

JOINT FUNDING AND USE AGREEMENT

This JOINT FUNDING AND USE AGREEMENT (this “Agreement”) is made and entered into the ___th day of _____, 2019, by and between SPRING CREEK APARTMENTS, LLC (“SCA”), and the STRATTON FLATS MASTER ASSOCIATION, INC. (“the Association”). Each party hereto may be individually identified as a “Party”, and all may be collectively referred to as the “Parties”.

RECITALS

- A. The Stratton Flats Master Association, Inc. is a Colorado common interest ownership association organized under and subject to the provisions of the Colorado Common Interest Ownership Act (“CCIOA”), C.R.S. § 38-33.3-101 *et seq.*, and the Declaration of Covenants, Conditions and Restrictions for Stratton Flats Master Association (the “Declaration”), as recorded in the real property records of Eagle County on January 26, 2009 at Reception No. 200900985. The area subject to the Stratton Flats Declaration is referred to as “Stratton Flats.”
- B. SCA is a Colorado limited liability company that has purchased the undeveloped areas of Stratton Flats from Stratton Flats Homes, LLC, (successor-in-interest to the Declarant of the Declaration).
- C. SCA will develop the cross hatched areas depicted on **Exhibit A** as apartments and/or condominiums and recreational amenities (“Apartment Area”).
- D. By separate document, the Apartment Area will be removed from the control of the Declaration and will be governed by its own organization.
- E. The residents of the Association and the residents of the Apartment Area will jointly use certain privately owned infrastructure and amenities.
- F. This Agreement shall govern the joint use and funding of the infrastructure and amenities described herein.

NOW, THEREFORE, in consideration of the mutual representations, covenants, and conditions set forth in this Agreement, the Parties agree to the following.

TERMS AND CONDITIONS

- 1. Incorporation of Recitals. The foregoing recitals are incorporated herein as if set forth in full and made a material part of this Agreement by the Parties.
- 2. Roadways and Parking.
 - A. SCA will complete a temporary roadway connection of Sunny Avenue across the “commercial property” to the east out to Highway 6 as approximately depicted in

Exhibit B. This roadway connection may be gravel until such time as the commercial property owner completes its development plan and a final roadway location (between Sunny Avenue and Highway 6) is established. SCA will complete a permanent roadway connection of Sunny Avenue to Highway 6 when the commercial property owner completes its development plan (i.e., upon Town of Gypsum approval of a development plan). After the permanent roadway to Highway 6 is constructed and accepted by the Town of Gypsum, it shall be considered a jointly used extension of Sunny Avenue subject to the cost sharing described below. All work shall be completed to standards of the construction documents approved by Town of Gypsum.

- B. SCA hereby grants the Association a non-revocable license to use roadways, sidewalks and trails specifically depicted on **Exhibit B** for the limited purposes of accessing West Park and Central Park, the clubhouse and amenity areas, and open space Tract V-2 as depicted on **Exhibit B**. All rights pursuant to the license granted to the Association shall only be exercised after the roadways, sidewalks, and trails have been constructed by SCA and accepted by the Town of Gypsum.
- C. The Association will grant to SCA easements for the use and benefit of the Apartment Area over, under and across Sunny Avenue, Stratton Circle, Falcon Lane, Nighthawk Way, Osprey Lane, Chickadee Court and the parking area off of Osprey Lane adjacent to North Park, as depicted on **Exhibit C**, for the purposes of providing access and utility connections to the Apartment Area. The Association will grant the respective easements upon the completion of the improvements for each road or parking area and the acceptance thereof by the Town of Gypsum.
- D. SCA shall be solely responsible for the construction, operation, maintenance, and repair (including the costs thereof) of its internal roadways, sidewalks and trails located within the Apartment Area, together with the eastern portion of Sunny Avenue and the eastern portion of Nighthawk Circle (past the intersection with Osprey Circle) as depicted on **Exhibit C**.
- E. Except for parking specifically designated for the park areas, the parking areas within the Apartment Area are expressly reserved for its residents and their guests. Parking areas within the Apartment Area shall not be considered a jointly used roadway and shall not be used by members of the Association without the written consent of SCA.

3. Parks and Amenities.

- A. SCA will complete a 10 foot wide trail improvement from Jules Drive to the Spring Creek Drainage located on Tract G as approximately depicted on **Exhibit B**. The timing and standards for completion of the trail will be determined by the

Town of Gypsum phasing plan and approved construction documents. The Association shall have a right of access to use the trail for non-motorized purposes.

- B. SCA will construct at its cost and expense park areas, a clubhouse and recreational amenities within the Apartment Area as further depicted on **Exhibit B**. SCA will further provide passive activity open space on Tract V-2 as depicted on **Exhibit B**. The timing and standards for completion of the park areas, clubhouse and recreational amenities will be determined by the Town of Gypsum phasing plan and approved construction documents. SCA shall own the park areas, clubhouse, open space and recreational amenities and shall be solely responsible for the costs of operating, maintaining and repairing the same. SCA shall maintain the park areas, recreational equipment, seating facilities, amenities, and similar appurtenances to a similar quality as the Association maintains similar park facilities that it owns.
 - C. SCA hereby grants the Association an irrevocable license so that the Association's members can use the park areas, the public areas of a clubhouse, the open space on Tract V-2, and recreational amenities in the areas depicted on **Exhibit B**. SCA may adopt reasonable rules and regulations (that apply to both residents of the Apartment Area and members of the Association) regarding the use of the park areas, a clubhouse and recreational amenities. SCA shall only charge the Association or its members a fee for using the park areas, clubhouse and recreational amenities on the same basis as residents of the Apartment Area. All rights pursuant to the license granted to the Association shall only be exercised after the park areas, clubhouse and recreational amenities have been constructed by SCA and accepted by the Town of Gypsum.
 - D. The Association hereby grants SCA an irrevocable license so that the owners/renters of the Apartment Area can use the North Park facility (Tract M) as depicted on **Exhibit B**. The Association may adopt reasonable rules and regulations regarding the use of the North Park. The Association shall not charge SCA or residents and guests of the Apartment Area a fee for using the North Park.
4. Raw Water Irrigation System. The Association maintains a raw water irrigation system consisting of joint use of the CM Stremme & Gates Ditch, a pipeline, a water storage pond, irrigation pumps, and main water lines ("Raw Water System"). The Raw Water System is designed for irrigation of landscaping and parks within Stratton Flats and the adjoining Tower Center commercial development. Under applicable agreements with the Town, up to 14.6 acres of the Stratton Flats residential development area can be irrigated using the Raw Water System. For purposes of allocating the use of the 14.6 acres of irrigation, the Parties agree that the Association shall be permitted to irrigate up to 4.5 acres and SCA shall be permitted to irrigate up to 10.1 acres. The Association will

execute a partial Assignment and Assumption of Long Term Water Lease Agreement with SCA formalizing SCA's right to use CM Stremme & Gates Ditch water pursuant to the lease with the Town of Gypsum. SCA shall pay 61 percent of any amounts due under the Long Term Water Lease Agreement with the Town of Gypsum.

5. Cost Sharing for Jointly Used Infrastructure and Facilities.

- A. The Association will manage the operation, maintenance and repair of the jointly used infrastructure and facilities located outside of the Apartment Area such as roadways, the raw water irrigation system, and North Park.
- B. SCA will manage the operation, maintenance, and repair of the infrastructure and facilities located within the Apartment Area such as internal roadways, parks, clubhouse and recreational amenities, including the portion of Sunny Avenue referred to as Tract B-1 and the portion of Nighthawk Circle referred to as Tract F as depicted on **Exhibit B**.
- C. The Parties may enter into a management agreement whereby they jointly contract for operation, maintenance and repair services for infrastructure and facilities located both within Stratton Flats and the Apartment Area.
- D. SCA will pay the Association 61% of the costs of the following operation, maintenance and repair items: North Park (Tract M) and associated trails, the Association's portion of Raw Water System (including ditch maintenance), stormwater drainage maintenance, weed control, street lights, common area landscaping, and casualty and liability insurance (the "Joint Costs"). The costs associated with these items may include a 5% "management fee" payable to the Association. The Association shall pay 100% of all other costs incurred by the Association for services provided to its members.
- E. SCA will be solely responsible for the costs associated with the operation, maintenance, and repair of the roadways, parks, clubhouse and recreational amenities located within the Apartment Area. SCA shall pay 100% of all other costs and improvements incurred by the SCA for services provided to its owners/renters.
- F. The Association and SCA shall jointly prepare and approve an annual budget for the Joint Costs items. Joint Costs work performed by third parties may be put out to competitive bid at least once every 3 years as deemed necessary by the Association and SCA.
- G. The Association and SCA shall prepare a capital maintenance and repair plan for the Joint Costs items. The capital maintenance and repair plan shall identify the

approximate timing and cost of non-recurring maintenance and repairs over a 5-10 year planning horizon. The Association and SCA shall jointly determine an annual amount to be paid to a reserve fund for capital maintenance and repair plan work. SCA shall pay 61% of reserve funds and the Association shall pay 39%. Joint Costs reserve funds shall be held in a separate account that requires signatures from both the Association and SCA.

H. SCA shall make payments pursuant to this Agreement in the same time and manner as members of the Association.

6. Oversized Vehicle Parking Lot. SCA intends to operate an oversized vehicle parking area on Parcel 14A and a portion of Tract V-2. SCA will make space available to both renters/owners in the Apartment Area and member of the Association on a first come - first served basis. Parking in the oversized vehicle parking area will be charged a fee. The Association's members will pay the same fee as SCA's renters/owners which fee will be determined by SCA.
7. Reimbursement of Costs. SCA agrees to pay 61 percent of the legal and planning fees associated with negotiating, reviewing, and editing of legal documents related to the Agreement to Convey Common Elements, the First Amendment to the Declaration of Covenants, Conditions and Restrictions for Stratton Flats Master Association, and this Agreement. SCA agrees to pay 100 percent of the cost of circulating documents to the Association's members for signature and approval, including reasonable legal and consultant fees incurred by the Association in connection therewith. The Association shall provide SCA with invoices describing the work performed in connection with the above activities and the cost associated therewith. SCA shall make payment to the Association within fourteen days of receiving invoices from the Association.
8. Dispute Resolution. Any dispute under this Agreement related to: (a) the operating, maintaining, or repairing any jointly used infrastructure, amenity or area, or (b) the development and implementation of any annual budget or capital maintenance and repair plan contemplated in this Agreement, shall be submitted to binding arbitration. The Parties shall jointly designate an arbitrator who shall have at least 5 years of experience in common interest community management. Both sides shall submit materials related to the dispute to the arbitrator within 21 days. The arbitrator shall then make a decision within 14 days. The decision of the arbitrator shall be final.
9. Town of Gypsum Requirements. References in this Agreement to the Town of Gypsum's requirements shall mean those requirements related to applicable infrastructure contained in any Annexation and Development Agreement or amendment thereto, Subdivision Improvement Agreement or amendment thereto, plat, or construction plans and specifications approved by the Town.

10. Indemnification. SCA agrees to indemnify and hold harmless the Association, and its officers, from and against all liability, claims, and demands, on account of any injury, death, loss, or damage, which arise out of or are connected with SCA's obligations hereunder, if such injury, death, loss or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of SCA, or any contractor of SCA, or any officer, employee, volunteer, agent or invitee of SCA, or any other person for whom SCA is responsible. SCA shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and bear all such other costs and expenses related thereto, including court costs and attorney's (including legal assistant's) fees. SCA's indemnification obligation shall not be construed to extend to any injury, loss or damage which is caused by the act, omission or other fault of the Association or of unrelated third parties. SCA's indemnification shall also not be construed to constitute a warranty on construction or guarantee against construction defects for any improvement or modification to improvement contemplated by this Agreement.

The Association agrees to indemnify and hold harmless SCA, and its officers, from and against all liability, claims, and demands, on account of any injury, death, loss, or damage, which arise out of or are connected with Association's obligations hereunder, if such injury, death, loss or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Association, or any contractor of the Association, or any officer, employee, volunteer, agent or invitee of the Association, or any other person for whom the Association is responsible. The Association shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and bear all such other costs and expenses related thereto, including court costs and attorney's (including legal assistant's) fees. The Association's indemnification obligation shall not be construed to extend to any injury, loss or damage which is caused by the act, omission or other fault of the SCA or of unrelated third parties. The Association's indemnification shall also not be construed to constitute a warranty of the conditionals or construction of any improvement contemplated by this Agreement.

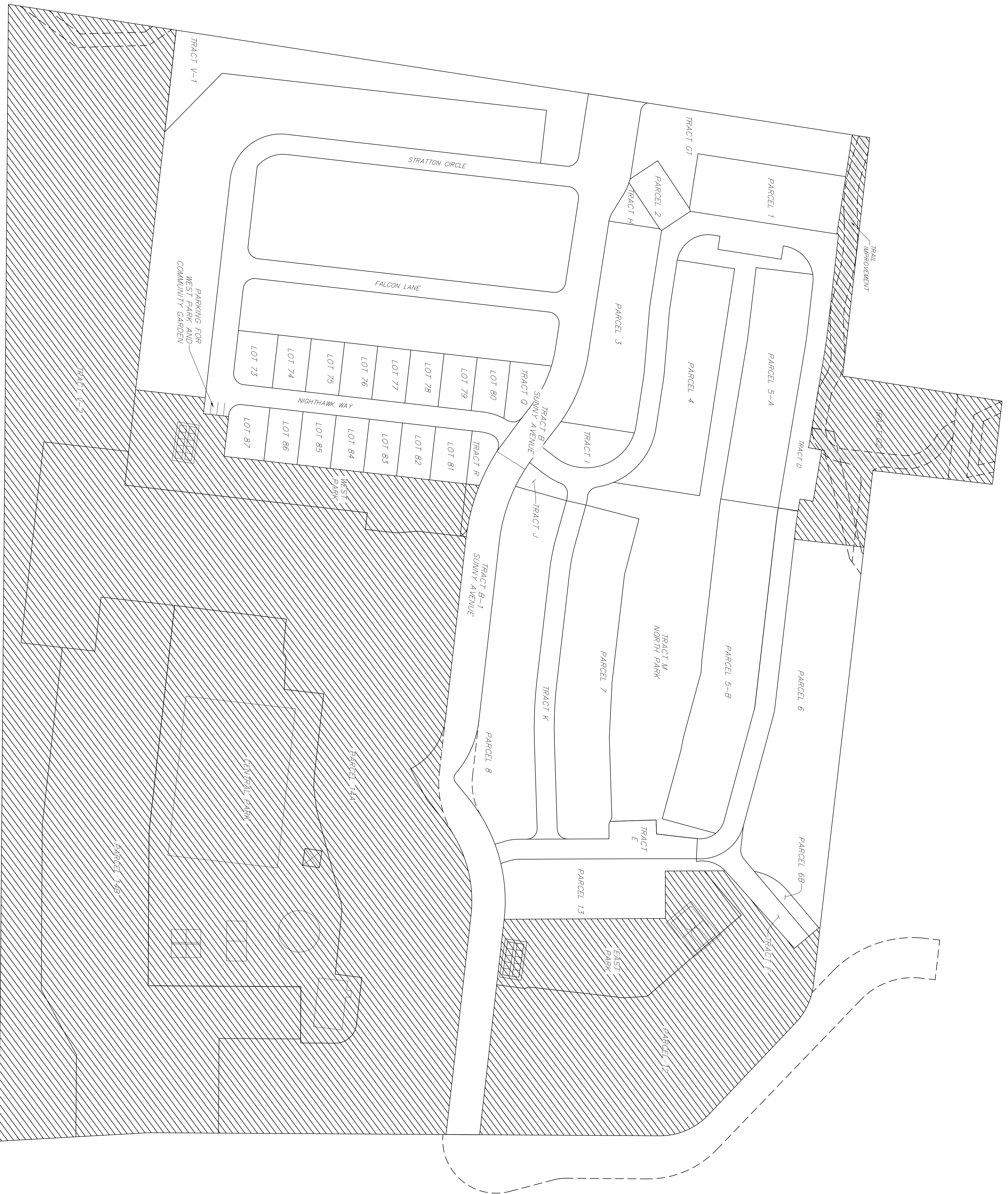
11. Binding Effect. This Agreement shall be binding upon the Parties from the date first written above and shall inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors, and permitted assigns.

12. Assignment. SCA shall have the right to assign this Agreement to an entity created for the purpose of owning and developing all or a portion of the Apartment Area, upon written notice to the Association. No assignment to a party that does not own any portion of the Apartment Area shall be effective without 30 days' advance written notice and written acknowledgment by the Association.

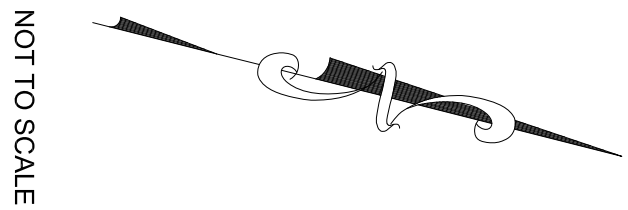
13. Attorney Fees. The prevailing party in any cause of action under this Agreement shall be entitled to recover its reasonable costs and attorneys' fees incurred in the litigation of such action.
14. Jurisdiction and Venue. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of Colorado. Venue for any action arising under this Agreement shall be in Eagle County, Colorado.
15. Entire Agreement. This Agreement and all exhibits hereto contain the entire understanding between the Parties and no other warranty, representations, or agreements shall be binding upon the Parties unless set forth in writing.
16. Severability. If any provision, or any part of any provision of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby.
17. Counterparts. This Agreement may be signed by the Parties in counterparts, and each signed counterpart shall become part of the final Agreement and shall have the same force and effect thereof. A copy of any signature on a signature page shall be as valid and binding as an original signature.

EXHIBIT A

TO JOINT USE AND FUNDING AGREEMENT; AREAS TO BE DEVELOPED BY SPRING CREEK APARTMENTS, LLC



LEGEND
 SPRING CREEK DEVELOPMENT AREAS

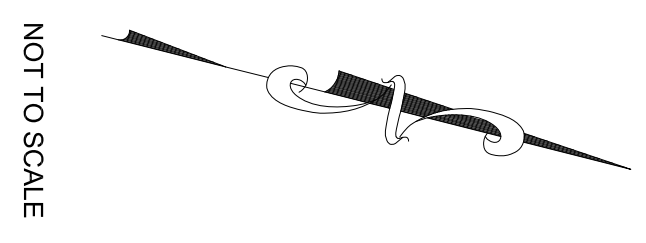
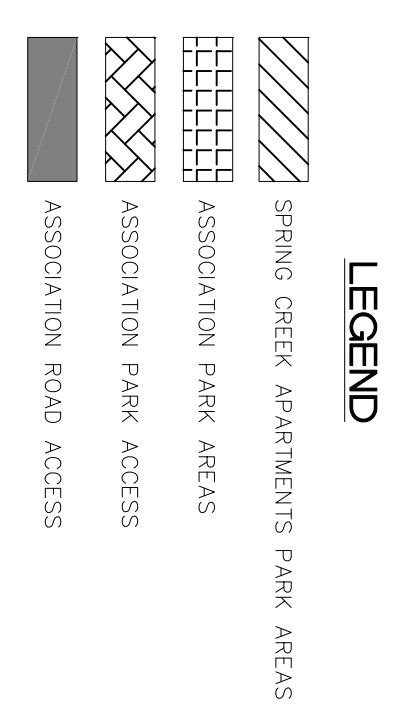
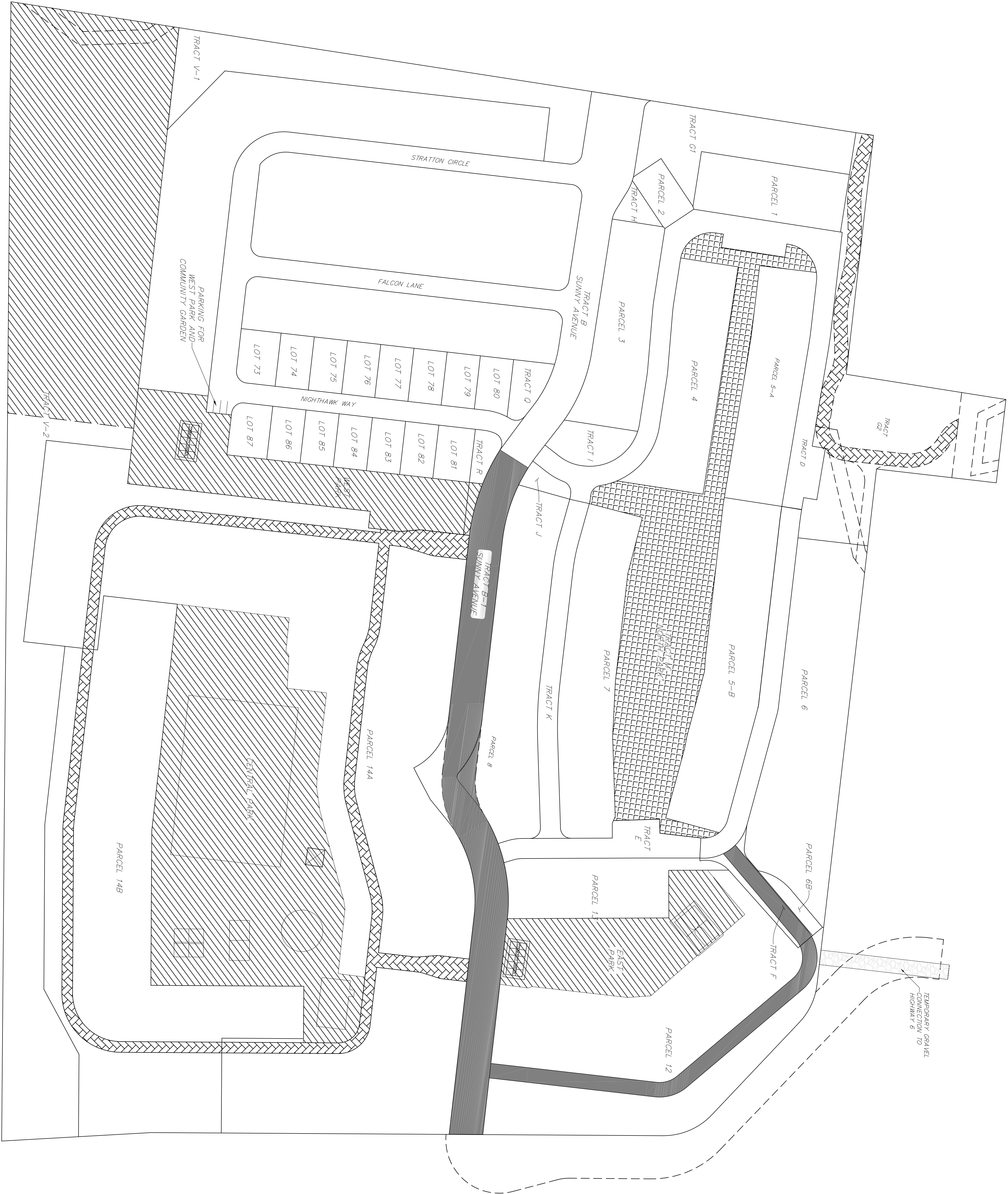


NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than five years from the date of certification shown herein.

<p>PROJECT NO. 16-0063</p> <p>SHEET NO. 1 OF 1</p>	<p>EXHIBIT A</p> <p>TO JOINT USE AND FUNDING AGREEMENT; AREAS TO BE DEVELOPED BY SPRING CREEK APARTMENTS, LLC</p>	<p>CLIENT: SPRING CREEK APARTMENTS, LLC</p> <p><small>This document was prepared for the exclusive use of the Client specified herein. 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.</small></p>	<p>Inter-Mountain ENGINEERING</p> <p><small>Civil Engineers & Surveyors P.O. BOX 978, AVON, CO 81620 PH: (970)949-5072 FAX: (970)949-0339 9618 BROOK HILL LANE, LOVE TREE, CO 80124 EMAIL: INFO@INTERMOUNT.NET</small></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>NO.</td> <td>DATE</td> <td>REVISION</td> <td>BY</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	REVISION	BY				
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EXHIBIT B

TO JOINT USE AND FUNDING AGREEMENT; PARCELS AVAILABLE FOR USE BY STRATTON FLATS MASTER ASSOCIATION AND SPRING CREEK APARTMENTS RESIDENTS



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<p>PROJECT NO. 16-0063</p> <p>SHEET NO. 1 OF 1</p>	<p>EXHIBIT B</p> <p>TO JOINT USE AND FUNDING AGREEMENT; PARCELS AVAILABLE FOR USE BY STRATTON FLATS MASTER ASSOC. AND SPRING CREEK APTS. RESIDENTS</p>	<p>CLIENT: SPRING CREEK APARTMENTS, LLC</p> <p>This document was prepared for the exclusive use of the Client specified herein. 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>	<p>Inter-Mountain ENGINEERING Civil Engineers & Surveyors</p> <p style="font-size: x-small;">P.O. BOX 978, AVON, CO 81620 PH: (970)949-5072 FAX: (970)949-0339 9618 BROOK HILL LANE, LOVE TREE, CO 80124 EMAIL: INFO@INTERMOUNT.ENG</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>NO.</td> <td>DATE</td> <td>REVISION</td> <td>BY</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	REVISION	BY				
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