

AGREEMENT TO CONVEY COMMON ELEMENTS

This AGREEMENT TO CONVEY COMMON ELEMENTS (this “Agreement”) is made and entered into the ___th day of July, 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). SCA did not receive an assignment of declarant rights as part of its purchase.
- C. By Ordinance 2017-10, the Town of Gypsum Council approved amendments to the Stratton Flats Planned Unit Development, including changes to the densities and uses on the undeveloped areas of Statton Flats.
- D. The Association is the owner of certain common elements pursuant to dedication and conveyance on: (a) the Final Plat Stratton Flats Planned Unit Development, Filing 1, recorded in the real property records of Eagle County on March 21, 2008, at Reception No. 200806090, and (b) bargain and sale deed recorded in the real property records of Eagle County on December 13, 2011 at Reception No. 2011123161, (c) special warranty deed recorded in the real property records of Eagle County on June 4, 2012 at Reception No. 201211430, and (d) quit claim deed recorded in the real property records of Eagle County on July 27, 2016 at Reception No. 201611644.
- E. The platted boundaries of certain common element parcels have changed in accordance with the land use approvals associated with Ordinance 2017-10 (“Land Use Approvals”).
- F. The Association, with the consent of owners comprising at least sixty seven percent of the lots located within the Stratton Flats Master Association that are not owned by the Declarant desires to convey certain common elements to SCA for the purposes described herein.

- G. SCA desires to convey certain of the common elements back to the Association after revised plats have been approved and recorded and applicable construction activities have occurred.

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. Parties.

Stratton Flats Master Association
c/o Scott Wright
1367 Mesa Drive
P.O. Box 5356
Eagle, CO 81631

Spring Creek Apartments, LLC
c/o Polar Star Development, LLC
28 Second Street, Suite 215
Edwards, CO 81632

Stratton Flats Owners
Listed on Exhibit A

3. Stratton Flats Common Elements Conveyed to SCA. Upon the execution of this Agreement by the Association, together with the consent of no less than 67% of the owners, excluding therefrom the Declarant, the Association shall convey by Bargain and Sale Deed to SCA, or another entity as directed by SCA, the common elements identified and depicted on **Exhibit B**, attached hereto and incorporated herein by this reference.

4. Modifications to Common Elements. During SCA's ownership of the common elements identified on **Exhibit B**, SCA shall undertake to modify the parcel boundaries consistent with the Land Use Approvals. SCA shall work in a reasonable manner to obtain approvals from the Town of Gypsum and record a plat consistent herewith.

5. Improvements by SCA. Following receipt of the common elements identified on **Exhibit B** and obtaining any required approvals from the Town of Gypsum, SCA shall undertake to complete the roadway improvements located on the common areas depicted on **Exhibit C** in conformance with the Town of Gypsum's requirements. SCA shall also undertake to receive plat approval from the Town of Gypsum and to thereafter construct Chickadee Court and Osprey Lane at the locations approximately depicted on **Exhibit C** in conformance with the Town of Gypsum's requirements.

6. License to Construct Improvements. The Association hereby grants SCA a license for the purpose of constructing improvements within: (a) the Nighthawk Circle right-of-way (curb,

utilities, asphalt), (b) the West Park area within the Stratton Circle and Nighthawk Way rights-of-way (curb, gutter, for purposes of creating parking), and (c) along Osprey Lane on Tract M (curb, gutter, asphalt for purposes of creating parking). All construction within the licensed areas shall be completed in accordance with the construction plans approved by the Town of Gypsum.

7. SCA Conveyance to Association. Upon substantial completion of the roadways, streets, and appurtenant facilities by SCA located on those common elements depicted on **Exhibit C**, SCA shall convey the parcels depicted on **Exhibit D** by Bargain and Sale Deed to the Association. After completion of construction in accordance with the Town of Gypsum's standards and acceptance by the Town of Gypsum, SCA will grant to the Association by bargain and sale deed a permanent easement for access purposes over and across those portions of Sunny Avenue (Tract B-1) and Nighthawk Circle (Tract F) as depicted on **Exhibit D**. In the event that construction work on those common elements depicted on **Exhibit C** is accomplished by SCA in a phased manner, the parties may agree to conveyances of the parcels depicted on **Exhibit D** on a phase by phase basis. All property conveyed to the Association by SCA shall have been accepted by the Town of Gypsum in accordance with the Town's public improvement review and acceptance procedures, be subject to warranty to the Town of Gypsum in accordance with the Town's requirements, and be free and clear of all liens and encumbrances, excepting therefrom such cross easements as may be granted for the joint use of the common elements.

8. Stratton Circle Parcel. The Association will also convey to SCA the portion of Stratton Circle that fronts former Lot Nos. 18, 19 and 20 as depicted on **Exhibit B**. SCA will undertake to replat this area as part of an adjacent parkland parcel which will be owned and maintained by SCA. A portion of the asphalt will be removed and landscaped as part of the park area as depicted on **Exhibit E**. A portion of the Stratton Circle parcel will be used as parking and for access to the adjoining parklands as also depicted on **Exhibit E**. SCA will complete the work to standards of the construction documents approved by Town of Gypsum.

9. Payment of Expenses. The Association shall have no liability for any cost, fees, obligations, real estate taxes or assessments, or any other costs related to the conveyance of common elements as set forth in this Agreement. All such costs shall be the responsibility of SCA, and SCA indemnify and hold the Association harmless therefrom.

10. Default. In the event SCA fails to comply with any term or warranty in this Agreement, then the Association shall be entitled to seek enforcement of the terms in this Agreement by specific performance and to maintain an action for damages, if any.

11. Contingencies. This Agreement is subject to the acquisition of the undeveloped areas of Stratton Flats by SCA.

12. Condition of Common Elements. The Association makes no representations or warranties of any kind, express or implied, regarding the condition of the common elements to be conveyed as depicted on **Exhibit B**. SCA will construct the unfinished portions of the roadway

common elements depicted on **Exhibit C** in accordance with the construction documents approved by the Town of Gypsum. SCA will convey to the Association the common elements depicted on **Exhibit D** either in the condition that they were received, or the condition to which they were constructed, less normal wear and tear incurred during SCA's period of ownership.

13. 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 of the Stratton Flats subdivision, or construction plans and specifications approved by the Town.

11. 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.

12. Insurance. SCA agrees to procure and maintain, and pay for Comprehensive general liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. The policy shall be applicable to all premises and operations described herein. The policy shall include coverage for bodily injury, broad form property damage, and personal injury (including contractual liability coverage).

13. 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.

14. 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 undeveloped area in Stratton Flats, upon written notice to the Association. No assignment to a party that does not own any portion of the undeveloped area in Stratton Flats shall be effective without 30 days' advance written notice and written acknowledgment by the Association.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

IN WITNESS WHEREOF, the Parties have executed this instrument to be effective on the date first written above.

[Signature Pages to Follow]

**STRATTONFLATS MASTER ASSOCIATION,
INC.**

President

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this _____ day of
_____ 2019 by _____ as President of
Stratton Flats Master Association, Inc.

Witness my hand and official seal.

My commission expires:

Notary Public

SPRING CREEK APARTMENTS, LLC

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this ____ day of
_____ 2019 by _____.

Witness my hand and official seal.

My commission expires:

Notary Public

The undersigned Owner of Unit _____ consents to the conveyance of common elements to Spring Creek Apartments, LLC for the purposes set forth in the above Agreement to Convey Common Elements.

OWNER

By: _____

Written: _____

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this _____ day of _____ 2019 by _____.

Witness my hand and official seal.

My commission expires:

Notary Public

EXHIBIT A

(list of property owners

Account Name	Attn	Mailing	City	State	Zip	Lot
Zhanetta Betaganova		PO Box 3126	Vail	CO	81658	P1-101
Mie Wirick		PO Box 1554	Gypsum	CO	81637	P1-102
Ricardo Gonzalez		PO Box 4114	Gypsum	CO	81637	P1-103
Adam Junkins & Jessica Mapes		PO Box 1448	Gypsum	CO	81637	P1-104
Yolanda Loera & Salvador Deloera		PO Box 9036	Avon	CO	81620	P1-105
Manuel & Sofia Marin		PO Box 1448	Gypsum	CO	81637	P1-106
HFHELC Inc	Caitlin Weis	PO Box 4149	Avon	CO	81620	Filing1-4A
HFHELC Inc	Caitlin Weis	PO Box 4149	Avon	CO	81620	Filing 1-403
Cynthia Escobar & Jose Luna		PO Box 9443	Avon	CO	81620	P1-107
Jocelyn Regalado & Oscar Solis		PO Box 158	Gypsum	CO	81637	P1-108
Mingma & Phurba Sherpa		PO Box 4166	Gypsum	CO	81637	P1-109
Laura Alicia Gonzalez Rivas		PO Box 2062	Gypsum	CO	81637	P1-110
David & Andrea Foster		PO Box 525	Gypsum	CO	81637	P1-111
Sitlali De Anda		PO Box 110	Gypsum	CO	81637	P1-112
Lubos and Veronika Laska		PO Box 2553	Gypsum	CO	81637	P1-113
Sergio and Xochitl Rincon		PO Box 2171	Gypsum	CO	81637	P1-114
Nicole Renee Sisneros		PO Box 593	Gypsum	CO	81637	P1-115
Diego Armando Gutierrez		PO Box 417	Avon	CO	81620	P1-116
Guadalupe Nye		PO Box 35	Gypsum	CO	81637	P1-117
Modesta Monica Serna		PO Box 1860	Avon	CO	81622	P1-118
Frances Carthy		PO Box 4111	Eagle	CO	81631	P2-307
Ivonne Leticia Calona Caceres		PO Box 1536	Gypsum	CO	81637	P2-308
Rebecca Anderson		P.O. Box 706	Gypsum	CO	81637	P3-201
Malena & Todd Anderson		575 Cordova Ct	Lafayette	CO	80026	P3-202
Eagle River Water & Sanitation District	Connie Nunley	846 Forest Rd	Vail	CO	81657	P3-203
Jason & Heather Sica		PO Box 5116	Edwards	CO	81632	P3-204
Roberto & Ivette Rosales		PO Box 3127	Avon	CO	81620	P3-301
Gabriela Velazco		PO Box 5202	Gypsum	CO	81637	P3-302
Heather Keys & Dorian Dima		PO Box 3433	Eagle	CO	81631	P3-303
Maria Chavez		PO Box 4441	Edwards	CO	81632	P3-304
Claudia & Casas Cabral		PO Box 3321	Avon	CO	81620	P3-305
Clara Fuerte		PO Box 1396	Avon	CO	81620	P3-306
Rosa Camacho		PO Box 4167	Eagle	CO	81631	P4-403
Patricia Rodriguez		PO Box 8662	Avon	CO	81620	P4-404
Omar & Adriana Jimenez		PO Box 1171	Gypsum	CO	81637	P4-405
Patricia Chavez		PO Box 6787	Avon	CO	81620	P4-406
Maricela Dominguez & Rudy Frausto		PO Box 9247	Avon	CO	81620	P4-407

Erica Ross		PO Box 1351	Gypsum	CO	81637	P4-408
Anselmo & Maria del Carmen Solis		PO Box 1248	Gypsum	CO	81637	P4-409
Maria Vera Zumudio		PO Box 1066	Gypsum	CO	81637	P4-410
Selma Mondragon		PO Box 1282	Gypsum	CO	81637	P4-411
Renata Marshall		PO Box 5193	Gypsum	CO	81637	P4-412
HFHELC	Caitlin Weis	PO Box 4149	Avon	CO	81620	Filing 1 – Parcel 4A
HFHELC	Caitlin Weis	PO Box 4149	Avon	CO	81620	Filing 1 – Parcel 5-B
HFHELC	Caitlin Weis	PO Box 4149	Avon	CO	81620	Filing 1 – Parcel 6
Jaime & Clarissa Ortega		PO Box 1480	Gypsum	CO	81637	SF-1
Hector Gandarilla		PO Box 1366	Gypsum	CO	81637	SF-2
Nicholas & Hannah Larkins		PO Box 4032	Gypsum	CO	81637	SF-3
Diana & Torres Bustillos		PO Box 5003	Edwards	CO	81632	SF-4
Luis Romero Sr.		PO Box 682	Minturn	CO	81645	SF-5
Tyler Churches		PO Box 2076	Gypsum	CO	81637	SF-6
Eagle River Water & Sanitation District	Connie Nunley	846 Forest Rd	Vail	CO	81657	SF-7
Benjamin and Jennifer Robbins		PO Box 4340	Gypsum	CO	81637	SF-8
Zachary Green		PO Box 4369	Gypsum	CO	81657	SF-9
Michael & Breanna Kelly		PO Box 1605	Gypsum	CO	81637	SF-10
Dustin & Alysha Juedemann		PO Box 5251	Gypsum	CO	81637	SF-11
Margarita Casias & Carlos Esparsen		PO Box 1874	Gypsum	CO	81637	SF-12
Scott & Kelly Peterson		PO Box 354	Eagle	CO	81631	SF-13
Eduardo Lozano		PO Box 617	Avon	CO	81620	SF-14
Patrick and Ines Solis		PO Box 1889	Gypsum	CO	81637	SF-15
Shane & Katherine Voight		PO Box 996	Gypsum	CO	81637	SF-16
Michael & Elaine Spalding		PO Box 4098	Gypsum	CO	81637	SF-17
Michelle Parenti		PO Box 6628	Avon	CO	81620	SF-46
Francisco Gonzalez & Sergio Serna Guerr		PO Box 1702	Gypsum	CO	81637	SF-47
Eagle River Water & Sanitation District	Connie Nunley	846 Forest Rd	Vail	CO	81657	SF-48
Elia Rodriguez Gallegos		PO Box 1945	Gypsum	CO	81637	SF-49
Emily & Christena Levandoski		PO Box 2148	Edwards	CO	81632	SF-50
Rafael & Evangelina Duarte		PO Box 572	Gypsum	CO	81637	SF-51
Patrick McGann		PO Box 1981	Gypsum	CO	81637	SF-52
Zachary & Haley DuFresne		PO Box 1797	Gypsum	CO	81637	SF-53
Juan Edgardo Reyes		PO Box 0354	Gypsum	CO	81637	SF-54
Ariana Palacios & Martin Garcia		PO Box 4321	Gypsum	CO	81637	SF-55

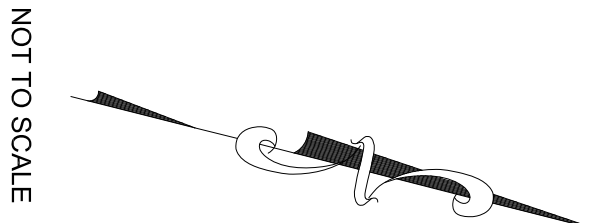
Pascha Lebarron		PO Box 324	Gypsum	CO	81637	SF-56
Thomas & Brigitte Carter		PO Box 6664	Avon	CO	81620	SF-57
Maria Serna-Ramos, Juan Reyes-Ramos & Sergio Serna- Guerra		PO Box 729	Gypsum	CO	81637	SF-58
Brian & Asagi Seeley		PO Box 703	Gypsum	CO	81637	SF-59
Davalyn Torres		PO Box 4344	Gypsum	CO	81637	SF-60
Marco & Mercedes Aragon		PO Box 3083	Avon	CO	81620	SF-61
Kevin & Molly Furtado		PO Box 602	Vail	CO	81658	SF-62
Susanna Hermosillo & Jose Sanchez		PO Box 445	Minturn	CO	81645	SF-63
Michael & Kaeley Lovato		PO Box 304	Minturn	CO	81645	SF-64
Richard Sutton		PO Box 5222	Gypsum	CO	81637	SF-65
Lorenzo & Patricia Cano		PO Box 738	Gypsum	CO	81637	SF-66
Tanner & Apostolo Kraft		PO Box 7011	Avon	CO	81620	SF-67
Jorge Mier-Perez		PO Box 1235	Eagle	CO	81631	SF-68
Victor Luevanos		PO Box 2322	Edwards	CO	81632	SF-69
Fnu Indrayati & John Dargan		PO Box 2283	Gypsum	CO	81637	SF-70
John Cerda		PO Box 1001	Eagle	CO	81631	SF-71
Richard & Megan Payton		PO Box 5228	Gypsum	CO	81637	SF-72
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-73
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-74
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-75
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-76
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-77
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-78
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-79
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-80
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-81
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-82
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-83
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-84

Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-85
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-86
Stratton Flats XV LLC	Rick Patriacca	PO Box 4556	Eagle	CO	81631	SF-87

EXHIBIT B

LEGAL DESCRIPTIONS OF THE PARCELS TO BE CONVEYED TO
SPRING CREEK APARTMENTS LLC:

- ④ TRACT ACCORDING TO FINAL PLAT STRATTON FLATS PLANNED UNIT DEVELOPMENT, FILING NO. 1, RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF EAGLE COUNTY, STATE OF COLORADO, ON MARCH 21, 2008 UNDER RECEPTION NO. 200806090.



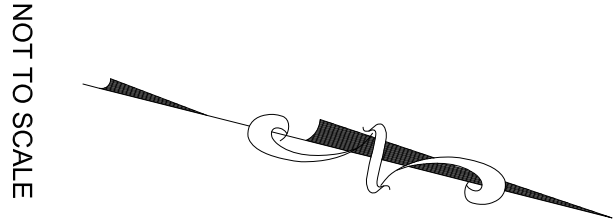
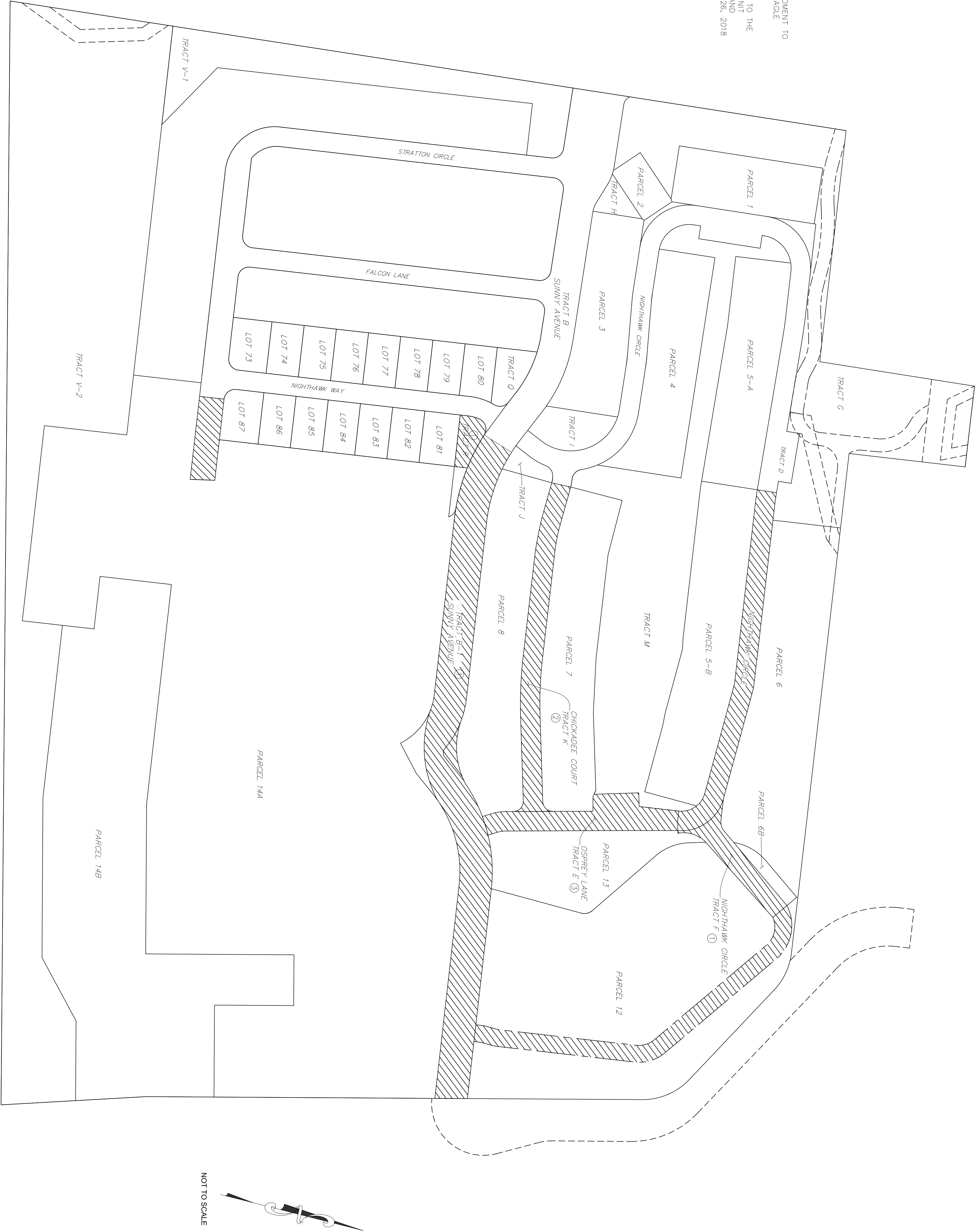
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown herein.

EXHIBIT C
TO AGREEMENT TO CONVEY COMMON ELEMENTS;
ROADWAY IMPROVEMENTS

- LEGAL DESCRIPTIONS**
- ① TRACTS B, F, AND R ACCORDING TO A FUTURE MINOR PLAT AMENDMENT TO BE RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF EAGLE COUNTY, STATE OF COLORADO.
- ② TRACTS E (OSPREY LANE) AND K (CHICKADEE COURT) ACCORDING TO THE SECOND AMENDMENT FINAL PLAT OF STRATTON FLATS PLANNED UNIT DEVELOPMENT, FILING 1 RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF EAGLE COUNTY, STATE OF COLORADO ON OCTOBER 26, 2018 AT RECEPTION NO. 201819387.

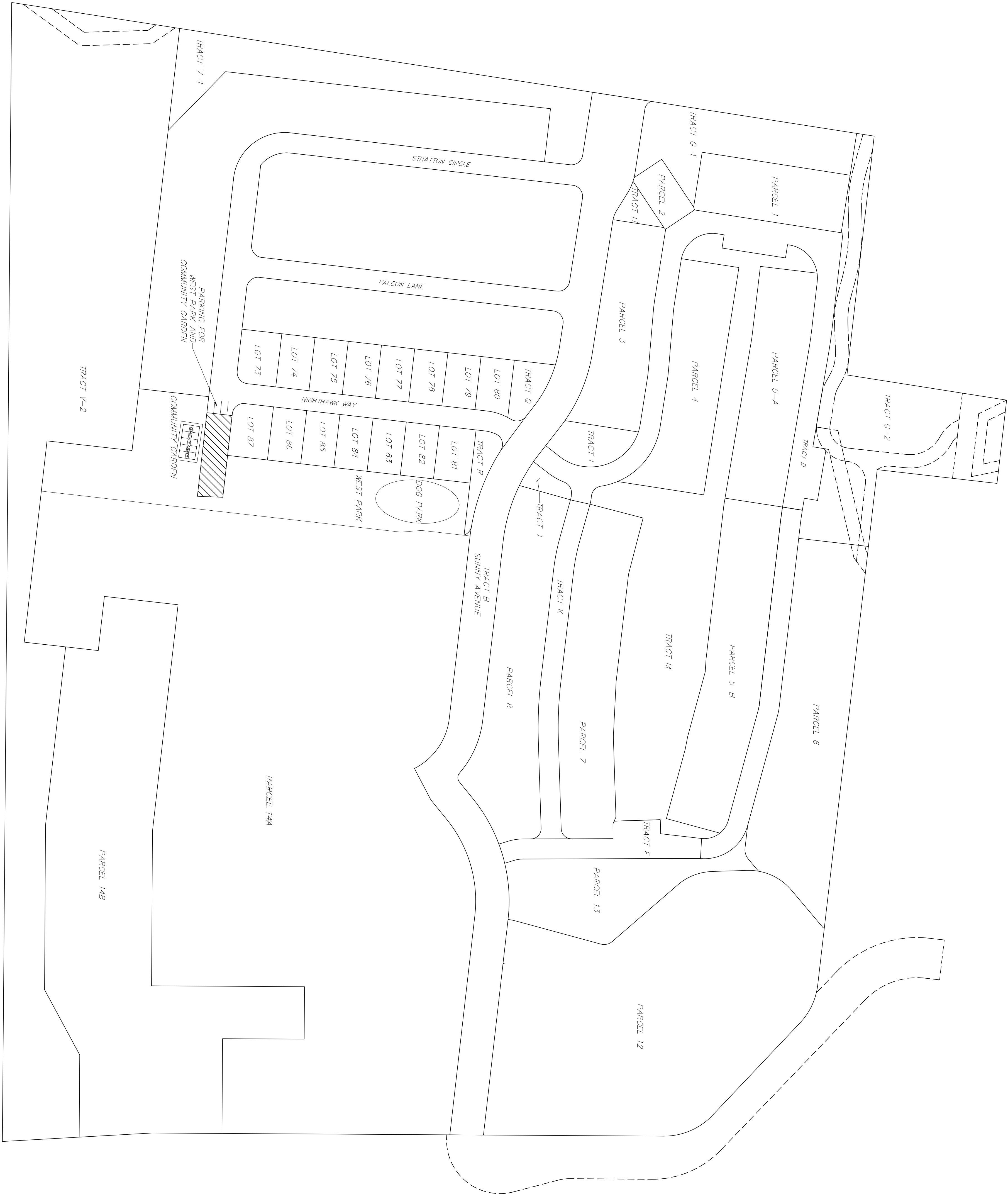
LEGEND

 TRACTS TO BE IMPROVED BY SPRING CREEK APARTMENTS, LLC



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 later than the third anniversary of the date of certification shown herein.

TRACT B (STRATTON CIRCLE)



LEGEND

TRACT B (STRATTON CIRCLE) TO BE CONVEYED
TO SPRING CREEK APARTMENTS LLC

NOT TO SCALE

EXHIBIT E

TO AGREEMENT TO CONVEY COMMON ELEMENTS
TRACT B (STRATTON CIRCLE)
TOWN OF GYPSUM, EAGLE COUNTY, COLORADO

CLIENT: SPRING CREEK APARTMENTS, LLC

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.



9618 BROOK HILL LANE, LONE TREE, CO 80124 EMAIL: INFO@INTER-MTN.NET

[illegible]

NOTICE: According to Colorado law you must commence

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.