

PUBLIC IMPROVEMENTS EASEMENT AGREEMENT
(South Promenade Extension)

THIS PUBLIC IMPROVEMENTS EASEMENT AGREEMENT (“Agreement”), is made and entered into this _____ day of _____, 202__ between Thunderhead Beach LLC, a Delaware limited liability company (“Thunderhead” or “Grantor”) and the CITY OF STEAMBOAT SPRINGS, a Colorado home rule municipal corporation (hereafter referred to as “City”).

WHEREAS, Thunderhead is the owner of certain real property known as Lot 1, Ski Hill Subdivision, according to the plat thereof recorded at Reception No. _____ of the Routt County records, located in Steamboat Springs, Colorado (“Lot 1”); and

WHEREAS, in connection with and as a condition of approval by the City designated _____ of the final plat for the Ski Hill Subdivision, Filing No. 1, Thunderhead has agreed to construct an extension of the existing pedestrian and related improvements known and referred to herein as the Promenade, such extension to be referred to herein as the “Promenade Extension” and such improvements to be referred to as the “Promenade Extension Improvements”; and

WHEREAS Grantor desire to convey to City a non-exclusive public improvements easement over and across that part of Lot 1 on which the Promenade Extension will be constructed; and

WHEREAS, construction of the Promenade Extension Improvements is secured to the City by that certain Improvements Agreement recorded at Reception No _____ of the Routt County records (the “SIA”); and

WHEREAS, the City desires to accept said public improvements easement under the terms, conditions and agreements specified herein.

NOW, THEREFORE, in consideration of the covenants contained herein, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **EASEMENT DESCRIPTION.** Grantor hereby grant and convey to City, and its successors and assigns forever, a perpetual and nonexclusive public improvements easement (“Easement”) for the use and benefit of the public in, to, over, under and across the Property in the approximate location shown on the map attached as Exhibit “A” (“Easement Premises”). Upon completion of the Promenade, Grantor and the City shall record an amendment to this Agreement which shall contain an as-built legal description of the Easement Premises in substitution of the map attached hereto as Exhibit “A.”
2. **AGREEMENT PURPOSE.** The Easement shall be for the public use of the Promenade Extension.

3. CONSTRUCTION AND MAINTENANCE. The design and construction of the Promenade Extension shall be the responsibility of Thunderhead and shall be in substantial conformity with the plans for the Promenade Extension Improvements set forth in the SIA.

Operation and maintenance of the Promenade Extension Improvements shall be the responsibility of Grantor and shall include but not be limited to snow removal, landscape maintenance and irrigation, hard and soft surface repair and replacement, lighting repair and replacement, signage and all other aspects of general care and maintenance to allow said Promenade Extension to exist in satisfactory condition as described below and shall be performed by Thunderhead in accordance with the requirements set forth in Exhibit “B” attached hereto (“Standard of Care”). The Standard of Care may be amended as reasonably necessary from time to time by written agreement of the City and Grantor. In the event the City agrees to a lesser Standard of Care with any property owner whose property is burdened by the Promenade easement requirements, Grantor shall have the right at its option to have the Standard of Care modified to such lesser Standard of Care by an amendment to this Agreement.

Notwithstanding anything herein to the contrary, Grantor may, in Grantors’ sole discretion, elect to plow or remove snow from the Promenade Extension within the Easement by means other than operation of a snowmelt system, in which case the standard of care shall be as follows: accumulations of snow of one inch or more shall be removed as soon as is practical between the hours of 6:00 a.m. and 12:00 midnight.

4. OTHER OBLIGATIONS OF THE CITY. The Easement is granted subject to the following terms and conditions.

A. In the event of a breach of a term or condition of this Agreement by the City, the remedy available to Grantor shall be by way of an action, in law or equity, including relief for specific performance and damages but not rescission of this Agreement.

B. Except as otherwise provided herein, the promises and agreements made hereunder are acknowledged by Grantor as full consideration for the Easement. Grantor reserve the right to cultivate, use and occupy the Easement Premises for any purposes consistent with the rights and privileges above granted.

5. MOTOR VEHICLE RESTRICTIONS. Except as provided below, upon completion of construction of the Promenade by Thunderhead, the use by Grantor of motorized vehicles, including but not limited to, four-wheel drive vehicles, snowmobiles, motorcycles, and construction vehicles on the Promenade Extension shall be permitted only with the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall not permit the public to use motorized vehicles in the Easement Premises, including but not limited to, four-wheel drive vehicles, snowmobiles, motorcycles, and construction vehicles. If the use of motor vehicles is permitted on the Promenade Extension, adequate protection of the facilities shall be in place prior to their use.

The Promenade Extension shall be constructed with a traffic-rated surface to safely accommodate motor vehicles that may enter the Easement Premises. Any vehicular damage to the Promenade Extension shall be promptly repaired by Grantor in accordance with the requirements set forth in Exhibit "B". Notwithstanding the above, the City and Grantor are permitted to utilize motorized vehicles to maintain or police the Easement Premises and nothing herein shall preclude the use of motor vehicles to provide emergency services on or adjacent to the Easement Premises. Notwithstanding anything set forth elsewhere in this Agreement, including the prohibition or restriction on the use of motor vehicles within the Easement Premises, this Easement is granted subject to and shall be subordinate to easements granted for vehicular access, for loading, unloading, repairs, maintenance and deliveries previously granted which encumber the Easement Premises, including, without limitation, the easements recorded at Reception No. _____ and _____ of the Routt County records, and in this regard, it is understood and agreed that the following motor vehicle uses are permitted on the Easement Premises: any and all types of motor vehicles, including, by way of example, cars, trucks, and vans, service carts and others that are utilizing the Easement Premises for the operation, maintenance and repair of the facilities located on or about Lot 1, the Torian Condominium or Lot 2 of the Ski Hill Subdivision Filing No. 2.

6. **ENFORCEMENT OF PROHIBITED USES.** Any party may notify, in writing, any other party of any apparent unauthorized uses of the Easement Premises including, but not limited to, commercial or vehicular use of the area in violation of the terms of this Agreement. The party receiving such written notification shall immediately take commercially reasonable actions to prevent further prohibited use of the area.
7. **OBSTRUCTIONS.** Grantor agree not to unreasonably obstruct, impede, or interfere with the City's use of the Easement Premises, and City agrees not to unreasonably obstruct, impede, or interfere with Grantor's use of the Property. Nothing herein shall prohibit the installment of temporary or permanent pedestrian amenities and enhancements or the placement and utilization of private amenities such as restaurant seating areas benefitting adjacent commercial establishments within the Easement Premises to the extent approved in advance and in writing by the City. The construction of building overhangs, lighting, landscaping, amenities and similar features within the Easement Premises which do not unreasonably obstruct, impede, or interfere with the use of the Easement is specifically authorized.
8. **RELOCATION OF EASEMENT PREMISES.** Grantor reserve the right to relocate the Easement Premises and Promenade Extension located therein by recording an Amendment to this Agreement setting forth the legal description of the relocated Easement Premises. Grantor shall give the City six (6) months' prior written notice of Grantors' intent to relocate the Easement Premises and Promenade Extension and shall obtain the consent of the City including a resolution of approval of the Steamboat Springs City Council prior to relocation to the extent required by the applicable codes and policies of the City. City shall consent to the relocation of the Easement Premises and Promenade Extension unless the proposed relocation unreasonably interferes with the public's use of the Promenade Improvements.

9. **INDEMNIFICATION.** To the extent permitted by law, the City shall indemnify Grantor against any liability for damages, costs, losses and expenses (including attorney's fees and court costs) resulting from, arising out of, or in any way connected with the occupation or use of the Easement Premises by the City, its contractors, employees, invitees and agents. The City's covenant to indemnify hereunder (a) shall not be deemed a waiver of sovereign immunity under the Colorado Governmental Immunity Act (the "Act"), (b) shall only be effective to the extent of the limits of the Act as set forth in C.R.S. §24-10-114, as those may be amended from time to time, (c) shall only be effective if the City's obligation to indemnify Grantor is insured by the Colorado Intergovernmental Risk Sharing Agency ("CIRSA") or CIRSA's successor as the City's general liability carrier. The parties acknowledge that the purported indemnification hereunder by the City may violate the state constitution and be an ultra vires act.
10. **BINDING ON SUCCESSORS.** This Agreement shall run with the land. If the Project is hereafter submitted to a common interest community owners' association ("HOA") under the Colorado Common Interest Ownership Act ("CCIOA") then, with respect only to obligations incurred after the date of recording of the declaration establishing such common interest community, this Agreement shall only be the obligation of such HOA and shall no longer encumber or apply to individual units within such Projector or to Thunderhead.
11. **WHOLE AGREEMENT.** It is expressly agreed that this Agreement contains the entire understanding of the parties and that there are no other verbal or written representations, agreements, warranties, or promises relating to the Agreement. The covenants and agreements herein contained are for the benefit of Grantor and the City and do not create any obligations, duties, or benefits to persons not party hereto.
12. **MODIFICATION.** It is agreed that neither this Agreement nor any of its terms, provisions, conditions, representations or covenants can be modified except by written instrument duly executed and recorded by the parties. After formation of the HOA, this agreement may be amended with the consent of the City, Torian and the HOA without any requirement to obtain the consent of any individual unit owner within the Project.
13. **SEVERABILITY.** If any of the provisions of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, or enforceability of other provisions of this Agreement or the Agreement as a whole shall remain unaffected.
14. **NOTICES.** All notices, communications, or written devices concerning this Agreement and the right-of-way granted herein shall be mailed by certified mail, return receipt requested, to the addresses listed below. Notices shall be deemed received on the date of delivery indicated on the return receipt.

GRANTOR:

If to Thunderhead:
Thunderhead Beach LLC
c/o Majestic Realty Co.
13191 Crossroads Parkway North, Sixth Floor
City of Industry, CA 91746-3497
Attention: Craig Cavileer
Attention: Reon Soski

With a copy to:
Latham & Watkins LLP
12670 High Bluff Drive
San Diego, California 92130
Attention: Sony Ben-Moshe, Esq.

GRANTEE:

CITY OF STEAMBOAT SPRINGS
c/o Legal Department
P.O. Box 775088
137 10th St.
Steamboat Springs, CO 80477

15. REMEDIES. In the event the City at any time in its reasonable discretion determines that operation and maintenance of the Promenade Extension has not been performed by Grantor in accordance with the Standard of Care described in Exhibit C hereto as may be amended, the City shall provide written notice ("Notice") to Grantor of such deficiencies and describing the nature of such deficiencies. Grantor shall have ten (10) days from receipt of such notices to correct the deficiencies described in the Notice provided, however, that if such deficiencies are of such a nature that they reasonably cannot be cured within such ten (10) day period, such period shall be extended for such additional period of time as shall be reasonably necessary ("Cure Period"). In the event Grantor fail to timely correct the deficiencies contained in the Notice within the Cure Period, City shall be authorized to enter upon the Promenade Extension to correct such deficiencies. The City shall provide, an itemized invoice ("Invoice") within fifteen (15) days of its actual out-of-pocket expenditures necessary to correct deficiencies contained in said Notice. Grantor shall promptly reimburse the City for any amounts contained in such Invoice within fifteen (15) days of receipt of such Invoice. In the event Grantor fails to satisfy its obligations as provided in this Agreement, the City may seek any legal or equitable remedies available at law, including but not limited to specific performance or injunctive relief.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

THUNDERHEAD BEACH LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

CITY OF STEAMBOAT SPRINGS

By: _____
Gary Suiter, City Manager

ATTEST

City Clerk

[illegible]

The foregoing instrument was subscribed to and acknowledged before me by _____
 _____ (GRANTOR) on the _____ day of _____,
 202__.

WITNESS my hand and official seal.

Notary Public

[illegible]

The foregoing instrument was subscribed to and acknowledged before me by _____
 _____ (GRANTOR) on the _____ day of _____,
 202__.

WITNESS my hand and official seal.

Notary Public

[illegible]

The foregoing instrument was subscribed to and acknowledged before me by Gary Suiter, City Manager, and attested to by Julie Franklin, City Clerk, for the City of Steamboat Springs, Colorado, on the _____ day of _____, 202 .

WITNESS my hand and official seal.

Notary Public

PROPERTY DESCRIPTION

EASEMENT

AN EASEMENT OVER AND ACROSS A PORTION OF LOT 1, SKI HILL SUBDIVISION, FILING NO. 2 AS RECORDED UNDER RECEPTION NO. _____ IN THE ROUTT COUNTY RECORDS; LOCATED IN THE SW1/4 SECTION 22, TOWNSHIP 6 NORTH, RANGE 84 WEST OF THE 6TH PRINCIPAL MERIDIAN; CITY OF STEAMBOAT SPRINGS, COUNTY OF ROUTT, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS:

THE WEST LINE OF THE NW1/4 SECTION 27, T6N, R84W, 6TH P.M., BEING ASSUMED TO BEAR S01°46'00"W.

COMMENCING AT THE SW CORNER OF SAID SECTION 22; THENCE N77°03'36"E, A DISTANCE OF 1050.22 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 1, SAID CORNER BEING THE POINT OF BEGINNING;

THENCE N06°18'20"E, ALONG THE WESTERLY BOUNDARY OF SAID LOT 1, A DISTANCE OF 38.68 FEET;
THENCE N26°48'51"W, ALONG THE WESTERLY BOUNDARY OF SAID LOT 1, A DISTANCE OF 1.14 FEET;
THENCE S80°48'58"E, A DISTANCE OF 37.56 FEET;
THENCE N09°11'02"E, A DISTANCE OF 20.16 FEET;
THENCE S80°49'39"E, A DISTANCE OF 25.96 FEET;
THENCE N44°11'02"E, A DISTANCE OF 8.50 FEET;
THENCE N09°11'02"E, A DISTANCE OF 12.31 FEET;
THENCE S80°48'10"E, A DISTANCE OF 7.25 FEET;
THENCE ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 11.96 FEET, A CENTRAL ANGLE OF 40°56'37", AND AN ARC LENGTH OF 8.55 FEET, THE CHORD OF WHICH BEARS N78°43'31"E, A DISTANCE OF 8.37 FEET;
THENCE ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 9.04 FEET, A CENTRAL ANGLE OF 80°41'18", AND AN ARC LENGTH OF 12.73 FEET, THE CHORD OF WHICH BEARS S81°24'08"E, A DISTANCE OF 11.70 FEET;
THENCE S40°59'28"E A DISTANCE OF 4.28 FEET;
THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 91.31 FEET, A CENTRAL ANGLE OF 62°49'40", AND AN ARC LENGTH OF 100.13 FEET, THE CHORD OF WHICH BEARS N80°26'53"E, A DISTANCE OF 95.19 FEET;
THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 52.76 FEET, A CENTRAL ANGLE OF 38°33'30", AND AN ARC LENGTH OF 35.51 FEET, THE CHORD OF WHICH BEARS N77°46'59"E, A DISTANCE OF 34.84 FEET;
THENCE ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 111.61 FEET, A CENTRAL ANGLE OF 25°12'40", AND AN ARC LENGTH OF 49.11 FEET, THE CHORD OF WHICH BEARS N71°06'34"E, A DISTANCE OF 48.71 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID LOT 1;
THENCE S10°34'14"E, ALONG SAID EASTERLY BOUNDARY OF LOT 1, A DISTANCE OF 22.77 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 1;
THENCE S74°25'54"W, ALONG THE SOUTHERLY BOUNDARY OF SAID LOT 1, A DISTANCE OF 296.33 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 9,001 SQUARE FEET OR 0.21 ACRES.

SURVEYORS STATEMENT

I, JEFFRY A. GUSTAFSON, A LICENSED SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE AND BELIEF, ARE CORRECT.

JEFFRY A GUSTAFSON, LICENSED LAND SURVEYOR
COLORADO LS NO. 29039
FOR AND ON BEHALF OF LANDMARK CONSULTANTS, INC.
STEAMBOAT SPRINGS, CO 80477



PROJECT: 2633-003

DATE: 02/20/25

DRAWN BY: JAG

CHECKED BY:

EXHIBIT EASEMENT

LOCATED IN LOT 1, SKI HILL SUBDIVISION, FILING NO. 2;
IN THE SW1/4 SECTION 22, T6N, R84W, 6TH P.M.;
CITY OF STEAMBOAT SPRINGS,
COUNTY OF ROUTT, STATE OF COLORADO

SHEET

1

Of 2 Sheets

TORIAN PLUM
CONDOMINIUMS,
PHASE II
RECEPTION NO.
522146

LOT 1
SKI HILL SUBDIVISION, FILING NO. 2
RECEPTION NO. _____

PARCEL B
SKI HILL SUBDIVISION
RECEPTION NO.
307130

TORIAN PLUM
CONDOMINIUMS, PHASE I
RECEPTION NO. 333249

EASEMENT
9,001 SQUARE FEET±
0.21 ACRES±

POINT OF
BEGINNING

LOT 2
SKI HILL SUBDIVISION, FILING NO. 2
RECEPTION NO. _____

POINT OF COMMENCEMENT
SW CORNER SECTION 22
T6N, R84W, 6TH P.M.
2" IRON POST W/ 3" BRASS
CAP STAMPED LS 12093

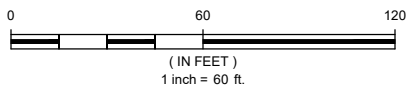
BASIS OF
BEARINGS

S01°46'00"W
2644.76'

W1/4 CORNER SECTION 27
T6N, R84W, 6TH P.M.
2" BRASS CAP IN CONCRETE
40.25' WITNESS CORNER
STAMPED LS 13221

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CH. BEARING	CH. LENGTH
C1	8.55'	11.96'	40°56'37"	N78°43'31"E	8.37'
C2	12.73'	9.04'	80°41'18"	S81°24'08"E	11.70'
C3	100.13'	91.31'	62°49'40"	N80°26'53"E	95.19'
C4	35.51'	52.76'	38°33'30"	N77°46'59"E	34.84'
C5	49.10'	111.61'	25°12'32"	N71°06'30"E	48.71'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N06°18'20"E	38.68'
L2	N26°48'51"W	1.14'
L3	S80°48'58"E	37.56'
L4	N09°11'02"E	20.16'
L5	S80°49'39"E	25.96'
L6	N44°11'02"E	8.50'
L7	N09°11'02"E	12.31'
L8	S80°48'10"E	7.25'
L9	S40°59'28"E	4.28'
L10	S10°32'52"E	22.77'
L11	S74°25'54"W	296.33'



NOTE: THIS EXHIBIT DOES NOT REPRESENT A
MONUMENTED SURVEY. IT IS INTENDED ONLY TO
DEPICT THE ATTACHED PROPERTY DESCRIPTION.



www.landmark-co.com

PROJECT: 2633-003

DATE: 02/20/25

DRAWN BY: JAG

CHECKED BY:

EXHIBIT EASEMENT

LOCATED IN LOT 1, SKI HILL SUBDIVISION, FILING NO. 2;
IN THE SW1/4 SECTION 22, T6N, R84W, 6TH P.M.;
CITY OF STEAMBOAT SPRINGS,
COUNTY OF ROUTT, STATE OF COLORADO

SHEET

2

Of 2 Sheets