CARBONDALE BOARD OF TRUSTEES  
REGULAR MEETING  
NOVEMBER 12, 2019  
CARBONDALE TOWN HALL  
511 COLORADO AVENUE  
6:00 P.M.  

STUDENT OF THE MONTH  
AWARD

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<th>TIME</th>
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<td>1. Roll Call</td>
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<td>6:10</td>
<td>2. Consent Agenda</td>
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<td>a. Accounts Payable</td>
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<td>b. BOT 10-8-2019 Regular Mtg. Minutes</td>
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<td>d. BOT 10-22 2019 Regular Mtg. Minutes</td>
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<td>e. Recommendation for Reappointment – Parks and Recreation Commission</td>
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<td>f. Professional Service Contract – Aquatics Master Plan</td>
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<td>g. Contract Letter, Trench Vault and Conduit Agreement – Gateway Park Smithy</td>
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<td>h. Liquor License Renewal – Village Smithy</td>
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<td>i. Letters of Support – Stepping Stone</td>
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<td>j. Employee Education Assistance Policy</td>
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<td>7. Public Hearing - Liquor License Transfer – Mi Casita</td>
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<td>8. Homeless Coalition Update</td>
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<td>9. Town Center Relocation of Restrictive Covenant</td>
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<td>11. Capital Improvements 5 Year Plan</td>
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<td>12. Plastics Strategy</td>
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<td>13. Letters of Support – Western Leaders Network</td>
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<td>14. Minutes/Correspondence</td>
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<td>c. Bike/Pedestrian/Trails Commission 9-30-19 Minutes</td>
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* Please note: times are approximate
Board of Trustees Agenda Memorandum

Item No: Attachment A
Meeting Date: 11.12.2019

TITLE: Accounts Payable

SUBMITTING DEPARTMENT: Finance

ATTACHMENTS: Accounts Payable for 11.12.2019

DISCUSSION: The accounts payable include the payment to the forest service for the 2020 Nettle Creek Plant permit for $9,320.11. Timberline Electric was paid a total of $14,070.89 for repair and replacement at Nettle Creek due to a lightening strike. Roaring Fork Engineering was paid $16,654.00 for design & consulting for Roaring Fork Well Treatment Plant. River Restoration was paid $17,930.20 for Crystal River Restoration Phase 2. Aspen Tree Service was paid $4,008.00 for work on trees at the Town housing trailers. The final payment of $45,028.50 was paid to A to Z Recreation for the Miners Park Playground equipment.

The payroll for 10.18.19 was $169,137.02. Tax liability for the town was $9,522.16. Pension and Retirement liability was $11,196.43. The payroll for 11.01.19 was $149,595.37. Tax liability for the town was $8,753.61. Pension and Retirement liability was $9,756.25.

If you have any questions concerning the Accounts Payable, please contact me.

Renae
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| 25640  | HOLLAND & HART LLP                 | DEVELOPER REIMBURSABLE -         | 1765513 56  | 13136 | 10/22/2019   | 75.00  |
| 25640  | HOLLAND & HART LLP                 | WATER LEGAL                      | 1765513 56  | 13136 | 10/22/2019   | 633.48 |

Total 41-4336-3520: 708.48

| 15380  | CRYSTAL OAKS BRIDGE ASSN           | ANNUAL ASSESSMENT                | 10/22/19    | 13135 | 10/24/2019   | 300.00 |

Total 41-4336-3687: 300.00

| 35460  | MOUNTAIN TEMP SERVICES LLC         | TEMP LABOR FOR UTILITIES        | 506891      | 94377 | 10/17/2019   | 129.37 |

Total 41-4336-3982: 129.37

| 57780  | XEROX CORPORATION                  | COPIER LEASE                     | 098566597   | 94399 | 11/01/2019   | 79.24  |

Total 41-4336-5310: 79.24

| 23240  | FERGUSON WATERWORKS #11            | HYDRANT WRENCH                   | 97749 06462 | 94383 | 10/23/2019   | 905.45 |

Total 41-4336-9410: 905.45

| 42900  | RESOURCE ENGINEERING INC           | WATER RIGHTS ANALYSIS            | 21101 21100 | 94389 | 09/30/2019   | 89.00  |
| 42900  | RESOURCE ENGINEERING INC           | WATER RIGHTS ANALYSIS - DIV      | 21101 21100 | 94389 | 09/30/2019   | 2,826.00 |

Total 41-4337-3570: 10,559.00

| 19350  | ECOQUA WATER TECHNOLOGY            | C/W VALVE / O-RINGS RFWTP        | 904194104   | 94370 | 10/08/2019   | 6,311.20 |

Total 41-4337-7200: 6,311.20

| 15900  | DANA KEPNER COMPANY INC            | REGISTER HEADS                   | 1505408-01  | 94393 | 10/31/2019   | 685.00 |
| 15900  | DANA KEPNER COMPANY INC            | K-HORNS, JOINT ASSEMBLY, S       | 1505408-00  | 94385 | 10/24/2019   | 3,728.65 |

Total 41-4337-9342: 4,413.65

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MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
OCTOBER 8, 2019

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on October 8, 2019, at 6:00 p.m. in the Town Hall meeting room.

STUDENT OF THE MONTH

The following students from Ross Montessori School, Carbondale Community School and Crystal River Elementary School were awarded a Certificate of Achievement from Mayor Richardson:

Angel Vasquez Buenrostro
Zachary Hanrahan
Mason Frisbie

Alexis Filiss
Sylvia Duchscher (not present)
Bella Frisbie

ROLL CALL:

The following members were present for roll call:

Mayor
Dan Richardson
Trustees
Erica Sparhawk
Lani Kitcing
Ben Bohmfalk
Marty Silverstein
Luis Yllanes
Heather Henry

Staff Present:

Town Manager
Jay Harrington
Town Clerk
Cathy Derby
Finance Director
Renaie Gustine
Town Attorney
Mark Hamilton
Building Official
John Plano

CONSENT AGENDA

- Accounts Payable totaling $149,014.74
- BOT 9/17/2019 Work Session Minutes
Trustee Meeting Minutes
October 8, 2019

- BOT 9/24/2019 Regular Meeting Minutes
- Liquor License Renewal – Cripple Creek Backcountry
- Resolution No. 12, Series of 2019 – Supporting GOCO Grant – Carbondale Arts & RFTA
- Recommendation for Reappointment – Carbondale Public Arts Commission – Carol Klein
- Recommendation for Reappointment – Park s& Recreation Commission – Genevieve Villamizar
- Recommendation for Reappointment – Environmental Board – Patrick Hunter
- Recommendation for Appointment – Bike/Pedestrian/Trails Commission – Michael Gorman
- Purchase of Generator for Crystal Well

Trustee Silverstein made a motion to approve the Consent Agenda. Trustee Sparhawk seconded the motion and it passed with:

7 yes votes: Richardson, Bohmfalk, Silverstein, Sparhawk, Kitching, Henry, Yllanes

PERSONS PRESENT NOT ON THE AGENDA

Matt Kennedy, Carbondale, stated that he had been at a previous Board meeting where he asked the Trustees to reconsider changing the number of rabbits a household may possess. He is present tonight to ask the Board to reconsider the ordinance; the Board agreed and will schedule it on a future agenda.

TRUSTEE COMMENTS

Trustee Bohmfalk stated that he attended the Bike/Pedestrian/Trails Commission meeting. They made a recommendation to redirect their budget from lighting, and filing sidewalk gaps to 8th Street planning for improvements. Trustee Bohmfalk informed the Board that he is working with Rachel Cooper, a teacher at Roaring Fork High School, to fill the Student Trustee position. Trustee Bohmfalk will draft a job description.

Trustee Kitching stated that she attended the AGNC economic development summit where they discussed the ramifications of FMLD revenue reductions. Also, Coverture made a presentation. Trustee Kitching also attended the Colorado River Conservation Board meeting. They discussed the impacts of a compact call including contingency water storage.

Trustee Yllanes congratulated Wilderness Workshop for their federal court victory concerning the climate impact of oil and gas.
Trustee Silverstein stated that he attended the Carbondale Public Arts Commission meeting. The Best in Show has been chosen. They have a lot of new members, creating more vitality. They have been coordinating more with Carbondale Arts. Trustee Silverstein attended the Tree Board meeting. They now have more members than in recent history. Trustee Silverstein congratulated everyone who helped make Potato Day a great success. There was a great turnout and he is excited that this long standing tradition is continuing.

Trustee Sparhawk stated that she attended the Colorado Communities of Climate Action (CC4CA) Executive Committee meeting. They are transitioning to a new in-house non-profit. The Executive Director Jacob Smit asked if the Board would like a presentation. The Board declined due to the fact that Trustee Sparhawk does an excellent job of keeping them informed of CC4CA’s progress.

Trustee Henry stated that she attended the Multi-Jurisdictional Housing Coalition meeting. She stated that the challenge is what 2020 will look like, and what they hope to accomplish. They are working on a 2020 Memorandum of Understanding.

Mayor Richardson stated that he attended a meeting with Sally Clark, the State Director of the USDA Small Development Center. They listened to a presentation on what the USDA offers (i.e. economic development grants, etc.). Mayor Richardson attended the Co-Housing and Finance Authority meeting. Red Hill Lofts were awarded tax credits for their Carbondale housing project. Mayor Richardson attended the Wilderness Workshop’s Stand at the Summit event. Mayor Richardson stated that First Friday was a great event and a new mural was unveiled. Mayor Richardson thanked everyone who volunteered for Potato Day. On Sunday Mayor Richardson attended the Carbondale Arts Artway dedication.

ATTORNEY’S COMMENTS

The attorney did not have any comments.

PUBLIC HEARING – TRANSFER OF RETAIL MARIJUANA CULTIVATION LICENSE APPLICATION

Applicant: Happy Farmer, Ltd
Location: 220 N. 12th St., Units A, 2-4

Staff explained that Happy Farmer, Ltd has applied to transfer a retail marijuana cultivation license at 220 N. 12th St., Units A 2-4. The applicant/local agent is Brandin Wepsala who resides in Basalt. Staff noted that the previous owner had issues with insufficient electricity but the problem has been resolved.

Mayor Richardson opened the hearing to public comment. There was no one present who wished to address the Board so Mayor Richardson closed the public hearing.
Trustee Sparhawk made a motion to approve Happy Farmer, Ltd’s transfer of a retail marijuana cultivation application. Trustee Yllanes seconded the motion and it passed with:

7 yes votes: Yllanes, Richardson, Silverstein, Sparhawk, Henry, Bohmfalk, Kitching

SPECIAL EVENT LIQUOR LICENSE – TWO RIVERS UNITARIAN UNIVERSALISTS

Two Rivers Unitarian Universalists has applied for a Special Event Liquor License for their annual fundraising event to be held at the Third Street Center. The Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve Two Rivers Unitarian Universalists’ Special Event Liquor License. Trustee Silverstein seconded the motion and it passed with:

7 yes votes: Richardson, Bohmfalk, Henry, Yllanes, Silverstein, Kitching, Sparhawk

SPECIAL EVENT LIQUOR LICENSE – KDNK

KDNK has applied for a Special Event Liquor License for their annual Halloween party to be held at the Third Street Center. The Police Department has reported no problems with the applicant or the premises.

Trustee Bohmfalk made a motion to approve KDNK’s Special Event Liquor License. Trustee Sparhawk seconded the motion and it passed with:

7 yes votes: Bohmfalk, Henry, Yllanes, Silverstein, Kitching, Sparhawk, Richardson

MOTION SUPPORTING LIBRARY DISTRICT MILL LEVY QUESTION

Todd Anderson attended the September 24th Trustee meeting and asked the Board for their endorsement of the Library District mill levy (increase) ballot question. The Board told him that they would consider the endorsement at their October 8th meeting. Todd stated that it would speak volumes if the Board would support the mill levy increase. The revenue would replace down-graded services including hours and staffing. Trustee Henry asked if the increase would be a sustainable level; Todd answered yes. The Board stated that the library is a critical component of the community and they endorsed the Library District mill levy ballot question.

YOUTHZONE REQUEST FOR CAPITAL CONTRIBUTION

YouthZone Executive Director Laurie Mueller was present at the meeting. Laurie explained that they purchased a building in Glenwood Springs and then underwent a
capital fundraiser with a goal of raising $2 million. They are close to their target and they are asking the Town of Carbondale for a $5,000 contribution. The Board acknowledged that YouthZone provides invaluable services to the youth of Carbondale.

Trustee Silverstein made a motion to approve a $5,000 contribution (from the 2019 budget) to YouthZone’s capital campaign. Trustee Bohmfalk seconded the motion and it passed with:

7 yes votes: Silverstein, Bohmfalk, Henry, Kitching, Richardson, Yllanes, Sparhawk

**WECYCLE UPDATE**

Mayor Richardson stated that $3,000 has been allocated in the 2020 draft budget for WeCycle analysis/planning. RFTA has been questioning how to approach the last mile (last mile before a bus stop). It’s agreed that mobility will benefit from thoughtful planning. Mirte Mallory, WeCycle Executive Director, informed the Board that they are looking at equitable solutions, technology, location of stations, demand, and the planning is taking longer than expected. As a result, WeCycle will not be launching in Carbondale in 2020.

**CORE – NET ZERO ENERGY DISCUSSION**

Katharine Rushton (GCE), Phi Filerman (CORE), and Jeff Dickinson (Biospaces, Inc.) were present at the meeting. They gave a presentation on their report “Net Zero for New Construction.” They noted that significant action, on an accelerated timeline, must take place in order to arrive at the Town’s net zero goal. To achieve net zero municipalities must adopt stricter residential building energy codes. A key strategy is to produce highly efficient homes and the focus should be on new construction. They stated that there is a perception that efficient homes are extremely expensive to build but in reality the cost differential is approximately $5,000. To be successful we need district strategies in place, pilot projects and training. It is believed that Aspen/Pitkin County will drive the local industry and they are increasing their energy standards. The Board supports the Table of Recommendations on page 12 of the report.

**ORDINANCE NO. 15, SERIES OF 2019 – CORE – PROPOSED CHANGES TO THE RESIDENTIAL EFFICIENT BUILDING PROGRAM (REBP)**

Katharine Rushton (GCE), Phi Filerman (CORE), and Jeff Dickinson (Biospaces, Inc.) were present at the meeting. They have been working on changes to the REBP (the last version was adopted in 2011) in order to meet the Town’s goal of being carbon neutral by 2050.

Two of the residential building changes include new requirements for renewables (solar) and lowering HERS (tiered) requirements. HERS will not be required for homes under
2,000 square feet. Also, mandatory training for all builder is being recommended. The Board asked building official John Plano for his opinion on the changes. John stated that it is extremely hard to achieve a 45 HERS rating without adding solar.

Mayor Richardson opened the meeting to public comment.

Richard Stump stated that he didn’t know about the proposed changes. He offered the following opinions: the HERS and solar requirements are excessive, the on-site solar and renewable resources off-grid are redundant, solar is still dependent on the grid unless you have storage and the grid is not a storage system, there will be a substantial increase in building costs, the changes take five steps beyond what the Code requires - maybe shoot for a HERS of 55 not 45.

The Board agreed to not take action on Ordinance 15 at this time as they would like more information on the following:

- How to address projects in the pipeline
- Is 45 the right HERS for tier #1
- How do the requirements apply to multi-family units
- Will there be rebates and incentives
- The cost of building a home is already exorbitant adding more costs is disturbing even if the energy savings pays for itself

The Board agreed to continue the discussion at a future meeting.

2020 BUDGET

Renae explained that there is a legal requirement to present the budget before October 15th. The projected ending fund balance for 2019 is $621,365 and has been spent down to $358,926. There is an offset of building fees that have been paid this year but the work will be done next year. September sales tax revenue is up 8%, year-to-date sales tax revenue is up 5.1%, lodging revenue is up 2.8%, bag fee revenue is up 3.5%. Sales tax revenue is holding at 5% with three months left to go in the year. It is anticipated that the trash fund will have a deficit for two years.

The Board requested that the housing fund accounts be broken out.

EXECUTIVE SESSION

At 9:15 p.m. Trustee Silverstein made a motion to go into an Executive Session for the purpose of discussing the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest under C.R.S. Section 24-6-402(4)(a). Trustee Bohmfalk seconded the motion and it passed with:

7 yes votes: Kitching, Bohmfalk, Henry, Silverstein, Sparhawk, Richardson, Yllanes
At 9:30 p.m. Trustee Bohmfalk made a motion to adjourn the Executive Session and return to the regular scheduled meeting. Trustee Henry seconded the motion and it passed with:

7 yes votes: Bohmfalk, Henry, Silverstein, Sparhawk, Richardson, Yllanes, Kitching

Trustee Silverstein made a motion to authorize the Mayor to sign a Real Estate Purchase Agreement on the American Tree Property. Trustee Yllanes seconded the motion and it passed with:

7 yes votes: Henry, Silverstein, Sparhawk, Richardson, Yllanes, Kitching, Bohmfalk

ADJOURNMENT

The October 8, 2019, regular meeting adjourned at 9:33 p.m. The next scheduled meeting will be held on October 22, 2019, at 6:00 p.m.

APPROVED AND ACCEPTED

__________________________
Dan Richardson, Mayor

ATTEST:

__________________________
Cathy Derby, Town Clerk
MINUTES
CARBONDALE BOARD OF TRUSTEES
WORK SESSION
OCTOBER 15, 2019

Mayor Dan Richardson called the Work Session to order on October 15, 2019, at 6:00 p.m. in the Town Hall meeting room.

ROLL CALL:

The following members were present for roll call:

Mayor  Dan Richardson
Trustees  Lani Klitching
          Erica Sparhawk
          Ben Bohmfalk
          Heather Henry
          Marty Silverstein

Absent  Luis Yllanes

Staff Present:

Town Manager  Jay Harrington
Boards & Commissions Clerk  Kae McDonald
Finance Director  Renae Gustine
Public Works Director  Kevin Schorzman
Utilities Director  Mark O'Meara
Parks and Recreation Director  Eric Brendlinger
Police Chief  Gene Schilling
Police Lieutenant  Chris Wurtsmith
Police Executive Assistant  Anna Ramirez

AMENDMENTS TO NOISE ORDINANCE DISCUSSION

Mayor Richardson explained that at a previous meeting a few citizens came before the Board requesting they consider making changes to the noise ordinance due to a neighbor who was constantly playing music all day in the summer; the Board agreed to review the ordinance.

Gene stated that the Town's noise ordinance is one of the strictest in the Roaring Fork Valley. Last year the Town received 112 noise complaints and most were due to music and construction. Jay noted that when there is a disturbance of the peace call usually there is an underlying neighborhood issue (neighbors not getting along).
Mayor Richardson stated that the Board needs to decide if the decibel levels are appropriate and does the language for disturbing the peace need to be strengthened. Mayor Richardson opened the meeting to public discussion.

Laurie Loeb, Garfield Avenue, said that years ago a decibel level of 85 was considered healthy. Newer data recommends not going above 60-70 decibels. She stated that the Town’s decibel level is too high. She lived comfortably in her neighborhood until ten years ago and then there was a proliferation of special events and bars. The music from the Black Nugget is an on-going problem. Noise is a matter of community annoyance that causes sleep disruption.

In the ordinance the disturbing the peace section does not address specific decibel levels. Consistent noise below the decibel level can still be a community annoyance.

Mayor Richardson asked Gene if the ordinance gives the police enough flexibility; he responded yes it does.

Becky Young stated that their neighbor was playing music 12 hours a day seven days a week at the 60 decibel level and it made her a nervous wreck. 60 decibels is way too high when music is being played constantly. Her neighbor was using music as a weapon.

Jay noted that a lot of our noise complaints are well within the decibel range but they are annoying noises (i.e. heavy bass).

Greg Forbes, Garfield Ave., stated that the duration of the music was more of a problem that the decibel level. He asked if there is any way to address the duration of noise from the decibel levels.

Tom Burkew, Main Street, stated that special events are what brought us to Carbondale; they are temporary. His neighbor was a different matter, the music was accompanied by rants of a violent nature. It was scary, disturbing behavior.

Gene believes the current ordinance is sufficient and that the disturbing the peace section may have been misinterpreted.

The Board agreed that the noise ordinance does not need to be changed at this time.

**BUDGET REVIEW**

**POLICE**

Gene highlighted the items in the 2020 Police Budget. Key items discussed included:
• Purchase a new hybrid police car for the next police chief
• Would like to add a new staff position in the future
• Budgeted for training for all police staff – some training is reimbursed through grants and the VALE fund
• The radio budget has increased by $9,000
• Management would like to hire a new police chief by June 1st so they can spend a month with Chris Wurtsmith and three month with Chief Schilling
• Sick and vacation pay-outs have been budgeted for Chris and Gene who are retiring
• They did not budget for additional staff

PUBLIC WORKS/UTILITIES

Kevin presented the Public Works and Utilities Budgets. Key points included:

• The motor pool budget includes: fuel, mechanics tools, new backhoe
• The Streets budget includes: a new full time position for vegetation management, half of the cost for a steam weed machine, half of the cost for a stump grinding machine, concrete street maintenance and a foundation for a sand storage building
• The wastewater budget includes: a new clarifier, storm water improvements, new sewer main on Colorado Avenue
• The water budget includes: Roaring Fork Treatment Plant expansion, pump back system on the Nettle Creek line, preliminary work on developing the fourth Roaring Fork well, ditch maintenance and Nettle Creek Hydroelectric Plant construction
• The trash budget is $86,847

RECREATION

Eric gave an overview of the Recreation Budget

• They are still using the 2015 Master Plan as a guide
• The major goal is to maintain the amenities we have
• They continue to apply for grants (playground equipment, etc.)
• Staff is working with consultants to produce an Aquatics Center Master Plan – a new pool would reduce operating costs
• They have budgeted for Gateway RV Park Improvements
• Park trash cans will be replaced with bear proof trash cans
• Maintenance will be performed on: Red Hill trails, Sopris Park Gazebo, North Face irrigation, ball park dug out improvements, new bike racks
• The Recreation Center is focusing on increasing marketing, scrutinizing programs and making necessary changes according to cost recovery, monitor energy usage, HVAC upgrade, retrofit one of the patio doors for ADA accessibility
• For integrated weed management they are purchasing a steam machine – the non-traditional parks are the most challenging
• The pool is scheduled for on-going maintenance – re-paint the building, purchase lounge chairs, purchase a replacement cover for winter closure
• Recreation Programming – they continue to produce two sheets of ice for public use, continue to provide special events, and they continue to be involved with Garfield County Healthy Community Coalition

ADJOURNMENT

The October 15, 2019, work session adjourned at 8:30 p.m. The next regularly scheduled meeting will be held on October 22, 2019, at 6:00 p.m.

APPROVED AND ACCEPTED

[Signature]
Dan Richardson, Mayor

ATTEST:

[Signature]
Cathy Derby, Town Clerk
MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
OCTOBER 22, 2019

Mayor Pro Tem Marty Silverstein called the Board of Trustees Regular Meeting to order on October 22, 2019, at 6:00 p.m. in the Town Hall meeting room.

ROLL CALL:

The following members were present for roll call:

Mayor Pro Tem Marty Silverstein
Trustees Lani Kitching
                        Ben Bohmfalk
                        Erica Sparhawk
                        Luis Yllanes

Arrived After Roll Call Heather Henry

Absent Dan Richardson

Staff Present:

Town Manager Jay Harrington
Boards and Commission Clerk Kae McDonald
Finance Director Renae Gustine
Town Attorney Mark Hamilton
Public Works Director Kevin Schorzman
Parks & Recreation Director Eric Brendlinger
Planning Director Janet Buck
Planner John Leybourne

CONSENT AGENDA

- Accounts Payable totaling: $511,022.65

Trustee Bohmfalk made a motion to approve the Consent Agenda. Trustee Kitching seconded the motion and it passed with:

6 yes votes: Bohmfalk, Silverstein, Sparhawk, Kitching, Yllanes, Henry
PERSONS PRESENT NOT ON THE AGENDA

Larry Bogats, Settlement Lane, representing the Carbondale Age Friendly Community Initiative (CAFCI), an ad hoc group of seniors, stated that AARP will be presenting CAFCI with an AARP Certificate of Participation on November 21, 2019 from 3:30 pm – 6:00 pm at the Third Street Center. He invited the Trustees and public to attend the presentation/celebration.

Sam Anderson, a Roaring Fork High School Student and member of the Youth Water Leaders Team, invited the Trustees to attend the Healthy Rivers Youth Water Summit on December 5, 2019 from 9 am – 2:30 pm at the Third Street Center. The event is not open to the general public.

Summers Scott, Main Street, stated that he opposes CoVenture receiving public funding and he feels that there are better ways to spend the money.

TRUSTEE COMMENTS

Trustee Sparhawk stated that she attended “Build Day” at the Habitat for Humanity Vista Project. She highly recommends visiting the project and taking a tour of a net zero affordable housing unit. The event was attended by several elected officials in the Roaring Fork Valley. After the event they had a discussion on local policies including net zero building codes. Trustee Sparhawk attended the Chamber Board meeting where they were given an overview of the Confluence Business Conference. Trustee Sparhawk stated that the Carbondale Communities for Climate Action (CC4CA) is looking for people to join the Legislative Committee.

Trustee Kitching stated that she attended the Garfield County Public Land and Natural Resources Steering Committee. They reviewed access and Right-of-Ways, tourism, and economic viability. Trustee Kitching also attended the Ruedi Water and Power Authority (RWAPA) quarterly meeting. On November 19th there will be a meeting with Ruedi Water Reservoir contract water holders and she recommended that staff attend. They also discussed Proposition DD which proposes using gaming revenue for the Colorado River Basin Plan.

Mayor Pro Tem Silverstein attended Indigenous People Day at Sopris Park – it was a nice event.

ATTORNEY’S COMMENTS

The attorney did not have any comments.

SPECIAL EVENT LIQUOR LICENSE – TRUE MEDIA

True Media has applied for a Special Event Liquor License for an event to be held at the Third Street Center. The Police Department has reported no problems with the applicant or the premises.
Trustee Sparhawk made a motion to approve True Media’s Special Event Liquor License. Trustee Henry seconded the motion and it passed with:

6 yes votes: Bohmfalk, Henry, Yllanes, Silverstein, Kitching, Sparhawk

SPECIAL EVENT LIQUOR LICENSE – COVENTURE

CoVenture has applied for a Special Event Liquor License for an event to be held at their establishment. The Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve True Media’s Special Event Liquor License. Trustee Yllanes seconded the motion and it passed with:

6 yes votes: Bohmfalk, Henry, Yllanes, Silverstein, Kitching, Sparhawk

Evan Zislis told the Board that he will talk to Summers Scott about his concerns with CoVenture receiving funding from the Town.

PUBLIC HEARING – CRYSTAL ACRES PUD AMENDMENT
Applicant: Jerome and Donna Dayton
Location: 315 Oak Run Road

John Leybourne explained that this a hearing for a Major PUD amendment for the Crystal Acres Planned Unit Development (PUD). The applicants have requested the amendment to update Section 12, Special Restrictions of the PUD, to better define what a “primitive footpath” is by providing a review through a conditional use permit with review criteria and providing design and construction details for a “low impact trail.”

The Planning and Zoning Commission held two public hearing and, after numerous changes to the text as it relates to the primitive trail allowed in the riparian zone, recommended approval of the amendment to the Board.

John noted that after the Planning & Zoning review neighbors submitted revised language to the PUD amendment. The applicant approves of the revised language. John stated that the Board has the option: to either remand the application back to the Planning & Zoning Commission for review, or suggest that the neighbors amend the language in their Homeowners Association covenants.

Mark explained that an amended application would need to be re-filed, re-noticed, etc. He pointed out that the Code states that in order to change a PUD it requires approval of 50% +1 of the PUD households. As a result, tonight is technically not a public hearing because they do not have the required number of signatures.
Trustee Henry made a motion to remand the Crystal Acres PUD Amendment to the Planning & Zoning Commission. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Henry, Yllanes, Silverstein, Kitching, Sparhawk, Bohmfalk

RESOLUTION NO. 13, SERIES OF 2019 – INTEGRATED WEED MANAGEMENT PLAN

Gwen Garcelon, a member of the weed task force who spearheaded the Plan, was present at the meeting.

Eric explained that the State signed the Noxious Weed Act in 1990. The Act directs that each municipality shall adopt a Noxious Weed Management Plan for all lands (public and private) within the municipality. Staff and volunteers have been working on a Plan for several years. The proposed plan focuses on soil and land management, the re-introduction of native species to help crowd out the invasive species, and non-chemical innovative weed management strategies utilizing the expertise of local land managers and the increasing knowledge of natural weed management and options available to staff.

Gwen stated that the Plan allows for specialists to use protocols to eliminate weeds before the Board decides the next step. She said that it is imperative to keep herbicides and pesticides out of public parks. We need to focus on soil health.

Mayor Pro Tem Silverstein opened the meeting to public comment.

Sara Larose, works for Garfield County Vegetation, thanked everyone responsible for a very detail, well written document. She looks forward to seeing the results, a strong partnership, and exchanging ideas.

Gwen stated that she hopes other municipalities can use the Plan.

It was noted that the Parks and Recreation Commission and the Environmental Board are very supportive of the Plan.

The Board stated that they appreciate the amount of work has gone in to creating the document and they appreciate the document itself.

Gwen would like to hold a press conference and pursue educational opportunities (Dandelion Day, Farmer's Market) to inform the community of the plan.

Trustee Sparhawk made a motion to approve Resolution No. 13, Series of 2019 approving the Integrated Weed Management Plan. Trustee Henry seconded the motion and it passed with:

6 yes votes: Yllanes, Silverstein, Kitching, Sparhawk, Bohmfalk, Henry
Jay informed the Board that the clerk has received an inquiry on how to file a petition proposing to ban the use of all herbicides and pesticides in Carbondale.

PROPOSED BUDGET REVIEW

MAJOR CAPITAL PROJECT

Kevin gave an overview of the proposed major capital projects for 2020. They include:

- Red Hill Parking
- Street re-surfacing including street light replacement in the Hendrick area
- Trail maintenance
- River Valley Ranch road maintenance
- Sidewalk construction
- The Bike/Pedestrian/Trails Commission has recommended spending $90,000 to study 8th Street improvements, the money would be used on a study, engineering and construction
- Mobile stage for community events
- Replace the 2001 backhoe
- Replace the light plant
- Replace a police car

Combined, the proposed budget totals $638,000.

ADMINISTRATION

Renae Gustine presented the proposed Administration budget. The key expenditures are:

- The seasonal streets position will change to a full-time position
- April Election
- The Town will undertake a salary survey
- Money has been put in the budget for a public relations consultant
- 3% cost of living increase – salary adjustment
- Provide funding for high School clinician
- Funding for (possible) professional salary recruitment (police)
- Risk management insurance increase
- One HVAC unit
- Blinds for Trustee Chambers and Room 2
- Water Heater
- Flooring
- Affordable housing $50,000 to Red Hill Lofts
- Economic development efforts – Chamber, CoVenture, WeCycle
- Garfield County Clean Energy membership
- Increase community requests to $70,000
- Affordable Housing Coalition membership
Michael Lowe of CoVenture was asked to provide a clear list of businesses that CoVenture has helped. The Board wants to be able to measure the return on investment of taxpayer dollars.

MISCELLANEOUS

Jay thanked Kae McDonald, the new Boards and Commission Clerk, for her detailed minutes.

ADJOURNMENT

The October 22, 2019, regular meeting adjourned at 8:45 p.m. The next scheduled meeting will be held on November 12, 2019 at 6:00 p.m.

APPROVED AND ACCEPTED

____________________________
Dan Richardson, Mayor

ATTEST:

____________________________
Cathy Derby, Town Clerk
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Item No: Consent Agenda

Meeting Date: November 12, 2019

TITLE: Parks & Recreation Chair and Co-chair elected and re-appointment of one previous member by the BOT for Parks & Recreation Commission alternate member.

SUBMITTING: Parks & Recreation Department

ATTACHMENT: Application for appointment to the Parks & Recreation Commission

PURPOSE: Appointment of Hollis Sutherland as Chair and Rose Rosello as Co-chair to the Parks & Recreation Commission. Re-appointment of Kathleen Wanatowicz, to the alternate position vacated by Genevieve Villamizar who recently went from an alternate position to a full member.

BACKGROUND: Kathleen has served on the Parks & Recreation Commission previously and has and interest to return to this volunteer position due to the progress on the pool project.

RECOMMENDATION: These are dedicated Parks & Recreation Commissioner members and have institutional knowledge and interest in continuing their volunteer work with this commission.

Prepared By: Eric Brendlinger, Recreation Center Manager

JH
Town Manager
TOWN OF CARBONDALE

APPLICATION FOR APPOINTMENT OR REAPPOINTMENT
TO TOWN ADVISORY BOARDS AND COMMISSIONS

THIS IS AN APPLICATION FOR APPOINTMENT ___ REAPPOINTMENT ___

NAME OF APPLICANT: Kathleen Wanatowicz
MAILING ADDRESS: 159 Capital Ave
STREET ADDRESS OF RESIDENCE: Carbondale, CO
TELEPHONE: (Work) (Home) 618-5114
OTHER PHONE: ___________________ E-MAIL: glennakathleen@gmail.com

INDICATE WHERE YOU WOULD LIKE YOUR AGENDAS AND INFORMATIONAL MATERIALS DELIVERED:

glennakathleen@gmail.com

(If you are seeking reappointment, it is only necessary to fill in your name and those informational items which have changed since you were last appointed.)

BOARD OR COMMISSION FOR WHICH (RE) APPOINTMENT IS Sought:

Parks + Recreation

NEW APPOINTMENT ONLY:

Describe any special knowledge, abilities, background or interests which you feel will provide a positive contribution to the goals and purposes of the board or commission for which you are seeking appointment. (Attach resume if desired or use an extra sheet of paper if necessary.)

BA in Parks + Recreation

MA in Business, Human Resources, Member took time off for baby. I do all things recreation in and outside about the pool.

Signature: ______________________ Date: 9.27.19  

CONGRATULATIONS! The Mayor has appointed you to the Parks + Recreation Commission by official action taken on __________. Your term will expire __________.

We greatly appreciate your interest and participation in the municipal government process.

Mayor and Board of Trustees
Town of Carbondale
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Item No:  
Meeting Date: November 12, 2019

TITLE: Town of Carbondale Aquatic Facility Master Plan Bid Award

SUBMITTING: Parks & Recreation Department

ATTACHMENT: Copy of RFP and Copy of Design Workshop RFP proposal and the scoring matrix

BACKGROUND:
Six proposals were received from consulting firms, in response to the Town's RFP release seeking proposals to conduct an Aquatics Facility Master Plan. These proposals were reviewed by staff, including Eric Brendlinger, Parks & Recreation Director, Jessi Rochel, Recreation Program Manager and Margaret Donnelly, our Aquatics, Health and Wellness Coordinator. The review committee was made up of two other Parks and Recreation Commission members, Hollis Sutherland and Rose Rossello and a past Park & Recreation Commission member, Kathleen Wanatowicz. Utilizing individual review of all six proposals and an individual matrix scoring system with point values, the selection committee was able to combine this data with a more subjective pro and con review of each proposal.

ANALYSIS SCORING:

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<th>Name of Firm</th>
<th>Total Points</th>
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<td>Design Workshop</td>
<td>315</td>
</tr>
<tr>
<td>Connect One Design</td>
<td>298</td>
</tr>
<tr>
<td>Ayers</td>
<td>277</td>
</tr>
<tr>
<td>SEH</td>
<td>276</td>
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<td>Greenplay</td>
<td>229</td>
</tr>
<tr>
<td>Farnsworth</td>
<td>222</td>
</tr>
</tbody>
</table>

After this process the following two firms were selected by the review committee to be interviewed on October 17th, 2019:

- Connect One Design (Basalt, Colorado)
- Design Workshop (Aspen, Colorado)

Following the interviews, staff conducted reference checks, and reconvened the review committee to discuss next steps, and after much discussion and in-depth evaluation, the consensus was to select Design Workshop to conduct the Aquatics Facility Master Plan.

FISCAL ANALYSIS:
The contract agreement award is for $75,000 of which $56,250 will be paid through a GOCO Planning Grant and $18,750 will be paid through funds allocated within the Recreation Sales & Use Tax Fund.
RECOMMENDATION:
Staff recommends the following motion be made and approved:

Move to approve the RFP bid award to Design Workshop to complete the 10-year update to the Parks, Recreation & Trails Master Plan, and to authorize the Mayor to sign a contract with them in the amount of $45,000 for this project.

Prepared By: Eric Brendlinger Parks & Recreation Director

Jay Harrington
Town Manager
AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT FOR PROFESSIONAL SERVICES is made effective the 12th day of November, 2019 by and between the TOWN OF CARBONDALE, a Colorado home rule municipal corporation ("Town"), and Design Workshop, Inc. a Colorado Corporation ("Design Workshop" or "Consultant").

WHEREAS, after a competitive interview process concerning consulting services with regard to the Town’s Aquatic Facility Master Plan, the Town determined to negotiate with Design Workshop with regard to such Services; and

WHEREAS, the Town now desires to contract with Design Workshop for, and Design Workshop desires to perform for the Town, such Services upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Scope of Agreement. Design Workshop agrees to provide the Services, as more fully identified on Attachment A (Project Approach & Scope of Work), which is incorporated herein by this reference.

2. Town Information. The Town shall provide all public information reasonably requested by Design Workshop to perform the Services, including copies of its prior master plan, prior community surveys, annual parks & recreation department budgets, inventory of recreation assets, facilities and equipment, and any available Geographic Information System (GIS) electronic mapping. Design Workshop may require additional assistance and information from Town staff from time to time, and Town agrees to provide such assistance as may be reasonably requested by Design Workshop on a timeline that is reasonable based on the Town staff availability.

3. Compensation. The Town agrees to compensate Design Workshop for its fees and services in an amount not to exceed seventy five thousand dollars ($75,000.00), for the scope of work identified on Attachment A, with compensation and release of Town funds based on deliverables received and outlined within Attachment B (Design Workshop Project Schedule), which is attached hereto and incorporated herein by this reference. This amount is inclusive of all projected travel time, per diem, etc., and the Town shall not be charged for additional reimbursable expenses or work beyond the scope of services hereunder without separate written agreement thereto.

4. Billing. Design Workshop shall invoice the Town for deliverables as detailed on Attachment A, and completed as detailed on Attachment B, with each bill to include a list of labor terms and any reimbursable expenses or additional authorized work charges incurred during that billing period. Payments of amounts due shall be made by the Town within thirty (30) days after receipt of each statement and all necessary backup data. Design Workshop may add late fees of 1.5% per month to charges not timely paid within such thirty (30) day period.
3. **Term and Renewal.** This Agreement shall be effective as of November 12, 2019, and shall extend until completion of the Services, unless earlier terminated pursuant to this Agreement.

4. **Status.** Design Workshop is an independent consultant and shall not be considered an employee of the Town for any purpose. Design Workshop shall be responsible for payment of all federal, state and local taxes as may be associated with amounts paid by Town to Design Workshop under this Agreement. Neither Design Workshop nor the Town shall have the right to commit the other beyond the terms of this Agreement without express written agreement of both parties.

5. **Standard of Care.** The standard of care applicable to Design Workshop’s services will be the same degree of care, skill, and diligence normally employed by professionals performing the same or similar services. Consultant will re-perform any services not meeting this standard without additional compensation.

6. **Indemnity.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, ATTORNEYS AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, CLAIMS AND LIABILITIES RELATING TO BODILY INJURY OR PROPERTY DAMAGE), DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY CONSULTANT OR ITS SUBCONSULTANTS TO PROPERLY PERFORM THE WORK IN ACCORDANCE WITH THIS AGREEMENT, OR THE NEGLIGENCE OR MISCONDUCT OF CONSULTANT OR CONSULTANT’S OFFICERS, AGENTS, EMPLOYEES, OR SUBCONSULTANTS.

7. **Insurance.** Design Workshop shall obtain, maintain and provide proof of general liability, automotive liability, professional liability, and worker’s compensation insurance to the Town upon execution of this Agreement. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the Town, but regardless of such acceptance it shall be the responsibility of the Consultant to maintain adequate insurance coverage at all times. The Town shall be named as an additional insured on all such policies.

8. **Governmental Immunity/TABOR/Immigration Compliance.** Nothing herein shall be interpreted as a waiver of governmental immunity, to which the Town would otherwise be entitled under § 24-10-101, et seq., C.R.S., as amended. This contract is also contingent upon annual budgeting by the Town of Carbondale and it shall not be construed as a multi-year financial obligation of the Town. The Town’s obligations shall terminate should it fail to budget funds toward this Agreement after the current fiscal year. Design Workshop also agrees to be bound by the terms of attached Addendum A as related to compliance with Colorado immigration laws, which Addendum is incorporated by reference.

9. **Employees, Subcontractors and Assignees.** The providing of professional services required under paragraph 1 of this Agreement shall be the responsibility of Consultant. Design
Workshop may employ or subcontract with additional persons to assist in the performance of this Agreement, subject to Town approval of each sub-consultant and that sub-consultant’s agreement to obtain and maintain insurance coverage equivalent to that maintained by Design Workshop pursuant to Paragraph 7, above. Supervision and payment of any such persons shall be the sole and exclusive responsibility of Design Workshop. Notwithstanding the foregoing, however, this Agreement shall not be assigned by Design Workshop to a third party without the prior express written consent of the Town.

10. **Termination.** If at any time the Town is dissatisfied with the services of Design Workshop for any reason whatsoever, the Town may terminate this Agreement effective immediately upon the delivery of written notice to Consultant. In the event of any such termination, the Town shall pay Design Workshop for services rendered through the date of notice of termination.

11. **Notice.** Any notices required to be given pursuant to this Agreement shall be delivered as follows:

   **To the Town:**
   Town Manager  
   Town of Carbondale  
   511 Colorado Avenue  
   Carbondale, CO 81623

   **Copy to:**
   Mark Hamilton  
   Town of Carbondale Attorney  
   Holland & Hart LLP  
   600 E. Main St., Suite 104  
   Aspen, CO 81611

   **To Design Workshop:**
   Anna Gagne  
   Design Workshop, Inc.  
   120 E. Main Street  
   Aspen, CO 81611

12. **Responsibilities.** Design Workshop shall be responsible for all damages to persons or property caused by Design Workshop, its employees, sub-consultants or others for whom Design Workshop is legally liable.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the written mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

14. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Venue for any action instituted pursuant to this agreement shall lie in Garfield County, Colorado.
15. **Authority.** Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

16. **Attorneys’ Fees.** Should this Agreement become the subject of litigation between the Town and Design Workshop, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys’ fees and expert witness fees. All rights concerning remedies and/or attorneys’ fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Professional Services as set forth below.

**TOWN OF CARBONDALE**  
A Colorado home rule municipal corporation

**ATTEST:**  

By:  
Dan Richardson, Mayor

Cathy Derby, Town Clerk

**APPROVED AS TO FORM**

By:  
Mark Hamilton, Town Attorney

**DESIGN WORKSHOP, INC.**  
A Colorado Corporation

By:  

4
Town of Carbondale
Addendum A to Professional Services Agreement

Work By Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., et. seq., as amended, Consultant warrants, represents, acknowledges, and agrees that:

1. Consultant does not knowingly employ or contract with an illegal alien.

2. Consultant shall not knowingly employ or contract with an illegal alien to perform work or enter into a contract with a sub consultant that fails to certify to Consultant that the sub consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

3. Consultant has participated in or attempted to participate in the basic pilot employment confirmation program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, “Basic Pilot Program”) in order to confirm or attempt to confirm the employment eligibility of all employees who are newly hired for employment in the United States. If Consultant is not accepted into the Basic Pilot Program prior to entering into this Agreement, Consultant shall forthwith apply to participate in the Basic Pilot Program and shall submit to the Town written confirmation of such application within five (5) days of the date of this Agreement. Consultant shall continue to apply to participate in the Basic Pilot Program, and shall confirm such application to the Town in writing, every three (3) months until Consultant is accepted or this Agreement is completed, whichever occurs first. This Paragraph 3 shall be null and void if the Basic Pilot Program is discontinued.

4. Consultant shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5. If Consultant obtains actual knowledge that a sub-consultant performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall be required to:

(a) Notify the sub consultant and the Town within three (3) days that Consultant has actual knowledge that the sub consultant is employing or contracting with an illegal alien; and

(b) Terminate the subcontract with the sub consultant if within three (3) days of receiving the notice required pursuant to this subparagraph the sub consultant does not stop employing or contracting with the illegal alien; except that Consultant shall not terminate the contract with the sub consultant if during such three (3) days the sub consultant provides information to establish that the sub consultant has not knowingly employed or contracted with an illegal alien.

6. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation that the
Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.

7. If Consultant violates this Addendum, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Consultant shall be liable for actual and consequential damages to the Town arising out of said violation.

CONSULTANT

By: ____________________________

Dated: ________________
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Item No: Consent Agenda

Meeting Date: November 12, 2019

TITLE: Holy Cross Energy Policies & Procedures documents to conduce the electrical service work at the Gateway RV Park 50 amp Project.

SUBMITTING: Parks & Recreation Department


PURPOSE: Capital Improvement Project utilizing revenue from the Gateway RV Park in a phased 30 amp to 50 amp conversion project for the site pedestals.

BACKGROUND: Many RV’s require a 50 amp service and it has become the standard offering at other rv parks.

RECOMMENDATION: This is the first step in a phased project that will begin this year.

Prepared By: Eric Brendlinger, Parks & Recreation Director

__________________________
JH
Town Manager
October 8, 2019

TOWN OF CARBONDALE, A Colorado Home Rule Municipal Corporation
511 COLORADO AVE
CARBONDALE, CO. 81623

RE: GATEWAY RV PARK POWER

To Whom it may concern,

Holy Cross Energy has completed a design and cost estimate for providing electric service to the above referenced project, hereinafter the "Project". Our facilities will be installed as shown on the attached sketch. The owner or developer of the subject Project is hereinafter referred to as the "Owner".

<table>
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<th>Description</th>
<th>Amount</th>
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<tr>
<td>Estimated cost of overhead construction</td>
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</tr>
<tr>
<td>Estimated cost of underground construction</td>
<td>$14,350.00</td>
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<tr>
<td>Total estimated cost of construction</td>
<td>$23,700.00</td>
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<tr>
<td>Construction deposit (refundable) consisting of overhead costs and equivalent overhead costs</td>
<td>$23,700.00</td>
</tr>
<tr>
<td>Standard Construction Allowance</td>
<td>$(1,000)</td>
</tr>
<tr>
<td>Contribution in aid of construction (non-recoverable)</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>Total payment required before starting work on the project</td>
<td>$23,900.00</td>
</tr>
</tbody>
</table>

The above figures are only estimates. After the job has been completed, the actual cost of construction will be determined. The Owner's contribution and deposit will be adjusted to reflect the actual cost by making a refund or further assessment. Execution of this document constitutes the Owner's agreement to pay any further assessment in a timely manner. Adjusted construction deposits are available for refund over a ten year period as specified by Holy Cross Energy's Line Extension Policy. Refunds will be paid to TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation unless otherwise directed in writing.

Our power facilities must be installed on an easement. Please execute and return the enclosed document.

The following conditions are hereby noted:

1. A Load Form must be submitted for this project. These forms are available on-line and can be found by visiting www.holycross.com.

2. Holy Cross Energy has separate Policies and Procedures for Generation Interconnections. Please visit www.holycross.com or send an e-mail to renewables@holycross.com for more information.

A Touchstone Energy® Cooperative
3. Holy Cross Energy has implemented a policy which requires that the Owner provide all excavation, backfill, compaction and cleanup needed for installation of the underground power system extension to serve the Project. The Owner must also set all vaults and install all conduits as specified by Holy Cross Energy's design for the Project and the enclosed construction specifications. Holy Cross Energy will supply all material which can be picked up by the Owner at the appropriate storage yard. The cost of this material is included in the job cost estimate. The attached Trench, Conduit, and Vault Agreement must be properly executed by the Owner and returned prior to the start of excavation.

4. It shall be the Owner's responsibility to ensure that splice vaults, switchgear vaults and transformer vaults installed hereunder for the Project are accessible by Holy Cross boom trucks and other necessary equipment and personnel at all times. The use of such access by Holy Cross shall not require removal or alteration of any improvements, landscaping, or other obstructions. The ground surface grade shall not be altered within ten (10) feet of said splice, switchgear and transformer vaults, nor along the power line route between the vaults. The ground surface grade at said transformer and switchgear vaults shall be six (6) inches below the top of the pad. The ground surface grade at said splice vaults shall be even with the top of the pad. The manhole opening of said splice vaults shall be uncovered (excluding snow) and accessible at all times. Improvements, landscaping or any other objects placed in the vicinity of said transformers and switchgear shall be located so as not to hinder complete opening of the equipment doors. The ground surface within ten (10) feet of said transformer and switchgear doors shall be flat, level and free of improvements, landscaping, and other obstructions. Improvements, landscaping and other objects will be kept a minimum of four (4) feet from non-opening sides and backs of said transformers and switchgear. Owner hereby agrees to maintain the requirements of this paragraph and further agrees to correct any violations which may occur as soon as notified by Holy Cross Energy. Said corrections will be made at the sole cost and expense of Owner.

5. There is no provision in our estimate for revegetation. Revegetation, if required, must be provided by parties other than Holy Cross Energy.

6. Secondary voltage available will be 120/240, single-phase.

7. Secondary facilities shall be installed in accordance with National Electrical Code and Holy Cross Energy specifications. All meter locations must be approved. Any service over 200 amps or 240 volts must have prior written approval from Holy Cross Energy.

8. All underground services shall be installed in conduit ahead of the meter. All underground services must be in conduit beneath roads, driveways, and other areas of difficult excavation.

9. All residential services must have an outside disconnect accessible at all times to Holy Cross Energy personnel.

10. The meter housing must be positioned so the meter faces a driveway or road.

11. Motor protection from phase loss and other voltage problems should be provided. This equipment shall be installed and maintained at the expense of the Owner.

12. It shall be the Owner's responsibility to protect their electric equipment from temporary over voltage or under voltage situations resulting from causes beyond the control of Holy Cross Energy.

13. The above mentioned cost estimate does not include connect fees or meter deposits, if required. Arrangements for payment of these items and for scheduling the actual meter installation should be made through the local Holy Cross Energy office.
14. We attempt to complete all projects in a timely manner. However, highest priority is given to maintaining service to our existing consumers. This fact, along with inevitable construction delays, will not allow us to guarantee a project completion date.

15. All Holy Cross Energy rules and regulations will be followed.

16. When Holy Cross Energy is in receipt of the Owner's check in the amount of $23,900.00, all necessary executed easements, other permits, if required, a completed "Residential Load Form" or "General Services Load Form", the executed trench agreement, and the signed original of this letter agreement (below), the job can be scheduled for construction. Holy Cross Energy does not accept checks with lien waivers.

Sincerely,
HOLY CROSS ENERGY

Kenton Berner,
Engineering Department
kberner@holycross.com
(970) 947-5497
KB:MM
Enclosure

The above terms and conditions are hereby agreed to and accepted

By: __________________________

Title: __________________________

Date: __________________________

19-23645 Contract Letter
HOLY CROSS ENERGY
RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,

TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation

(hereinafter called "Grantor"), for a good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant unto Holy Cross Energy, a Colorado corporation whose post office address is P. O. Box 2150, Glenwood Springs, Colorado (hereinafter called "Grantee") and to its successors and assigns, the right of ingress and egress across lands of Grantor, situate in the County of Garfield, State of Colorado, described as follows: A parcel of land situate in Section 28, Township 07 South, Range 88 West of the 6th P.M., as more fully described at Reception Number 796260 in the records of the GARFIELD County Clerk and Recorder's Office, GLENWOOD SPRINGS, Colorado.

And, to construct, reconstruct, enlarge, operate, maintain and remove an electric transmission or distribution line or system, within the above mentioned lands, upon an easement described as follows:

An easement thirty (30) feet in width, the centerline for said easement being a power line as constructed, the approximate location of which upon the above described property is shown on Exhibit A attached hereto and made a part hereof by reference.

The rights herein granted specifically allow Grantee to (1) install down guys with anchors as needed on any pole located on the above described easement, and (2) install additional poles, down guys with anchors, overhead conductors and/or related facilities within the above described easement at any time in the future.

And, in addition, Grantor hereby grants to Grantee, and to its successors and assigns, the right to clear all trees and brush, by machine work or otherwise, within said easement, and the further right to cut trees, even though outside of said easement, which are tall enough to strike the wires in falling.

Grantor agrees that the surface of the ground will not be changed nor will any other alteration be made within the boundaries of the easement which would violate National Electrical Safety Code requirements for minimum clearance from the power line conductors.

Grantor agrees that all poles, wire and other facilities installed by Grantee on the above described lands, shall remain the property of Grantee, and shall be removable at the option of Grantee.

Grantor covenants that they are the owner of the above described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character, except those held by the following: All those of Record.

TO HAVE AND TO HOLD, said right-of-way and easement, together with all and singular, the rights and privileges appertaining thereto, unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has caused these presents to be duly executed on this ______ day of _______________, 20______.

W/O#19-23645:65:50: Gateway RV Line Ext. 10/8/19 19-23645 KB Page 1 of 2 Revised 4/5/11
The individual signing this Holy Cross Energy Right-of-Way Easement hereby represents that they have full power and authority to sign, execute, and deliver this instrument.

TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation

____________________________
Mayor

STATE OF ____________________

 ) ss.
COUNTY OF __________________

The foregoing instrument was acknowledged before me this ______ day of __________________________, 20____, by __________________________ as Mayor of TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation.

WITNESS my hand and official seal.
My commission expires:

____________________________
Notary Public

Address: ____________________________________________
TRENCH, CONDUIT, AND VAULT AGREEMENT

This agreement is made and entered into this __________ day of _____________________, 20________, between TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation, whose mailing address is 511 Colorado Ave, Carbondale, CO 81623, hereinafter called "Owner", and Holy Cross Energy, a Colorado corporation whose mailing address is P. O. Box 2150, Glenwood Springs, Colorado 81602, hereafter called "Holy Cross".

WHEREAS, Holy Cross has been requested by Owner to provide underground electric facilities, hereinafter called "Facilities", to serve a project known as Gateway RV Line Ext., hereinafter called "Project"; and,

WHEREAS, Owner is required to provide all excavation, conduit and vault installation, backfill, compaction and cleanup needed to construct said requested Facilities; and,

WHEREAS, Owner owns real property described as follows: A parcel of land situate in Section 28, Township 07 South, Range 88 West of the 6th P.M., as more fully described at Reception Number 796260 in the records of the GARFIELD County Clerk and Recorder's Office, GLENWOOD SPRINGS, Colorado, hereinafter called "Property", which Property is the real property where the Project is being developed; and,

WHEREAS, installation of Facilities to serve the Project may require trenching or other excavation on certain real property adjacent to the Project described as follows: N/A, hereinafter called "Adjacent Land".

NOW, THEREFORE, Owner and Holy Cross agree as follows:

1. Owner shall provide all excavation, conduit and vault installation, backfill, compaction and cleanup necessary for installation of Facilities to serve the Project. Such excavation shall be located as shown on the construction plans approved by Holy Cross, and performed in accordance with Holy Cross Vault Installation Specifications, Construction Specifications and inspector requirements. Any deviation from the approved construction plans will not be made unless approved by Holy Cross in advance. All Facilities installed hereunder shall be inspected during construction by Holy Cross and shall meet all Holy Cross requirements prior to acceptance of such Facilities by Holy Cross.
   a. Prior to commencement of any work hereunder, Holy Cross shall furnish to Owner its Vault Installation Specifications and Construction Specifications and such specifications are made a part hereof by reference.
   b. All Facilities installed within the Property and Adjacent Land shall be within dedicated or conveyed and recorded utility easements.
   c. The top of all conduits installed hereunder shall be located a minimum of 48" below the final grade of the ground surface.
   d. A twelve-inch (12") minimum separation will be maintained between conduits installed for the Facilities and all other new or existing underground utilities. Wherever possible, this separation will be horizontal. The Facilities conduit separation from plastic gas lines shall be greater than this minimum wherever practicable.
   e. Holy Cross will supply the necessary conduit and vaults for installation by the Owner upon completion of contractual arrangements. Owner assumes responsibility for all material lost or damaged after such material has been issued to and signed for by Owner or by an agent of Owner. Alternatively, Owner may provide its own conduit and vaults meeting Holy Cross specifications for use on the Project and convey such provided material to Holy Cross with an acceptable Bill of Sale. After installation by the Owner and acceptance by Holy Cross, Holy Cross shall continue as the owner of the conduit, vaults and related structures and facilities.
   f. If conduit and/or vault installation provided by Owner for the Project are found to be unusable or improperly constructed, irrespective of whether such discovery is made during or after installation, Owner will be responsible for correcting said problems at its expense as specified by Holy Cross and Owner shall reimburse Holy Cross for all additional costs resulting from conduit and/or vault installation being unusable or improperly constructed.

2. Despite the fact that Holy Cross reserves the right to specify acceptable work performed hereunder, Owner shall perform work hereunder as an independent contractor, including, but not limited to, the hiring and firing of its own employees, providing its own tools and equipment, payment of all wages, taxes, insurance, employee withholdings, and fees connected with its work on the Project.

3. Owner shall obtain all necessary digging permits and utility locations prior to excavation for work performed hereunder. Owner shall repair all damage caused during excavation promptly and at its expense. No excavation will be undertaken within five (5) feet of existing underground electric facilities except under the on site supervision of a Holy Cross employee.
4. Owner shall indemnify, save, and hold harmless Holy Cross, its employees and agents, against any and all loss, liability, claims, expense, suits, causes of action, or judgments for damages to property or injury or death to persons that may arise out of work performed hereunder, or because of a breach of any of the promises, covenants and agreements herein made by the Owner. Owner shall promptly defend Holy Cross whenever legal proceedings of any kind are brought against it arising out of work performed hereunder by the Owner and/or work performed at the direction of the Owner. In the event Owner shall fail to promptly defend Holy Cross, it shall be liable to Holy Cross, and shall reimburse it, for all costs, expenses and attorney fees incurred in defending any such legal proceeding. Owner agrees to satisfy, pay, and discharge any and all judgments and fines rendered against Holy Cross arising out of any such proceedings. Owner also agrees to promptly satisfy and pay any monetary settlements of disputes that arise hereunder, provided Owner has been given the opportunity to join in such settlement agreements. The above indemnification clause shall not apply to state and local governments or local service districts. In lieu thereof, whenever Owner is a government or district it shall procure and maintain in effect at least $1,000,000 of public liability insurance covering the acts, damages and expenses described in the above indemnification clause. Upon Holy Cross’ request, such an Owner shall furnish a Certificate of Insurance verifying the existence of such insurance coverage.

5. Owner shall repair, at its expense, any excavation settlement and damage to asphalt paving or other surface improvements caused by such settlement resulting from work performed hereunder within the Property and Adjacent Land for a period of two (2) years beginning on the date backfill and cleanup are completed.

6. Owner, at its expense, shall stop the growth of thistles and/or other noxious weeds in all areas disturbed by excavation performed hereunder for a period of two (2) years beginning on the date backfill and cleanup are completed.

7. In the event Owner shall not promptly complete all of the obligations hereinabove agreed to be performed by Owner, Holy Cross may give written notice by registered or certified mail demanding Owner to complete the work and obligations undertaken by Owner herein, and if such is not completed within 30 days after receipt of such notice by Owner, Holy Cross may complete the work and obligations hereof. If Holy Cross shall be required to complete the work, all costs of completion shall be chargeable to and collectible from Owner.

8. As set forth in paragraph 1 above, Owner covenants that the trench, and all Facilities within the trench installed hereunder shall be located within dedicated or conveyed and recorded utility easements and at the proper depth below finished grade. It shall be the obligation of Owner to properly locate and construct the Facilities within the easement. Should it ever be discovered that such Facilities have not been properly located within dedicated or conveyed and recorded utility easements, or at the proper depth, it shall be the obligation of Owner to provide new easements for the actual location of the Facilities, or to relocate the Facilities within the easement, all of which shall be at the sole cost and expense of Owner.

9. It shall be Owner’s responsibility to ensure that splice vaults, switchgear vaults and transformer vaults installed hereunder on the Property are accessible by Holy Cross boom trucks and other necessary equipment and personnel at all times. The use of such access by Holy Cross shall not require removal or alteration of any improvements, landscaping, or other obstructions. The ground surface grade shall not be altered within ten (10) feet of said splice, switchgear and transformer vaults, nor along the power line route between the vaults. The ground surface grade at said transformer and switchgear vaults shall be six (6) inches below the top of the pad. The ground surface grade at said splice vaults shall be even with the top of the pad. The manhole opening of said splice vaults shall be uncovered (excluding snow) and accessible at all times. Improvements, landscaping or any other objects placed in the vicinity of said transformers and switchgear shall be located so as not to hinder complete opening of the equipment doors. The ground surface within ten (10) feet of said transformer and switchgear doors shall be flat, level and free of improvements, landscaping, and other obstructions. Improvements, landscaping and other objects will be kept a minimum of four (4) feet from non-opening sides and backs of said transformers and switchgear. Owner hereby agrees to maintain the requirements of this paragraph and further agrees to correct any violations that may occur as soon as notified by Holy Cross. Said corrections will be made at the sole cost and expense of Owner.

10. All Holy Cross meter locations must be approved in advance. Notwithstanding such advance approval, it shall be the Owner’s responsibility to maintain acceptable access, as determined solely by Holy Cross, to all Holy Cross meters at all times. At any time in the future, should access to any Holy Cross meters be determined by Holy Cross to be unacceptable, then it shall be the Owner’s responsibility, at the Owner’s sole cost, to correct the access and make it acceptable, as determined solely by Holy Cross.

11. Owner covenants that it is the owner of the above described Property and that said Property is free and clear of encumbrances and liens of any character, except those held by the following: All those of Record.

The promises, agreements and representations made by Owner herein shall be covenants that run with the Property and shall be binding upon the successors in interest, and assigns, of the Property.
The individual signing this Trench, Conduit and Vault Agreement hereby represents that he/she has full power and authority to sign, execute, and deliver this instrument.

Holy Cross Energy, a Colorado corporation

By: ________________________________
David Bleakley - Vice President, Engineering

TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation

By: ________________________________
Mayor

STATE OF ________________________ ) ss.
COUNTY OF _______________________

The foregoing instrument was acknowledged before me this _____ day of ________________________, 20__, by ________________________________ as Mayor of TOWN OF CARBONDALE, a Colorado Rule Municipal Corporation.

WITNESS my hand and official seal.
My commission expires:

________________________________________
Notary Public
Address: ____________________________________

STATE OF ________________________ ) ss.
COUNTY OF _______________________

The foregoing instrument was acknowledged before me this _____ day of ________________________, 20__, by David Bleakley - Vice President, Engineering Holy Cross Energy, a Colorado corporation.

WITNESS my hand and official seal.
My commission expires:

________________________________________
Notary Public
Address: ____________________________________


10/8/19 1923645 KB Page 3 of 3 Revised 4/5/11
HOLY CROSS ENERGY
UNDERGROUND RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,

TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation

(hereinafter called "Grantor"), for a good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant unto Holy Cross Energy, a Colorado corporation whose post office address is P. O. Box 2150, Glenwood Springs, Colorado (hereinafter called "Grantee") and to its successors and assigns, the right of ingress and egress across lands of Grantor, situate in the County of Garfield, State of Colorado, described as follows:

A parcel of land situate in Section 28, Township 07 South, Range 88 West of the 6th P.M., as more fully described at Reception Number 796260 in the records of the GARFIELD County Clerk and Recorder's Office, GLENWOOD SPRINGS, Colorado.

And, to construct, reconstruct, repair, change, enlarge, re-phase, operate, and maintain an underground electric transmission or distribution line, or both, with the underground vaults, conduit, fixtures and equipment used or useable in connection therewith, together with associated equipment required above ground, within the above mentioned lands, upon an easement described as follows:

An easement ten (10) feet in width, the centerline for said easement being an underground power line as constructed, the approximate location of which upon the above described property is shown on Exhibit A attached hereto and made a part hereof by reference.

The rights herein granted specifically allow Grantee to install additional underground and/or pad-mounted facilities within the easement described herein.

It shall be the Grantor's responsibility to ensure that splice vaults, switchgear vaults and transformer vaults installed hereunder on said real property are accessible by Grantee's boom trucks and other necessary equipment and personnel at all times. The use of such access by Grantee shall not require removal or alteration of any improvements, landscaping, or other obstructions. The ground surface grade shall not be altered within ten (10) feet of said splice, switchgear and transformer vaults, nor along the power line route between the vaults. The ground surface grade at said transformer and switchgear vaults shall be six (6) inches below the top of the pad. The ground surface grade at said splice vaults shall be even with the top of the pad. The manhole opening of said splice vaults shall be uncovered (excluding snow) and accessible at all times. Improvements, landscaping or any other objects placed in the vicinity of said transformers and switchgear shall be located so as not to hinder complete opening of the equipment doors. The ground surface within ten (10) feet of said transformer and switchgear doors shall be flat, level and free of improvements, landscaping, and other obstructions. Improvements, landscaping and other objects will be kept a minimum of four (4) feet from non-opening sides and back of said transformers and switchgear. Grantor hereby agrees to maintain the requirements of this paragraph and further agrees to correct any violations which may occur as soon as notified by Grantee. Said corrections will be made at the sole cost and expense of Grantor.

Together with the right to remove any and all trees, brush, vegetation and obstructions within said easement and the right to pile spoils outside said easement during construction and maintenance, when such is reasonably necessary for the implementation and use of the rights hereinabove granted. In areas where vegetation is disturbed by the above described use of the easement, the ground surface shall be seeded using a standard native mix by Grantee. Grantor agrees that landscaping or other surface improvements added on said easement after the date of execution hereof will be minimized and that Grantee will not be responsible for damage to said additional landscaping or surface improvements caused by exercise of its rights granted by this easement.

Grantor agrees that all facilities installed by Grantee on the above described lands, shall remain the property of Grantee, and shall be removable at the option of Grantee.

Grantor covenants that they are the owner of the above described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character, except those held by the following: All those of Record.
TO HAVE AND TO HOLD, said right-of-way and easement, together with all and singular, the rights and privileges appertaining thereto, unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has caused these presents to be duly executed on this ______ day of ________________, 20______.

The individual signing this Holy Cross Energy Underground Right-of-Way Easement hereby represents that he/she has full power and authority to sign, execute, and deliver this instrument.

TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation

By: ________________________________

Mayor

STATE OF __________________________

) ss.

COUNTY OF ________________________

The foregoing instrument was acknowledged before me this ______ day of ____________________________, 20______, by _____________________________ as Mayor of TOWN OF CARBONDALE, a Colorado Home Rule Municipal Corporation.

WITNESS my hand and official seal.
My commission expires:

______________________________

Notary Public

Address: ________________________________
**PROPOSAL: 002**

**TO:** TOWN OF CARBONDALE  
ERIC BREDUGNER  
DEREK MILLER  
ebraduger@carbondaleco.mil  
cmiller@carbondaleco.net

**October 18, 2019**  
*PROPOSAL VALID FOR 30 DAYS*

WE HEREBY PROPOSE TO PROVIDE LABOR AND MATERIALS FOR THE FOLLOWING INSTALLATION LOCATED AT:  
GATEWAY RV PARK

**PHASE I CONDUIT INSTALL.**

<table>
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<tr>
<th>QTY</th>
<th>ITEM</th>
<th>HOURS PER EACH ITEM</th>
<th>LABOR @ $65/HR</th>
<th>MISC MATERIAL</th>
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<td>$0.00</td>
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**CONDUIT INSTALL**

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<th>HOURS PER EACH ITEM</th>
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<tbody>
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<td>2</td>
<td>3&quot; PVC FROM HCE TRANSFORMER VAULT TO SERVICE AREA</td>
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**PROPOSAL:**

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<tr>
<td>TOTAL LABOR &amp; MATERIALS</td>
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</tr>
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</table>

LEI RECOMMENDS SERVICE BE ENGINEERED FOR PERMIT REQUIREMENTS
FIXTURE AIMING AND HEIGHT ADJUSTMENT WILL BE BILLED AT TIME AND MATERIAL RATES
COMPLEX FIXTURE ASSEMBLIES WILL BE BILLED AT TIME AND MATERIAL RATES
Fixtures: Fixtures supplied by owner and installed by electrician must be UL approved. If not UL approved, there may be additional charges to have made so. Fixtures must be made available to hang prior to final inspection or there may be additional charges.

Installation of owner-supplied fixtures after final inspection will be billed as a change at change order rates.

Boxes: Elevations and locations for all boxes are required prior to start of job. If these are unavailable at start, there may be an extra fee applied to install boxes or demo after rough-in.

Changes: Extra work (i.e., change orders) must have the corresponding Lassiter Electric, Inc. request for change order signed by an authorized agent prior to the start of work. Any time and material basis changes to be made will be made with written change order at the rate of $75.00 per hour per man.

Payments: Payment is due within 30 days of invoice date. Overdue payments are subject to 1.5% monthly interest. Customer expressly agrees to pay contractor’s reasonable attorneys’ fees for collection.

Labor: Price is based on work being performed during normal Lassiter Electric, Inc. hours of operation and does not include acceleration of a fixed schedule or overtime. Any accelerated schedule will be discussed with GC prior to start of new schedule.

Taxes: Any change in tax rates during the duration of the project will result in usage of the current tax rate (for billing purposes) as opposed to the tax rate on this proposal.

Town of Carbondale has reviewed the above proposal for work at:
Gateway RV Park
We agree to accept this proposal and abide by the terms stated therein.

Accepted by:

[Signature]

[Print Name]

[Title]

[Date]
To: Mayor Dan Richardson and  
Carbondale Board of Trustees

From: Gene Schilling  
Chief of Police, Carbondale Police Department

Ref.: Liquor License Renewal for Village Smithy Restaurant

Date: October 31, 2019

I have completed the requested record checks for the establishment and following individual:

Jared Ettelson / Manager

I have found no liquor violation records that would cause me to recommend denial of this liquor license renewal for this establishment.

I recommend approval for the liquor license renewal.
# Retail Liquor or Fermented Malt Beverage License Renewal Application

## Please verify & update all information below

### Licensee Name
VILLAGE SMITHY RESTAURANT INC

### Doing Business As Name (DBA)
VILLAGE SMITHY RESTAURANT

### Liquor License #
07-51616-0000

### License Type
Hotel & Restaurant (city)

### Sales Tax License #

### Expiration Date

### Due Date
12/08/2019

### Business Address
26 SOUTH THIRD ST Carbondale CO 81623-2004

### Mailing Address
26 SOUTH THIRD ST Carbondale CO 81623-2004

### Operating Manager

### Date of Birth

### Home Address

### Phone Number

### Email

## Affirmation & Consent
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

### Signature

### Title
Managing Partner

### Date
10/22/2019

## Report & Approval of City or County Licensing Authority
The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 44, Articles 4 and 3, C.R.S., and Liquor Rules. Therefore this application is approved.

### Local Licensing Authority For

### Title

### Date

### Signature

### Attest
November 13, 2019

Dan Richardson
Mayor
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

NAME OF CONTACT
TITLE
ADDRESS OF GRANTING ORGANIZATION

Dear NAME:

This letter is to express my support for Stepping Stones of the Roaring Fork Valley. We have partnered with Stepping Stones for the past 5 years. Our partnership provides over 200 young people per year with mentoring, basic needs services, nightly meals, educational support, skill development, and experiential learning to build resilience.

Stepping Stones high continuity of care mentoring model and the support services they provide has a positive impact on local youth and families. Participants in their program have reached desired outcomes such as increasing school attendance, improving academic performance, substance use reduction and attaining employment. Their staff focus on daily, consistent interaction with the youth they serve and mentored youth participants average over 19 hours of direct contact with an adult mentor every month. They support youth over the long term, with participants able to continue engagement from the age of 10 to 21, throughout the many critical transitions of adolescence and young adulthood.

We support this grant request because I recognize the critical need that Stepping Stones meets in our community. We are committed to (describe) to ensure their programs sustainability and success. Please feel free to contact me at 970-510-1345 if you have any additional questions.

Sincerely,

Dan Richardson
Mayor
Town of Carbondale
November 12, 2019

Dan Richardson
Mayor
Town of Carbondale
511 Colorado Avenue
Carbondale, Colorado 81623

NAME OF CONTACT
TITLE
ADDRESS OF GRANTING ORGANIZATION

Dear NAME:

This letter is to express our support for Stepping Stones of the Roaring Fork Valley’s capital campaign. We have partnered with Stepping Stones for the past 5 years. Our partnership provides over 200 young people per year with mentoring, basic needs services, nightly meals, educational support, skill development, and experiential learning to build resilience.

Over the next year, Stepping Stones will be renovating their 4,500 square foot commercial building in Carbondale. They will also be connecting it with their adjacent 2,500 square foot teen house. This integrated space will function as a community hub to provide additional resources for youth and their families. The facility will include a wellness center to improve young people’s social, emotional, mental, and physical health and a large kitchen capable of preparing nightly home-cooked meals to nourish all participants.

We support this grant request because I recognize the critical need that Stepping Stones meets in our community. We are committed to (describe) to ensure this campaign will be successful. Together, we are increasing the capacity of this organization to serve hundreds of additional youth over the next decade. Please feel free to contact me at 970-510-1345 if you have any additional questions.

Sincerely,

Dan Richardson
Mayor
Town of Carbondale
Board of Trustees Agenda Memorandum

Item No: Attachment J

Meeting Date: 11/12/2019

TITLE:  Policy for Education Assistance

SUBMITTING DEPARTMENT:  Town Manager & Finance

ATTACHMENTS:  Policy for Education Assistance, Education Repayment Agreement

BACKGROUND:  The Town had a policy for Education Assistance established in 2007. This policy was deleted in the 2015 Revision of the Employee Handbook and Policies as it lacked specifics and was somewhat arbitrary.

DISCUSSION:  Reimbursing an employee for work-related education is a great way to add to your employees’ skills and knowledge, which they can apply to in their employment with the Town. The education assistance will improve or maintain skills, increase the education level of the employee and benefit both the employee and the Town.

FISCAL ANALYSIS:  Included with salary adjustments in administration will be an allocation for the assistance. It will be reviewed for utilization every year.

RECOMMENDATION:  Staff recommends the Board approve the following motion: Move to approve the Policy for Education Assistance and Education Repayment Agreement and include them in the Employee Handbook and Policies.

Prepared By:  Jay Harrington and Renae Gustine

______________________
JH
Jay Harrington
Town Manager
Employee Education Assistance Policy

Subject to the availability of funds, the Town may contribute a maximum of $1,500.00 per year for educational purposes for Full-Time employees. The maximum per approved employee for classes per year will be $1,500.00. The education must be in conjunction with or related to the employee's position with the Town of Carbondale and must have prior approval of the Town Manager. Reimbursement will be contingent upon satisfactory completion of the program with a passing grade of B or better or a pass if in a pass/fail class. If an employee voluntarily leaves or is terminated from Town employment, repayment in part or full for the educational instruction may be required. The two-year repayment period begins when the reimbursement check is written. Employees will be asked to sign an agreement stating such. Employees are encouraged to discuss their education needs with their supervisor.
EDUCATION REPAYMENT AGREEMENT

Name: __________________________ Phone: __________________________ Email: __________________________
Supervisor: ______________________ Phone: __________________________ Email: __________________________

Department: ________________________________
Training / Certification Program / License: ________________________________

Total Cost (tuition & class grade): __________________________ Dates of classes: __________________________

This education repayment agreement is voluntarily entered into in accordance with the Town of Carbondale Educational Assistance policy. I agree to repay Town of Carbondale the actual total cost of reimbursements received in the event I voluntarily leave my position with the Town or my employment is ended for cause within two years from the date I complete and passed the class/es, certification program or license. I agree that the cost shall be updated to the actual cost at the time of my separation from the Town including, but not limited to, registration fees, materials, and the value of paid leave time including benefits. The amount owed shall be pro-rated per month of completed employment toward the two-year period. I authorize the Town to withhold any necessary reimbursement from my final paycheck(s). If the payroll withholding is insufficient to reimburse the Town in full, I agree to make repayment in one lump sum by certified check or money order within 30 days of my separation date. If I fail to make said repayment, I agree that the Town may seek collection and I am liable for any associated attorney’s fees and costs. I also understand this repayment agreement is not a guarantee of employment for any period of time.

Employee Signature __________________________ Date __________________________

Supervisor’s Signature __________________________ Date __________________________

Town Manager __________________________ Date __________________________
TITLE: Thompson Park – Combined Preliminary/Final Subdivision Plat for Parcel 2, Thompson Park Subdivision

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS: Ordinance 15, Series of 2019
Thompson Park Land Use Application
Excerpt – Planning Commission Minutes 10-24-2019

BACKGROUND

This is an application for a combined Preliminary and Final Plat for Parcel 2 of the Thompson Park Subdivision. The Board is required to hold a public hearing and either approve the application or deny it. The Board may also continue the public hearing.

The Planning Commission reviewed the application at its October 24, 2019 meeting and unanimously recommended approval. The minutes of the meeting are attached.

The Thompson Park property was annexed into the Town in 2012. The property was zoned Residential/Medium Density (R/MD). The Historic House parcel was zoned Open Space (O).

The Board of Trustees approved the Master Subdivision Improvements Agreement (SIA) for the Thompson Park Subdivision in May of 2015. This subdivision created Parcels 1, 2, 3, 4 and the Historic House Parcel. Parcel 1 was purchased by Ross Montessori and subsequently was developed as a school. The Historic House Parcel was dedicated to the Town. Parcels 2, 3, and 4 were set aside for future phases of residential development.

In April of 2018, the Planning Commission approved a Subdivision Conceptual Plan for Parcel 2, Parcel 3 and Parcel 4 of the Thompson Park Subdivision. At that time, the Planning Commission also reviewed the Major Site Plan Review, Conditional Use Permit, and Amendment to the Thompson Park Annexation and Development Agreement for the three parcels and recommended approval. In June of 2018, the Board approved those items. The approval allows the development of 33
townhomes/multifamily units on Parcels 2 and 3 as well as 7 single family units on Parcel 4.

In June of 2018, the Board also approved a Development Improvements Agreement to allow construction to proceed on Parcel 2. This approval allows the construction of 27 dwelling units. There would be two duplexes, two triplexes, three fourplexes and one fiveplex. Five of the units would be affordable housing units.

Since that time, the majority of the public improvements have been constructed. In addition, building permits have been issued for the two duplexes and the two triplexes.

In 2018, the Planning Commission and the Board reviewed the Major Site Plan Review to ensure it complied with the UDC, the Thompson Park Development Plan, and Annexation Agreement. The following items were reviewed at that time:

- Zoning
- Lot Area Per Dwelling Unit
- Setbacks
- Maximum Impervious Lot Coverage (UDC Section 3.7-2)
- Building Height
- Landscaping and Screening (UDC Section 5.4)
- Street Trees
- Screening (UDC Section 5.4.5)
- Streets (UDC Section 5.5.2)
- Pedestrian Circulation (UDC Section 5.5.3)
- Private Outdoor Space/Bulk Storage
- Parking
- Shading Analysis
- Architectural Design of Buildings and Structures
- Park and Recreation Space, Trails, and Facilities
- Transportation Impact Fees
- Park Development Fees
- Transfer Assessment
- Water Rights

This application is simply subdividing the units into individual lots. There are no changes to the site plan or building elevations approved through the Major Site Plan Review process.

PRELIMINARY AND FINAL SUBDIVISION

The Planning Commission approved a Subdivision Conceptual Plan on April 26, 2018. UDC Section 2.6.3.A. states that a conceptual plan represents a general land use plan and layout for the area to be proposed, to be included within a subdivision. It allows for an evaluation of a proposed subdivision before detailed planning and engineering work is undertaken and before substantial expenses are incurred.
The applicant has now submitted a combined application for Preliminary and Final Subdivision Plat. Technically, the Planning Commission is the approving authority for a Preliminary Plat and the Board is the approving authority for Final Plat. However, these items have been combined so it is a one step process.

The subdivision plat would create 24 lots. The lots would range from 2,351 sq. ft. to 10,454 sq. ft.

A duplex is being constructed on Lot 1. The residential units in the duplex are stacked. A condominium plat will be submitted in the future to divide that building into two condominium units. A triplex is being constructed on Lot 2. These units are also stacked so a condominium plat will be submitted for that as well. The balance of the units are attached single family dwelling units (townhomes).

The UDC provides that in the R/MD zone district that the lot width, lot depth, minimum lot area and side yard setbacks may vary if approved through a subdivision process to allow townhomes to be subdivided. Staff has reviewed the zoning parameters and the lot configurations. Both are in compliance with the UDC.

Chapter 17.06 of the UDC includes design standards for subdivisions. This includes roads, water, sewer, shallow utilities, connections, etc. These items were reviewed and approved at the time of Major Site Plan Review and are currently under construction.

The one item from Chapter 17.06 which needs to be acknowledged is the use of easements to access lots. The UDC states that use of easements shall not be allowed unless allowed by the approving authority during a subdivision process. This should be documented in the final approval documents.

**Subdivision Plat**

The Town Engineer and Town Attorney reviewed the subdivision plat and the plat generally looks acceptable. They requested that some revisions be made which have been done. However, the plat still needs some fine tuning so Staff included a condition that the subdivision plat be reviewed and approved by Town Staff prior to recordation.

**Covenants**

The Town Attorney and Town Staff reviewed the covenants and they are generally acceptable. The Attorney and Staff requested some changes which have been made. There may still need a few more minor modifications, so Staff included a condition that the final covenants be reviewed and approved by Town Staff prior to recordation.
Fire District Fees

The Annexation Agreement requires the payment of the Fire District Fees at the time of subdivision. The fees are as follows:

\[27 \text{ units} \times \$730 = \$19,710\]

School District Fees

The Annexation Agreement requires the payment of School District Fees at the time of subdivision. The fees are as follows:

\[
\begin{align*}
22 & \text{ 3-bedroom units} \times \$1104 = \$24,288 \\
4 & \text{ 2-bedroom units} \times \ 378 = \ 1,512 \\
1 & \text{ 1-bedroom unit} \times \ 131 = \ 131
\end{align*}
\]

Total School District Fees $25,931

Affordable Housing

A housing mitigation plan was approved by the Board at the time of Major Site Plan Review. Five affordable housing units will be provided on Parcel 2. All five units are currently under construction. One is the duplex on Lot 1 and the other the triplex on Lot 2. The deed restrictions will be reviewed at the time of condominimization of Lots 1 and 2. No free market units may be issued a Certificate of Occupancy (CO) until the affordable housing units are issued COs. It is anticipated the condominium applications will be submitted in the near future.

Design Standards

The Development Plan requires that the applicant submit Design Guidelines with each phase of the development. These were submitted with the application. The guidelines appear to be thorough and thoughtful. They would be administered by the HOA and would be internal to Thompson Park.

Approval Criteria for Preliminary Plats

The Planning and Zoning Commission may approve a preliminary plat application that meets the following criteria:

1. The proposed subdivision complies with all applicable use, density, development, and design standards set forth in this Code that have not otherwise been modified or waived pursuant to this chapter and that would affect or influence the layout of lots, blocks, and streets. Applicants shall avoid creating lots or patterns of lots in the subdivision that will make compliance with such development and design standards difficult or infeasible.
2. The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision is designed in a way that minimizes the amount of land disturbance, maximizes the amount of open space in the development, preserves existing trees/vegetation and riparian areas, protects critical wildlife habitat, and otherwise accomplishes the purposes and intent of this Code.

3. The applicant has provided evidence that provision has been made to connect to the Town’s public water supply system.

4. The applicant has provided evidence that provision has been made for a public sewage disposal system or, if other methods of sewage disposal are proposed, adequate evidence that such system shall comply with state and local laws and regulations.

5. The applicant has provided evidence to show that all areas of the proposed subdivision that may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified by the subdivider and that the proposed use of these areas are compatible with such conditions.

6. The applicant has provided evidence to show that all areas of the proposed subdivision that may involve other natural hazards including flood and wildfire have been identified and mitigated to the maximum extent practicable.

7. The application provides a clear assumption of responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision.

8. As applicable, the proposed phasing for development of the subdivision is rational in terms of available infrastructure capacity and financing.

9. The subdivision is consistent with the approved subdivision conceptual plan, if applicable, unless detailed engineering studies require specific changes based on site conditions (in which case the applicant shall not be required to pursue another conceptual plan approval);

10. The subdivision is consistent with the Comprehensive Plan and other adopted Town policies and plans, including any adopted transportation plan or streets/roadway plan.

**Final Plat Approval Criteria**

The Board of Trustees may approve final plats which meet the following criteria:
1. The final plat conforms to the approved preliminary plat and incorporates all recommended changes, modifications, and conditions attached to the approval of the preliminary plat;

2. The development will substantially comply with all requirements of this Code; and

3. The development will comply with applicable technical standards and specifications adopted by the Town.

**FISCAL ANALYSIS**

The fiscal impact implications of additional residential development on the Town were addressed at the time of annexation and zoning. No significant impacts were found at that time.

**RECOMMENDATION**

Staff recommends approval of the proposed application as it is in compliance with the Subdivision Conceptual Plan approved by the Planning Commission in April of 2018 and the Major Site Plan Review approved in June of 2018.

Staff would recommend the following motion: **Move to approve Ordinance No. 15, Series of 2019 approving the combined Preliminary/Final Subdivision Plat for Parcel 2 of the Thompson Park Subdivision, including the use of an easement to access the lots along Lewie’s Circle and Jewel’s Court.**

**CONDITIONS OF APPROVAL**

1. The Subdivision Plat shall be reviewed and approved by the Town prior to recordation of the Plat.

2. The covenants shall be reviewed and approved by the Town prior to recordation of the Plat.

3. The deed restrictions for the affordable housing units shall be reviewed and approved by the Town at the time of condominiumization.

4. The title commitment shall be reviewed and approved by the Town prior to recordation of the Plat.

5. The following Fire District Fees shall be paid to the Fire District prior to recordation of the Subdivision Plat:

   
   \[ 27 \text{ units} \times 730 = 19,710 \]
6. The following School District Fees shall be paid to the School District prior to recordation of the Subdivision Plat:

\[
\begin{align*}
22 \text{ 3-bedroom units} \times 1104 &= \$24,288 \\
4 \text{ 2-bedroom units} \times 378 &= 1,512 \\
1 \text{ 1-bedroom unit} \times 131 &= 131 \\
\end{align*}
\]

Total School District Fees $25,931

7. All representations of the Applicant in written submittals to the Town or in public hearings concerning this project shall also be binding as conditions of approval.

8. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.

**FINDINGS**

**Approval Criteria for Preliminary Plats**

1. The proposed subdivision complies with all applicable use, density, development, and design standards set forth in this Code. Applicants did not create lots or patterns of lots in the subdivision that will make compliance with such development and design standards difficult or infeasible.

2. The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision are designed to minimize the amount of land disturbance, maximize the amount of open space in the development, preserves existing trees/vegetation and riparian areas, protects critical wildlife habitat, and otherwise accomplishes the purposes and intent of this Code.

3. The applicant has provided evidence that provision has been made to connect to the Town’s public water supply system.

4. The applicant has provided evidence that provision has been made for a public sewage disposal system.

5. The applicant has provided evidence to show that all areas of the proposed subdivision that may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified by the subdivider and that the proposed use of these areas are compatible with such conditions.

6. The applicant has provided evidence to show that all areas of the proposed subdivision that may involve other natural hazards including flood and wildfire have been identified and mitigated to the maximum extent practicable.
7. With the conditions of approval, the application provides a clear assumption of responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision.

8. The phasing for development of the subdivision was approved during Major Site Plan Review and is rational in terms of available infrastructure capacity and financing.

9. The subdivision is consistent with the approved subdivision conceptual plan;

10. The subdivision is consistent with the Comprehensive Plan and other adopted Town policies and plans, including any adopted transportation plan or streets/roadway plan.

**Final Plat Approval Criteria**

1. The final plat conforms to the approved preliminary plat and incorporates all recommended changes, modifications, and conditions attached to the approval of the preliminary plat;

2. The development complies with all requirements of this Code; and

3. The development complies with applicable technical standards and specifications adopted by the Town.

Prepared by: Janet Buck, Planning Director

__________________

Town Manager
ORDINANCE NO. 15
SERIES OF 2019

AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING A COMBINED PRELIMINARY AND FINAL PLAT FOR PHASE 2
OF THE THOMPSON PARK SUBDIVISION

WHEREAS, Thompson Park, LLC, a Colorado limited liability company ("Applicant"), has submitted an application for the contemporaneous approval of a combined Preliminary and Final Plat ("Phase 2 Plat") in order to subdivide 24 lots and develop up to 27 residential dwelling units within Parcel 2, Thompson Park Subdivision, according to the Master Plat thereof recorded in the Garfield County real property records on May 19, 2015 at Reception No. 862909 ("Subject Property"); and

WHEREAS, after all required notices, the Planning and Zoning Commission of the Town of Carbondale reviewed this application at a noticed public hearing held on October 24, 2019 and recommended approval of this application with conditions; and

WHEREAS, after all required notices, the Board of Trustees conducted a noticed public hearing on this application on November 12, 2019 during which public hearing the Board of Trustees heard and considered the statements of Town staff, the Applicant’s representatives, and members of the public, and reviewed and considered all other relevant documents and information presented at such hearing, all as required by law; and

WHEREAS, the Board of Trustees finds and determines that the application meets the following approval criteria for preliminary subdivision plats set forth in Municipal Code Chapter 17.02, Sub-Sections 2.6.4.C.4.a.i through –x, inclusive, including:

i. The proposed subdivision provides lots which are compliant with development and design standards;

ii. The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision is designed in a way that minimizes the amount of land disturbance, maximizes the amount of open space in the development, preserves existing trees/vegetation and riparian areas, protects critical wildlife habitat, and otherwise accomplishes the purposes and intent of this Code;

iii. The applicant has provided evidence that provision has been made to connect to the Town’s public water supply system;

iv. The applicant has provided evidence that provision has been made for a public sewage disposal system;

v. The applicant will be required to provide evidence to show that all areas of the proposed subdivision that may involve soil or topographical conditions presenting hazards and that the proposed use of these areas are compatible with such conditions;
vi. The applicant has provided evidence to show that all areas of the proposed subdivision do not involve natural hazards including flood and wildfire;

vii. The application provides a clear assumption of responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision;

viii. The proposed phasing for development of the subdivision is rational in terms of available infrastructure capacity and financing;

ix. The subdivision is consistent with the subdivision conceptual plan, which was approved as part of the Thompson Park Annexation and Rezoning; and

x. The subdivision is consistent with the Comprehensive Plan as it optimizes the use of land in Town and functions as infill development; and

WHEREAS, the Board of Trustees further finds that the Phase 2 Plat complies with the following standards for final plat approval in Municipal Code Chapter 17.02, Subsections 2.6.5.C.2.b.i through iii, inclusive:

i. The final Phase 2 Plat will conform to the approved preliminary plat and incorporate all recommended changes, modifications, and conditions attached to the approval of the preliminary plat;

ii. The development will comply with all requirements of the Town’s Unified Development Code (“UDC”); and

iii. The development will comply with applicable technical standards and specifications adopted by the Town; and

WHEREAS, the Board of Trustees finds that certain conditions of approval should be imposed so that said subdivision will be developed consistent with the purposes of Title 17 of the Carbondale Municipal Code and the terms of the Annexation and Development Agreement Relating to the Thompson Park Property, Town of Carbondale, recorded in the Office of the Garfield County Clerk and Recorder on March 16, 2012, Reception No. 816055, as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Amendments to the same, which amendments were recorded at Reception Nos. 854368, 847651, 851116, 859604, 859605, 862912, 881125, 914138, and 921277, respectively (said agreement, as amended, is referred to herein as the “Annexation Agreement”). Exhibit C to the Annexation Agreement sets forth the Thompson Park Development Plan, which terms and conditions apply to the Development in addition to applicable provisions of the Carbondale Municipal Code. The Development is also subject to: (1) all terms and conditions of the Master Subdivision Improvements Agreement for the Thompson Park Subdivision dated May 19, 2015 and recorded in the real property records of Garfield County, Colorado at Reception No. 862913 (“the Master SIA”); (2) all
terms and conditions of the Ordinance No. 11, Series of 2018, dated July 10, 2018 and recorded in the Garfield County, Colorado real property records on November 14, 2018 at Reception No. 914139 (the “Major Site Plan Approval Ordinance”); and (3) the Development Improvements Agreement, Parcel 2, Thompson Park Subdivision dated November 8, 1018 and recorded in the real property records of Garfield County, Colorado on November 14 2018 at Reception No. 914139 (the “DIA”).

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO as follows:

1. Approval of Phase 2 Plat. The Board of Trustees hereby grants preliminary and final plat approval for the Phase 2 Plat, subject to compliance with all terms and conditions of this Ordinance, the Master Site Plan Approval Ordinance, the DIA, the Master SIA, and the Annexation Agreement. The Phase 2 Plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the Phase 2 Plat on or before November 18, 2019. The Phase 2 Plat shall include plat notes in substantially the form set forth below:

a. Except as otherwise expressly authorized by the Town of Carbondale, all lawn and garden, common space, open space and parkland irrigation uses within Thompson Park shall be from a separate private raw water irrigation system or systems that shall not be connected to the domestic in-house supply for any building unit or residence or to the non-potable irrigation system that serves the Historic House Parcel. Total irrigated areas within Thompson Park, including irrigation of the Historic House Parcel, shall not exceed 4.71 acres, and total residential lawn and garden irrigation shall not exceed 3.3 acres. Each lot depicted hereon shall have no more than 2500 square feet of irrigated lawn and garden area.

b. The residential lots shown hereon are all part of a common interest community governed by the Master Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Garfield Clerk and Recorder on ____________, 2019, at Reception No. __________________. Such Declaration includes common expense budgeting, assessment, and collection procedures for the purposes of funding common expenses, including upkeep of private common areas as well as operation, maintenance, repair and replacement of certain infrastructure located within public rights-of-way, including open sections of irrigation ditches and a private irrigation system, as well as upkeep of all landscaped areas within public rights-of-way.

c. A Declaration of Covenant—Real Estate Transfer Assessment (“RETA”) in a form approved by the Town of Carbondale has been
recorded in the Office of the Garfield County Clerk & Recorder, Reception No. 922724, for purposes of establishing a transfer assessment of one percent (0.01) of the gross sales price of each sale, payable to the Town of Carbondale at the time of future resales of Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

d. Future condominium units to be developed upon Lots 1 and 2 shall be subject to a Deed Restriction to be approved by the Town and recorded in the Office of the Garfield County Clerk & Recorder for purposes of establishing income qualifications, and occupancy and resale restrictions, to preserve the affordability of all future condominium units to be located upon these two Lots.

e. There shall be non-exclusive public access and utility easements for the benefit of the Town of Carbondale throughout the public access and utility easement areas shown on this Plat, including the easement areas for Lewie’s Circle and Jewel’s Court, for purposes of allowing perpetual public access, ingress/egress, and the construction, operation, maintenance and repair of public utilities to be located within these easement areas, including but not limited to public water and sewer mains to be placed within these areas. These easement areas shall not be signed as private property or in any way that limits public access to or use of streets and sidewalks to be constructed within these areas. Despite the public having access to these Parcels, the homeowners association for the Thompson Park Subdivision shall have perpetual responsibility for maintenance, repair and replacement of all sidewalks, curbs, gutters, drainage and paved street areas within these easement areas, and the Town of Carbondale shall have no obligation to construct, maintain, repair or replace the same, or to plow snow within public access easement areas shown on this Plat.

2. **Dedication of Public Easements/Title Commitment.** The Phase 2 Plat shall include dedications to the Town of public utility and access easements. These public easements shall provide for perpetual public pedestrian, bicycle and vehicle access across and upon all private roadways and sidewalk areas shown on the Phase 2 Plat, and each roadway shall be signed at each connection with public roadways in a manner acceptable to the Public Works Director without any restriction as to public access and use. Prior to recordation of the Phase 2 Plat, the Applicant shall provide the Town Attorney with an updated title commitment showing that such dedications and conveyances shall be free and clear of all encumbrances, except those shown on the Phase 2 Plat, or subject only to such exceptions as may be approved by the Town Attorney. Any lender with a lien against the Subject Property shall sign consents and lien subordinations for the Phase 2 Plat prior to recordation.
3. **Master Declaration of Covenants.** A Master Declaration of Covenants, Conditions and Restrictions (“Master Declaration”) for the Thompson Park Subdivision in the form approved by Town staff and the Town Attorney shall be recorded contemporaneously with the Phase 2 Plat. The Applicant shall also incorporate a homeowners association as a Colorado non-profit corporation to hold title to all common areas in accordance with the Colorado Common Interest Ownership Act prior to recordation of the Phase 2 Plat. No properties outside of the Thompson Park Subdivision shall be included in the common interest community for the Thompson Park Subdivision without prior approval of the Board of Trustees. At the time of future subdivision of Parcels 3 and 4 and into residential lots, those lots shall be incorporated into the common interest community and commence paying assessments for common expenses in the same manner as the lots shown on the Phase 2 Plat. Affordable housing units shall have full voting rights but shall only pay 50% of the assessments levied against free market residential units within the community. These provisions of the Master Declaration shall not be amended in the future except with advance approval of the Town’s Board of Trustees.

4. **Affordable Housing Deed Restrictions.** All future residential units to be developed upon Lots 1 and 2 shall be subject to Deed Restrictions to be recorded in the Office of the Garfield County Clerk & Recorder for purposes of establishing income qualifications, and occupancy and resale restrictions, to preserve the affordability of residential units located upon these two Lots. The Applicant shall execute and record the Deed Restrictions in a form approved by Town staff and the Town Attorney contemporaneously with the condominiumization of residential units within Lots 1 and 2 (presently anticipated to be a duplex on Lot 1 and a triplex upon Lot 2, for a total of five residential units). At the time that the Deed Restrictions are recorded, the Applicant shall provide the Town Attorney with an updated title commitment showing that such Deed Restrictions shall be free and clear of all encumbrances, except those shown on the Phase 2 Plat, or subject only to such exceptions as may be approved by the Town Attorney. Any lender with a lien against the properties to be deed-restricted shall sign consents and lien subordinations for each Deed Restriction. No certificates of occupancy shall issue for any residential units upon any Lot shown upon the Phase 2 Plat until at least five residential units have been condominiumized according to all applicable Town land use requirements and review procedures, and thereafter deed-restricted for affordable housing in accordance with this paragraph.

5. **Easement Access.** The Board of Trustees hereby approves and authorizes the use of easements dedicated on the Phase 2 Plat for legal access to all 27 dwelling units to be located on the Subject Property.

6. **Additional Conditions of Approval.** The Board of Trustees imposes the following additional conditions of approval:
a. The Applicant shall submit to the Town proof of payment of the following fees required by the Carbondale and Rural Fire Protection District prior to recordation of the Phase 2 Plat:

27 units x $730 = $19,710

b. The Applicant shall submit proof of payment of the following fees to the Roaring Fork School District prior to recordation of the Phase 2 Plat:

22 3-bedroom units x $1104 = $24,288
4 2-bedroom units x $378 = 1,512
1 1-bedroom unit x $131 = 131

TOTAL: $25,931

c. All representations of the Applicant in written submittals to the Town or in public hearings concerning this project shall also be binding as conditions of approval.

d. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code. The Applicant shall reimburse the Town for any outstanding reimbursable legal or engineering expenses incurred through the date of recordation.

e. All development shall continue to comply with all related development approvals and agreements, including the Annexation Agreement, the Master SIA, the Master Site Plan Approval Ordinance, and the DIA. To the extent that the Phase 2 Plat vary from the standards set forth in the Thompson Park Development Plan attached to the Annexation Agreement as Exhibit C, including in particular building design and street, sidewalk and trail layout standards, these differences are approved in the discretion of the Board of Trustees and shall not exempt future development upon Parcels 3 and 4 from all terms of the Annexation Agreement, as amended.

f. No more than 27 residential units (consisting of one townhome unit per lot upon lots 3-24, two condominium units upon Lot 1, and three condominium units upon Lot 2), shall be developed upon the property shown on the Phase 2 Plat.

g. No certificates of occupancy shall issue for any residence within Phase 2 until all required public and private improvements to serve each residence are completed, including deep utilities, shallow utilities, asphalt paving, and concrete curb and gutters, but excepting landscaping, are certified by Developer’s engineer as being complete according to all applicable plans and specifications, and thereafter inspected and accepted by the Town, in accordance with the DIA.

7. **Recording.** A copy of this Ordinance shall be recorded in the Office of the Garfield County Clerk and Recorder at the expense of the Developer. The terms and
conditions of this Ordinance, which touch and concern the property shown on the Phase 2 Plat, are intended to run with title to said property and to be binding upon any successors or assigns.

INTRODUCED, READ AND PASSED this ____ day of ____________, 2019.

THE TOWN OF CARBONDALE

By: _________________________________

Dan Richardson, Mayor

ATTEST:

______________________________

Cathy Derby, Town Clerk
VIA HAND-DELIVERY
Janet Buck, Planning Director
City of Carbondale Planning Department
511 Colorado Avenue
Carbondale, Colorado 81623

RE: Thompson Park, LLC
Thompson Park Phase 2 Subdivision Application

Dear Ms. Buck,

Thompson Park, LLC (“Applicant”) hereby submits to the Town of Carbondale (“Town”) its combined application for preliminary and final subdivision (“Application”) of Parcel 2, Thompson Park Subdivision, according to the Thompson Park Master Plat recorded in the Garfield County real property records at Reception No. 862909. Applicant requests that all parts of its Application be reviewed concurrently. Pre-application meetings via telephone have been conducted since April 2019.

The property comprising the Thompson Park subdivision was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052. It is subject to the Annexation and Development Agreement and nine amendments thereto (“Annexation Agreement”) between the Town and Applicant and the Applicant’s predecessor, Cerise Park, LLC. The Application refers to this stage of development as “Phase 2” because, according to the First Amendment to the Annexation Agreement (Reception No. 854368), the Master Plat constitutes both the Master Plat and Phase 1 Plat required by Section 4 of the Annexation Agreement. The subdivision is also subject to the Thompson Park Development Plan (the “Plan”) that was attached as an exhibit to the original Annexation Agreement and was amended in conjunction with the seventh amendment to the Annexation Agreement. Both the Annexation Agreement and the Plan impose restrictions and requirements on the development of the Property in addition to those contained in the Uniform Development Code (“UDC”).

Appendix A provided herewith lists each provision of the Annexation Agreement and the Plan that imposes an additional requirement on Applicant at the subdivision stage and explains how Applicant has satisfied each requirement. Those provisions of the Annexation Agreement and Plan that address site plan issues were analyzed and summarized in Applicant’s 2018 major site plan application.
In July 2018, the Town Board of Trustees approved a major site plan and conceptual subdivision plan for the entire subdivision, including Parcel 2. Pursuant to those approvals, Applicant is entitled to develop 27 dwelling units on Parcel 2. Application intends to do so by subdividing Parcel 2 into 24 lots and constructing eight duplex and townhome buildings on those lots. Lots 1 and 2 will be developed with a condominiuized affordable duplex and tri-plex, respectively, creating a total of 5 affordable housing units. Applicant will seek approval of the condominium plats once the buildings have been framed and the dimensions of the units can be determined. The remaining 22 market units will be divided among six townhome buildings ranging from duplexes to five-plexes. The privately-maintained roads within Parcel 2—Jewel’s Court and Lewie’s Circle—will not be separate parcels but, rather, public access easements over lots they cross.

Several of the major site plan application requirements are the same as the subdivision application requirements. As such, Applicant has already submitted—and the Town has approved—a majority of the preliminary and final subdivision crossover requirements. For ease of reference, Appendix B lists all of the preliminary and final subdivision application requirements and explains how each has been or will be satisfied. In light of the overlapping site plan and subdivision application requirements, per our August 9, 2019 telephone conversation, only the following documents are being submitted with the Application:

1. Land Use Application Form
2. Payment for Application fees (preliminary and final subdivision fees)
3. Title Commitment as proof of ownership of Parcel 2
4. Preliminary/Final Subdivision Plat documents
   - Final Plat
   - Proposed Declaration of Covenants, Conditions, Easements and Restrictions For Thompson Park Subdivision, including Design Review Guidelines as a separate document
   - List of adjacent property owners and their addresses
   - Utility Plan
5. Additional Documents
   - Proposed affordable housing deed restriction
   - Detailed design guidelines with list of approved plant species
   - Proposed Planning & Zoning Public Notice

Applicant has provided a total of 8 copies of all of the final plat and required plans, 4 of which are 24x36 and 4 of which are 11x17. Seven copies of all other documents have also been provided. All Application materials will be provided electronically as well.

Please contact me if you need additional information or have questions regarding any of the foregoing materials. Applicant respectfully requests that the Application be considered at the October 10, 2019 Planning & Zoning Commission meeting. We look forward to working with the Town as we proceed through the application process.

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1 The utility plans provided herewith are the construction plans used to install the water and sewer facilities. Applicant’s project manager has confirmed that the utilities have been constructed in accordance with the plans. However, the plans are not intended to be the final as-built plans required under the Parcel 2 Development Improvements Agreement in connection with the Town’s acceptance of the publicly-dedicated utilities. Such final as-built plans will be submitted once all utility connections and a field survey have been completed.
Sincerely,

GARFIELD & HECHT, P.C.

[Signature]

By: Haley Carmer
Attorneys for Cerise Park, LLC

Enclosures
## APPENDIX A
### ANNEXATION AGREEMENT (“AA”) AND DEVELOPMENT PLAN (“DP”) SUBDIVISION REQUIREMENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Agreement Text</th>
<th>Applicant Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AA 5(B)</strong></td>
<td>An SIA approved by the Town Attorney shall be required for any Phase Plat approval associated with the Project. Along with each SIA, the Developer shall provide to the Town a letter of credit or other security in a form consistent with the Town Code to secure the proper construction and installation of the public improvements.</td>
<td>A Development Improvements Agreement for the Parcel 2 public improvements was prepared and approved in connection with the 2018 major site plan application. The Development Improvements Agreement was recorded as an exhibit to the site plan approval ordinance—Ordinance 11, Series 2018—on November 11, 2018, at Reception No. 914139. Financial security for the public improvements in the form of a letter of credit was provided to the Town on October 31, 2018.</td>
</tr>
<tr>
<td><strong>AA 7(C)</strong></td>
<td>Prior to recordation of each Phase Plat, Developer shall pay a transportation impact fee for each platted lot or unit shown on the Phase Plat. Developer shall receive a credit against future transportation impact fees for all costs incurred with respect to Highway 133 Improvements.</td>
<td>In connection with the Master Plat, Applicant’s predecessor completed the Highway 133 Improvements called for in the Annexation Agreement and dedicated those improvements to the Town, which have been accepted. The costs incurred by Applicant’s predecessor with respect to the Highway 133 improvements satisfy Applicant’s transportation impact fee obligations.</td>
</tr>
<tr>
<td><strong>AA 10(B) &amp; (C)</strong></td>
<td>Affordable housing deed restriction</td>
<td>Applicant is submitting three versions of an affordable housing deed restriction with its Application. Because three different affordable housing categories are required to be located on Parcel 2 per the Eighth Amendment to the Annexation Agreement, there is a separate agreement for each category. The Declaration also references the affordable housing restriction (Sec. 4.15). The form of the deed restrictions included with the Application was approved by the Town in connection with a prior Parcel 2 subdivision application.</td>
</tr>
<tr>
<td>AA 11</td>
<td>Developer agrees to impose a real estate transfer assessment requiring the seller of any free market residential unit or lot to pay the Town a real estate transfer assessment of .5% of the gross sales price at the time of initial sale, and 1% of the gross sales price of each subsequent sale.</td>
<td>In connection with the major site plan approval, Applicant agreed to increase the initial RETA to 1%. That agreement is reflected in the Eighth Amendment to the Annexation Agreement. The RETA covenant was recorded against all subdivision parcels on July 10, 2019, at reception no. 922724. The Declaration also includes a provision regarding the RETA that references the separately recorded covenant (Sec. 4.14).</td>
</tr>
<tr>
<td>AA 12(A)</td>
<td>For each Phase of the Project, the Developer shall pay a fire district impact fee to the Carbondale and Rural Fire Protection District determined in accordance with the Fire District’s schedule of fees prior to the recordation of the Phase Plat for such Phase.</td>
<td>Applicant will pay the fire district impact fee of $730 per unit pay prior to recording the Phase Plat for Parcel 2.</td>
</tr>
<tr>
<td>AA 12(B)</td>
<td>For each Phase of the Project, the Developer shall pay a school district impact fee to Roaring Fork School District, RE 1 determined in accordance with the School District’s schedule of fees prior to the recordation of the Phase Plat for such Phase.</td>
<td>Applicant will pay the school impact fee to the Roaring Fork School District RE-1 prior to recordation of the Phase Plat for Parcel 2. At present, the fee is as follows: $162 per 1-bedroom unit, $219 per 2-bedroom unit, and $656 per 3-bedroom unit.</td>
</tr>
<tr>
<td>AA 13(A)</td>
<td>Developer shall submit a complete draft of a master declaration of restrictive covenants to be established for each Phase with each Phase Plat application.</td>
<td>The Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision is being submitted as part of the Application.</td>
</tr>
<tr>
<td>AA 13(D)</td>
<td>The Developer shall include in the restrictive covenants, and as a plat note on each Phase Plat, a prohibition of installation of solid fuel burning fireplaces, stoves, appliances or other devices.</td>
<td>Section 4.16 of the Declaration prohibits solid fuel burning appliances within the subdivision. A plat note regarding the same appear on the Phase Plat for Parcel 2.</td>
</tr>
<tr>
<td>AA 14(B)(3)</td>
<td>Developer shall include upon all Phase Plats and within the Governing Documents language regarding the raw water irrigation requirement and total irrigable acres within the Subdivision and each plat.</td>
<td>The required language, as amended¹ by the first amendment to the annexation agreement, appears in Section 4.17 of the Declaration and is included as a plat note on the Phase Plat for Parcel 2.</td>
</tr>
</tbody>
</table>

¹ The First Amendment to the Annexation Agreement reduced the total amount of irrigated area within the Subdivision to 4.71 acres and total residential lawn and garden irrigation area to 2.3 acres in light of the allocation of 1.0 acres of irrigation to Parcel 1 that is now the Ross Montessori School.
<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA 16(B)</td>
<td>All fees in lieu of water rights shall be paid at the time of recordation of a Phase Plat</td>
<td>A water rights dedication fee in the amount of $29,558 was paid in July 2018 in connection with the issuance of a building permit for Parcel 2</td>
</tr>
<tr>
<td>AA 16(F)(1)</td>
<td>With each Phase Plat application, the Developer shall provide a map to the Town showing the location of acreage to be irrigated in the future by the Town’s raw water system and the location of acreage to be dried up.</td>
<td>All of the irrigated areas on Parcel 2, including those within public rights-of-way, will be irrigated using the private raw water irrigation system to be installed by Applicant. This issue was analyzed and approved in connection with the 2018 major site plan approval.</td>
</tr>
<tr>
<td>16(F)(4)</td>
<td>Developer shall provide detailed designs with each Phase Plat application for the irrigation system(s) intended to serve development within such Phase.</td>
<td>This issue was analyzed and approved in connection with the 2018 major site plan approval.</td>
</tr>
<tr>
<td>DP 10(A) 1 thru 8</td>
<td>Architectural Design of Buildings and Structures</td>
<td>Applicant architectural and landscape design guidelines, which include a list of approved plant species, are included with the Application. Those guidelines are incorporated by reference into the Thompson Park Subdivision declaration at Section 4.4.</td>
</tr>
</tbody>
</table>
## APPENDIX B
PRELIMINARY AND FINAL SUBDIVISION APPLICATION REQUIREMENTS

<table>
<thead>
<tr>
<th>Application Requirement</th>
<th>Applicant Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PRELIMINARY SUBDIVISION</strong></td>
<td></td>
</tr>
<tr>
<td>Preliminary Plat</td>
<td>Town staff has advised that no preliminary plat is required for this Application because the information specific to the preliminary plat (e.g., drainage, topography, solar plan, etc.) was analyzed and approved in connection with the 2018 major site plan application.</td>
</tr>
<tr>
<td>Proposed covenants</td>
<td>The Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision is submitted as part of the Application.</td>
</tr>
<tr>
<td>Adjoining Property Owners</td>
<td>A list of property owners adjoining Parcel 2 as well as those within 300 feet of the property is submitted as part of the Application.</td>
</tr>
<tr>
<td>Shading and Solar Access</td>
<td>This issue was reviewed and approved in connection with the 2018 major site plan application.</td>
</tr>
<tr>
<td>Evidence of Title and Ownership</td>
<td>A current title commitment is submitted as part of the Application.</td>
</tr>
<tr>
<td>Consistency with conceptual subdivision plan</td>
<td>The final subdivision plat and conceptual subdivision plan approved by the Town in 2018 are consistent because both:</td>
</tr>
<tr>
<td></td>
<td>• Subdivide Parcel 2 into 24 lots</td>
</tr>
<tr>
<td></td>
<td>• Create the privately-maintained roads as publically-dedicated easements, not separate parcels</td>
</tr>
<tr>
<td></td>
<td>• Reflect the same lot configuration</td>
</tr>
<tr>
<td></td>
<td>The Parcel 2 open space areas shown on the conceptual plan were not designated as separate lots. Instead of making those areas separate lots on the Final Plat, they have been incorporated into Lots 1, 2, 3, 4, 5, 6, 9, 11, 12, 14, 17, and 19 and are designated as an open space easement that will be managed by the HOA and available for use by all subdivision owners.</td>
</tr>
<tr>
<td>Utility Plan</td>
<td>A utility plan showing the current location of the utilities being constructed on Parcel 2 is submitted as part of the Application.</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Street Profile</td>
<td>This issue was reviewed and approved in connection with the 2018 major site plan application.</td>
</tr>
<tr>
<td>Drainage Plan</td>
<td>This issue was reviewed and approved in connection with the 2018 major site plan application.</td>
</tr>
<tr>
<td>Irrigation Plan</td>
<td>This issue was reviewed and approved in connection with the 2018 major site plan application.</td>
</tr>
<tr>
<td>Land Dedication &amp; Park Development Fee</td>
<td>The open space dedication and park development fee requirements imposed by the Town’s municipal code and the Annexation Agreement were satisfied through (a) the conveyance of the Historic House Parcel to the Town; (b) the dedication of public pedestrian and bike trails throughout the subdivision; (c) payment of $31,500 at the time of recordation of the Master Plat; and (d) the improvements Applicant’s predecessor made to the Historic House Parcel pursuant to the Master Plat SIA.</td>
</tr>
</tbody>
</table>

**FINAL SUBDIVISION**

<table>
<thead>
<tr>
<th>Final Plat</th>
<th>A final plat including all of the elements required under the UDC is submitted as part of the Application.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covenants</td>
<td>The Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision is submitted as part of the Application.</td>
</tr>
<tr>
<td>Engineered plans and cost estimate for public improvements, including dedicated land, rights-of-way or easements</td>
<td>This issue was reviewed and approved in connection with the 2018 major site plan application.</td>
</tr>
<tr>
<td>Draft subdivision improvements agreement</td>
<td>A Development Improvements Agreement for the Parcel 2 public improvements was prepared and approved in connection with the 2018 major site plan application. The Development Improvements Agreement was recorded as an exhibit to the site plan approval ordinance—Ordinance 11, Series 2018—</td>
</tr>
<tr>
<td>Agreement to convey ownership of public improvements to the Town</td>
<td>This requirement is included in the existing Development Improvements Agreement.</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Land Dedication &amp; Park Development Fee</td>
<td>See description above</td>
</tr>
</tbody>
</table>
Land Use Application

PART 1 – APPLICANT INFORMATION

Applicant Name: Thompson Park, LLC  Phone: 970-947-1936
Applicant Address: c/o Garfield & Hecht, P.C., 901 Grand Avenue, #201, Glenwood Springs, CO 81601
E-mail: hcarmer@garfieldhecht.com

Owner Name: Thompson Park, LLC  Phone: same as above
Address: same as above
E-mail: same as above

Location of Property: provide street address and either 1) subdivision lot and block; or 2) metes and bounds:
Parcel 2, Thompson Park Subdivision Master Plat recorded May 19, 2015, as Reception No. 862909

PART 2 – PROJECT DESCRIPTION

General project description: Subdivision of Parcel 2 into 24 lots. A condominiumized duplex and triplex will be constructed on 2 of the lots, and townhomes will be constructed on the other 22 lots.

Size of Parcel: 2.2 acres  # Dwelling Units: 27  Sq Ftg Comm: 0
Type of Application(s): preliminary and final subdivision (UDC Sec.2.6.4 & 2.6.5)
Existing Zoning: Residential/Medium Density (R/MD)  Proposed Zoning: N/A

PART 3 – SIGNATURES

I declare that I have read the excerpt from the Town of Carbondale Municipal Code Article 8 Land Use Fees. I acknowledge that it is my responsibility to reimburse the Town for all fees incurred as a result of this application.

I declare that the above information is true and correct to the best of my knowledge.

Applicant Signature  Date

Owner Signature  Date  Owner Signature  Date

The above and foregoing document was acknowledged before me this 6th day of September, 2019, by David M. Bauer.

Witness my hand and official
My commission expires: 12/14/2022
Commitment Ordered By:
David McConaughy
Garfield & Hecht, P.C.
The Denver Centre
420 Seventh Street, Suite 100
Glenwood Springs, CO 81601
Phone: 970-945-1936 Fax: 970-947-1937
e-mail: dmcconcaughy@garfieldhecht.com

Commitment Number: 0600437-C8
Buyer's Name(s): Cerise Park, LLC, a Delaware limited liability company
Seller's Name(s):

Property:
1605 Highway 133, Carbondale, CO 81623
THOMPSON PARK SUBDIVISION, County of Garfield, State of Colorado.

Title Charges

These charges are based on issuance of the policy or policies described in the attached Commitment for Title Insurance, and includes premiums for the proposed coverage amount(s) and endorsement(s) referred to therein, and may also include additional work and/or third party charges related thereto.

If applicable, the designation of “Buyer” and “Seller” shown below may be based on traditional settlement practices in Garfield County, Colorado, and/or certain terms of any contract, or other information provided with the Application for Title Insurance.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner’s Policy Premium</td>
<td>$0.00</td>
</tr>
<tr>
<td>Loan Policy Premium</td>
<td>$0.00</td>
</tr>
<tr>
<td>Additional Lender Charge(s)</td>
<td></td>
</tr>
<tr>
<td>Additional Other Charge(s)</td>
<td></td>
</tr>
<tr>
<td>Tax Certificate</td>
<td>$25.00</td>
</tr>
<tr>
<td>Total Endorsement Charge(s)</td>
<td></td>
</tr>
<tr>
<td>TBD Charge(s)</td>
<td>$370.00</td>
</tr>
<tr>
<td><strong>TOTAL CHARGES:</strong></td>
<td><strong>$395.00</strong></td>
</tr>
</tbody>
</table>

---

Service Beyond Expectation in Colorado for: Eagle, Garfield, Grand, Pitkin and Summit Counties. (Limited Coverage: Jackson, Lake, Park and Routt Counties)
Locations In: Avon/Beaver Creek, Basalt, Breckenridge, Grand Lake and Winter Park. (Closing Services available in Aspen and Glenwood Springs)
ALTA Commitment For Title Insurance
(Adopted 06-17-06) (Revised 08-01-2016)

COMMITMENT FOR TITLE INSURANCE
ISSUED BY
WESTCOR LAND TITLE INSURANCE COMPANY

NOTICE

IMPORTANT-READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE
TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY
INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN
CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE,
LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE.
THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE,
INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE
PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO
EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A
PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND
PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION
INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment
Conditions, WESTCOR LAND TITLE INSURANCE COMPANY, a South Carolina Corporation (the
"Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This
Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule
A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy
Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within six (6) months after the Commitment Date,
this Commitment terminates and the Company’s liability and obligation end.

IN WITNESS WHEREOF, WESTCOR LAND TITLE INSURANCE COMPANY has caused its corporate
name and seal to be hereunto affixed and by these presents to be signed in facsimile under authority of its
by-laws, effective as of the date of Commitment shown in Schedule A.

Issued By:

WESTCOR LAND TITLE INSURANCE COMPANY

The Title Company of the Rockies
1620 Grand Avenue Bldg Main, Floor 1
Glenwood Springs, CO 81601
Phone: 970-945-1169

By:

Attest:

President
Secretary
1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.

2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.

3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.
Westcor Land Title Insurance Company ("WLTIC") and The Title Company of the Rockies value their customers and are committed to protecting the privacy of personal information. In keeping with that philosophy, we each have developed a Privacy Policy, set out below, that will ensure the continued protection of your nonpublic personal information and inform you about the measures WLTIC and The Title Company of the Rockies take to safeguard that information. This notice is issued jointly as a means of paperwork reduction and is not intended to create a joint privacy policy. Each company's privacy policy is separately instituted, executed, and maintained.

**Who is Covered**

We provide our Privacy Policy to each customer when they purchase a WLTIC title insurance policy. Generally, this means that the Privacy Policy is provided to the customer at the closing of the real estate transaction.

**Information Collected**

In the normal course of business and to provide the necessary services to our customers, we may obtain nonpublic personal information directly from the customer, from customer-related transactions, or from third parties such as our title insurance agent, lenders, appraisers, surveyors and other similar entities.

**Access to Information**

Access to all nonpublic personal information is limited to those employees who have a need to know in order to perform their jobs. These employees include, but are not limited to, those in departments such as closing, legal, underwriting, claims and administration and accounting.

**Information Sharing**

Generally, neither WLTIC nor The Title Company of the Rockies shares nonpublic personal information that it collects with anyone other than those individuals necessary needed to complete the real estate settlement services and issue its title insurance policy as requested by the consumer. WLTIC or The Title Company of the Rockies may share nonpublic personal information as permitted by law with entities with whom WLTIC or The Title Company of the Rockies has a joint marketing agreement. Entities with whom WLTIC or The Title Company of the Rockies have a joint marketing agreement have agreed to protect the privacy of our customer's nonpublic personal information by utilizing similar precautions and security measures as WLTIC and The Title Company of the Rockies use to protect this information and to use the information for lawful purposes. WLTIC or The Title Company of the Rockies, however, may share information as required by law in response to a subpoena, to a government regulatory agency or to prevent fraud.

**Information Security**

WLTIC and The Title Company of the Rockies, at all times, strive to maintain the confidentiality and integrity of the personal information in its possession and has instituted measures to guard against its unauthorized access. We maintain physical, electronic and procedural safeguards in compliance with federal standards to protect that information.

*The WLTIC Privacy Policy can be found on WLTIC's website at [www.wltic.com](http://www.wltic.com)*
COMMITMENT FOR TITLE INSURANCE
Issued by

TITLE COMPANY
of the rockies

as agent for

Westcor Land Title Insurance Company

SCHEDULE A

Reference:  
Commitment Number: 0600437-C8

1. Effective Date: May 31, 2019, 7:00 am  Issue Date: June 12, 2019

2. Policy (or Policies) to be issued:
   ALTA Owner's Policy (6-17-06)  Policy Amount: Amount to be Determined
   Premium: Amount to be Determined
   Proposed Insured: Thompson Park, LLC

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.

4. The Title is, at the Commitment Date, vested in:
   Thompson Park, LLC

5. The land referred to in this Commitment is described as follows:
   FOR LEGAL DESCRIPTION SEE SCHEDULE A CONTINUED ON NEXT PAGE

   Countersigned
   The Title Company of the Rockies

   By: ________________________________

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Westcor Land Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; and Schedule B, Part II-Exceptions.

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SCHEDULE A (continued)

LEGAL DESCRIPTION

The Land referred to herein is located in the County of Garfield, State of Colorado, and described as follows:

Parcels 2, 3 and 4, THOMPSON PARK SUBDIVISION MASTER PLAT, according to the Plat thereof filed May 19, 2015 as Reception No. 862909.

Upon compliance with Requirement No. 10, the Legal Description will read as follows:

Lot___, __________, according to the Plat thereof filed _____, 2019 at Reception No. ________.
COMMITMENT FOR TITLE INSURANCE

Issued by

Westcor Land Title Insurance Company

SCHEDULE B, PART I

Requirements

The following are the requirements to be complied with prior to the issuance of said policy or policies. Any other instrument recorded subsequent to the effective date hereof may appear as an exception under Schedule B of the policy to be issued. Unless otherwise noted, all documents must be recorded in the office of the clerk and recorded of the county in which said property is located.

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

2. Pay the agreed amount for the estate or interest to be insured.

3. Pay the premiums, fees, and charges for the Policy to the Company.

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

5. Evidence satisfactory to the Company or its duly authorized agent that all dues and/or assessments levied by the Homeowners Association have been paid through the date of closing.

6. Partial Release by the Public Trustee of Garfield County releasing subject property from the lien of the Deed of Trust from Thompson Park LLC for the use of National Exchange Bank and Trust, to secure $2,500,000.00, dated September 26, 2018, and recorded September 27, 2018 at Reception No. 912219.

7. NOTE: The above Deed of Trust secures a revolving line of credit.

8. Partial Release by the Public Trustee of Garfield County releasing subject property from the lien of the Deed of Trust from Thompson Park LLC for the use of National exchange Bank and Trust, to secure $6,500,000.00, dated September 26, 2018, and recorded September 27, 2018 at Reception No. 912263.
NOTE: Disburser's Notice by National Exchange Bank and Trust, recorded October 17, 2018 at Reception No. 913080.

NOTE: The above Deed of Trust secures a revolving line of credit.

9. Termination Statement for Financing Statement from Thompson Park LLC, debtor(s), to National Exchange Bank and Trust, secured party, recorded September 27, 2018 at Reception No. 912264, giving notice of a security interest under the Uniform Commercial Code.

10. Record Plat of _________.

THE COMPANY RESERVES THE RIGHT TO CONDUCT AN ADDITIONAL SEARCH OF THE RECORDS IN THE OFFICE OF THE CLERK AND RECORDER FOR GARFIELD COUNTY, COLORADO FOR JUDGMENT LIENS, TAX LIENS OR OTHER SIMILAR OR DISSIMILAR INVOLUNTARY MATTERS AFFECTING THE GRANTEE OR GRANTEES, AND TO MAKE SUCH ADDITIONAL REQUIREMENTS AS IT DEEMS NECESSARY, AFTER THE IDENTITY OF THE GRANTEE OR GRANTEES HAS BEEN DISCLOSED TO THE COMPANY.

NOTE: THIS COMMITMENT IS ISSUED UPON THE EXPRESS AGREEMENT AND UNDERSTANDING THAT THE APPLICABLE PREMIUMS, CHARGES AND FEES SHALL BE PAID BY THE APPLICANT IF THE APPLICANT AND/OR ITS DESIGNEE OR NOMINEE CLOSES THE TRANSACTION CONTEMPLATED BY OR OTHERWISE RELIES UPON THE COMMITMENT, ALL IN ACCORDANCE WITH THE RULES AND SCHEDULES OF RATES ON FILE WITH THE COLORADO DEPARTMENT OF INSURANCE.
SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

Any loss or damage, including attorney fees, by reason of the matters shown below:

1. Any facts, right, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession thereof.

2. Easements or claims of easements, not shown by the Public Records.

3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

4. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

5. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the Public Records or attaching subsequent to the effective date hereof, but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

7. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as reserved in United States Patent recorded February 7, 1894 in Book 12 at Page 295, October 10, 1894 in Book 12 at Page 334, October 26, 1897 in Book 12 at Page 465 and November 10, 1947 in Book 232 at Page 435.


NOTE: Quitclaim Deed recorded September 13, 2016 at reception No. 882286.

11. Terms, agreements, provisions, conditions and obligations as contained in Resolution No. 2008-30 recorded February 21, 2008 as Reception No. 743343.

12. Easements, rights of way and all other matters as shown on the Plat of TLCCO Property Exemption Plat, filed April 8, 2008 as Reception No. 746205.


13. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 3, Series of 2012, recorded March 16, 2012 as Reception No. 816052.

14. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 4, Series of 2012, recorded March 16, 2012 as Reception No. 816054.

15. Annexation and Development Agreement, recorded March 16, 2012 as Reception No. 816055, Second Amendment recorded March 28, 2014 as Reception No. 847651, Third Amendment recorded July 9, 2014 as Reception No. 851166, Second Amendment recorded August 15, 2014 as Reception No. 852656, First Amendment recorded October 6, 2014 as Reception No. 854368, Fourth Amendment recorded February 25, 2015 as Reception No. 859604, Fifth Amendment recorded February 25, 2015 as Reception No. 859605, and Sixth Amendment recorded May 19, 2015 at Reception No. 862912, seventh Amendment recorded July 28, 2016 at Reception No. 880318, rerecorded August 16, 2016 at Reception No. 881125 and eighth amendment recorded November 14, 2018 at Reception No. 914138.

NOTE: Acknowledgement and Consent to Assignment recorded September 27, 2018 at Reception No. 912248.

16. All Matters disclosed on the Thompson Park Subdivision Master Plat recorded May 19, 2015 as Reception No. 861840.
17. Easements, rights of way and all other matters as shown on the Plat of Thompson Park Subdivision Master Plat, filed May 19, 2015 at Reception No. 862909.

18. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 9, Series of 2015 recorded May 19, 2015 at Reception No. 862908.

19. Terms, agreements, provisions, conditions and obligations as contained in Master Subdivision Improvements Agreement recorded May 19, 2015 at Reception No. 862913, thereafter first amendment recorded January 6, 2016 at Reception No. 872184.

20. Easement and right of way for utility line purposes, as granted by Cerise Park, LLC to Public Service Company of Colorado, by instrument recorded September 13, 2016 at Reception No. 882287, said easement being more particularly described therein.

21. Terms, agreements, provisions, conditions and obligations as contained in Ordinance No. 11, Series of 2018 recorded November 14, 2018 at Reception No. 914139.

22. Easements, rights of way and all other matters as shown on the Plat of _______, filed ____, 2019 at Reception No. ______.
DISCLOSURE STATEMENTS

Note 1: Colorado Division of Insurance Regulations 3-5-1, Paragraph C of Article VII, requires that "Every Title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the Title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed." (Gap Protection)

Note 2: Exception No. 4 of Schedule B, Section 2 of this Commitment may be deleted from the Owner's Policy to be issued hereunder upon compliance with the following conditions:

1. The Land described in Schedule A of this commitment must be a single-family residence, which includes a condominium or townhouse unit.
2. No labor or materials may have been furnished by mechanics or materialmen for purpose of construction on the Land described in Schedule A of this Commitment within the past 13 months.
3. The Company must receive an appropriate affidavit indemnifying the Company against unfiled mechanic's and materialmen's liens.
4. Any deviation from conditions A though C above is subject to such additional requirements or Information as the Company may deem necessary, or, at its option, the Company may refuse to delete the exception.
5. Payment of the premium for said coverage.

Note 3: The following disclosures are hereby made pursuant to §10-11-122, C.R.S.:

(i) The subject real property may be located in a special taxing district;
(ii) A certificate of taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent; and
(iii) Information regarding special districts and the boundaries of such districts may be obtained from the County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note 4: If the sales price of the subject property exceeds $100,000.00, the seller shall be required to comply with the disclosure or withholding provisions of C.R.S. §39-22-604.5 (Non-resident withholding).

Note 5: Pursuant to C.R.S. §10-11-123 Notice is hereby given:

(a) If there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate then there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property, and
(b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note 6: Effective September 1, 1997, C.R.S. §30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one-half inch the clerk and recorder may refuse to record or file any document that does not conform.

Note 7: Our Privacy Policy:
We will not reveal nonpublic personal customer information to any external non-affiliated organization unless we have been authorized by the customer, or are required by law.

Note 8: Records:
Regulation 3-5-1 Section 7 (N) provides that each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law.

Note 9: Pursuant Regulation 3-5-1 Section 9 (F) notice is hereby given that “A title entity shall not earn interest on fiduciary funds unless disclosure is made to all necessary parties to a transaction that interest is or has been earned. Said disclosure must offer the opportunity to receive payment of any interest earned on such funds beyond any administrative fees as may be on file with the division. Said disclosure must be clear and conspicuous, and may be made at any time up to and including closing.”

Be advised that the closing agent will or could charge an Administrative Fee for processing such an additional services request and any resulting payee will also be subjected to a W-9 or other required tax documentation for such
purpose(s).
Be further advised that, for many transactions, the imposed Administrative Fee associated with such an additional service may exceed any such interest earned.
Therefore, you may have the right to some of the interest earned over and above the Administrative Fee, if applicable (e.g., any money over any administrative fees involved in figuring the amounts earned).

Note 10: Pursuant to Regulation 3-5-1 Section 9 (G) notice is hereby given that “Until a title entity receives written instructions pertaining to the holding of fiduciary funds, in a form agreeable to the title entity, it shall comply with the following:

1. The title entity shall deposit funds into an escrow, trust, or other fiduciary account and hold them in a fiduciary capacity.
2. The title entity shall use any funds designated as “earnest money” for the consummation of the transaction as evidenced by the contract to buy and sell real estate applicable to said transaction, except as otherwise provided in this section. If the transaction does not close, the title entity shall:
   (a) Release the earnest money funds as directed by written instructions signed by both the buyer and seller; or
   (b) If acceptable written instructions are not received, uncontested funds shall be held by the title entity for 180 days from the scheduled date of closing, after which the title entity shall return said funds to the payor.
3. In the event of any controversy regarding the funds held by the title entity (notwithstanding any termination of the contract), the title entity shall not be required to take any action unless and until such controversy is resolved. At its option and discretion, the title entity may:
   (a) Await any proceeding; or
   (b) Interplead all parties and deposit such funds into a court of competent jurisdiction, and recover court costs and reasonable attorney and legal fees; or
   (c) Deliver written notice to the buyer and seller that unless the title entity receives a copy of a summons and complaint or claim (between buyer and seller), containing the case number of the lawsuit or lawsuits, within 120 days of the title entity’s written notice delivered to the parties, title entity shall return the funds to the depositing party.”
Title Company of the Rockies

Disclosures

All documents received for recording or filing in the Clerk and Recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The Clerk and Recorder will refuse to record or file any document that does not conform to the requirements of this section. Pursuant to C.R.S. 30-10-406(3)(a).

The company will not issue its policy or policies of title insurance contemplated by this commitment until it has been provided a Certificate of Taxes due or other equivalent documentation from the County Treasurer or the County Treasurer's authorized agent; or until the Proposed Insured has notified or instructed the company in writing to the contrary. Pursuant to C.R.S. 10-11-122.

No person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been received and are available for immediate withdrawals as a matter of right. Pursuant to C.R.S. 38-35-125(2).

The Company hereby notifies the proposed buyer in the current transaction that there may be recorded evidence that the mineral estate, or portion thereof, has been severed, leased, or otherwise conveyed from the surface estate. If so, there is a substantial likelihood that a third party holds some or all interest in the oil, gas, other minerals, or geothermal energy in the subject property. Such mineral estate may include the right to enter and use the property without the surface owner's permission. Pursuant to C.R.S. 10-11-123.

If this transaction includes a sale of property and the sales price exceeds $100,000.00, the seller must comply with the disclosure/withholding requirements of said section. (Nonresident withholding) Pursuant to C.R.S. 39-22-604.5.

Notice is hereby given that: The subject property may be located in a special taxing district. A Certificate of Taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent. Information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor. Pursuant to C.R.S. 10-11-122.

Notice is hereby given that: Pursuant to Colorado Division of Insurance Regulation 8-1-2;

"Gap Protection" - When this Company conducts the closing and is responsible for recording or filing the legal documents resulting from the transaction, the Company shall be responsible for all matters which appear on the record prior to such time or recording or filing; and

"Mechanic's Lien Protection" - If you are the buyer of a single family residence, you may request mechanic's lien coverage to be issued on your policy of Insurance. If the property being purchased has not been the subject of construction, improvements or repairs in the last six months prior to the date of this commitment, the requirements will be payment of the appropriate premium and the completion of an Affidavit and Indemnity by the seller. If the property being purchased was constructed, improved or repaired within six months prior to the date of this commitment the requirements may involve disclosure of certain financial information, payment of premiums, and indemnity, among others. The general requirements stated above are subject to revision and approval by the Company. Pursuant to C.R.S. 10-11-122.

Notice is hereby given that an ALTA Closing Protection Letter is available, upon request, to certain parties to the transaction as noted in the title commitment. Pursuant to Colorado Division of Insurance Regulation 8-1.

Nothing herein contained will be deemed to obligate the Company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.
# Thompson Park Subdivision, Parcel 2
Adjacent Property Owners and Owners within 300 Feet

<table>
<thead>
<tr>
<th>Parcel Id</th>
<th>Owner Name</th>
<th>Owner Mailing Address</th>
<th>City, State, Zip</th>
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<tbody>
<tr>
<td>R082837</td>
<td>CARBONDALE, TOWN OF</td>
<td>511 COLORADO AVENUE</td>
<td>CARBONDALE CO 81623</td>
</tr>
<tr>
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<td>CARBONDALE CO 81623</td>
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<td>CARBONDALE CO 81623</td>
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<td>CARBONDALE, TOWN OF</td>
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<td>CARBONDALE CO 81623</td>
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<tr>
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<td>CARBONDALE CO 81623</td>
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<td>R090001</td>
<td>CHAPMAN, COLIN R</td>
<td>1537 HIGHWAY 133</td>
<td>CARBONDALE CO 81623</td>
</tr>
<tr>
<td>R090015</td>
<td>MARK ROSS MONTESSORI FOUNDATION</td>
<td>109 LEWIES LANE</td>
<td>CARBONDALE CO 81623</td>
</tr>
<tr>
<td>R090061</td>
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<td>109 LEWIES LANE</td>
<td>CARBONDALE CO 81623</td>
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<tr>
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<td>ROARING FORK SCHOOL DISTRICT, NO. RE-1</td>
<td>1405 GRAND AVE</td>
<td>GLENWOOD SPRINGS CO 81601</td>
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<tr>
<td>R083575</td>
<td>THOMPSON PARK LLC</td>
<td>833 E MICHIGAN STREET SUITE 1500</td>
<td>MILWAUKEE WI 53202</td>
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<tr>
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<td>MILWAUKEE WI 53202</td>
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<td>R083345</td>
<td>THOMPSON, LEWIS R &amp; JACQUELYN</td>
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<td>CARBONDALE CO 81623</td>
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<td>CARBONDALE CO 81623</td>
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<td>R090027</td>
<td>VAUGHAN, MATTHEW S &amp; KATHLEEN M</td>
<td>1535 HIGHWAY 133</td>
<td>CARBONDALE CO 81623</td>
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</table>
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THOMPSON PARK SUBDIVISION

This Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision (this “Declaration”) is made this ___ day of _______________, 2019, by Thompson Park, LLC, a Colorado limited liability company (“Declarant”).

RECITALS

A. Capitalized terms used in this Declaration are defined in Section 1.1.

B. Declarant owns the Property, which is real property located in the Town of Carbondale, County of Garfield, State of Colorado.

C. By recording this Declaration, Declarant By the filing of this Declaration, Declarant serves notice that upon the further filing of one or more notices of applicability pursuant to the requirements of Section 16.02 hereof, Portions of the Property identified in such notice or notices will be subjected to the terms and provisions of this Declaration. Once such notices of applicability have been recorded, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Declaration.

D. The law which governs the type of association described herein is the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, et seq., as the same may be amended from time to time (the “Act”). The development contemplated herein is a “common interest community” (as such term is defined in the Act). The type of common interest community is a “planned community” (as such term is defined in the Act) because portions of the real estate are designated for ownership by an owners’ association. In the event of any conflict or inconsistency between the provisions of the Act and this Declaration, the provisions of the Act shall govern.

DECLARATION

NOW, THEREFORE, it is hereby declared that those portions of the Property, as and when subjected to this Declaration pursuant to Section 7.4, below, shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions, easements, and restrictions and the Act, as may be amended from time to time. With respect to each portion of the Property subjected hereto as provided herein, this Declaration shall: (i) run with the subjected portion(s) of the Property at law; (ii) bind all Persons having or acquiring interest in the subjected portion(s) of the Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of the subjected portion(s)
of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by each Owner and his or her heirs, successors in interest and assigns; and the Association and its successor in interest.

**Article 1: Definitions and Exhibits**

Section 1.1 **Definitions.** The following initially capitalized terms when used in this Declaration shall have the meanings specified below:

“**Act**” means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes §§ 38-33.3-101, et seq., as amended from time to time. In the event the Act is repealed, the terms of the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

“**Allocation Percentage**” means the share of any Assessments to be allocated to each Lot or Unit, as amended from time to time. The formula for determining the Allocation Percentage is set forth in Section 6.9.

“**Declaration**” means this Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision as it is amended from time to time.

“**Annual Budget**” is defined in Section 6.1.

“**Articles**” means the Articles of Incorporation of the Association that have been filed in the office of the Secretary of State of Colorado, as amended from time to time.

“**Assessments**” mean Common Assessments, Special Assessments, and Specific Assessments.

“**Association**” means Thompson Park Homeowners Association, Inc., a Colorado nonprofit corporation, presently formed.

“**Board or Board of Directors**” means the board of directors of the Association.

“**Bylaws**” means the duly adopted Bylaws of the Association, as amended from time to time.

“**Common Assessments**” is defined in Section 6.3.

“**Common Elements**” means any real property or easement interest in real property together with all improvements thereon and personal property owned or held by the Association for the primary benefit of all or some of the Owners and the Property as a whole or a portion thereof, and this term includes both General Common Elements and Limited Common Elements.
“Common Expenses” means, except for those costs and expenses expressly excluded below, all costs and expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws including, without limitation: all costs of insuring, operating, managing, administering, securing, protecting, cleaning, maintaining, repairing, renewing, replacing or restoring (to the extent not covered by insurance or condemnation proceeds) the Common Elements and public rights-of-way and open ditch channels within the Property; taxes on any property owned by the Association, if payable by the Association; and funding of working capital and reasonable reserves for such costs and expenses.

“Declarant” means Thompson Park, LLC, and its successors and assigns. No party other than Thompson Park, LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the Office of the Clerk and Recorder of Garfield County, Colorado, a written assignment from Thompson Park, LLC of all or a portion thereof.

“Declarant Control Period” means that period of time during which Declarant controls the operation and management of the Association, including the right to appoint and remove all members of the Board and the officers of the Association. The duration of the Declarant Control Period is from the date this Declaration is recorded until the earlier to occur of: (i) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; (ii) two (2) years after any right to add portions of the Property was last exercised Declarant; or (iii) one-hundred and twenty (120) days after the conveyance of seventy-five percent (75%) of all Lots that may be created out of the Property have been conveyed to Owners other than the Declarant.

“Delinquency Costs” is defined in Section 6.10.

“Deed Restriction Agreement” means the Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy, and Resale of Certain Lots within the Thompson Park Subdivision, Town Of Carbondale, Garfield County, Colorado (“Deed Restriction Agreement”). Deed Restriction Agreements will be recorded against Units as phases of the Property are platted and the same are added to the Development as provided in Section 7.4.

“Deed Restricted Unit” means those Units within the Development that are subject to a Deed Restriction Agreement. Units within the Development may become Deed Restricted Units as additional phases are platted.

“Design Guidelines” means the detailed design guidelines required by Section 10 of the Development Plan and recorded as Reception No. ______________, as may be amended from time to time.
“Development” means the portion of the Property described in Exhibit A that has been made subject to this Declaration through the filing of a Notice of Applicability.

“Development Plan” means the Thompson Park Development Plan approved by the Town of Carbondale and attached as Exhibit A to the Seventh Amendment to the Annexation and Development Agreement Relating to the Thompson Park Property, Town of Carbondale, dated June 22, 2016, recorded as Reception No. 880318, and rerecorded at Reception No. 881125, as may be amended with approval of the Town of Carbondale.

“Director” means a member of the Board.

“Dwelling” means a Unit or other Improvement or portion thereof containing sleeping, bath, and kitchen facilities that is designed and used for occupancy as a dwelling on a Lot. A residence may be either a detached single-family dwelling or an individual residential unit within a multi-family building, which building may span several Lots and include Party Walls.

“First Mortgagee” means the legal holder of a Mortgage with first priority over other Mortgages.

“Fiscal Year” means the fiscal year of the Association set from time to time by the Board pursuant to the Bylaws.

“Free Market Lot” means any Lot that is not a Deed Restricted Unit.

“Future Development Parcels” means Parcels 3 and 4 as shown on the Master Plat and any other parcel shown on any Plat and designated thereon as “RESERVED FOR FUTURE DEVELOPMENT.”

“General Common Element” means a Common Element owned or held by the Association for the benefit of all of the Owners and the Property as a whole.

“Guest” means any Person rightfully present on or in rightful possession of any portion of the Property, including, without limitation, (a) a tenant of an Owner or of the Association or (b) an agent, employee, contractor, licensee, invitee, shareholder, partner, Owner or guest of an Owner, the Association or a tenant of either of them.

“Improvement(s)” means all structures, facilities, installations, improvements to property, changes in property, and appurtenances thereto, of every type, kind or nature, including, without limitation, buildings, road, driveways, walkways, fences, walls, patios, decks, gardens, landscaping, re-vegetation, and removal of vegetation, changes in grade, excavations, berms, ditches, culverts, poles, outdoor lighting, antennas and signs.

“Law” means all laws, statutes, ordinances, resolutions, orders, codes, rules, regulations, judgments, decrees and other requirements (including requirements under permits, licenses,
consents and approvals) of any federal, state, county, city, town or other governmental authority having jurisdiction over the Property or any activity on the Property.

“Lessee” means any Person or Persons who is the lessee of a Lot under a lease.

“Limited Common Element” means a Common Element owned and maintained by the Association for the benefit of one or more Lots but fewer than all of the Lots, including but not limited to individual yards or driveways. The Plat shall identify the specific Lot or Lots benefited by each Limited Common Element.

“Livestock” means animals, other than cats or dogs, customarily raised or kept on ranches or farms for profit including, without limitation, horses.

“Lot” means each of the lots or parcels shown on any Plat of the Property. All of the Lots, Units, and Future Development Parcels together with the Common Elements comprise the “Property.”

“Master Plat” means the Thompson Park Subdivision Master Plat recorded in the Office of the Garfield County Clerk and Recorder on May 19, 2015, as Reception No. 862909.

“Member” means a member of the Association, and “Membership” means the rights and obligations associated with being a Member.

“Mortgage” means any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure an evidence of debt or the performance of an obligation which is required to be released upon the payment of such debt or the performance of such obligation.

“Notice of Applicability” means the notice recorded in the Records subjecting a portion of the Property to this Declaration in accordance with Section 7.4 hereof.

“Notice to Comply” is defined in Section 7.12.

“Owner” means a Person or Persons who is the owner of fee simple title of Record to a Lot or Unit from time to time, but excluding the Association. The term “Owner” shall not include (a) a contract purchaser except a contract vendee under an installment land sales contract; (b) the vendor under an installment sales contract; or (c) a Person holding an interest in a Lot or Unit merely as security for the performance of an obligation, unless and until such a security holder becomes an owner in fee simple of such Lot or Unit.

“Party Wall” means any common wall adjoining two or more Dwellings along the boundary between Lots or Units and shall be deemed to include the roofing underlying the portion of the roof over, and the utility lines within, a common wall.
“Permitted” means allowed pursuant to or not inconsistent with the provisions of this Declaration, the Bylaws, the Rules (if any) and in compliance with Law.

“Person” means any individual, corporation, partnership (general or limited, with or without limited liability), limited liability company, estate, trust, business trust, association or any other legal entity.

“Plat” means a subdivision plat or condominium map or plat that is recorded in the Records in order to subdivide the Property into Lots and/or Units. Up to five subdivision Plats, not including the Master Plat, may be recorded, and each such Plat may be amended or supplemented from time to time as necessary.

“Property” means the real property legally described on Exhibit A along with any and all Improvements now in place or hereafter constructed thereon. Such real property or portions thereof may be made subject to this Declaration, from time to time, by the filing of one or more Notices of Applicability.

“Record(s)” means the real property records of Garfield County, Colorado.

“Reserve Fund” is defined in Section 6.1.

“Restrictions” or “Governing Documents” means (i) this Declaration, as amended from time to time, (ii) the Articles and Bylaws in effect from time to time, (iii) the Rules (if any) in effect from time to time; (iv) any Policies and Procedures; (v) the Development Plan; and (vi) the Design Guidelines in effect from time to time.

“RETA” means the real estate transfer assessment due upon sale of the Lots or Units pursuant to the document recorded in the Records on July 10, 2019 as Reception No. 922724 (the “RETA Covenant”) or as the RETA Covenant may be amended in the future if authorized by the Town of Carbondale.

“Rules” or “Rule” means the rules and regulations adopted by the Board pursuant to Section 5.6 as such rules and regulations are adopted and amended from time to time.

“Special Assessments” is defined in Section 6.4.

“Specific Assessments” is defined in Section 6.5.

“Thompson Park” means the planned community located on the Property that may be subject to this Declaration upon the recordation of a Notice of Applicability.

“Unit” means a condominium unit within an Improvement constructed on a Lot that is deemed a separate estate in an individual air space unit, the horizontal and vertical boundaries of which are created and defined by a Plat.
Section 1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Declaration.

Exhibit A - Legal Description of the Property
Exhibit B - Schedule of Percentages upon development and annexation of entire Property

Article 2: The Community.

Section 2.1 Purposes. These covenants and restrictions are made for the purposes of creating and keeping the Property insofar as possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance; guarding against fires and unnecessary interference with the natural beauty of the Property, all in accordance with the Act.

Section 2.2 Name. The name of the Association is Thompson Park Homeowners Association, Inc.

Section 2.3 Election of CCIOA. The Declarant and the Association have elected to subject Thompson Park to the entire Act and hereby subject the Property to all of the provisions contained in the Act notwithstanding the number of Lots created by the initial Plat.

Section 2.4 Legal Description. Any contact of sale, deed lease, deed of trust, mortgage, will or other instrument affecting a Lot shall legally describe it substantially as follows:

“Lot ____, [Unit ___ if applicable], THOMPSON PARK SUBDIVISION, PHASE ____, according to the __________________ Plat recorded ______________, 20__ at Reception No. ___________, in the real estate records of Garfield County, State of Colorado and according to the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision recorded ______________, 2019, at Reception No. __________ of the real estate records of Garfield County, State of Colorado.”

Article 3: Easements.

Section 3.1 Easements Described on Plat and in Declaration. All of the Property is subject to the easements shown, created, served, or granted on the Master Plat, any Plat, and in this Declaration.

Section 3.2 Utility Easements. There is hereby reserved to the Association the following rights: (i) grant of nonexclusive easements for underground utilities, including, without limitation, for the installation, relocation, operation, maintenance, repair and
replacement of lines, pumps, pipes, transformers, tanks, wires, conduits, culverts, pedestals and other facilities or systems and for ingress and egress to and from the same over and across the Property, and (ii) without extinguishing the aforementioned general easement, from time to time to substitute one or more specific easements for the use by utility companies or others by recording an instrument in the real estate records of Garfield County. Where necessary, the Board shall have the right, without obtaining consent of any Owner or Lienholder, to amend the Plat to reflect any relocations of existing easements on the Plat or the granting of new easements for any of the purposes permitted hereunder.

Section 3.3 Common Elements. All Improvements constructed within the areas affected by the Easements, excepting those Improvements constructed and maintained by Owners, are Common Elements.

Section 3.4 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of any easement area or any other portion of the Property to or for the general public for any public purpose whatsoever.

Section 3.5 Easements for Encroachments. If any portion of the Common Elements encroaches upon any Lot or Unit, or if any Lot or Unit encroaches upon any other Lot or Unit or upon any portion of the Common Elements, as a result of the construction of any Improvement or otherwise, or if any such encroachment shall occur hereinafter as a result of settling or shifting of any Improvement, a valid easement shall exist for the encroachment and for the maintenance of the same so long as such Improvement stands. In the event any Improvement, Lot, Unit, adjoining Lot or Unit, or adjoining Common Element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Lot or Unit, or of any Lot or Unit upon any other Lot, Unit, or portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such Improvement shall stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or upon title to the Lots or Units so as to impair merchantability of title. Any such easement shall burden the Lot, Unit, or Common Elements encroached upon and benefit the Lot, Unit, or Common Elements on which the encroaching Improvement is located or which is benefited by the encroaching Improvement. Notwithstanding the foregoing, in no event shall an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lot(s) or Unit(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of the Owner claiming the benefit of such easement.

Section 3.6 Rules. The Board may adopt and enforce Rules pursuant to this Declaration governing the use of all easements created under this Declaration for the benefit of the Owners and their Guests.
Section 3.7  **Association Easements Over the Lots.** There is hereby created and established for the benefit of the Association easements over, across, within and through the Lots and Units as may be necessary for the Association to perform the duties and functions it is obligated or permitted to perform under this Declaration.

Section 3.8  **Roadways and Trails.** The Plat(s) may include easements for private roadways, alleys, paths, or trails as Common Elements to be owned, maintained, and insured by the Association, and each Owner shall have a right of ingress and egress over and across any such roadways, alleys, paths, or trails; provided, however, that such roadways, alleys, paths, or trails may be designated on a Plat as being publically accessible. If any roadways, alleys, paths, or trails are designated on a Plat as Limited Common Elements, then easement rights of Owners shall be limited to those Owners of Lots or Units specifically benefited by such Limited Common Elements.

Section 3.9  **Party Walls.**

3.9.1 The cost of reasonable repair and maintenance of a Party Wall shall be a joint expense of the Owners of the Dwellings sharing such Party Wall, and each such Owner shall have a perpetual easement in and to that part of the Property on which the Party Wall is located, regardless of the precise location of the Lot or Unit boundary with respect to such Party Wall, for Party Wall purposes, including maintenance, repair, and inspection. No Owner shall alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when initially constructed.

3.9.2 In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, then the Owners of the Dwellings sharing such Party Wall shall bear equally the expense to repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient, and such Owners, their successors and assigns shall have the right to the full use of said wall so repaired and rebuilt. If an Owner’s negligence or willful misconduct shall cause damage to or destruction of said wall, such responsible party shall bear the cost of repair and reconstruction to the extent such Owner’s negligence or misconduct caused such damage.

3.9.3 The Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring sewage, water, utilities, and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient, and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural support or the sound transmission coefficient of the Party Wall.

3.9.4 Declarant hereby grants to the Association and its representatives and agents a nonexclusive easement to enter upon and use the Property on which a Party Wall is
located as may be necessary or appropriate to perform the duties and functions that the
Association may be obligated or permitted to perform under this Declaration.

3.9.5 Nothing in this Section 3.9 shall be construed as a waiver of any
applicable insurance coverage for damage to any Party Wall.

Section 3.10 Open Space Easements. The Open Space Easements identified on any Plat
shall be considered Common Elements to be owned, maintained, and insured by the Association.
Each Owner shall be entitled to enter upon and use such Open Space Easements, and the
Association shall have the right to adopt Rules regarding use of the Open Space Easements.

**Article 4: Covenants, Conditions and Restrictions.**

Section 4.1 Generally. Except as otherwise expressly provided in this Declaration,
each Lot and Unit shall be owned, used, and conveyed subject to the covenants, conditions and
restrictions of this Article 4. This Section 4.1 is not intended and shall not be construed to limit
the effect of any provision contained in any other Article of this Declaration.

Section 4.2 Compliance with Law. Nothing shall be done or kept on any Lot in
violation of Law, and each Lot shall be used, kept and maintained in compliance with Law.

Section 4.3 Permitted Use of the Lots and Units Generally. Except to the extent
expressly permitted by this Declaration, the Lots shall be improved with and used solely for
Dwellings. No commercial activities other than home occupations shall be permitted on the Lots
or within Units. Rental of a Dwelling for any period shall not be considered a commercial use.
Lot and Unit Owners shall be entitled to the quiet use and enjoyment of their Lot and Unit and
shall not interfere with the right of other Owners to the same.

Section 4.4 Design Review. Every Improvement on any Lot shall comply with the
Design Guidelines to the extent applicable to such Lot. In the event of any conflict between this
Declaration and the Design Guidelines, the Design Guidelines shall control. The Architectural
Control Committee (“Committee” or “ACC”) required by Section 10 of the Development Plan
shall administer and implement the Design Guidelines. Prior to construction of any
Improvement, except for landscaping or non-structural Improvements located entirely within a
structure or within any private courtyard on a Lot, an Owner shall apply to the Committee for
approval. The Committee, upon prior approval from the Board, shall have the authority to adopt
Rules concerning the submittal and review process which may include (among other things) fees,
a requirement for plans stamped by a licensed architect or engineer, and a requirement for the
applicant to reimburse the Association for the costs of any architect or other professional
consultant retained by the Committee to review an application. The Town of Carbondale shall
also have the right, but not the obligation, to enforce the Design Guidelines if the Declarant or
Committee fails to do so. The design review process shall not apply to construction or
Section 4.4.1 Architectural Control Committee. The Committee shall consist of three members. The Declarant shall appoint the members of the initial Committee and control appointments to the Committee until such time as all seven single-family dwellings approved for Parcel 4 of the Property have been constructed. Thereafter, the Board shall appoint additional and replacement members of the Committee. Committee members may but need not be Members of the Association. At least one member of the Committee shall be an architect, engineer, or contractor or have experience in one of those fields. Each Committee member shall serve for a two-year term, except that one member of the first Committee appointed by the Declarant shall serve a one-year term then two-year terms thereafter. The Committee may adopt additional rules and regulations regarding the number and terms of Committee members and meeting and application procedures, provided that such additional rules are ratified by the Board.

Section 4.4.2 Amendments. The Design Guidelines may be amended by the Committee from time to time. An amendment to the Design Guidelines shall not constitute an amendment to this Declaration; such amendment is therefore not subject to Section 9.2 of this Declaration.

Section 4.4.3 Non-Liability for Design Review. The Committee will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, Board, Association, Declarant, nor any individual member thereof will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent that the Committee, Board, Association, Declarant, or any individual member thereof acted with malice or performed any intentional wrongful acts. Approval by the Committee does not necessarily assure approval by the appropriate governmental body or the Town of Carbondale. Notwithstanding that the Committee has approved plans and specifications, neither the Committee, Board, Association, Declarant, nor any of members thereof, will be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of, or the construction of, any Improvement(s). Neither the Committee, Board, Association, Declarant, nor any member, agent, employee, or consultant thereof, will be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, the Design Guidelines, the Development Plan, or the Rules, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Association will defend and indemnify the Committee, Board, Declarant, and individual members thereof in any suit or proceeding which may arise by reason of the Committee’s decisions; provided, however, that the Association will not be obligated to indemnify the Committee, Board,
Declarant, or members of either to the extent that any such person is adjudged to be liable for malice or intentional wrongful acts in the performance of his or her design review duties, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 4.5 **Domestic Pets.** Owners are allowed to have and keep household pets, such as dogs and cats, and the same are allowed on the Property. All pets must be under the Owner’s physical control at all times, including the use of leashes when on Common Elements. Owners shall be responsible for immediately cleaning up after their pets. Livestock is not permitted on the Property. The Association may adopt additional Rules regarding pets, including, but not limited to, limiting the number of pets per Owner.

Section 4.7 **Utility Facilities.** Only utility facilities for utility services approved by the Board and of the type necessary and customary for the uses permitted on the Lots shall be constructed or installed on any Lot or Unit. All utility facilities on each Lot shall be placed underground, except such utility facilities as are required by their function, by the providers of the Utilities Services or by Law to be above ground. To the extent not underground, utility facilities shall be shielded from view with natural materials and made as unobtrusive as is reasonably possible. Utility facilities should be installed in a manner that minimizes disturbance of the natural environment.

Section 4.8 **Fences.** Except for any Limited Common Elements specifically designated as fenced areas on the Plat, fences are not permitted to be constructed on the Lots or Common Elements without prior written approval by the Architectural Control Committee and in accordance with the Design Guidelines, which approval may be withheld in the Committee’s sole discretion. All approved fences shall be constructed in compliance with the architectural site plans recorded with the Plat(s). Chain link fences are not allowed under any circumstances.

Section 4.9 **Temporary Buildings.** No boat, mobile home, tent, trailer or modular building or other temporary building shall be permitted on any Lot, except for any builder’s construction trailer or similar structure approved pursuant to Section 4.12, below, which shall be removed promptly upon completion of the subject Improvement on the Lot.

Section 4.10 **Repair of Improvements.** No Improvement on any Lot that has been damaged or partially or totally destroyed by fire, earthquake, or other cause shall be allowed to remain in such state for more than six months following the date of damage or destruction, unless such damage is non-structural and not visible from the exterior of a building. Upon the occurrence of any such damage or destruction, to the extent it may be the responsibility of the Owner of the Lot or Unit to remedy the damage or destruction, the Owner shall promptly and with reasonable diligence, after acquiring any approvals from the Board or Committee required.
by this Declaration, either rebuild the Improvement or raze the Improvement and restore the land on which the Improvement was located to the condition the land was in prior to the damage or destruction.

Section 4.11 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, nothing herein shall prohibit exporting and hauling of gravel, aggregate or earth that may be excavated or generated in connection with standard practices incidental to the construction of Improvements.

Section 4.12 Exception for Construction. During the course of construction of any Improvements that is permitted on a Lot, the Board shall have the authority to grant temporary waivers to any of the restrictions of this Article 4 to the extent reasonably necessary to permit such work to be undertaken in a reasonable manner, provided that nothing is done in the course of such work that shall result in the violation of any restriction in this Article 4 upon the completion of the Improvement.

Section 4.13 Exemption for Association. The Association shall not be subject to the provisions of this Article 4.

Section 4.14 Transfer Assessment. All sales, transfers, or conveyances of any Lot or Unit shall be subject to payment of the RETA pursuant to the terms of the RETA Covenant and subject to the exceptions stated therein, which are incorporated in this Declaration by reference.

Section 4.15 Deed Restricted Housing. The Deed Restricted Units have been designated for deed-restricted affordable housing and shall be subject to additional restrictions to be included in the recorded deeds for such Units and the applicable Deed Restriction Agreement.

Section 4.16 Fireplaces. Solid fuel burning fireplaces, stoves, appliances, and other devices are prohibited. Gas-burning fireplaces, grills, and similar devices are permitted, as are charcoal-burning grills.

Section 4.17 Irrigation. All lawn and garden, common space, open space and parkland irrigation uses within Thompson Park shall be from a separate raw water irrigation system or systems that shall not be connected to the domestic in-house supply for any building unit or dwelling or to the non-potable irrigation system that serves the Historic House Parcel (as shown on the Master Plat). Total irrigated areas within Thompson Park, including irrigation of the Historic House Parcel, shall not exceed 4.71 acres, and total residential lawn and garden irrigation shall not exceed 2.3 acres. Each lot or unit located within Areas A, B or C (as shown on the Master Plat) shall have no more than 2500 square feet of irrigated lawn and garden area; each lot or unit located within
AREAS D OR E SHALL HAVE NO MORE THAN 3500 SQUARE FEET OF IRRIGATED LAWN AND GARDEN AREA; AND EACH LOT OR UNIT WITHIN AREAS F AND G SHALL HAVE NO MORE THAN 5000 SQUARE FEET OF IRRIGATED LAWN AND GARDEN AREA. The raw water irrigation system and all parts and components thereof, including any and all pump stations, shall be owned and operated by the Association and shall be considered a General Common Element. This Section 4.17 shall not be amended without the prior written consent of the Town of Carbondale.

Section 4.18 Off-Street Parking. The Owner of a Lot or Unit containing an enclosed garage or carport or surface parking space shall be required to park the Owner’s vehicle(s) in the parking spaces provided therein, and Owner shall not park the Owner’s vehicle(s) on the street in front of the Lot or Unit. The Board shall have the authority to adopt additional Rules regarding parking and the enforcement thereof.

Section 4.19 Solar Devices and Design. All Dwellings located within the Property shall be designed and constructed to accommodate solar energy devices as provided for in the Design Guidelines. All provisions in this Declaration and the Design Guidelines regarding solar energy devices shall comply with applicable state statutes regarding the same, including, but not necessarily limited to, C.R.S. § 38-30-168. Any Owner desiring a solar energy device on his or her Dwelling shall be responsible for repairing any leaks or other damage caused by the solar energy device. Free-standing solar energy devices are not permitted. This Section 4.19 shall not be removed from this Declaration without approval from the Town of Carbondale.

Section 4.20 Marijuana Use. It is prohibited to smoke, sell, grow, or manufacture marijuana, cannabis, and/or products derived therefrom for the purposes of medicinal or recreational use on the Property; provided, however, that the same may be possessed, smoked, or consumed within a Dwelling.

Section 4.21 Rentals. The Owner of a Free Market Lot shall have the right to rent or lease the same upon such terms and conditions as the Owner may deem advisable unless provided otherwise in the Rules. The leasing of Deed Restricted Units shall be subject to and comply with the Town of Carbondale Community Housing Guidelines in effect from time to time. All leases of any Dwelling in the Development shall (i) be in writing; (ii) provide that the lease is subject to the terms of this Declaration; (iii) only allow the uses authorized in this Declaration; and (iv) state that failure of a lessee to comply with the terms of the Governing Documents shall be a default under the lease and be enforceable by the Association.

Section 4.22 Nuisances. No nuisances shall be allowed on the Property, nor any use or practice which is improper, offensive, unlawful, or the source of annoyance to residents or which interferes with the peaceful enjoyment of possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard to exist.

Article 5: Association
Section 5.1 Organization. The Association is a non-profit Colorado corporation created for the purpose of administering and managing certain aspects of Thompson Park pursuant to its Articles and Bylaws and any other Rules or restrictions. Neither the Articles, Bylaws, Rules, nor other restrictions promulgated by the Association shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between this Declaration and the Articles, Bylaws or other restrictions, this Declaration shall control.

Section 5.2 Ownership Generally. Every Owner shall be a Member of the Association. When an Owner consists of more than one Person, all such Persons shall, collectively, constitute one Member of the Association and all such Persons shall be jointly and severally obligated to perform the responsibilities of Owner. Membership in the Association shall automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association shall recognize a new Owner as a Member upon presentation of satisfactory evidence of Record of the sale, transfer, succession, disposition, foreclosures or other transfer of a Lot or Unit to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Lot or Unit. Any attempted prohibited transfer of a Membership shall be void and shall not be recognized by the Association.

Section 5.3 Voting Classes and Allocation of Votes. Each Member shall have voting rights in the Association. The vote of any Member owning a Deed Restricted Unit or a Free Market Lot shall amount to one (1) vote. Members’ voting rights shall not be altered without prior approval from the Town of Carbondale Board of Trustees. If a Lot or Unit is owned by two or more Persons, then, pursuant to Section 5.2, such Persons shall constitute one Member, and shall share and jointly control, pursuant to the Bylaws, the voting rights allocated to such Lot or Unit.

Section 5.4 Board of Directors. The affairs of the Association shall be governed by the Board, which may, by resolution, delegate any portion of its authority to an executive committee or an officer or managing agent of the Association. Except as otherwise specifically provided by Law or in this Declaration, the Articles, or the Bylaws, the Board may exercise all rights and powers of the Association without a vote of the Members. The qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be appointed or elected and the manner in which Directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws.

Section 5.5 Bylaws. The Board may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws shall not be inconsistent with the provisions of this Declaration. The Bylaws may include, without limitation, provisions regarding the appointment or election of the Board and the appointment or election of officers of the Association, subject to the terms of this Declaration.
Section 5.6 Adoption of Rules. This Declaration, the Articles, the Bylaws, and the Design Guidelines establish a framework of affirmative and negative covenants, conditions, easements and restrictions that govern Thompson Park. The RETA Covenant and Deed Restriction Agreement also impose additional restrictions on all or some of the Lots. The Board shall be authorized to and shall have the power to adopt, amend and enforce rules applicable within Thompson Park with respect to any Lot, Unit, Common Element or function of the Association, and to implement the provisions of this Declaration, including but not limited to, Rules to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate animals; to assure fullest enjoyment of use; to regulate signs; to regulate use of any and all Common Elements to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within the Property; and to protect and preserve property and property rights. No Rule shall conflict with the terms of this Declaration, the Bylaws, the Articles, RETA Covenant, Deed Restriction Agreement, or Design Guidelines. The Rules may be modified, cancelled, limited or exceptions created thereto, or expanded from time to time. Any amendment of or addition to the Rules may be made upon the affirmative vote of a majority of the Board. Except as may be set forth in this Declaration, all Rules shall comply with the following provisions:

(a) The Rules shall be reasonable and shall be uniformly applied.

(b) The Association may prohibit activities not normally associated with property restricted to residential use, and the Association may also restrict or prohibit any activities that create monetary costs for the Association or other Lots or Units, that generate excessive noise or traffic, that create unsightly conditions visible outside of a Lot, or that create a nuisance or source of annoyance.

(c) No Rule shall, by singling out a particular Owner, Lot, or Unit, alter the rights to use the Common Elements to the detriment of such Owner, Lot, or Unit. Nothing in this provision shall prevent the Association from changing Common Elements available, from adopting generally applicable Rules for the use of Common Elements or from denying use privileges to those who are delinquent in paying Assessments, misuse the Common Elements or violate the Restrictions. This provision does not affect the right to levy and collect Assessments pursuant to other terms of this Declaration.

(d) No Rule shall require the consent of the Association for transferring title to any Lot or Unit; provided that no transfer is permitted without compliance with the RETA Covenant or Deed Restriction Agreement, if applicable, according to their terms.

Section 5.7 Functions and Duties of the Association. The Association shall perform each of the following duties for the benefit of its members:
(a) **Maintenance of the Common Elements.** The Association shall operate, keep and maintain the Common Elements in good condition and repair and in compliance with Law and the Restrictions. The Association shall improve, construct, replace or repair the Common Elements or any part thereof when necessary or desirable to do so in its judgment and discretion. Notwithstanding any other provisions of this Declaration, if any repairs to any Common Elements are necessitated by the negligent, reckless or intentionally wrongful act or omission of any Owner or a guest of an Owner, then such repairs shall be undertaken by the Association at the sole cost and expense of such Owner and such costs and expenses shall be assessed as a Specific Assessment against the Lot or Unit of such Owner. Notwithstanding the Allocation Percentages, the Board shall have the authority to assess any special costs of maintaining Limited Common Elements to the Lot(s) benefited by such Limited Common Elements.

(b) **Additional Maintenance.** In addition to the Association’s Common Element maintenance obligations, the Association shall also be responsible, in perpetuity, for the irrigation and maintenance of the landscape strips and irrigation systems within the public rights-of-way in Thompson Park. The Association shall also be responsible, in perpetuity, for maintaining, repairing, and/or replacing, as necessary, the open ditch channels that run through the Property. Said maintenance shall include, but not be limited to, annual cleaning of the channels to remove silt and debris and cleaning bar screens and pipeline inlets.

(c) **Other Functions.** The Association shall perform the other functions specifically required to be performed by the Association pursuant to the Restrictions, including, without limitation, determining, levying and collecting Assessments and enforcing the terms of the Restrictions as the Association deems appropriate.

**Section 5.8 Powers and Authority.** The Association shall have the following powers and authority:

(a) **Assessments.** To determine, levy and collect Assessments.

(b) **Charges and Fees.** To determine, levy and collect charges and fees for the violation of the Restrictions.

(c) **Rules.** To make, establish and promulgate Rules. Owners and Guests shall be subject to the Rules and such Rules shall have the same purpose and effect as the covenants, conditions and restrictions included in this Declaration and shall be treated as incorporated herein.

(d) **Bylaws.** To adopt and amend the Bylaws.

(e) **Enforcement.** To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in the Restrictions, and to perform all
other acts reasonably necessary to enforce any of the provisions of the Restrictions, including, without limitation, the suspension of Membership privileges and the imposition of fines on Owners or Guests who violate or permit violations of the Restrictions.

(f) Management Company. To retain the services of a professional management company to manage some or all of the affairs of the Association.

(g) Borrowing. To borrow money and to incur indebtedness for the purposes of the Association.

(h) Assignment. To assign its right to future income, including the right to receive Assessments.

(i) Sale of Common Elements. To convey or subject to a lien or encumbrance any Common Elements.

(j) Insurance. To maintain the insurance coverage pursuant to Section 8.1.

(k) Contracts. To make contracts and incur liabilities in furtherance of its purposes.

(l) Additional Improvements. To cause additional Improvements to be made as part of the Common Elements, including the construction of any capital asset for the benefit of some or all of the Lots, Units, or Owners, including, without limitation, access roads, paths, walkways and landscaping changes; improvements (including without limitation, removal of trees and other vegetation) and appurtenances; recreational areas and facilities, picnic areas, playgrounds, shelters, exercise facilities, trash enclosures; postal facilities; parking areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and Improvements useful or necessary to benefit Owners or to provide the services of the Association.

(m) Property. To acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property.

(n) Sanctions. To impose and receive charges for late payments of Assessments, recover reasonable attorneys’ fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether or not suit is initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Restrictions, including suspension of Membership privileges.
(o) **Charges.** Impose and receive reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments.

(p) **Indemnification.** Provide for the indemnification of the Association’s officers and Board and maintain Directors’ and Officers’ liability insurance.

(q) **Professional Services.** To obtain and pay for legal, accounting and other professional services.

(r) **Performance through Others.** To perform any of its functions by, through or under contractual arrangements, licenses, or other arrangements with any governmental, quasi-governmental or private entity as may be necessary or desirable.

(s) **Lawsuits.** To institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Thompson Park, including construction defect cases, provided that the Association shall comply with the procedures set forth in C.R.S. § 38-33.3-303.5 and Section 5.11, below, prior to initiating a construction defect lawsuit.

(t) **Law.** To exercise any right or privilege provided to the Association by Law.

(u) **Other.** To carry out all other duties, functions or rights of the Association as set forth in the Restrictions from time to time.

(v) **Implied Authority.** To exercise any power or authority as may be necessary, convenient or desirable to fulfilling or exercising any duty, function or power that the Association may otherwise have or enjoy under the terms of this Declaration.

Section 5.9 **Financial Statement.** The Board shall provide a financial statement (which need not be audited) for the immediately preceding Fiscal Year, free of charge, to a Member so requesting or to any First Mortgagee of a Lot so requesting within a reasonable time after written request therefor by any such party, to the extent available.

Section 5.10 **Association Books and Records.** The Association shall make available to Owners current copies of this Declaration, the Articles, Bylaws, Rules, Design Guidelines, books, records and financial statements of the Association as required by Section 317 of the Act. Such records shall be made available for inspection upon request during normal weekday business hours or under other reasonable circumstances. The Association may impose a reasonable charge for copies as provided by Section 317 of the Act.

Section 5.11 **Testing for Construction Defects.**
(a) The Association will not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing, or invasive testing of any kind, for defects in construction of any Improvement, Dwelling, Unit, Common Element or Limited Common Element without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board will rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Association will not be obligated to authorize or undertake such testing.

(b) In determining whether to authorize such testing, the Board will be governed by the following considerations:
   i. Whether the Association’s position is strong enough to justify taking any other or further action;
   ii. Whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable person or to justify expending the Association’s resources; and
   iii. Whether it is in the Association’s best interests, based upon hardship, expense, inconvenience or other reasonable criteria to pursue the matter further.

(c) Notwithstanding the foregoing, under no circumstance will the Association authorize such testing as is contemplated under Section 5.11(a) unless the nature of the suspected defect is such that:
   i. It poses a significant risk to life, health, safety or personal property; and
   ii. It threatens or affects the structural integrity, functionality or performance of the Property (or a portion thereof) for its intended use.

(d) In the event that the Board undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant and/or others responsible for the construction will be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area and repair any defect that is found to exist. Declarant and/or others responsible for construction will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

(e) In the event that testing discloses any defects, Declarant and/or others responsible for construction will be given a reasonable amount of time, based on the nature and extent of the defect, to repair or correct the condition. If Declarant or others responsible
for construction fail to repair or correct the condition, the Board will have the right, but not the obligation, to proceed with a “Claim” pursuant to this Article.

**ARTICLE 6: Financial Matters and Assessments**

Section 6.1 **Annual Budget.** The Board shall cause to be prepared and adopted annually, prior to the beginning of each Fiscal Year, a budget for the Association (the “**Annual Budget**”). The Annual Budget shall include all of the following: (i) the estimated Common Expenses and revenues of the Association for such Fiscal Year, in reasonable detail as to the various categories of expenses and revenues; (ii) the current cash balance in any reserve fund established and maintained by the Association for the purpose of funding the periodic repair or replacement of any of the Common Elements, including without limitation landscaping, irrigation systems, and private roads, and for unbudgeted and unplanned Common Expenses incurred by the Association from time to time (the “**Reserve Fund**”), (iii) an estimate of the amount required to be spent during such Fiscal Year from the Reserve Fund; and (iv) a statement of the amount required to be added to the Reserve Fund during such Fiscal Year to cover anticipated withdrawals and adequately address contingencies and anticipated needs in future Fiscal Years.

Section 6.2 **Assessments.** There shall be three types of Assessments: (a) Common Assessments as described in Section 6.3; (b) Special Assessments as described in Section 6.4; and (c) Specific Assessments as described in Section 6.5. Each Owner, by adoption of this Declaration or by accepting a deed or other instrument of conveyance for any Lot or Unit, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration and the other applicable Restrictions.

Section 6.3 **Common Assessments.** The Owner of each Lot or Unit is liable for and subject to assessments for a portion of the Common Expenses equal to the Owner’s Allocation Percentage (the “**Common Assessments**”). The Common Assessments shall be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) **Payment.** The Board shall assess Common Assessments against the Owner of each Lot or Unit based on the Annual Budget in accordance with the Allocation Percentage. Each Owner is obligated to pay the Association the Common Assessments made against such Owner’s Lot or Unit, and the payment shall be due on the first day of each fiscal quarter, in (4) equal installments, or in another reasonable manner designated by the Board which may be implemented without amending this Declaration. The Board’s failure to fix the Common Assessments prior to the commencement of any Fiscal Year shall not be deemed a waiver or modification of any of the provisions of this Declaration or a release of any Owner from its obligations to pay Common Assessments or any installments of them for that Fiscal Year, but the Common Assessments fixed for the preceding Fiscal Year shall continue until the Board fixes the new Common Assessment.
(b) **Adjustment.** To the extent that payments of Common Assessments during the balance of any Fiscal Year are inadequate or more than required to meet the Association’s obligations intended to be covered by such Common Assessments, the Board may amend the Annual Budget and increase the Common Assessments for the balance of such Fiscal Year by giving not less than 30 days’ prior notice to all Owners. Alternatively, in the event that payments of Common Assessments during the balance of any Fiscal Year are more than required to meet the Association’s obligations, the Association may, at its discretion, put the surplus into the Reserve Fund instead of amending the Annual Budget as provided in this subsection.

(c) **Reconciliation.** After the end of each Fiscal Year, the Board may reconcile the actual Common Expenses incurred by the Association during that Fiscal Year against the Common Assessments that the Association received and intended to cover such Common Expenses. To the extent that the Owners have paid more than the actual Common Expenses, the Board may either (i) credit the overpayments against the Owners’ Common Assessments for the next Fiscal Year; or (ii) deposit the overpayments into the Reserve Fund.

Section 6.4 **Special Assessment.** The Association may levy from time to time one or more special assessments (“Special Assessments”) for the purpose of defraying in whole or in part the cost of any construction, maintenance, repair, improvement, modification, restoration, unexpected repair or replacement of any Common Element or for carrying out the other responsibilities or functions (whether required or discretionary) of the Association in accordance with this Declaration. Each Special Assessment shall be allocated in accordance with the Allocation Percentage. Each Owner shall pay all Special Assessments assessed against the Owner’s Lot or Unit. Special Assessments shall be paid at the time(s) and in the manner reasonably determined by the Board. The Board may require that Special Assessments be paid before the service, improvement or other item for which the Special Assessment is being levied is provided.

Section 6.5 **Specific Assessments.** The Association shall have the power to levy assessments against one or more particular Lot(s) or Unit(s) as follows (“Specific Assessments”):

(a) to cover costs incurred in bringing the Lot or Unit into compliance with the terms of the Restrictions, or costs incurred as a consequence of the conduct of the Owner or such Owner’s Guests;

(b) to cover necessary costs or expenses incurred by the Association that benefit one or more Lots or Units but fewer than all Lots and Units, such as repair and maintenance of Limited Common Elements or otherwise; and

(c) to cover any costs or expenses that are recoverable as Specific Assessments pursuant to other provisions of this Declaration.
Section 6.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner shall become liens against such Owner’s Lot or Unit which may be foreclosed or otherwise collected as provided in this Declaration.

Section 6.7 Working Capital Fund. Upon the transfer of a Lot or unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Common Assessments will be paid to the Association for the Association’s working capital fund, unless the Declarant determines otherwise. The Board, in its discretion, may allocate all or a portion of any working capital fee to the Association’s Reserve Fund. Upon termination of the Declarant Control Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Lot or Unit. Each working capital contribution will be collected upon the conveyance of the Lot or Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Lot or unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association’s assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, to an entity owned or controlled by Owner, or to the Owner’s spouse, child, or parent; or (iv) transfers made for estate planning purposes. Contributions to the fund are not advance payments of Common Assessments and are not refundable.

Section 6.8 Commencement of Assessments. The obligation to pay Common Assessments, Special Assessments and Specific Assessments is a continuing obligation.

Section 6.9 Allocation Percentage. The Allocation Percentage of each Owner shall mean the share of any Assessments to be allocated to each Lot or Unit. Subject to the Board’s right to assess Assessments as provided in this Section 6, a Lot or Unit’s Allocation Percentage is determined by the percentage equivalent of a fraction, the numerator of which shall be the finished square footage area of each Owner’s Dwelling and the denominator of which shall be the total of the finished square footage area of all Dwellings within the Development. As portions of the Property are annexed into the Development and made subject to the terms and provisions of this Declaration by the recording of one or more Notices of Applicability in accordance with Section 7.4 hereof, the Lots or Units included in such annexed portion of the Property will be automatically assigned Allocation Percentages in accordance with the formula set forth in this Section 6.9, and the Notice of Applicability will reflect such allocations. Since Declarant intends to annex portions of the Property and Lots and Units in phases, the initial Lots and Units added to this Declaration will be allocated a higher Allocation Percentage than would otherwise be allocated to the Lots and Units if all of the Property was made subject to this Declaration at a single point in time. However, as additional Lots and Units are annexed into the Development and subjected to this Declaration, the Allocation Percentages previously allocated
to the Lots and Units then subject to this Declaration will be reduced. The Notice of Applicability for each portion of the Property added to this Declaration will include the Allocation Percentages assigned to all Lots and Units within the Development after giving effect to the Lots and/or Units then being made subject to the Declaration. A schedule of Allocation Percentages which will apply to each Lot or Unit when all of the Property is annexed and subjected to the terms and provisions of this Declaration is attached hereto as Exhibit B. Exhibit B is an estimate only; final Allocation Percentages cannot be definitively determined until each and every Improvement is constructed.

Section 6.10 Payment of Assessment; Notice and Acceleration. Each Owner shall pay all Assessments assessed against such Owner’s Lot or Unit by the Association in accordance with the terms of this Declaration. Each Assessment is a separate, distinct and personal debt and obligation of the Owner against whose Lot or Unit the Assessment is assessed. All Assessments are payable in full without offset for any reason whatsoever. Each Owner’s obligation to pay Assessments is entirely independent of any obligation of the Association to the Owner or any other Owner to that Owner. Any Assessment or installment of an Assessment not paid within five days after it becomes due is delinquent. If an Assessment or installment of an Assessment is delinquent, the Association may recover all of the following (collectively, the “Delinquency Costs”): (a) interest from the date due at the rate of 18% per annum; (b) late charges and other monetary penalties imposed by the Association pursuant to any Governing Document; and (c) all collection and enforcement costs, including reasonable attorneys’ fees and expenses, incurred by the Association. If an Assessment or installment of an Assessment is delinquent, the Association may notify the Owner of the delinquency and state in the notice (i) the amount of the delinquent Assessment or installment; (ii) the Delinquency Costs accrued to date; and (iii) the date by which the delinquent Assessment or installment and all associated Delinquency Costs must be paid. If the Association gives such a notice and the delinquent Assessment or installment of an Assessment and all associated Delinquency Costs are not paid in full by the due date specified in the notice, then the Association, at its option, may declare all unpaid installments of the subject Assessment for the current Fiscal Year to be immediately due and payable in full without further demand or notice and may enforce the collection of the Assessment (including any installments whose due dates were accelerated).

Section 6.11 Enforcement of Assessments. If any Assessment is not fully paid within five (5) days after the same becomes due and payable, then as often as the same may happen, (i) Delinquency Costs shall begin to accrue from the date due until the date of payment, (ii) the Association may accelerate the remaining payments in accordance with Section 6.10, (iii) the Association may thereafter bring an action at law or in equity or both against any Owner personally obligated to pay the same, and (iv) the Association may bring an action to foreclose its lien against the particular Lot or Unit as provided in the Act and herein in the manner and form provided by Colorado law for foreclosure of real estate mortgages.
(a) **Suit.** The Association may bring a suit or suits at law to enforce the Owner’s obligation to pay a delinquent Assessment (including any installments whose due dates are accelerated by the Association pursuant to Section 6.10) and associated Delinquency Costs. Each action shall be brought in the name of the Association. The judgment rendered in the action shall include costs and reasonable attorneys’ fees in an amount adjudged by the court against the defaulting Owner. Upon full satisfaction of the judgment, the Association, by one of its officers, shall execute and deliver to the judgment debtor an appropriate satisfaction of the judgment.

(b) **Lien and Foreclosure.** Assessments (including any installments whose due dates are accelerated by the Association pursuant to Section 6.10) and associated Delinquency Costs constitute a continuing mortgage lien on the Lots or Units against which they are assessed from the date due. Such lien shall be perfected upon the Recording of this Declaration and no further claim shall be required. If an Assessment is delinquent, if the Association gives a notice concerning the delinquency and if the delinquent Assessment is not paid in full by the due date specified in the notice, then the Association may foreclose the lien securing the Assessment, any installments whose due dates are accelerated by the Association pursuant to Section 6.10, and any associated Delinquency Costs in accordance with the laws of the State of Colorado. The Association may undertake and conduct such foreclosure in the manner for foreclosure of mortgages under the laws of Colorado.

(c) **Further Actions by Association.** The foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installment thereof which are not fully paid when due or for any subsequent default Assessments). Except as limited by the Deed Restriction Agreement, the Association shall have the power and right to bid in or purchase any Lot or Unit at foreclosure or any other sale and to acquire and hold, lease, or mortgage the Lot or Unit and to convey, or otherwise deal with the Lot acquired in such proceedings.

(d) The remedies provided above are not exclusive of any other remedies provided for in favor of the Association under the other terms of the Restrictions or otherwise available to the Association under law or in equity. By electing to pursue one or more available remedies, the Association shall not be deemed to have waived its right to pursue any other remedies that may be available to it for a failure by an Owner to pay any Assessment.

Section 6.12 **Purchaser’s Liability for Assessments.** Notwithstanding the personal obligation of each Owner to pay all Assessments levied against the Lot or Unit, and
notwithstanding the Association’s perpetual lien upon a Lot or Unit for such Assessments, all purchasers shall be jointly and severally liable with the prior Lot or Unit Owner(s) for any and all unpaid Assessments against such Lot or Unit, without prejudice to any such purchaser’s right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser’s obligation to pay Assessments shall commence upon the date on which the purchaser becomes the Owner of a Lot or Unit. For Assessment purposes, the date a purchaser becomes a Lot or Unit Owner shall be determined as follows:

(a) In the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Lot or Unit Owner shall be deemed to be upon the expiration of all applicable redemption periods;

(b) In the event of a conveyance or transfer by deed in lieu of foreclosure, a purchaser is deemed to become the Lot or Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title to the Lot or Unit, irrespective of the date the deed is recorded; and

(c) In the event of a conveyance or transfer by deed, a purchaser shall be deemed to become the Lot or Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Lot or Unit, irrespective of the date the deed is recorded.

However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions set forth herein.

Section 6.13 Waiver of Homestead Exemption; Subordination of Association’s Lien for Assessments. By acceptance of a deed or other instrument of a transfer of a Lot or Unit, each Owner irrevocably waives the homestead exemption provided in C.R.S. §38-41-201, as amended. The Association’s perpetual lien on a Lot or Unit for Assessments shall be superior to all other liens and encumbrances except the following:

(a) Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(b) To the extent permitted under the Act, the lien of any First Mortgagee, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been subsequent to the date of the attachment of the Association’s liens (except that the Association’s priority lien under the Act shall remain superior to the First Mortgagee).
All other persons or entities not holding the liens described in (a) or (b) above and obtaining a lien or encumbrance on any Lot or Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association’s future liens for Assessments, interest, late charges, costs, expenses, and attorney’s fees as provided herein, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of a Lot or Unit, including but not limited to a foreclosure sale, shall not affect the Association’s lien on such Lot or Unit for assessments, interest, late charges, costs, expenses and attorney’s fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Lot or Unit from liability for, or the Lot or Unit from the lien of, any Assessments made after the sale or transfer.

Section 6.14 Owners not Exempt from Liability. No Owner is exempt from liability for payment of Assessment by waiver of the use or enjoyment of any portion of the Common Elements, by abandonment of its Lot or Unit, or otherwise.

Section 6.15 Reallocation. If any Assessment remains unpaid for more than six months after it is first due, the Association may treat the unpaid Assessment as a Common Expense to be assessed against all Lots or Units other than Deed Restricted Units; provided, however, that if the Association subsequently collects all or any part of the unpaid Assessment, through foreclosure of its lien or otherwise, then any Owner who has paid a portion of the unpaid Assessment as a Common Expense is entitled to a credit (in an amount equal to its pro rata share of the amount of the unpaid Assessment that the Owner paid that was subsequently collected by the Association) against any Common Assessments subsequently due from that Owner.

Section 6.16 Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

Section 6.17 Disputes and Records. Any Owner or an Owner’s authorized representative may inspect the books and records of the Association during regular business hours upon reasonable notice. If an Owner disputes the amount of any Assessment against its Lot or Unit and is unable to resolve the issue through an inspection of the Association’s books and records, the Owner will continue to pay in a timely manner the full amount of the disputed Assessment until, if ever, it is finally determined that the amount is incorrect (in which case the

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Association will promptly refund any overpayment. If the Owner fails to pay the disputed Assessment while the dispute is pending, the Association may immediately pursue any of its remedies for the failure (including, without limitation, suit against the Owner and/or foreclosure of the Association’s lien against the Owner’s Lot or Unit), and the pendency of the dispute is not a bar or defense to any actions by the Association.

Section 6.18 Certificate. Within 21 calendar days after receiving a written request from any Owner, Mortgagee or designee of either of them, or any title company, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association’s registered agent, the Association will furnish to the requesting party a certificate executed on behalf of the Association and addressed to the requesting party, stating that any unpaid Assessment due from the requesting Owner or Owner of the Lot or Unit encumbered by the requesting Mortgagee’s Mortgage, or stating that there are no unpaid Assessments due from such Owner, as the case may be. A certificate furnished by the Association pursuant to this Section 6.18 is binding upon the Owner and the Association. The Association may charge the Owner of any Lot or Unit for which such a certificate is furnished pursuant to this Section 6.18, and the Owner will pay as a Specific Assessment, a reasonable fee for the preparation of the certificate in an amount determined by the Association from time to time.

ARTICLE 7: Declarant’s Reserved Rights

Section 7.1 Construction and Marketing. Declarant, for itself and its successors and specific assigns, hereby retains a right and easement of ingress and egress over, in, upon, and across the Property and all other real property owned by Declarant as depicted on the Master Plat, and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the complete construction of all Improvements and sale of all Lots and Units and future Lots and Units proposed for the Property and other parcels shown on the Master Plat as approved by the Town of Carbondale including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs. Declarant, for itself and its successors and specific assigns, hereby retains the right to maintain any Lot(s) or Unit(s) as sales offices, management offices, or model residences so long as Declarant, or any successor Declarant, continues to own, lease, or control a Lot or Unit. The use by Declarant of any Lot or Unit as a model residence, office, or other use shall not affect the Lot or Unit’s designation as a separate Lot or Unit subject to Assessments. Notwithstanding any other provision of this Declaration, Declarant shall have the right to construct all types of Improvements, including without limitation new Dwellings or Units on any of the Lots, without restriction by the Association or the Owners and without any requirement for any type of permission or pre-approval. The design review process described above in Section 4.4 shall not apply to any construction of homes or any other Improvements whatsoever by Declarant.

Section 7.2 Reservation for Expansion. Declarant hereby reserves to itself and the Association and/or Owners in all future phases of Thompson Park Subdivision as shown on the
Master Plat an easement and right-of-way over, upon and across the Property, including the Future Development Parcels, for construction, utilities, drainage, irrigation, and ingress and egress to and from all parcels shown on the Master Plat, and for use of the Common Area as may be reasonably necessary or incident to the construction of Improvements on the Lots or future Lots that may be created on the Property. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the Records.

Section 7.3 Supplemental Declaration and Development Rights. Declarant shall have the right to create additional Lots, Units, and Common Elements within the Future Development Parcels, which Lots, Units, and Common Elements shall become part of the Development and be subject to this Declaration upon the recordation of a Notice of Applicability as provided in Section 7.4, below, and to record one or more additional Plats regarding the same. The Future Development Parcels as shown on the Master Plat and any other Plat may be developed and platted in any order determined by Declarant in its sole discretion. Declarant or the Association may annex real property adjacent to the Property into Thompson Park according to the procedures set forth in the Act upon prior approval of such annexation by the Town of Carbondale Board of Trustees and the owner of the subject property. Following annexation, a Notice of Applicability regarding the annexed property shall be recorded in order to subject the same to this Declaration. The rights of Declarant and any successor or specific assign to exercise such rights to annex additional real property shall expire 50 years after the date of recording of this Declaration.

Section 7.4 Notice of Applicability. Recording this Declaration serves to provide notice that at any time, and from time to time, all or any portion of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration will apply to and burden a portion or portions of the Property upon the recording of a Notice of Applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Declaration. To be effective, a Notice of Applicability must be executed by the Declarant and the record title owner of the Property being made subject to this Declaration if such Property is not owned by the Declarant. To make the terms and provisions of this Declaration applicable to a portion of the Property, Declarant will be required only to cause a Notice of Applicability to be recorded in substantially the form set forth in Exhibit C hereto.

To the extent required by applicable law, a Notice of Applicability will constitute an amendment to this Declaration and may be executed unilaterally by the Declarant provided that Declarant is the owner of the Property described in the Notice of Applicability. If all or a portion of the Property described in the Notice of Applicability is not owned by the Declarant, only the owner of such portion and the Property and the Declarant must execute the Notice of Applicability.
Section 7.5  **No Amendment.** The terms and provisions of this Article 7 inure to the benefit of Declarant, are enforceable by Declarant, and shall not be amended without the express written consent of Declarant and without regard to whether Declarant owns any portion of the Property at the time of such amendment.

Section 7.6  **Declarant Control Period.** Notwithstanding anything to the contrary, Declarant, or its successors or assigns, will have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be a deemed removal of the Board Member being replaced by such appointment) until expiration or termination of the Declarant Control Period. The same is true regarding members of the Architectural Control Committee. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board and Committee before termination of the Declarant Control Period. In that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Committee, Board, or Association, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 7.8  **Financial Contributions.** Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded annually, from the date it is made until the date of its repayment, at the statutory rate of eight percent (8%).

**ARTICLE 8: Insurance and Indemnity**

Section 8.1  **Association’s Insurance.** The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Section 8.1 shall be included in the Common Expenses:

(a)  **Property Insurance.** The Association shall maintain property insurance covering risks of direct physical loss for all insurable Common Elements, if any, with limits sufficient to cover the full replacement costs of such insurable Common Elements less applicable deductibles at the time insurance is purchased and at each renewal date. The Association’s property insurance may exclude land, excavations, foundations and other items normally excluded from property policies. The Association’s property insurance shall be maintained in the name of the Association. To the extent available on reasonable terms, such property insurance also shall (i) contain no provisions by which the insurer may impose a so-called “co-insurance” penalty; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iii) provide that no act or omission by any Owner, unless acting within the scope of the Owner’s authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (iv) provide that it may not be cancelled, nor may coverage be reduced, without 30 days prior notice to the Association;
(v) include a so-called “inflation guard” endorsement; and (vi) provide for a waiver of subrogation by the insurer as to claims against each Owner and each Owner’s Guests.

(b) **Liability Insurance.** The Association shall maintain bodily injury and property damage liability insurance for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising from their Membership in the Association. To the extent available on reasonable terms, such liability insurance shall (i) have a per occurrence limit of not less than $1,000,000.00; (ii) be on a commercial general liability form; (iii) contain a “severability of interest” or “cross-liability” endorsement which precludes the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iv) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (v) provide that no act or omission by any Owner, unless acting within the scope of such Owner’s authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements; and (vii) provide that it may not be cancelled, nor may coverage be reduced, without 30 days’ prior notice to the Association and all additional insureds named in the policy.

(c) **Worker’s Compensation and Employer’s Liability.** If the Association has any employees, then it shall maintain worker’s compensation and employer’s liability insurance as determined from time to time by the Board. At a minimum, the Association shall maintain such insurance in amounts and with coverages required by applicable law.

(d) **Automobile Insurance.** If the Association operates owned, hired or non-owned vehicles, the Association shall maintain comprehensive automobile liability insurance at a limit of liability of not less than $300,000.00 for combined bodily injury and property damage.

(e) **Other Insurance.** The Association may procure and maintain other insurance as the Board from time to time deems appropriate to protect the Association or the Owners or as may be required by the Act.

(f) **Licensed Insurers.** All policies of insurance required to be maintained by the Association shall be placed with insurers licensed in the State of Colorado.

Section 8.2 **Owner’s Insurance.** Each Owner of a Lot or Unit shall obtain insurance, at the Owner’s expense, to the extent and in the amount the Owner deems necessary to protect its interests; provided, however, that such insurance shall, at a minimum, cover all interior fixtures, fittings, flooring, ceilings, and walls of the Owner’s Dwelling.

Section 8.3 **Association’s Indemnity.** The Association shall be liable to and shall protect, defend, indemnify and hold harmless each Owner from and against any and all damages, claims, demands, liens (including, without limitation, mechanics’ and materialmen’s liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys’ fees,
court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever suffered or incurred by, or threatened or asserted against, the Owner as a result of or in connection with the use, enjoyment or ownership of the Common Elements by the Association, and its directors, officers, agents and employees acting within the scope of their authority, and to the extent not covered by Section 8.4, by licensees, permittees or other third parties using the Common Elements. Nothing contained in this Section 8.3 shall be construed to provide for any indemnification that violates Law or voids any or all of the provisions of this Section 8.3.

Section 8.4 Owners’ Indemnity. Each Owner of a Lot or Unit shall be liable to and shall protect, defend, indemnify and hold harmless the Association, the Board, and each other Owner from and against any and all damages, claims, demands, liens (including, without limitation, mechanics’ and materialmen’s liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys’ fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever suffered or incurred by, or threatened or asserted against, the Association, the Board, or any such other Owner as a result of or in connection with the use, enjoyment or ownership of any portion of such indemnifying Owner’s Lot or the Common Elements by the indemnifying Owner or its Guests and caused by the negligence, recklessness or intentionally wrongful acts or omissions of the indemnifying Owner or its Guests. Nothing contained in this Section 8.4 shall be construed to provide for any indemnification that violates Law or voids any or all of the provisions of this Section 8.4. All amounts owed by an Owner of a Lot to the Association pursuant to this Section 8.4 shall be expenses for which the Association may levy Specific Assessments against such Owner’s Lot.

Section 8.5 Proceeds and Adjustment. The Board is solely responsible for adjustment of any losses under insurance policies maintained by the Association and is hereby irrevocably appointed the agent of all Owners, Mortgagees and other Persons having an interest in Thompson Park for purposes of adjusting all claims arising under insurance policies maintained by the Association and executing and delivering releases when claims are paid. The Association may receive all proceeds of any insurance policy maintained by the Association, except other insured parties under liability insurance policies shall be entitled to proceeds arising out of their insured losses.

ARTICLE 9: Miscellaneous Provisions

Section 9.1 Term of Declaration. Except as provided below in this Section 9.1, all provisions of this Declaration shall continue in effect in perpetuity unless this Declaration is terminated by written ballot of 75% of the Owners. The termination of this Declaration shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary of the Association, stating that this Declaration has been terminated by the Owners as provided herein. Notwithstanding the foregoing, for so long as Declarant owns any Lot, Unit, or any additional parcel shown on the Master Plat subject to Declarant’s reserved rights set forth above in Article 7, this Declaration shall not be terminated without the written consent of Declarant.

Section 9.2 Amendment. Except as otherwise provided in this Declaration, including that the Town of Carbondale must approve any change to the definition of “Allocation
Percentage” or to Sections 4.17 and 5.3, above, any provision of this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by the Owners holding at least 67% of the voting power of the Association. The amendment shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary setting forth the amendment in full and certifying that the amendment or repeal has been approved by the Owners as provided herein.

Section 9.3 Notice. Any notice permitted or required to be given under this Declaration shall be in writing and shall be deemed properly given and received on the earlier of: (a) when actually received if delivered personally, by messenger service, by e-mail, facsimile, or otherwise; (b) on the next business day after deposit for delivery (specifying next day delivery) with any recognized overnight courier service; or (c) three business days after mailing, by registered or certified mail, return receipt requested. All such notices shall be furnished with delivery or postage charges paid, addressed (which term, for purposes of this Section 9.4, shall include the facsimile number in the case of a notice given by facsimile) as follows: (i) to the Association or Board at the address established for the Association by the Board; and (ii) to an Owner of a Lot or Unit at the address for such Person maintained in the Association’s records; provided, however, that if the Association does not provide an address for an Owner, then notice to such person may be given in any manner in which notice is permitted to be given to a Person under the Law of the State of Colorado in connection with the foreclosure of mortgages, including publication. Each Owner shall give notice to the Association at its mailing or street address and, with each change of its address, shall give notice of such change promptly, in the manner provided for giving notice to the Association in this Section 9.3.

Section 9.4 Persons Entitled to Enforce this Declaration. The Association and any Owner (including Declarant so long as it owns any of the real property shown on the Master Plat) shall each have the right to enforce any or all of the Restrictions contained in this Declaration against all or any portion of the Property and the Owner(s) thereof; provided, however, that no Owner shall be permitted to bring any enforcement action under this Declaration unless the Association declines to bring a similar action. The Association shall be deemed to have declined to bring an enforcement action if (a) an Owner gives notice to the Association in accordance with Section 9.3, that such Owner intends to bring an enforcement action (which notice shall specify the Restriction at issue and shall briefly summarize the circumstances prompting such action), and (b) the Association gives notice to such Owner, in accordance with Section 9.3, that the Association declines to enforce the Restriction or the Association fails to initiate an enforcement action or otherwise cause compliance with the Restriction within 60 days after the date of such Owner’s notice to the Association. The right of enforcement shall include the right to bring an action for damages as well as any equitable relief, including any action to enjoin any violation or specifically enforce the Restriction or other provision of this Declaration.
Section 9.5 Violations Constituting a Nuisance. Any violation of any Restriction or other provisions of this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 9.6 Violations of Law. Any violation of Law pertaining to the ownership, occupation or use of any of the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 9.7 Remedies Cumulative. Each remedy that is provided under this Declaration is cumulative and not exclusive.

Section 9.8 No Implied Waivers. Failure to enforce any Restriction or other provision of this Declaration shall not operate as a waiver of that Restriction or provision or of any other Restriction or provision of this Declaration.

Section 9.9 Costs and Attorneys’ Fees. In any action or proceeding under this Declaration, the party determined by the court or arbitrator, as the case may be, to be the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys’ fees and expenses.

Section 9.10 Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purposes of this Declaration. With respect to matters addressed by more than one restriction, the more restrictive shall be interpreted to override the less restrictive. The term “including,” unless otherwise specified, shall be interpreted in its broadest sense to mean “including without limitation.”

Section 9.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado. In the event of court action to enforce this Declaration, the exclusive venue shall be the county court or district court of Garfield County, Colorado.

Section 9.12 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 9.13 Registration by Owner of Mailing Address. Each Owner shall register their mailing address with the Association, including an e-mail address if available. Assessment statements and all other notices or demands intended to be served upon an Owner shall be sent via e-mail if one is available, or otherwise by regular U.S. Mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices
intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association.

Section 9.14 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 9.15 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration. Reference to Articles, Sections and Exhibits in this Declaration are to the indicated provisions and Exhibits of this Declaration unless otherwise specified.

Executed this _____ day of ___________, 2019.

Thompson Park, LLC, a Colorado limited liability company

By:__________________________
Print Name:___________________
Title:_______________________

State of _________________ )
) ss.
County of _______________ )

The foregoing instrument, Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision, was acknowledged before me this ___ day of ____________, 2019, by _______________________________ as Manager of Thompson Park, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: ________________

_____________________________
Notary Public
EXHIBIT A
Property Legal Description

Parcels 2, 3, and 4 of the THOMPSON PARK SUBDIVISION according to the MASTER PLAT thereof recorded May 19, 2015, as Reception No. 862909, Garfield County, Colorado.
EXHIBIT B
Allocation Percentages
## EXHIBIT B

<table>
<thead>
<tr>
<th>Lot/Unit #</th>
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<th>Allocation Percentage</th>
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<td></td>
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<tr>
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<tr>
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<td>3000</td>
</tr>
<tr>
<td>40</td>
<td>7</td>
<td>3000</td>
</tr>
<tr>
<td>Total sq. ft.</td>
<td>86,288</td>
<td>100.00%</td>
</tr>
</tbody>
</table>
EXHIBIT C
Form Notice of Applicability

NOTICE OF APPLICABILITY

THIS NOTICE OF APPLICABILITY ("Notice") is executed this ___ day of ____________, 20__, by Thompson Park, LLC, a Colorado limited liability company ("Declarant") [and ________________________________ (“Owner”)] i. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Declaration (defined below).

WHEREAS, Declarant is the declarant identified in the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision recorded ________________, 2019, in the Garfield County Real Property Records at Reception No. ______________ (“Declaration”); and

WHEREAS, Declarant [Owner] is the owner of the real property legally described as follows, to wit:

Lot __ - Lot __, Phase __, Thompson Park Subdivision, according to the plat thereof recorded ________________, 20__, at Reception No. ______________.

The “Annexed Property”); and

WHEREAS, the Annexed Property is part of the Property described in Exhibit A to the Declaration; and

WHEREAS, pursuant to Section 7.4 of the Declaration, Declarant [and Owner] desire to include the Annexed Property in the Development and subject the same to the Declaration.

1. The Annexed Property is hereby annexed into and made a part of the Development and is now subject to all provisions, covenants, conditions, and restrictions set forth in the Declaration.

2. The plat creating the Annexed Property was recorded at Reception No. ___________ and is incorporated herein by reference.

3. The Allocation Percentages of all Lots subject to the Declaration after giving effect to the Annexed Property described in the Notice are as follows:

<table>
<thead>
<tr>
<th>Lot Number</th>
<th>Allocation Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
DATED as of the date first set forth above.  DECLARANT

Thompson Park, LLC, a Colorado limited liability company

By:  
Title:  

STATE OF ______________ )
)ss
COUNTY OF ____________)

Acknowledged before me this ___ day of ___________________________, 20__ by
_________________________________________________________ as _______________ of Thompson Park, LLC, a Colorado limited liability company.

[OWNER

By:  
Title:  

STATE OF ____________ )
)ss
COUNTY OF ____________)

Acknowledged before me this ___ day of ___________________________, 20__ by
_________________________________________________________.]

Bracketed provisions should be modified or deleted as necessary.
ARCHITECTURAL DESIGN GUIDELINES
FOR
THOMPSON PARK SUBDIVISION,
TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

Article I – Introduction

Section 1.1 It is the intention of the Declarant of the Thompson Park Subdivision to construct all of the residential units proposed in the Thompson Park Subdivision. In addition, the Declarant will install all landscaping and irrigation systems for the public rights of way and other designated landscape areas within the Subdivision. The purpose of these Architectural Design Guidelines (“Guidelines”) is to provide a framework for the consideration of future additions and alterations, which may be proposed by the initial buyers of the Lots or Units and by subsequent Owners.

Section 1.2 The authority and discretion to approve or disapprove any proposed additions or alterations to the Dwellings or other Improvements or to the landscaped areas designated for maintenance by the Thompson Park Homeowners Association, Inc. (the “HOA”) shall rest exclusively with the Architectural Control Committee (“Committee”). Additionally, the Town of Carbondale shall have the right, but not the obligation, to enforce these Guidelines if the Committee or HOA fail to do so. The Committee shall consider all such additions or alterations in light of Article III of these Guidelines, but may, in addition, consider such additional circumstances and facts, as it deems appropriate in arriving at its final decision to approve or disapprove.

Section 1.3 – All capitalized terms used in these Guidelines that are not defined herein shall have the meaning assigned to them in the Declaration of Covenants, Conditions, Easements, and Restrictions for Thompson Park Subdivision (“Declaration”).

Article II – Application Procedures

Section 2.1 Application for Approval. Any owner and/or the owner’s representative proposing landscaping or construction (“Applicant”) which is subject to the review and approval of the Committee may be required to submit the following items, together with such other additional information as the Committee may request, depending upon the scope and impact of the proposed improvements. It is recommended that the Applicant schedule a preliminary meeting with the Committee to determine which, if any, of the following items may be required:

A. Site Plan, at a scale of not less than 1/8” = 1′-0” showing the Lot and the following information:
   1. Property lines and dimensions, and building setback lines, as shown on the recorded plat.
   2. Location of the proposed improvement for which approval is sought and its relationship to property lines. Location of existing structures on adjacent lots should be indicated.
   3. Driveway, parking and walkway locations and the width, grades and proposed surface material of each.
   4. Footprint of the improvement.
B. Grading. The Declarant will establish finished grades of the Lot in question in accordance with the approved drainage plan. Said drainage plan shall not be altered without prior written consent of the Declarant.

1. Existing grades on the Lot, as well as proposed finished grades of any ground, shall not be altered.
2. Any existing and proposed drainage channels and patterns, swales, culverts, catch basins or subsurface drainage systems shall not be altered.
3. The location on the Lot of any benchmark used to set elevations shall not be altered.

C. Architectural Drawings, including, but not limited to, the following:

1. Floor plans at a scale of not less than 3/16"=1' showing all floors and spaces intended to be used or occupied. Indicate room dimensions and square footage of each floor, and finished floor elevations on the main floor.
2. Exterior elevations at a scale of not less than 3/16"=1' showing all exterior elevations and surfaces of the proposed improvements, including the roof and any appurtenances thereto, such as skylights, chimneys and venting, and all proposed finish grades relative to each elevation as indicated on the grading plan.
3. Cross-sections taken through the proposed improvement at its highest point indicating the height of the structure above both natural and proposed grade.
4. Exterior walls - clearly show the texture, color and type of material, as well as the pattern or direction of any exterior wall surfaces. Also indicate the type, material and color of any trim, doors, windows, fascia, decking and handrails. Color and material samples are required.
5. Roof plan showing roof pitch, valleys, hips, gables and drip lines, materials, color, and the location of any protrusion beyond the surface of the roof, including, but not limited to, chimneys, parapets, facades, and skylights. Color and material samples are required.
6. Exterior lighting shall be indicated where it occurs, together with type of fixtures, direction of light to be emitted, and information on whether such lighting is recessed or surface mounted. All exterior lighting fixtures must conform to the Town of Carbondale Lighting Ordinance.
7. The Committee may require submission of such additional plans and other information (including models), as it may deem appropriate to the approval process.

D. Landscape Drawings. Each Lot contains landscaped areas installed by the Declarant and maintained by the HOA, as well as landscaped areas installed and maintained by each homeowner. Any proposed alterations to the landscaping in those areas maintained by the HOA and visible to other properties in Thompson Park shall be subject to review by the Committee. In that instance, a landscape plan shall be prepared by a landscape architect or professional landscape company and shall include:

1. A planting plan at a scale of not less than 1/8" = 1'-0" showing the arrangement of all trees, shrubs, groundcovers, seeded lawn areas, sodded lawn areas and natural grass areas. A plant list or other indication of species, variety, size, quantity, spacing and location of all plant materials proposed for use on the project shall be included.
2. A plan indicating all proposed changes to the automated irrigation system.

Section 2.2 Optional Preliminary Review. Prior to submitting any plans or specifications for approval, an Applicant may obtain a preliminary review of any proposed construction or landscaping
from the Committee upon request. The purpose of the preliminary review is to give the Applicant and/or its representatives an opportunity to discuss specific design concerns with the Committee, obtain interpretations and answers to questions concerning the Guidelines, and to establish the extent of submittal documentation necessary.

This procedure is informal, and no preliminary approval by the Committee shall obligate the Committee to approve final plans and specifications for the project after a formal submittal as provided for in paragraph 2.1. The information, plans, and specifications provided to the Committee at the preliminary review stage shall be at the discretion of the applicant, but should include sufficient information and graphic representations to allow the Committee to be helpful in the development of an acceptable construction and/or landscape plan.

Section 2.3 Fees. The application for preliminary design review, or for final approval of any landscaping or construction plan shall be accompanied by a deposit in the amount of $500.00, which may from time-to-time be amended as deemed necessary by the HOA. In addition, the Applicant shall be responsible for payment of all reasonable fees and expenses charged by consultants retained by the Committee to advise the Committee with respect to the applicant’s proposals. The Applicant’s deposit shall be credited against such fees and expenses. An Applicant’s financial obligations set forth in this Section 2.3 shall be enforced according to the provisions set forth in Article 6 of the Declaration.

Section 2.3 Inspection. Submittal of an application grants the Committee the authority to make an onsite inspection of the Lot on which the improvements are proposed. Further, the Applicant shall notify the Committee when the improvements have been completed, allowing the Committee to inspect and confirm that the improvements were completed in compliance with approved plans and specifications.

Section 2.4 Notification of Action. Upon receipt of a completed application for approval, the Committee shall have thirty (30) days in which to complete its review of the application, and to notify the Applicant, in writing, of its decision to approve or disapprove, and if disapproved, to set forth the reasons therefor.

Section 2.5 Expiration of Approval. Except as provided to the contrary for landscape completion in these Guidelines, after approval of any development plan, the Applicant shall commence with the installation or construction of the improvements within six (6) months and shall complete them within one (1) year from the approval date. Failure to do so will cause the approval to expire unless, prior to expiration, the Applicant petitions for, and receives, an extension from the Committee, which may be granted, in the sole discretion of the Committee.

Section 2.6 Application Form. Application for approval by the Committee shall be completed on forms provided by the Committee, and shall be signed by all record owners of title to the Lot on which the proposed improvements will be constructed or installed.

Section 2.7 Limitations on Architectural Design Committee Approval. In considering and approving any application for architectural design review, the Committee does not consider, and neither the Committee nor the HOA assume any responsibility for, the following:
A. The structural capacity of the proposed improvements, nor the suitability of any proposed materials, building techniques or other aspects of the improvements relating to habitability or suitability for the intended purpose of the Applicant;

B. Compliance with any applicable building codes, or any other statutes, ordinances, rules or regulations promulgated and made applicable to the Applicant's property by any city, county, state or federal government, or any agency, department, bureau or other political subdivision thereof; or

C. Suitability of the proposed site of any improvements in relation to manmade or natural hazards, including, without limitation, geological instability, ground compaction, drainage or flood hazards.

Article III – Design Criteria

Section 3.1 Architectural Design. The design of any proposed additions or alterations to a structure within the Thompson Park Subdivision shall be consistent with the style and character established by the original structures built by the Declarant in the Subdivision.

Section 3.2 Solar Collectors. Sloping roofs suitable and intended for the installation of roof-mounted solar collectors have been incorporated into the original dwelling units. Installation of roof-mounted solar collectors on said roofs, installed parallel to the roof and projecting no more than required to achieve a waterproof and structurally adequate mounting, are permitted without Committee approval. Installation of rack-mounted solar collectors on roofs not sloped or oriented for roof-mounted solar collectors as well as free standing solar collectors are prohibited.

Section 3.3 Exterior Wall Materials. Additions and alterations shall use exterior wall materials consistent with, and substantially similar to the exterior finish materials used in the initial construction.

Section 3.4 Windows. Windows used in additions and alterations shall substantially match the material, color and profile of the windows used in the initial construction.

Section 3.5 Pet Enclosures. All dog runs, pens, and other pet enclosures shall be immediately adjacent to the dwelling, and landscaped or otherwise screened or fenced so as to obscure them from view from neighboring lots or adjacent streets. All such pet enclosures must receive approval by the Committee prior to construction.

Section 3.6 Exterior Lighting. All exterior lighting shall be shielded and directional and the light source should not be visible from neighboring properties or adjoining streets. All exterior lighting must meet the requirements of Carbondale’s Lighting Ordinance. All exterior lighting proposed in any additions or alterations shall require the approval of the Committee prior to installation, and all plans submitted for approval shall show clearly the location, and type of light fixtures proposed, together with any other information which may be helpful to the Committee in reviewing the application.

Section 3.7 Fencing. Fencing may be installed at the heights and in the locations indicated on the approved Thompson Park Subdivision Plat documents. All fencing shall be natural finish cedar, which
may only be treated with clear sealers that do not impart a color to the natural wood finish. All fencing must be installed in accordance with the requirements of Table 5.4-3 of the Town of Carbondale Unified Development Code. A site plan demonstrating compliance with these Guidelines shall be submitted for review and approval prior to installation.

Section 3.8  Landscaping. Those areas of the Lot with landscaping installed and maintained by an owner are not subject to the landscape requirements of these Guidelines. In those areas, owners are, however, strongly encouraged to use native and low-water-use species in order to promote water conservation. Applicants proposing landscaping changes in areas of the Lot with landscaping maintained by the HOA shall submit plans demonstrating conformance with the following Guidelines:

A. All lawns shall be low-water species.

B. List of approved shrubs: See Exhibit “A” hereto.

C. List of approved trees: See Exhibit “A” hereto.

D. The existing irrigation system shall be altered and or expanded as necessary to properly irrigate the proposed plantings, and the Applicant shall demonstrate to the satisfaction of the Committee that the amount of water to be used to irrigate the proposed plantings does not exceed the amount of water used prior to irrigation of the proposed plantings.

E. The Applicant shall obtain from the landscaping contractor a two (2) year warranty on all trees and shrubs and grant to the HOA the same right to invoke the warranty as the Applicant.

F. All costs associated with accomplishing proposed changes to the landscaping within the areas maintained by the HOA shall be borne by the Applicant proposing said changes.

Section 3.9  Terraces. To protect and ensure owners’ privacy from adjacent units, owners may construct rooftop terraces upon application to and approval from the Committee.

A. Terraces may only be constructed within the roof areas designated on the approved schematic architectural plans for any phase of development of the Thompson Park Subdivision.

B. The design of any rooftop terrace must be sympathetic to and compliment the architectural character of the existing buildings within the Subdivision.

C. Applications for the construction of any proposed rooftop terraces are subject to the review and approval process set forth in Article II of these Guidelines.

Article IV – Miscellaneous

Section 3.1  Amendment. These Guidelines may be amended from time to time as deemed necessary by the Committee in its discretion. All approved amendments shall be recorded in the real property records of the office of the Garfield County Clerk & Recorder.
Section 3.2 Non-Liability for Design Review. The Committee will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, nor the HOA, nor any individual Committee or HOA board member will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent that the Committee or any individual Committee member acted with malice or performed any intentional wrongful acts. Approval by the Committee does not necessarily assure approval by the appropriate governmental body or the Town of Carbondale. Notwithstanding that the Committee has approved plans and specifications, neither the Committee, nor the HOA, nor any of their members will be responsible or liable to any Applicant, owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of any application or the construction of any Improvement(s). Neither the HOA, nor the Committee, nor any agent thereof, nor Declarant, nor any of Declarant’s partners employees, agents, or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of the Thompson Park Declaration, these Guidelines, the Development Plan for the Subdivision, or the Subdivision rules, nor for any structural or other defects in any work done according to such plans and specifications. In all events the HOA will defend and indemnify the Committee members in any such suit or proceeding which may arise by reason of the Committee’s decisions; provided, however, that the HOA will not be obligated to indemnify a member of the Committee to the extent that any such member is adjudged to be liable for malice or intentional wrongful acts in the performance of his or her duty as a member of the Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.
## EXHIBIT A
APPROVED PLANT SPECIES

### EVERGREEN TREES:

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<th>Botanical Name</th>
<th>Common Name</th>
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</thead>
<tbody>
<tr>
<td>Abies concolor</td>
<td>White Fir</td>
</tr>
<tr>
<td>Picea pungens</td>
<td>Colorado Blue Spruce</td>
</tr>
<tr>
<td>Pinus aristata</td>
<td>Bristlecone Pine</td>
</tr>
<tr>
<td>Pinus nigra</td>
<td>Austrian Pine</td>
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<tr>
<td>Pseudotsuga menziesii</td>
<td>Douglas Fir</td>
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### DECIDUOUS TREES:

#### Shade Trees

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<th>Common Name</th>
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</thead>
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<td>Norway Maple</td>
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<tr>
<td>(Varieties: Columnar, Deborah, Emerald Queen)</td>
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</tr>
<tr>
<td>Gleditsia triacanthos inermis</td>
<td>Honeylocust</td>
</tr>
<tr>
<td>(Varieties: Imperial, Skyline and Shademaster)</td>
<td></td>
</tr>
<tr>
<td>Populus tremuloides</td>
<td>Quaking Aspen</td>
</tr>
<tr>
<td>Sorbus aucuparia</td>
<td>European Mountain Ash</td>
</tr>
<tr>
<td>Tilia Americana ‘Redmond’</td>
<td>Redmond Linden</td>
</tr>
</tbody>
</table>

#### Ornamental Trees

<table>
<thead>
<tr>
<th>Botanical Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acer ginnala ‘Flame’</td>
<td>Amur Flame or Ginnala Maple</td>
</tr>
<tr>
<td>Acer grandidentatum</td>
<td>Bigtooth Maple</td>
</tr>
<tr>
<td>Acer tataricum</td>
<td>Tatarian Maple</td>
</tr>
<tr>
<td>(Varieties: Hot Wings, Pattern Perfect)</td>
<td></td>
</tr>
<tr>
<td>Crataegus viridis ‘Winter King’</td>
<td>Winter King Hawthorn</td>
</tr>
<tr>
<td>Prunus virginiana ‘Shubert’</td>
<td>Shubert or Canada Red Chokecherry</td>
</tr>
</tbody>
</table>

ATTACHMENT K
### EVERGREEN SHRUBS:

<table>
<thead>
<tr>
<th>Botanical Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Picea pungens</td>
<td>Dwarf Globe Spruce</td>
</tr>
<tr>
<td>‘Glaucia Globosa’</td>
<td></td>
</tr>
<tr>
<td>Pinus mugo</td>
<td>Mugo varieties</td>
</tr>
<tr>
<td>(Varieties: Big Tuna, Miniature, Dwarf, Slowmound, White Bud)</td>
<td></td>
</tr>
<tr>
<td>Buxus</td>
<td>Boxwood</td>
</tr>
<tr>
<td>(Use in protected north and east facing locations. Varieties: Green Velvet, Winter Gem and Julia Jane)</td>
<td></td>
</tr>
</tbody>
</table>

### DECIDUOUS SHRUBS:

<table>
<thead>
<tr>
<th>Botanical Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acer glabrum</td>
<td>Rocky Mountain Maple</td>
</tr>
<tr>
<td>Berberis thunbergii var.</td>
<td>Barberry</td>
</tr>
<tr>
<td>Buddleja davidii var.</td>
<td>Compact Butterfly Bush</td>
</tr>
<tr>
<td>Cornus sericea</td>
<td>Dogwood varieties</td>
</tr>
<tr>
<td>(Varieties: Arctic Fire, Bailey, Cardinal, Rock Cotoneaster)</td>
<td></td>
</tr>
<tr>
<td>Cotoneaster lucidus</td>
<td>Peking / Hedge Cotoneaster</td>
</tr>
<tr>
<td>Forsythia</td>
<td>Forsythia varieties</td>
</tr>
<tr>
<td>(Varieties: Arnold Dwarf, Northern Sun, Show Off, Sunrise’)</td>
<td></td>
</tr>
<tr>
<td>Lonicera</td>
<td>Honeysuckle varieties</td>
</tr>
<tr>
<td>Perovskia atriplicifolia</td>
<td>Russian Sage</td>
</tr>
<tr>
<td>Prunus besseyi</td>
<td>Western Sand Cherry</td>
</tr>
<tr>
<td>Prunus x cistena</td>
<td>Purple Leaf Plum</td>
</tr>
<tr>
<td>Prunus tomentosa</td>
<td>Nanking Cherry</td>
</tr>
<tr>
<td>Prunus virginiana</td>
<td>Chokecherry</td>
</tr>
<tr>
<td>Rosa foetida ‘Bicolor’</td>
<td>Austrian Copper Rose</td>
</tr>
<tr>
<td>Rosa Hugonis</td>
<td>Father Hugo Shrub Rose</td>
</tr>
<tr>
<td>Rosa Morden var.</td>
<td>Morden Varieties Shrub Rose</td>
</tr>
<tr>
<td>Botanical Name</td>
<td>Common Name</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>Salix purpurea nana</td>
<td>Dwarf Arctic Willow</td>
</tr>
<tr>
<td>Spirea</td>
<td>Spirea</td>
</tr>
<tr>
<td>Syringa vulgaris</td>
<td>Lilac varieties</td>
</tr>
<tr>
<td>Viburnum x burkwoodii</td>
<td>Burkwood Viburnum</td>
</tr>
<tr>
<td>Viburnum carlesii</td>
<td>Koreanspice Viburnum</td>
</tr>
<tr>
<td>Viburnum dentatum</td>
<td>Arrowwood Viburnum</td>
</tr>
<tr>
<td>Viburnum lantana</td>
<td>Mohican Wayfaring Tree</td>
</tr>
<tr>
<td>Viburnum opulus ‘Roseum’</td>
<td>Snowball Viburnum</td>
</tr>
<tr>
<td>Viburnum trilobum ‘Bailey Compact’</td>
<td>Compact American</td>
</tr>
<tr>
<td>Viburnum trilobum ‘Wentworth’</td>
<td>Wentworth Highbush Viburnum</td>
</tr>
</tbody>
</table>
DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO (“Agreement”) is made and executed this __ day of __________________, 2019, (the “Effective Date”), by Thompson Park, LLC, a Colorado limited liability company and/or its assigns (the “Declarant”), for the benefit of and enforceable by the Board of Trustees of the Town of Carbondale, Colorado (the “Town”) and the Garfield County Housing Authority (“GCHA”), a duly constituted housing authority established pursuant to Colorado law (the Town and GCHA together, the “Beneficiaries”).

RECITALS

WHEREAS, the Declarant is the owner of 100% of the real property described in the Thompson Park Subdivision Phase 2 Plat, recorded in the Garfield County real property records at Reception No. _______________________ (“Property”); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 plat have been condominiumized pursuant to the condominium plat recorded in the Garfield County real property records at Reception No. _______________________, resulting in the creation of five condominium units (the “Units”); and

WHEREAS, the Property was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052;

WHEREAS, the Declarant’s predecessor and the Town entered into an Annexation and Development Agreement (“Annexation Agreement”), Reception No. 816055, setting forth additional terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, on November 8, 2018, Declarant and the Town entered into an Eighth Amendment to the Annexation Agreement, which amendment was recorded at Reception No. 914138; and

WHEREAS, Section 10 of the Annexation Agreement, as amended by the Eighth Amendment, requires that 20% of the units or lots developed on the Property be deed-restricted for affordable housing, with two units or lots being affordable to purchasers earning not more than 100% of the Garfield County area median income (“AMI”); and
WHEREAS, as indicated on the Phase 2 plat and condominium plat, the Property comprises 27 residential units; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement’s affordable housing requirements by restricting the use of Units __ and __ of the Property (“Restricted Lots”) as hereinafter described.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare, covenant, and agree as follows:

SECTION 1
DEFINITIONS

A. The following definitions shall apply to the terms used in this Agreement:

1. “Area of Eligibility” shall mean the Roaring Fork Valley and the area encompassing Aspen, Colorado, to Parachute, Colorado, including Redstone, Colorado, and Marble, Colorado.

2. “Date of Intent to Sell” shall mean the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when a Restricted Lot is first offered for sale by an Owner or the Declarant, as applicable.

3. “Guidelines” shall mean the Town’s Community Housing Guidelines as amended from time to time and in effect at the time of sale of a Restricted Lot; provided, however, that as to Declarant, the terms of the Annexation Agreement shall control.

4. “Initial Sale Price” shall mean any sale price that is within the range established by the Guidelines for Qualified Buyers, and, in any event, that will not exceed thirty percent (30%) of household income for housing costs, including principal, interest, taxes, insurance and Homeowner Association fees, established by the AMI closest in time to the Date of Intent to Sell for the initial sale of a Restricted Lot.

5. “Institutional Lender” shall mean any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.

6. “Qualified Buyer” or “Qualified Buyers” shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred percent (100%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.
7. “Owner,” as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an “Owner” hereunder only during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

8. “Permitted Capital Improvements” is defined on Exhibit A attached hereto and incorporated herein by this reference.

9. “Required Improvements” shall mean any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency.

SECTION 2
DECLARATION

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Restricted Lots shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Lot, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who purchase a Restricted Lot shall be Qualified Buyers, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries.

B. Declarant hereby restricts the acquisition or transfer of a Restricted Lot to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Lot in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Lot, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying a Restricted Lot to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee’s acknowledgement and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of such Memorandum of Acceptance is attached hereto as Exhibit B.
SECTION 3
USE AND OCCUPANCY OF THE RESTRICTED LOT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Lot is limited exclusively to housing for Qualified Buyers owning the Restricted Lot and their families. Each Restricted Lot shall be utilized as an Owner’s sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Lot, must: (a) occupy the Restricted Lot as his or her sole place of residence, as explained in the Guidelines, during the time that he or she is the Owner of a Restricted Lot; (b) not engage in any business activity on or in such Restricted Lot, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines for the duration of the Owner’s ownership of the Restricted Lot; and (d) sell, convey, or otherwise transfer such Restricted Lot only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Lot as his or her sole and exclusive place of residence, the Restricted Lot shall be offered for sale pursuant to the provisions of Section 4(H) of this Agreement. The Owner shall be deemed to have ceased utilizing the Restricted Lot as his or her sole and exclusive place of residence by becoming a resident elsewhere, either within or outside the Area of Eligibility, by residing on the Restricted Lot for fewer than nine (9) months per calendar year without the express written approval of the GCHA, or as otherwise provided in the Guidelines. Where the provisions of this Section 3(C) apply, the GCHA may require the Owner to rent the Restricted Lot in accordance with the provisions of Section 5, below.

D. If an Owner of a Restricted Lot must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Lot during such absence, a leave of absence may be granted by the GCHA for up to one (1) year upon clear and convincing evidence demonstrating a bona fide reason for leaving and a commitment to return to the Area of Eligibility. A letter must be sent to the GCHA at least thirty (30) days prior to leaving, requesting permission to rent the Restricted Lot during the leave of absence. Notice of such intent, and the ability to comment, shall be provided to any applicable homeowners’ association at the time of request to the GCHA. The leave of absence shall be for one (1) year and may, at the discretion of the GCHA, be extended for an additional one (1) year; but in no event shall the leave exceed two (2) years. The Unit may be rented during the one (1) or two (2) year period in accordance with Section 5, below.

SECTION 4
SALE OF RESTRICTED LOT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:
1. Deliver a written notice of its intent to sell a Restricted Lot (the “Notice of Sale”) to the Town and GCHA prior to offering the Restricted Lot for sale; and

2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and

3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list the Restricted Lot for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual resale price. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

C. In no event shall a Restricted Lot be sold by an Owner for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Restricted Lot paid by the Owner selling the Restricted Lot divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982 84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics (“Consumer Price Index”), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements and/or Required Improvements. In determining the improvement costs, only the Owner’s actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner’s “sweat equity” or to any appreciation in the value of the improvements. Notwithstanding the foregoing, in no event shall the Maximum Resale Price be less than the Owner’s purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements and Required Improvements (except as limited in Paragraph C of this Section 4). The full amount of any monetary grant from a federal, state, or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale Price.
NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA, OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

D. To qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and

3. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements.

Notwithstanding anything else contained in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller’s customary closing costs or to accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective Qualified Buyer.

G. Prior to an Owner’s entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall not enter into a sales contract for the sale of a Restricted Lot with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with Section 4(C). The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (hereinafter referred to as “Non-
Qualified Transferee(s)”), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to a Restricted Lot, the Restricted Lot shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in Section 4(B) above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Restricted Lot shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Restricted Lot. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.

2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.

3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.

4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.

5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.
SECTION 5
RENTAL OF A RESTRICTED LOT

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA’s conditions of approval, rent a Restricted Lot. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy, and all other qualifications established by the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be “Owner’s cost” prorated on a monthly basis. “Owner’s cost,” as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner’s assessments, utilities remaining in Owner’s name, plus an additional Twenty Dollars ($20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including Section 3.

B. Nothing herein shall be construed to require the Declarant, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Lot between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours’ written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be
construed as a waiver or relinquishment of the Town’s or GCHA’s right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 7
GRIEVANCE PROCEDURES

A. A grievance is any dispute that a tenant or Owner may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant’s or Owner’s rights, duties, welfare, or status. A grievance may be presented to a special review committee established by the Town and GCHA (hereinafter referred to as the “Committee” under the following procedures).

B. Filing a Grievance.

1. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.

2. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.

3. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.

4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.

2. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.

3. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.

4. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee
shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

SECTION 8
REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Lot, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney’s fees.

C. Each and every conveyance of a Restricted Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

D. In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of a Restricted Lot by an Owner, or as specified in Section 4(H). The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner’s purchase price of the Restricted Lot as referred to in Section 4 of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in Section 4 of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9
DEFAULT/FORECLOSURE

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, “First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Restricted Lot to secure a loan used to purchase the Restricted Lot. An Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Restricted Lot, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.
B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a Qualified Buyer of a Restricted Lot.

C. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering a Restricted Lot, including the First Deed of Trust, or to breach any of Owner’s duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Thompson Park Homeowners Association for general or special assessments. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner’s duties or obligations under said deed of trust, within five (5) calendar days of Owner’s notification from lender, or its assigns or within five (5) calendar days of Owner’s notification from any other creditor specified herein, of any default, past due payment or breach.

D. Upon notification of a default as provided in Section 9(C), above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of a Restricted Unit pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner’s financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to Section 4 of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in Section 9(C), above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner’s behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney’s fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Restricted Lot. Otherwise, Owner’s indebtedness to the Town shall be satisfied from the Owner’s proceeds at closing upon sale of the Restricted Lot. The provisions of this Section 9(E) are not subject to the provisions of Section 9(A) limiting the amount of secured indebtedness.
The Town shall be a “person with an interest in the property.....” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 et seq. Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town’s sole discretion, to purchase the Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Restricted Lot, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the Town timely exercises its option, the closing on the purchase of the Restricted Lot shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Restricted Lot free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to cure the default by paying off the indebtedness secured by the Restricted Lot which is the subject of the pending foreclosure action, then to Owner’s closing costs, then to the payment of other indebtedness secured by the Restricted Lot, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town’s option to purchase the Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town’s option to purchase the Restricted Lot in the event that any subsequent NED is filed.

The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Restricted Lot made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Restricted Lot if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of Section 4(H) of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.
SECTION 10
GENERAL PROVISIONS

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:
c/o Garfield & Hecht, P.C.
901 Grand Avenue, Suite 201
Glenwood Springs, Colorado 81601

To Town:
Town of Carbondale, Colorado
511 Colorado Avenue
Carbondale, Colorado 81623

To Owner: as set forth in each recorded Memorandum of Acceptance for each Restricted Lot

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule
restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner’s or lender’s rights under this Agreement, and when such amendment has been approved by the Town.

N. Attorney’s Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.
DECLARANT:

THOMPSON PARK, LLC, a Colorado limited liability company

            By: Lubar & Co., Co-Manager of Thompson Park, LLC

By: ____________________________
   David Bauer, Treasurer

STATE OF WISCONSIN             )
   ) ss.
COUNTY OF______________

   The foregoing instrument was signed before me this _____ day of ____________, 2019, by
   David Bauer, Treasurer of Lubar & Co., Co-Manager of Thompson Park, LLC, a Colorado limited
   liability company.

WITNESS my hand and official seal.

My commission expires: ________________

______________________________
   Notary Public
ACCEPTANCE BY THE GARFIELD COUNTY HOUSING AUTHORITY AND THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

By: ______________________________
Katherine Gazunis, Executive Director
Garfield County Housing Authority

STATE OF COLORADO )
) ss.
COUNTY OF GARFIELD )

The above and foregoing document was acknowledged before me by Katherine Gazunis this ___ day of __________________, 2019.

Witness my hand and official seal.
My commission expires:

______________________________________________________________
Notary Public

TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation

By: ______________________________
Dan Richardson, Mayor

ATTEST

______________________________________________________________
Cathy Derby, Town Clerk
STATE OF COLORADO   )
COUNTY OF GARFIELD  ) ss.

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this ____ day of ___________________, 2019.

Witness my hand and official seal.
My commission expires:

___________________________
Notary Public
EXHIBIT A
PERMITTED CAPITAL IMPROVEMENTS

1. The term “Permitted Capital Improvements” as used in the Agreement shall only include the following:
   
   a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacements, and/or maintenance improvements;
   
   b. Improvements for energy and water conservation;
   
   c. Improvements for the benefit of seniors and/or handicapped persons;
   
   d. Improvements for health and safety protection devices;
   
   e. Improvements to add and/or finish permanent/fixed storage space;
   
   f. Improvements to finish unfinished space;
   
   g. Garages;
   
   h. The cost of adding decks and any extension thereto;
   
   i. Landscaping; and
   
   j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:

   a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;
   
   b. Improvements required to repair, replace, and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting, and other similar items; or
   
   c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined in the Agreement.
EXHIBIT B
MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _______________________________ (“Owner”) has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: ____________________________________________________________________, according to the Final Plat thereof recorded ______________ (date), as Reception No. _____________ (“Property”), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner acknowledges and agrees to the terms, conditions, and restrictions found in that certain instrument entitled DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO recorded on _________________ as Reception Number _______________ in the Office of the Clerk and Recorder of Garfield County, Colorado (“Agreement”); and

NOW, THEREFORE, as required by the Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Owner agrees and acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions, and requirements thereof. In particular, Owner acknowledges and agrees that the Town of Carbondale shall be entitled to exercise the rights and options as set forth in Section 9 of the Agreement in the event of a default as described therein, and that the Owner will be required to document the cost of and obtain approval for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows

   a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is $__________________.

   b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:

   ________________________________________________
   ________________________________________________
   ________________________________________________
3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER

______________________________ Dated: _______________________
Name:

STATE OF COLORADO  )
 ) ss.
COUNTY OF ___________ )

The above and foregoing document was acknowledged before me this ____ day of __________________, 20___, by ____________________________.

Witness my hand and official seal.
My commission expires:

__________________________________________
Notary Public

OWNER:

______________________________ Dated: _______________________
Name:

STATE OF COLORADO  )
 ) ss.
COUNTY OF ___________ )

The above and foregoing document was acknowledged before me this ____ day of __________________, 20___, by ____________________________.

Witness my hand and official seal.
My commission expires:

__________________________________________
Notary Public
DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS AND UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and executed this __ day of ________________, 2019, (the "Effective Date"), by Thompson Park, LLC, a Colorado limited liability company and/or its assigns (the "Declarant"), for the benefit of and enforceable by the Board of Trustees of the Town of Carbondale, Colorado (the "Town") and the Garfield County Housing Authority ("GCHA"), a duly constituted housing authority established pursuant to Colorado law (the Town and GCHA together, the "Beneficiaries").

RECITALS

WHEREAS, the Declarant is the owner of 100% of the real property described in the Thompson Park Subdivision Phase 2 Plat, recorded in the Garfield County real property records at Reception No. _______________________ ("Property"); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 plat have been condominiumized pursuant to the condominium plat recorded in the Garfield County real property records at Reception No. _______________________, resulting in the creation of five condominium units; and

WHEREAS, the Property was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052;

WHEREAS, the Declarant’s predecessor and the Town entered into an Annexation and Development Agreement ("Annexation Agreement"), Reception No. 816055, setting forth additional terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, on November 8, 2018, Declarant and the Town entered into an Eighth Amendment to the Annexation Agreement, which amendment was recorded at Reception No. 914138; and

WHEREAS, Section 10 of the Annexation Agreement, as amended by the Eighth Amendment, requires that 20% of the units or lots developed on the Property be deed-restricted for affordable housing, with one unit or lot being affordable to purchasers earning not more than 120% of the Garfield County area median income ("AMI"); and
WHEREAS, as indicated on the Phase 2 plat and condominium plat, the Property comprises 27 residential units; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement’s affordable housing requirements by restricting the use of Unit __ of the Property (“Restricted Lot”) as hereinafter described.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare, covenant, and agree as follows:

SECTION 1
DEFINITIONS

A. The following definitions shall apply to the terms used in this Agreement:

1. “Area of Eligibility” shall mean the Roaring Fork Valley and the area encompassing Aspen, Colorado, to Parachute, Colorado, including Redstone, Colorado, and Marble, Colorado.

2. “Date of Intent to Sell” shall mean the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when a Restricted Lot is first offered for sale by an Owner or the Declarant, as applicable.

3. “Guidelines” shall mean the Town’s Community Housing Guidelines as amended from time to time and in effect at the time of sale of a Restricted Lot; provided, however, that as to Declarant, the terms of the Annexation Agreement shall control.

4. “Initial Sale Price” shall mean any sale price that is within the range established by the Guidelines for Qualified Buyers, and, in any event, that will not exceed thirty percent (30%) of household income for housing costs, including principal, interest, taxes, insurance and Homeowner Association fees, established by the AMI closest in time to the Date of Intent to Sell for the initial sale of a Restricted Lot.

5. “Institutional Lender” shall mean any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.

6. “Qualified Buyer” or “Qualified Buyers” shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred twenty percent (120%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.
7. “Owner,” as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an “Owner” hereunder only during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

8. “Permitted Capital Improvements” is defined on Exhibit A attached hereto and incorporated herein by this reference.

9. “Required Improvements” shall mean any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency.

SECTION 2
DECLARATION

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Restricted Lot shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Lot, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who purchase a Restricted Lot shall be Qualified Buyers, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries.

B. Declarant hereby restricts the acquisition or transfer of a Restricted Lot to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Lot in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Lot, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying a Restricted Lot to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee’s acknowledgement and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of such Memorandum of Acceptance is attached hereto as Exhibit B.
SECTION 3
USE AND OCCUPANCY OF A RESTRICTED LOT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Lot is limited exclusively to housing for Qualified Buyers owning the Restricted Lot and their families. Each Restricted Lot shall be utilized as an Owner’s sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Lot, must: (a) occupy the Restricted Lot as his or her sole place of residence, as explained in the Guidelines, during the time that he or she is the Owner of a Restricted Lot; (b) not engage in any business activity on or in such Restricted Lot, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines for the duration of the Owner’s ownership of the Restricted Lot; and (d) sell, convey, or otherwise transfer such Restricted Lot only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Lot as his or her sole and exclusive place of residence, the Restricted Lot shall be offered for sale pursuant to the provisions of Section 4(H) of this Agreement. The Owner shall be deemed to have ceased utilizing the Restricted Lot as his or her sole and exclusive place of residence by becoming a resident elsewhere, either within or outside the Area of Eligibility, by residing on the Restricted Lot for fewer than nine (9) months per calendar year without the express written approval of the GCHA, or as otherwise provided in the Guidelines. Where the provisions of this Section 3(C) apply, the GCHA may require the Owner to rent the Restricted Lot in accordance with the provisions of Section 5, below.

D. If an Owner of a Restricted Lot must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Lot during such absence, a leave of absence may be granted by the GCHA for up to one (1) year upon clear and convincing evidence demonstrating a bona fide reason for leaving and a commitment to return to the Area of Eligibility. A letter must be sent to the GCHA at least thirty (30) days prior to leaving, requesting permission to rent the Restricted Lot during the leave of absence. Notice of such intent, and the ability to comment, shall be provided to any applicable homeowners’ association at the time of request to the GCHA. The leave of absence shall be for one (1) year and may, at the discretion of the GCHA, be extended for an additional one (1) year; but in no event shall the leave exceed two (2) years. The Unit may be rented during the one (1) or two (2) year period in accordance with Section 5, below.

SECTION 4
SALE OF RESTRICTED LOT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:
1. Deliver a written notice of its intent to sell a Restricted Lot (the “Notice of Sale”) to the Town and GCHA prior to offering the Restricted Lot for sale; and

2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and

3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list the Restricted Lot for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual resale price. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

C. In no event shall a Restricted Lot be sold by an Owner for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Restricted Lot paid by the Owner selling the Restricted Lot divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982 84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics (“Consumer Price Index”), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements and/or Required Improvements. In determining the improvement costs, only the Owner’s actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner’s “sweat equity” or to any appreciation in the value of the improvements. Notwithstanding the foregoing, in no event shall the Maximum Resale Price be less than the Owner’s purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements and Required Improvements (except as limited in Paragraph C of this Section 4). The full amount of any monetary grant from a federal, state, or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale Price.
NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA, OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

D. To qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and

3. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements.

Notwithstanding anything else contained in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller’s customary closing costs or to accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective Qualified Buyer.

G. Prior to an Owner’s entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall not enter into a sales contract for the sale of a Restricted Lot with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with Section 4(C). The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (hereinafter referred to as “Non-
Qualified Transferee(s”), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to a Restricted Lot, the Restricted Lot shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in Section 4(B) above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Restricted Lot shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Restricted Lot. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.

2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.

3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.

4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.

5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.
SECTION 5
RENTAL OF A RESTRICTED LOT

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA’s conditions of approval, rent a Restricted Lot. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy, and all other qualifications established by the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be “Owner’s cost” prorated on a monthly basis. “Owner’s cost,” as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner’s assessments, utilities remaining in Owner’s name, plus an additional Twenty Dollars ($20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including Section 3.

B. Nothing herein shall be construed to require the Declarant, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Lot between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours’ written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be
construed as a waiver or relinquishment of the Town’s or GCHA’s right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 7
GRIEVANCE PROCEDURES

A. A grievance is any dispute that a tenant or Owner may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant’s or Owner’s rights, duties, welfare, or status. A grievance may be presented to a special review committee established by the Town and GCHA (hereinafter referred to as the “Committee” under the following procedures).

B. Filing a Grievance.

1. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.

2. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.

3. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.

4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.

2. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.

3. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.

4. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee
shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

SECTION 8
REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Lot, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney’s fees.

C. Each and every conveyance of a Restricted Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

D. In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of a Restricted Lot by an Owner, or as specified in Section 4(H). The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner’s purchase price of the Restricted Lot as referred to in Section 4 of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in Section 4 of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9
DEFAULT/FORECLOSURE

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, “First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Restricted Lot to secure a loan used to purchase the Restricted Lot. An Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Restricted Lot, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.
B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a Qualified Buyer of a Restricted Lot.

C. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering a Restricted Lot, including the First Deed of Trust, or to breach any of Owner’s duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Thompson Park Homeowners Association for general or special assessments. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner’s duties or obligations under said deed of trust, within five (5) calendar days of Owner’s notification from lender, or its assigns or within five (5) calendar days of Owner’s notification from any other creditor specified herein, of any default, past due payment or breach.

D. Upon notification of a default as provided in Section 9(C), above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of a Restricted Unit pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner’s financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to Section 4 of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in Section 9(C), above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner’s behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney’s fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Restricted Lot. Otherwise, Owner’s indebtedness to the Town shall be satisfied from the Owner’s proceeds at closing upon sale of the Restricted Lot. The provisions of this Section 9(E) are not subject to the provisions of Section 9(A) limiting the amount of secured indebtedness.
F. The Town shall be a “person with an interest in the property......” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 et seq. Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town’s sole discretion, to purchase the Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Restricted Lot, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the Town timely exercises its option, the closing on the purchase of the Restricted Lot shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Restricted Lot free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to cure the default by paying off the indebtedness secured by the Restricted Lot which is the subject of the pending foreclosure action, then to Owner’s closing costs, then to the payment of other indebtedness secured by the Restricted Lot, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town’s option to purchase the Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town’s option to purchase the Restricted Lot in the event that any subsequent NED is filed.

G. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Restricted Lot made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Restricted Lot if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of Section 4(H) of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.
SECTION 10
GENERAL PROVISIONS

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:
c/o Garfield & Hecht, P.C.
901 Grand Avenue, Suite 201
Glenwood Springs, Colorado 81601

To Town:
Town of Carbondale, Colorado
511 Colorado Avenue
Carbondale, Colorado 81623

To Owner: as set forth in each recorded Memorandum of Acceptance for each Restricted Lot

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule
restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner’s or lender’s rights under this Agreement, and when such amendment has been approved by the Town.

N. Attorney’s Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.
DECLARANT:

THOMPSON PARK, LLC, a Colorado limited liability company

By: Lubar & Co., Co-Manager of Thompson Park, LLC

By: _________________________________
David Bauer, Treasurer

STATE OF WISCONSIN )
COUNTY OF ____________)

The foregoing instrument was signed before me this _____ day of ____________, 2019, by David Bauer, Treasurer of Lubar & Co., Co-Manager of Thompson Park, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: ____________________

________________________________________
Notary Public
ACCEPTANCE BY THE GARFIELD COUNTY HOUSING AUTHORITY AND THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

By: _________________________________
Katherine Gazunis, Executive Director
Garfield County Housing Authority

STATE OF COLORADO  )
) ss.
COUNTY OF GARFIELD  )

The above and foregoing document was acknowledged before me by Katherine Gazunis this ___ day of __________________, 2019.

Witness my hand and official seal.
My commission expires:

______________________________
Notary Public

TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation

By: _________________________________
Dan Richardson, Mayor

ATTEST

______________________________
Cathy Derby, Town Clerk
STATE OF COLORADO  )
 ) ss.
COUNTY OF GARFIELD  )

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this _____ day of _________________, 2019.

Witness my hand and official seal.
My commission expires:

________________________________________
Notary Public
EXHIBIT A
PERMITTED CAPITAL IMPROVEMENTS

1. The term “Permitted Capital Improvements” as used in the Agreement shall only include the following:

   a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacements, and/or maintenance improvements;

   b. Improvements for energy and water conservation;

   c. Improvements for the benefit of seniors and/or handicapped persons;

   d. Improvements for health and safety protection devices;

   e. Improvements to add and/or finish permanent/fixed storage space;

   f. Improvements to finish unfinished space;

   g. Garages;

   h. The cost of adding decks and any extension thereto;

   i. Landscaping; and

   j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall NOT include the following:

   a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;

   b. Improvements required to repair, replace, and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting, and other similar items; or

   c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined in the Agreement.
EXHIBIT B
MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _______________________________ ("Owner") has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: ___________________________________________________________________, according to the Final Plat thereof recorded ____________ (date), as Reception No. _____________ ("Property"), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner acknowledges and agrees to the terms, conditions, and restrictions found in that certain instrument entitled DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO recorded on _________________ as Reception Number ______________ in the Office of the Clerk and Recorder of Garfield County, Colorado ("Agreement"); and

NOW, THEREFORE, as required by the Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Owner agrees and acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions, and requirements thereof. In particular, Owner acknowledges and agrees that the Town of Carbondale shall be entitled to exercise the rights and options as set forth in Section 9 of the Agreement in the event of a default as described therein, and that the Owner will be required to document the cost of and obtain approval for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows

   a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is $__________________.

   b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:

       ______________________________________

       ______________________________________

       ______________________________________
3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER
__________________________________   Dated: _______________________
Name:

STATE OF COLORADO   )
 ) ss.
COUNTY OF ___________ )

The above and foregoing document was acknowledged before me this ____ day of __________________, 20___, by __________________________________.

Witness my hand and official seal.
My commission expires:
________________________________________
Notary Public

OWNER:
__________________________________   Dated: _______________________
Name:

STATE OF COLORADO   )
 ) ss.
COUNTY OF ___________ )

The above and foregoing document was acknowledged before me this ____ day of __________________, 20___, by __________________________________.

Witness my hand and official seal.
My commission expires:
________________________________________
Notary Public
DEED RESTRICTION
THOMPSON PARK SUBDIVISION, PHASE 2
TOWN OF CARBONDALE, COLORADO

DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS AND UNITS WITHIN THE
THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD
COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING
THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON
PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY,
COLORADO (“Agreement”) is made and executed this __ day of ________________, 2019, (the
“Effective Date”), by Thompson Park, LLC, a Colorado limited liability company and/or its
assigns (the “Declarant”), for the benefit of and enforceable by the Board of Trustees of the
Town of Carbondale, Colorado (the “Town”) and the Garfield County Housing Authority
(“GCHA”), a duly constituted housing authority established pursuant to Colorado law (the Town
and GCHA together, the “Beneficiaries”).

RECITALS

WHEREAS, the Declarant is the owner of 100% of the real property described in the
Thompson Park Subdivision Phase 2 Plat, recorded in the Garfield County real property records at
Reception No. ______________________ (“Property”); and

WHEREAS, the structures located on Lots 1 and 2 created by the Phase 2 plat have been
condominiumized pursuant to the condominium plat recorded in the Garfield County real property
records at Reception No. ______________________, resulting in the creation of five condominium
units; and

WHEREAS, the Property was annexed into the Town pursuant to Town of Carbondale
Ordinance No. 2 (Series 2012), Reception No. 816052;

WHEREAS, the Declarant’s predecessor and the Town entered into an Annexation and
Development Agreement (“Annexation Agreement”), Reception No. 816055, setting forth additional
terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, on November 8, 2018, Declarant and the Town entered into an Eighth Amendment
to the Annexation Agreement, which amendment was recorded at Reception No. 914138; and

WHEREAS, Section 10 of the Annexation Agreement, as amended by the Eighth Amendment,
requires that 20% of the units or lots developed on the Property be deed-restricted for affordable
housing, with two units or lots being affordable to purchasers earning not more than 150% of the
Garfield County area median income (“AMI”); and
WHEREAS, as indicated on the Phase 2 plat and condominium plat, the Property comprises 27 residential units; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement’s affordable housing requirements by restricting the use of Units __ and __ of the Property (“Restricted Lots”) as hereinafter described.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare, covenant, and agree as follows:

SECTION 1
DEFINITIONS

A. The following definitions shall apply to the terms used in this Agreement:

1. “Area of Eligibility” shall mean the Roaring Fork Valley and the area encompassing Aspen, Colorado, to Parachute, Colorado, including Redstone, Colorado, and Marble, Colorado.

2. “Date of Intent to Sell” shall mean the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when a Restricted Lot is first offered for sale by an Owner or the Declarant, as applicable.

3. “Guidelines” shall mean the Town’s Community Housing Guidelines as amended from time to time and in effect at the time of sale of a Restricted Lot; provided, however, that as to Declarant, the terms of the Annexation Agreement shall control.

4. “Initial Sale Price” shall mean any sale price that is within the range established by the Guidelines for Qualified Buyers, and, in any event, that will not exceed thirty percent (30%) of household income for housing costs, including principal, interest, taxes, insurance and Homeowner Association fees, established by the AMI closest in time to the Date of Intent to Sell for the initial sale of a Restricted Lot.

5. “Institutional Lender” shall mean any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.

6. “Qualified Buyer” or “Qualified Buyers” shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred fifty percent (150%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.
7. “Owner,” as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an “Owner” hereunder only during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

8. “Permitted Capital Improvements” is defined on Exhibit A attached hereto and incorporated herein by this reference.

9. “Required Improvements” shall mean any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency.

SECTION 2
DECLARATION

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Restricted Lots shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Lot, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who purchase a Restricted Lot shall be Qualified Buyers, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries.

B. Declarant hereby restricts the acquisition or transfer of a Restricted Lot to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Lot in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Lot, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying a Restricted Lot to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee’s acknowledgement and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of such Memorandum of Acceptance is attached hereto as Exhibit B.
SECTION 3
USE AND OCCUPANCY OF A RESTRICTED LOT

A. Except as otherwise provided herein, the use and occupancy of a Restricted Lot is limited exclusively to housing for Qualified Buyers owning the Restricted Lot and their families. Each Restricted Lot shall be utilized as an Owner’s sole and exclusive place of residence.

B. An Owner, in connection with the purchase of a Restricted Lot, must: (a) occupy the Restricted Lot as his or her sole place of residence, as explained in the Guidelines, during the time that he or she is the Owner of a Restricted Lot; (b) not engage in any business activity on or in such Restricted Lot, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines for the duration of the Owner’s ownership of the Restricted Lot; and (d) sell, convey, or otherwise transfer such Restricted Lot only in accordance with this Agreement and the Guidelines.

C. In the event an Owner ceases to utilize a Restricted Lot as his or her sole and exclusive place of residence, the Restricted Lot shall be offered for sale pursuant to the provisions of Section 4(H) of this Agreement. The Owner shall be deemed to have ceased utilizing the Restricted Lot as his or her sole and exclusive place of residence by becoming a resident elsewhere, either within or outside the Area of Eligibility, by residing on the Restricted Lot for fewer than nine (9) months per calendar year without the express written approval of the GCHA, or as otherwise provided in the Guidelines. Where the provisions of this Section 3(C) apply, the GCHA may require the Owner to rent theRestricted Lot in accordance with the provisions of Section 5, below.

D. If an Owner of a Restricted Lot must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Lot during such absence, a leave of absence may be granted by the GCHA for up to one (1) year upon clear and convincing evidence demonstrating a bona fide reason for leaving and a commitment to return to the Area of Eligibility. A letter must be sent to the GCHA at least thirty (30) days prior to leaving, requesting permission to rent the Restricted Lot during the leave of absence. Notice of such intent, and the ability to comment, shall be provided to any applicable homeowners’ association at the time of request to the GCHA. The leave of absence shall be for one (1) year and may, at the discretion of the GCHA, be extended for an additional one (1) year; but in no event shall the leave exceed two (2) years. The Unit may be rented during the one (1) or two (2) year period in accordance with Section 5, below.

SECTION 4
SALE OF RESTRICTED LOT; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:
1. Deliver a written notice of its intent to sell a Restricted Lot (the “Notice of Sale”) to the Town and GCHA prior to offering the Restricted Lot for sale; and

2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and

3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list the Restricted Lot for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual resale price. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

C. In no event shall a Restricted Lot be sold by an Owner for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Restricted Lot paid by the Owner selling the Restricted Lot divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982 84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics (“Consumer Price Index”), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements and/or Required Improvements. In determining the improvement costs, only the Owner’s actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner’s “sweat equity” or to any appreciation in the value of the improvements. Notwithstanding the foregoing, in no event shall the Maximum Resale Price be less than the Owner’s purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements and Required Improvements (except as limited in Paragraph C of this Section 4). The full amount of any monetary grant from a federal, state, or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale Price.
NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA, OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

D. To qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and

3. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements.

Notwithstanding anything else contained in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller’s customary closing costs or to accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective Qualified Buyer.

G. Prior to an Owner’s entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall not enter into a sales contract for the sale of a Restricted Lot with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with Section 4(C). The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (hereinafter referred to as “Non-
Qualified Transferee(s”), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to a Restricted Lot, the Restricted Lot shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in Section 4(B) above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Restricted Lot shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Restricted Lot. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.

2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.

3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.

4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.

5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.
SECTION 5
RENTAL OF A RESTRICTED LOT

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA’s conditions of approval, rent a Restricted Lot. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy, and all other qualifications established by the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be “Owner’s cost” prorated on a monthly basis. “Owner’s cost,” as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner’s assessments, utilities remaining in Owner’s name, plus an additional Twenty Dollars ($20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including Section 3.

B. Nothing herein shall be construed to require the Declarant, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Lot between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours’ written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be
construed as a waiver or relinquishment of the Town’s or GCHA’s right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 7
GRIEVANCE PROCEDURES

A. A grievance is any dispute that a tenant or Owner may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant’s or Owner’s rights, duties, welfare, or status. A grievance may be presented to a special review committee established by the Town and GCHA (hereinafter referred to as the “Committee” under the following procedures).

B. Filing a Grievance.

1. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.

2. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.

3. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.

4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.

2. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.

3. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.

4. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee
shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

SECTION 8
REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Lot, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney’s fees.

C. Each and every conveyance of a Restricted Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

D. In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of a Restricted Lot by an Owner, or as specified in Section 4(H). The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner’s purchase price of the Restricted Lot as referred to in Section 4 of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in Section 4 of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9
DEFAULT/FORECLOSURE

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, “First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Restricted Lot to secure a loan used to purchase the Restricted Lot. An Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Restricted Lot, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.
B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a Qualified Buyer of a Restricted Lot.

C. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering a Restricted Lot, including the First Deed of Trust, or to breach any of Owner’s duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Thompson Park Homeowners Association for general or special assessments. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner’s duties or obligations under said deed of trust, within five (5) calendar days of Owner’s notification from lender, or its assigns or within five (5) calendar days of Owner’s notification from any other creditor specified herein, of any default, past due payment or breach.

D. Upon notification of a default as provided in Section 9(C), above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of a Restricted Unit pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner’s financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to Section 4 of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in Section 9(C), above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner’s behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney’s fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Restricted Lot. Otherwise, Owner’s indebtedness to the Town shall be satisfied from the Owner’s proceeds at closing upon sale of the Restricted Lot. The provisions of this Section 9(E) are not subject to the provisions of Section 9(A) limiting the amount of secured indebtedness.
F. The Town shall be a “person with an interest in the property……” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 et seq. Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town’s sole discretion, to purchase the Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Restricted Lot, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the Town timely exercises its option, the closing on the purchase of the Restricted Lot shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Restricted Lot free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to cure the default by paying off the indebtedness secured by the Restricted Lot which is the subject of the pending foreclosure action, then to Owner’s closing costs, then to the payment of other indebtedness secured by the Restricted Lot, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town’s option to purchase the Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town’s option to purchase the Restricted Lot in the event that any subsequent NED is filed.

G. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Restricted Lot made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Restricted Lot if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of Section 4(H) of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.
SECTION 10
GENERAL PROVISIONS

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:
c/o Garfield & Hecht, P.C.
901 Grand Avenue, Suite 201
Glenwood Springs, Colorado 81601

To Town:
Town of Carbondale, Colorado
511 Colorado Avenue
Carbondale, Colorado 81623

To Owner: as set forth in each recorded Memorandum of Acceptance for each Restricted Lot

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule
restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner’s or lender’s rights under this Agreement, and when such amendment has been approved by the Town.

N. Attorney’s Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.
DECLARANT:
THOMPSON PARK, LLC, a Colorado limited liability company

By: Lubar & Co., Co-Manager of Thompson Park, LLC

By: ________________________________
David Bauer, Treasurer

STATE OF WISCONSIN )
) ss.
COUNTY OF _____________)

The foregoing instrument was signed before me this _____ day of __________, 2019, by David Bauer, Treasurer of Lubar & Co., Co-Manager of Thompson Park, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: ____________________

_____________________________________
Notary Public
ACCEPTANCE BY THE GARFIELD COUNTY HOUSING AUTHORITY AND THE BOARD
OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING
THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE
THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD
COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County
Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

By:_______________________________________
Katherine Gazunis, Executive Director
Garfield County Housing Authority

STATE OF COLORADO  )
) ss.
COUNTY OF GARFIELD  )

The above and foregoing document was acknowledged before me by Katherine Gazunis
this ___ day of ___________________, 2019.

Witness my hand and official seal.
My commission expires:

__________________________________________________________________________
Notary Public

TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation

By:_______________________________________
Dan Richardson, Mayor

ATTEST

__________________________________________________________________________
Cathy Derby, Town Clerk
The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this ____ day of ________________, 2019.

Witness my hand and official seal.
My commission expires:

___________________________
Notary Public
EXHIBIT A
PERMITTED CAPITAL IMPROVEMENTS

1. The term “Permitted Capital Improvements” as used in the Agreement shall only include the following:
   
   a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacements, and/or maintenance improvements;
   
   b. Improvements for energy and water conservation;
   
   c. Improvements for the benefit of seniors and/or handicapped persons;
   
   d. Improvements for health and safety protection devices;
   
   e. Improvements to add and/or finish permanent/fixed storage space;
   
   f. Improvements to finish unfinished space;
   
   g. Garages;
   
   h. The cost of adding decks and any extension thereto;
   
   i. Landscaping; and
   
   j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:
   
   a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;
   
   b. Improvements required to repair, replace, and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting, and other similar items; or
   
   c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined in the Agreement.
EXHIBIT B
MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _______________________________ (“Owner”) has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: ___________________________________________________________________, according to the Final Plat thereof recorded __________ (date), as Reception No. _____________ (“Property”), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner acknowledges and agrees to the terms, conditions, and restrictions found in that certain instrument entitled DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS OR UNITS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO recorded on _________________ as Reception Number ___________________ in the Office of the Clerk and Recorder of Garfield County, Colorado (“Agreement”); and

NOW, THEREFORE, as required by the Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Owner agrees and acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions, and requirements thereof. In particular, Owner acknowledges and agrees that the Town of Carbondale shall be entitled to exercise the rights and options as set forth in Section 9 of the Agreement in the event of a default as described therein, and that the Owner will be required to document the cost of and obtain approval for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows
   a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is $________________.
   b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:
      __________________________________________
      __________________________________________
      __________________________________________
3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER

__________________________________   Dated: _______________________
Name:

STATE OF COLORADO   )
COUNTY OF ___________  ) ss.

The above and foregoing document was acknowledged before me this ____ day of___________________, 20___, by ________________________________.

Witness my hand and official seal.
My commission expires:
__________________________________________
Notary Public

OWNER:

__________________________________   Dated: _______________________
Name:

STATE OF COLORADO   )
COUNTY OF ___________  ) ss.

The above and foregoing document was acknowledged before me this ____ day of___________________, 20___, by ________________________________.

Witness my hand and official seal.
My commission expires:
__________________________________________
Notary Public
PUBLIC NOTICE

PLEASE TAKE NOTICE that the Town of Carbondale Planning & Zoning Commission, Garfield County, State of Colorado, will conduct a public hearing to consider an application submitted by Thompson Park, LLC (“Applicant”) for approval of a preliminary and final subdivision application (“Application”), for the property legally described as Parcel 2, THOMPSON PARK SUBDIVISION, according to the MASTER PLAT thereof filed May 19, 2015, as Reception No. 862909, Garfield County, Colorado, consisting of approximately 2.20 acres (“Property”). Thompson Park, LLC is the owner of the Property. Applicant is proposing to subdivide Parcel 2 into 24 lots and build 27 residential units thereon. A total of five units on Parcel 2 will be deed-restricted for affordable housing.

A public hearing on the Application is scheduled for October ____, 2019, at 6:00 PM, at Carbondale Town Hall, 511 Colorado Ave., Carbondale, Colorado. All interested parties have the right to appear at said hearing and to be heard on the Application. Copies of the Application are on file in the Town Planning Department office, Town Hall, 511 Colorado Ave., Carbondale, Colorado and may be examined by interested persons during regular working hours, 8:00 am through 5:00 pm, Monday through Friday.

The application may also be reviewed on the Town’s website at www.carbondalegov.org.

Janet Buck
Planning Director

Publish 1x September __, 2019
PUBLIC HEARING – Thompson Park – Subdivision/Parcel 2
Applicant: Thompson Park, LLC
Location: Parcel 2, Thompson Park

Janet stated that this is an application for a combined Preliminary and Final Plat for Parcel 2 of the Thompson Park Subdivision. She said that the Commission is required to hold a public hearing and recommend approval of the application or recommend denial. She said that the Commission may also continue the public hearing.

Janet said that in April of 2018, the Planning Commission reviewed a Major Site Plan application for this parcel. She said that the Board then approved the application as well as a Development Improvements Agreement to allow construction to proceed on Parcel 2.

Janet stated that this approval allowed the construction of 27 dwelling units. She noted that there would be two duplexes, two triplexes, three fourplexes and one five plex. She said that five of the units would be affordable housing units.

Janet said since that time, the majority of the public improvements have been constructed. She said that in addition, building permits have been issued for the two duplexes and the two triplexes.

Janet explained that the heavy lifting was done in 2018 as far as making sure the development complied with the UDC and the Thompson Park approval documents.

Janet said that this application is simply subdividing the units into 24 individual lots. She said that there are no changes to the site plan or building elevations approved through the Major Site Plan Review process.

Janet stated that the Town Attorney and Town Staff reviewed the subdivision plat and covenants. She said that they are generally acceptable but some revisions will need to be made. She stated that we included a condition that the final plat and covenants be reviewed and approved by Town Staff prior to recordation.

Janet said that the subdivision plat is in compliance with the UDC. She continued by saying that the one item which needs to be acknowledged is the use of easements to access lots. She said that the UDC states that use of easements shall not be allowed unless allowed by the approving authority during a subdivision process. She stated that this should be documented in the final approval documents.

Janet stated that the Fire District and School District Fees are due at the time of subdivision. She said that she included conditions that require payment prior to recordation.

Janet said that a housing mitigation plan was approved by the Board in 2018. She stated that the Town Attorney is reviewing the deed restrictions for the five units before recordation but overall they look fine.
Janet said that the application included Design Guidelines. She stated that the guidelines appear to be thorough and thoughtful. She said that her only comment is that when the Major Site Plan Review was done, it was noted that no more impervious surfaces would be allowed on Parcel 2. She said that she would like to see notification to future property owners on the limitations for additions to buildings on Parcel 2.

Jeff asked if there were similar restrictions on all the Lots.

Janet explained that this application tonight is only for Parcel 2.

Jay commented that all of the affordable housing is near the highway. He said that he thought that the Commission had a previous conversation that the affordable housing should be dispersed throughout the development.

Janet said that there are affordable units on all three parcels.

Jay said that he was just pointing it out and that the UDC should be changed to state disbursement of affordable housing throughout.

Jade asked if it were standard procedure waiting until the end to divide the lots.

Janet said that it was decided to subdivide the whole lot at the same time instead of each lot as they were built.

Haley Carmer introduced herself and Jeff Speidel the project manager. She said that the first three buildings are under construction. She said that the Lots will be renumbered as the addressing has been done already.

Haley explained Parcels 1, where Ross Montessori was built, and Parcels 2, 3 and 4. She said that there would be an open space easement and limited common elements. She said that they would be open to everyone’s use but that the HOA would be responsible for maintaining, including the plowing.

Marina asked about the site plan in regards to the location of snow storage.

Janet said that she said it was between Lots 1 and 2.

Haley explained the site plan and that with two entrances that it allowed for more green space.

Jade asked if there would be a crosswalk across the highway.

Haley said that CDOT wouldn’t allow a crosswalk.

Jeff said that it is part of CDOT’s access plan but that they are not in favor of crosswalks.

There were no members of the public present.
Motion to Close Public Hearing

A motion was made by Jeff to close the public hearing. Jay seconded the motion and it was approved unanimously.

Jay said that in reviewing the survey docs and the water easement and water profile plan, that the sewer main is not going through the easement. He said that this is an issue.

Jeff Speidel said that the sewer had to be relocated and that he will check to see if an easement is needed.

Jeff Davlyn asked what the timeline for building the remainder of the development would be.

Jeff Speidel said that it would depend on sales and what the partners wanted to do.

Motion

Jade made a motion to recommend approval of the combined Preliminary/Final Subdivision Plat for Parcel 2 of the Thompson Park Subdivision, including the use of an easement to access the lots along Lewie’s Circle and Jewel’s Court and to check on sewer easement and snow storage. Jay seconded the motion and it was approved unanimously.

Staff Update

Janet said that it has been absolutely crazy and that she has had many meetings with developers. She said that Staff has been running into problems with the Code in the Historical Commercial Core (HCC) district. She explained that the developers are tangling with the limit of 33% of the surface of the Lot for residential parking, hindering residential on the upper floors. She said that this section of the UDC is not working and that future amendments could be needed. She said that she would add it to a future agenda for discussion. She stated that this section was a holdover from the old code.

Marina said that it was worth a discussion with developers and architects.

Janet said that she had a meeting with the 1201 Colorado Avenue applicants and that they are looking at additional development possibilities.

Janet said that she had a meeting regarding the Overlook lot. She said that looking at the Comp Plan, we need to decide what we want to see.

Janet said that the two acre parcel next to the substation on Highway 133 is being explored for annexation.
Commissioner Comments

Jay said that he wasn’t at the last meeting for 1201 Colorado Avenue but that the sidewalk between the round-about and downtown needs addressing. He said that with future re-developments and City Market that Main Street needs more separation for a friendly walking area.

Motion to Adjourn

A motion was made by Jeff to adjourn. Jay seconded the motion and the meeting was adjourned at 8:15.
To: Mayor Dan Richardson and
   Carbondale Board of Trustees

From: Gene Schilling
       Chief of Police, Carbondale Police Department

Ref.: Liquor License Transfer Application for Mi Casita, 580 Main St Suite 100.

Date: October 1, 2019

I have completed the requested record checks for the following individual:

Applicant Hogan Hoeffner

I recommend approval of the liquor license transfer application.
# Colorado Liquor Retail License Application

- **New License** [ ]
- **New-Concurrent** [ ]
- **Transfer of Ownership** [ ]
- **State Property Only** [ ]

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor)

## Section I - Applicant Information

1. **Applicant is applying as a/an**
   - [ ] Individual
   - [x] Limited Liability Company
   - [ ] Association or Other
   - [ ] Corporation
   - [ ] Partnership (includes Limited Liability and Husband and Wife Partnerships)

2. **Legal Entity Name (Must match Certificate of Good Standing/Authority)**
   - [ ] P.O. Box
   - **DBA Name**
   - [ ] Micah Carbondale

3. **Address of Premises (specify exact location of premises, include suite/unit numbers)**
   - **City**
   - **County**
   - **State**
   - **ZIP Code**

## Section II - Responsible Party/Main Contact Information

4. **First & Last Name**
   - **Phone Number**
   - **Email Address**

## Section III - License Type Selection and Fee Assessment

### Section A - Nonrefundable Application Fees

- Application Fee for New License: $1,100.00
- Application Fee for New License w/Concurrent Review: $1,200.00
- Application Fee for Transfer: $1,100.00

### Section B - Liquor License Fees

- [ ] Adding Optional Premises to H & R...$100.00 X ________ Total
- [ ] Adding Related Facility to Resort Complex...$75.00 X ________ Total
- [ ] Arts License (City)...
- [ ] Arts License (County)...
- [ ] Beer & Wine License (City)...
- [ ] Beer & Wine License (County)...
- [ ] Brew Pub License (City)...
- [ ] Brew Pub License (County)...
- [ ] Campus Liquor Complex (City)...
- [ ] Campus Liquor Complex (County)...
- [ ] Club License (City)...
- [ ] Club License (County)...
- [ ] Distillery Pub License (City)...
- [ ] Distillery Pub License (County)...
- [ ] Hotel and Restaurant License (City)...
- [ ] Hotel and Restaurant License (County)...
- [ ] Hotel and Restaurant License w/ extra premises (City)...
- [ ] Hotel and Restaurant License w/ extra premises (County)...
- [ ] Liquor-Licensed Drugstore (City)...
- [ ] Liquor-Licensed Drugstore (County)...
- [ ] Lodging & Entertainment - L & E (City)...
- [ ] Lodging & Entertainment - L & E (County)...

- Lodging & Entertainment - L & E (County)...
- Manager Registration - H & R...
- Manager Registration - Tavern...
- Manager Registration - Lodging & Entertainment...
- Manager Registration - Campus Liquor Complex...

- [ ] Master File Location Fee...
- [ ] Master File Background...

### Questions?
- Visit: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information

Do not write in this space - For Department of Revenue use only

### Liability Information

- **License Account Number**
- **Liability Date**
- **License Issued Through (Expiration Date)**
- **Total**

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<thead>
<tr>
<th>Section IV — Eligibility Question</th>
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<tbody>
<tr>
<td><strong>All License Types</strong></td>
</tr>
<tr>
<td>5. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders of 10% or more, or directors if a corporation) or managers under the age of twenty-one years?</td>
</tr>
<tr>
<td>6. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders of 10% or more, or directors if a corporation) or managers ever (in Colorado or any other state):</td>
</tr>
<tr>
<td>(a) Been denied an alcohol beverage license?</td>
</tr>
<tr>
<td>(b) Had an alcohol beverage license suspended or revoked?</td>
</tr>
<tr>
<td>(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?</td>
</tr>
<tr>
<td>If you answered yes to a, b, or c, explain in detail on a separate sheet.</td>
</tr>
<tr>
<td>7. Has a liquor license (same license class) that was located within 500 feet of the proposed premises, been denied within the preceding two years?</td>
</tr>
<tr>
<td>8. Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?</td>
</tr>
<tr>
<td>Waiver by local ordinance?</td>
</tr>
<tr>
<td>Other:</td>
</tr>
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<thead>
<tr>
<th>Liquor Stores and Liquor Licensed Drug Stores Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (&gt;) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.</td>
</tr>
<tr>
<td>10. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (&lt;) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.</td>
</tr>
<tr>
<td>11. (a) For additional Retail Liquor Store only: Was your Retail Liquor Store License issued on or before January 1, 2016?</td>
</tr>
<tr>
<td>(b) If yes, is each member listed as an owner in Section VII a Colorado resident?</td>
</tr>
<tr>
<td>12. Liquor Licensed Drugstore (LLDS) applicants, answer the following:</td>
</tr>
<tr>
<td>(a) Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant’s LLDS premise?</td>
</tr>
<tr>
<td>If &quot;yes&quot; a copy of license must be attached.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Club Liquor License Applicants Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>13. Attach a copy of applicable documentation</td>
</tr>
<tr>
<td>(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?</td>
</tr>
<tr>
<td>(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization that is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?</td>
</tr>
<tr>
<td>(c) How long has the club been incorporated?</td>
</tr>
<tr>
<td>(d) Has the applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?</td>
</tr>
</tbody>
</table>

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<tr>
<th>Brew Pub, Distillery Pubs, and Winery’s Restaurant Applicants Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Optional Premises or Hotel and Restaurant with Optional Premises Applicants Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>15. Has a local ordinance or resolution authorizing optional premises been adopted?</td>
</tr>
<tr>
<td>Number of additional Optional Premises areas requested. (See license fee chart)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Campus Liquor Complex Applicants Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. (a) Is the applicant an institution of higher education?</td>
</tr>
<tr>
<td>(b) Is the applicant a person who contracts with the institution of higher education to provide food services?</td>
</tr>
<tr>
<td>If &quot;yes&quot; please provide a copy of the contract with the institution of higher education to provide food services.</td>
</tr>
<tr>
<td>17. Related Facility - Campus Liquor Complex applicants answer the following:</td>
</tr>
<tr>
<td>(a) Is the related facility located within the boundaries of the Campus Liquor Complex?</td>
</tr>
<tr>
<td>If yes, please provide a map of the geographical location within the Campus Liquor Complex.</td>
</tr>
<tr>
<td>If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.</td>
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<tr>
<th>Section V — Premises Information</th>
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</thead>
<tbody>
<tr>
<td>18. Does the applicant, as listed on T2 of this application, have legal possession of the premises by ownership, lease or other arrangement?</td>
</tr>
<tr>
<td>(a) Ownership [X] Lease [ ] Other (Explain in Data)</td>
</tr>
<tr>
<td>(b) If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:</td>
</tr>
<tr>
<td>Landlord [ ] Tenant [ ]</td>
</tr>
<tr>
<td>(b) Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, storage areas, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2&quot; X 11&quot;.</td>
</tr>
</tbody>
</table>
Section VI — Financial Information

19. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company, or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee.

20. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies, etc.) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.

<table>
<thead>
<tr>
<th>Legal Company Name or Individual Name</th>
<th>Date of Birth (Indicate)</th>
<th>FEIN or SSN</th>
<th>Interest/Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

Section VII — Ownership Information

21. Tax Distraction Information. Does the applicant or any other person listed on this application including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraction issued to them by the Colorado Department of Revenue? If yes, provide an explanation and include copies of any payment agreements.

22. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8201-1 (Individual History Record), and submit fingerprint cards to the local licensing authority.

** If applicant is owned 100% by a parent company, please list the designated principal officer on above.

** Corporations — the President, Vice-President, Secretary and Treasurer must be accounted for above (include ownership percentage if applicable)

** If total ownership percentage disclosed here does not total 100%, applicant must check this box.

Applicant affirms that no individual other than those disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Title 47 or 48, C.R.S.

Section VIII — Manager Information

23. For all premises applicants,
   (a) Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record
   (b) For all Liquor Licensed Drugstore (LLDS) the Permitted Manager must also submit a Manager Permit Application

24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.

Section IX — Oath of Application

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Other Code which affect my license.

Authorized Signature: ____________________________
Printed Name and Title: ____________________________
Date: ____________________________
**Section X — Report and Approval of Local Authority (City/County)**

<table>
<thead>
<tr>
<th>Date application filed with local authority</th>
<th>Date of local authority hearing (for renewal applicants, exempt if less than 30 days from date of application)</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 30, 2019</td>
<td>November 12, 2019</td>
</tr>
</tbody>
</table>

The Local Licensing Authority hereby affirms that each person required to file DR 8404-1 (Individual History Record) or a DR 8000 (Manager Permit) has been:

- [x] Fingerprinted
- [ ] Subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license.

(To be completed by the local licensing authority)

- [ ] Date of inspection or anticipated date
- [x] Will conduct inspection upon approval of state licensing authority

*NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.*

The foregoing application has been examined, and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 45 or 47, C.R.S., and Liquor Rules. Therefore, this application is approved.

<table>
<thead>
<tr>
<th>Local Licensing Authority for</th>
<th>Telephone Number</th>
<th>Town, City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td>Print:</td>
<td>Title:</td>
</tr>
<tr>
<td>Signature</td>
<td>Print:</td>
<td>Title:</td>
</tr>
</tbody>
</table>
Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license.

Notice: This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by “N/A”. Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely)

1. Name of Business
   BorderTown LLC

2. Your Full Name (last, first, middle)
   Hogan Todd Hoefler

3. List any other names you have used

4. Mailing address (if different from residence)
   350 Main St, Ste 100, Pawtucket, RI 02861

5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)

<table>
<thead>
<tr>
<th>Street and Number</th>
<th>City, State, Zip</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>5642 Whispering Pines</td>
<td>Houston, TX, 77055</td>
<td>3/19</td>
<td>8/19</td>
</tr>
</tbody>
</table>

6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)

<table>
<thead>
<tr>
<th>Name of Employer or Business</th>
<th>Address (Street, Number, City, State, Zip)</th>
<th>Position Held</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>H4H Tw Properties</td>
<td>3719 South Hills, Ft Worth, TX</td>
<td>Prop Mgr</td>
<td>5/2012</td>
<td>3/2019</td>
</tr>
</tbody>
</table>

7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.

<table>
<thead>
<tr>
<th>Name of Relative</th>
<th>Relationship to You</th>
<th>Position Held</th>
<th>Name of Licensee</th>
</tr>
</thead>
</table>

8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or leased money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.)
   Yes [ ] No [x]

9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.)
   Yes [ ] No [x]
10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bond for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.)
   - [ ] Yes
   - [x] No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.)
   - [ ] Yes
   - [x] No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.)
   - [ ] Yes
   - [x] No

---

### Personal and Financial Information

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

#### a. Date of Birth

#### b. Social Security Number

#### c. Place of Birth

#### d. U.S. Citizen
   - [ ] Yes
   - [x] No

#### e. If Naturalized, state where

#### f. When

#### g. Name of District Court

#### h. Naturalization Certificate Number

#### i. Date of Certification

#### j. If an Alien, Give Alien’s Registration Card Number

#### k. Permanent Resident Card Number

---

### 14. Financial Information.

a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other.
   - $250,000

b. List the total amount of the personal investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid.
   - $250,000 (Cash)

* If corporate investment only please skip to and complete section (d)

" Section b should reflect the total of sections c and e

---

### c. Provide details of the personal investment described in 14b. You must account for all of the sources of this investment.

(Attach a separate sheet if needed)

<table>
<thead>
<tr>
<th>Type: Cash, Services or Equipment</th>
<th>Account Type</th>
<th>Bank Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>Trust</td>
<td>BBVA</td>
<td>$250,000</td>
</tr>
</tbody>
</table>

---

### d. Provide details of the corporate investment described in 14 (a). You must account for all of the sources of this investment. (Attach a separate sheet if needed)

<table>
<thead>
<tr>
<th>Type: Cash, Services or Equipment</th>
<th>Loans</th>
<th>Account Type</th>
<th>Bank Name</th>
<th>Amount</th>
</tr>
</thead>
</table>

---

### e. Loan Information (Attach copies of all notes or loans)

<table>
<thead>
<tr>
<th>Name of Lender</th>
<th>Address</th>
<th>Term</th>
<th>Security</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

### Oath of Applicant

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature

[Signature]

Print Signature

[Signature]

Title

[Title]

Date

[Date]
Articles of Organization

filed pursuant to §7-90-301, et seq. and §7-80-204 of the Colorado Revised Statutes (C.R.S)

1. Entity name:

Bordertown Labs, LLC
(The name of a limited liability company must contain the term or abbreviation "limited liability company", "llc", "l.l.c.", "llc", "l.l.c.", "limited liability company", or "llc", "l.l.c.", or "limited liability company", §7-90-601, C.R.S.)

2. Use of Restricted Words (if any of these terms are contained in an entity name, true name of an entity, trade name or trademark stated in this document, mark the applicable box):

☐ "bank" or "trust" or any derivative thereof
☐ "credit union"
☐ "savings and loan"
☐ "insurance", "casualty", "mutual", or "surety"

3. Principal office street address:

11655 W. 66th Lane
(Street name and number)

Arvada CO 80004
(City) (State) (Postal/Zip Code)

United States
(Country - if not US)

4. Principal office mailing address (if different from above):

5. Registered agent name (if an individual):

OR (if a business organization):

National Registered Agents, Inc.

6. The person identified above as registered agent has consented to being so appointed.

7. Registered agent street address:

1535 Grant Street, Suite 140
(Street name and number)

Denver CO 80203
(City) (State) (Postal/Zip Code)
8. Registered agent mailing address
(if different from above):

<table>
<thead>
<tr>
<th>Street name and number or Post Office Box information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(City)</th>
<th>(State)</th>
<th>(Postal/Zip Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Province - if applicable</th>
<th>Country - if not US</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Name(s) and mailing address(es)
of person(s) forming the limited
liability company:

(if an individual)

<table>
<thead>
<tr>
<th>Anderson</th>
<th>Peter</th>
<th>Mark</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Last)</td>
<td>(First)</td>
<td>(Middle)</td>
</tr>
</tbody>
</table>

OR (if a business organization)

11655 W. 66th Lane

<table>
<thead>
<tr>
<th>Street name and number or Post Office Box information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(City)</th>
<th>(State)</th>
<th>(Postal/Zip Code)</th>
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<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Province - if applicable</th>
<th>Country - if not US</th>
</tr>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

(if an individual)

<table>
<thead>
<tr>
<th>(Last)</th>
<th>(First)</th>
<th>(Middle)</th>
<th>(Suffix)</th>
</tr>
</thead>
</table>

OR (if a business organization)

10. The management of the limited liability company is vested in managers ☐
OR is vested in the members ☑

11. There is at least one member of the limited liability company.
12. *(Optional)* Delayed effective date: ____________________________

*(mm/dd/yyyy)*

13. Additional information may be included pursuant to other organic statutes such as title 12, C.R.S. If applicable, mark this box ☐ and include an attachment stating the additional information.

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual’s act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

14. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing:

Lemus Tania

(Last) (First) (Middle) (Suffix)

7083 Hollywood Blvd., Suite 180

(Street name and number or Post Office Box information)

Los Angeles CA 90028

(City) (State) (Postal/Zip Code)

United States

(Province – if applicable) (Country – if not US)

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box ☐ and include an attachment stating the name and address of such individuals.)

Disclaimer:

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user’s attorney.
Agreement to Purchase Ownership Interest in BorderTown, LLC

This agreement is between Graciela Peña, (hereinafter referred to as “Seller”) and Hogan Todd Hoeßner (hereinafter referred to as “Purchaser”).

Whereas, BorderTown, LLC is a duly organized and existing limited liability company in good standing under the laws of the State of Colorado.

Whereas, Seller owns 100% of the membership interests in BorderTown, LLC (the “Company”) and hereby warrants and represents that there are no restrictions precluding her from selling her entire ownership interest in the Company.

Whereas, Seller warrants and represents that there are no legal demands or lawsuits currently involving the Company and that that the Company is current on all state, local and federal taxes and has no tax liens against it.

Whereas, the Company owns and operates Mi Casita restaurant at 580 Main Street, #100, in Carbondale, Colorado.

Whereas, Seller desires to sell, and Purchaser desires to purchase, 100% of the membership interests in the Company to facilitate Purchaser’s desire to take over, own and operate Mi Casita as an ongoing concern and business.

NOW THEREFORE, in consideration of the payments to be made hereunder, the terms and conditions set forth below and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

Financial Terms for Change of Ownership: Upon confirmation that this Agreement does not cause a breach or violation of the Company’s lease at 580 Main Street and provided the Mi Casita liquor license can be maintained or transferred without interruption, Purchaser will pay Seller the following for 100% ownership of the Company:

a.) a $50,000 non-refundable payment to be made on or before the “pre-transfer period,” which is defined as the date this Agreement is executed by both Seller and Purchaser through March 15, 2019 during which period Seller shall continue to operate the Mi Casita restaurant in the normal course of business. During the pre-transfer period, Purchaser and his agents will be on the Mi Casita premises and Seller and its agents and employees will assist Purchaser in becoming familiar with all aspects of Mi Casita,
operations and receipts during the period of January 1, 2019 through March 15, 2019 and shall not be calculated based on a pro rata share of the Company's annual receipts.

Agreed and Accepted:

SELLER:  
[Signature]

PURCHASER:  
[Signature]

[Name]

Hogan Todd Hoeffner
Affidavit - Restrictions On Public Benefits

I, **Hogan Hoffner**, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- [x] I am a United States citizen.
- [ ] I am not a United States citizen but I am a Permanent Resident of the United States.
- [ ] I am not a United States citizen but I am lawfully present in the United States pursuant to Federal law.
- [ ] I am a foreign national not physically present in the United States.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

**Signature**

[Signature]

**Date**

[7/3/14]
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF DOCUMENT FILED

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the
records of this office, the attached document is a true and complete copy of the
Statement of Trade Name

with Document # 20191216130 of
MI CASITA CARBONDALE

(Entity ID # 20191216130 )

filed by BorderTown, LLC
consisting of 2 pages.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through
03/07/2019 that have been posted, and by documents delivered to this office electronically through
03/12/2019 @15:47:55.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this
official certificate at Denver, Colorado on 03/12/2019 @15:47:55 in accordance with applicable law. This
certificate is assigned Confirmation Number 11447099

*******************************************************************************
* End of Certificate*******************************************************************************

Notice: A certificate issued electronically from the Colorado Secretary of State’s Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State’s Web site, http://www.sos.state.co.us/biz/CertificateSearchResults.do entering the certificate’s confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click "Businesses, trademarks, trade names" and select “Frequently Asked Questions.”
Statement of Trade Name of a Reporting Entity
filed pursuant to §7-71-103 and §7-71-107 of the Colorado Revised Statutes (C.R.S)

1. For the reporting entity delivering this statement, its ID number, true name, form of entity and the jurisdiction under the law of which it is formed are

   ID Number: 20061197222  
   (Colorado Secretary of State ID number)

   True name: BorderTown, LLC

   Form of entity: Limited Liability Company

   Jurisdiction: Colorado

2. The trade name under which such entity transacts business or conducts activities or contemplates transacting business or conducting activities in this state is

   MI CASITA CARBONDALE

3. A brief description of the kind of business transacted or activities conducted or contemplated to be transacted or conducted in this state under such trade name is

   RESTAURANT

4. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

   □ This document contains additional information as provided by law.

5. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

   (If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

   The delayed effective date and, if applicable, time of this document are ____________ (mm/dd/yyyy hour.minute am/pm)

Notice:
Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that such document is such individual's act and deed, or that such individual in good faith believes such document is the act and deed of the person on whose behalf such individual is causing such document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S. and, if applicable, the constituent documents and the organic statutes, and that such individual in good faith believes the facts stated in such document are true and such document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is identified in this document as one who has caused it to be delivered.
6. The true name and mailing address of the individual causing this document to be delivered for filing are

<table>
<thead>
<tr>
<th>PENA</th>
<th>GRACE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Last)</td>
<td>(First)</td>
</tr>
<tr>
<td>580 Main St, #101</td>
<td></td>
</tr>
<tr>
<td>(Street number and name or Post Office Box information)</td>
<td></td>
</tr>
<tr>
<td>Carbondale</td>
<td>CO 81623</td>
</tr>
<tr>
<td>(City)</td>
<td>(State)</td>
</tr>
</tbody>
</table>

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:
This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user’s legal, business or tax advisor(s).
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

BorderTown, LLC

is a Limited Liability Company

formed or registered on 05/17/2006 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20061197222.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/07/2019 that have been posted, and by documents delivered to this office electronically through 03/12/2019 @ 15:34:40.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/12/2019 @ 15:34:40 in accordance with applicable law. This certificate is assigned Confirmation Number 11447035.

Secretary of State of the State of Colorado

**************************************************************End of Certificate**************************************************************

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ biz click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."
## Summary

### Details

<table>
<thead>
<tr>
<th>Details</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>BorderTown, LLC</td>
</tr>
<tr>
<td>Status</td>
<td>Good Standing</td>
</tr>
<tr>
<td>Formation date</td>
<td>05/17/2006</td>
</tr>
<tr>
<td>ID number</td>
<td>20061197222</td>
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<tr>
<td>Form</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Colorado</td>
</tr>
<tr>
<td>Periodic report month</td>
<td>March</td>
</tr>
<tr>
<td>Principal office street address</td>
<td>580 Main Street Ste 100, Suite 100, Carbondale, CO 81623, CO, United States</td>
</tr>
<tr>
<td>Principal office mailing address</td>
<td>580 Main Street, Suite 100, Carbondale, CO 81623, CO, United States</td>
</tr>
</tbody>
</table>

### Registered Agent

<table>
<thead>
<tr>
<th>Registered Agent</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Hogan Hoefner</td>
</tr>
<tr>
<td>Street address</td>
<td>580 Main Street Ste 100, Suite 100, Carbondale, CO 81623, United States</td>
</tr>
<tr>
<td>Mailing address</td>
<td>580 Main Street, Suite 100, Carbondale, CO 81623, United States</td>
</tr>
</tbody>
</table>

For this Record...
- Filing history and documents
- Trade names
- Get a certificate of good standing
- File a form
- Subscribe to email notification
- Unsubscribe from email notification

For this Record...
- Business Home
- Business Information
- Business Search

FAQ's, Glossary and Information
Minutes for BorderTown, LLC

Let it be known on this date, March 15, 2019, a formal meeting of BorderTown, LLC was held to finalize the purchase of BorderTown, LLC. It has been confirmed that all necessary conditions have been met to complete the purchase, including receipt of purchase funds and assignment of the Mi Casita lease. As of the date of this meeting Graciela Peña hereby resigns from BorderTown, LLC. Graciela also agrees to have her name removed from the Mi Casita Liquor License and has no objection to the new owner, Hogan Hoeffner, having the Liquor License transferred to his name.

Acknowledgement of Minutes

Graciela Peña

Hogan Hoeffner

Date 3/15/19
Existing Premises

1st floor Restaurant space
2800 square feet more or less
Main Level of the Jalins Building
physical address, 580 Main Street
Suite 100, Carbondale Colorado 81623
ASSIGNMENT AND ASSUMPTION OF LEASE
Pertaining to 580 Main Street, Ste. 100, Carbondale, Colorado

WHEREAS, Hogan Hoeffer purchased from Graciela Pena a 100% interest in Bordertown, LLC, which entity owns and operates Mi Casita restaurant located at 580 Main Street, Ste. 100, Carbondale, Colorado (hereinafter “Leased Premises”).

WHEREAS, Graciela Pena formerly owned 100% of Bordertown, LLC and was the named tenant for the Leased Premises under a contractual lease with owner Rock Leonard (“Landlord”), which became effective January 1, 2017 (“Lease”).

WHEREAS, by this agreement, Graciela Pena hereby assigns all her tenant rights and interests under the Lease to Hogan Hoeffer as of the date set forth below. By entering into this Assignment, Hogan Hoeffer hereby acknowledges, agrees and hereby assumes all obligations and duties, including personally guaranteeing monthly rent as set forth in the Lease, effective upon his execution below.

WHEREAS, as of the date of full execution of this Assignment and Assumption of Lease, Landlord releases Graciela Pena, her agents and representatives from any and all duties and obligations under the Lease and agrees and acknowledges that, as of the date of the execution of this Assignment and Assumption of Lease, Hogan Hoeffer is responsible and liable for all obligations under the Lease, including, but not limited to, rent, maintaining insurance, compliance with building codes and permits.

Accepted and Agreed:

Graciela Pena
Assignor -- Graciela Pena
3/15/19
Date Signed

Hogan Hoeffer
Assignee -- Hogan Hoeffer
3/15/19
Date Signed

Rock Leonard
Landlord -- Rock Leonard
3/15/19
Date Signed
# Required Documents Checklist and Worksheet

Instructions: This checklist should be utilized to assist applicants with filing all required documents for licensure. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable.

Questions? Visit: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information

## Section I — Applicant Information

<table>
<thead>
<tr>
<th>Attached</th>
<th>No Applicable</th>
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</tbody>
</table>
- A copy of the company's Certificate of Good Standing (Certificate of Authority if foreign entity)
- A copy of the company's Certificate of Trade Name

## Section III — Licensing Type Selection and Fee Assessment

- Payment made out to the local licensing authority to cover the applicable application and licensing fees

## Section IV — Eligibility Questions

<table>
<thead>
<tr>
<th>Attached</th>
<th>No Applicable</th>
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</table>
- Written response to questions 6a, 6b, or 6c?
- Written response to questions 7?
- Liquor Licensed Drug Stores Only — A copy of the applicant's Pharmacy license as required by question 12
- Club Liquor License Applicants Only — Written documentation per question 13a, 13b, 13c, and 13d
- Brew Pub, Distillery, and Vintner Applicant's Only — Copy of Federal Permit as required by question 14
- Campus Liquor Complex Applicant's Only — Copy of contract for food services as required by question 16b
- Campus Liquor Complex Applicant's Only — Copy of diagram as required by question 17

## Section V — Premises Information

<table>
<thead>
<tr>
<th>Attached</th>
<th>No Applicable</th>
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</table>
- One of the following forms of proof of possession of the premises
  - Deed in name of the applicant dated stamped, filed with County Clerk
  - Lease in the name of the applicant
  - Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the Applicant
  - Other agreement if not deed or lease

Note — the lease or deed must be in the name of the applicant as listed in Section I, Question 2

## Section VI — Financial Information

<table>
<thead>
<tr>
<th>Attached</th>
<th>No Applicable</th>
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<tbody>
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</table>
- A complete list of any person or entity who currently holds any form of financial interest in or profit sharing agreement with the business. Also include any person or entity who will loan or give money, inventory, furniture or equipment to the business. Provide copies of the actual agreements, loans, notes, etc. or a written description of any verbal agreement made.

## Section VII — Ownership Information

<table>
<thead>
<tr>
<th>Attached</th>
<th>No Applicable</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
- Copies of any payment agreements as required by question 21
- Copies of valid Government Issued IDs for all owners
- If applicant is a Sole Proprietorship, Form DR 4679
- If applicant is a corporation, Articles of Incorporation
- If applicant is a Partnership, copy of Partnership Agreement (not required if husband and wife)
- If applicant is a LLC, copy of Articles of Organization

## Section VIII — Manager Information

Hotel and Restaurant, Tavern, Lodging and Entertainment, and Campus Liquor Complex Applicants ONLY

- An individual History Record Form DR 8404-I
- If manager is an owner, no fee is required, otherwise, a $75 manager registration fee
LEASE AGREEMENT

SUMMARY OF TERMS

The following terms are hereby incorporated in the attached *** as if fully set forth therein:

1. Date of Lease: January 1, 2017
2. Date of Possession of Premises: January 1, 2017
3. Name of Tenant: Graciela Pena
4. Designation of Leased Premises: 580 Main Street, Ste 100 Carbondale, Colorado 81623
5. Permitted Uses: Restaurant
6. Length of Term of Lease: 5 years
   Rental Termination Date: December 31, 2022
7. Square footage of Premises: 2,800 square feet, also 450 sq ft patio and Wine closet in basement
8. Base annual rental amount per square foot: $17
9. Base rental amount/month for first year of lease: $3,966.67
10. Common Area Maintenance per square foot per month $5.72
11. Total Rent per month: $5,300
12. Insurance requirements:
   a. On account of bodily injuries to or death of one person: $1,000,000
   b. On account of bodily injuries or death of more than one person as the result of any one accident or disaster: $1,000,000.
   c. On account of damage to property: $1,000,000.
11. Tenant’s address:
    129 White Peaks Lane, Glenwood Springs, Colorado 81601
12. Amount of security deposit: $5,000
13. Additional Provisions:

Dated effective the date designated in number one (#1) above.

LANDLORD:
BY Rock Leonard

TENANT:
BY Graciela Pena
** LEASE AGREEMENT **

This LEASE is made and entered into as of the date set forth on the *** Lease Agreement SUMMARY OF TERMS which is attached hereto and incorporated herein, by and between *** ("Landlord") and the person or entity designated in the said SUMMARY OF TERMS as the Tenant ("Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of a building and other improvements ("Building") known as the ** ("the Building"), and Tenant desires to lease a portion of the space in said Building.

NOW THEREFORE, in consideration of the rents herein reserved by Landlord, to be paid by Tenant, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

I. PREMISES

The Landlord demises unto the Tenant, and Tenant leases from the Landlord, for the term and upon the terms and conditions hereinafter set forth, certain parts of the Building as designated on the SUMMARY OF TERMS, consisting of the square footage as designated in the SUMMARY OF TERMS ("the Premises") located in the ** in the Town of Carbondale, Colorado, together with the right to the non-exclusive use, in common with others, of all such automobile parking areas, driveways, footways, and other facilities designed for common use, as may be installed by the Landlord comprising in total the Building, and of such other facilities as may be provided or designated from time to time by the Landlord for the common use, subject to the terms and conditions of this Lease and to any rules and regulations for the use thereof as set forth herein. Landlord reserves the right to promulgate further reasonable rules and regulations for the operation of the Building and use of the common use area and facilities and Tenant agrees to be subject thereto.

II. POSSESSION

(a) Possession of the Premises shall be delivered hereunder on the date provided on the SUMMARY OF TERMS. Upon receiving possession of the Premises from the Landlord, the Tenant shall proceed with due diligence to install such stock, fixtures, and equipment and perform such other work necessary or appropriate to prepare the Premises for the opening of business. The Tenant shall submit to the Landlord, on or before 30 days after the signing of this Lease, plans and specifications covering all work which the Tenant proposes to do in the Premises. Such plans and specifications shall be prepared in such detail as the Landlord may require, and the Tenant shall not commence any work until the Landlord has approved such plans and specifications in writing. The Landlord shall act with reasonable promptness with respect to such plans and specifications.

(b) By occupying the Premises after the delivery of possession to install fixtures, facilities, or equipment, or to perform finishing work, the Tenant shall be deemed to have accepted the same and to have acknowledged that the Premises are in the condition required by this Lease

III. USE

The Tenant shall use and occupy the Premises for only those purposes specifically set forth on the SUMMARY OF TERMS, and for no other purposes.

IV. TERM

The term of this Lease shall be for the number of years as indicated on the SUMMARY OF TERMS unless sooner terminated as hereinafter provided. The term shall commence on the date when the Landlord shall deliver possession of the Premises to
the Tenant, as provided in Article II and the SUMMARY OF TERMS. The rental termination date is set forth on the SUMMARY OF TERMS and the term shall end at midnight on such date.

V. RENTAL

(a) FIRST YEAR RENTAL. The Tenant shall pay to the Landlord as an annual rental rate for the first lease year the amount per square foot as designated on the SUMMARY OF TERMS. For purposes of calculating the annual rental rate for the first year, the Premises are deemed to contain the square footage as designated on the SUMMARY OF TERMS. Such rental shall be payable in advance in equal monthly installments on the first day of each calendar month during the first year of the term hereof. Such rental shall commence to accrue on the date when the Landlord has delivered possession of the Premises to the Tenant, as set forth in Article II, such date being hereinafter referred to as the Rental Commencement Date. Notwithstanding the foregoing, the first monthly rental payment hereunder shall be due and payable upon execution of this Lease.

(b) SUBSEQUENT LEASE YEARS

(1) The annual rent for each lease year following the first lease year shall be the amount of the rent for the year immediately preceding increased by 4%.

(2) Tenant shall have the right to renew for an additional 3 year term under the same terms and conditions of the current term.

(c) GENERAL RENTAL PROVISIONS

(1) The relationship of the parties during the term of this Lease shall at all times be that of Landlord and Tenant. Neither the Landlord nor the Tenant shall be deemed to be a partner or engaged in a joint venture with or an associate of the other in the conduct of its business, nor shall the Tenant or the Landlord be liable for any debts incurred by the other in the conduct of its business, nor shall anything contained herein be deemed or construed to confer upon the Landlord or the Tenant any interest in the business of the other.

(2) Tenant shall pay all rentals and other charges and render all statements herein prescribed to the Landlord Rock Leonard 580 Main Street, Suite 300A, Carbondale, Colorado 81623, or to such other person or corporation and at such other place as shall be designated by the Landlord in writing at least ten (10) days prior to the next ensuing rental payment date. Rental payments shall be made payable to Rock Leonard.

(3) If Tenant fails to pay any rental installment hereunder or any other sum that Tenant may be obligated to pay under the terms of this Lease as additional rent, by midnight of the tenth day following the day of the month such payment was due, Tenant shall add to that installment of rent and/or additional rent, for each day the payment is past due, an amount equal to four percent (4%) of that installment which sum shall be added for each day following the due date up to and including the day on which such installment is actually paid. Such amounts shall be deemed additional rent hereunder and Tenant's failure to pay the same at the time the rent and/or additional rent is paid shall mean that Tenant is still in default in the payment of the rent for that month. If rent is not paid within the month that it is initially due, an added 2% per month shall be added for each month that rental installment is not paid.

(4) If the Tenant makes a rental payment with a check which does not clear the bank on which it is drawn the second time it is submitted, (i) the rental for that month shall continue to be deemed unpaid until Tenant delivers to Landlord the amount of such rental (together with any additional rental which may have accrued) in the form of cash, a cashier's check or certified funds, and (ii) after a second rental payment with a check that does not clear the bank on which it is drawn the second time it is submitted, and throughout the remainder of the term of this Lease, a personal check shall be an unacceptable method of paying rent hereunder and all of Tenant's subsequent rental payments must be in the form of cash, a cashier's check or certified funds.

VI. COMMON USE AREAS AND FACILITIES
(a) All facilities furnished in the Building and designated for the general use, in common, of occupants of the Building, including the Tenant, its officers, agents, employees, and customers, which facilities may include but shall not be limited to, parking areas, streets, sidewalks, canopies, roadways, loading platforms, washrooms, shelters, ramps, landscaped areas, and other similar facilities, shall at all times be subject to the exclusive control and management of the Landlord, and the Landlord shall have the right from time to time to change the area, level, location, and arrangement of such parking areas and other facilities above referred to; to restrict parking by tenants and their employees to employee parking areas; to do such things as in the Landlord's sole discretion may be necessary regarding such facilities; and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common facilities.

(3) Each year Tenant shall pay to Landlord, as additional rent pursuant to the provisions of Article V, paragraph (c)(3) of this Lease, an amount equal to Tenant's pro rata share of common area expenses. The annual expenses shall be determined as of each August 1 during the term of this lease. At the beginning of each year of the term of the Lease, Landlord shall submit to Tenant a budget of the common area expenses for the forthcoming year. Based upon the budget, Tenant shall pay to Landlord each month one-twelfth (1/12th) of that amount which is allocable to the Premises as Tenant's share of the common area expenses. Within forty-five days after the end of each year, Landlord shall submit to Tenant an itemization of the actual common area expenses for that year. In the event that the actual expenses are more or less that the budgeted expenses, either Tenant shall pay to Landlord (within thirty (30) days of receipt of such itemization) the additional amount, or Landlord shall give Tenant a credit toward next year's budgeted expenses, as the case may be.

(c) For the purposes of this Article, the Landlord's respective operating cost of common facilities is defined as including all of the Landlord's portion of the cost and expenses of operating and maintaining the common facilities in the Building, and shall be deemed to include, without limitation, real estate property taxes, trash removal, landscaping, sanitary control, cleaning, lighting, snow removal, resurfacing, parking lot maintenance, painting, fire protection, public liability and property damage insurance, repairs, policing, security, common area sewer, water, gas and electric, management fees, and a reserve for future major expenses, including without limitation such expenses as roof replacement, painting or staining of the Building and the like. The allocation of common expenses to the Premises as said expenses relate to the common expenses for the entire Building shall bear the same relationship as the square footage of the Premises bears to the rentable square footage of the Building.

VII. PUBLIC UTILITIES

The Tenant shall pay for all utilities, used or consumed in or upon the Premises, and all water and sewer charges. The Landlord shall not be liable to the Tenant for any damages should the furnishing of any utilities by the Landlord be interrupted or required to be terminated because of necessary repairs or improvements or any cause beyond the reasonable control of the Landlord. Nor shall any such interruption or cessation relieve the Tenant from the performance of any of the Tenant's covenants hereunder. All utility charges incurred by the Tenant hereunder shall be deemed to be additional rent pursuant to the provisions of Article V, paragraph (c)(3) of this Lease.

VIII. REPAIRS

The Landlord shall keep the roof and the exterior walls of the Premises, excepting any work done by the Tenant or any glass or doors, in proper repair, provided that in each case the Tenant shall have given the Landlord prior written notice of the necessity of such repairs; and provided, further, that if any such repair is required by reason of the Tenant's negligence or the negligence of any of
its agents, employees, or customers, or other person using the Premises with the Tenant's consent, express or implied, the Landlord may make such repair and add the cost thereof, as additional rent pursuant to the provisions of Article V paragraph (c)(3) of this Lease, to the first installment of minimum rent which shall thereafter become due. The Tenant shall keep the interior of the Premises, which includes, but is not limited to, all electrical, plumbing, heating, air conditioning, and other mechanical installation therein, all doors, and all plate glass and door and window glass, in good order, making all repairs, alterations, replacements, and modifications at its own expense and using materials and labor of a kind and quality equal to the original work, and shall surrender the Premises at the expiration or earlier termination of this Lease in as good condition as when received, excepting only deterioration caused by ordinary wear and tear and damage by fire or other casualty of the kind insured against in standard policies of fire insurance with extended coverage. Except as herein above provided, the Landlord shall have no obligation to repair, maintain, alter, replace, or modify the Premises or any part thereof, or any electrical, plumbing, heating, air conditioning, or other mechanical installation therein.

IX. TENANT'S RIGHT TO MAKE ALTERATIONS

The Tenant shall not make any alterations, improvements, or additions to the Premises during the term of this Lease or any extension thereof without first obtaining the written consent of the Landlord. The Tenant shall not cut or drill into, or secure any fixture, apparatus, or equipment of any kind to any part of the Premises without first obtaining the written consent of the Landlord. All such alterations, improvements and additions made by the Tenant shall remain upon the Premises at the expiration or earlier termination of this Lease and shall become the property of the Landlord.

X. AFFIRMATIVE COVENANTS OF TENANT

The Tenant covenants that it shall:

(a) Comply with the terms of any state or federal statute or local ordinance or regulation applicable to the Tenant or its use of the Premises, and save the Landlord harmless from penalties, fines, costs, expenses, or damages resulting from its failure so to do.

(b) Comply with the terms, conditions, rules and regulations set forth herein (or hereafter promulgated by Landlord) relating to the use, operation, and maintenance of the common facilities.

(c) Keep the Premises sufficiently heated to prevent freezing of water in pipes and fixtures.

(d) Keep the outside areas immediately adjoining the Premises clean and free from ice and snow, and not burn, place, or permit any rubbish, obstructions, or merchandise in such areas.

(e) Comply with all rules and regulations of the Landlord in effect at the time of the execution of this Lease or at any time and from time to time promulgated by the Landlord, which the Landlord in its sole discretion shall deem necessary in connection with the Premises or the building of which the Premises are a part, including the installation of such fire extinguisher and other safety equipment as the Landlord may require; and comply with the recommendations of the Landlord's insurance carriers and their rate-making bodies.

(f) Do all things necessary to prevent the filing of any mechanic's or other liens against the Premises or any part thereof by reason of work, labor, services, or materials supplied or claimed to have been supplied to the Tenant, or anyone holding the Premises, or any part thereof, through or under the Tenant.

XI. NEGATIVE COVENANTS OF TENANT

The Tenant covenants that it shall not do any of the following without the prior consent in writing of the Landlord:
(a) Use or operate any machinery that, in the Landlord's opinion, is harmful to the building or disturbing to other tenants in the building of which the premises are a part or use any loudspeakers, televisions, phonographs, radios, or other devices in a manner so as to be heard or seen outside of the Premises, or display merchandise on the exterior of the Premises either for sale or for promotional purposes. Tenant shall not, without the prior written approval of Landlord, operate or permit on the premises any heavy machinery or equipment.

(b) Attach any awning, antenna, or other projection to the roof or the outside walls of the Premises or the Building.

(c) Commit or suffer to be committed by any person, any waste upon the Premises or any nuisance or other act which may disturb the quiet enjoyment of any other tenant in the Building.

XII. SIGNS

The Tenant shall not decorate, paint, or in any other manner, alter the exterior of the Premises, and shall not install or affix any sign, device, fixture, or attachment on or to the exterior of the Premises, or any building thereon, including the roof or the canopy thereof, without first obtaining the Landlord's written consent and complying in all respects with the standards set for such signs or other decoration by the Landlord.

XIII. RIGHTS OF LANDLORD

The Landlord reserves, in addition to any other rights reserved herein, the following rights with respect to the Premises:

(a) At all reasonable times, by itself or its duly authorized agents, to go upon and inspect the Premises, and at its option to make repairs, alterations, and additions thereto or to the Building. If during an emergency the Tenant shall not be personally present to open and permit an entry by the Landlord into the Premises, the Landlord or the Landlord's agents may enter the same without rendering the Landlord or such agents liable therefor and without in any manner affecting the obligations and covenants of this Lease.

(b) To display a For Sale sign at any time, and also, after notice from either party of intention to terminate this Lease, or at any time within three months prior to the expiration of this Lease, to display a For Rent sign, and such signs shall be placed upon such part of the Premises as the Landlord shall require, except on display windows or doors leading into the Premises. Prospective purchasers or tenants authorized by the Landlord may inspect the Premises at reasonable hours at any time.

XIV. DAMAGE TO PREMISES

If the Premises shall be damaged by fire or other casualty of the kind insured against in standard policies of fire insurance with extended coverage, but are not thereby rendered untenantable in whole or in part, the Landlord shall promptly, at its own expense, cause such damage to be repaired, and the rent shall not be abated. If, by reason of such occurrence, the Premises shall be rendered untenantable only in part, the Landlord shall promptly at its own expense, cause the damage to be repaired, and the rent, meanwhile, shall be abated proportionately as to the portion of the Premises rendered untenantable. If the Premises shall be rendered wholly untenantable by reason of such occurrence, the Landlord shall promptly at its own expense cause such damage to be repaired, and the rent, meanwhile, shall be abated in whole, provided, however, that there shall be no extension of the term of this Lease by reason of such abatement. If the Premises shall be rendered wholly untenantable after the beginning of the last two years of the term of this Lease, the Landlord may terminate this Lease by notice to the Tenant, such notice to be given within thirty (30) days of the event rendering the Premises wholly untenantable, provided that such termination shall not affect any rights theretofore accrued to the Landlord hereunder because of prior defaults of the Tenant. Except as herein provided, there shall be no obligation on the Landlord
to repair or rebuild in case of fire or other casualty.

XV. INDEMNIFICATION AND PUBLIC LIABILITY INSURANCE

The Tenant shall:
(a) Indemnify the Landlord and save it harmless from and against any and all claims, actions, damages, liability, and expense in connection with loss of life, personal injury, or damage to property occurring in or about, or arising out of, the Premises and adjacent sidewalks and loading platforms or areas, or occasioned wholly or in part by any act or omission of the Tenant, its agents, subtenants, licensees, concessionaires, contractors, customers, or employees, then the Tenant shall protect and hold the Landlord harmless and shall pay all costs, expenses, and reasonable attorneys' fees incurred or paid by the Landlord in connection with such litigation. The Tenant shall also pay all costs, expenses, and reasonable attorneys' fees that may be incurred or paid by the Landlord in enforcing the covenants and conditions of this Lease whether incurred as a result of litigation or otherwise.

(b) At all times during the term hereof keep in force at Tenant's expense public liability insurance in companies acceptable to the Landlord and naming as insured both the Landlord and the Tenant, with minimum limits as set forth in SUMMARY OF TERMS on account of bodily injuries to or death of one person, and on account of bodily injuries or death of more than one person as the result of any one accident or disaster, and on account of damage to property.

(c) At all times during the term hereof keep in force at Tenant's expense plate glass insurance in companies acceptable to the Landlord and naming as insured both the Landlord and the Tenant.

(d) At all times during the term hereof keep in force at Tenant's expense fire insurance with extended coverage in companies acceptable to the Landlord, equal to the replacement costs of the Tenant's betterment's and improvements on the Premises, and naming Landlord as an additional insured, to the extent of such betterment's and improvements.

(e) Furnish to the Landlord, within thirty (30) days after the execution of this Lease, copies of policies or certificates of insurance evidencing coverages required by this Lease. All policies required hereunder shall contain an endorsement providing that the insurer will not cancel or materially change the coverage of such policies without first giving ten (10) days prior written notice thereof to Landlord.

XVI. WAIVER OF CLAIMS

(a) The Landlord and Landlord's agents, employees, and contractors shall not be liable, and Tenant hereby releases all claims, for damage to person or property sustained by Tenant or any person claiming through Tenant resulting from any fire, accident, occurrence, or condition in or upon the Premises or Building, including, but not limited to, claims for damage resulting from (1) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring or installation thereof, water pipes, stairs, railings, or walks; (2) any equipment or appurtenances becoming out of repair; (3) the bursting, leaking, or running of any tank, washstand, water closet, waste pipe, drain, or any other pipe or tank in, upon, or about such building or premises; (4) the backing-up of any sewer pipe or downspout; (5) the escape of steam or hot water; (6) water, snow, or ice being upon or coming through the roof or any other place upon or near such building or premises or otherwise; (7) the falling of any fixture, plaster, or stucco; (8) broken glass; and (9) any act or omission of co-tenants or other occupants of such building or adjoining or contiguous property or buildings.

(b) The Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises, or its contents or to other portions of the Building, arising from any risk generally covered by fire and extended coverage insurance, vandalism, malicious mischief and sprinkler leakage; and the parties each, on behalf of their respective insurance companies insuring
the property of either Landlord or Tenant against any such loss, waive any right of
subrogation that it may have against Landlord or Tenant, as the case may be, if
such waiver of subrogation is available. Tenant, on behalf of its insurance
companies insuring the Premises, its contents, Tenant's other property or other
portions of the Building, waives any right of subrogation which such insurer or
insurers may have against any of the businesses located in the Building.

XVII. TRADE FIXTURES

All trade fixtures installed by Tenant in the Premises shall remain the
property of Tenant and shall be removable at the expiration or earlier termination
of this Lease or any renewal or extension thereof, provided Tenant shall not at
such time be in default under any covenant or condition contained herein; and
provided, further, that in the event of such removal, having repaired the damage
caused by such removal, Tenant shall promptly restore the Premises to their
original order and condition. Any such trade fixture not removed at or prior to
such termination shall become the property of Landlord. Lighting fixtures and air
conditioning equipment, whether or not installed by Tenant, shall not be removable
at the expiration or earlier termination of this Lease, or at the expiration of any
such renewal or extension thereof, and shall become the property of Landlord.

XVIII. ASSIGNING, MORTGAGING, SUBLETTING

Tenant shall not assign, create a security interest in, pledge, or encumber
this Lease, in whole or in part, or sublet the whole or any part of the Premises,
or permit the use of the whole or any part thereof by any licensee or
concessionaire, without first obtaining the written consent of Landlord, which
consent may be withheld at the sole discretion of Landlord. In the event of any
such permitted assignment, subletting, licensing, or granting of a concession,
Tenant shall nevertheless remain liable for the performance of all the terms,
conditions, and covenants of this Lease.

XIX. SUBORDINATION

This Lease is subject and subordinate to any and all mortgages or deeds of
trust now or hereafter placed on the property of which the Premises are a part,
provided, however, that in each such case the holder of the mortgage or the trustee
of such deed of trust shall agree that this Lease shall not be divested or in any
way affected by foreclosure or other default proceedings under such mortgage, deed
of trust, or obligation secured thereby, so long as Tenant shall not be in default
under the terms of this Lease; and this Lease shall remain in full force and effect
notwithstanding any such default proceedings under such mortgage, deed of trust, or
obligation secured thereby.

XX. FINANCING AGREEMENT

Tenant shall not enter into, execute, or deliver any financing agreement that
can be considered as a priority to any mortgage or deed of trust pertaining to the
Premises and, in the event Tenant does so execute or deliver such financing
agreement, such action on the part of Tenant shall be considered an event of
default under this Lease entitling Landlord to such remedies as are provided for
herein.

XXI. SURRENDER AND HOLDING OVER

(a) Tenant, upon expiration or termination of this Lease, either by lapse of
time or otherwise, shall peaceably surrender to Landlord the Premises in broom
clean condition and in good repair as required by Article VIII. In the event that
Tenant shall fail to surrender the Premises upon demand, Landlord, in addition to
all other remedies available to it hereunder, shall have the right to receive, as
liquidated damages for all the time Tenant shall so retain possession of the
provision hereof, all of which other provisions shall remain in full force and effect.

XXIX. ATTORNEY'S FEES AND COSTS

In the event Landlord takes any action or retains an attorney to collect any rents due hereunder or to enforce any of the provisions of this Lease pertaining to Tenant's covenants and obligations, including but not limited to taking possession of the Premises, enforcing Landlord's lien or Forcible Entry and Detainer proceedings, Tenant shall pay to Landlord such costs and expenses incurred by Landlord in connection therewith, including all reasonable attorney's fees.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the date set forth on the SUMMARY OF TERMS.

LANDLORD: ***

[Signature]

TENANT: ***

BY: Graciela Pena

In consideration of the making of this lease by the Landlord with the Tenant at the request of the undersigned and in reliance on this guaranty, the undersigned GRACIELA PENA hereby personally and unconditionally guarantees the payment of the rent to be paid by the tenant and the performance by the tenant of all the terms, conditions, covenants and agreements of the lease. The undersigned further promises to pay all Landlords expenses, including his reasonable attorneys fees, incurred in enforcing this guarantee.

[Signature]

Graciela Pena
Limited Liability Company Agreement of
BorderTown LLC,
a Limited Liability Company

THIS OPERATING AGREEMENT (this "Agreement") of BorderTown LLC, LLC (the "Company"), is executed and agreed to, for good and valuable consideration, by the undersigned members (the "Members").

I. Formation.
A. State of Formation. This is a Limited Liability Company Operating Agreement (the "Agreement") for BorderTown LLC, a Manager-managed Colorado limited liability company (the "Company") formed under and pursuant to Colorado law.

B. Operating Agreement Controls. To the extent that the rights or obligations of the Members or the Company under provisions of this Operating Agreement differ from what they would be under Colorado law absent such a provision, this Agreement, to the extent permitted under Colorado law, shall control.

C. Primary Business Address. The location of the primary place of business of the Company is:

580 Main St Suite 100, Carbondale, Colorado 81623, or such other location as shall be selected from time to time by the Members.

D. Registered Agent and Office. The Company's initial agent (the "Agent") for service of process is Hogan Hoeffner. The Agent's registered office is 375 N Spring St, Aspen, Colorado 81611. The Company may change its registered office, its registered agent, or both, upon filing a statement with the Colorado Secretary of State.

E. No State Law Partnership. No provisions of this Agreement shall be deemed or construed to constitute a partnership (including, without limitation, a limited partnership) or joint venture, or any Member a partner or joint venturer of or with any other Member, for any purposes other than federal and state tax purposes.

II. Purposes and Powers.
A. Purpose. The Company is created for the following business purpose:

Operating a restaurant

B. Powers. The Company shall have all of the powers of a limited liability company set forth under Colorado law.

C. Duration. The Company's term shall commence upon the filing of an Articles of
Organization and all other such necessary materials with the state of Colorado. The Company will operate until terminated as outlined in this Agreement unless:

1. The Members vote unanimously to dissolve the Company;

2. No Member of the Company exists, unless the business of the Company is continued in a manner permitted by Colorado law;

3. It becomes unlawful for either the Members or the Company to continue in business;

4. A judicial decree is entered that dissolves the Company; or

5. Any other event results in the dissolution of the Company under federal or Colorado law.

III. Members.
A. Members. The Members of the Company (jointly the "Members") and their Membership Interest in the same at the time of adoption of this Agreement are as follows:

   Hogan Hoeffer, 100%

B. Initial Contribution. Each Member shall make an Initial Contribution to the Company. The Initial Contributions of each shall be as described in Attachment A, Initial Contributions of the Members.

   No Member shall be entitled to interest on their Initial Contribution. Except as expressly provided by this Agreement, or as required by law, no Member shall have any right to demand or receive the return of their Initial Contribution. Any modifications as to the signatories' respective rights as to the receipt of their initial contributions must be set forth in writing signed by all interested parties.

C. Limited Liability of the Members. Except as otherwise provided for in this Agreement or otherwise required by Colorado law, no Member shall be personally liable for any acts, debts, liabilities or obligations of the Company beyond their respective Initial Contribution, including liability arising under a judgment, decree or order of a court. The Members shall look solely to the Company property for the return of their Initial Contribution, or value thereof, and if the Company property remaining after payment or discharge of the debts, liabilities or obligations of the Company is insufficient to return such Initial Contributions, or value thereof, no Member shall have any recourse against any other Member except as is expressly provided for by this Agreement or as otherwise allowed by law.
D. **Death, Incompetency or Termination of a Member.** Should a Member die, be declared incompetent, or withdraw from the Company by choice, the remaining Members will have the option to buy out that Member's Membership Interest in the Company. Should the Members agree to buy out the Membership Interest of the withdrawing Member, that Interest shall be paid for equally by the remaining Members and distributed in equal amounts to the remaining Members. The Members agree to hire an outside firm to assess the value of the Membership Interest.

The Members will have 0 days to decide if they want to buy the Membership Interest together and disperse it equally. If all Members do not agree to buy the Membership Interest, individual Members will then have the right to buy the Membership Interest individually. If more than one Member requests to buy the remaining Membership Interest, the Membership Interest will be paid for and split equally among those Members wishing to purchase the Membership Interest. If all Members agree by unanimous vote, the Company may choose to allow a non-Member to buy the Membership Interest thereby replacing the previous Member.

If no individual Member(s) finalize a purchase agreement by 0 days, the withdrawing Member, or their estate, may dispose of their Membership Interest however they see fit, subject to the limitations in Section III (E) below. If a Member is a corporation, trust, partnership, limited liability company or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

The name of the Company may be amended upon the written and unanimous vote of all Members if a Member withdraws, dies, is found incompetent or is terminated.

E. **Creation or Substitution of New Members.** Any Member may assign in whole or in part its Membership Interest only after granting their fellow Members the right of first refusal, as established in Section III (D) above.

1. **Entire transfer.** If a Member transfers all of its Membership Interest, the transferee shall be admitted to the Company as a substitute Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. Such admission shall be deemed effective immediately upon the transfer, and, simultaneously, the transferor Member shall cease to be a Member of the Company and shall have no further rights or obligations under this Agreement.

2. **Partial transfer.** If a Member transfers only a portion of its Membership Interest, the transferee shall be admitted to the Company as an additional Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement.
3. Whether a substitute Member or an additional Member, absent the written consent of all existing Members of the Company, the transferee shall be a limited Member and possess only the percentage of the monetary rights of the transferor Member that was transferred without any voting power as a Member in the Company.

F. Member Voting.
   1. Voting power. The Company's Members shall each have voting power equal to their share of Membership Interest in the Company.

   2. Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be delivered to the other Members of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

G. Members' Duty to File Notices. The Members shall be responsible for preparation, maintenance, filing and dissemination of all necessary returns, notices, statements, reports, minutes or other information to the Internal Revenue Service, the state of Colorado, and any other appropriate state or federal authorities or agencies. Notices shall be filed in accordance with the section titled "Notices" below. The Members may delegate this responsibility to a Manager at the Members' sole discretion.

H. Fiduciary Duties of the Members. The Members shall have no fiduciary duties whatsoever, whether to each other or to the Company, unless that Member is a Manager of the Company, in which instance they shall owe only the fiduciary duties of a Manager. No Member shall bear any liability to the Company or to other present or former Members by reason of being or having been a Member.

I. Waiver of Partition: Nature of Interest. Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each Member hereby irrevocably waives any right or power that such Member might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. No Member shall have any interest in any specific assets of the Company.

IV. Accounting and Distributions.
   A. Fiscal Year. The Company's fiscal year shall end on the last day of December.

   B. Records. All financial records including tax returns and financial statements will be held at the Company's primary business address and will be accessible to all Members.
C. **Distributions.** Distributions shall be issued on an annual basis, based upon the Company's fiscal year. The distribution shall not exceed the remaining net cash of the Company after making appropriate provisions for the Company's ongoing and anticipatable liabilities and expenses. Each Member shall receive a percentage of the overall distribution that matches that Member's percentage of Membership Interest in the Company.

V. **Tax Treatment Election.**

The Company has not filed with the Internal Revenue Service for treatment as a corporation. Instead, the Company will be taxed as a pass-through organization. The Members may elect for the Company to be treated as a C-Corporation, S-corporation or a Partnership at any time.

VI. **Board of Managers.**

A. **Creation of a Board of Managers.** The Members shall create a board of Managers (the "Board") consisting of Managers appointed at the sole discretion of the Members and headed by the Chairman of the Board. The Members may serve as Managers and may appoint a Member to serve as the Chairman. The Members may determine at any time in their sole and absolute discretion the number of Managers to constitute the Board, subject in all cases to any requirements imposed by Colorado law. The authorized number of Managers may be increased or decreased by the Members at any time in their sole and absolute discretion, subject to Colorado law. Each Manager elected, designated or appointed shall hold office until a successor Manager is elected and qualified or until such Manager's earlier death, resignation or removal.

B. **Powers and Operation of the Board of Managers.** The Board shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the Company's purposes described herein, including all powers, statutory or otherwise.

1. **Meetings.** The Board may hold meetings, both regular and special, within or outside the state of Colorado. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the Chairman on not less than one day's notice to each Manager by telephone, electronic mail, facsimile, mail or any other means of communication.

i. At all meetings of the Board, a majority of the Managers shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Managers present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Managers present at such meeting may adjourn the meeting until a quorum shall be present. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all
Managers consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board.

ii. Managers may participate in meetings of the Board by means of telephone conference or similar communications equipment that allows all persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the primary business address of the Company.

C. Compensation of Managers. The Board shall have the authority to fix the compensation of Managers. The Managers may be paid their expenses, if any, of attendance at meetings of the Board, which may be a fixed sum for attendance at each meeting of the Board or a stated salary as Manager. No such payment shall preclude any Manager from serving the Company in any other capacity and receiving compensation therefor.

D. Removal of Managers. Unless otherwise restricted by law, any Manager or the entire Board may be removed, with or without cause, by the Members, and any vacancy caused by any such removal may be filled by action of the Members.

E. Managers as Agents. To the extent of their powers set forth in this Agreement, the Managers are agents of the Company for the purpose of the Company’s business, and the actions of the Managers taken in accordance with such powers set forth in this Agreement shall bind the Company. Except as provided in this Agreement, no Manager may bind the Company.

F. No Power to Dissolve the Company. Notwithstanding any other provision of this Agreement to the contrary or any provision of law that otherwise so empowers the Board, none of the Board shall be authorized or empowered, nor shall they permit the Company, without the affirmative vote of the Members, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company’s inability to pay its debts generally as they become due, or, to the fullest extent permitted by law, take action in furtherance of any such action.

G. Duties of the Board. The Board and the Members shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. The Board also shall cause the
Company to:

1. Maintain its own books, records, accounts, financial statements, stationery, invoices, checks and other limited liability company documents and bank accounts separate from any other person;

2. At all times hold itself out as being a legal entity separate from the Members and any other person and conduct its business in its own name;

3. File its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;

4. Not commingle its assets with assets of the Members or any other person, and separately identify, maintain and segregate all Company assets;

5. Pay its own liabilities only out of its own funds, except with respect to organizational expenses;

6. Maintain an arm's length relationship with the Members, and, with respect to all business transactions entered into by the Company with the Members, require that the terms and conditions of such transactions (including the terms relating to the amounts paid thereunder) are the same as would be generally available in comparable business transactions if such transactions were with a person that was not a Member;

7. Pay the salaries of its own employees, if any, out of its own funds and maintain a sufficient number of employees in light of its contemplated business operations;

8. Not guarantee or become obligated for the debts of any other person or hold out its credit as being available to satisfy the obligations of others;

9. Allocate fairly and reasonably any overhead for shared office space;

10. Not pledge its assets for the benefit of any other person or make any loans or advances to any person;

11. Correct any known misunderstanding regarding its separate identity;

12. Maintain adequate capital in light of its contemplated business purposes;

13. Cause its Board to meet or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Colorado limited liability company formalities;
14. Make any permitted investments directly or through brokers engaged and paid by the Company or its agents;

15. Not require any obligations or securities of the Members; and

16. Observe all other limited liability formalities.

Failure of the Board to comply with any of the foregoing covenants shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

H. Prohibited Actions of the Board. Notwithstanding any other provision of this Agreement to the contrary or any provision of law that otherwise so empowers the Board, none of the Board on behalf of the Company, shall, without the unanimous approval of the Board, do any of the following:

1. Guarantee any obligation of any person;

2. Engage, directly or indirectly, in any business or activity other than as required or permitted to be performed pursuant to the Company's Purpose as described in Section II (A) above; or

3. Incur, create or assume any indebtedness other than as required or permitted to be performed pursuant to the Company's Purpose as described in Section II (A) above.

VII. Fiduciary Duties of the Board.

A. Loyalty and Care. Except to the extent otherwise provided herein, each Manager shall have a fiduciary duty of loyalty and care similar to that of managers of business corporations organized under the laws of Colorado.

B. Competition with the Company. The Managers shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority, by individual vote, of the Board of Managers excluding the interested Manager, consents thereto. The Managers shall refrain from competing with the Company in the conduct of the Company's business unless a majority, by individual vote, of the Board of Managers excluding the interested Manager, consents thereto.

C. Duties Only to the Company. The Manager's fiduciary duties of loyalty and care are to the Company and not to the other Managers. The Managers shall owe fiduciary duties of disclosure, good faith and fair dealing to the Company and to the other Managers. A Manager who so performs their duties shall not have any liability by reason of being or having been a Manager.
D. **Reliance on Reports.** In discharging the Manager’s duties, a Manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more Members, Managers, or employees of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented.

2. Legal counsel, public accountants, or other persons as to matters the Manager reasonably believes are within the persons’ professional or expert competence.

3. A committee of Members or Managers of which the affected Manager is not a participant, if the Manager reasonably believes the committee merits confidence.

VIII. **Dissolution.**

A. **Limits on Dissolution.** The Company shall have a perpetual existence, and shall be dissolved, and its affairs shall be wound up only upon the provisions established in Section II (C) above.

Notwithstanding any other provision of this Agreement, the Bankruptcy of any Member shall not cause such Member to cease to be a Member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Each Member waives any right that it may have to agree in writing to dissolve the Company upon the Bankruptcy of any Member or the occurrence of any event that causes any Member to cease to be a Member of the Company.

B. **Winding Up.** Upon the occurrence of any event specified in Section II(C), the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. One or more Members, selected by the remaining Members, shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the liabilities of the Company and its assets, shall either cause its assets to be distributed as provided under this Agreement or sold, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided under this Agreement.

C. **Distributions in Kind.** Any non-cash asset distributed to one or more Members in liquidation of the Company shall first be valued at its fair market value (net of any liability secured by such asset that such Member assumes or takes subject to) to determine the profits or losses that would have resulted if such asset were sold for such value, such profit or loss shall then be allocated as provided under this
Agreement. The fair market value of such asset shall be determined by the Members or, if any Member objects, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) approved by the Members.

D. Termination. The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for under this Agreement and (ii) the Company's registration with the state of Colorado shall have been canceled in the manner required by Colorado law.

E. Accounting. Within a reasonable time after complete liquidation, the Company shall furnish the Members with a statement which shall set forth the assets and liabilities of the Company as at the date of dissolution and the proceeds and expenses of the disposition thereof.

F. Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely to the assets of the Company for the return of its Initial Contribution and shall have no recourse for its Initial Contribution and/or share of profits (upon dissolution or otherwise) against any other Member.

G. Notice to Colorado Authorities. Upon the winding up of the Company, the Member with the highest percentage of Membership Interest in the Company shall be responsible for the filing of all appropriate notices of dissolution with Colorado and any other appropriate state or federal authorities or agencies as may be required by law. In the event that two or more Members have equally high percentages of Membership Interest in the Company, the Member with the longest continuous tenure as a Member of the Company shall be responsible for the filing of such notices.

IX. Exculpation and Indemnification.

A. No Member, Manager, employee or agent of the Company and no employee, agent or affiliate of a Member (collectively, the "Covered Persons") shall be liable to the Company or any other person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

B. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such
Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. Expenses, including legal fees, incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall be paid by the Company. The Covered Person shall be liable to repay such amount if it is determined that the Covered Person is not entitled to be indemnified as authorized in this Agreement. No Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions. Any indemnity under this Agreement shall be provided out of and to the extent of Company assets only.

C. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

D. To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of the Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

E. The foregoing provisions of this Article IX shall survive any termination of this Agreement.

X. **Insurance.**

The Company shall have the power to purchase and maintain insurance, including insurance on behalf of any Covered Person against any liability asserted against such person and incurred by such Covered Person in any such capacity, or arising out of such Covered Person's status as an agent of the Company, whether or not the Company would have the power to indemnify such person against such liability under the provisions of Article IX or under applicable law. This is separate and apart from any business insurance that may be required as part of the business in which the Company is engaged.

XI. **Settling Disputes.**

All Members agree to enter into mediation before filing suit against any other Member
or the Company for any dispute arising from this Agreement or Company. Members agree to attend one session of mediation before filing suit. If any Member does not attend mediation, or the dispute is not settled after one session of mediation, the Members are free to file suit. Any law suits will be under the jurisdiction of the state of Colorado.

XII. Independent Counsel.

All Members entering into this Agreement have been advised of their right to seek the advice of independent legal counsel before signing this Agreement. All Members and each of them have entered into this Agreement freely and voluntarily and without any coercion or duress.

XIII. General Provisions.

A. Notices. All notices, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing and may be personally served or sent by United States mail and shall be deemed to have been given when delivered in person or three (3) business days after deposit in United States mail, registered or certified, postage prepaid, and properly addressed, by or to the appropriate party.

B. Number of Days. In computing the number of days (other than business days) for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which national banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

C. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall together constitute one and the same instrument.

D. Severability. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

E. Headings. The Article and Section headings in this Agreement are for convenience and they form no part of this Agreement and shall not affect its interpretation.

F. Controlling Law. This Agreement shall be governed by and construed in all respects in accordance with the laws of the state of Colorado (without regard to conflicts of law principles thereof).

G. Application of Colorado Law. Any matter not specifically covered by a provision of this Agreement shall be governed by the applicable provisions of Colorado law.
H. **Amendment.** This Agreement may be amended only by written consent of all the Members. Upon obtaining the approval of any such amendment, supplement or restatement as to the Certificate, the Company shall cause a Certificate of Amendment or Amended and Restated Certificate to be prepared, executed and filed in accordance with Colorado law.

I. **Entire Agreement.** This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

IN WITNESS WHEREOF, the Members have executed and agreed to this Limited Liability Company Operating Agreement, which shall be effective as of March 15, 2019.

Signature: 

Hogan Hoeffner
ATTACHMENT A

Initial Contributions of the Members

The Initial Contributions of the Members of BorderTown LLC are as follows:

Hogan Hoeftner
  
  Contribution:
  
  Cash: $250,000.00
Wholesaler Affidavit of Compliance
Section 12-47-303(1)(d), C.R.S.

Wholesaler Licensee Name (If an LLC, partnership, corporation or name of cooperation):

Trade Name of Establishment/Doing Business As (DBA):

Physical Address:

Transferor Retailer Licensee Name:

Trade Name of Transferor Doing Business As (DBA):

Physical Address:

The above wholesaler affirms that all alcohol beverages delivered to the above transferor retailer are:

έ Paid in Full (only for the purposes of complying with section 12-47-303(1)(e), C.R.S.)

Note: If Paid in Full is selected, the wholesaler may no longer extend credit to the transferor or transferor until the local and state licensing authorities have approved the transfer of the liquor license.

έ Not Paid in Full

Signature: ____________________________

THOMAS CLAY

SEAL

18/5/19
# Wholesaler Affidavit of Compliance

**Section 12-47-303(1)(d), C.R.S.**

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<thead>
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<th>Wholesaler Licensee Name (If an LLC, partnership, corporation or name of corporation)</th>
<th>License Number</th>
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<td>BRACHTOUR BEVERAGES COLORADO</td>
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<td>Ms. CASSITA</td>
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<tr>
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<tr>
<td>BorderTown LLC DBA Mi Cassita</td>
<td>(970) 274-9040</td>
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<tr>
<td>129 White Peaks Lane</td>
<td>Glenwood Springs</td>
<td>CO</td>
<td>81601</td>
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The above wholesaler affirms that all alcohol beverages delivered to the above transferor retailer are:

- [ ] Paid in Full (only for the purposes of complying with section 12-47-303(1)(d), C.R.S.)
  - Note: If Paid in full is selected, the wholesaler may no longer extend credit to the transferee or transferor until the local and state licensing authorities have approved the transfer of the liquor license.

- [ ] Not Paid in Full

**Wholesaler**

BRACHTOUR BEV

**Signature**

[Signature]

**Print**

KEVIN WHEELER

**Title**

SALES REP

**Date**

8-5-19
What we have Accomplished:

Open Conversation with the Habitat Challenged in our Community

Awareness of who these people who are in our Community

Establishing a reputable fundraising process to support our efforts

Ability to help get people back on their feet and self-sustaining in our Community

Annual Membership Passes for our Habitat Challenged Community Members

The Ability to take routine showers

Emergency accommodation in local hotels

A means of providing Gas/repairs for vehicles

Provide Veterinarian care for Pets

Provide Gift Cards for Food/Personal Items

Provide assistance for safe and legal camping, including but not limited to, Sleeping Bags, tents, etc.

Established a comprehensive Resource Guide

Provide Bi-monthly a hot meal that offers connection with our community.
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<th>In</th>
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From: Jessi Rochel <jrochel@carbondaleco.net>
Sent: Wednesday, October 30, 2019 12:28 PM
To: Lynn Kirchner <lynnk@rof.net>
Cc: Suzy Boyle <suzy@amorerealty.com>
Subject: Nov 12th TOC meeting

To Whom It May Concern:

The Carbondale Homeless Assistance (CHA) program has been working with the Carbondale Recreation and Community Center (CRCC) since January 2016. Over this course of time, they have purchased 4 Annual Senior Memberships, 11 Annual Adult Memberships, and 28 Punch Passes (each pass has 20 punches on it). These memberships and punch passes have been provided to local homeless that are vetted by the CHA prior to them being able to utilize the CRCC as part of the CHA program. The list of approved CHA members at the CRCC has changed over the course of time, but currently includes 23 people for the punch pass, and 6 with individual memberships.

The collaboration between the CHA and the CRCC has overall been a positive experience for both groups. The CHA managing members are easy to work with, and we have had very few issues with this program within the Rec Center itself. Since the CHA meets with potential members prior to allowing them to access the shared punch pass, we have subsequently denied access to the pass for just a few people. The CHA managing members have always given us final say on whether a person may be permitted to use or continue to use the pass based on their behavior within our facility. This collaboration protects the financial interests and integrity of the CHA, as well as the safety of the Rec Center, its staff, and paying members and guests. We will continue to work with the CHA in the future.

Jessi Rochel  
Community Center and Recreation Programs Manager  
Carbondale Recreation and Community Center  
567 Colorado Avenue  
Carbondale, CO 81623  
970.510.1278  
www.carbondalerec.com
<table>
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# Town of Carbondale Parks and Recreation

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**Total Admittance:** 528

**Filters Selected:**
- Date Range: 01/01/2016 To: 11/07/2019
- Member: CHA CHA
Roaring Fork Valley Resource Guide

The purpose of this guide is to inform community members of resources that are available to assist in stabilizing and enriching their lives by offering food, shelter, and other forms of aid. In case of emergency, please call 911. Call 2.1.1. for health and human services information or www.wc211.org. This is a free and confidential service connecting people in need to important community resources.

**CRISIS LINES:**

- Domestic Violence Help Line - Advocate Safehouse Project - 970.945.4439 or 970.285.0209
- Domestic Violence Help Line - RESPONSE - 970.925.SAFE (7233)
- Mental Health/Suicide Help Line - Aspen HOPE Center - 970.925.5858
- Mental Health/Suicide Help Line - Mind Springs Health - 888.207.4004

**FOOD:**

- Garfield County Lift-Up - (6 food pantries in the valley, call for locations) - 970.625.4496
- Food Bank of the Rockies Mobile Pantry - El Jebel Health & Human Services, 0020 Eagle County Drive, El Jebel - 970.328.9586. Second Wednesday of every month from 11am to 1pm.
- Lift up - Third Street Center 520 S Third St #35, Carbondale - 970.963.1778. Open M/W/F 10am to 12:30pm
- Women, Infant and Children Nutrition
  - Community Health Service, Aspen 970.920.5420
  - Garfield County, Glenwood Springs 970.945.6614
- Food Stamps:
  - Pitkin & Eagle County - 855.855.4626
  - Garfield County - 970.945.9191

**FREE COMMUNITY MEALS:**

- Aspen Day Center/Homeless Shelter - 405 Castle Creek Rd #16 (Aspen Health & Human Services Building) 970.925.1342. Dinner every day at 6pm. Please call ahead.
- Extended Table Soup Kitchen - (Lift up) United Methodist Church, 824 Cooper Ave Glenwood Springs - 970.625.4496. M-F 5pm to 6pm
- Feed My Sheep - Glenwood Springs - 970.928.8340. Day Center open M-F 8am to 3pm. Offers Breakfast and lunch.
- Faith Lutheran Church - Carbondale - 970.510.5046. Free community meal every 3rd Saturday.
- Senior (over 60) Lunches - El Jebel Community Center - 0020 Eagle County Dr, El Jebel - 970.379.0020 at Noon on T/TH
- Senior (over 60) Lunches - Pitkin Co Senior Center - 0275 Castle Creek Rd, Aspen - 970.920.5432 at Noon on M/W/F
- Teens ages 14 – 21 – Stepping Stones - 1010 Garfield Ave, Carbondale - 720.207.7646 Monday - Friday at 5:00pm

**HEALTH:**

- Aspen to Parachute Dental Health Alliance - 970.309.2064. www.mygreatteeth.org
- Community Health Services of Pitkin County - 970.920.5420
- Dr. Greg Feinsinger - Third Street Center, Carbondale - 970.379.5718 offer free initial medical consultation from 8am to 12pm on Mondays by appointment. Email - gfeinsinger@comcast.net
- Garfield County Public Health Immunization - Glenwood Springs - 970.945.6614
- Mind Springs Health - www.mindspringshealth.org
  - Aspen - 970.920.5555
  - Glenwood Springs - 970.945.2583

**HEALTH CONTINUED:**

- Mountain Family Health - 970.945.2840
Mountain Valley Development Services – 970.945.2306 offers resources for people with developmental disabilities. www.mtnvalley.org

Planned Parenthood – Glenwood Springs – 970.945.8631 offers affordable reproductive health care.

**HOUSING:**

- Aspen Pitkin County Housing Authority – 970.920.5050
- Carbondale Housing Authority (Senior Housing Only) - 970.963.9326
- Garfield County Housing Authority – Glenwood Office – 970.945.3072. Provides Rental Assistance, Senior Housing, Community Housing Administration
- Habitat for Humanity – 970.945.9138

**MISC:**

If you are looking for basic assistance with items such as clothing, camping supplies, bus passes, prescription assistance, please call 2.1.1 or check in with one of the following organizations:

- Aspen Day Center – Aspen – 970.925.1342
- Defiance Thrift Store – Glenwood Springs - 970.945.0234
- Feed My Sheep – Glenwood Springs – 970.928.8340
- Lulu’s Thrift Store – 922 Hwy 133, Carbondale – 970.963.1984
- Miser’s Mercantile – 303 Main St, Carbondale – 970.963.3940
- Ragged Mountain Sports - 902 CO-133, Carbondale – 970.510.5185
- The Salvation Army – Glenwood Springs – 970.945.6976

**PET CARE:**

CARE (Colorado Animal Rescue) – 2801 County Road 114, Glenwood Springs – 866.947.9173 offers free pet food thru their food bank. Please call ahead for assistance.

**SHELTER:**

Feed My Sheep – Glenwood Springs – 970.928.8340 (Please call ahead.) offers:

- Day Center, M-F from 8am – 3pm – Offers supplies, showers, laundry, storage, communication services, breakfast and lunch.
- Winter Overnight Program – November 18 – March 15th. M-F from 6pm to 8pm, Sat 5pm to 8pm and Sun 2pm to 8pm. Transport to overnight facility begins at 8:15 pm. Please see overnight program rules at www.feedmysheephomelessministry.org/overnight-program

Aspen Homeless Shelter – Aspen – 970.925.1342 (Please call ahead.) offers:

- Day Center at Aspen Health and Human Services Building, Open 7 days a week. M-F 10am – 8:30pm, Sat & Sun 11:00am – 8:30 pm
- Overnight Program at St Mary’s Catholic Church, meets at backdoor of church between 9:00pm and 10:00pm

Advocate Safehouse Project – Glenwood Springs – 970.945.2632 offers:

- Provides emergency shelter for (female) survivors in danger with crisis intervention, client education, safety planning, individual and group counseling, advocacy, case management, and information/referrals.

**Camping:**

- Camping within City Limits is prohibited. It is a misdemeanor offense. This includes cars, RVs and tents.
- Camping is allowed on Forest Service Land and along Forest Service Roads. Maximum time allowed at any one site is 14 days during any 30-day period. The Forest Service has a strict ‘Leave No Trace’ policy. Please pack out all waste and leave the space as you found it.
Guía de recursos en el valle Roaring Fork

El propósito de esta guía es informar a los miembros de la comunidad acerca de los recursos que están disponible para ayudarlos a enriquecer sus vidas, ofreciéndoles alimento, abrigo y, otras formas de ayuda. En caso de emergencia, por favor llame al 9.1.1.


Conectando gente necesitada con recursos importantes en la comunidad.

**LÍNEAS DE CRISIS:**

- Línea de Ayuda para Violencia doméstica: Advocate Safehouse Project – 970.945.4439 o 970.285.0209
- Línea de Ayuda para Violencia doméstica – RESPONSE – 970.925.5SAFE
- (7233) Línea de ayuda prevención de suicidio y salud mental Aspen HOPE Center – 970.925.5858
- Línea de ayuda prevención de suicidio y salud mental – Mind Springs Health – 888.207.4004

**COMIDA:**

- Garfield County Lift-Up – (6 despensas de alimentos en el valle, llame para averiguar la ubicación.) – 970.625.4496
- Food Bank of the Rockies Mobile Pantry – El Jebel Servicios Humanos y de Salud, 0020 Eagle County Drive, El Jebel – 970.328.9586. Segundo miércoles de cada mes de 11am a 1pm.
- Lift up – Third Street Center 520 S Third St #35, Carbondale – 970.963.1778. Abierto L/M/V 10am a 12:30pm
- Alimentación para mujeres niños e Infantes
  - Community Health Service, Aspen 970.920.5420
  - Garfield County, Glenwood Springs 970.945.6614
- Estampillas para alimentos:
  - Pitkin & Eagle County – 855.855.4626
  - Garfield County – 970.945.9191

**COMIDAS COMUNITARIAS GRATUITAS:**

- Aspen Day Center/Homeless Shelter – 405 Castle Creek Rd #16 (Edificio de Servicios Humanos y de Salud de Aspen) 970.925.1342. Cena cada día a las 6pm. Por favor llame con anticipación.
- Extended Table Soup Kitchen – (Lift up) United Methodist Church, 824 Cooper Ave Glenwood Springs – 970.625.4496. L-V 5pm a 6pm
- Feed My Sheep – Glenwood Springs – 970.928.8340. El Day Center está abierto L-V 8am a 3pm. Ofrece desayuno y almuerzo.
- Faith Lutheran Church – Carbondale – 970.510.5046. Comida comunitaria gratuita cada 3er sábado de mes.
- Almuerzos para mayores de edad (más de 60años) – Centro Comunitario de El Jebel – 0220 Eagle County Dr. El Jebel – 970.379.0020 a mediodía los Mi/J Tercer Edad (más de 60 años) Almuerzos – Pitkin Senior Center – 0275 Castle Creek Rd Aspen – 970.920.5432 a mediodía los L/M/V Jóvenes de 14 – 21 – Stepping Stones - 1010 Garfield Ave, Carbondale - 720.207.7646 Lunes – Viernes a las 5:00pm

**SALUD:**

- Aspen to Parachute Dental Health Alliance – 970.309.2064. www.mygreatteeth.org
- Servicios Comunitarios de Salud del Pitkin County – 970.920.5420
- Dr. Greg Feinsinger – Third Street Center, Carbondale – 970.379.5718 ofrece una consulta inicial gratuita de 8am a 12pm los lunes con cita – gfeinsinger@comcast.net
- Garfield County Public Health Immunization – Glenwood Springs - 970.945.6614
- Mind Springs Health – www.mindspringshealth.org
  - Aspen – 970.920.5555
  - Glenwood Springs – 970.945.2583
SALUD CONTINUACIÓN:
Mountain Family Health – 970.945.2840
Mountain Valley Development Services – 970.945.2306 ofrece recursos para personas con discapacidades de desarrollo. www.mtnvalley.org
Planned Parenthood – Glenwood Springs – 970.945.8631 ofrece cuidados de salud reproductiva accesibles.

VIVIENDA:
Aspen Pitkin County Housing Authority – 970.920.5050
Carbondale Housing Authority (Solo vivienda para mayores de la tercera edad) - 970.963.9326
Garfield County Housing Authority – Glenwood Office – 970.945.3072. Provee ayuda con la renta, vivienda para tercera edad, Administración de vivienda comunitaria
Habitat for Humanity – 970.945.9138

MISCELÁNEOS:
Si está buscando ayuda con cosas como ropa, artículos de campismo, pases para el bus, ayuda con recetas, por favor llame al 2.1.1 o contacte alguna de las siguientes organizaciones:

Aspen Day Center – Aspen – 970.925.1342
Defiance Thrift Store – Glenwood Springs - 970.945.0234
Feed My Sheep – Glenwood Springs – 970.928.8340
Lulu’s Thrift Store – 922 Hwy 133, Carbondale – 970.963.1984
Misers Mercantile – 303 Main St, Carbondale – 970.963.3940
Ragged Mountain Sports - 902 CO-133, Carbondale – 970.510.5185
The Salvation Army – Glenwood Springs – 970.945.6976

CUIDADO DE MASCOTAS:
CARE (Colorado Animal Rescue) – 2801 County Road 114, Glenwood Springs – 866.947.9173 ofrece comida para mascotas gratuita a través de su banco de alimentos. Por favor llame con anticipación para recibir asistencia.

ABRIGO:
Feed My Sheep – Glenwood Springs – 970.928.8340 (Por favor llame con anticipación.) Ofrece:
  • Day Center, L-V de 8am – 3pm – ofrece suministros, duchas, lavandería, almacenaje, servicios de comunicación, desayuno y almuerzo. .
  • Programa de pernoctación invernal – 18 de noviembre al 15 de marzo. L-V de 6pm a 8pm, Sab. 5pm a 8pm y domingos de 2pm a 8pm. El servicio de transporte hacia el lugar de pernoctar empieza a las 8:15 pm. Por favor revise las reglas del programa de pernoctación en www.feedmysheephomeslessnessministry.org/overnight-program
Aspen Homeless Shelter – Aspen – 970.925.1342 (Por favor llame con anticipación.) Ofrece
  • Day Center en el Edificio de Servicios Humanos y de Salud de Aspen, Abierto 7 días a la semana..
    L-V 10am – 8:30pm, Sab. Y Dom: 11:00am – 8:30 pm
  • Programa de Pernoctación en IAT St Mary’s Catholic Church, se reúne detrás de la iglesia entre las 9:00pm y las 10:00pm
Advocate Safehouse Project – Glenwood Springs – 970.945.2632 ofrece:
  • Alojamiento de emergencia para (mujeres) sobrevivientes en peligro, con intervención de crisis, educación para los clientes, planificación de medidas de seguridad, consejería individual y de grupo, defensoría, manejo de casos, información y, referencias.

Campismo:
  • Acampar en los límites de la ciudad es prohibido. Es un delito menor. Esto incluye tiendas de campaña y RVs.
  • Acampar es permitido en terrenos del Servicio Forestal y, en las orillas de los caminos del Servicio Forestal. El tiempo permitido es de 14 días en un sitio dado durante cualquier periodo de 30 días. El Servicio Forestal tiene una política muy estricta de ‘No Dejar Basura’. Por favor recoja toda la basura y deje el lugar tal y como lo encontró.
TOWN OF CARBONDALE  
511 COLORADO AVENUE  
CARBONDALE, CO 81623

Agenda Memorandum

Meeting Date: November 12, 2019

TITLE: Town Center – Agreement to Relocate Restrictive Covenant

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS: Letter from Park & Metz LLP dated October 11, 2019  
Agreement to Relocate Restrictive Covenant  
American Tree & Cement Subdivision Plat  
Town Center Subdivision Plat  
Clarion Modeling Spreadsheets

BACKGROUND

Randy Metz of Park & Metz, representing Pickwick Holdings, LLC, submitted a letter to the Town on October 11, 2019 requesting that the Declaration of Restrictive Covenant (Covenant) which presently burdens Parcel 1 of the American Tree and Cement Subdivision Exemption (AT&C Parcel) be relocated to Lots 1, 9 and 10 of the Town Center Subdivision, Filing No. 2.

The AT&C Parcel is the vacant land located at the northeast corner of 4th Street and Colorado Avenue. The plat for the property is attached.

Filing #1 of the Town Center Subdivision was recorded in 2003. Filing #2 was recorded in 2004. A plat which shows the two filings is attached.

The same property owner holds title to the AT&C Parcel and Lots 1, 9 and 10 of the Town Center Subdivision.

In 2003, a Housing Mitigation Plan was approved in 2003 for the Town Center Subdivision, Filing #1 and Filing #2, and memorialized in Town Center Subdivision Improvements Agreement (SIA). The intent of the Town Center Housing Mitigation Plan was to cumulatively calculate the required affordable housing units as the Town Center subdivision was built out. At the end of construction of Town Center, the Town was to calculate the number of total housing units built and the number of affordable housing units. Any deficiency was to be made up on the AT&C Parcel.
The Covenant was placed on the AT&C Parcel to secure the Town Center obligation to provide deed-restricted affordable housing units for the Town Center Subdivision.

DISCUSSION

The Town Center SIA states that at any time, at the property owner’s request, the Town agrees that it will release the Covenant on the AT&C Parcel provided that simultaneously, the property owner imposes the same Covenant on an undeveloped lot or lots within the Town Center Subdivision. The property owner, Pickwick Holdings, LLC, is now requesting that the Covenant be relocated to Lots 1, 9, and 10 as allowed in the SIA.

The SIA states that the lots within Town Center Subdivision which receive the Covenant must be adequate to support the required affordable housing units which may be constructed in the Town Center Subdivision. Staff utilized the Clarion modeling and made some assumptions to roughly determine how many residential units could be developed on the entire Town Center Subdivision property. The modeling spreadsheets are attached. The Unified Development Code (UDC) requires that 20% of residential units be deed restricted as affordable housing units. It appears that Lots 1, 9 and 10 are sufficient in size to house 20% of the total units as affordable housing units.

Approval of the Agreement to Relocate Restrictive Covenant does not affect properties in the Town Center Subdivision which are owned by Thunder River Theatre, the Lot 19 Homeowner’s Association, and Morningwood, LLC.

FISCAL IMPACTS

Relocating the Covenant from the AT&C Parcel to the Town Center property does not appear to fiscally impact the Town.

RECOMMENDATION

Staff recommends the following motion: Move to approve the Agreement to Relocate Restrictive Covenant.

Prepared By: Janet Buck, Planning Director

JH

Town Manager
October 11, 2019

VIA EMAIL @ jharrington@carbondaleco.net, mehamilton@hollandhart.com

Town of Carbondale Board of Trustees C/O
Jay Harrington,

Town Manager
Mark Hamilton
Holland & Hart LLP

Re: Parcel 1, American Tree and Cement Subdivision Exemption, according to the plat thereof filed December 3, 1991 at 25 Reception No. 455996

Dear Town of Carbondale Board of Trustees,

Pickwick Holdings, LLC, pursuant to paragraph 30(A) of the Contract to Buy and Sell Real Estate executed on October 9, 2019, respectfully, makes the following request to the Town of Carbondale Board of Trustees:

1. The Declaration of Restrictive Covenant (Rec. No. 623534)(the “Deed Restriction”) which presently burdens Parcel 1, American Tree and Cement Subdivision Exemption, according to the plat thereof filed December 3, 1991 at 25 Reception No. 455996 (“the Property), pursuant to section 7.d of the Subdivision Improvements Agreement for the Town Center Subdivision, Filing No. 2 dated 802 December 14, 2004 (Rec. No. 068234) (the “2004 SIA”), for the purpose of providing the Town of Carbondale with security to guarantee the satisfaction of affordable housing obligations related to development of the Town Center Subdivision, be placed upon Lots 1, 9, and 10, Town Center Subdivision.

Sincerely,

PARK & METZ, LLP

/s/ Randy S. Metz

cc: Cathy Derby, Town Clerk
cderby@carbondaleco.net

Randy S. Metz, Esquire
After recording, please return to:
Town of Carbondale
c/o Town Manager
511 Colorado Ave.
Carbondale, CO 81623

AGREEMENT TO RELOCATE RESTRICTIVE COVENANT

(to release Parcel 1, American Tree and Cement Subdivision Exemption, Town of Carbondale, Colorado from restrictive covenant and to establish covenant against
Lots 1, 9 and 10, Town Center Subdivision, Filing No. 2, Town of Carbondale, Colorado)

This Agreement to Relocate Restrictive Covenant (“Agreement”) is made this ___ day of _____________, 2019 by and between PICKWICK HOLDINGS, LLC, a Colorado limited liability company (“Owner”), with an address of ________________, and the TOWN OF CARBONDALE, COLORADO, a Colorado home rule municipal corporation, with an address of 511 Colorado Ave., Carbondale, CO 81623 (“Town”).

A. A Declaration of Restrictive Covenant dated March 21, 2003 (the “2003 Restrictive Covenant”) was executed and recorded by Carsam Realty Ten, Ltd., a Texas limited partnership (the “Original Declarant”), in favor and for the benefit of the Town, which Declaration was recorded in the Garfield County, Colorado real property records on March 25, 2003, in Book 1450 on Page 83, Reception No. 623534.

B. Pursuant to the 2003 Restrictive Covenant, a restrictive covenant was placed upon Parcel 1, as depicted on the plat of the American Tree and Cement Subdivision Exemption, which plat was recorded in the Garfield County, Colorado real property records on July 22, 1997 as Reception No. 51134 (this property is further described on Exhibit A to the 2003 Declaration) (the “American Tree Property”). This covenant that was placed upon the American Tree Property pursuant to the 2003 Restrictive Covenant was for the purpose of securing the Original Declarant’s obligations to provide deed-restricted affordable housing units related to the future development of the Town Center Subdivision, as described and approved by the Town pursuant to Ordinance No. 9, Series of 2003, which Ordinance was recorded in the Garfield County, Colorado real property records on March 25, 2003, Reception No. 623538. The 2003 Restrictive Covenant was a specific requirement of Section 7 of the Subdivision Improvements Agreement for Town Center Subdivision Filing No. 1, dated March 11, 2003, and recorded in the real property records of Garfield County, Colorado on March 25, 2003, Reception No. 623531 (the “Filing No. 1 SIA”).

C. The 2003 Restrictive Covenant was subsequently amended by a document entitled “Consent to Transfer of Restricted Property and Amendment of Restrictive Covenant” dated July 17, 2007 and recorded in the real property records of Garfield County, Colorado, on July 25, 2007, as Reception No. 729014.

D. In 2004, the Town approved Phase 2 of the Town Center Subdivision pursuant to Ordinance No. 31, Series of 2004, which Ordinance was recorded in the real property records of Garfield
County, Colorado as Reception No. 668232. In connection with this further approval, the Town and the Original Declarant executed a second agreement entitled Subdivision Improvements Agreement for Town Center Subdivision, Filing No. 2, which Agreement was dated December 14, 2004 and recorded in the real property records of Garfield County, Colorado on February 4, 2005 as Reception No. 668234 (the “Filing No. 2 SIA”). Pursuant to Paragraph 7.d of the Filing No. 2 SIA, the parties reiterated the Original Declarant’s obligation to secure its affordable housing obligations related to the Town Center Subdivision by its placement of a restrictive covenant upon the American Tree Property pursuant to the 2003 Declaration. However, said Paragraph 7.d further provided that:

   At any time, at the Developer’s request, the Town agrees that it will release the aforesaid deed restriction on the property so restricted, provided that simultaneously therewith, the Developer shall impose the same deed restriction upon either the other Adjacent Property, or an undeveloped lot or lots within Town Center, which is adequate in size for the construction of the required number of deed restricted community housing units.

   E. Owner, which presently holds title to the American Tree Property and all remaining undeveloped lots within the Town Center Subdivision, is the successor-in-interest to the Original Declarant. No affordable housing units have been deed-restricted within the Town Center Subdivision as of the date of this Agreement.

   F. Pursuant to a letter to the Town dated October 11, 2019, pursuant to Paragraph 7.d of the Filing No. 2 SIA, Owner has requested that the restrictive covenant that was placed upon the American Tree Property pursuant to the 2003 Restrictive Covenant be fully released and discharged, and that instead an equivalent restriction be placed upon Lots 1, 9 and 10, Town Center Subdivision Filing No. 2, for the purpose of continuing to secure the completion of all required deed-restricted affordable housing units associated with development of the Town Center Subdivision.

   G. The Town is willing to permit the release of the 2003 Restrictive Covenant against the American Tree Property upon condition that an equivalent covenant be placed upon Lots 1, 9 and 10, Town Center Subdivision, Filing No. 2, according to the terms and conditions set forth in this Agreement.

   NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good consideration, the sufficiency of which is acknowledged, the Owner and the Town further agree as follows:

   1. The above recitals are incorporated herein by reference.

   2. Owner agrees and acknowledges that, as the successor-in-interest to the Original Declarant, Owner has assumed all remaining obligations of the original Owner pursuant to all applicable Town of Carbondale approvals for the Town Center Subdivision, including in particular all outstanding developer obligations set forth in Section 7 of the Filing No. 1 SIA and Section 7 of the Filing No. 2 SIA.
3. Pursuant to the 2003 Restrictive Covenant, the Town hereby agrees that this document shall be considered a written instrument, signed by the Owner and the Town, notarized as required for the execution of deeds, and specifically referring to the 2003 Restrictive Covenant, stating that other security acceptable to the Town has been provided by the Owner. As such, upon mutual execution of this Agreement, and recording of the same in the real property records of Garfield County, Colorado, the 2003 Restrictive Covenant against the American Tree Property shall be and is hereby released and fully discharged by the Town.

4. In lieu of the security originally posted pursuant to the 2003 Deed Restriction, Owner hereby agrees to impose a replacement restrictive covenant against Lots 1, 9 and 10, Town Center Subdivision Filing No 2, as such lots are described on the Final Plat recorded in the real property records of Garfield County, Colorado, on February 4, 2005, as Reception No. 668233 (“the Replacement Restricted Properties”), according to the following terms:

   a. Owner hereby declares that the Replacement Restricted Properties shall not be sold, conveyed or otherwise transferred, except as provided in this Agreement, or until such time as the Owner has satisfied its obligations to provide deed restricted community housing relating to Town Center as expressly set forth in Section 7 of the Filing No. 1 SIA and Section 7 of the Filing No 2. SIA, and the covenant is thereafter extinguished and released as hereinafter provided.

   b. Owner hereby represents and warrants to the Town that, as of the date of this Agreement, the Replacement Restricted Properties are all each free and clear of all financial encumbrances. After recordation of this Agreement, Owner may grant a deed of trust, mortgage or other security interest in the Replacement Restricted Property, so long as the same is junior to this Agreement and would not, upon foreclosure of such security instrument, extinguish or modify the restrictive covenant established hereby against the Replacement Restricted Properties. However, Owner shall not grant any security interest in the Replacement Restricted Properties without the Town’s consent, which shall be granted in the circumstances set forth in this paragraph.

   c. This Agreement and the restrictive covenant established against the Replacement Restricted Properties hereby shall be deemed a covenant which shall run with and burden the Replacement Restricted Properties for the benefit of the Town, and shall be specifically enforceable by the Town. In the event that the Town should ever commence litigation or other proceeding to enforce the terms of this Agreement, and if the Owner’s breach of this Agreement is established in such proceeding, then the Owner shall be responsible to pay the Town’s attorneys’ fees, expenses, and other court costs incurred in such proceeding.

   d. This Agreement and the restrictive covenant herein established against the Replacement Restricted Properties may be released and extinguished only by a written instrument, signed by the Owner and the Town, notarized as required for the execution of
Agreement to Relocate Restrictive Covenant  
Town of Carbondale/Pickwick Properties LLC  
November ____, 2019  
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deeds, specifically referring to this Agreement as it is recorded in the real property records of Garfield County, Colorado, stating that the purposes of the restrictive covenant established herein have been satisfied, or that other security acceptable to the Town has been provided by the Owner, and the restrictive covenant hereby established against the Replacement Restricted Properties pursuant to this Agreement is therefore fully released and discharged. Upon its execution, such instrument shall be recorded in the real property records of Garfield County, Colorado, and from and after such recording, the restrictive covenant established against the Replacement Restricted Properties herein shall be fully extinguished and discharged and shall no longer be considered a burden or encumbrance upon the Replacement Restricted Properties.

5. Except as specifically provided for herein with regard to release and replacement of the 2003 Restrictive Covenant, nothing herein shall be deemed to amend any other aspects of existing agreements and Town approvals related to development of the Town Center Subdivision, including but not limited to the Filing No. 1 SIA and the Filing No. 2 SIA, both of which shall remain in full force and effect.

6. The provisions of this Agreement shall be binding upon the parties, their successors and assigns, and shall run with title to the Replacement Restricted Properties.

PICKWICK HOLDINGS LLC  
a Colorado limited liability company

By____________________________________  
Manager

STATE OF COLORADO  }  
} ss.
COUNTY OF GARFIELD  }

Subscribed and sworn to before me this ____ day of ________________, 20___ by  
a____________________ as Manager of Pickwick Holdings LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

__________________________________  
Notary Public
Agreement to Relocate Restrictive Covenant
Town of Carbondale/Pickwick Properties LLC
November____, 2019
Page 5 of 5

THE TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation

By____________________________________
Mayor

ATTEST:

__________________________________
Town Clerk

STATE OF COLORADO } } ss.
COUNTY OF GARFIELD }

Subscribed and sworn to before me this____ day of ______________, 20____ by
__________________________________ as Mayor and ________________________ as Town Clerk of the Town of
Carbondale, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

My commission expires:

__________________________________
Notary Public
## Town Center

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<tr>
<th>Lot Area (sqft)</th>
<th>Building and Parking</th>
<th>Livable Space (sqft)</th>
<th>Parking Spaces</th>
<th>Parking Lot Area (sqft)</th>
<th>Private Outdoor Space</th>
<th>Bulk Storage (sqft)</th>
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<td>Efficiency</td>
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<td>31.25</td>
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<td>39,406.25</td>
<td>5,200.00</td>
<td>1,957.20</td>
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### Parcels (Garfield County)
- Gross Floor Area (sqft): 57,309.50
- Parking (sqft): 39,406.25
- Building footprint (sqft): 19,103.17

### Required Site Features
- Open Space: 11,483.40
- Total: 11,483.40

### Tests

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<th>Space Used by Proposed Development</th>
<th>Total</th>
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<td>☑ Space Used by Proposed Development</td>
<td>69,992.82</td>
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**Notes:**
1. 60% of lot area (Table 3.7-2)
2. Private outdoor space not included in GFA (Sec. 5.6.5.8)
3. Assumes 8' ceiling height; 8 cu ft of storage = 1 sq ft of floor area (Sec. 5.6.5.C.2.b)
4. Livable space + additional 22% to account for non-livable space, wall thickness, etc. Assumes bulk storage is included in the 22%.
5. GFA/building stories
6. 15% of land w/n residential subdivision. May not be required with UDC amendments. (Table 5.3-1)
7. 40% net site area (Table 3.7-2)
Town Center

<table>
<thead>
<tr>
<th>Building and Parking</th>
<th>Number of Units</th>
<th>Livable Space (sqft)</th>
<th>Parking Spaces</th>
<th>Parking Lot Area (sqft)</th>
<th>Private Outdoor Space</th>
<th>Bulk Storage (sqft)</th>
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<td>Two Bedroom</td>
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<td>Three Bedroom</td>
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<td>22.50</td>
<td>7,312.50</td>
<td>1,000.00</td>
<td>362.50</td>
</tr>
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</table>

Parcels (Garfield County)

| Gross Floor Area (sqft) | 10,614.00 |
| Parking (sqft)           | 7,312.50  |
| Building footprint (sqft)| 3,538.00  |

Required Site Features

| Open Space             | 2,159.55 |
| Total                  | 2,159.55 |

Tests

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<th>Space Used by Proposed Development</th>
<th>Total</th>
<th>Difference</th>
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Notes:
1. 60% of lot area (Table 3.7-2)
2. Private outdoor space not included in GFA (Sec. 5.6.5.B)
3. Assumes 8' ceiling height: 8 cu ft of storage = 1 sq ft of floor area (Sec. 5.6.5.C.2.b)
4. Livable space + additional 22% to account for non-livable space, wall thickness, etc. Assumes bulk storage is included in the 22%.
5. GFA/building stories
6. 15% of land w/n residential subdivision. May not be required with UDC amendments. (Table 5.3.1)
7. 40% net site area (Table 3.7-2)
BACKGROUND

On March 24, 2009, Balentine Carbondale Holdings, LLC (Balentine) and the Town entered into a water rights fee escrow agreement. The purpose of the agreement was to place $9,000 in escrow until such time that the Town determined if Balentine Holdings was to either pay the fee for water rights or if the fee was not required based upon determination by the Town.

As such it appears that no determination was made since the agreement was entered into and recently Mr. Balentine made a request to the Town to release the escrow agreement. Staff conducted research into the issue and made a determination that Balentine Carbondale Holdings, LLC was not required to pay water right fee’s as a certain amount of water rights were originally allocated to the Kay PUD when it was first established. New development within the Kay PUD may be assessed water rights fees as required based upon the type and size of that development.

RECOMMENDATION:

Staff recommends that the Board of Trustees approve the release of the Water Rights Escrow.

Prepared By: John Leybourne
AUTHORIZATION TO RELEASE ESCROW FUNDS

TOWN OF CARBONDALE is presently holding the sum of $9,000.00 in escrow pursuant to the terms of the Water Rights Fee Escrow Agreement dated March 24, 2009 between the Balentine Carbondale Holdings, LLC, a Colorado limited liability company (hereinafter referred to as “Balentine”) and the Town of Carbondale, a Colorado municipal corporation (hereinafter referred to as “Town”). The escrow is being held by Pitkin County Title.

Town hereby acknowledges that the purpose of the Water Rights Fee Escrow Agreement has been fulfilled and the sum of $9,000.00 is to be released to Balentine.

The undersigned Board of Trustees of Town hereby authorize the Town to release the sum of $9,000.00 plus interest, to Balentine and directs Pitkin County Title to release the escrow funds to Balentine. In addition, the Town agrees to hold Pitkin County Title harmless for the release of the escrow funds authorized hereby.

Dated this ____ day of November.

TOWN OF CARBONDALE, COLORADO

By: __________________________
    Dan Richardson, Mayor

ATTEST:

_____________________________
    Cathy Derby, Town Clerk
WATER RIGHTS FEE ESCROW AGREEMENT

This WATER RIGHTS FEE ESCROW AGREEMENT ("Agreement") is made this 17th day of March, 2009, between Balentine Carbondale Holdings, LLC, a Colorado limited liability company, (hereinafter referred to as "Balentine") and the Town of Carbondale, a Colorado municipal corporation (hereinafter referred to as "Town").

RE bâtALS

A. On March 8, 2007, Town’s Planning & Zoning Commission passed Resolution No. 4, Series of 2007, approving a Special Review Use for Lots 12A and 12B of the Kay PUD, to be developed by Balentine. The Special Review Use application contemplated construction of two buildings commonly referred to as Buildings A and B (the "Project"). Resolution No. 4 required the payment of water rights dedication fees at the time of building permit.

B. Instead of paying water rights dedication fees when a building permit was issued, Balentine requested a determination from the Town’s Board of Trustees that Balentine is not obligated to pay water right dedication fees to the Town. The Board of Trustees has not yet made a determination regarding Balentine’s request. The Town issued a building permit with the understanding that the fees would be addressed prior to issuance of certificates of occupancy.

C. In order to enable the Town to issue Certificates of Occupancy for completed residential units at the Project while the Town’s Board of Trustee considers Balentine’s request for a fee waiver, Balentine has placed $2,250.00 from each of four prior sales of residential units within Building A (a current total of $9000.00) into an escrow account with Pitkin County Title for the benefit of the Town. These fees are intended to be applied against any water right dedication fees that the Board of Trustees may ultimately determine to be required.

D. Balentine and the Town now wish to memorialize the purpose of these escrowed funds, and to provide for the escrow of additional funds from future sales of residential units within Building A of the Project, until the fee waiver request is resolved.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, Balentine and the Town hereby agree as follows:

1. Purpose of Escrow Account. Balentine acknowledges and agrees the funds currently being held in escrow by Pitkin County Title, noted on each Seller’s Settlement Statement as “Escrow for Water Rights Dedication”, are for the payment of any water right dedication fees that the Town may ultimately decide Balentine is obligated to pay.
2. **Additions to Escrow Account.** Balentine agrees that if any additional residential units in the Project are sold before the question of the water right dedication fees is resolved, Balentine will place $2,250.00 from each additional the sale of residential units within Building A into the escrow account for the benefit of the Town. Any water rights fees applicable to units within Building B shall be paid prior to issuance of a building permit in accordance with Resolution No. 4.

3. **Disbursement of Escrow Account.** Balentine and the Town agree that, should the Town determine that water rights dedication fees are due for units within Building A, the escrow agent shall then release escrowed funds to the Town for the payment of that amount. If less money is due to the Town than currently held in escrow, any amounts remaining in escrow after payment of the Town’s fee shall be released to Balentine. If more money is due to the Town than is held in the escrow account, Balentine shall immediately pay the remaining balance to the Town, and the Town may withhold processing any building permit applications for Lots 12B until said fees are paid. The parties agree that this agreement shall serve as escrow instructions to the escrow agent.

4. **Issuance of Certificates of Occupancy.** In consideration for the assurances contained in this Agreement, the Town agrees to immediately issue Certificates of Occupancy for the remaining completed residential units within Building A of the Project, provided that all building code requirements and other conditions of approval are satisfied as to said units.

5. **Governing Law.** This Agreement shall be construed and interpreted, and the rights and obligations of the parties shall be determined and enforced, in accordance with the laws of the State of Colorado applicable to contracts made, and to be performed, in Colorado.

6. **Counterpart Execution.** This Agreement may be executed by the parties in one or more counterparts, all of which taken together shall constitute one instrument.

7. **Attorneys’ Fees.** Should this Agreement become the subject of litigation to resolve a claim of default in performance by either party, the party who is determined to be in default shall pay the attorneys’ fees, expenses, and court costs of the non-defaulting party.

8. **Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such determination shall not affect the validity of any other provision of this Agreement, and the remaining provisions shall be considered severable and shall continue in full force and effect.

9. **Captions.** The article, section, or paragraph captions or titles in this Agreement are for convenience only and shall not be deemed to be a part of the content of this Agreement.

10. **Entire Agreement; Amendment; Waiver.** This Agreement shall constitute the entire and whole agreement between the parties hereto and may not be modified or amended, except by a written instrument, signed by each of the parties hereto, expressing such amendment.
or modification. This agreement shall be binding upon the parties’ successors and assigns, and
may be recorded in the Garfield County real property records.

Dated: March 24th, 2009

TOWN OF CARBONDALE

By: Stacey Bernot, Mayor

ATTEST:

Cathy Derby, Town Clerk

SEAL

BALENTINE CARBONDALE HOLDINGS, LLC
a Colorado limited liability company

By: Rick Balentine, Manager

STATE OF COLORADO } } ss.
COUNTY OF Pitkin } } Subscribed and sworn to before me this 11th day of February, 2009 by Rick Balentine as Manager of Balentine Carbondale Holdings, LLC.

WITNESS my hand and official seal.

My commission expires: 8/4/2011

Notary Public

Paula Charlap
TOWN OF CARBONDALE
PUBLIC WORKS
511 Colorado Avenue
Carbondale, CO 81623

Board of Trustee Agenda Memorandum

Meeting Date: November 12, 2019

TITLE: 2020-2024 Capital Improvement Plan

SUBMITTING DEPARTMENTS: Public Works/Parks and Recreation

ATTACHMENTS: 2020-2024 Transportation CIP; 2020-2024 Parks & Recreation CIP

BACKGROUND
From a budget perspective, capital improvement planning is an important tool to allow municipalities to anticipate larger future expenditures, and prioritize these expenditures in a way that allows necessary revenues to be in-place when the expenditures occur. The Town Charter requires the preparation of a 5-year capital improvement plan (CIP) during the budget process each year. Items typically included in a capital improvement plan include:

- Major maintenance, reconstruction or expansion of streets, sidewalks and trails
- Major maintenance or improvements to facilities
- Replacement or expansion of equipment and facilities in parks
- Vehicle replacement

DISCUSSION
The following items have been included in the proposed CIP that accompanies the proposed 2020 budget:

2020 Transportation

Crossing Improvements-Hendrick Drive/Westridge Court Intersection: This project was included in the 2019 Budget, but was not completed. This project addresses concerns with the pedestrian crossing on the curve on Hendrick Drive near the intersection with Westridge Court. Concerns about visibility (particularly at night) have been raised by users of the crossing. This improvement would look at enhancing the visibility of the crossing. In addition, the improvement would connect the sidewalk along the north side of Hendrick that ends just west of the Community Garden near Holland Drive to Hendricks Park. Estimated cost: $50,000; Funding: Funding for the project was allocated in the 2019 Budget and is currently in the Capital Construction Fund.

8th Street Multi-Modal Improvements: Concerns have been raised related to pedestrian and bicycle safety on 8th Street north of Main Street, particularly between the Rio Grande Trail and Village Road. The proposed funding in the 2020 budget would allow for a study of the area, design of potential improvement as well as initial funding to
implement some of the identified improvements. **Estimated cost:** $90,000; **Funding:** Capital Construction Fund.

**RVR Road Maintenance:** Many of the existing roads in RVR are experiencing settling and other forms of failure. Historically, the streets crew has performed a few repairs each year, however a more aggressive repair plan likely involving contracting may be beneficial. The funding shown in the CIP for this item is not currently included in proposed budget. The Board should discuss whether or not they are in favor of including this item in the final budget. **Estimated cost:** $50,000; **Funding:** Capital Construction Fund.

**Trail Maintenance:** This item will be used for maintenance of deteriorated trail sections in various parts of Town. **Estimated cost:** $25,000; **Funding:** Capital Construction Fund.

**Concrete Street Maintenance:** This item will be used to repair damaged panels on the Town’s concrete streets. **Estimated cost:** $40,000; **Funding:** General Fund-Streets Budget. It should be noted that diamond grinding the concrete streets in town would improve smoothness and restore surface texture to the streets. This process would be cost prohibitive if it is not done in conjunction with a CDOT diamond grinding project in the area. Staff has reached out to the Concrete Paving Association and CDOT to make sure we are informed of the next project that involves diamond grinding in the area. When we are made aware of the next project, staff will bring this to the Board to potentially add a project to that year’s budget. In light of the fact that timing of a grinding project may come up with a small amount of advanced notice, staff is proposing to keep the 2020 funding for Concrete Street Maintenance in the Streets budget in the General Fund, but to move it into the Capital Construction Fund for future budget years.

**Drainage Improvements:** This item will be used to fund drainage improvements throughout Town. **Estimated cost:** $55,000; **Funding:** Waste Water Fund-Storm Water Budget.

**Street Light Replacement:** The Board has expressed a desire to begin replacing older Town-owned street lights with newer, more efficient, dark sky compliant fixtures. The street light replacement in the Colorado Meadows subdivision was done in 2019. **Estimated cost:** $25,000; **Funding:** Capital Construction Fund.

**Annual Street Maintenance:** This item includes funding for seal coating, crack sealing and pavement marking. **Estimated cost:** $150,000; **Funding:** Capital Construction Fund.

**Hendrick Drive Sidewalk-Existing sidewalk north to Main Street:** This project was included in the 2019 Budget, but was not completed. This project would extend the existing sidewalk on Hendrick Drive from its current terminus to Main Street. **Estimated cost:** 50,000; **Funding:** Funding for the project was allocated in the 2019 Budget and is currently in the Capital Construction Fund.

**Parking Improvements 4th Street from Garfield to Euclid:** This project was included in the 2019 Budget, but was not completed. The Board has expressed a desire to look at low cost parking improvements in the downtown area. As discussed with the Board at a recent meeting, parallel parking in this area would not be effective at increasing the
number of parking spots given the constraints of the site. However, a plan will be brought to the board in the near future to better define the parallel parking. **Estimated cost:** $60,000; **Funding:** Funding for the project was allocated in the 2019 Budget and is currently in the Streetscape Fund.

**Red Hill Parking Lot:** This item was included in the CIP to account for costs associated with constructing a gravel parking area for the new Red Hill Trailhead off of the realigned portion of County Road 107. The County has included funding in the proposed 2020 County budget to straighten County Road 107 as it approaches SH-82. **Estimated cost:** $50,000; **Funding:** Capital Construction Fund

### 2020 Parks and Open Space

**Aquatics Center Master Plan for a pool feasibility study** Planning grant closeout is due in the Fall of 2020. **Estimated Cost:** $75,000; **Funding:** Fall 2018 Greater Outdoors Colorado grant program. $18,750 matching funds came out of 2019 budget for a $75,000 reimbursable grant at completion of plan in 2020

**Bear Proof Trash Cans and Recycling Containers:** To replace existing trash cans with bear proof trash cans and recycling specific bear proof cans in Town Parks **Estimated cost:** $6,000; **Funding:** Conservation Trust Fund

**Giannetti or Colorado Meadows Playground equipment renovation or replacement. Renovation:** This project involves improvements to the playground equipment and ADA access to our park playgrounds. **Estimated cost:** $50,000; **Funding:** FMLD Mini-Grant (Spring & Fall)

**Red Hill Trails Maintenance and Dog Pot Additions:** New trailhead and trail work and services needed. **Estimated Cost:** $15,000; **Funding:** General Fund Trail Maintenance

**Parking Improvements-Nuche Park:** This project would maintain the park in its natural state by providing designated parking and eliminating vehicular access to the parkland. **Estimated cost:** $10,000; **Funding:** Recreation Sales and Use Tax

**Gateway RV Park Improvements:** Replace shingled roof with metal seam for future solar potential on bathhouse. **Estimated Cost:** $7,000; **Funding:** RV Park Building Maintenance. Continue work for the phased project process of adapting all rv sites to 50 amp power pedestals. **Estimated Cost:** $105,000; **Funding:** RV Park improvements/equipment $35,000 over a three-year phased project.

**VFD Pump for Hendricks Irrigation System:** To replace older pump system with more efficient pump. **Estimated Costs:** $30,000 with some rebate potential **Funding:** Park Improvements/Equipment

**Towable Mobile Stage:** To be used in our parks and for street events. **Estimated Costs:** $70,000; **Funding:** Capital Vehicle Purchases

### 2021 to 2024 Transportation

**4th Street Soft Trail-Rio Grande Trail to Delaney Park:** This project would construct a gravel surfaced trail on the east side of 4th Street between the Rio Grande Trail and Delaney Park. **Estimated cost:** $40,000; **Funding:** Future Capital Construction Fund.
Village Road Lighting-Gianinetti Park to 8th Street: This project would install additional lighting along the north side of the sidewalk from Gianinetti Park to 8th Street. **Estimated cost:** $60,000; **Funding:** Future Capital Construction Fund.

8th Street Multi-Modal Improvements: This funding has been included to pay for future improvements to the 8th Street corridor north of Main Street which are identified through the study and public outreach in 2020. **Estimated cost:** $750,000 ($250,000 per year); **Funding:** Future Capital Construction Fund.

4th Street Sidewalk-Colorado Avenue to Rio Grande Trail: This project would fill in the gap that exists on the east side of Town Hall. **Estimated cost:** $30,000; **Funding:** Future Capital Construction Fund.

Trail Lighting between 3rd Street Center and Crystal Valley Trail: This project would add lighting along the trail between the 3rd Street Center and the trail along SH-133. **Estimated cost:** $20,000; **Funding:** Future Capital Construction Fund budget.

Village Road Mill and Overlay: The existing pavement on Village Road from SH-133 to 8th Street is showing signs of distress and the existing pavement should be replaced. Staff is proposing to mill the existing roadway, do minor curb repairs where necessary, and then replace the road surface. This project would be similar to the Meadow Wood project that was completed in 2019. **Estimated cost:** $210,000; **Funding:** Future Capital Construction Fund budget.

Annual Maintenance Activities: The CIP includes recommended amounts of funding for various annual maintenance activities. It should be noted that based on trail maintenance work completed in 2019, the future projections have been increased for trail maintenance and street light replacement. In addition, staff is also proposing moving the funding for concrete street maintenance from the General Fund to the Capital Construction fund beginning in 2021. **Estimated cost:** $430,000 annually; **Funding:** As shown, the future funding (beyond 2020) would be largely from the Capital Construction Fund, with the Enterprise funds continuing to provide funding for drainage improvements.

Industry Way-Extension to 8th Street: This project would extend Industry Way from its current terminus east to 8th Street. The project would be associated with redevelopment in the area when that occurs. This property that was acquired on 8th Street in 2019 was acquired in anticipation of this project. **Estimated cost:** $1,500,000; **Funding:** Funding for this project will likely be a combination of Town funds, developer funds and potential grants.

Parking Improvements 2nd Street south of Main Street: This project will explore the possibility of expand parking in the downtown area along 2nd Street. **Estimated cost:** $70,000; **Funding:** Future Streetscape Fund budget.

Roundabout: (SH-133/Industry Way): This project would construct a roundabout at Industry Way and SH-133. This project would likely be driven by traffic and traffic delays on SH-133, and would be necessary prior to or in conjunction with the Industry Way Extension project. At this time, staff believes that it would be appropriate to consider this project in 2023 based on development and increasing traffic on SH-133. **Estimated Cost:** $2,500,000. **Funding:** Funding for this project will likely be a
combination of Town funds, developer funds and potential grants. It should be noted that the Town has already collected $225,000 in funds earmarked for highway improvements from the City Market and 1st Bank projects. In addition, the approval ordinance for Main Street Marketplace includes an additional $25,000 in required funding when certain building permits are issued for that project.

**Downtown Surface Parking:** This project is related to paving and other improvements to the parking lot east of Town Hall if the Town is successful in acquiring the property. The project would likely be done in phases with concrete work, electrical conduit and lighting, and irrigation lines being done one year followed by paving and landscaping the following year. **Estimated cost:** $400,000 ($200,000 per year); **Funding:** Future Streetscape Fund budget.

**2021 to 2024 Parks and Open Space**

**Renovate Pool and Bath House:** Based on results of the planning effort, this funding would be used to renovate/replace the existing pool and bath house. **Estimated Cost:** $6,000,000; **Funding:** TBD

**Bonnie Fischer Park Improvements:** This project involves implementation of the next phase of the master plan at Bonnie Fischer Park with bread oven improvements. **Estimated cost:** $35,000; **Funding:** Recreation Sales and Use Tax/GOCO Grant

**Wheelchair Access in Playgrounds:** Funding has been included in the CIP in future years to provide wheelchair access to various parks throughout Town. **Estimated total cost:** $25,000; **Funding:** Potential FMLD Mini-Grant

**Thompson Park and History Park Improvements:** This item provides funding for infrastructure improvements at Thompson Park and History Park. **Estimated cost:** $25,000; **Funding:** FMLD Mini-Grant

**Lighting Project:** Funding is included in future years for planning and implementation for new lighting infrastructure at the Skateboard Park and Darien Tennis and Pickleball courts at North Face Park. **Estimated cost:** $220,000; **Funding:** Recreation Sales and Use Tax/Grant Funding

**Red Hill Trailhead Infrastructure Project:** Future funding for a trailhead bathroom facility and information signage. **Estimated Cost:** $50,000  **Funding:** General Fund Trails Budget

**Gateway RV Park Improvements:** Funding is included in future years for improvements to the electrical systems at Gateway RV Park. **Estimated total cost:** $105,000; **Funding:** General Fund RV Park Budget.

**Gateway RV Park Irrigation:** This item would fund irrigation improvements at the Nature Park. **Estimated cost:** $60,000; **Funding:** General Fund RV Park Budget

**FISCAL ANALYSIS**

Proposed expenditures related to the 2020 Transportation portion of the CIP total $645,000 (with $160,000 included in the 2019 Budget which will be reallocated in the 2020 Budget), and expenditures related to the 2020 Parks and Open Space total
$291,000 with a potential for $106,000 to be grant funded. This includes the $56,750 from a received GOCO Planning Grant for the Aquatics Facility Master Plan.

RECOMMENDATION
Discuss the capital projects proposed for inclusion in the 2020-2024 Capital Improvement Plan and provide feedback to staff.

Prepared by: Kevin Schorzman and Eric Brendlinger

__________________________________________
Town Manager
### Safety Projects

<table>
<thead>
<tr>
<th>Project</th>
<th>2020</th>
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<td>Crossing improvements-Hendrick/Westridge</td>
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### Maintenance Projects

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<td>Village Road Mill and Overlay</td>
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### Expansion Projects

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<td>Industry Way</td>
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<td>Parking Improvements 4th Street from Garfield to Euclid</td>
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<td>Parking Improvements 2nd Street South of Main</td>
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<td>Red Hill Parking Lot</td>
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<td>Roundabout (SH-133/Industry Way)</td>
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<td>Downtown Surface Parking</td>
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### Total Transportation Capital Outlay

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<td>Total</td>
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- **General Fund Budget Line Item**
- **Streetscape Fund Budget Line Item**
- **Enterprise Fund Budget Line Item**
- **Caryover Item from 2019 Budget**
- **Capital Fund Budget Line Item**
- **Items that will likely have financial contributions from other sources**
<table>
<thead>
<tr>
<th>Parks and Recreation Department and Open Space 2020-2024 CIP</th>
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<tbody>
<tr>
<td>Parks</td>
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<tr>
<td>Planning Grant Pool Renovation</td>
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<td>Renovate Pool &amp; Bath House</td>
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<td>Bear Proof Park Trash &amp; Recycle Containers</td>
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<td>Park Playground Equipment Replace/Retrofit</td>
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<tr>
<td>Meadows or Gianinetti</td>
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<tr>
<td>Improvements at Bonnie Fischer Park Bread oven</td>
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<tr>
<td>Wheelchair Access in Playgrounds, parks and bathrooms (water fountains)</td>
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<tr>
<td>Thompson Park &amp; History Park Improvements (Permaculture and grounds)</td>
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<tr>
<td>Park Bathroom Improvements North Face Park GOCO Grant</td>
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<tr>
<td>Pickleball Courts North Face Park (FMLD Mini Grant)</td>
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<tr>
<td>Skateboard Park, Tennis &amp; Pickleball Lighting Project (GOCO grant)</td>
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<tr>
<td>Trail Improvements (Red Hill Trailhead Infrastructure Implementation)</td>
</tr>
<tr>
<td>Nuche Park Improvements (parking, trail work, plantings, dedication sign)</td>
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<tr>
<td>Gateway RV Park Electrical Conversion 30 to 50 amps</td>
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<td>Gateway RV Park Irrigation System</td>
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<td>Towable Mobile Stage</td>
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<td>VFD Pump for Hendricks Park Irrigation System</td>
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<td><strong>Total Capital Outlay</strong></td>
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<table>
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<th>Potential Grant Funding</th>
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<td>Grant Funded %</td>
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<td>$215,000 bond + grants</td>
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**CARRY OVER FROM 2019 BUDGET**
Board of Trustees Agenda Memorandum

Item No: 11
Meeting Date: 11/12/19

TITLE: Plastics Strategy

SUBMITTING DEPARTMENT: Town Manager

ATTACHMENTS: Proposal from LBA Associates 10/4/19
Minutes from BOT Meeting of 9/10/19

BACKGROUND:
At the September 10th regular Town Board meeting, the Board of Trustees had a discussion on plastic reduction efforts and strategies. At that meeting, the board indicated a desire to hire a consultant to assist in developing a comprehensive plastic reduction strategy for the Town. The Board also requested that the Town join Recycle Colorado, we are now a member.

DISCUSSION:
LBA Associates provided a three-step approach to developing a plastics strategy for Carbondale for an estimated cost of $14,620. The draft 2020 Budget has $5,000 in the bag fund for this type of project and $15,000 in the Town Board’s budget for PR consulting services. The Town Board may consider increasing the consulting budget to undertake this project.

RECOMMENDATION:
Staff recommends the Board approve the proposal with LBA Associates and increase the Board’s 2020 consulting budget by $10,000.

Prepared By: Jay Harrington

[Signature]

Town Manager
RESULTS OF CRYSTAL MEADOWS RESIDENTS TRANSPORTATION SURVEY

During a recent discussion on senior mobility the Board asked Crystal Meadows Executive Director Jerilyn Nieslanik to create a transportation survey for its residents to see if mobility is lacking in that area. Fifty two surveys were returned. The survey revealed that the majority (29) of residents of Crystal Meadows have access to a car. Nine had limited or no access to a car. Mayor Richardson stated that the survey did not reveal any major gaps in mobility. The Board acknowledged that the circulator bus could be improved as it doesn’t serve that part of town but funds are limited. Mayor Richardson thanked RFTA and Jerilyn Nieslanik for their help with the survey. Mayor Richardson stated that he will continue to maintain a dialogue with Heritage Park on the possibility of extending their shuttle service to accommodate Crystal Meadows (once they have a driver).

LETTER OF CREDIT REDUCTION – CITY MARKET

Kevin explained that City Market has submitted a Letter of Credit (LOC) Reduction #3 in the amount of $183,667.77 to reduce the off-site security for public improvements for Carbondale Marketplace. If approved, this would leave a LOC balance for the outstanding off-site public improvements at $509,925.90. Staff has reviewed the request, as well as the work completed to date, and agrees the request is appropriate.

Trustee Kitching made a motion to approve the partial release of $183,667.77 of the Letter of Credit for the off-site improvements related to the Carbondale Marketplace project. Trustee Silverstein seconded the motion and it passed with:

6 yes votes: Henry, Kitching, Richardson, Bohmfalk, Silverstein, Yllanes

LETTER OF CREDIT REDUCTION – CARBONDALE MARKETPLACE LOT 5B – 1st BANK

Kevin explained that 1st Bank has submitted a Letter of Credit (LOC) Reduction #3 in the amount of $84,459.65 to reduce the security for public improvements for Carbondale Marketplace Lot 5B. If approved, this would leave a LOC balance for the outstanding public improvements at $29,662.99. Staff has reviewed the request, as well as the work completed to date, and agrees the request is appropriate.

Trustee Silverstein made a motion to approve the partial release of $84,459.65 of the Letter of Credit for the improvements related to the Carbondale Marketplace Lot 5B project. Trustee Yllanes seconded the motion and it passed with:

6 yes votes: Yllanes, Henry, Kitching, Richardson, Bohmfalk, Silverstein

CONTINUED DISCUSSION ON PLASTIC REDUCTION EFFORTS

Jay stated that at the last meeting the Board had a discussion on efforts to reduce plastics. The Trustees indicated a desire to consider engaging a consultant and setting
a scope for services. Staff has identified $5,000 for consultant fees. Jay researched what different communities are doing to combat plastics and it appears that each community has taken an individualistic approach to customize their needs and community goals.

Discussion ensued.

The Board agreed that it’s necessary to set goals as to what they are trying to accomplish. Mayor Richardson noted that the new waste hauler is willing to help but they need to know what the Town is trying to accomplish.

Trustee Henry stated that the effort should start with public outreach – it’s imperative to get the community’s input. Then we can develop a baseline and set goals.

Environmental Board member Jim Kirschivink suggested that the Town should put ads in the newspapers seeking comments as to how we can control/reduce plastics. Scoping is a good next step to developing Town goals. Also, we should coordinate with surrounding municipalities to make sure we are undertaking the same efforts.

Trustee Silverstein stated that we should look at what successful towns are doing to reduce plastics.

The Board agreed to:

- Hire a consultant - work will possibly be done in phases- there is $5,000 left in the bag fee account to fund the first phase
- Jay noted that Laurie Batchelder Adams has a base knowledge of the Town’s waste practices
- Solicit input from the community to develop a baseline and establish goals - we need to be clear on expectations for outreach
- Analysis needs to be done as to where plastic is coming from
- Join Recycle Colorado
- Collect data on the largest generators of plastic in town

The Board set the following goal: “Eliminate the generation of single use plastics (and possibly styrofoam) in the Town of Carbondale.”

The Board was informed that the Chamber of Commerce would like to be a partner in the effort to reduce plastics in town.

**REVIVAL OF STUDENT TRUSTEE DISCUSSION**

Jay provided background information on the student trustee. The Town had a student trustee from 2002 – 2013. It was a non-voting position but the student provided input on agenda items. It ended after the 2013 school year when interest in the program subsided. Youth Zone recommended the student trustee appointee.
October 4, 2019

Jay Harrington, Town Manager
Town of Carbondale
511 Colorado Ave.
Carbondale, CO 81623

RE: Carbondale Plastics Strategy – Proposed Scope of Work & Budget

Dear Jay:

Based on our conversation last month, I’ve laid out a list of tasks to address the Board of Trustees desire to eliminate single-use plastics & Styrofoam in the Town of Carbondale.

SCOPE OF WORK
This scope is subject to modification as the project proceeds.

Task 1  Research Best Practices – To include material-specific strategies such as extended producer responsibility, bans, fees, outreach & other programs/policies:

- Research best Colorado programs – will include a discussion with Carbondale Environmental Board on its work & findings
- Research national programs
- Identify current status of state-level policy efforts (state-wide plastic bag ban, local pre-emption on plastic bags, cannabis packaging diversion, market development for plastic processors, etc.)
- Tabulate findings & review with staff with teleconference

LBA Associates will include research associate Alicia Archibald in this task.

Task 2  Evaluate Plastics Composition in Carbondale’s Trash & Recycle Streams & Opportunities for Diversion – Work will rely on existing waste composition from Pitkin County (2015), Fraser/Winter Park (2016), Eagle County (2017), Summit County (2019) & other available sources:

- Utilize composition data from Mountain Waste & Recycling sort (expected to be available by spring 2020)
- Identify diversion opportunities by resin
- Recommend improvements to future data collection (waste comp) efforts & review with staff/trustees
- Tabulate findings & review with staff via teleconference
- Present Task 1 & 2 findings to Trustees
TOWN OF CARBONDALE SOLID WASTE COLLECTION STRATEGY

Task 3 Develop Plastics Strategy for Town Implementation – Work to include:
- Identify “best bang for the buck” strategies per Trustees’ goals
- Recommend programs & policies in sequential approach over next 10 years
- Estimate diversion potential
- Work with Carbondale’s attorney to evaluate any legal constraints
- Consider public outreach/public relations needs for strategy implementation
- Develop short memo report
- Present recommendations to trustees & staff

Other considerations that were not included in this scope but could be added to best meet the needs of the Town include:
- Public meetings to evaluate public perceptions & support for specific programs or policies – including use of local public relations firm to describe options & assist discussions
- On-going coordination with the Environmental Board
- Bringing speakers from other municipalities & organizations with successful plastics diversion programs
- Site tours for staff, trustees & public to Front Range plastics processing facilities & end-users (i.e., Direct Polymer, Tenere, Sana Packaging)

CONSULTANT EXPENSES
The table below provides an estimate of labor costs and travel costs with a not-to-exceed total of $14,620. To the extent LBA is working in either the Roaring Fork or Vail Valleys at the same time and can coordinate travel, we will work to reduce travel costs. We anticipate that invoicing and payment will be on a time and materials basis up to the not-to-exceed project total.

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<tr>
<th>TASK</th>
<th>LABOR</th>
<th>MAXIMUM TRAVEL COSTS</th>
<th>SUBTOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Research BMPs</td>
<td>$5,490</td>
<td>$0</td>
<td>$5,490</td>
</tr>
<tr>
<td>2 Evaluate Plastics</td>
<td>$3,120</td>
<td>$500</td>
<td>$3,620</td>
</tr>
<tr>
<td>Composition &amp; Opportunities</td>
<td>$5,010</td>
<td>$500</td>
<td>$5,510</td>
</tr>
<tr>
<td>3 Develop Plastics Strategy</td>
<td>$13,620</td>
<td>$1,000</td>
<td>$14,620</td>
</tr>
</tbody>
</table>

Labor rates – Batchelder Adams ($135/hour), Archibald ($75/hour)

Travel driving labor discounted 50%

Expenses includes no mark-up - mileage costs based on the federal GSA reimbursement rates

Please don’t hesitate to let me know if there are any questions concerning the scope of work or budget.
I look forward to working with Carbondale again.

Sincerely,

[Signature]

Laurie Batchelder Adams, President
Cathy Derby

From: Dan Richardson
Sent: Wednesday, November 06, 2019 9:22 PM
To: Trustees
Subject: Fwd: Deadline today! Dan, will you sign Western Leaders Network’s letters

Cathy,
Will you please include this email in the packet? I will ask the board if it wishes to support either of these letters. Thank you.

Dan Richardson
Mayor of Carbondale
(970) 510-1345

Begin forwarded message:

From: Jessica Pace <jess@westernleaders.org>
Date: November 5, 2019 at 9:44:25 AM MST
To: Dan Richardson <drichardson@carbondaleco.net>
Subject: Re: Deadline today! Dan, will you sign Western Leaders Network’s letters

Sure.

For your colleagues who might not have heard of us before, Western Leaders Network is a nonpartisan nonprofit that organizes local and tribal elected officials across the Interior West to advocate for our public lands, air, water and local economies. We were founded in 2017 and currently have 300 leaders engaged with us across the states of CO, AZ, UT, NM, MT, NV, ID and WY.

We are currently circulating two sign-on letters to our network including one to EPA Administrator Andrew Wheeler, opposing the agency’s rollback of federal standards to reduce methane emissions and remove oil and gas facilities from federal oversight. The other is calling on Congress to reform the 1872 mining law, in order to hold mining companies accountable by charging a federal royalty for extracting minerals, which we currently do not have, and establish a reclamation fund for cleaning up polluted mine sites.

The letters can be read in full and signed at the links below. Please let me know if I can answer any other questions about them or these two issues. We’re thrilled we already have over 50 leaders across those states signed on to the mining law letter and 90 on the EPA letter, and we’re hoping to add more!

Jess

The 1872 Mining Law letter is here:
https://docs.google.com/forms/d/e/1FAIpQLSfCiWM40Sdk1aQyV1NwiWyk9_MuvJMmtktemF6N7QpJqnKLEQ/viewform?usp=sf_link
And the one opposing the agency's rollback of methane regulations is here: https://docs.google.com/forms/d/e/1FAIpQLSeCXFVgB2gTh1-G6quGlINAYsaKuDZjSiHuAvcHlca-eDZOig/viewform?usp=sf_link

On Tue, Nov 5, 2019 at 7:41 AM Dan Richardson <drichardson@carbondaleco.net> wrote:
Jessica,
Will you please send me a simple explanation of your request that I can forward to our board? Thank you.

Dan Richardson
Mayor of Carbondale
(970) 510-1345

On Oct 28, 2019, at 9:49 PM, Jessica Pace <jess@westernleaders.org> wrote:

Not at all, that's fine. Would be great to have any/all of you sign. Thanks!

On Mon, Oct 28, 2019 at 8:15 PM Dan Richardson <drichardson@carbondaleco.net> wrote:
Jessica,
We don't meet again until 11/12. Is that too late?

Dan Richardson,
Mayor of Carbondale
(970) 510-1345

On Oct 18, 2019, at 9:36 AM, Jessica Pace <jess@westernleaders.org> wrote:

No problem.
We actually extended the deadline, so you're welcome to sign on if you like.

On Thu, Oct 17, 2019 at 9:13 PM Dan Richardson <drichardson@carbondaleco.net> wrote:
Sorry for my delayed response Jessica.

Dan Richardson,
Mayor of Carbondale
(970) 510-1345

On Oct 16, 2019, at 4:28 PM, Jessica Pace <jess@westernleaders.org> wrote:

Hi Dan,

Would you like to sign either or both of Western Leaders Network's sign-on letters? Deadline is today. We've sent emails about this, but I know how they get lost in the shuffle.
One is calling on Congress to reform the 1872 Mining Law:
https://docs.google.com/forms/d/e/1FAIpQLSfCIWM40SdIk1aQyVdINwiWyk9_MuvJMtkttemF6N7QPJqnKLEQ/viewform?usp=sf_link

And one is to EPA Administrator Andrew Wheeler, opposing the agency's rollback of methane regulations:
https://docs.google.com/forms/d/e/1FAIpQLScCvXFvBG2qTh1-G6quGllrAYsaKuDZgSiHuAvchhcacdZOniy/viewform?usp=sf_link

Or you can just reply to this and I'll add you myself so you don't have to bother with the forms.

Thank you!

Jess

--
Jessica Pace
Program Coordinator
Western Leaders Network
PO Box 4433
Durango CO 81302
615-294-2049
www.westernleaders.org
www.facebook.com/WestLeaders/
https://twitter.com/WestLeaders

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www.facebook.com/WestLeaders/
https://twitter.com/WestLeaders

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Jessica Pace
Program Coordinator
1872 Mining Law Reform Sign-On Letter

Please add your name to the letter below, asking Congressman Raul Grijalva and the House Natural Resources Committee to support reforms to the General Mining Act of 1872 to hold the hard rock mining industry accountable for cleanup and charge a royalty for the development of our public lands. The deadline to sign on is close of business Oct. 16, 2019. If you have any questions, please contact Jessica Pace with Western Leaders Network at jess@westernleaders.org.

Honorable Raul Grijalva
United States House of Representatives
1511 Longworth House Office Building
Washington, DC 20515

United States House of Representatives
Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Oct. 17, 2019

Dear Chairman Grijalva and Members of the House Natural Resources Committee,

We are writing to support HR 2579, the Hardrock Leasing and Reclamation Act of 2019. Hardrock mining is a pillar of western history that enabled communities across the West to establish and grow into the places we call home today. But the industry – and our environmental consciousness – have come a long way since 1872, when the General Mining Act first became law. That’s why we, as <<xxxxx>> local, elected officials from <<xxxxx>> western states, are calling on Congress to reform this outdated law that continues to govern hardrock mining operations on 350 million acres of public lands at the expense of taxpayers, our local economies and our environment.

Like any industry, the practice of hardrock mining has evolved over the decades, yet the law that governs it has not evolved with it. The 1872 Mining Law was created when mining was
arguably done by individual prospectors with picks and shovels, not the large-scale operators of today. Moreover, the law prioritizes mining as the best use for public lands – a philosophy that doesn’t align with the multi-use approach we apply to our federal lands today, allowing for conservation, outdoor recreation, hunting and fishing, agriculture and energy development all to coexist.

While individual states have enacted various reclamation laws, there are no consistent national standards to ensure that water resources are protected, and communities are consulted before mining moves forward. Furthermore, hardrock mining is exempt from many critical federal regulations, including portions of the Clean Water Act and the Resource Conservation and Recovery Act, our federal hazardous waste law.

Hardrock mining is the leading source of toxic pollution in the U.S. The Environmental Protection Agency estimates that 40 percent of the headwaters of waterways in the western United States are polluted by mining. And every day, abandoned hardrock mines collectively produce about 50 million gallons of polluted water, threatening water supplies of downstream communities. The estimated price to clean up the hundreds of thousands of abandoned hardrock mines across the country is an estimated $50 billion. With limited resources to accomplish that, and potentially billions more in cleanup costs at active mines, the burden falls to taxpayers, local governments and state agencies, as well as the EPA’s Superfund program.

Our invaluable lands and waterways feel the effects of this outdated legislation west-wide, from Arizona’s Santa Rita Mountains and Grand Canyon National Park, to Montana’s Cabinet Mountains Wilderness to Bears Ears National Monument in Utah.

Legislation to reform the 1872 mining law should allow hardrock mining to be balanced with other land uses, expand public land protections, mandate operation and reclamation standards to protect our waterways, create an abandoned mine cleanup program funded by a reclamation fee, abolish patenting and charge a royalty. The United States is the only country that does not charge a royalty for minerals taken from public lands. It is high time that we bring this law into the 21st century to ensure the protection of our taxpayers, our lands and waters, and the local economies that depend on them.

Sincerely,

<<local elected officials>>

* Required

Name *

Your answer

https://docs.google.com/forms/d/e/1FAIpQLS/CIiM40Sdk1aQyVIiWw1Wyik9_MuvJmtktemF6N7OpJqnKLEQ/viewform 2/3
EPA Methane Rule Rollback Sign-On Letter

Please add your name to the letter below to Environmental Protection Agency Administrator Andrew Wheeler, opposing the rollback of the agency's methane rules. The deadline to sign on is close of business Nov. 25, 2019. If you have any questions, please contact Jessica Pace with Western Leaders Network at jess@westernleaders.org.

Andrew R. Wheeler
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
NW Washington, D.C. 20460

Oct. 17, 2019

Dear Administrator Wheeler,

We the undersigned write in opposition to the Environmental Protection Agency's rollback of its methane emission standards. Recently, the EPA released a proposed rule to completely eliminate regulations for methane emissions from the oil and gas industry, which would remove from the scope of federal oversight all existing oil and gas facilities nationwide. This is yet another blow to taxpayers and the environment in addition to the agency's separate proposal last fall to significantly weaken pollution control standards adopted in 2016. By doing this, EPA is also attempting to shirk its legal obligation to regulate existing oil and gas pollution sources and protect our health and environment by addressing climate change.

As local elected officials from across the Interior West, we can speak from experience about the realities of climate change. We're seeing more frequent and extreme droughts, heatwaves, floods, wildfires and other impacts that threaten our economies and quality of life. And we know that reducing methane is a key piece of addressing our climate crisis. As such, we can't be serious about addressing climate change while simultaneously undoing protections against a greenhouse gas that's 87 times more potent that carbon dioxide in
disrupting the climate. Moreover, a recent study found that the oil and gas industry produces more than 13 million metric tons of methane pollution annually, which is 60 percent more than EPA estimates. Failing to stop preventable methane waste is also a misuse of taxpayer resources. Tens of millions of royalty dollars are wasted each year as a result of wasted natural gas, which means many of our energy-producing western states and communities miss out on critical funding for infrastructure projects, public services and education.

If EPA adopts both proposals and entirely rescinds current methane pollution standards, by EPA’s own estimates it would result in 730,000 to 830,000 additional tons of methane from new sources through 2025. Not only is this contradictory to protecting citizens and our environment, it’s contradictory to many leading oil and gas companies’ own call for responsible, commonsense methane regulations to address energy waste and climate pollution.

Over the past two years, many of the undersigned local elected officials also signed multiple letters to the Interior Department, opposing the Bureau of Land Management’s rescission of its own rules to limit methane waste from oil and gas operations on federal land. The reasons are the same: we need to be strengthening, not weakening, federal standards that will cut down on needless methane waste that cheats our taxpayers, pollutes our environment and threatens our public health.

We’re proud of the western states that have strengthened their resolve to reduce methane pollution and combat climate change in the midst of so many rollbacks of environmental safeguards at the federal level. Colorado for example, has already created strong, enforceable statewide standards to reduce greenhouse gas emissions and cut down on unnecessary methane waste, and New Mexico is currently in the processing of adopting its own protections against oil and gas pollution. We need these regulations now more than ever. Waste is not a western value, and EPA’s elimination of methane regulations – for the sole purpose of giving the oil and gas industry a break that many companies do not even want – is shamefully wasteful, lacks foresight, and is out of step with what American citizens want and deserve.

Sincerely,

* Required

Name *

Your answer
MINUTES
ENVIRONMENTAL BOARD
September 23, 2019

CALL TO ORDER
Colin Quinn called the meeting to order at 6:00 pm on September 23, 2019 in Room 2 at Town Hall.

ROLL CALL
The following members were present for roll call:

E-board Members: Colin Quinn, Chairperson
Sandy Marlin, Member
Frosty Merriott, Member
Pat Hunter, Alternate

Town Staff Present: Kevin Schorzman, Staff Liaison
Eric Brendlinger, Parks and Recreation Director
Kae McDonald, Boards and Commissions Clerk

Guests: Heather Henry, Trustee Liaison
Phi Filerman, CORE Liaison
Natalie Fuller, Dandelion Days Coordinator
Susan Christman, Guest

CONSENT AGENDA
Motion Passed: Pat moved to approve E-board meeting minutes from August 2019. Sandy seconded the motion, and it was unanimously approved.

PERSONS PRESENT NOT ON THE AGENDA
Susan Christman, an attorney who has previously worked in California on the issue of pesticides, was attending the meeting to listen to the agenda item concerning the Integrated Weed Management Plan.

APPLICATION FOR RE-APPOINTMENT TO THE ENVIRONMENTAL BOARD
Colin opened up the discussion by stating that Becky Moller has resigned from the Environmental Board. Patrick Hunter has submitted his application for re-appointment to the Board. After a brief discussion, all agreed to move forward with Patrick’s re-appointment.

Motion Passed: Colin moved to recommend Patrick Hunter’s re-appointment to the Environmental Board to the Board of Trustees. Sandy seconded the motion, and it was unanimously approved.
DANDELION DAY 2020

Natalie Fuller presented her interest in moving the financial responsibilities of Dandelion Day under the Carbondale Arts/Carbondale Creative District umbrella. This option is being considered to relieve the Town of Carbondale from having to write the check to pay Natalie for her time on this project. To that end, she met with Amy Kimberly, the Director of Carbondale Arts, to discuss whether this option was feasible. Amy was receptive, but indicated that she needed to broach the topic with her staff. Her primary concern was the additional burden it might place on her staff, and what the cost/insurance burden might be for Sopris Park. Natalie assured Amy that she would still be taking care of the financials, fundraising, and all of the organizational legwork for the event. Natalie is proposing a payment of $2,000.00 for the event, as she invested a solid 120 hours into the work for the event.

Comments/Questions:
Sandy: My concern is that if Dandelion Days is sponsored by Carbondale Art District, the focus may shift from an environmental perspective to an Arts perspective.
Pat: Would Carbondale Arts enter into a contract with the Town? Whose insurance would cover the event?
Eric: Carbondale Arts would enter into a contract with the Parks and Recreation Department to rent Sopris Park, and their insurance would cover the event—they would list the Town as an additional insured.
Natalie: Brings up the Town’s relationship with the event.
Colin: Could we budget money from the EBoard fund to support Dandelion Days?
Eric/Heather: Yes, it could be taken out of the budget for 2020.
Pat: Our budget is $5,000. How much would be designated?
Natalie: Last year, the EBoard put $3,000.00 in to start, but that money was put back into the EBoard’s account.
Heather: Last year Dandelion Days broke even. The Eboard might consider using money out of the budget for a straight sponsorship.
Colin: If Carbondale Arts took it over as a fundraiser, the EBoard could be a sponsor and still maintain some influence.
Natalie: The sponsorships are $100, $250, and $500. Each level comes with perks. A $500 sponsorship would put the EBoard name on the poster and given air time on the stage.
Frosty: We do need clarification as to whether it would be a Carbondale Arts program or if it falls under the Creative Arts District umbrella. It probably should be under the Creative Arts District, because that is really the economic engine, whereas Carbondale Arts is focused on education. I do think it makes sense. Now that I understand what you’re thinking, I can talk with Amy about it.
Heather: My concern is the vision of Dandelion Days. I think we would want to maintain a strong relationship with the event. If we were an uber-sponsor, that might ensure that the EBoard retains a strong influence over the messaging.
Phi: It would also model the partnership between the EBoard and the Creative Arts District.
Natalie: I would really like to keep the relationship between Dandelion Days and the Environmental Board going.
Colin: Can I propose a path forward, Frosty, can you talk the Carbondale Arts?
Frosty: Yes, let me see what Carbondale Arts is thinking. I do like the idea of the sponsorship to help keep the focus on the environment.
Heather: I would also like to see the focus of Dandelion Days stay on environmental issues.
Colin: Can we invite Amy to the next meeting to get some answers to these questions, so we can make a decision.
Pat: I, for one, would not be happy about giving it up.

INTEGRATED WEED MANAGEMENT PLAN
Eric Brendlinger (Parks and Recreation Department Director) and Gwen Garcelon (Chairperson of Weed Advisory Task Force) presented the Integrated Weed Management Plan that was approved by the Parks and Recreation Commission on September 11, 2019. Eric began by giving some background on the history of the plan, stating that it began in 1990 when the State of Colorado Noxious Weed Act was adopted in which municipalities were directed to develop a noxious weed management plan; it is now known as the Colorado Noxious Weed Act. The first draft of Carbondale’s plan was introduced to the Board of Trustees in 2010, which mirrored that of Garfield County’s; it was never adopted primarily because of the language in the document. It has been a lot of work and includes the involvement of the Environmental Board as well as interested citizens who were very adamant about not using herbicides and pesticides on Town property. The document sat in a black hole until Gwen got involved when a Citizen Weed Task Force was organized.

Gwen provided additional background, indicating that the Weed Task Force has invested a lot of time in the last year going through the original document. Once the document was vetted, it went to Town of Carbondale Staff for review. Although it has been a long process, it produced a high-quality document because of the intensive vetting. The document also speaks to the overall environmental ethic of the townspeople in terms of non-chemical weed eradication, but it also works within the state regulations. There is, however, a lot more in the process that makes chemical intervention far less necessary. Specifically, a focus on the health of the soil so that weeds are far less likely to become a problem.

They also wanted to clarify that the Integrated Weed Management Plan is specifically for Town of Carbondale Property, with the Parks and Recreation Department overseeing all of the on-the-ground management and paperwork.

Comments/Questions:
Pat: Is the Town of Carbondale currently in compliance with Colorado State Regulations?
Eric: Yes. The Parks Department currently uses a manual approach to manage weeds on the Type A list.
Pat: Whose staff is in charge?
Eric: The Parks and Recreation Department and Public Works staff.
Kevin: I want to point out we are in compliance with how we are managing noxious weeds, but we are not yet in compliance with adopting a noxious weed plan that meets state requirements.
Gwen: This plan is another thing reflects a change in the paradigm in how we interact with the land. We are not calling this a noxious weed plan, it is an Integrated Weed Management Plan. This is a better way to work with the land; it is better for us, and better for our kids.
Colin: What do you need from us (the Environmental Board)?
Eric: I wanted to explain what the Weed Board responsibility is and keep you involved in the process, especially when it comes to the local advisory board—which is the Board of Trustees. But in the language of Resolution #7, 1998, which is the resolution that established the Environmental Board:

"The Town of Carbondale Board of Trustees acts as the Weed Advisory Board after weighing the council and advice of the Environmental Board."

This is especially pertinent when weighing the use of pesticides or herbicides. That has really been one of the stumbling blocks to getting something passed. In the previous plan if our attempts to eradicate a noxious weed using non-chemical means didn’t work, we had no recourse. In this plan, there is a process that we can go through in order to use chemicals.
Sandy: It is not the starting point, but the ending point.
Eric: Exactly. It is the last-ditch effort. The EBoard would be involved in reviewing those plans. The timing of it would be the issue. It would be November or December for the following growing season. We have logs for each park that details what we are dealing with for each park. In that log, it would go through each of the steps taken, what was successful, etc. If we get down to the bottom and still aren’t successful, we would consult with a specialized land manager that would review all of the steps taken, and if every alternative has been tried and is unsuccessful, they would make the recommendation of chemical (herbicide) use under their supervision. At that point, that is when we would come before the Eboard and the Board of Trustees to ask permission to use this chemical and here is why.
Gwen: There is a good group of land management people around that we can utilize.
Eric: Thanks to Susan Christman’s input, in the Public Education component we added a public registry, so that there is a notification process prior to any chemical use. There will be an e-mail notification 48 hours prior to any application, as well as posting both onsite and on the Town website.
Pat: Are there areas of higher concern?
Eric: Gateway RV park and the Bike Park still require a lot of work. The Delaney Nature Park is 33 acres that needs to be managed.
Colin: What is your plan to roll this out?
Eric: The next step will be to take it to the Board of Trustees for adoption.  
Gwen: Once that is done, we are planning a press conference to kick it off.

**Motion Passed:** Sandy moved to approve the Integrated Weed Management 
Plan. Colin seconded the motion, and it was unanimously approved.

**HOUSEKEEPING ITEMS**
Although not on the agenda, Colin had invited Fred Malo to provide a summary of 
the Climate Action Strike on Friday, September 20. Fred is part of 350 Roaring 
Fork, which is a subset of 350 Colorado and 350.Org. Fred was pleased with the 
result, with at least 150 people attending, many of whom were students from area 
schools. He felt like they had good cooperation from the schools, and was 
appreciative of the support of Eric and the Town. He also added several bullet 
points:
- Not all bags are made of plastic; there are other products available that may 
  make a plastic bag ban more palatable;
- He would really like to see the Eboard get involved in planting more trees, 
  especially on the local school grounds.

Questions/Comments:

**ADJOURNMENT**
The September 23, 2019, regular meeting adjourned at 7:20 p.m. The next regular 
meeting is scheduled on October 28, 2019 at 6:00 pm.

Respectfully submitted,  
Kae McDonald
MINUTES
CARBONDALE PARKS & RECREATION COMMISSION
September 11, 2019

Becky Moller called the Carbondale Parks & Recreation Commission meeting to order at 7:00 p.m. on September 11, 2019, in the Town Hall meeting room.

ROLL CALL
The following members were present for roll call:

Members: Becky Moller, Chair
          John Williams, Member
          Hollis Sutherland, Member
          Rose Rosello, Member
          Ashley Allis, Member
          Todd Chamberlin, Member
          Tracy Wilson, Vice Chair

Absent: Genevieve Villamizar, Alternate (LATE)
        Camy Britt, Alternate

Town Staff Present: Eric Brendlinger, Parks & Recreation Director
                    Jessi Rochel, Parks & Recreation Manager
                    Margaret Donnelly, Aquatics Manager/Health & Wellness Coordinator
                    Kae McDonald, Boards & Commission Clerk
                    Luis Yllanes, Board of Trustees Liaison

CONSENT AGENDA
Motion Passed: Rose moved to approve the minutes from the August 14, 2019 meeting. Todd seconded the motion, and it was unanimously approved.

HOUSEKEEPING
Eric brought up the fact that Parks & Recreation management will be at a conference during the upcoming October 9, 2019, commission meeting and asked if the meeting could be rescheduled for Wednesday, October 16, 2019, instead. After a brief discussion, all agreed to the new meeting date for October.

Rose brought up the fact that while at Sopris Park, she noticed that the paint had worn off some of the playground equipment and asked if Eric could bring that to the attention of staff.

PERSONS PRESENT NOT ON THE AGENDA
There was no one present, not on the agenda, who wished to address the Commission.

AQUATICS/WELLNESS COORDINATOR: END OF SEASON POOL REPORT
Margaret Donnelly provided a recap on pool attendance numbers and staffing. Listing the following numbers in comparison with 2018:
<table>
<thead>
<tr>
<th>General Admissions by Category</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lap and Open Swim Patrons</td>
<td>7,024</td>
<td>6,341</td>
</tr>
<tr>
<td>Day Camps</td>
<td>554</td>
<td>1,288</td>
</tr>
<tr>
<td>Swimming Lessons</td>
<td>2,062</td>
<td>2,125</td>
</tr>
<tr>
<td>Mountain Fair</td>
<td>34</td>
<td>32</td>
</tr>
<tr>
<td>TOTAL ADMISSIONS</td>
<td>9,674</td>
<td>9,813</td>
</tr>
<tr>
<td>PROJECTED BUDGET</td>
<td></td>
<td>$54,000</td>
</tr>
<tr>
<td>TOTAL REVENUES</td>
<td>$62,888</td>
<td>$57,480</td>
</tr>
</tbody>
</table>

Margaret further explained that, due to scheduling conflicts and lifeguard to patron ratios, they had had to turn away four day camps. One of the other challenges was scheduling lifeguards—although there were the same number of lifeguards on staff this year as in 2018, the number of shifts many of the lifeguards could cover was less than that of the previous year. However, because the hours the pool was open had also been reduced, there was an actual savings of almost $7,000.00 in part-time pay compared to 2018. Margaret also explained that she had tracked usage numbers going back to 2013, and 2019 had the second highest visitor-ship of those years, and that an average of 6,000 was good for general admissions. With the higher-than-budgeted revenues, they can get a head start on budget items for 2020. She is also working on buttoning-up the pool. The lip on the liner is coming up, so she is trying to get that fixed because they can’t put the cover on the pool until it is.

Margaret also informed the Commission on other programming changes that will be upcoming at the Recreation Center. Fitness Zumba (both Aqua and Regular) will be going away, but Margaret is hopeful she can find a replacement to teach land Zumba at some point in the future. With the addition of two new classes—Circuits and Conditioning and Body Pump—the morning, noon, and evening class schedule will be full Monday through Thursday. Farm RX will continue with programming this Fall; Carbondale is the only recreation center in Garfield County that offers this class. A cooking class for students—Fork and Pan, will be offered again this fall during Early Release Wednesdays. There will be two four-week sessions.

Questions/Comments:
Eric: Margaret is running a tight ship, and maximizing the short season. The numbers she presented are impressive.
Rose: Were you able to hire enough staff?
Margaret: I chose not to hire two people because their references didn’t check out. In the end, I chose to sit on stand as a lifeguard, but then my other responsibilities suffered.
Eric: It would be nice to supplement that number, and be fully-staffed, so the full-time (Recreation Department) staff don’t have to lifeguard.
Margaret: A final plug for upcoming events to put on your calendars—Oktoberfest, the Turkey Trot, and the Full Moon Winter Tri is January 11, 2020!

**APPROVAL OF PICKLEBALL COURTS NAMING REQUEST**
Jeff and Cille Dickinson attended the meeting as representatives of the Roaring Fork Pickleball Association. Eric indicated that they had to follow the naming procedure, which included a 45-day public comment period. There was no opposition to the new name of the Pickleball Courts at North Face Park. The new name will now need consent from the Parks and Recreation Commission, after which it will be forwarded to the Board of Trustees for formal adoption.

Motion Passed: Todd moved to approve the name of the Pickleball Courts at North Face Park as the "Young-Calaway Pickleball Courts ... Alpine Bank." Hollis seconded the motion, and it was unanimously approved.

Questions/Comments:
John: What is the expected completion date?
Jeff: The pour is expected to happen in mid-September. It will then cure over the winter, and the final surfacing will take place next spring.

**CARBONDALE ARTS REQUEST TO PARTNER FOR 2020 GOCO MINI-GRANT**
Amy Kimberly, Executive Director of Carbondale Arts, presented a request to the Parks & Recreation Commission to partner for a 2020 GOCO mini-grant to fund the development of the third and final park along the Rio Grande Artway—the Youth Art Park. She has been coordinating with the 7th grade Middle School kids to develop the concepts for the park. The park is proposed to include charging stations and possibly a small climbing wall (similar
to that found at the Salida Town Park). The location is proposed just across the bike path from Town Hall. The Rio Grande Artway thus far has been a successful creative place-making project, with both De-Rail Park and the Latino Folk Garden attracting a lot of community interest; pedestrian counts since 2015 have shown an increase of 50,000 people using the section of trail between Snowmass Drive and Highway 133.

Amy has spent a good deal of time communicating with GOCO, and as far as she knows, no one else from Carbondale is putting forward another proposal for the mini-grant round. Maintenance of the park would be similar to that of the other two parks—Carbondale Arts would sign a Memorandum of Understanding with the Town that maintenance of the park would be the responsibility of Carbondale Arts. Land & Shelter would produce the final design, and Amy is optimistic that she can include Roaring Fork High School’s shop department in constructing some of the park elements. Colorado Health Foundation helped fund the Latino Folk Garden; GOCO looks much more favorably at applications that include a community funding component.

Questions/Comments:
Eric: Have you secured another grant yet?
Amy: Not yet, but there is a lot of money available for public health grants. We are hopeful the match is secure before we apply.
Ashley: You are asking us to support the partnership. How much money is budgeted?
Amy: We are seeking up to $40,000.
Hollis: If you are applying for a 2020 grant, which grant cycle are you aiming for?
Eric: There is one mini-grant and one regular grant awarded per grant cycle.
Becky: Haven’t we used the mini-grant for the Pickleball Courts?
Eric: That was an FMLD grant, which also has a mini-grant and traditional grant.
Hollis: When did we submit the FMLD grant?
Eric: The Pickleball grant was for the Fall cycle.
Ashley: Is Parks & Rec submitting anything to GOCO?
Eric: No.
Tracy: Thank you for your work on the Artway! It is nice to see, and I have definitely noticed an increase in people using the parks.
Tracy: Are you well-equipped to submit the application on time?
Amy: Yes.
Becky: Just for clarification, what are we committing to?
Eric: The mini-grant requires a 25% match. GOCO is a fairly competitive grant. Supporting this project as an extension of the Creative District Plan is part of the language in the 2015 Master Plan.
Amy: The Parks & Recreation Department have been incredible in supporting Carbondale Arts.
Rose: I just want to reiterate what Tracy said. I have seen a lot of families at the park, having dinner this summer. I am a little nervous about the climbing wall. I would also love to see a rotating exhibit of artwork.
Amy: The climbing wall in Salida is not big; I am talking about 6 feet by 6 feet. It was just nice to see an active component, and I think it would complement the climbing boulder outside the recreation center.
Tracy: I have managed climbing walls for years, and I don’t have any real concerns.
Ashley: From a practical perspective on the charging stations, they will need energy inspections, so it would be good to partner with the Town.
Amy: Yes, and we will have to partner with RFTA too.
Luis: It is ironic, having a graffiti wall.
Amy: We call it an “Art Wall” as opposed to graffiti, mostly in deference to the Town. It could be a few kids creating art for a year, but we haven’t nailed down that concept down yet. It certainly won’t be random.
Tracy: I have seen them called a Zen, or Buddha Board.
Becky: Do we have consensus on this?

Motion Passed: Todd moved to support the proposed Carbondale Arts Youth Art Park GOCO mini-grant application. John seconded the motion, and it was unanimously approved.

**TOWN OF CARBONDALE INTEGRATED WEED MANAGEMENT PLAN**

Eric and Gwen Garcelon presented the draft of the Carbondale Integrated Weed Management Plan. Eric highlighted the history, stating that it began in 1999 when the State of Colorado Noxious Weed Act was adopted in which municipalities were directed to develop a noxious weed management plan; it is now known as the Colorado Noxious Weed Act. The first draft of Carbondale’s plan was introduced to the Board of Trustees in 2010, which mirrored that of Garfield County’s; it was never adopted primarily because of the language in the document. It has been a lot of work and includes the involvement of the Environmental Board as well as interested citizens who were very adamant about not using herbicides and pesticides on Town property. The
document sort-of sat in a black hole until Gwen got involved when a Citizen Weed Task Force was organized. Gwen provided additional background, indicating that the Weed Task Force has invested a lot of time in the last year going through the original document. Once the document was vetted, it went to Town of Carbondale Staff for review. Although it has been a long process, it produced a high-quality document because of the intensive vetting. The document also speaks to the overall environmental ethic of the townspeople in terms of non-chemical weed eradication, but it also works within the state regulations. There is, however, a lot more in the process that makes chemical intervention far less necessary.

Gwen also highlighted the use of logs that are in Section 3.03; the logs will be used by the Parks and Recreation Department to keep track of how each parcel under their purview is being managed. She questioned whether the logs should be identified specifically as being used by Parks & Recreation, or whether other departments might manage them in the future. Hollis pointed out that Town Staff are better equipped to decide that, and that the use of the logs would be ingrained in the management of Town Property. Eric also pointed out that they would be used as a historic document that can be reviewed as staff changes. Gwen asked Eric to discuss the logs and how they are working. Eric responded that Parks and Recreation Staff decided that they needed them. Each park requires a different management technique, and there have been some successes. The bike park is probably the most challenging in how we manage the weeds, and the logs provide documentation on what has been tried and how well it worked. We are getting closer to figuring out what works best, and that in itself is a success of the logs. Gwen interjected that that’s the point of the integrated weed management plan, it is a long-term management strategy and if it is carefully tracked and archived, it can work. And it focuses on healthy soil, so it is something exciting, and will develop into something we can be proud of and helpful to other municipalities. Eric pointed out that it also exposes our weakness, in that it tracks what needs to be done compared to what is actually being accomplished. Gwen continued that the incredible opportunity in this plan is the public education that is detailed in it. But, there is no time or staff to do the work detailed in the plan. She wanted the Commission to think about what the public education plan could look like, and what are the opportunities there. Let’s get creative. When the plan is adopted, we plan to have a press conference and invite the community. That would be an easy enough thing to do to kick this off.

Questions/Comments:
Hollis: I would like to see us specifically address the education piece. Carbondale, in fact all of Garfield County, has the backing of the Colorado Extension Service and the Garfield County Vegetation Management Department, and they are available for education, plant identification, and recommendations for the best practices of certain plants. It is a great resource. They are also willing to provide support when the Plan comes before the Board of Trustees.
Tracy: We could also have a table at First Friday to launch this.
Luis: Hollis, your idea for the education component is so critical. There is also an app to identify noxious weeds, so there are ways to help them identify what they should be looking for and where the problem areas might be.
Becky: I am going to be a little nitpicky. On Page 6, Paragraph 5, Item 1.04, I would like to see language similar to Page 9, Paragraph 2.01. Prefer there is concordance between the two sections. Also on Page 9, it reads that there must be approval before using chemicals, when before it didn’t require Board of Trustee’s approval.
Hollis: I think the wording just needs clarification.
Eric: We do, and we want that, in a timely manner. The final decision is with the Board whether we can use chemicals or not. This is a way to get them to look at what was done this season, how it worked, and what we are planning for next season before the weeds start growing.
Becky: It really is just a matter of clarifying the language. For example, they would need approval in the Fall for an application the following Spring, so there isn’t any confusion about the timing of the approval.
Hollis: Would it make sense to say as presented during the dormant season.
Becky: Or at least well in advance to the growing season. One final comment: on Page 11. I don’t think we need to have a list of beneficial uses of weeds in the Weed Management Plan, just my personal opinion.
Genevieve: I think education and establishing culture is important, especially when you are telling people to do something, or not to do something. Their first question is why, and it is a big part of the culture in Carbondale. I love seeing it in there.
Hollis: If it is a List A plant, you can’t have it. If it is a List B plant, you can have it, but you must control it.
Gwen: This paragraph is about a new paradigm of co-existing with weeds in a different way. It helps people to start thinking in new ways about weeds. That is part of the spirit of this plan, why they are there in the first place, and better management of the soil. They could also be potentially helpful in the future—we may need these plants in the future.
Susan Christman: I have had a chance to review the Weed Management Plan. California takes a completely different approach; the Pesticide Management Plan I worked on was a different paradigm. I am thrilled to see this document. One piece of the puzzle I am curious about is in the instance of when chemicals are used. Is
there an opportunity to post notices on the site ahead of time? Second, could there be a registry for notification if someone wants to know when and where chemicals are being used. It helps placate the public if they see someone spraying, and it is part of both the education and public health aspect of the plan.

John Burger: I have a business—Alpha Natural, Inc. (www.alphanaturalconsulting.com, 970-984-2467). I worked for the Town of Carbondale in 1999 as a pesticide-free applicator. I am here in support of Susan Christman. I am very interested and support anyone who wants to use something other than chemicals.

Hollis: Is there a place where we can add a Notification Plan?

Susan: On Page 16, in Section 4.04: Education and Awareness. If you can revise it to add public notification.

Tracy: Can we add a page to the website?

Eric: We can post notices on site when we are using an alternative method. It is a great idea to have a registry for when we do use herbicides, so that people that want to know have an opportunity to get on that list. It won’t be too much a burden. We can put a bullet point in the plan to identify the notification methods.

Motion Passed: Todd moved to adopt the Town of Carbondale Integrated Weed Management Plan with edits and forward it to the Board of Trustee’s for their consideration. Hollis seconded the motion, and it was unanimously approved.

THANK YOU TO TODD CHAMBERLIN FOR HIS SERVICE, NOMINATIONS FOR 2020 BOARD CHAIRPERSON AND VICE CHAIR

The Parks and Recreation Commission officially extended a huge thanks to Todd for his 10 years of service on the commission. Eric added that nominations for chairperson and vice chair will be on October’s meeting agenda. Tracy indicated that, while she is still committed to staying on the Parks & Recreation Commission, she would rather not continue in her role as Vice Chair. Becky expressed interest in retaining her role as Chairperson. Hollis expressed an interest in running for the Chairperson position. Rose expressed an interest in becoming more involved, either as Chairperson or Vice Chair. Genevieve also presented her revised application for full member status on the Parks and Recreation Commission.

Motion Passed: Todd moved to accept Genevieve Villamizar as a full member on the Parks and Recreation Commission. Rose seconded the motion, and it was unanimously approved.

REPORT & UPDATES

Eric Brendlinger, Parks & Recreation Director:

- The playground replacement project at Miner’s Park will begin October 1 with the demolition of the current play features;
- The construction of the pickleball courts is in progress. Members of the Roaring Fork Pickleball Association are playing an active role in the construction;
- There is some interest in the Aquatics Master Plan. Proposals are due September 27;
- A manufacturer/installer for the Red Hill Trails signs has been selected; it is Arrow Signs and Design. The contract was finalized at the September 10, 2019, meeting of the Board of Trustees;
- Now that the Department of the Interior is allowing E-bikes on BLM Lands, the Red Hill SRMA regulations will need to be adjusted to mirror that of the BLM;
- The Parks and Recreation Department is recruiting for the Special Events Task Force. There is one meeting in October and one meeting in November to outline 2020 events.

Jessi Rochel, Recreation Center and Program Manager:

- The Fall/Winter Brochure is available online, and will be in the September 19 edition of the Sopris Sun;
- Jessi attended the Back-To-School event last night to promote the CRCC and Fall programming;
- The CRCC will be partnering with CSU Extension and AmeriCorps to continue the STEM Program. She is not charging for her program, so the Rec Center is not charging her for the use of the space. It will run on Thursdays from 3:30 to 5 pm from October through Spring Break;
- The Pickleball Tournament will be held at North Face Park September 21 and 22;
- The CRCC is still accepting sponsors for Potato Days. It will be held on Saturday, October 5;
- Celtic/Octoberfest will be held on Friday and Saturday, October 11 and 12;
- There will be two senior trips to Paonia coming up on September 20 and September 28;
- The next Blood Drive will be held on Wednesday, October 9;
- Working with ACCESS Afterschool again this year. It will be on Tuesdays and a sports medley of some sort every week;
- The Gateway RV Park closes on September 30;

Eric introduced Genevieve for a final piece of business not on the agenda. Genevieve indicated that the Carbondale Garden Squad was trying to find incentives to help maintain participation, specifically items that might not cost money. She is asking for passes to the CRCC as incentives for repeat participation. Eric indicated that the Parks and Recreation Department has developed a policy for donation requests that was discussed at a past Parks & Recreation Commission meeting. It was forwarded to the Board of Trustee’s, with their preferred action at that time to be a legal review; which is where it still is. Eric wanted some input from the Commission whether or not they want to continue to pursue finalization of the donation policy. There was discussion over what constitutes non-profit and not-for-profit, and how local organizations fit into those categories. Eric felt that legal counsel was essential to help delineate certain definitions before the policy was put back on the agenda. After some discussion, it was suggested that Genevieve apply for 20 day passes to reward volunteers for their work.

ADJOURNMENT
The September 11, 2019, regular meeting adjourned at 9:15 pm. The next regularly scheduled meeting is set for October 16 at 7:00 pm.

Respectfully submitted,
Kae McDonald
MINUTES
BIKE, PEDESTRIAN, AND TRAILS COMMISSION
September 30, 2019

CALL TO ORDER
Matt Gworek called the meeting to order at 6:00 pm on September 30, 2019 in Room 1 at Town Hall.

ROLL CALL
The following members were present for roll call:

BPTC Members: Matt Gworek, Chairperson
Niki Delsen, Member
Darren Broom, Member
Laurie Loeb, Member
Meg Plumb, Member

Town Staff Present: Kevin Schorzman, Staff Liaison
Kae McDonald, Boards and Commissions Clerk

Ben Bohmfalk, Trustee Liaison

Guests: Michael Gorman, BPTC Applicant
Ron Kokish, CAFCI
Megan Ziggler, Guest
Holly Buell, Guest

CONSENT AGENDA
Motion Passed: Darren moved to approve the Bike, Pedestrian, and Trail Commission meeting minutes from September 9, 2019 with noted corrections. Meg seconded the motion, and it was unanimously approved.

PERSONS PRESENT NOT ON THE AGENDA
Ron Kokish thanked the Commission for their attention at the last meeting, and reiterated the need to address 8th Street. Megan Ziggler related a close call between her husband, who was on a bike, and a vehicle. She pointed out that while addressing the needs of 8th Street was important, there are other streets that, based on the CAFCI survey, also need attention. Holly would like to see the downed signs along 8th Street re-installed, as well as bike sharrows so it is clear where bikes are allowed.

APPLICATION FOR APPOINTMENT TO THE BPT COMMISSION
Matt asked Michael Gorman, the prospective applicant, to introduce himself and provide some background on his experience and interest in the BPT, Commission.
Michael is currently involved in the Pitkin County Management Plan for the Penny Hot Springs. Matt asked if there were any questions for Michael.

Motion Passed: Laurie moved to recommend Michael Gorman’s appointment to the Bike, Pedestrian, and Trails Commission to the Board of Trustees. Meg seconded the motion, and it was unanimously approved.

CONSIDER DEFINITION OF PRIORITY MULTI-MODAL CORRIDORS

The BPTC believes the term Priority Multi-Modal Corridor was never clearly defined and this now presents difficulty in deciding how to move forward with infrastructure improvements, policies and enforcement.

Matt summarized the current definitions of multi-modal in front of the Commission for consideration, and explained why it is important for the Town to distinguish between Multi-Modal and Priority Corridors.

Two definitions are offered for consideration by the BPTC:

Definition 1, offered by CAFCI

The needs of motorized travelers are secondary to the needs of pedestrians and bicyclists. The thoroughfare is designed to discourage travel at more than 15 miles per hour. (Adapted from definitions of local street types – Arlington Virginia)

Definition 2

Multi-Modal Corridors (MMCs) are a connected system of streets, pathways and sidewalks on which the needs of all users (regardless of age, ability or mode of transportation) are of equal importance, and all users have the same rights to safe and comfortable use.

The word “priority” is used to express the expectation that the Town will consider the development and support of the designated MMCs when allocating relevant resources.

After questions from Ben about who/what this definition is going to serve, Matt responded that the definition would provide guidance to the BPT Commission, with the long-term goal of presenting it for adoption by the Board of Trustees. Meg followed this up by pointing out that, used as an amendment to the Priority Corridor Map, it could clarify certain aspects of the map. Niki pointed out that without enforcement, it doesn’t really mean anything. Matt would like to see agreement among the Commission, then gauge how the Board of Trustees views the definition. Darren followed that up by saying that as the town changes, priority corridors may change, and having a detailed definition could help guide how corridors are identified in the future. Matt reiterated the distinction between Priority Corridors and Multi-Modal, and Meg followed this up by outlining a brief history in the development of different priorities:

- Where infrastructure existed for safe/continuous bike use;
• Night-time safety and the distinctions between vehicular, pedestrian, and bicycle needs balanced with where the infrastructure could be upgraded;
• Not all corridors have the same needs or opportunities;
• The current map is an attempt to illustrate these various distinctions.

Motion Passed: Meg moved to adopt Definition #2 for use when referring to Multi-Modal Corridors. Darren seconded the motion, and it was unanimously approved.

NEXT STEPS FOR 8th STREET
Matt introduced the idea that $90k identified in the draft 2020 budget, for the sidewalk from Town Hall to the bike path and lights along Village Lane from the Cemetery to Gianinetti Park, could be directed towards planning and work on 8th Street.

Kevin estimated that the Consultant would require about half of the budgeted amount. He also suggested that if the consultant were directed to involve the general public and not just the residents along 8th Street, a more robust plan would be developed. Ben followed this up by saying a recommendation of this sort would demonstrate to the Board of Trustees the sense of urgency in improving 8th Street. Further, he stated that there has never been a plan for 8th Street, and that by investing time and money now to get a consensus, it is the best use of limited funds.

Questions/Comments:
Niki: I would like to see something happen now, sharrows, for example.
Darren: I would prefer to wait, before putting a "band-aid" on it.
Matt: I concur with Darren—anything we do now could be a waste of time and money.
Meg: I know we need to show action, but is there a better way? The lighting on Village Road is a leftover to do item from the safety issue we addressed three years ago. Execution takes time.
Laurie: Something that won't take a lot of money is to enforce existing regulations. That would be a good way to show we are doing something.

Motion Passed: Laurie moved to recommend the allocation of $90,000 in the budget to hire a consultant to develop a plan for upgrades to 8th Street to create a viable multi-modal corridor, based on the definition adopted by the BPTC. In the meantime, the Bike, Pedestrian, and Trails Commission recommends the prioritization in the enforcement of existing ordinance to address safety of pedestrians and cyclists on 8th Street including:
• Right-of-Way Encroachment;
• Parking Issues (for example, vehicles parking on the sidewalk or parking too close to an intersection);
• Vehicular Weight Limit;
• Vehicular Speed Limits;
• Rules of Road for Cyclists.
Meg seconded the motion, and it was unanimously approved.

HOUSEKEEPING ITEMS
Niki would like to see the letter Darryl Fuller sent to the Colorado Department of Transportation added to next month's agenda.

ADJOURNMENT
The September 30, 2019, regular meeting adjourned at 7:25 p.m. The next regular meeting is scheduled for November 4, 2019 at 6:00 pm.

Respectfully submitted,
Kae McDonald