AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Easement Agreement; Cement Creek Condominiums Asso

Action Requested: Other Discussion and BOCC Signature

Parties to the Agreement: BOCC and Cement Creek Condo Association

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Easement Agreement between BOCC and Cement Creek Condominium Association re Teocalli Road and Elcho Avenue

Fiscal Impact:

Submitted by: Laura Stanley for David Baumgarten **Submitter's Email Address:** lstanley@gunnisoncounty.org

Finance Review: ○ Required ● Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ● Required ○ Not Required

Comments:
ok db 10/15/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 10/15/2020 Certificate of Insurance Required

Yes ● No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/16/2020

○ Consent Agenda ● Regular Agenda ○ Worksession Time Allotted: 5 minutes

Agenda Date: 10/20/2020

Revised April 2015

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, dated the __ day of _____, 2020 ("Agreement" or "Easement"), is by and between **Gunnison County, Colorado, acting by and through its Board of County Commissioners** ("GUC"), the address of which is 200 E. Virginia Ave., Gunnison, CO 81230, and **Cement Creek Condominiums Association,** a Colorado nonprofit corporation, the address of which is 2 Elcho Avenue, Crested Butte, CO 81224 ("CCCA").

RECITALS

WHEREAS, GUC owns the roadway known as Teocalli Road and the real property immediately adjacent thereto, which is between Teocalli Road and the adjacent platted subdivisions, located in Gunnison County, Colorado ("GUC Property"); and

WHEREAS, CCCA is the common interest community association for the Cement Creek Condominiums, which includes buildings located on Lot 17, Block 2, Crested Butte South First Filing (Italian Creek Building), Lots 13 & 14, Block 2, Crested Butte South First Filing (East River Building), and Lots 3, 4 & 5, Block 3, Crested Butte South First Filing (Waterfall Creek Building), and as such has legal authority over certain real property designated as common elements/areas upon such properties, including but not limited to, the private roadway known as Elcho Avenue ("CCCA Property"); and

WHEREAS, GUC and CCCA are parties to that certain License Agreement dated June 6, 1989 ("License") whereby GUC granted CCCA a license to use and maintain that portion of the GUC Property that lies between Teocalli Road and the CCCA Property; and

WHEREAS, GUC and CCCA hereby desire to terminate the License and replace it with this Easement; and

WHEREAS, this Easement is to provide CCCA and its members, owners, agents, guests, invitees, employees, representatives, successors and assigns with rights of ingress and egress by and through Elcho Avenue and over the GUC Property to the CCCA Property, as shown and identified on the Cement Creek Condominiums Site Plan as the "Easement Area," a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the Recitals above and the agreements set forth below, GUC and CCCA hereby agree as follows:

AGREEMENT

1. EASEMENT GRANT. GUC hereby grants and conveys to CCCA and CCCA's members, owners, agents, tenants, guests, invitees, employees, personal representatives, successors and assigns, a non-exclusive perpetual easement appurtenant for only: (1) ingress and egress over and across that portion of the GUC Property that includes Elcho Avenue; and (2) use of the open space areas exclusively as open space between the ingress and egress portions of Elcho Avenue and between Elcho Avenue and the CCCA Property. Said easement areas are

identified as the ”Easement Area” on Exhibit A, attached hereto and incorporated herein, and which is more particularly described as follows (“Easement Area”):

> That portion of platted Elcho Avenue within the GUC Property (including the island area immediately adjacent thereto) between the traveled road surface of Elcho Avenue and the easterly boundary of Lot 14, Block 2, CRESTED BUTTE SOUTH – FIRST FILING, and that portion of Lot 13, Block 2, CRESTED BUTTE SOUTH – FIRST FILING, immediately adjacent to the portion of Elcho Avenue that is part of the GUC Property, and northerly of a westerly extension of the common boundary between Lots 1 and 2 of Block 3, CRESTED BUTTE SOUTH – FIRST FILING, all according to the plat thereof bearing Reception No. 280978,
>
> County of Gunnison,
> State of Colorado.

2. TERMINATION OF LICENSE. GUC and CCCA hereby agree to terminate the License and replace said License with this Easement.

3. MAINTENANCE. In consideration for the granting of the Easement by GUC, CCCA agrees to maintain the Easement Area, including but not limited to, maintaining in good condition and repair, the lawn, Elcho Avenue, and all other surfaces within the Easement Area, and plowing and removing snow from Elcho Avenue, all when necessary, as determined by CCCA. Notwithstanding the foregoing, GUC may require CCCA to maintain, repair or replace Elcho Avenue to ensure that Elcho Avenue is in the same, or similar, condition to the portion of Teocalli Road immediately adjacent to Elcho Avenue.

4. INDEMNIFICATION & HOLD HARMLESS – CCCA. CCCA hereby undertakes, for itself, and its owners, members, representatives, successors and assigns, to indemnify, defend, and hold harmless GUC, and its employees, officers, agents, representatives, successors and assigns, from any and all costs, expenses, claims or damages of any kind, including reasonable attorneys' fees, arising from or relating to actions or omissions undertaken pursuant to, or which arise from, the use of the Easement by CCCA, or its representatives, owners, employees, members, agents, successors or assigns. The indemnification obligations set forth in this Section 4 shall not apply to any circumstance that is caused by the negligent or intentional acts or omissions of GUC, or its representatives, officers, employees, invitees, agents, successors, or assigns.

5. INSURANCE. CCCA shall maintain general liability insurance in an amount of not less than $1,000,000 combined single limit insuring CCCA and GUC, as is applicable, covering actions undertaken pursuant to this Easement Agreement and the indemnification obligation set forth herein. CCCA shall name GUC as an additional insured under its insurance policy and shall supply GUC with a certificate of insurance to that effect annually by January 31 of each year.

6. NO WARRANTIES OF TITLE. The Easement contemplated herein is without warranty of title and is subject to all prior liens, encumbrances, easements, restrictions, reservations, and rights of way affecting the parties' properties.

7. ENTIRE AGREEMENT. This Easement Agreement contains the entire understanding of the parties regarding the subject matter hereof and any and all prior discussions and negotiations are merged into this Agreement. The terms and provisions of this Easement Agreement shall be enforceable by an action for damages, specific performance, injunction and/or any other remedy available at law or in equity. All remedies are cumulative.

8. ATTORNEY'S FEES & COSTS. If an action is brought in a court of law of competent jurisdiction to enforce, interpret or construe this Easement Agreement, or any document provided for herein or related hereto, the prevailing party shall be awarded all reasonable attorneys' fees and costs incurred in the prosecution or defense of such action, including expert witness fees and costs, if applicable.

9. EASEMENT RUNS WITH THE LAND. The Easement shall be perpetual and appurtenant to and run with title to the GUC Property and the CCCA Property and shall be binding upon the members, owners, heirs, representatives, officers, successors and assigns of the parties hereto.

10. NOTICES. All notices given pursuant to this Agreement shall be in writing and signed by the party, or a duly authorized representative of the party, making the same. All notices shall be deemed given when delivered personally, or three (3) days after deposit of the same in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the applicable party as first written above.

11. LEGAL REPRESENTATION. Both parties represent and warrant that they have carefully reviewed this Agreement, they have had competent legal representation in connection with the decision to enter into this Agreement, and the contents hereof are known and understood by them.

12. VENUE. Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be brought in a court of competent jurisdiction in Gunnison County, Colorado.

13. PARAGRAPH TITLES. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions herein.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the date first set forth above.

GUNNISON COUNTY, COLORADO

By: Gunnison County Board of County Commissioners

By: _____ (signature)

_____ (print name)

Its: Chairperson

ATTEST:

_____

Gunnison County Clerk

CEMENT CREEK CONDOMINIUMS ASSOCIATION,
a Colorado nonprofit corporation

By: Chris Ward, President
Chris Ward, President

STATE OF Texas)
)ss.
COUNTY OF Harris)

The foregoing Easement Agreement was acknowledged before me this 16 day of october, 2020, by Chris Ward, as President of Cement Creek Condominiums Association, a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: 9-26-2024

(SEAL)

NOTARY PUBLIC STATE OF TEXAS
IDELFONSO GARAY
Notary ID #129140801
My Commission Expires
September 26, 2024

Notary Public

EXHIBIT A

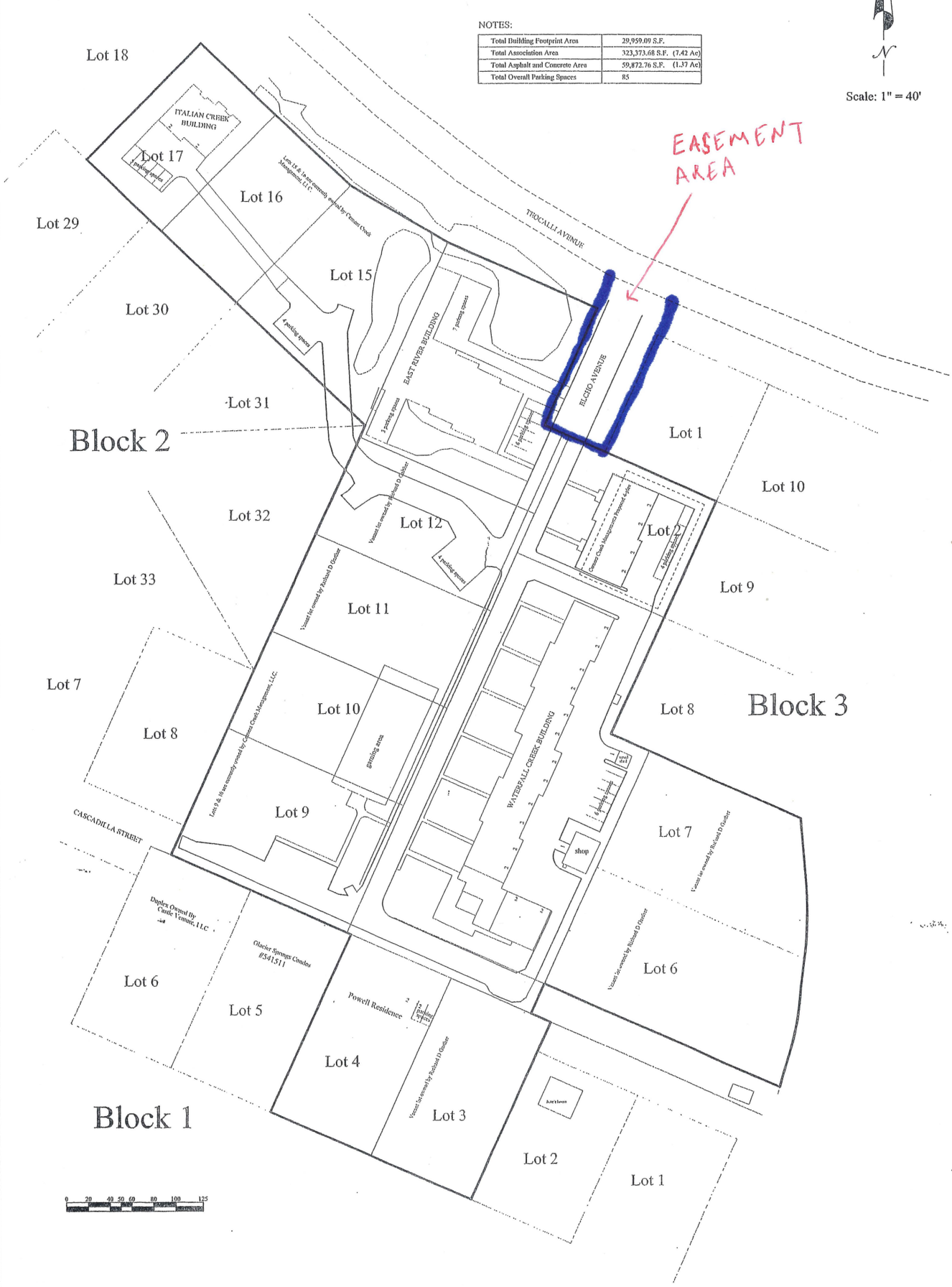
Cement Creek Condominiums Site Plan

NOTES:

Total Building Footprint Area	29,959.09 S.F.
Total Association Area	323,373.68 S.F. (7.42 Ac)
Total Asphalt and Concrete Area	59,872.76 S.F. (1.37 Ac)
Total Overall Parking Spaces	85

N

Scale: 1" = 40'



Crested Butte South – First Filing	Designed By: Cement Creek Management, LLC, 2 Elcho Avenue, Crested Butte, CO 81224, (970) 349-6682, Fax (970) 349-5710	Drafted By: Jon Szabankiewicz, 908 N 14th St, Gunnison, CO 81230, (970) 641-6772, Fax (970) 641-6773	TITLE: Cement Creek Management, LLC; SUB: Cement Creek Condominiums Site Plan	Revised 7-11-7 area&border updated; 7-6-7 updated to 2007; DATE ISSUED: 11-27-04; DESIGNED BY: ; FILE NAME: ; REVISED: 11-28-06; DRAWN BY: JJS; SCALE: 1"=40'; REVISED #: ; CHECKED BY: ; SHEET NO: 1 of 1

GUNNISON CO.
4:8923

LICENSE AGREEMENT

This License Agreement is entered into in Gunnison County, Colorado as of June 6, 1989 as follows:

1. Parties. The parties to this Agreement are:

Gunnison County, Colorado, acting by and through its Board of Commissioners, hereafter termed the "County", and

The Cement Creek Condominiums Association, a Colorado non-profit corporation, hereafter termed the "Licensee".

2. Purpose. In consideration of the Licensee's promise to hold the County harmless as against claims of the public, evidence of which is attached hereto, and in consideration of other mutual promises recited herein, the County and Licensee have entered into this Agreement to memorialize their understanding with respect to the subject matter hereof.

3. License to Use Public Property. The Licensee is hereby granted a revocable license to use public property described as follows:

> That portion of platted Teocalli Road between the traveled road surface and the northerly boundary of Lots 14, 15, and 16, Block 2, Crested Butte South-First Filing, according to the plat thereof bearing Reception No. 280978 of the records of Gunnison County, Colorado, and
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> That portion of platted Elcho Avenue between the traveled road surface and the easterly boundary of Lots 14 and that portion of Lot 13, Block 2, Crested Butte South-First Filing northerly of a westerly extension of the common boundary between Lots 1 and 2 of Block 3, Crested Butte South-First Filing, according to the plat thereof bearing Reception No. 280978 of the records of Gunnison County, Colorado.

4. Use of Property. The property that is the subject of this License Agreement shall be utilized by the Licensee solely for the construction of sidewalks, curbs and gutters, fencing and landscaping amenities, together with such additional requirements as may be imposed by the Licensee's insurance

carrier in furtherance of the provisions of Paragraph 6 hereof, and for no other purposes. All construction and installation shall be under the supervision of the Crested Butte South Metropolitan District.

5. Maintenance and Repair. The Licensee shall keep all improvements upon the subject property in good condition and repair, and shall maintain the same with such reasonable regularity and by such reasonable means and in such reasonable manner as to prevent the same from being or becoming unsightly or otherwise detract from the general appearance of adjacent property, or which would constitute a nuisance or hazard contrary to public health, safety, and welfare.

6. Indemnity, Insurance. The Licensee hereby gives to the County assurance and the Licensee's covenant to hold the County harmless from any and all liability arising from harm to the public, whether in the form of property damage or bodily injury resulting from use of the public property permitted hereby. The Licensee also shall carry liability insurance to protect the public from injuries sustained by reason of such use with limits of coverage of at least $500,000 for bodily injury, including death, per person, and $500,000 for bodily injury per occurrence, and $250,000 for property damage per occurrence. The Licensee shall furnish the County Manager with certificates of insurance pertaining to each policy extending such coverage. The Licensee shall also provide such certificates annually or otherwise, as the case may be, for any and all renewals and extensions of the terms of such coverage.

7. Forfeiture, Removal. If and whenever the Licensee shall have refused or otherwise failed to hold the County harmless and to carry insurance as provided hereinabove, or whenever the County shall have determined that such public property or any portion thereof is required by the County for other purposes, then, in that event, upon 30 days written notice by the County to the Licensee the privileges granted hereby to the Licensee shall automatically terminate. In that event, the Licensee upon written demand by the County shall cause said improvements to be removed from such public property at the Licensee's sole expense within a reasonable period of time as set forth in such written notice. If the Licensee shall refuse or otherwise fail to cause said improvements to be removed within such reasonable period of time following receipt of such written demand by the County, then and in that event the County shall have the right to remove the improvements or cause the same to be removed, and the Licensee shall be liable to the County for the County's removal costs.

8. Privileges Personal to Licensee. This License is personal to the Licensee, and the privileges herein granted shall

not inure to or for the benefit of the Licensee's successors or assigns.

9. Snow Removal. The use of the licensed area shall not interfere with snow removal operations by the County on the existing roadways nor by the Crested Butte South Metropolitan District. The Licensee shall be responsible for removal of all snow from the licensed area in such a fashion and manner as not to interfere with traffic or to violate any County rules and regulations now or hereafter in effect.

10. Entirety of Agreement, Modifications. The making, execution and delivery of this Agreement by the Licensee has been induced by no representations, statements, warranties or agreements other than those herein expressed. This License Agreement embodies the entire understanding of the parties and there are no further or other agreements or understands, written or oral, in effect between the parties, relating to the subject matter hereof. This instrument may be amended and modified only by an instrument of equal formality signed by both parties.

IN WITNESS WHEREOF, the parties hereto affix their respective signatures on the dates appearing opposite thereto:

GUNNISON COUNTY, COLORADO
By its Board of County Commissioners

By: _____
David Leinsdorf, Chairman

ATTEST:

_____
Joanne Reitinger, County Clerk

CEMENT CREEK CONDOMINIUMS ASSOCIATION,
a Colorado non-profit corporation

By: _____
James R. Folkes, President

ATTEST:

_____
Secretary

STATE OF Colorado)
) SS.
COUNTY OF Gunnison)

Subscribed and sworn to before me by David Leinsdorf, as Chairman of the Board of County Commissioners and Joanne Reitinger as County Clerk of Gunnison County, Colorado, this 8th day of June, 1989.

Notary Public
Address:
200 E. VIRGINIA AVE.
GUNNISON, CO 81230-2207

NOTARY PUBLIC STATE OF COLORADO

My commission expires: May 12, 1992

STATE OF Colorado)
) SS.
COUNTY OF Gunnison)

Subscribed and sworn to before me by James R. Folkes as president and J. Jeffrey Folkes as Secretary of Cement Creek Condominiums Association, a Colorado non-profit corporation this 13th day of June, 1989.

Karen J. Crebley
Notary Public
Address:
120 North Taylor
Gunnison, CO 81230
(303) 641-3326

My commission expires: September 23, 1990