means substances, materials or waste the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or laws, as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant" or "contaminant" and including, without limitation, those designated as a "hazardous substance" under Section 311 or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Secs. 1321, 1317), defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6903), or defined as a "hazardous substance" under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601), and, including, without limitation, petroleum products and byproducts, PCBs and asbestos.

(e) Grantee shall comply with all applicable federal, state and local laws, rules and ordinances in connection with its use of the GCCI Property and shall obtain all permits and approvals required by applicable governmental or quasi-governmental entities in connection with Grantee's Easement Activity and use of the GCCI Property as permitted hereunder.

5. Miscellaneous.

(a) Easement to Run with Land. This Easement Agreement, including the Easements and all other covenants, agreements, rights and obligations created hereby, shall run with the GCCI Property, and shall be binding on all persons having or acquiring fee title to the GCCI Property, all upon the terms, provisions and conditions set forth herein.

(b) Counterparts. This Easement Agreement may be executed in several counterparts, and each counterpart shall constitute one Easement Agreement binding on all parties hereto, notwithstanding that all of the parties are not signatory to an original or same counterpart.

(c) Successors and Assigns. This Easement Agreement shall be binding on Grantor's and Grantee's respective successors and assigns.

(d) No Representations or Warranties. Grantee acknowledges and agrees that it is using the GCCI Property based on its "AS IS" physical condition and in an "AS IS" state of repair. Grantor expressly disclaims and makes no representations or warranties, whether expressed or implied, to Grantee, or to Grantee's Responsible Parties, with respect to the GCCI

Property, including, without limitation, with respect to the suitability or fitness of the GCCI Property for the Easement Activity, the Grantee Improvements, or any of the uses or purposes contemplated by the Easements granted pursuant to this Easement Agreement.

(e) Section Headings. The Section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this Easement Agreement.

(f) Entire Agreement. This Easement Agreement, together with the exhibits attached hereto, contains the entire agreement of the parties hereto with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the parties hereto.

(g) Severability. If any portion of this Easement Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Easement Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Easement Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable. In the event that such provision cannot be so reformed, Grantor may terminate this Easement Agreement in its sole discretion.

(h) Governing Law. The terms and provisions of this Easement Agreement shall be construed under and governed by the laws of the state of Colorado. If any action or proceeding is brought concerning this Easement Agreement, it shall be brought in a court of competent jurisdiction in Garfield County, Colorado. If any action or proceeding shall be brought in any forum in any other location, then it shall, to the fullest extent permitted by law, be stayed upon initiation of any action or proceeding concerning this Easement Agreement in the foregoing forum.

(i) Waivers. No provision of this Easement Agreement shall be deemed waived except by a writing executed by the party against whom the waiver is sought to be enforced. No waiver of any provision of this Easement Agreement shall be deemed a continuing waiver of such provision or deemed a waiver of any other provision of this Easement Agreement.

(j) Notices. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, sent via overnight delivery service, sent via email, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

Grantor:

Grantee:

With a copy (which shall not

With a copy (which shall not

constitute notice) to:

constitute notice) to:

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing, personal delivery or emailing in compliance with this paragraph.

(k) Amendment. This Easement Agreement may not be amended or terminated except by a written instrument signed by the then-fee-owner of the GCCI Property and the then-fee-owner of the CI Property; provided, however, that no indemnity or reimbursement obligation contained in this Easement Agreement or limitation of liability with respect to any beneficiary may be modified or eliminated without the prior written consent of such beneficiary of such indemnities and reimbursement obligations or limitation of liability, regardless of whether such beneficiary continues to own an interest in the GCCI Property or CI Property.

(l) Default. If any party hereto breaches any provision of this Easement Agreement and fails to cure such breach within 30 days after written notice thereof, the non-breaching party shall be entitled to any and all remedies, legal or equitable, which may be available including, without limitation, specific performance. All such remedies, including those set forth in this Easement Agreement, shall be cumulative.

(m) Attorney Fees. The substantially prevailing party in any action or arbitration brought to enforce or interpret this Easement Agreement shall be awarded its costs and reasonable attorney's fees (including those of in-house counsel), including for any appellate review.

(n) Usage of Terms. When the context in which words are used herein indicates that such is the intent, words in the singular number shall include the plural and vice versa. All pronouns and any variations thereof shall be deemed to refer to all genders.

(o) Authority to Execute. Each person executing this Easement Agreement represents and warrants that it is duly authorized to execute this Easement Agreement by the party on whose behalf it is so executing.

(p) Recordation. Grantee may record this Easement in the real property records of Garfield County, Colorado.

(q) Disclaimer of Joint Venture. This Easement Agreement is not intended to create a joint venture, partnership or agency relationship between Grantor and Grantee, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

(r) Easements Not Exclusive. The Easements and rights granted herein are not exclusive, and the right is hereby reserved to Grantor to exercise or grant such other easements, rights or privileges across, on or pertaining to the Easement Property (including the

Easement Area), so long as such easements do not unreasonably interfere with the Easements granted herein.

(s) Construction. The parties hereto have participated jointly in the negotiation and drafting of this Easement Agreement. In the event an ambiguity or question of intent or interpretation arises, this Easement Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Easement Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement Agreement on the date first above written.

GRANTOR:

GARFIELD COUNTY COMMERCIAL INVESTMENTS, LLC

By: _____
Name: _____
Title: _____

GRANTEE:

CARBONDALE INVESTMENTS, LLC

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 20____, by _____, _____ of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 20____, by _____, _____ of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

Legal Description of GCCI Property

EXHIBIT B

Legal Description of CI Property

EXHIBIT C

Easement Area and Temporary Construction Easement Area