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<td>e. Liquor License Renewal – Mi Casita</td>
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<td>7. Memorandum of Understanding – Roaring Fork Pickleball Association - North Face Park Pickleball Courts</td>
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<td>8. Special Event Liquor License – CoVenture</td>
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* Please note: times are approximate
Board of Trustees Agenda Memorandum

Item No: Attachment A

Meeting Date: 02.26.2019

TITLE:  Accounts Payable

SUBMITTING DEPARTMENT:  Finance

ATTACHMENTS:  Accounts Payable for 02.26.2019

DISCUSSION:  The accounts payable include $20,000.00 annual support to the Carbondale Chamber of Commerce, $9,076.00 for 6 bear proof double trash/recycle containers to Bear Saver, the quarterly payment of $7,500.00 to the Garfield County Housing Authority and engineering of $15,118.65 is being paid to Roaring Fork Engineering for the WWTP clarifier and pump project. Remodeling continues on the Gateway House through February with payments of $33,375.00 for roof repairs, replacement of tile in bathroom, drywall, painting and general construction.

The payroll for 2.8.19 was $157,275.11. Tax liability for the town was $9,177.15. Pension and Retirement liability was $10,093.14.

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

Renae
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Feb 08, 2019 10:41AM
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TOWN OF CARBONDALE
Payment Approval Report - by GL No
Feb 21, 2019 09:33AM
MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
FEBRUARY 12, 2019

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on February 12, 2019, at 6:00 p.m. in the Town Hall meeting room.

STUDENT OF THE MONTH

Students from Carbondale Community School and Ross Montessori School were in attendance to receive the “Student of the Month” award. The following students were awarded a Certificate of Achievement from Mayor Richardson:

Chase Campbell  Taylor Rubinstein
Cristian Gomez  Charlotte Grobler

ROLL CALL:

The following members were present for roll call:

Mayor  Dan Richardson
Trustees  Marty Silverstein
         Erica Sparhawk
         Lani Kitching
         Ben Bohmfalk
         Marty Silverstein

Absent  Heather Henry

Staff Present:

Town Manager  Jay Harrington
Town Clerk  Cathy Derby
Finance Director  Renae Gustine
Town Attorney  Mark Hamilton
Planning Director  Janet Buck

CONSENT AGENDA

• Accounts Payable totaling $235,122.66
• BOT 1/22/2019 Regular Meeting Minutes
• Liquor License Renewal – Peppino’s
• Liquor License Renewal – Winetime
• Liquor License Renewal – 7Eleven
• Tasting Permit Renewal – Winetime
• Board of Adjustment – Appointment of Alternates
• Contract with DHM – Crystal River Restoration Project

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

6 yes votes: Richardson, Ylanes, Bohmfalk, Silverstein, Sparhawk, Kitching

PERSONS PRESENT NOT ON THE AGENDA

There was no one present who wished to address the Board.

TRUSTEE COMMENTS

Trustee Silverstein stated that he attended the Sopris Sun’s 10th anniversary party. Also, he attended the Mt. Sopris Riders benefit. They groom the trails which are open to everyone, and they don’t ask the Town for money.

Trustee Sparhawk stated that she testified on a vaping bill in the Denver House Committee. The bill passed in the House. The bill goes to the Senate on Thursday. If it passes the Bill will allow counties to raise the age limit to purchase tobacco products and would remove the penalty on the share back tax if you license tobacco.

Trustee Sparhawk also attended the Colorado Communities for Climate Action meeting. They discussed an option that will allow utility companies to accelerate the closing of their coal fired power plants.

Trustee Kitching attended the Senior Matters meeting; they are grateful for the Town’s grant. On March 14th they are having a gathering at the Third Street Center. CLEER will be there to discuss their energy efficiency program for seniors. Electric vehicles will be a future gathering topic. On March 28th there will be a discussion on CBD’s use for medical conditions at Crystal Meadows.

Trustee Kitching attended the CoVenture soft opening; she was very impressed with their programming and the remodel of the building.

Trustee Kitching will be attending the Crystal River Workshop. They will be discussing an initiative that targets the upper reaches of the Crystal River.

Trustee Kitching also attended the Garfield County Water Forum. They thanked the Town for the 250 feet water contribution during the summer drought.
Trustee Kitching attended the Rocky Mountain Health Foundation meeting which came about from the sale of the Rocky Mountain Health Plan to United Health Care. The sale resulted in a $4 million fund that will live in perpetuity. Of the $4 million, $1 million will be given to western slope health related non-profits.

Trustee Yllanes stated that CPAC is jurying sculptures. The sculptures will be changed out in May and the opening is scheduled for June 6th.

Trustee Yllanes also stated that the Parks and Recreation Commission will be hosting an open house tomorrow on the North Face Master Plan which includes the installation of pickleball courts.

Trustee Bohmfalk attended the Bike/Pedestrian/Trails Committee meeting where they discussed Meadowood Drive improvements.

Trustee Bohmfalk also attended the CoVenture soft opening; a lot of good things are happening there.

Mayor Richardson informed the Board that he spoke at the Garfield County Republicans meeting. The topic was Vacation Rentals By Owners (VRBO’s) and he believes the Town is on the right policy course.

Mayor Richardson attended Jim Calaway’s memorial. It was uplifting and there was a great turn out.

Mayor Richardson attended the Garfield County Commissioners meeting. He thanked them for their continued support of protecting Thompson Divide.

Mayor Richardson wished the Sopris Sun Happy Birthday.

Mayor Richardson spoke with Michael Lowe, Executive Director of CoVenture, about scheduling Board meetings. Michael wants to schedule the Board meetings on a to be determined Monday afternoon at 4:00 p.m. Trustee Bohmfalk volunteered to be the Board representative.

Trustee Sparhawk stated that she attended Senator Bennett’s news conference announcing his proposed Thompson Divide legislation.

**ATTORNEY’S COMMENTS**

The attorney did not have any comments.
SPECIAL EVENT LIQUOR LICENSE – DUCKS UNLIMITED

Ducks Unlimited has applied for a Special Event Liquor License for an event to be held at the Orchard. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve Ducks Unlimited's Special Event Liquor License. Trustee Kitching seconded the motion and it passed with:

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

SPECIAL EVENT LIQUOR LICENSE – CARBONDALE ARTS – FASHION SHOW

Carbondale Arts has applied for a Special Event Liquor License for their annual fashion show to be held at the Recreation Center. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve Carbondale Arts' Special Event Liquor License. Trustee Yllanes seconded the motion and it passed with:

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

ORDINANCE NO. 3, SERIES OF 2019 AND DEVELOPMENT IMPROVEMENT AGREEMENT – MAIN STREET MARKETPLACE

Applicant: Crystal River Marketplace, LLC
Location: Lot 1, Carbondale Marketplace Subdivision

Planner Bob Schultz and developer Briston Peterson were present for the meeting.

On November 27, 2018, the Board approved the Main Street Marketplace application and asked staff to prepare approval documents for the Board's consideration.

The Main Street Marketplace proposal is for a mixed-use development with about 10,000 sq. ft. of commercial space and 115 residential dwelling units on the 5.37 acre parcel. The property is Lot 1 of the Carbondale Marketplace Subdivision which is located at the northwest corner of Highway 133 and Main Street, behind the 7-Eleven store. All of the residential units would be rentals. 20% of the rentals would be deed restricted.

Janet recommend approval of Ordinance No. 3, Series of 2019, and the Main Street Marketplace Development Improvements Agreement.

Discussion ensued.
Jay added that due to the proposed phasing staff negotiated a security for restoration of the site if it is partially finished or stalls.

Mayor Richardson asked if the restoration language is too vague. Mark responded that clause 4h states that if progress seizes for an extended period of time that the security will be used to move machinery, for dust management, etc. Briston stated that he is clear on the meaning of restoration. He wants the project to be left in a state that makes it marketable and he does not want to threaten public safety.

Bob Schultz noted that providing security for restoration is not in the Municipal Code. If it is going to become a new policy then an effort should be made to create a definition.

Trustee Kitching made a motion to approve Ordinance No. 3, Series of 2019 and the Main Street Marketplace Development Improvements Agreement. Trustee Silverstein seconded the motion and it passed with:

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

Briston gave an update on the Main Street Marketplace/City Market construction. The project has been shut down for winter. Gould Construction was hired to do the utility work. City Market is fulfilling all of their obligations. They are in the process of upgrading the store’s design. They are scheduled to break ground in June, and open in late 2020. First Bank will be mobilizing February 26th and there is a ground breaking ceremony on February 26th. In March a fair amount of work will take place on the Rockford Ditch and West Main Street will be reduced to one lane of traffic.

SCHEDULING MARCH (SECOND) MEETING

Due to the March spring break, the Board discussed cancelling the March 26, 2019, meeting and changing the March 19, 2019 work session to a special meeting.

Trustee Silverstein made a motion to cancel the March 26, 2019 Board of Trustee meeting and change the March 19, 2019 work session to a special meeting. Trustee Kitching seconded the motion and it passed with:

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

VCAPS – 2019 BUDGETED ITEMS

In September, 2018, Carbondale hosted the Western Water Assessment (WWA) group. They conducted a Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) pilot program workshop. The workshop resulted in an extensive report that will support the Town in taking actions to mitigate drought and climate change through combined regional efforts in the greater Roaring Fork Valley.
In January 2019, the Trustees requested a breakdown of VCAPS related projects included in the 2019 budget. An extensive list of projects is included in the Trustee packet. The projects address: reduced runoff, stress on the ecosystem, fires, reduced water supply, more concentrated waste water solids, decrease in tourism (due to drought), reduced irrigation for town facilities, reduced agriculture irrigation out of town, and a possible call on the Nettle Creek.

Discussion ensued.

Mayor Richardson noted that it may be beneficial to use climate mitigation when considering most budget decisions. The board could ask does the proposed project help or hinder climate mitigation.

Trustee Bohmfalk stated we appear to be focused on supply and we need to approach how to reduce consumption. He asked should we spend enterprise funds on finding ways to reduce demand. Should we make the Unified Development Code more aggressive in requiring lower water consumption (landscaping, etc.).

Trustee Sparhawk suggested that we focus on communication/educating citizens. The Board agreed that the VCAPS power point should be condensed. It should then be put on the website along with Angie’s memo (provided in the packet) and both should be used for presentations (Chamber, etc.) The Board agreed that the Environmental Board, Parks and Recreation Commission, and the Tree Board should review the memo and power point and use them when they are preparing their future work plans.

Staff will provide water updates on a regular basis.

EXECUTIVES SESSION – LITIGATION UPDATE REGARDING KIERNAN AND TUMBLEWEED CASES

At 7:47 p.m. Trustee Bohmfalk made a motion to go in to an executive session for a conference with the town attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b). Trustee Yllanes seconded the motion and it passed with:

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

At 8:37 p.m. Trustee Bohmfalk made a motion to adjourn the executive session and return to the regular meeting. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Richardson, Silverstein, Sparhawk, Bohmfalk, Kitching, Yllanes
ADJOURNMENT

The February 12, 2019, regular meeting adjourned at 8:40 p.m. The next regularly scheduled meeting will be held on February 26, 2019, at 6:00 p.m.

APPROVED AND ACCEPTED

Dan Richardson, Mayor

ATTEST:

Cathy Derby, Town Clerk
To: Mayor Dan Richardson and
Carbondale Board of Trustee's

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Renewal Application for Sopris Sport Bar

Date: February 13, 2019

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

Reyna Jimenez Gavida

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.
**LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION**

**PLEASE VERIFY & UPDATE ALL INFORMATION BELOW**

<table>
<thead>
<tr>
<th>Licensee Name</th>
<th>Sores Sport Bar INC</th>
<th>DBA</th>
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<td>Hotel &amp; Restaurant</td>
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<td>Street Address</td>
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<td>Mailing Address</td>
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<tr>
<td>Operating Manager</td>
<td>Reyna Jimenez</td>
<td>Date of Birth</td>
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<tr>
<td>Home Address</td>
<td>Glenwood Springs, CO, 81601</td>
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<tr>
<td>Phone Number</td>
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1. Do you have legal possession of the premises at the street address above? □ YES □ NO
   - Is the premises owned or rented? □ Owned □ Rented* *If rented, expiration date of lease 02/01/20

2. Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. □ YES □ NO

**NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS:** If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.

3. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. □ YES □ NO

4. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. □ YES □ NO

5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. □ YES □ NO

6. **SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver’s license, state-issued ID or valid passport.

**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.

<table>
<thead>
<tr>
<th>Type or Print Name of Applicant/Authorized Agent of Business</th>
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<tr>
<td>Reyna Maria Jimenez</td>
<td>Owner</td>
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<td>Reyna Maria Jimenez</td>
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**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 12, Articles 46 and 47, C.R.S. THEREFORE THIS APPLICATION IS APPROVED.

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<th>Local Licensing Authority For</th>
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To: Mayor Dan Richardson and Carbondale Board of Trustees

From: Gene Schilling
    Chief of Police, Carbondale Police Department

Ref: Liquor License Renewal for Thunder River Theater Company

Date: February 20th 2019

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

Corey Simpson/ Operating Manager

I have found no in-house liquor violation records. The State Liquor Division conducted compliance checks Oct 5th 2019 and Thunder River Theater Company passed that compliance check.

I recommend the approval for the liquor license application.
# ATTACHMENT D

## RETAIL LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

**THUNDER RIVER THEATRE COMPANY**  
67 PROMENADE  
CARBONDALE CO 81623-5700

### PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

<table>
<thead>
<tr>
<th>Licensee Name</th>
<th>DBA</th>
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<tr>
<td>ROARING FORK FRIENDS OF THE THEATER INC</td>
<td>THUNDER RIVER THEATRE COMPANY</td>
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<table>
<thead>
<tr>
<th>Operating Manager</th>
<th>Manager Phone Number</th>
<th>Date of Birth</th>
<th>Home Address</th>
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<tbody>
<tr>
<td>Kameron Miranda</td>
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**Street Address**  
67 PROMENADE CARBONDALE CO 81623-5700  
**Mailing Address**  
67 PROMENADE CARBONDALE CO 81623-5700

<table>
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<tr>
<th>Field</th>
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<tbody>
<tr>
<td>Phone Number</td>
<td>9709638200</td>
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</table>

1. Do you have legal possession of the premises at the street address above?  
   - Yes [X]  
   - No [ ]

   Is the premises owned or rented?  
   - Owned [ ]  
   - Rented [ ]

   If rented, expiration date of lease?

19. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested.  
   - Yes [X]  
   - No [ ]

**NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS:** If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.

3. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation.  
   - Yes [ ]  
   - No [X]

4. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation.  
   - Yes [X]  
   - No [ ]

5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation.  
   - Yes [X]  
   - No [ ]

## 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.

<table>
<thead>
<tr>
<th>Type or Print Name of Applicant/Authorized Agent of Business</th>
<th>Title</th>
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</thead>
<tbody>
<tr>
<td>Corey Simson</td>
<td>Executive Artistic Director</td>
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<tbody>
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<td>[Signature]</td>
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## 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 12, Articles 46 and 47, C.R.S. THEREFORE THIS APPLICATION IS APPROVED.

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</table>
To: Mayor Dan Richardson and Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref: Liquor License Renewal for Mi Casita

Date: February 20th 2019

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

Graciela Pena / Operating Manager

I have found no in-house liquor violation records. The State Liquor Division conducted compliance checks October 5th 2019 and Mi Casita passed that compliance check.

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

**Please verify & update all information below**

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<tr>
<th>Licenses Name</th>
<th>Doing Business As Name (DBA)</th>
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<tbody>
<tr>
<td>Graciela Peña</td>
<td><em>Mi Casita Restaurant</em></td>
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</table>

<table>
<thead>
<tr>
<th>Liquor License #</th>
<th>License Type</th>
<th>Sales Tax License #</th>
<th>Expiration Date</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>28-15372-0000</td>
<td>H &amp; R</td>
<td></td>
<td>3/11/19</td>
<td>12/5/2018</td>
</tr>
</tbody>
</table>

Business Address: 580 Main St. ste 100 Carbondale, CO 81623

Mailing Address: 580 Main St. ste 100 Carbondale, CO 81623

Email: graciela_peña@gmail.com

Operating Manager: Graciela Peña

Date of Birth: 11/25/1994

**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**
Graciela Peña

**Title**
OWNER

Date: 2/14/19

**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*

Signature

Title

Date

*Attest*
Board of Trustees Agenda Memorandum

Meeting Date: February 26, 2019

TITLE: 2019 Chip Seal Program Contract

SUBMITTING DEPARTMENT: Public Works

ATTACHMENTS: 2019 Chip Seal Agreement

BACKGROUND
The Town of Carbondale placed an advertisement in the Sopris Sun requesting quotations for the 2019 Chip Seal Program. The request for quotations was also posted on the Town’s website.

DISCUSSION
The 2019 Chip Seal Program consists of applying oil and chips to approximately 45,650 square yards of Town streets. The 2019 Program will address streets shown on the map in Attachment “A” of the agreement.

The low quote for the project was $2.25 per square yard which compares to last year’s low quote of $2.03 per square yard. This is an increase of about 10% over last year’s low bid, but is still approximately 9% lower than the low bid in 2017. The reduction in cost compared to 2017 is related to changes in the specifications and methods implemented in 2018.

Two quotations were received for this year’s work as follows:

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>GMCO, LLC</td>
<td>Rifle, CO</td>
<td>$2.25</td>
<td>$102,712.50</td>
</tr>
<tr>
<td>United Compaines of Mesa County</td>
<td>Grand Junction, CO</td>
<td>$2.47</td>
<td>$112,755.50</td>
</tr>
</tbody>
</table>

GMCO has performed chip sealing for the Town for many years. They have been good to work with, and have provided a high-quality end product for the Town. Staff recommends that the Board accept GMCO’s bid for the project and authorize the Mayor to execute the attached agreement for the work.
FISCAL ANALYSIS
The unit price for this year's chip sealing is approximately 10% higher than last year. The 2019 budget contains $360,000.00 for the Street Resurfacing Program which includes chip sealing, crack sealing, striping, and the Meadow Wood Mill and Overlay project.

Crack Sealing Program Cost:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application cost at $1.40/pound</td>
<td>$21,000</td>
</tr>
<tr>
<td>Estimated Bituminous material cost</td>
<td>$13,000</td>
</tr>
<tr>
<td>Crack Sealing Program Cost</td>
<td>$34,000</td>
</tr>
</tbody>
</table>

Total Street Surface Program Cost:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crack Sealing Program cost</td>
<td>$34,000.00</td>
</tr>
<tr>
<td>Chip Seal Program cost @ 2.25/sqyd</td>
<td>$102,712.50</td>
</tr>
<tr>
<td>Estimated Street Surface Program cost</td>
<td>$136,712.50</td>
</tr>
<tr>
<td>Street Surface Program budget</td>
<td>$360,000.00</td>
</tr>
<tr>
<td>Budget Remaining for Meadow Wood and Striping</td>
<td>$223,287.50</td>
</tr>
</tbody>
</table>

RECOMMENDED MOTION
Staff recommends that the following motion be approved: I move to award the 2019 Chip Seal Program bid to GMCO, LLC with a unit price of $2.25 per square yard and authorize the Mayor to sign the attached agreement.

Prepared by: Kevin Schorzman

______________________________
Town Manager
2019 Town of Carbondale
Chip and Seal Program

CONSTRUCTION AGREEMENT
(unit prices)

THIS AGREEMENT is entered into by and between GMCO, LLC, a Colorado Limited Liability Company, P.O. Box 1480, Rifle, CO 81650 (“Contractor”), and the Town of Carbondale, Colorado, a Colorado home rule municipal corporation (“Town”). This Agreement is to be effective February 12, 2019, regardless of the date of signature(s) below.

For good and valuable consideration, the parties agree as follows:

1. **Work.** The Town desires to complete chip seal improvement work, within the Town of Carbondale as described in Attachment A. All of the Work will be directed and overseen by the Town’s Public Works Director. Contractor is willing to perform this Work upon request of the Public Works Director at the rates set forth in Attachment B.

2. **Compensation.** Contractor will be paid for the work to be performed pursuant to this Agreement at the unit prices for chip and seal application set forth on Attachment B (“Contractor’s Compensation”). Contractor shall provide the Town with a performance and payment bond in an amount no less than 100% of the cost of the project in accordance with C.R.S. § 38-26-106 (2016). Any cost associated with the bond shall be included in the unit price for the work performed, and shall not be compensated directly.

3. **Payment.** In consideration for Contractor’s performance of the Work, and subject to satisfaction of the Town and acceptance of the same by the Town, Contractor's Compensation shall be payable to Contractor in one payment for Work completed, based on Applications for Payment submitted by Contractor and approved by the Town. Town shall make said payment for the Work to Contractor no later than thirty-one (31) days after the Work is completed and accepted by Town. It shall be a condition precedent to the payment of Contractor that Contractor submits waivers and assignments of liens and such other documents, papers and statements as may be requested by and all in a form reasonably acceptable to Town. Title to all materials shall pass to Town upon final payment. Town may make the check for full and final payment payable jointly to Contractor and any of its subcontractors, material suppliers, laborers or equipment suppliers, and the amount so paid will apply to the Contractor’s Compensation.

4. **Independent Contractor Status.** Contractor shall perform all services and procure all materials as an independent contractor, retaining complete control over Contractor’s personnel, any subcontractors, and operations.

5. **Records.** Contractor shall keep full and detailed accounts as may be necessary for proper financial management under this Agreement. The Town shall be afforded access to all the Contractor's records relating to this Agreement or the Work.

6. **Immigration Compliance.** The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract nor contract with any subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.
The Contractor has verified or attempted to verify through participation in the Basic Pilot Program that the Contractor does not employ any illegal aliens. (For the purpose of this paragraph, “Basic Pilot Program” is defined to mean the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security). If the Contractor is not accepted into the Basic Pilot Program prior to executing this contract, the Contractor shall apply to participate in the Basic Pilot Program every three months until the contractor is accepted or this contract has been completed, whichever is earlier. The Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this contract is being performed. This paragraph shall not be effective if the Basic Pilot Program is discontinued.

If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the contractor shall notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. The Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor shall also comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to C.R.S. 8-17.5-102(2).

7. **Contractor’s Obligations.** All work performed by the Contractor shall be performed in a workmanlike manner, pursuant to industry standards and all applicable Carbondale Municipal Code provisions, and subject to Town’s satisfaction and approval. The Contractor shall clean up all debris generated by its work and shall keep mud from the street and near the site. Contractor shall also perform as follows:

a. Contractor shall supervise and direct the Work, using Contractor's best skill and attention, and Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement. Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary to complete each Job in a workmanlike manner in strict accordance with the Contract Documents. Contractor accepts the relationship of trust and confidence established between the Town and Contractor by this Agreement. Contractor represents, covenants and agrees to furnish efficient business administration and superintendence, to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of the Town.

b. Contractor warrants to the Town that all materials incorporated in the Work will be new unless otherwise specified in the Contract Documents, that all Work and materials will be free from faults and defects not inherent in the quality required or permitted under the Contract Documents, and that all Work and materials will be in conformance with the Contract Documents and all applicable requirements of local building codes and zoning requirements and all federal,
state and local rules, regulations, orders, statutes and ordinances. Any Work not conforming to these requirements shall be considered defective.

c. Contractor shall at all times keep all worksites and all adjacent trails and public streets free from accumulation of waste, materials or rubbish caused by Contractor's operations and shall at all times maintain a neat and orderly work area as required by Town. At the completion of the Work, the Contractor shall remove all such waste, materials and rubbish from and about the Premises, as well as Contractor's tools, construction equipment, machinery and surplus materials. Contractor shall comply with any and all provisions of applicable law with respect to the transportation, handling, use, storage, disposal, removal and disposal of hazardous material, hazardous substances or hazardous waste in accordance with all applicable law or governmental regulations, including any governmental order or requirement for cleanup or remedial work arising out of Contractor's transportation, handling, use, storage or disposal of such hazardous materials on or about the Premises.

d. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to (a) all employees on the Work and other persons who may be affected thereby, (b) all the Work and all materials and equipment to be incorporated herein, and (c) other property at the site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. Where consideration of labor, equipment or safety is involved, Contractor is solely responsible for all decisions and Town shall not incur any liability as a result of Contractor's decisions.

e. All claims which Contractor has or wishes to assert against Town must be presented in writing to Town not later than ten (10) days after Contractor is aware or should have been aware that a claim will or does exist, or such longer time as may be required by law, even though the exact nature of the claim and the amount of the claim may not be determinable at that time. The nature of the claim and the amount of the claim must be presented to Town in writing as soon thereafter as Contractor has or should have had such information, and Contractor hereby waives all claims not presented as provided herein.

f. Upon request of Town, Contractor shall submit for Town's review and approval a schedule ("Schedule") for the performance of the Work. When the Schedule is approved by Town, it shall not be exceeded by Contractor except as may be approved in writing by Town, provided however that, although time is of the essence, the Contractor shall not be responsible for delays caused by matters outside of Contractor's or its sub-contractors’ control. In no case shall the completion date listed on the schedule be beyond the completion date listed in paragraph 11.

g. Contractor shall promptly pay all bills and charges for its materials, labor and other costs in connection with the Work and shall keep the project site and all improvements thereon free and clear of any liens, charges or claims of Contractor or its subcontractors, material suppliers, employees and agents. In the event a lien shall be filed in connection with the Work, Contractor shall, at its own cost, cause such lien to be discharged within ten (10) days from recordation of the lien. In the event Contractor fails to discharge the lien when required hereunder, Contractor shall be immediately liable to the Town and shall pay to the Town all costs, damages and losses incurred by the Town in connection with such lien, including but not limited to attorneys’ fees, costs resulting from delay in closing sales, and the cost of bonds to release the lien.
8. **INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ALL OTHER OWNERS OF LAND UPON WHICH THE WORK WILL OCCUR, AND THEIR RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES 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 WORK, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY CONTRACTOR OR ITS SUBCONTRACTORS TO PROPERLY PERFORM THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, OR NEGLIGENCE OR MISCONDUCT OF CONTRACTOR OR CONTRACTOR’S OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS.

9. **Insurance.** Contractor will also obtain, pay for and maintain the coverage and amounts of insurance coverage not less than those below and will provide the Town with certificates issued by insurance companies satisfactory to Town to evidence such coverage prior to the commencement of any work, and upon renewal or change in any such policy. The Town shall be named as an additional insured on all such policies. Contractor will procure and maintain the following types of insurance at limits no less than stated below:

a. Workers’ Compensation complying with the laws of the State of Colorado and Employer’s Liability Insurance in an amount not less than $1,000,000.00, as well as any similar coverage required for this work by applicable federal or state law.

b. Comprehensive Automobile Liability Insurance in an amount not less than $1,000,000.00 combined single limit.

c. Commercial General Liability Insurance with an installation floater in an amount not less than $1,000,000.00 per occurrence, specifically insuring Contractor’s indemnification obligation under this contract.

Each of the above-named policies shall be issued by an insurer acceptable to Town and be on a form satisfactory to Town, with exclusions and deductibles acceptable to Town, whose approval shall not be unreasonably withheld. The Workers’ Compensation and Employer’s Liability Insurance shall include a Waiver of Subrogation in favor of the Town. In addition, the Town shall be named as an additional insured on the Comprehensive Automobile Liability policy and the Commercial General Liability policy (by endorsement form number CG 20 26, which policies must provide coverage to the Town that is primary with respect to any other insurance carried by said entities. Additional insured coverage shall include products and completed operations coverage. Certificates of Insurance evidencing the above insurance coverage shall be furnished to Town before Contractor starts any Work. Policies shall be furnished to Town upon request. Insurance similar to that required of Contractor shall be provided by all subcontractors to cover their operations performed under this Agreement; provided, however, that the limits of such insurance may be adjusted in accordance with the nature of each subcontractor’s operations. Contractor shall maintain Certificates of Insurance from all subcontractors, enumerating, among
other things, the waivers in favor of, and insured status of, the Town as required herein, and shall provide to Town a copy of each Certificate of Insurance from each subcontractor upon request.

10. **Subcontractors.** The subcontracting of any of the Work shall not relieve Contractor of any of its liabilities or responsibilities under the Contract Documents. Subcontracting will be performed only with the permission of the Town. Contractor shall make prompt payment to its subcontractors for Work performed and/or materials supplied. Any retainage on payments due subcontractors shall be made only after Contractor consults with the Town and obtains the Town’s prior written consent and approval.

11. **Timing.** Time is of the essence. All Work shall be completed by Contractor between May 15, 2018, and June 30, 2018, unless otherwise agreed in writing by the Town Manager or Public Works Director and Contractor.

12. **Performance.** Payment may be withheld by the Town on account of (1) defective Work not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) damage to Town or another contractor, or (5) failure to timely carry out the Work in accordance with the Contract Documents. The acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor in connection with the Work except those previously made in writing and identified by Contractor as unsettled on Contractor’s Application for Payment for the Work.

13. **Lien Waivers.** At the time of final payment for each work item or project requested by the Town, the Contractor shall deliver to the Town a final lien waiver. Final payment shall be made only after the work item or project has been fully performed by the Contractor and the Town has accepted the Work.

14. **Change orders.** The Town may order changes in the Work consisting of additions, deletions or modifications, the Contractor's Compensation and time for completion being adjusted accordingly. All such changes in the Work shall be authorized by written Change Order signed by the Town. The Contractor's Compensation and time for completion may be changed only by Change Order. Cost or credit to the Town from a change in the Work shall be determined by mutual agreement. No aspect of the Contract Documents provided after the date of this contract shall be deemed a change in the Work, unless the particular Contract Document represents a change in the scope of Work (including detail) which was not and could not have been reasonably inferred or anticipated by Contractor, as an experienced and prudent contractor.

15. **Breach waivers.** In the event that either party hereto waives a breach of this Agreement by the other party, such waiver shall not be deemed to be or be construed a waiver of any subsequent breach of the terms hereof.

16. **Defective Work/Corrections/Warranties.** Contractor shall promptly correct any Work found to be defective within two years from the date of completion of the work item or project or within such longer period of time as may be prescribed by law. Contractor also guarantees all equipment, material, supplies, and work furnished on the job against defects for two years from final completion of the Work. Contractor agrees, at its sole cost, to make all repairs and correct such defects under the warranty. Failure to correct such defects within the required time shall
constitute a breach of this Agreement. Contractor expressly agrees that all warranties made by Contractor in this Agreement shall survive the termination of this Agreement and completion of the Work.

17. **Termination.**

a. If Contractor does not fully comply with the terms of this Agreement or any other contract documents, then the Town may, without prejudice to any other right or remedy and after giving Contractor seven (7) days prior written notice and opportunity to cure the breach, terminate the services of Contractor.

b. The Town may also, at any time, terminate for its own convenience any part of the Work or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of Work to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If any part of the Work is so terminated, Contractor shall be entitled to payment for actual costs directly related to Work thereafter performed by Contractor in terminating such Work including cancellation charges of subcontractors and material suppliers, provided such Work is authorized by Town. In case of such termination, the Town will issue a Change Order making any required adjustment to the scheduled date of completion and/or the Contractor's Compensation for the Work.

c. In the event of termination, the Town may offset against any sum due Contractor under the Contract Documents the amount of any obligations of Contractor to the Town, whether or not arising out of this Agreement.

18. **Dispute Resolution.** This Agreement shall be construed, interpreted and governed by the laws of the State of Colorado. In the event that legal proceedings are instituted by either of the parties for enforcement of this Agreement, such proceedings shall be brought in the Garfield County District Court. The prevailing party in any such dispute shall be entitled to an award of reasonable attorneys’ fees and costs, including expert witness fees.

19. **Binding Effect/Assignment.** This Agreement shall be binding upon the parties hereto, their partners, successors and assigns. This contract and the documents incorporated herein by reference constitute the entire agreement between the parties and may be altered, amended or repealed only by duly executed written agreement. Neither party will assign the contract without the written consent of the other. Contractor will not be relieved of any of the responsibilities of this contract by assigning or subcontracting the work or any portion thereof.

20. **Town Budgeting/TABOR compliance.** The Town has appropriated funds out of its 2017 budget in the amount of Contractor’s Compensation. Nothing in this contract shall be construed as a multi-year budgetary obligation and, pursuant to C.R.S. 24-91-103(6), no change order shall issue which causes the aggregate amounts to be paid by the Town pursuant to this contract to exceed the amount appropriated.

21. **Equal Opportunity Employer.** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Engineer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the equal opportunity laws. Contractor shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal, State, or local laws and regulations.

22. Governmental Immunity. Nothing herein shall be interpreted as a waiver of governmental immunity, to which the Town would otherwise be entitled under §24-10-1, et seq., C. R. S., as amended.

23. Negotiation and Drafting of Agreement. The parties agree and acknowledge that both parties have participated in the negotiation and drafting of this Agreement and no presumption shall exist in favor of either party hereto. This Agreement shall not be construed against either party merely because of said party’s drafting of this Agreement.

24. Agreement Administration and Notice. For purposes of administering this Agreement, the Town’s Public Works Director shall represent the Town in carrying out the purposes and intent of this Agreement. 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:                Town Attorney  
                          Town of Carbondale  
                          511 Colorado Avenue  
                          Carbondale, CO 81623

To Contractor:     Jim Terry, Member  
                    GMCO, LLC  
                    P.O. Box 1480  
                    Rifle, CO 81650

25. Entire Agreement. This Agreement shall be binding upon the parties hereto, their successors and assigns. This contract and the documents incorporated herein by reference constitute the entire Agreement between the parties and may be altered, amended or repealed only by duly executed written Agreement.
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____ day of ____________________, 2019.

TOWN:

TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By: ______________________________________________________

Dan Richardson, Mayor

ATTEST:

__________________________

CONTRACTOR: GMCO LLC of Colorado

By: ________________________

Jim Terry

STATE OF COLORADO )
COUNTY OF GARFIELD ) ss.

The foregoing AGREEMENT was acknowledged before me this _____ day of ____________ , 2019 by _____________________________.

Witness my hand and official seal.

My commission expires: ______________________________

__________________________
Notary Public
ATTACHMENT “A”

2019 Town of Carbondale Chip Seal Program
STREET LISTING

<table>
<thead>
<tr>
<th>Road</th>
<th>Square Yards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crystal Canyon Drive</td>
<td>14,188</td>
</tr>
<tr>
<td>Old Barn Road</td>
<td>944</td>
</tr>
<tr>
<td>Pine Ridge Court</td>
<td>1,156</td>
</tr>
<tr>
<td>South Bridge Court</td>
<td>1,140</td>
</tr>
<tr>
<td>Shadowood Lane</td>
<td>2,012</td>
</tr>
<tr>
<td>Perry Ridge Road</td>
<td>9,240</td>
</tr>
<tr>
<td>Patterson Drive</td>
<td>1,194</td>
</tr>
<tr>
<td>Sopris Mesa Drive</td>
<td>3,722</td>
</tr>
<tr>
<td>Snowmass Drive</td>
<td>8,795</td>
</tr>
<tr>
<td>Cleveland Place</td>
<td>2,052</td>
</tr>
<tr>
<td>West 8&lt;sup&gt;th&lt;/sup&gt; Place</td>
<td>567</td>
</tr>
<tr>
<td>West 8&lt;sup&gt;th&lt;/sup&gt; Court</td>
<td>640</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>45,650</strong></td>
</tr>
</tbody>
</table>
ATTACHMENT “B”

Town of Carbondale
2019 Chip Seal Program Bid Form

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Chip Seal Surfacing</td>
<td>45,650</td>
<td>SQYD</td>
<td>$2.25</td>
<td>$102,712.50</td>
</tr>
</tbody>
</table>

Unit Price in words: Two dollars and Twenty-Five cents per square yard

Note: When evaluating the bids, any discrepancy between the listed Unit Price and Total will be settled in favor of the Unit Price in words.

Bid submitted on behalf of: GMCO Limited Liability Company of Colorado

(Company)

Bid submitted by: Jim Terry Member GMCO Limited Liability Company of Colorado

(Name and title of authorized agent)

Date of bid: February 12, 2019
Board of Trustees Agenda Memorandum

Meeting Date: February 26, 2019

TITLE: 2019 Crack Sealing Program Contract

SUBMITTING DEPARTMENT: Public Works

ATTACHMENTS: 2019 Crack Sealing Agreement
January 24, 2017, Board Memo

BACKGROUND
The Town of Carbondale placed an advertisement in the Sopris Sun requesting quotations for the 2019 Crack Sealing Program. The request for quotations was also posted on the Town’s website.

DISCUSSION
The 2019 Crack Sealing Program consists of cleaning cracks and applying approximately 15,000 pounds of hot bituminous material in the voids. The 2019 Program will begin on the streets scheduled for this year’s chip and seal work and may continue to other areas of Town.

Three quotations were received for this year’s work as follows:

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armor Proseal</td>
<td>Montrose, CO</td>
<td>$1.14</td>
<td>$17,100.00</td>
</tr>
<tr>
<td>Bonneville Asphalt &amp; Repair</td>
<td>Orem, UT</td>
<td>$1.40</td>
<td>$21,000.00</td>
</tr>
<tr>
<td>SealCo</td>
<td>Gunnison, CO</td>
<td>$1.80</td>
<td>$27,000.00</td>
</tr>
</tbody>
</table>

In 2017, Armor Proseal submitted the low quote for that year’s crack sealing program, but because of issues with work they performed in 2015, the Town awarded the contract to the contractor who provided the second lowest quote (see attached memo from 01/24/17). As in 2017, staff is recommending that this year’s work be awarded to the contractor who provided the second lowest quote for the work. In 2017, Bonneville Asphalt & Repair did perform the work and there were no issues with workmanship or traffic control.
FISCAL ANALYSIS
The 2019 budget contains $360,000.00 for the Street Resurfacing Program which includes chip sealing, crack sealing, striping, and the Meadow Wood Mill and Overlay project.

Crack Sealing Program Cost:

<table>
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Total Street Surface Program Cost:

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<tr>
<td>Crack Sealing Program cost</td>
<td>$34,000.00</td>
</tr>
<tr>
<td>Chip Seal Program cost @ 2.25/sqyd</td>
<td>$102,712.50</td>
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<tr>
<td>Estimated Street Surface Program cost</td>
<td>$136,712.50</td>
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<td>Street Surface Program budget</td>
<td>$360,000.00</td>
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<tr>
<td>Budget Remaining for Meadow Wood and Striping</td>
<td>$223,287.50</td>
</tr>
</tbody>
</table>

RECOMMENDED MOTION
Staff recommends that the following motion be approved: I move to award the 2019 Crack Sealing Program bid to Bonneville Asphalt & Repair, LLC with a unit price of $1.40 per pound and authorize the Mayor to sign the attached contract.

Prepared by: Kevin Schorzman

________________________
Town Manager
2019 Town of Carbondale  
Bituminous Crack Sealing Program  

CONSTRUCTION AGREEMENT  
(unit prices)

THIS AGREEMENT is entered into by and between Bonneville Asphalt & Repair LLC, a Utah Limited Liability Company, P.O. Box 186, Orem Utah, 84059 ("Contractor"), and the Town of Carbondale, Colorado, a Colorado home rule municipal corporation ("Town"). This Agreement is to be effective February 12, 2019, regardless of the date of signature(s) below.

For good and valuable consideration, the parties agree as follows:

1. **Work.** The Town desires to complete bituminous crack sealing improvement work, within the Town of Carbondale as described in Attachment A. All of the Work will be directed and overseen by the Town’s Public Works Director. Contractor is willing to perform this Work upon request of the Public Works Director at the rates set forth in Attachment B.

2. **Compensation.** Contractor will be paid for the work to be performed pursuant to this Agreement at the unit prices for bituminous crack sealant application set forth on Attachment B ("Contractor’s Compensation"). Contractor shall provide the Town with a performance and payment bond in an amount no less than 100% of the cost of the project in accordance with C.R.S. § 38-26-106 (2016). Any cost associated with the bond shall be included in the unit price for the work performed, and shall not be compensated directly.

3. **Payment.** In consideration for Contractor's performance of the Work, and subject to satisfaction of the Town and acceptance of the same by the Town, Contractor's Compensation shall be payable to Contractor in one payment for Work completed, based on Applications for Payment submitted by Contractor and approved by the Town. Town shall make said payment for the Work to Contractor no later than thirty-one (31) days after the Work is completed and accepted by Town. It shall be a condition precedent to the payment of Contractor that Contractor submits waivers and assignments of liens and such other documents, papers and statements as may be requested by and all in a form reasonably acceptable to Town. Title to all materials shall pass to Town upon final payment. Town may make the check for full and final payment payable jointly to Contractor and any of its subcontractors, material suppliers, laborers or equipment suppliers, and the amount so paid will apply to the Contractor’s Compensation.

4. **Independent Contractor Status.** Contractor shall perform all services and procure all materials as an independent contractor, retaining complete control over Contractor’s personnel, any subcontractors, and operations.
5. **Records.** Contractor shall keep full and detailed accounts as may be necessary for proper financial management under this Agreement. The Town shall be afforded access to all the Contractor's records relating to this Agreement or the Work.

6. **Immigration Compliance.** The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract nor contract with any subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

   The Contractor has verified or attempted to verify through participation in the Basic Pilot Program that the Contractor does not employ any illegal aliens. (For the purpose of this paragraph, “Basic Pilot Program” is defined to mean the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security). If the Contractor is not accepted into the Basic Pilot Program prior to executing this contract, the Contractor shall apply to participate in the Basic Pilot Program every three months until the contractor is accepted or this contract has been completed, whichever is earlier. The Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this contract is being performed. This paragraph shall not be effective if the Basic Pilot Program is discontinued.

   If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the contractor shall notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. The Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

   The Contractor shall also comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to C.R.S. 8-17.5-102(2).

7. **Contractor’s Obligations.** All work performed by the Contractor shall be performed in a workmanlike manner, pursuant to industry standards and all applicable Carbondale Municipal Code provisions, and subject to Town’s satisfaction and approval. The Contractor shall clean up all debris generated by its work and shall keep mud from the street and near the site. Contractor shall also perform as follows:

   a. Contractor shall supervise and direct the Work, using Contractor's best skill and attention, and Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement. Contractor shall provide and pay for all labor, materials,
equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary to complete each Job in a workmanlike manner in strict accordance with the Contract Documents. Contractor accepts the relationship of trust and confidence established between the Town and Contractor by this Agreement. Contractor represents, covenants and agrees to furnish efficient business administration and superintendence, to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of the Town.

b. Contractor warrants to the Town that all materials incorporated in the Work will be new unless otherwise specified in the Contract Documents, that all Work and materials will be free from faults and defects not inherent in the quality required or permitted under the Contract Documents, and that all Work and materials will be in conformance with the Contract Documents and all applicable requirements of local building codes and zoning requirements and all federal, state and local rules, regulations, orders, statutes and ordinances. Any Work not conforming to these requirements shall be considered defective.

c. Contractor shall at all times keep all worksites and all adjacent trails and public streets free from accumulation of waste, materials or rubbish caused by Contractor's operations and shall at all times maintain a neat and orderly work area as required by Town. At the completion of the Work, the Contractor shall remove all such waste, materials and rubbish from and about the Premises, as well as Contractor's tools, construction equipment, machinery and surplus materials. Contractor shall comply with any and all provisions of applicable law with respect to the transportation, handling, use, storage, disposal, removal and disposal of hazardous material, hazardous substances or hazardous waste in accordance with all applicable law or governmental regulations, including any governmental order or requirement for cleanup or remedial work arising out of Contractor's transportation, handling, use, storage or disposal of such hazardous materials on or about the Premises.

d. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to (a) all employees on the Work and other persons who may be affected thereby, (b) all the Work and all materials and equipment to be incorporated herein, and (c) other property at the site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. Where consideration of labor, equipment or safety is involved, Contractor is solely responsible for all decisions and Town shall not incur any liability as a result of Contractor's decisions.

e. All claims which Contractor has or wishes to assert against Town must be presented in writing to Town not later than ten (10) days after Contractor is aware or should have been aware that a claim will or does exist, or such longer time as may be required by law, even though the exact nature of the claim and the amount of the claim may not be determinable at that time. The nature of the claim and the amount of the claim must be presented to Town in writing as soon thereafter as Contractor has or should
have had such information, and Contractor hereby waives all claims not presented as provided herein.

f. Upon request of Town, Contractor shall submit for Town's review and approval a schedule ("Schedule") for the performance of the Work. When the Schedule is approved by Town, it shall not be exceeded by Contractor except as may be approved in writing by Town, provided however that, although time is of the essence, the Contractor shall not be responsible for delays caused by matters outside of Contractor's or its subcontractors' control. In no case shall the completion date listed on the schedule be beyond the completion date listed in paragraph 11.

g. Contractor shall promptly pay all bills and charges for its materials, labor and other costs in connection with the Work and shall keep the project site and all improvements thereon free and clear of any liens, charges or claims of Contractor or its subcontractors, material suppliers, employees and agents. In the event a lien shall be filed in connection with the Work, Contractor shall, at its own cost, cause such lien to be discharged within ten (10) days from recordation of the lien. In the event Contractor fails to discharge the lien when required hereunder, Contractor shall be immediately liable to the Town and shall pay to the Town all costs, damages and losses incurred by the Town in connection with such lien, including but not limited to attorneys' fees, costs resulting from delay in closing sales, and the cost of bonds to release the lien.

8. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ALL OTHER OWNERS OF LAND UPON WHICH THE WORK WILL OCCUR, AND THEIR RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES 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 WORK, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY CONTRACTOR OR ITS SUBCONTRACTORS TO PROPERLY PERFORM THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, OR NEGLIGENCE OR MISCONDUCT OF CONTRACTOR OR CONTRACTOR'S OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS.

9. Insurance. Contractor will also obtain, pay for and maintain the coverage and amounts of insurance coverage not less than those below and will provide the Town with certificates issued by insurance companies satisfactory to Town to evidence such coverage prior to the commencement of any work, and upon renewal or change in any such policy. The Town shall be named as an additional insured on all such policies. Contractor will procure and maintain the following types of insurance at limits no less than stated below:
a. Workers' Compensation complying with the laws of the State of Colorado and Employer's Liability Insurance in an amount not less than $1,000,000.00, as well as any similar coverage required for this work by applicable federal or state law.

b. Comprehensive Automobile Liability Insurance in an amount not less than $1,000,000.00 combined single limit.

c. Commercial General Liability Insurance with an installation floater in an amount not less than $1,000,000.00 per occurrence, specifically insuring Contractor's indemnification obligation under this contract.

Each of the above-named policies shall be issued by an insurer acceptable to Town and be on a form satisfactory to Town, with exclusions and deductibles acceptable to Town, whose approval shall not be unreasonably withheld. The Workers' Compensation and Employer's Liability Insurance shall include a Waiver of Subrogation in favor of the Town. In addition, the Town, shall be named as an additional insured on the Comprehensive Automobile Liability policy and the Commercial General Liability policy (by endorsement form number CG 20 26, which policies must provide coverage to the Town that is primary with respect to any other insurance carried by said entities. Additional insured coverage shall include products and completed operations coverage. Certificates of Insurance evidencing the above insurance coverage shall be furnished to Town before Contractor starts any Work. Policies shall be furnished to Town upon request. Insurance similar to that required of Contractor shall be provided by all subcontractors to cover their operations performed under this Agreement; provided, however, that the limits of such insurance may be adjusted in accordance with the nature of each subcontractor's operations. Contractor shall maintain Certificates of Insurance from all subcontractors, enumerating, among other things, the waivers in favor of, and insured status of, the Town as required herein, and shall provide to Town a copy of each Certificate of Insurance from each subcontractor upon request.

10. Subcontractors. The subcontracting of any of the Work shall not relieve Contractor of any of its liabilities or responsibilities under the Contract Documents. Subcontracting will be performed only with the permission of the Town. Contractor shall make prompt payment to its subcontractors for Work performed and/or materials supplied. Any retainage on payments due subcontractors shall be made only after Contractor consults with the Town and obtains the Town's prior written consent and approval.

11. Timing. Time is of the essence. All Work shall be completed by Contractor on or before May 15, 2019, unless otherwise agreed in writing by the Town Manager or Public Works Director and Contractor.

12. Performance. Payment may be withheld by the Town on account of (1) defective Work not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) damage to Town or another contractor, or (5) failure to timely carry out the Work in accordance
with the Contract Documents. The acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor in connection with the Work except those previously made in writing and identified by Contractor as unsettled on Contractor's Application for Payment for the Work.

13. **Lien Waivers.** At the time of final payment for each work item or project requested by the Town, the Contractor shall deliver to the Town a final lien waiver. Final payment shall be made only after the work item or project has been fully performed by the Contractor and the Town has accepted the Work.

14. **Change orders.** The Town may order changes in the Work consisting of additions, deletions or modifications, the Contractor's Compensation and time for completion being adjusted accordingly. All such changes in the Work shall be authorized by written Change Order signed by the Town. The Contractor's Compensation and time for completion may be changed only by Change Order. Cost or credit to the Town from a change in the Work shall be determined by mutual agreement. No aspect of the Contract Documents provided after the date of this contract shall be deemed a change in the Work, unless the particular Contract Document represents a change in the scope of Work (including detail) which was not and could not have been reasonably inferred or anticipated by Contractor, as an experienced and prudent contractor.

15. **Breach waivers.** In the event that either party hereto waives a breach of this Agreement by the other party, such waiver shall not be deemed to be or be construed a waiver of any subsequent breach of the terms hereof.

16. **Defective Work/Corrections/Warranties.** Contractor shall promptly correct any Work found to be defective within two years from the date of completion of the work item or project or within such longer period of time as may be prescribed by law. Contractor also guarantees all equipment, material, supplies, and work furnished on the job against defects for two years from final completion of the Work. Contractor agrees, at its sole cost, to make all repairs and correct such defects under the warranty. Failure to correct such defects within the required time shall constitute a breach of this Agreement. Contractor expressly agrees that all warranties made by Contractor in this Agreement shall survive the termination of this Agreement and completion of the Work.

17. **Termination.**
   a. If Contractor does not fully comply with the terms of this Agreement or any other contract documents, then the Town may, without prejudice to any other right or remedy and after giving Contractor seven (7) days prior written notice and opportunity to cure the breach, terminate the services of Contractor.
   b. The Town may also, at any time, terminate for its own convenience any part of the Work or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of Work to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If any part of the Work is so terminated, Contractor shall be entitled to payment for actual costs directly related to Work thereafter performed by Contractor in terminating such
Work including cancellation charges of subcontractors and material suppliers, provided such Work is authorized by Town. In case of such termination, the Town will issue a Change Order making any required adjustment to the scheduled date of completion and/or the Contractor's Compensation for the Work.

c. In the event of termination, the Town may offset against any sum due Contractor under the Contract Documents the amount of any obligations of Contractor to the Town, whether or not arising out of this Agreement.

18. **Dispute Resolution.** This Agreement shall be construed, interpreted and governed by the laws of the State of Colorado. In the event that legal proceedings are instituted by either of the parties for enforcement of this Agreement, such proceedings shall be brought in the Garfield County District Court. The prevailing party in any such dispute shall be entitled to an award of reasonable attorneys’ fees and costs, including expert witness fees.

19. **Binding Effect/Assignment.** This Agreement shall be binding upon the parties hereto, their partners, successors and assigns. This contract and the documents incorporated herein by reference constitute the entire agreement between the parties and may be altered, amended or repealed only by duly executed written agreement. Neither party will assign the contract without the written consent of the other. Contractor will not be relieved of any of the responsibilities of this contract by assigning or subcontracting the work or any portion thereof.

20. **Town Budgeting/TABOR compliance.** The Town has appropriated funds out of its 2018 budget in the amount of Contractor’s Compensation. Nothing in this contract shall be construed as a multi-year budgetary obligation and, pursuant to C.R.S. 24-91-103(6), no change order shall issue which causes the aggregate amounts to be paid by the Town pursuant to this contract to exceed the amount appropriated.

21. **Equal Opportunity Employer.** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Engineer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the equal opportunity laws. Contractor shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal, State, or local laws and regulations.
22. **Governmental Immunity.** Nothing herein shall be interpreted as a waiver of governmental immunity, to which the Town would otherwise be entitled under §24-10-1, et seq., C. R. S., as amended.

23. **Negotiation and Drafting of Agreement:** The parties agree and acknowledge that both parties have participated in the negotiation and drafting of this Agreement and no presumption shall exist in favor of either party hereto. This Agreement shall not be construed against either party merely because of said party's drafting of this Agreement.

24. **Agreement Administration and Notice.** For purposes of administering this Agreement, the Town's Public Works Director shall represent the Town in carrying out the purposes and intent of this Agreement. 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:**
   Town Attorney  
   Town of Carbondale  
   511 Colorado Avenue  
   Carbondale, CO 81623

   **To Contractor:**
   Bonneville Asphalt & Repair  
   P.O. Box 186  
   Orem, UT 84059
25. **Entire Agreement.** This Agreement shall be binding upon the parties hereto, their successors and assigns. This contract and the documents incorporated herein by reference constitute the entire Agreement between the parties and may be altered, amended or repealed only by duly executed written Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____ day of _________________, 2019.

TOWN:

TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By: ________________________________
   Dan Richardson, Mayor

ATTEST:

______________________________

CONTRACTOR:

Bonneville Asphalt & Repair LLC
a Utah Limited Liability Company

By: ________________________________
   Kaylie Hansen

STATE OF UTAH

COUNTY OF UTAH

The foregoing AGREEMENT was acknowledged before me this _____ day of ______, 2019 by ________________________________
   Kaylie Hansen - Office Manager - Book Keeper

Witness my hand and official seal.

My commission expires: ________________________________
ATTACHMENT "A"

2019 CRACK SEAL AREAS

- No    - Yes

Town of Carbondale
Public Works
ATTACHMENT "B"

2019 Crack Fill Program Quotation Form

The Program consists of cleaning of cracks and application of approximately 15,000 pounds of hot applied crack sealant material. The Town reserves the right to change the quantity of material applied as well as the locations of the streets or trails receiving the application. The Town will be providing Daey American 974 bituminous material for the Program. The Unit Price bid per pound of material applied shall include the cost of labor, equipment and traffic control necessary to complete the work. All work shall meet, at a minimum, the BITUMINOUS CRACK SEALING SPECIFIC REQUIREMENTS contained in the Quotation Package. Please note: Payment to contractor shall be measured by submitting package labels/content boxes to the Town.

Quotation per Applied Pound of Material

$1.40

Total Quotation

$21,000

Twenty-one Thousand

(Written Amount)

Contractor: Bonneville Asphalt & Repair LLC
Address: 30 Box 18, Glenwood Springs 81601
Phone: 801-225-3544
bonnevilleasphalt@gmail.com
molly.admin.assistant.1-27-19

Town Manager / Town Attorney
Town of Carbondale
511 Colorado Avenue
Carbondale, Colorado 81623
**CERTIFICATE OF LIABILITY INSURANCE**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**
Arthur J. Gallagher Risk Management Services, Inc.
3967 South River Gate Drive, #200
Salt Lake City UT 84047

**INSURED**
BONNASP-01
Bonneville Asphalt & Repair LLC
PO Box 186
Orem UT 84059

**DATE (MM/DD/YYYY)**
3/7/2018

**INSURER(S) AFFORDING COVERAGE**
- INSURER A: Western National Assurance Company
  NAIC #: 24465

**COVERAGES**

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<th>INSR LTR</th>
<th>TYPE OF INSURANCE</th>
<th>ADD, SUBR INSD</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF/MM/DD/YYYY</th>
<th>POLICY EXP/MM/DD/YYYY</th>
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<td>BODILY INJURY (Per accident) $</td>
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<td>PROPERTY DAMAGE (Per accident) $</td>
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<td>X OCCUR</td>
<td>UMB102631001</td>
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<td>2/18/2019</td>
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<td>2/18/2019</td>
<td>Leased/Rented Limit $50,000</td>
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**
Subject to policy terms & conditions

**CERTIFICATE HOLDER**
Town of Carbondale
c/o Town Manager
611 Colorado Avenue
Carbondale CO 81623
USA

**CANCELATION**
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE**
[Signature]

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Board of Trustees Agenda Memorandum

Item No: 2-d

Meeting Date: January 24, 2017

TITLE: 2017 Crack Sealing Program Contract

SUBMITTING DEPARTMENT: Public Works

ATTACHMENTS: 2017 Crack Sealing Contract

BACKGROUND
The Town of Carbondale placed an advertisement in the Sopris Sun requesting quotations for the 2017 Crack Sealing Program. The request for quotations was also posted on the Town’s website.

DISCUSSION
The 2017 Crack Sealing Program consists of cleaning cracks and applying approximately 20,000 pounds of hot bituminous material in the voids. The 2017 Program will begin on the streets scheduled for this year’s chip and seal work and continue to other areas of Town.

Four quotations were received for this year’s work as follows:

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
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<td>Armor Proseal</td>
<td>Montrose, CO</td>
<td>$1.12</td>
<td>$22,400.00</td>
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<tr>
<td>Bonneville Asphalt &amp; Repair</td>
<td>Orem, UT</td>
<td>$1.32</td>
<td>$26,400.00</td>
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<td>Gunnison, CO</td>
<td>$1.49</td>
<td>$29,800.00</td>
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<td>Littleton, CO</td>
<td>$2.32</td>
<td>$46,400.00</td>
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In 2015, Armor Proseal submitted the low quote for that year’s crack sealing program and was subsequently awarded the project. I have spoken with several current and former staff members who were around in 2015 and observed Armor Proseal’s operations and traffic control. It is the conclusion of the former public works director, the current streets supervisor and the current police chief that Armor Proseal’s workmanship and traffic control were below industry standards. Therefore, although Armor Proseal submitted the low quote for this year’s work, staff recommends that we award the 2017 Crack Sealing Program to the
company that provided the second lowest quote: Bonneville Asphalt and Repair, LLC.

Bonneville Asphalt & Repair submitted the low quote for the 2014 crack sealing program, but because of the timing of the quotes and the need to get the crack sealing done prior to the chip sealing program that year, they were unable to meet the town’s schedule and therefore the project was awarded to the company that provided the second lowest quote. I have visited with Bonneville Asphalt & Repair and they have assured me that they are aware of the May 12, 2017, completion date for the project and can meet that schedule.

FISCAL ANALYSIS
The 2017 budget contains $212,500.00 for the Street Resurfacing Program.

Crack Sealing Program Cost:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
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</thead>
<tbody>
<tr>
<td>Application cost at $1.32. @ 20,000 pounds</td>
<td>$26,400.00</td>
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<tr>
<td>Estimated Bituminous material cost @ 20,000 pounds</td>
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<td>Estimated Crack Sealing Program Cost</td>
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Total Street Surface Program Cost:

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<th>Description</th>
<th>Cost</th>
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<td>Estimated Chip and Seal Program cost</td>
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<td>Estimated Street Surface Program cost</td>
<td>$211,030.00</td>
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<td>Street Surface Program budget</td>
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RECOMMENDED MOTION
Staff recommends that the following motion be approved: I move to award the 2017 Crack Sealing Program bid to Bonneville Asphalt & Repair, LLC with a unit price of $1.32 per pound and authorize the Mayor to sign the attached contract.

Prepared by: Kevin Schorzman

[Signature]

Town Manager
Board Trustees Agenda Memorandum

Attachment: H
Meeting Date: 2/26/2018

TITLE: Resolution 3: Garfield County Federal Mineral Lease District Grant Application for Purchase of Radio Upgrade

SUBMITTING DEPARTMENT: Police Department

ATTACHMENTS:

BACKGROUND

During the 2019 budget process, purchase of some radios was budgeted. The current Public Works and Utility radios are not compatible with the current radio system. We have budgeted to replace a few radios a year which will take us several years to convert to the new system. We would like approval to apply for GCFMLD grant and use the budgeted money as match for a traditional grant. If the grant is authorized, we would be able to purchase the majority of radios needed to convert public works and utilities.

FINANCIAL:

Grant in the amount of $50,762.52 would be requested from GCFMLD, the Town's match would be approximately $21,760.00 which is already budgeted in several different line items for 2019

RECOMMENDATION:
Motion to approve Resolution No. 3.

Prepared By: Gene Schilling
## Applicant Information

**Entity Name:** Carbondale Police Department  
**Mailing Address:** 511 Colorado Ave., Ste 911  
**Applicant Contact Name:** Gene Schilling  
**Title:** Chief of Police  
**Are you the primary contact for this grant:** YES NO  
**Email:** eks@carbondaleco.net  
**Telephone:** (970) 963-2662  
**Do you currently have an open GCFMLD grant?** YES NO  
**If yes, provide your grant number(s):**

## Project Information

**Project Title:** Radio Upgrades  
**Application Type (check only one):**  
- Traditional Grant Application  
- Mini Grant Application  

**Project described herein will start no later than (mm/dd/yyyy):** 06/01/2019  
**Impacted Community(ies):** Carbondale  
**City (location of project, including cross streets):** Town of Carbondale  

**Traditional Grant Request (not to exceed $1,000,000):** $50,762.52  
- **Total Project Cost:** $72,542.52  
- **Percent of overall match (% of total project cost) (example 40% type .40):** 30.00%  
- **Percent of cash match (% of total project cost) (example 20% type .20):** 30.00%  

* Round all figures to whole dollar amounts.  

**Mini Grant Request (not to exceed $25,000):**  
- **Total Project Cost:** $72,542.52  

**Note:** No match required.
Section 2 – Application – Summary Form

**Brief Project Description** (In a separate document, answer the three questions below in a total word count of 250 words (250 total, not 750) or less):
- What is the proposed project, including all components?
- Explain how your project is consistent with the Mission Statement of the GCFMLD.
- How will your project benefit communities impacted by the development of natural resources locally?
- Please specify word count on project description document.
- Please verify page count of your submittal on project description document.

**APPLICATION CHECKLIST**

Submit this application with the following required documents in the following order:
- ✓ Response to Selection Criteria Questions (narrative, on your own paper)
- ✓ Budget
- ✓ Preliminary Timeline Estimate
- □ Draft Intergovernmental Agreement, if applicable
- □ Signed Resolution from Governing Body
- □ Attachments to Selection Criteria:
  - Map(s) identifying the project location (Using Google Earth or Google Maps)
  - Site map
  - Up to five letters of support
  - Photos of existing public works or capital projects to be replaced, if applicable
  - Documentation of any opposition to the project, if applicable

By signing below, the applicant certifies that it owns, leases, or otherwise has control over the property on which this project will be completed (collectively, “Control”). Applicant has on file documentation evidencing its Control of the property and will provide such documentation to GCFMLD on request. The Applicant hereby certifies and warrants that any and all statements and representations including all sources and uses of funds made in this Grant Application are true and correct and may be relied upon by the GCFMLD.

**Authorized Signature:**

Gene Schilling
(From applicant organization)

**Date:** 02/07/2019

**GCFMLD Spring 2019 Grant Cycle**
Section 2 – Application – Summary Form

Official form of the GCFMLD. Do not alter or change this form in any manner. Submittals not using official forms or using altered forms may be returned without notice.

Traditional Grant Program. All applicants for the Traditional Grant Program must respond to the following selection criteria questions in no more than nine pages. Applications will be scored on a weighted average. All questions are scored at up to 5 points each, but Questions 1-6 are weighted at 60%, Questions 7-20, at 40%. The nine-page limit does not include the proposed budget, attachments, photographs, maps, letters, etc., but the total page count for your entire submittal may not exceed 25 pages.

In a separate document, please answer every question, numbering and restating in full the question you are answering. You must answer all questions. Failure to provide a response to any question will reduce your score. Please reference all attachments. Twelve point font or greater and standard margins (1” top, bottom, left, and right) required. No double-sided printing.

General Questions

1. Under federal law, your proposal must be one of the following three types: (1) planning, (2) construction and maintenance of public facilities, or (3) provision of public services. Describe the scope of the project – what exactly will be built. Be specific, explaining preparatory work, quantities, dimensions, etc. If the project is intended to enhance, rehabilitate, or replace existing public works or other capital projects, describe the state of the existing public works or other capital projects.

2. Explain how this project is one that would improve a community impacted by the development of natural resources.

3. Describe the community/neighborhood the project will serve.

4. Explain how this project is one that will reduce or alleviate social, economic, or public finance impacts resulting from the development of natural resources.

5. Please describe how this project will help the GCFMLD achieve its mission and specifically how granting your request will provide the greatest use of our resources for the greatest number of persons.

6. Describe the demand for your proposal in detail and any ramifications if the project is not funded.

Funding

7. Describe the status of confirmed and potential funding sources including all applications previously submitted to other organizations requesting funding and the dates that which those funds are to be awarded. Please update the GCFMLD regarding the award (awarded or not) of other financial sources as they are confirmed.

8. Provide a summary of and the individual commitment letters from those partners who have already committed cash or non-cash equivalents as funding for this project.

9. Is this project dependent upon receiving funding from the GCFMLD? What additional sources of funding not listed above could be utilized for this project?

10. Does this project require ongoing operational funding? If so, please describe the estimated funding amounts and the sources to fund this ongoing need.
11. Is this project part of an existing, established program or partnership? If so, please describe its accomplishments to date as they relate to the GCFMLD’s mission as well as the partners involved.

12. How much of your planned cash match is secured? How much of it is yet to be raised, and what are your plans for raising those additional funds? What is your “Plan B” if you are unable to raise those funds?

13. What is the plan to fund future management and/or operating costs of your project? If this project requires multi-phase applications and related approvals, describe other sources of funding other than from the GCFMLD in case this project does not receive future awards.

Additional Questions

14. Please provide letters of support from local governments that are expected to benefit from this project. These letters must be on official letterhead of the entity signed by an authorized signatory.

15. Who is supporting the project? Describe in summary and provide copies of all other additional support letters for this project including letters from individuals, community groups, newspaper articles, petitions, etc. Support letters/emails must be included with the application and will not be accepted or considered by the GCFMLD if delivered in any other way. In answering Questions 14 and 15, you may submit no more than five such letters total. Example: 1 letter for Question 14 and 4 letters for Question 15.

16. Who is opposed to the project? Have neighbors, user groups, or other parties objected to the project? Include any letters, petitions, news articles, or other documents evidencing opposition. What has been done to address the concerns of those opposing, and how has the opposition responded?

17. Describe the Applicant’s ability to complete the specific actions required to accomplish this project. Have you demonstrated this ability before with similar projects?

18. Is the project “shovel ready” and will it be completed within two years of the award date? Describe the planning that has gone into the project. Is design and engineering complete or is there work yet to be done? Using the sample Timeline provided by GCFMLD as a guide, please illustrate the timeline for completion of your project.

19. Describe the Applicants’ project management team, who will be used to complete this project.

Budget

20. Provide a detailed budget that presents information consistent with the answers presented throughout the Selection Criteria and on the Application Summary Form. Applicants must use the GCFMLD Budget Form. Budgets submitted in any other format will be rejected.
General Questions

1. Under federal law, your proposal must be one of the following three types: (1) planning, (2) construction and maintenance of public facilities, or (3) provision of public services. Describe the scope of the project—what exactly will be built. Be specific, explaining preparatory work, quantities, dimensions, etc. If the project is intended to enhance, rehabilitate, or replace existing public works or other capital projects, describe the state of the existing public works or other capital projects.

Our proposal will be to provide a public service. Purchase vehicle and handheld radio equipment for the Town of Carbondale Police and Public Works Department. Radios will allow us to improve citizen and visitor’s safety.

2. Explain how this project is one that would improve a community impacted by the development of natural resources?

Many gas/drilling industry related vehicles are driven in the Town of Carbondale on a daily basis. There is currently a proposal for several drilling rig vehicles to go through Carbondale to drill new wells at the Wolf Creek storage site in the 4 Mile area. Just outside of town limits is a major compressor station which provides gas service to the Roaring Fork and Vail Valleys. Vehicles continually drive through town to service this compressor station. The radios will allow us to respond to incidents that involve a natural resource extraction or service vehicle which may be carrying hazardous materials.

3. Describe the community/neighborhood the project will serve.

The Town of Carbondale is located on the east side of Garfield County, 12 miles east of Glenwood Springs and 30 miles northwest of Aspen. The town has a population of 6,820 residents, with 47.5% of Hispanic/Latino dissent. The median age is 35 years and families represent 67% of the population. The median household income is $68,217; however, 10.06% of the population (over 640 residents) live at or below the national poverty level. The town’s heritage for over 100 years has and is still centered on ranching and agriculture. The town’s largest employer is the local school district. The second largest employer is the local City Market grocery store. The majority of citizens seek a working class income, making a daily long 60-mile roundtrip commute to Aspen for higher paid employment in the winter, ski & summer tourist hospitality industry. Over the last 9 years, since the 2010 census, Carbondale’s population has grown 5.9% by attracting residents bringing new small retail shops, non-profit business, and their eco-talents to town. Fresh newly opened restaurants have revived the local culinary cuisine. Rediscovered galleries now showcase Carbondale’s crafts and visual arts. Two theatre venues cater to the performing arts scene. Fishing, hiking, biking, hunting, and outdoor adventure excursions celebrate the area’s natural beauty where the Crystal and Roaring Fork River valleys meet at the base of Mt. Sopris. All of this, besides ranching and agriculture, has
added to the economic profile in keeping our small town quality of life healthy, while slowly expanding our community’s growth and tax base.

4. Explain how this project is one that will reduce or alleviate social, economic, or public finance impacts resulting from the development of natural resources?

Natural resource extraction in Garfield and surrounding counties is driving growth in the region. The entire county is affected by mineral extraction through impacts on labor, housing, materials, and traffic. Due to the increased traffic in our community from oil and gas extraction activities, purchasing the radios would improve the safety of citizens, visitors, and workers impacted by these activities.

5. Please describe how this project will help the GCFMLD achieve its mission and specifically how granting your request will provide the greatest use of our resources for the greatest number of persons.

The radios will service all residents of Carbondale in addition to the regional visitors, commuter traffic, and vehicles supporting the extraction of natural resources, by safely moving traffic through the community.

6. Describe demand for your proposal in detail and ramifications if the project is not funded.

Due to the increased demands on the traffic route, public safety has become an issue. The radios would help facilitate the reduction of public safety hazards in the community. If the project is not funded, we would not be able to fund the radios conversion for several years, as we have limited budget to replace old radios. In case of an emergency event staff and vehicles would lack ability to communicate with emergency personnel.

Funding

7. Describe the status of confirmed and potential funding sources including all applications previously submitted to other organizations requesting funding and the dates that which those funds are to be awarded. Please update the GCFMLD regarding the award (awarded or not) of other financial sources as they are confirmed.

We currently have none.

8. Provide a summary of and the individual commitment letters from those partners who have already committed cash or non-cash equivalents as funding for this project.

No partners.

9. Is this project dependent upon receiving funding from the GCFMLD? What additional sources of funding not listed above could be utilized for this project?
Only a small portion of the project would be funded without funding from GCFMLD. Maybe a grant award from the Garfield County Commissioners.

10. Does this project require ongoing operational funding? If so, please describe the estimated funding amounts and the sources to fund this ongoing need.

Ongoing operational funding is required and would be provided by the Town of Carbondale.

11. Is this project part of an existing, established program or partnership? If so, please describe its accomplishments to date as they relate to the GCFMLD’s mission as well as the partners involved.

Not part of an existing program or partnership.

12. How much of your planned cash match is secured? How much of it is yet to be raised, and what are your plans for raising those additional funds? What is your “Plan B” if you are unable to raise those funds?

Cash match is currently budgeted in the Town of Carbondale 2019 budget.

13. What is the plan to fund future management and/or operating costs of your project? If this project requires multi-phase applications and related approvals, describe other sources of funding other than from the GCFMLD in case this project does not receive future awards.

Operating costs would be budgeted by the Town of Carbondale and would look at other funds that may become available for this type of project or look at increasing the town of Carbondale budget to purchase more radios.

Additional Questions

14. Please provide letters of support from local governments that are expected to benefit from this project. These letters must be on official letterhead of the entity signed by an authorized signatory.

15. Who is supporting the project? Describe in summary and provide copies of all other additional support letters for this project including letters from individuals, community groups, newspaper articles, petitions, etc. Support letters/emails must be included with the application and will not be accepted or considered by the GCFMLD if delivered in any other way. In answering Questions 14 and 15, you may submit no more than five such letters total. Example: 1 letter for Question 14 and 4 letters for Question 15.

Carbondale Rural Fire Protection District is supporting this grant. CRFPD would be able to communicate with public works vehicles that may assist them in natural disasters or emergency situation operations.

16. Who is opposed to the project? Have neighbors, user groups, or other parties objected to
the project? Include any letters, petitions, news articles, or other documents evidencing opposition. What has been done to address the concerns of those opposing, and how has the opposition responded?

No one has opposed the project.

17. Describe the Applicant's ability to complete the specific actions required to accomplish this project. Have you demonstrated this ability before with similar projects?

Once, funding is awarded radios would be bid out and once bid is received radios would be ordered. With this amount of radios being bid we may be able to order additional radios. We would ask that we be allowed to purchase the maximum amount of radios without going over the grant award from GCFMLD. Once, ordered and received radios will be issued to employees or installed in Town vehicles. We have completed other GCFMLD projects.

18. Is the project "shovel ready" and will it be completed within two years of the award date? Describe the planning that has gone into the project. Is design and engineering complete or is there work yet to be done? Using the sample timeline provided by GCFMLD as a guide, please illustrate the timeline for completion of your project.

The project will be completed within two years. Survey of radio needs for the public works department. Radio talk groups have been assigned for the radios from CCNC.

19. Describe the Applicants' project management team, who will be used to complete this project.

Gene Schilling, Chief of Police and Anna Ramirez, Executive Assistant.
### PRELIMINARY TIMELINE ESTIMATE

**Town of Carbondale Radio Purchase and Conversion**

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<tr>
<th>TASK</th>
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<th>May '19</th>
<th>Jun '19</th>
<th>Jul '19</th>
<th>Aug '19</th>
<th>Sep '19</th>
<th>Oct '19</th>
<th>Nov '19</th>
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<th>Feb '20</th>
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</table>

Project is estimated to begin no later than May, 2019. Once the equipment goes out to bid that would be the start of our project.
# Project Budget: Purchase and Convert Radios

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Date Secured</th>
<th>GCFMLD Grant Request</th>
<th>Applicant Match ($)</th>
<th>Partner Match ($)</th>
<th>Total Funding ($)</th>
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<td>$50,762.52</td>
<td>21,780.00</td>
<td>-</td>
<td>$72,542.52</td>
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## TOTAL SOURCE OF FUNDS

- $50,762.52
- $21,780.00
- $0.00
- $72,542.52
## Project Budget: Purchase and Convert Radios

<table>
<thead>
<tr>
<th>CASH</th>
<th>Use of Funds</th>
<th>Number of Units</th>
<th>Cost Per Unit</th>
<th>GCFMLD Funds</th>
<th>Applicant Funds</th>
<th>Partner Funds</th>
<th>Total Funding ($)</th>
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**USE OF FUNDS - CASH SUBTOTAL**

|                      |                  |                  |                  | $50,762.52    | $21,780.00     | $0.00            |

*Copy of GCFMLD_Budget_Form_FINAL*
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RESOLUTION NO. 3
SERIES OF 2019

A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A GRANT FROM THE GARFIELD COUNTY FEDERAL MINERAL LEASE DISTRICT AND THE COMPLETION OF RADIO UPGRADE.

A. WHEREAS, the Carbondale Police Department is a political subdivision of the State of Colorado, and therefore an eligible applicant for a grant awarded by the Garfield County Federal Mineral Lease District ("GCFMLD"); and

B. WHEREAS, the Carbondale Police Department has submitted a Grant Application for the Purchasing and Converting Radios requesting a total award of $50,762.52; and

C. WHEREAS, the Carbondale Police Department supports the completion of the project if a grant is awarded by the GCFMLD.

NOW, THEREFORE, BE IT RESOLVED BY THE Town of Carbondale THAT:

1. The above recitals are hereby incorporated as findings by the Town of Carbondale.

2. The Town of Carbondale strongly supports the Grant Application submitted by the Carbondale Police Department and has appropriated matching funds for a grant with Garfield County Federal Mineral Lease District.

3. The Town of Carbondale of the Carbondale Police Department authorizes the expenditure of funds necessary to meet the terms and obligations of any grant awarded pursuant to a Grant Agreement with the GCFMLD.

4. The project site is owned by Carbondale Police Department and will be owned by Carbondale Police Department for the next 25 years. The Town of Carbondale of the Carbondale Police Department will continue to maintain Purchase and Convert Radios in a high quality condition and will appropriate funds for maintenance annually.

5. If a grant is awarded, the Town of Carbondale hereby authorizes the Mayor Dan Richardson to sign a Grant Agreement with the GCFMLD

The effective date of this Resolution is the date passed and approved below.

INTRODUCED, READ AND ADOPTED, this 26th day of February, 2019.

________________________________________
Dan Richardson, Mayor

ATTEST:

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

Board of Trustees Agenda Memorandum

Meeting Date: February 26th, 2019

TITLE: GCFMLD Miners Park Playground Replacement Project Mini-Grant-Phase 2
Resolution No. 4, Series of 2019

SUBMITTING: Parks & Recreation Department

ATTACHMENT: Resolution No. 4-2019

Background:
Town staff is submitting a Spring 2019 Garfield County Federal Mineral Lease District (GCFMLD) mini-grant application for Town of Carbondale Public Park playground removal and replacement in Miners Park. This project is in alignment with the 2015 Parks, Recreation & Trails Master Plan which stated the following in recommendation #5, “Maintain existing amenities by focusing on enhancing existing parks before spearheading expansion to new locations.” The existing playground, originally built in 1984, has seen significant solar damage and many of the original play elements have been removed due to their dilapidated nature and have reached their repairable life cycle. A Fall 2018 mini-grant was received to replace the 5-12 year old play structure. This grant will be used to replace the 2-5 year old play structure and to replace the swing set with a stand alone, ADA compatible play element. Within the GCFMLD grant application a Resolution is required from the Town governing body indicating their support for the grant submittal.

Fiscal Financial Implications:
The estimated total project cost is $25,000 which will be entirely funded through the GCFMLD mini-grant. A local Town of Carbondale match is not required for the mini-grant program.

Recommendation:
Adoption of Resolution No. 4- 2019 supporting town submittal of a GCFMLD mini-grant application.

Prepared By: Eric Brendlinger, Parks & Recreation Director

Jay Harrington
Town Manager
RESOLUTION NO. 4
SERIES OF 2019

RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A GRANT FROM THE GARFIELD COUNTY FEDERAL MINERAL LEASE DISTRICT AND COMPLETION OF PHASE TWO OF A TOWN OF CARBONDALE PARK PLAYGROUND REPLACEMENT PROJECT.

WHEREAS: The Town of Carbondale is a political subdivision of the State of Colorado, and therefore an eligible applicant for the grant awarded by the Garfield County Federal Mineral Lease District ("GCFMLD"); and

WHEREAS: The Town of Carbondale has submitted a mini-grant application for public park playground replacement project to the following municipal park lands: Miners Park, requesting a total award of $25,000.00 from GCFMLD to complete Phase Two; and

WHEREAS: The Town of Carbondale supports the completion of Phase Two of the aforementioned playground replacement project if a grant is awarded by the GCFMLD.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF CARBONDALE THAT:

1. The above recitals are hereby incorporated as findings by the Board of Trustees of the Town of Carbondale.

2. The Board of Trustees of the Town of Carbondale strongly supports the Grant Application submitted by the Town of Carbondale for a grant with Garfield County Federal Mineral Lease District.

3. If the grant is awarded, the Board of Trustees of the Town of Carbondale strongly supports the completion of Phase Two of the playground removal and replacement project at Miners Park.

4. The Board of Trustees of the Town of Carbondale authorizes the expenditure of any funds necessary to meet the terms and obligations of a grant awarded pursuant to a Grant Agreement with the GCFMLD.

5. The project sites are owned by the Town of Carbondale and will be owned by the Town of Carbondale for the next 25 years. The Board of Trustees of the Town of Carbondale will continue to maintain the municipal park lands in a high quality condition and will appropriate needed funds for maintenance annually.

6. If a grant is awarded, the Board of Trustees of the Town of Carbondale hereby authorizes the Mayor to sign a Grant Agreement with the GCFMLD.

The effective date of this Resolution is the date passed and approved below.

PASSED AND APPROVED ON: __________________________

APPROVED BY: __________________________
   Dan Richardson, Mayor

ATTEST:

__________________________
   Cathy Derby, Town Clerk
Board of Trustees Agenda Memorandum

Meeting Date: February 26, 2019

TITLE: Roaring Fork Water Plant Maintenance and valve replacement.

SUBMITTING DEPARTMENT: UTILITIES

ATTACHMENTS: Evoqua Cost Break Down

BACKGROUND: The Roaring Fork treatment plant has been in service since 2003. Since the startup of the plant, the Town has performed routine maintenance per the manufacturer’s recommended schedule. Due to staffing and technical expertise required for some of the maintenance, the Town has contracted with the manufacturer representatives to perform training and some scheduled maintenance to keep the filtration system fully operational. Thus, annual site visits have been a regular occurrence to perform the more technical maintenance activities and to make recommendations on future maintenance and equipment replacement.

Over the years we have used Evoqua Water Technologies services for training staff to go over proper membrane cleaning cycles, pinning of the membranes (isolating individual membrane fibers which tear), membrane integrity testing, software upgrades, parts replacement and membrane replacement (in 2016).

DISCUSSION:

In May 2018 during a site visit for maintenance and training by the technicians, it was recommended to replace the isolation and actuation valves (in kind) which direct the flow of water through the filtration system. Staff requested a cost proposal for the work due to the age and potential for leak-by on the valves between the raw and filtered water. The attached proposal and break down identifies the cost associated with this work.
**FISCAL ANALYSIS**

The cost proposal for the valves and replacement items is $40,715.80 with the installation and training estimated to be $4,800. The total estimated cost for this work including installation and maintenance assistance is $45,515.80. Funding for this work was included in the 2019 adopted budget.

**RECOMMENDATION**

Staff recommends the Board of Trustees to authorize the proposed replacement of the equipment as listed in the attachment and to authorize assistance with training and installation of this equipment.

Prepared By:  Mark O'Meara, Utility Director

Town Manager
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<th>Reference Number</th>
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**Total net price:** $19,206.65

Proposal Notes

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08-16-2018
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Total net price without options: $2,302.50

Proposal Notes
CIP Bray Valves
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**Total net price:** $19,206.65
TOWN OF CARBONDALE
PUBLIC WORKS
511 Colorado Avenue
Carbondale, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: February 26, 2019

TITLE: Tree Board Check-In

SUBMITTING DEPARTMENT: Public Works

BACKGROUND
Annually, the Board meets with its advisory boards and commissions to get updates on current work plans and to provide guidance on Board priorities. This item will be the annual check-in for the Tree Board.

DISCUSSION
For the Board’s information, the BOT liaison is Marty Silverstein, the staff liaison is Town Arborist Mike Callas and membership on the Tree Board is currently comprised of the following individuals:

- Dan Bullock
- Kim Bock
- Gabe Riley
- Jo Anne Teeple
- Lisa Paige
- Brett Krudener
- Sarah Kemme

At this meeting, the Tree Board would like to discuss the following items with the Board:

- Arbor Day
- Review of Planting Plans
- Education-Tree walks, education materials, website, tree identification application for smart phones and tablets
- Tree City USA
- Tree planting refinements in the UDC

FISCAL ANALYSIS
None

RECOMMENDED ACTION
This item is being provided for the Board’s information and discussion.

Prepared by: Kevin Schorzman
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Item No: 2, Attachment J

Meeting Date: February 26, 2019

TITLE: Memorandum of Understanding with Roaring Fork Pickleball Association for the North Face Park pickleball courts

SUBMITTING: Parks & Recreation Department

ATTACHMENTS: Map of preferred pickleball configurations on the North Face Park parcel.
Survey Results
Parks & Recreation Commission Minutes Feb 13, 2019 (non-approved)
MOU Language

PURPOSE:
Pickleball has become a very popular sport in Carbondale, in Colorado, and across the nation. Roaring Fork Pickleball Association (RFPA) approached the Parks & Recreation Commission last January to research the opportunity for town land that could be used to construct dedicated pickleball courts in the Town of Carbondale, with the construction of the courts being funded by the RFPA organization.

BACKGROUND:
The RFPA, during a work session with the BOT in December 2018 advised the TOC Trustees that they were willing to fund up to 6 pickleball courts on Town land if 1/2 acre of Town land could be found. Due to the increasing popularity of pickleball and the growing user group of local players, the Parks & Recreation Commission were presented the possibility of repurposing 2 of the 3 tennis courts at the Darien Courts at the North Face Park to 6 dedicated pickleball courts. Upon further research this did not make sense due to the necessity for the Town to fill out a “Removing GOCO Funding Process” request and a possible re-imbursement necessary to GOCO and to the RE-1 School District. The commissioners voted to recommend keeping the three tennis courts and 6 existing painted lines for pickleball courts at the North Face Darien Tennis & Pickleball Courts at their October 2018 meeting.

Staff and commission members researched other parkland open space within our existing park system. The North Face Park Open Space, was determined to be the most logical location because the smaller length and width of a pickleball court complex footprint would still allow the special events and the open space to satisfy the needs for sport practices and other uses of the parks open space.

A design charrette took place with other park user stakeholders. The stakeholders present were the Town of Carbondale Parks & Recreation Department, Roaring Fork Pickleball Association, representatives from the Parks & Recreation Commission, the Roaring Fork Soccer Club, the Roaring Fork Lacrosse Club, the local skateboarders, La Liga Spanish Soccer League, Roaring Fork Futsal, Bike Polo players, Two Rivers Little League and management from Santa Lucia apartments. Jeff Dickinson, a RFPA
member, drew up plan A, B & C from the information gathered at the design charrette. The public was then invited to fill out a 4 question survey to determine the preferred design and why. We received 105 responses and on February 13th the public was invited to an open house presentation of the preferred designs and have an opportunity to meet with the Parks & Recreation Commission.

**DISCUSSION:**
RFPA is willing to fund the design build project in exchange for the MOU allowing for dedicated RFPA access to the courts at pre-determined and posted times. RFPA is also requesting the ability to utilize the courts for fundraising, in the form of clinics, tournaments, membership fees and organized drop-in sessions. The fundraising aspect is necessary to help pay down any portion of the construction that has been bank financed. Collateral for the bank loans will not be provided by the Town of Carbondale. The courts would be Town owned, on public park land and open to the public. RFPA is also requesting that a donor could purchase naming rights to the courts and a sign would display the new name located on the outside of the courts. The sign would abide by our town signage policy and the naming process would be conducted through our existing park and park amenity naming policy. RFPA is also asking for individual court naming sponsorship opportunities to be available to donors through donations to the RFPA. The signage recognizing the individual court donors would be on the inside of the courts and not visible from the outside.

**ANALYSIS:**
The site provides existing parking, future lighting possibilities, a new amenity without sacrificing existing recreational opportunities, and the potential for the creation of a multi-use artificial turf field. For 1/4 acre of general purpose North Face Park land, RFPA will provide an estimated $250,000 to design, construct and maintain 6 dedicated, tournament quality Pickleball courts. Carbondale will be the first venue in the Roaring Fork Valley with such a first-rate facility. With shared access to the adjacent Tennis/Pickleball courts, the 12-court capacity will make Carbondale one of the prime tournament venues in Colorado. Pickleball is the fastest growing sport in the world and these courts will prove to be a valuable asset to residents, guests, tourists and prospective new residents.

**FINANCIAL IMPLICATIONS:**
Court construction costs range from $30,000-$50,000 per post-tensioned concrete court. A 6 court complex built from scratch could fall in the range $180,000-$300,000. This does not include site prep, grading, compaction, or landscaping, nor does it represent future maintenance costs. Language in the attached MOU describes the roles and responsibilities of the Town of Carbondale Parks & Recreation and the RFPA. The MOU contains language allowing for addendums which will be reviewed annually. Next step is design and engineering of the subgrade and the production of a detailed site plan with specifications conducted by the RFPA. Staff would then create a RFP/RFQ for a design/build or construction only proposals.

**RECOMMENDATION:**
The Parks & Recreation Commission, at their February 13th meeting made the following motion:
The Parks & Recreation Commission accepts Plan C as the preferred plan and recommends that it is presented to the Board of Trustees for approval.
Staff recommends that the MOU be discussed and if no changes are necessary, be approved at this time.

**Prepared By:** Eric Brendlinger, Recreation Center Manager

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**JH**
Town Manager- Jay Harrington
Q1
Which plan do you prefer?

Answered: 100  Skipped: 9

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
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<tbody>
<tr>
<td>Plan A</td>
<td>16.00%</td>
</tr>
<tr>
<td>Plan B</td>
<td>11.00%</td>
</tr>
<tr>
<td>Plan C</td>
<td>73.00%</td>
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</tbody>
</table>

Total Respondents: 100
MINUTES
CARBONDALE PARKS & RECREATION COMMISSION
February 13, 2019

Becky Moller called the Carbondale Parks & Recreation Commission meeting to order at 7:08 p.m. on February 13, 2019, in the Town Hall meeting room.

ROLL CALL
The following members were present for roll call:

Members:
Becky Moller, Chair
John Williams, Member
Ashley Allis, Member
Todd Chamberlin, Member

Absent:
Hollis Sutherland, Member
Tracy Wilson, Vice Chair,
Rose Rosello, Member
Genevieve Villamizar-Alternate

Town Staff Present:
Eric Brendlinger, Parks & Recreation Director
Jamie Wall, Facility and Special Events Coordinator

CONSENT AGENDA
Ashley Allis moved to approve the minutes from the Parks & Recreation Commission meeting on January 9, 2019. John Williams seconded the motion, and it was unanimously approved.

PERSONS PRESENT NOT ON THE AGENDA

Eric mentioned that the RVR field in Triangle Park and the Tiny Nightingale shared space with soccer use during the spring seasons. Due to an overlap with Little League and TOC Recreation Department's summer baseball and softball league, there is a short window where the two leagues overlap (May & June) and the leagues don’t have enough field space – doesn’t justify building a new field facility.

Eric mentioned a few additional things about the park and shared space and how we arrived at the present design for pickleball.

- Multiple events can happen at the same time: creating more parking issues
- All of our open space is utilized. What do we give up to have more land/space? The proposed plan creates more play elements, could drive more people to the park.
- Bike Polo: not interested in artificial turf, but they are interested in utilizing the open space on grass and potentially the outfield of the Bill Hanks for Tournaments due to the grass and lights.
- Users of the Park currently: Adult softball, little league, youth baseball, t-ball, adult kickball leagues, and rentals.
- Nice to have extra space for other players/teams to warm up on – when fields are all being used. Pitchers need a place to warm up outside of the playing area.
- No preference on Plans, as long as the number of parking spaces doesn’t change.

Jim Noyes: Representing Roaring Fork Pickleball Association: Plan C makes the most sense (while having tournaments the courts are closest to Tennis Courts). Plan B doesn’t offer anything more than plan C. Plan A is something we can live with but the court is jammed in between parking lot and road (no room for tents for special events and tournaments).
Stats: 35 pickleball players on average between 7am-11am. Peaked one day at 75 – but didn’t last because people couldn’t play. With dedicated courts – you can play all day – weather permitting. Don’t see pickleball immediately growing, but over time yes. Fundraising: excavation issues might be a problem and could run into a clay soil that would require additional excavation work. Cost estimates 250k – confident we will get the money, but not sure how fast. Goal would be to build in 2019 with fundraising. Bank loan through Alpine Bank. Requires personal collateral.

NORTH FACE PARK-MASTER PLAN PUBLIC OPEN HOUSE, PUBLIC SURVEY DISTRIBUTION AND DATA COMPILATION

Plan A: 16%
Plan B: 11%
Plan C: 73%

(Based on the Plan you chose) Elements most excited about:
1. Futsal/Lacrosse fields
2. Close proximity pickleball/tennis courts (more room for tournaments)
3. Dedicated courts
4. Compact
5. Alignment of courts
6. Fastest growing sport in USA
7. Access to Skate Park
8. Separation of tennis and pickleball courts

What aspects of the proposed North Face Park improvements are you most concerned about?
1. None
2. Long term maintenance
3. Who will pay for it
4. Bathrooms
5. Lighting
6. Shade
7. Paving and vehicular stripping of parking space at both parking lots
8. Security of courts (skateboarders)
9. We already have tennis courts with pickleball lines, why more of the same thing
10. Not kid friendly
11. Parking – traffic flow
12. Losing grass fields
13. Visually obtrusive
14. Loss of other sports venues
15. Separate space for soccer field – not wrapped around pickleball courts
16. Appearance, fragmenting of the open space
17. Losing open space
18. Parking and infrastructures being able to handle the demand
19. Too much congestion

What additional elements or features would you like to see included in the park?
1. Bathrooms
2. Water fountain
3. Developed Parking
4. Viewing stands
5. Lighting
6. Shade structures
7. Sports equipment storage
8. Ballfield improvements
9. Pavilions
10. Trees
11. 8 courts instead of 6
12. Raised announcers for special events
13. Skate park expansion
14. Asphalt professional pump track
15. Different orientation of the courts as it relate to the sun
16. Play equipment
17. Basketball courts
18. Volleyball sand courts
19. Surrounding sidewalk/trails for access or walking while kids are playing on associated field's
20. RFTA shuttle stop

What elements in your preferred design are you the least excited about and why?
1. Lack of bicycle rack
2. No need for more courts, use existing tennis courts
3. Ballfield improvements
4. Permanent nets
5. Closer access to parking
6. Resurface tennis courts and striping
7. How will we pay for it
8. Pickleball courts could be far away from tennis courts
9. Parking is not exciting because our family rides bikes
10. Adequate signage for parking
11. No paths to parking to courts
12. Loss of space for soccer
13. Additional maintenance and amenities for Parks and Recreation Department
14. More Pickleball courts
15. Goalie location in relation to the sun
16. Elimination of free play/small kiddo zones
17. Lack of creativity in the design
18. Pickleball community has to come up with the money and no other use group has to

NORTH FACE PARK-MASTER PLAN-PARKS & RECREATION COMMISSION PREFERRED DESIGN
DISCUSSION AND DECISION

Plan C Discussion: Fits in both fields for soccer and boxed lacrosse fields. Access to both tennis and designated PB courts. Sidewalk to access Skate Park could be added with crusher fines or cement. Would lose the trees in between the existing tennis courts and the new pickleball courts – town arborist said two are not in good shape (keep one and re-plant it in the park. Lose two trees and replace them with healthy trees in another location in the park. The trees are Autumn Blaze Maples) Powerlines/irrigation plans- would be disrupted by this design. If the power lines have been correctly sleeved with appropriately sized conduit this would not be an issue to pave over them. Part of the irrigation system could be capped and the other part salvaged with this design. This might not provide enough coverage and it may need to be redesigned to have additional irrigation heads.
Phase 1 on the Urban Soccer & Lacrosse field: keep the grass as natural and irrigated. The pre-fabricated Urban Soccer & Futsal fields will have potential for multi-use (removable walls, nets, two separate fields or one long field, led lights) Boxed lacrosse: removable walls/netting. Lacrosse and Futsal fields need netting/fencing for the containment of the balls for the light space of the park, and the proximity to other park uses, users and parking lots. There is a plastic product that places walls and nets on the natural turf in a permanent, or non-permanent manner and can be removed at a later date.

Plan A Discussion: cuts off access to parking lot/ball fields. Bringing in materials (semi-trucks) to ballfield and to the bike park is needed through this access point. However, plan A presents a path for Pickelball courts, soccer
field, and ballfield. Plan A doesn’t have a designated Lacrosse field – because a large amount of the turf area would need to be used for parking. It only is left with a shared space with soccer and open space.

Nothing will change for the parking lot near the hill (smaller lot). Not enough space for pickleball courts.

**Commission preferred design comments:**

*Ashley Allis:* Option C. maximized the green space, option for skate park expansion, layout makes more sense, restrooms, access to all field uses.

*Becky Moller:* build them as pickleball courts, but if no one else is using the courts: futsal can be used on the PB courts. Nothing that would harm the courts such as skateboarding, razors or bikes.

*Luis Yllanes:* Plan C preferred option. In terms of parks and rec water use: how would this affect water management at parks in regards to the VCAPS report for future drought scenarios?

*Todd:* Plan C makes most sense, parking issue over the years. When does it max out? Noise?

*Eric:* Roaring Fork Futsal (winter based) 49 teams, 240 kids, 260 men & 41 women, (590 futsal players) in local gyms. Interested in summer leagues.

Documented noise complaints from Pickleball in other towns? (Jim explained that the pickleball industry was started with wooden paddles and a hard plastic ball. The industry now uses graphite paddles and a different material in the ball so the noise is dampened somewhat. Pickleball courts are not appropriate for a courtyard surrounded by residences.)

*Becky:* Don’t want to feel rushed on the decision. More future vision, what is the smartest way to build, not just rush based on money. No playground for little kids – or room for one.

John Williams made a motion to accept Plan C and fast track. The approval process at the Trustee level to take advantage of free money coming to the Town and utilizing the space for a popular sport allowing it to stay in Carbondale.

Ashley Allis: Okay with seconding the motion and recommending to the Trustees the acceptance of Plan C, but is not ok with including the language in the motion to fast track the process. She would like to see some final engineered designs.

Ashley Allis moved to make a motion accepting Plan C as the preferred plan of the Parks and Recreation Commission to go to the Board of Trustees.

John Williams second the motion. Motion was put to a vote with three votes in agreement (Allis, Williams and Chamberlin and one vote against (Moller) The motion was approved.

**REPORT & UPDATES**

*Eric Brendlinger, P & R Director:* Eric mentioned that the Ice Rinks are still going strong and that the Broomball Tournament is taking place. Ice maintenance is excellent. Longest time the ice has been open and we have a rental on Sunday February 17th that should be possible. Future Parks & Recreation Commission items were discussed including: VCAP reports (how we manage our parks and what our future parks look like), Moving forward on Crystal restoration-plans for Riverfront Park, and the Tree labeling project from the Environment Board.

*Jessie Rochel, Recreation Center Manager:* Jessie is playing in the broomball tournament so was unable to attend the meeting.
Commissioners: Nature Park fence damage and checking on the porta potty servicing at the Delaney Nature Park. (Eric mentioned this was checked into and is being serviced weekly. He said he will check into the hole in the fence around the solar array at the same park.)

Luis Yllanes, Trustee Liaison: Mentioned VCAP report as it pertains to park management discussions for a future meeting topic.

ADJOURNMENT
The February 13, 2019, regular meeting adjourned at 8:09pm. The next regularly scheduled meeting is set for March 13, 2019 at 7:00 pm.

Respectfully submitted,
Jamie Wall
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
TOWN OF CARBONDALE
AND
ROARING FORK PICKLEBALL ASSOCIATION

REGARDING FUNDRAISING FOR DEVELOPMENT, CONSTRUCTION,
MAINTENANCE & MANAGEMENT
OF PICKLEBALL COURT COMPLEX
LOCATED WITHIN THE NORTH FACE PARK

This Memorandum of Understanding ("MOU") is entered into this ___ day of (February/March), 2019 between the TOWN OF CARBONDALE, a Colorado home rule municipal corporation with a street address of 511 Colorado Ave., Carbondale, CO, 81623 (the “Town”) and the ROARING FORK PICKLEBALL ASSOCIATION, a Colorado unincorporated non-profit association, with a street address of 20 Maroon Place, Carbondale, CO, 81623 ("RFPA").

1. Background

On December 18, 2018, the Town of Carbondale’s Board of Trustees authorized Town staff to work with the Roaring Fork Pickleball Association (RFPA) on their proposed master plan and development of dedicated pickleball courts at a site on Town of Carbondale land located within the Town’s existing North Face Park. A condition of this authorization was that a Memorandum of Understanding (MOU) agreement be signed between the Town of Carbondale (Town) and an established local entity which will fund the project, and coordinate with the Town regarding the design, development, maintenance, improvements and priority of access to the site. The final project will be on Town land and be owned by the Town of Carbondale and operated as a public recreation amenity within a Town park, subject to the terms of this MOU.

2. Goals of the Town:

- Manage and maintain all parks, trails, open space and recreation facilities, including the Carbondale Pickleball Court Complex
- Oversee the design, development, construction and management of the Carbondale Pickleball Court Complex
- Conduct an assessment of North Face Park infrastructure present and future needs
- Schedule and post for public consumption the scheduled use of the Carbondale Pickleball Court Complex once completed
- Manage court rentals for exclusive use, tournaments, clinics, groups and individuals

3. Goals of RFPA:
• Assist in the activities and enjoyment of pickleball for all members
• Serve and to act as a public forum for discussing, evaluating and promoting the sport of pickleball.
• Provide private funding through annual dues paid by members and donations.
• Promote maintenance and enhancement of pickleball facilities.
• Launch or support programs and services that address local Pickleball players needs, and collaborate with the Town of Carbondale on fundraising, development, construction, scheduling, maintenance and improvements to the Carbondale Pickleball Court Complex.

4. **Scope of Work:**

• The work described within this MOU agreement includes ongoing and future activities to be undertaken by the Town and/or RFPA to fundraise, design, develop, construct, make improvements, maintain, schedule and manage the proposed Carbondale Pickleball Court Complex within the North Face Park.
• Current and future members of RFPA, along with other additional recruited community volunteers, will raise funds for the site preparation, design and construction of a pickleball court complex at the North Face Park, to include engineering drawings and a landscape site plan taking into consideration and highlighting the ADA access plan.
• Construction of new pickleball courts at the North Face Park will require existing irrigation infrastructure to be abandoned under the footprint of the new courts. RFPA will be responsible for this work and any work needed to redesigned the existing system and make it functional for the remaining turf park irrigation needs.
• RFPA's president will serve as the main liaison for RFPA's dealings with the Town pursuant to this MOU unless otherwise agreed by the Town.
• The work efforts and activities of RFPA and their project representatives will be outlined within this MOU and/or in an annual project plan addendum approved for future year(s).
• Any project or activity not included in this MOU or in the Town's maintenance plan for this site is subject to review and approval by designated representatives of the Town.

5. **Roles and Responsibilities:**

**Town of Carbondale:**

• The Town will act as the project manager for the design, permitting, request for proposals and bidding process, construction and development of the Carbondale Pickleball Court Complex based on the design parameters created by staff, stakeholders, consultants and public outreach efforts. Contingency design decisions and modifications to the project if needed, will be based on availability of resources and site conditions and consultation with Town staff, with feedback from RFPA.
• The Town will provide for access by RFPA and the general public to the Carbondale Pickleball Court Complex site, and make the site available for regularly scheduled pickleball play, subject to the following priority of use:
  Scheduled Use – Priority use is given to the following organizations in this order:
  1. Town of Carbondale Programs & Activities
  2. Roaring Fork Pickleball Association
3. Intergovernmental Agreement Use
4. Carbondale Youth Club Sports
5. Carbondale Residents Groups
6. Area Youth Sports Groups
7. Adult Groups Non-profit

- The Town will provide a schedule of annual recreation department programming use by April of each year to allow RFPA to conduct drop-in and reserved options for maximum use of court time and to allow RFPA to provide a seasonal schedule that mitigates court use conflicts.
- The Town will provide designated access to the pickleball courts for RFPA’s members at the following times:
  Monday, Wednesday, Friday and Saturday for 4 hour blocks, starting no earlier than 7 am (peak Summer season) and no later than 10 am (weather, temperature, light driven in the shoulder seasons) This represents 20 hours a week of reserved court time for scheduled drop-in play, managed by the RFPA representatives and available to RFPA members.
  Tuesday & Thursdays starting at no earlier than 5 pm- until closure due to darkness. If lights are added evening access would be revisited annually. This represents an additional 6 to 8 hours of reserved court time for scheduled drop-in play, managed by the RFPA representatives and available to RFPA members.
  Designated Court Access for RFPA allows RFPA to determine play protocol depending on who shows up and the level of play. RFPA will manage this.

- The Town will provide public access to the pickleball courts at times when scheduled and posted activities are not taking place. Open court times will be available to all on a first-come first-served basis. The courts are available to all on a one-hour honor system if players are waiting. Open court time can also be reserved thru the TOC Parks & Recreation Department. Open court time can also be designated for IGA uses by the Parks & Recreation Department. Open court time can be reserved thru Parks & Recreation Department for clinics, exhibitions, fundraisers and tournaments.

- The Town will provide maintenance upkeep and repair of all structural components of the Park, including but not limited to the public restrooms, parking areas, play surfaces, turf areas, sidewalks, fencing, and irrigation systems on a schedule to be determined by the Town.

- The Town will review all proposed site improvement projects and determine if they are appropriate for approval. All new projects or changes to existing or future public recreation amenities should be proposed and approved in writing.

- The Town may provide financial resources (if Town budgeted) that are needed for proposed activities, including but not limited to maintenance, programming, tournaments, clinics and special events.

- The Town will conduct regular trash pickups and North Face Park maintenance at a schedule to be determined by the Town and provide recycling opportunities in the park.

- The Town will meet with RFPA representatives for ongoing plan review and clarification of responsibilities annually.

- The Town will meet with RFPA representatives on or before November 1st of each year to review agreement activities and develop an annual work maintenance plan for the Pickleball Court Complex.

- The Town may seek possible outside funding for the Pickleball Court Complex and other North Face Park recreation amenity improvements through grants and other sources.
• The Town may assist, when time allows, the RFPA representatives with special events and tournaments.

**Roaring Fork Pickleball Association:**

• RFPA will fund the design, engineering, construction and development of the Carbondale Pickleball Court Complex based on the design parameters created by staff, stakeholders, consultants and public outreach efforts. Contingency design decisions and modifications to the project if needed, will be based on availability of resources and site conditions and consultation with Town staff. The Town shall not be obligated to proceed with development unless adequate funds are raised by RFPA.

• RFPA will designate (with Town concurrence and approval) and supervise one (1) and no more than three (3) project liaisons, who will work collaboratively with the Town with the collective goal to develop and construct the Carbondale Pickleball Court Complex at the North Face Park.

• As a privately funded construction project on public land, RFPA shall comply with all rules and regulations that exist in Town parks.

• Exclusive use by private individuals for camps and clinics or tournaments must abide by Town Rules and Regulations. For profit use of a public amenity requires a contractual relationship with the Town and is a fee based use of the courts.

• RFPA use of the courts in an exclusive manner (Designated Access Time) for drop-in play for RFPA members only or a $5.00 drop-in fee for visiting pickleball players, will be managed by RFPA. This time will be granted if within the 28 hours a week of scheduled RFPA weekly use for drop-in play. This time must be previously scheduled and posted for public consumption.

• Drop-in play schedules must adapt and not conflict with TOC Parks & Recreation Department programmed use of the courts. This schedule for seasonal use will be set in April of each year with the Town of Carbondale allowing RFPA to produce a non-conflicting drop-in schedule for the upcoming season.

• RFPA use of the courts in an exclusive manner for clinics, tournaments, club fundraisers, and other uses that fall outside of the 28 hours of RFPA Designated Access Time granted for drop-in play will be considered exclusive use and a fee based, scheduled use of the courts.

• Weekend tournaments produced by the RFPA will be considered exclusive use and a fee based, scheduled use of the courts. Court rental paperwork must be completed and paid for prior to use.

• RFPA will only use the dual-purposed tennis/pickleball courts on an as needed overflow basis. These courts will be available for pickleball open/drop-in play for those with their own nets and balls.

• Provide additional resources for all proposed activities, including but not limited to; maintenance, programming, tournaments, clinics and special events.

• Provide a schedule detailing RFPA use of the facility on an annual basis according to the scheduled priority use presented above.

• Organize and coordinate educational opportunities for school students and teachers to be introduced to the sport of pickleball.

• Provide volunteers to carry out routine maintenance, along with Town approved special projects.

• When required by the Town, obtain volunteer worker Waiver and Release Liability form signatures.
• Provide feedback to the Town of Carbondale staff of the upkeep and maintenance needs of the Carbondale Pickleball Court Complex as a public community park amenity. During any exclusive use of Town property by RFPA, RFPA shall have sole responsibility for, and the Town shall have no liability for, management of the property and any injury or damage to persons or property occasioned by RFPA, its members, agents, or invitees.

6. **RFPA Fundraising Plan:** RFPA wishes to underwrite the design and build costs and solicit a Pickleball Court Complex sponsorship in exchange for naming rights of the courts. In accordance to resolution No 15 Series of 2013 which authorizes procedures for the naming or renaming of public parks and public facilities, there is a provision in C-6 of that document that honors a Town Park or Park Facility donor’s stipulation that the naming or renaming of the park or park facility can occur as the condition of the donation. RFPA will be required to follow the provisions in the resolution to conduct this renaming process for the pickleball courts. RFPA also wishes to place signage on the pickleball courts to honor the donors involved in the fundraising efforts to get the courts designed and built. A permanent plaque or recognition wall is allowed. The design and size should comply with our sign code in the Unified Development Code Chapter 17 Development Standard 5.9 Signs. Individual court sponsorship opportunities for fundraising purposes would be restricted to 6” x 18” signs on the inside of the fence, thereby unseen from the exterior.

7. **Termination:** The Town and/or RFPA may terminate this MOU at any time by notice in writing at least ninety (90) days before the effective date of termination. In the event that one party provides the other with such notice, the parties will meet promptly to discuss termination issues.

8. **Amendment:** The Town and RFPA may, from time to time, request changes in the nature of the provisions of this MOU. Such changes which are mutually agreed upon will be incorporated in written amendments to this MOU.

9. **Ratification of MOU:** It is agreed that this MOU shall be reevaluated and re-approved by both parties annually, prior to November 1st of each year. In the event that either party does not re-approve, this MOU shall be deemed to terminate on February 1 of the next year.

10. **Insurance:** RFPA agrees to keep and maintain for the duration of this MOU including but not limited to commercial general liability with at least the minimum limits shown below. The commercial general liability insurance shall include completed operations coverage. RFPA shall furnish the Town with a certificate of insurance listing the Town of Carbondale as Certificate Holder and as an additional insured on RFPA’S general liability policy. In the event of bodily injury or property damage loss caused by RFPA or RFPA’S actions or inactions pursuant to this MOU, RFPA’s insurance coverage shall be primary with respect to any other insurance which may be available to the Town, regardless of how the “Other Insurance” provisions may read. In the event of cancellation, substantial changes or nonrenewal, the RFPA insurance carrier shall give the Town at least thirty (30) days prior written notice. No work shall be performed until RFPA has furnished to the Town the above referenced certificates of insurance, in a form suitable to the Town. Upon request, RFPA shall provide the Town copies of RFPA insurance policies and endorsements.

   Commercial General Liability:
   - Each Occurrence: $1,000,000
   - General Aggregate: $1,000,000
Nothing herein shall be construed as a waiver on the part of the Town to any defense of any claim, including but not limited to the defense of governmental immunity.

11. **Indemnification:** RFPA, its agents, officers, employees and volunteers shall indemnify, hold harmless, and defend the Town and all of its officers, agents, employees from and against any and all liability for personal injury and property damage arising out of or resulting from the negligent acts or omissions of its employees, its volunteers, and/or its agents, in the performance of this MOU, and any injury to persons or property occurring during any times then RFPA shall have exclusive use of Town property pursuant to this MOU. RFPA’s indemnity obligations hereunder shall include the obligation to pay any attorneys’ fees or other costs incurred by the Town in defense of any third party claims.

12. **Assignment:** Neither party shall assign any interest in this MOU unless approved in writing by both parties.

13. **Governing Law:** The MOU shall be construed under the statutes and laws of Colorado. It is agreed between the parties that RFPA will comply with and observe all Federal and State or local laws, or ordinances, codes, rules or regulations pertaining to this MOU and performance thereof.

14. **Authority:** The Town Manager under whose supervision the Parks and Recreation Department is assigned or his/her designee shall have authority to act on behalf of the Town and shall be the interpreter of the requirements of this MOU on behalf of the Town. The first point of contact for RFPA shall be the Parks and Recreation Director.

15. **Independent Contractor:** Employees and volunteers of RFPA shall not be deemed to be employees of the Town. RFPA will supervise its employees and volunteers and will disburse all payrolls, taxes, licenses, insurance, uniforms and all other expenses incurred by RFPA in the performance of this MOU.

16. **Governmental Immunity/Budgeting.** 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. All of the Town’s obligations pursuant to this MOU are and shall remain contingent upon annual budgeting by the Town, and nothing in this MOU shall be construed as a multi-year financial obligation of the Town.

17. **Ownership/Liens.** At all times, the North Face Park, and all property and improvements within that, including the proposed new Pickleball Court Complex, shall be the property of and wholly owned by the Tow, and RFPA’s rights in such property shall be limited to the usage allowed for above, for so long as this MOU is effect. RFPA may not and shall not pledge its interests pursuant to this MOU in support of any loan transaction, nor create any other liens against Town property. Upon termination of this MOU, the Town shall have sole discretion regarding future use and/or disposition of any improvements installed upon the North Face Park property pursuant to this MOU.

**TOWN OF CARBONDALE**

BY: __________________________

Dan Richardson

TITLE: Mayor

**ROARING FORK PICKLEBALL ASSOCIATION**

BY: __________________________

Cilla Dickinson

TITLE: RFPA Board President
DATE: ____________________  DATE: ____________________

ATTEST:

______________________________
Cathy Derby, Town Clerk
To: Mayor Dan Richardson and  
Carbondale Board of Trustees

From: Gene Schilling  
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for CoVenture

Date: January 29, 2019

CoVenture has submitted a liquor license special event application for March 1, 2019 from 4:00 pm—11:59 pm at 201 Main Street. I have found no records that would cause me to recommend denial of this liquor license application.

Evan Zislis / Event Manager

I recommend approval of this liquor license.
TOWN OF CARBONDALE
APPLICATION FOR A SPECIAL EVENTS PERMIT

IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NON-PROFIT AND ONE OF THE FOLLOWING:

- SOCIAL
- ATHLETIC
- FRATERNAL CHARtered BRANCH, LODGE OR CHAPTER
- PATRIotic OF A NATIONAL ORGANIZATION OR SOCIETY
- POLITICAL RELIGIOUS INSTITUTION
- PHILANTHROPIC INSTITUTION
- POLITICAL CANDIDATE
- MUNICIPALITY

TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:

- MALT, VINOUS AND SPIRITUOUS LIQUOR $50 PER DAY
- LIQUOR PERMIT NUMBER

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE

COVENTURE

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY

201 Main Street, Carbondale, CO 81623

3. ADDRESS OF SPECIAL EVENT

201 Main Street, Carbondale, CO 81623

<table>
<thead>
<tr>
<th>NAME</th>
<th>DATE OF BIRTH</th>
<th>EMAIL ADDRESS</th>
<th>PHONE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evan Zisilis</td>
<td></td>
<td>COVENTURE.io</td>
<td></td>
</tr>
<tr>
<td>Evan Zisilis</td>
<td></td>
<td>NTURE.io</td>
<td></td>
</tr>
</tbody>
</table>

4. PRES/ECY OF ORG. OR POLITICAL CANDIDATE

5. EVENT MANAGER

6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR?

- NO
- YES HOW MANY DAYS? 0

7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE?

- NO
- YES TO WHOM? NA

8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED?

- NO
- YES HOW MANY DAYS? 1

LIST BELOW THE EXACT DATES(S) FOR WHICH APPLICATION IS BEING MADE FOR PERMIT

<table>
<thead>
<tr>
<th>Date</th>
<th>Hours From</th>
<th>Date</th>
<th>Hours From</th>
<th>Date</th>
<th>Hours From</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/1/2019</td>
<td>4:00pm</td>
<td>To 11:59pm</td>
<td>3/1/2019</td>
<td>m</td>
<td>3/1/2019</td>
</tr>
</tbody>
</table>

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

SIGNATURE

SIGNATURE

DATE

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 12, Article 48, C.R.S., as amended.

THEREFORE, THIS APPLICATION IS APPROVED.

SIGNATURE

SIGNATURE

DATE

DATE

LOCAL LICENSING AUTHORITY

ATTEST
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,

COVENTURE, LLC

is a Limited Liability Company formed or registered on 05/03/2004 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 20041161839.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/28/2019 that have been posted, and by documents delivered to this office electronically through 01/29/2019 @ 10:03:41.

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 01/29/2019 @ 10:03:41 in accordance with applicable law. This certificate is assigned Confirmation Number 11357848.

[Signature]
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/ click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."
December 30, 2018

Mas Tyler Mobius
6 Highway 133
Carbondale, CO 81623

To whom it may concern;

As an industry leader in digital marketing and serial entrepreneur, I am proud to call Carbondale, Colorado home. I have built international companies all over the world but have chosen to pursue my interests from this Valley because I believe global brands can set up shop in small towns, while serving the world. I also believe that we can attract talent to support these sophisticated businesses, developing a better business culture. The work that GlenX accomplished last year in creating coding spaces and customized programming for entrepreneurs was an important start to creating the ecosystem for rural economic development, but this effort requires both public and private support to take that next step and become sustainable.

COVENTURE is that next step to providing economic resiliency and opportunity for the Roaring Fork Valley and beyond. This new enterprise will bring co-working, business incubation, programming, professional services and venture capital all under one roof to provide comprehensive solutions for an array of business needs. To help ensure their success, I have agreed to serve as Chairman of the Board as well as provide them adequate space in my new building in downtown Carbondale.

In my capacity as Landlord, I have agreed to provide a $125K grant to subsidize COVENTURE’s rent as they build their co-working revenue model over the next 5 years. In my capacity as Chairman of the Board, I will help their executive team implement a successful customer acquisition and growth strategy to ensure they are sustainable within 5 years. I do not make this kind of financial commitment lightly. I believe in the COVENTURE vision for economic resiliency and am confident we are assembling the right team to realize this vision. I hope you will join me in supporting this important resource for rural communities on the Western Slope.

Sincerely,

Mobius
406-4864
Alcohol served by TIPS-Trained Servers & ID's will be checked pre-service.
To: Mayor Dan Richardson and Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Date: February 6th, 2018

Ref: Liquor License Special Event for River Bridge Regional Center to be held at the old Thompson Barn, River Valley Ranch Drive, Carbondale on April 27th 2019 from 5pm to 10pm.

I have found no records that would cause me to recommend denial of this liquor license special event application to serve alcohol.

Blythe Chapman / Applicant

I recommend the approval for the liquor license.
TOWN OF CARBONDALE
APPLICATION FOR A SPECIAL EVENTS PERMIT

IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NON-PROFIT

AND ONE OF THE FOLLOWING:

- [x] SOCIAL
- [ ] ATHLETIC
- [ ] FRATERNAL
- [ ] CHARTERED BRANCH, LODGE OR CHAPTER
- [ ] PATRIOTIC
- [ ] OF A NATIONAL ORGANIZATION OR SOCIETY
- [ ] POLITICAL
- [ ] RELIGIOUS INSTITUTION
- [ ] PHILANTHROPIC INSTITUTION
- [ ] POLITICAL CANDIDATE
- [ ] MUNICIPALITY

TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:

- [x] MALT, VINOUS AND SPIRITUOUS LIQUOR $50 PER DAY

LIQUOR PERMIT NUMBER

STATE SALES TAX NUMBER (REQUIRED)

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE

River Bridge Regional Center

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY

520 21st Street
Glenwood Springs, CO 81601

3. ADDRESS OF SPECIAL EVENT

River Valley Ranch "Barn"
333 River Valley Ranch Drive
Carbondale, CO 81623

NAME

Blythe Chapman-Tardie

DATE OF BIRTH

EMAIL ADDRESS

verbridgez@gmail.com

PHONE NUMBER

5. EVENT MANAGER

6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR?

- [x] NO
- [ ] YES HOW MANY DAYS?

7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE?

- [ ] NO
- [x] YES TO WHOM?

8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED?

- [x] YES
- [ ] NO HOW MANY DAYS?

LIST BELOW THE EXACT DATES(S) FOR WHICH APPLICATION IS BEING MADE FOR PERMIT

Date: 4/27/19
Hours From 5pm To 10pm

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

SIGNATURE

DATE

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 12, Article 48, C.R.S., as amended

THEREFORE, THIS APPLICATION IS APPROVED.

SIGNATURE

DATE

LOCAL LICENSING AUTHORITY

ATTEST
FACILITIES USE AGREEMENT

This Facilities Use Agreement ("Agreement"), is made as of October 3, 2018, between Destination Holdings, LLC ("Destination"), a Colorado Limited Liability Company having an address of 333 River Valley Ranch Drive, Carbondale, CO 81623 and telephone number of 970-963-0400, and

River Bridge Regional Center ("Licensee"), having an address of 520 21st Street Glenwood Springs, and telephone number of 970-963-5495.

Event Name Imagine 7 Date of Event 4/27/18 Day of week Sat
Email blythe@riverbridgearc.org Cell: 970-379-1431 Home:

Weddings: Name of bride/groom NA Significant Other

Event Planner Blythe Chapman Phone # same
Caterer TBD Phone #

RECITALS

WHEREAS, Destination leases real property and improvements located at 333 River Valley Ranch Drive, Carbondale, CO 81623 (the "Barn"); and

WHEREAS, Licensee desires to use the Barn for an event (the "Event") he Event, and Destination is willing to permit Licensee to use the Barn for the Event on the following terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Licensed Barn. Destination licenses to Licensee the use of the Barn. Licensee agrees to accept the Barn "as is." Destination makes no representations or promises with respect to the Barn and Licensee agrees that Destination shall not have any obligation to perform any work, alterations, repairs or otherwise prepare the Barn for Licensee’s use and occupancy, other than as set forth in this Agreement. Licensee and its agents, employees, representatives and invitees shall access the Barn directly through the Barn’s lobby.

2. Permitted Use. Licensee may use the Barn for the Event and for no other purpose. No other use may be substituted for the Event without the prior consent of DESTINATION. Any additional use of the Barn beyond the Event as defined above will not be permitted without DESTINATION’s prior written approval. The total occupancy of the Barn shall not exceed ______ persons. Licensee shall comply with all covenants (including HOA), conditions, restrictions, laws, ordinances orders, and regulations affecting the Barn. Licensee shall not permit or allow any disorderly conduct, excessive or unreasonable noise, or any nuisance in anyway in or around the Barn. During the term of this Agreement, the Licensee, at Licensee expense, shall maintain the Premises in clean condition and maintain fixtures and appliances in good repair and working order, excepting normal wear and tear. Licensee further agrees to the following restrictions on the use of the Barn:

a. The doors to the Barn must be closed at 9:00 p.m. to limit noise impact in the community; The music/noise may continue with the doors closed.
b. The furniture in the Barn can be moved, but may not leave the Barn unless Licensee pays an additional fee for the furniture removal, which is outlined in Exhibit A. All furniture must be in the Barn over night to prevent damage.

c. Any movement of furniture performed by Licensee shall be the responsibility of renter, shall be picked up and not slid, and shall be done with Destination’s supervision so as to minimize damage to the soft-pine floors;

d. Any of Destination’s tables used by Licensee must be covered by plastic and a table cloth;

e. Licensee shall direct guests attending the Event to park in the Ranch House parking lot across the street from the Barn. If that lot is full, guests should be directed to park on the west side of the street. If the street fills please park on the North side of the Golf course parking lot;

f. No nails, tacks, duct tape, tape, glitter, confetti or anything else that can damage shall be used in the Barn. Gaff tape or fishing line should be used to put up lights and decorations; and

g. All guests must stay off the bridges and off the golf course at all times due to golfers and golf carts that may be playing golf during your event.

3. Term & Extensions. Destination licenses to Licensee the use of the Barn from 4pm-10pm 4/27 (the “Contract Period”). Licensee may request use of the Barn for additional time beyond the Contract Period (“Additional Time”) by making such request in writing prior to any use of the Barn beyond the Contract Period and in any event not later than five (5) business days prior to the earliest day of the Contract Period (“Commencement Date”). If Destination approves such request in its sole discretion, such Licensee shall pay for Additional Time as an Additional Charge pursuant to Section 8 at the “Approved Additional Time Rate” specified in Exhibit A. If Licensee occupies the Barn for Additional Time beyond the Contract Period without the prior written consent of Destination, licensee shall pay for such Additional Time as an Additional Charge pursuant to Section 9 at the “Unapproved Additional Time Rate” specified in Exhibit A. For purposes of this Agreement, the Contract Period shall be deemed to include all Additional Time.

4. Security Deposit. Upon execution of this Agreement, Licensee shall pay to Destination a $2,000 security deposit (the “Security Deposit”) as security for payment of all amounts due under this Agreement and for the faithful performance and observance by Licensee of the terms and conditions of this Agreement. In the event Licensee fails to pay any amount due or defaults under any other terms or conditions of this Agreement, Destination may, apply, or retain the whole or any part of the Security Deposit to the extent required for the payment of any sum due to Destination or which Destination may be required to expend by reason of Licensee’s default under any of the terms and conditions of this Agreement. In the event that Licensee shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Agreement and shall surrender the Barn to Destination in the condition required by this Agreement as is in on the Commencement Date, the Security Deposit shall be credited against the License Fee upon conclusion of the Contract Period.

5. License Fee. Licensee shall pay the fees detailed in Exhibit A (“the License Fee”) to Destination as follows:

   a. The Security Deposit shall be due and payable upon the execution of this Agreement. The Security Deposit is non-refundable. The Security Deposit may be credited against the License Fee as provided in Section 7.

   b. Fifty-percent (50%) of the License Fee shall be due and payable upon the execution of this Agreement.

   c. The remaining fifty-percent (50%) of the License Fee shall be due and payable no later than (30) days before the Commencement Date.

   d. Use of the Barn is not guaranteed until this Agreement has been fully executed and the Security Deposit and fifty-percent (50%) of the License Fee has been received by Destination.

6. Payments. All payments are to be made by cash or by check payable to Destination Holdings and delivered to the attention of Brian Leasure (“Facilities Manager”). Licensee shall pay all amounts due under this Agreement without abatement, deduction or set-off of any amount whatsoever. A finance charge of 1.5% or the maximum rate permitted by law (if less) will be charged for each twenty-one (21) day period that any payment is overdue, with a minimum charge of ten dollars ($10.00).
7. **Cancellation.**
   
   a. Licensee may terminate this Agreement upon written notice to Destination, provided that Licensee shall forfeit any payments made to Destination prior to such cancelation.
   
   b. Destination shall have the right, at its option, to terminate this Agreement, either in its entirety or with respect to the portion of the Agreement affected, without any liability of Destination to Licensee, and without any advance notice to Licensee, if:
      
      i. Licensee shall fail to observe any term, condition or covenant of this agreement;
      
      ii. the Barn is destroyed, damaged, or otherwise unfit for occupancy; or
      
      iii. any Event shall be prevented or interfered with by the public authorities or by any strike, labor dispute, or other cause beyond the control of Destination;
      
   c. Under the circumstances set forth in paragraph (b)(i) of this Section, Destination shall be entitled to retain the Security Deposit and any Licensee Fee paid by Licensee as liquidated damages in compensation for its damages and loss of revenue resulting from the termination and not as a penalty.
      
   d. Licensee hereby waives any and all claims against Destination for damages or other compensation arising out of or in connection with the termination of this Agreement or the cancellation of the Event.
      
8. **Additional Charges.** Licensee shall be responsible for any and all additional charges ("Additional Charges") incurred by Licensee during the Contract Period, including but not limited to charges for catering, concierge service and equipment rental (the "Service Charges"), telephone, facsimile and copy machine usage, Additional Time pursuant to Section 3, and any other Additional Charges under this Agreement. Rates for Additional Charges are set forth in Exhibit A. Destination shall invoice Licensee for all Additional Charges at the conclusion of the Contract Period and payment for Additional Charges shall be due and payable to Destination within forty-five (45) days of such invoice.
      
9. **Condition of Barn.**
   
   a. Licensee shall not make any changes or alteration to any part of the interior or exterior of the Barn or any other part of the Barn.
      
   b. Licensee shall take good care of the Barn and upon the completion of the Contract Period, as extended pursuant to this Agreement, shall restore the vacated Barn to its condition prior to Licensee’s entry. Licensee agrees that all tape and markings will be removed from the Barn and that the Barn shall be clean and in good order and repair upon the completion of its rental.
      
   c. Licensee agrees that it is responsible for any damage caused to the Barn by Licensee, its employees, agents, representatives or invitees. Any such damages shall be billed as Additional Charges.
      
10. **Access.** No portion of the corridors, foyers, vestibules or any ways of access comprising a part of the Barn shall be obstructed at any time by Licensee or used for any purpose other than ingress and egress to and from the Barn.
      
11. **Indemnification.** Licensee shall defend, indemnify, and hold harmless Destination, Destination’s landlord, the mortgagee of Destination’s landlord, and each of their respective partners, officers, employees, directors and agents ("Indemnitees") from and against any and all claims, demands, damages, judgments or liabilities (including liabilities for fines, penalties and reasonable attorneys’ fees, disbursements and other litigation costs) of any nature whatsoever (collectively, "Losses") resulting from or arising out of, in whole or in part, the Event or other subject matter of this Agreement, including but not limited to those resulting from or arising out of (i) the unauthorized or unlicensed use or performance of any idea, creation, intellectual property, works of performing art or literary, musical or artistic material in connection with any presentation given under this Agreement, (ii) any act done or words spoken by Licensee, its agents, employees, representatives or invitees during the Event, (iii) any damage done to the Barn or any part thereof, including resultant loss of use, caused by the act or omission of Licensee, its agents, employees, representatives or invitees, (iv) any libel, copyright infringement or indecent content in printed or program material furnished by Licensee in connection with the Event, (v) the breach by Licensee of any term of this Agreement, or (vi) any Loss to any person arising from participating in, attending or otherwise being involved in the Event, provided, however, that Licensee shall not be
obligated to indemnify any Indemnitee pursuant to this paragraph for any Loss that is finally judicially determined to have been caused entirely by one or more Indemnities’ willful misconduct.

12. **Insurance.** Destination will neither provide nor serve liquor. If Licensee elects to serve liquor at the event, Licensee must obtain liability insurance with a limit of no less than $2,000,000 with respect to bodily injury, personal injury, or death in any one occurrence (on an occurrence basis) that names Destination as an additional insured under such policy. Licensee must provide Destination with a certificate of insurance evidencing such coverage at least thirty (30) days prior to the commencement date. Licensee shall not do or permit to be done or bring or keep at any time in or upon the Barn anything which will in any way increase the rate of fire insurance on the Barn during the term of this Agreement or which shall conflict with the requirements of the District of Columbia Board of Fire Underwriters or any similar body, or be in violation of any of the terms of any insurance policy affecting the Barn or which shall conflict with any rules or ordinances of the Fire Department or Board of Health of the District of Columbia or of any other government agency having jurisdiction.

13. **Equipment and Services.** If elected by Licensee and included in the License Fee, Destination shall provide the use of the built-in hardware and audiovisual equipment detailed in Exhibit A (if any), along with set-up assistance. Licensee agrees that it shall not bring any equipment whatsoever into the Barn without Destination’s prior written approval. Licensee hereby releases Destination from any and all liability for loss or damages to any equipment or property owned, rented, or brought into the Barn by Licensee, or any agent, employee, representative or invitee of Licensee, which may be kept or placed in the Barn or used in connection with the Event.

14. **Photography Release.** Licensee hereby grants Destination permission to copyright, lease, sell and/or assign any and all photographs from the Event for use by parties associated with River Valley Ranch (“RVR”), including, without limitation, RVR’s Sales Center, RVR Golf Shop, & RVR Ranch House- HOA for advertising, promotion, publication or any other lawful purposes. Licensee hereby releases any and all right, claims, title and interest to the finished photographs, negatives, transparencies, and their reproductions of myself and my guests.

15. **Compliance with Destination Policies.** Licensee agrees to abide and to require all of its officers, directors, employees, agents, contractors, subcontractors, vendors, volunteers, licensees, Destination, including the policies set forth in Exhibit B hereof. Licensee shall cause its agents and any other person under its control to observe all terms of this Agreement.

16. **Notices.** All notices which may or must be given under this Agreement must be in writing and shall be sent to Destination or Licensee at the addresses set forth at the beginning of this Agreement. Any notice required to be given or made in writing within a specified period of time or on or before a date certain must be transmitted either by hand delivery (which may include commercial delivery service) subject to written receipt, by facsimile transmission with confirmation of receipt, or by U.S. Express, registered or certified mail, return receipt requested and postage and registry fees prepaid. All notices shall be deemed given when received (or date of attempted delivery if refused).

17. **Assignment.** Licensee shall not assign its rights and obligations under this Agreement to any other party. Any attempt to assign this Agreement by Licensee shall be void and of no effect.

18. **Governing Law.** This Agreement shall be construed in accordance with and governed by the law of the State of Colorado, without regard to the conflicts of laws rules thereof. The parties hereby consent to the exclusive jurisdiction of any court in the District of Colorado (whether a federal or state court) in any action or proceeding arising out of or relating to this Agreement. The parties irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

19. **Attorney’s Fees.** If Destination must retain an attorney to enforce any provision in this Agreement, Destination may, without limiting any other damages, recover its reasonable attorneys’ fees incurred in so doing, including reasonable attorneys’ fees incurred prosecuting claims against Licensee.

20. **Cumulative Remedies.** The remedies available to Destination under this Agreement shall not be exclusive but shall be cumulative and in addition to all other remedies of Destination existing now or in the future at law or in equity.

21. **No Waiver.** If Destination waives or elects not to enforce any term, condition or covenant of this Agreement, such waiver or election not to enforce shall not constitute a waiver of or election not to enforce the same term, condition or covenant in prior or subsequent transactions or different terms, conditions or covenants in the same, prior or subsequent transactions.
22. **Severability.** Any provision of this Agreement held to be contrary to law, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the validity or enforceability of the remaining provisions of this Agreement.

23. **Relationship of Parties.** The execution, delivery and performance of this Agreement shall not be construed as creating or establishing a partnership, joint venture or association of any type between Destination and Licensee.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and may not be modified or in any way altered except in writing, signed and executed by both parties hereto or, in the case of a waiver, by the party waiving compliance.

25. **Miscellaneous.** Each of the parties represent and warrant to the other party that this Agreement has been duly authorized by all necessary organizational action of such party and is legally enforceable and binding in accordance with its terms. This Agreement shall bind and inure to the benefit of the parties and their respective permitted successors, assigns and legal representatives. This Agreement may be executed in counterparts, a complete set of which shall constitute an original, and in duplicates, each of which shall constitute an original. Copies of this Agreement showing the true signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction may be used for all purposes as originals.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN:

**LICENSEE:**

Signature Date

**DESTINATION:**

Destination Holdings, LLC Date

Manager: Brian Leasure

Signature Date
EXHIBIT A

Fees, Equipment and Services

A. LICENSE FEE: BARN AND AUDIOVISUAL EQUIPMENT

<table>
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<th>AMENITY</th>
<th>RATE</th>
<th>QUANTITY</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Event with 125 or less people</td>
<td>$5,500</td>
<td>$600</td>
<td>$600.00</td>
</tr>
<tr>
<td>Event with 126 or more people</td>
<td>$5,950</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Tent fee</td>
<td>$1,000</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Furniture Removal(^1)</td>
<td>$1,200</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Sound system operated by Destination Holdings staff</td>
<td>$500</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL LICENSE FEE</strong></td>
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<td></td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Event Payments</th>
<th>Date</th>
<th>Check Number</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
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<td></td>
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<tr>
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<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL PAID</strong></td>
<td></td>
<td></td>
<td>$</td>
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</table>

B. OTHER ADDITIONAL CHARGES

<table>
<thead>
<tr>
<th>AMENITY</th>
<th>RATE</th>
</tr>
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<tbody>
<tr>
<td>Approved Additional Time (per hour or portion thereof)</td>
<td>($____)</td>
</tr>
<tr>
<td>Unapproved Additional Time (per hour or portion thereof)</td>
<td>($____)</td>
</tr>
<tr>
<td>(SERVICE)</td>
<td>($____)</td>
</tr>
<tr>
<td>(SERVICE)</td>
<td>($____)</td>
</tr>
<tr>
<td><strong>TOTAL ADDITIONAL CHARGES</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

\(^1\) All furniture on the main floor (excluding the builder room) taken offsite.
EXHIBIT B

Policies

1. Barn Hours: Licensee shall be permitted access to the Barn one-half hour before and one-half hour after each Event. The Barn must be vacated no later than 1:00 am unless other arrangements have been made in advance with the Facilities Manager.

2. Deliveries: All packages to be delivered to the Barn for the Event must be addressed to Facilities Manager and must reference the title and date of the Event. Large deliveries must be scheduled in advance with Facilities Manager.

3. Access: Licensee and its agents, employees, representatives and invitees shall access the Barn directly through the Barn lobby. Destination will unlock and secure the Barn prior to and following the Event. If a visitor’s key is provided to Licensee, such keys must be returned to Facilities Manager at the conclusion of each day of the Event. There is a $10.00 charge for unreturned keys.

4. Clean Up: Licensee shall be responsible for returning the Barn to the state it was in when at the commencement of the Contract Period, including removing all items brought into the Barn by Licensee, its agents, employees, representatives and invitees. Any items left in the Barn at the conclusion of the Contract Period shall be disposed of by Destination unless other arrangements have been made in advance with the Facilities Manager.

5. Climate Control: If you are having a problem with the temperature, please call the Facilities Manager who will adjust the thermostat to better suit your needs.

6. Trash: Licensee shall be responsible for the removal of all trash from the event.

7. Smoking: There is no smoking permitted anywhere in the Barn.

8. Lobby/Hallways: The Barn lobby and hallways must always remain free of obstruction. Please keep quiet in the Barn Lobby and hallways out of consideration for others in the Barn.

9. No toxic, flammable combustible or explosive fluids, chemicals or substance shall be brought into the Barn.

10. No bicycles, vehicles or animals, birds or pets of any kind shall be brought into the Barn.

11. Canvassing, soliciting and peddling in the Barn are prohibited.

12. Hand trucks may not be used within the Barn unless they are equipped with rubber tires and side guards.

13. Trash shall not be placed in the Barn lobby or hallways.

14. All of the furniture owned by Destination shall be kept in the Barn overnight to prevent damage.

15. Any hanging pictures that are removed must be replaced at the conclusion of the Contract Period.
RIVER VALLEY RANCH

APPROX. DIMENSIONS

OFFICE
18½' x 18½'
(Storage)

CONFERENCE ROOM
12½' x 14½'
(1)

BASMENT DOOR

REST ROOMS

NORTH ENTRANCE

41 FT. LONG
38 FT. WIDE

8' 4'

10' x 42'

63' x 21'

GLASS TABLES
59' x 20'

(2) HUTCH IN CONFERENCE ROOM

(1) TABLE IN CONFERENCE ROOM

10' x 42'

PATIO

60 FT. x 15 FT

EVENT LAWN
130 FT. x 45 FT

PARKING LOT
60 FT. x 80 FT

BRIAN LENTZ
OFFICE 970 963-0400
CELL 970 379-6690
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,

River Bridge Regional Center, Inc.

is a

Nonprofit Corporation

formed or registered on 06/08/2012 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 20121316764.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/01/2019 that have been posted, and by documents delivered to this office electronically through 02/04/2019 @ 12:03:31.

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 02/04/2019 @ 12:03:31 in accordance with applicable law. This certificate is assigned Confirmation Number 11370188.

Jena Griswold
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/click “Businesses, trademarks, trade names” and select “Frequently Asked Questions.”
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board Trustees Agenda Memorandum

Meeting Date: 2/26/19

TITLE: Tumbleweed Retail Marijuana Store License Renewal

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: Renewal Application

BACKGROUND: Tumbleweed is applying for renewal of their retail marijuana store license.

Tumbleweed’s license expires on 4/11/2019. Staff received their renewal application on January 23rd, well in advance of the required 60 day time period to do so.

Town Attorney Mark Hamilton has advised staff to request that the Trustees continue the consideration of the renewal of the application to March 12th due to on-going litigation.

FINANCIAL: All fees have been paid.

RECOMMENDATION: Staff recommends that the Board move to: continue the consideration to renew Tumbleweed’s retail marijuana store license to March 12, 2019.

Prepared By: Cathy Derby

_______  ______
Town Manager
Board of Trustees Agenda Memorandum

Meeting Date: 2/26/19
Attachment: P
Item: 11

TITLE: Public Hearing – Sopris Labs, LLC Retail and Medical Marijuana Infused Products (MIP) License Applications

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: Retail and Medical Marijuana MIP Applications

BACKGROUND:

On January 25, 2019, Sopris Labs, LLC submitted renewal applications for a Retail and Medical Marijuana MIP; both were deemed complete on January 25, 2019. All of the legal noticing requirements have been met by the applicant and staff.

The proposed MIPs are not located within 500 feet of a school/daycare or alcohol/drug treatment facility.

The Applicant’s Agent is owner Chapman Ducote. Staff can attest that Mr. Ducote, who currently resides in Basalt, is over 21, and meets the criteria to be the local agent representative.

The Municipal Code states that if a MIP is not operational within a year of receiving their license their license will not be renewed. The Applicant submitted building plans on October 15, 2018. The building design and the machinery involved in the MIP production are extremely complex. The building official has been reviewing the plans and machinery information submitted and it is anticipated that they will receive their building permit on February 22nd. The applicant has spent an extensive amount of money on the purchase of the property, architectural fees, an industrial hygienist and a fire protection specialist. Due to these extenuating circumstances and the fact that the applicant has shown their intent to become operational, staff recommends approval of their renewal applications.

Hours of operation will be 8:00 am – 12:00: am, Monday – Sunday.

FINANCIAL: All fees have been paid.
DISCUSSION: The Board may wish to determine if the Retail and Medical Marijuana Infused Product Applications are complete, meets all of the criteria set forth in Carbondale’s Retail and Medical Marijuana Ordinances, and the Colorado Retail and Medical Marijuana Code as adopted.

RECOMMENDATION:

Town staff recommends that the Board of Trustees make a motion to approve Sopris Labs’ Retail and Marijuana Infused Product Renewal Applications. If approved, the following recommended condition should apply:

1. The police will conduct an inspection of the security system prior to the applicant receiving a Certificate of Occupation.

Prepared By: Cathy Derby

__________________________
Town Manager

Phone 970.510-1205          Fax 970.963.9140
Town of Carbondale  
511 Colorado Avenue  
Carbondale, CO 81623  

Medical Marijuana Facility Renewal Application

Annual Educational Fee: $1,000.00  
Renewal Application Fee $500  

TOTAL DUE $2,500

Applicant is renewing a:  
- [ ] Store  
- [ ] Cultivation  
- [x] Manufactured Infused Products (MIP)

<table>
<thead>
<tr>
<th>Licensee Name: (ie. Corporation Name)</th>
<th>Trade Name (DBA)</th>
<th>Sales Tax No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sopris Labs, LLC</td>
<td>Sopris Labs, LLC</td>
<td></td>
</tr>
</tbody>
</table>

Street Address:  
695 Buggy Circle, Carbondale CO 81623  
Business Phone:  
954-415-2092

Mailing Address:  
same as above  
email address:  
denise@soprislabs.com

Operating Manager:  
Chapman Ducote  
Home Address:  
salt CO 81621  
Phone:  

1. Do you have legal possession of the premises at the street address above? Yes ☑ No ☐  
   Is the premises owned or rented ☑ Owned ☐ Rented. If rented, expiration date of lease ______________

2. Is the establishment within 500 ft. of a school? Yes ☑ No ☐

3. Since the date of filing of the last annual application, has there been any change in the financial  
   interest (loans, etc.) or organizational structure (change of officers, managing members, etc.)? If yes,  
   explain in detail and provide documentation. NO

4. Since the date of the filing of the last annual application, has the applicant or any of its agents, owners  
   managers been convicted of a felony? Yes ☑ No ☐  
   If yes, attach a detailed explanation ☑ Yes ☐ No

5. Since the date of the filing of the last annual application, has the applicant hired any new  
   employees? Yes ☑ No ☐ If yes, have they been: fingerprinted ☑ Yes ☐ No  
   Had a background check performed? Yes ☑ No ☐

OATH OF APPLICANT

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 Town of Carbondale  
Municipal Code, which affects my license.

Applicant Signature:  
Date: 1/18/2019  
Title: Managing Member

Has the local authority conducted a site visit to ensure that the premises is in compliance with  
Town Code ☑ Yes ☐ No

THIS APPLICATION HAS BEEN: ☑ Approved ☐ Denied

Authorized Signature:  
Date:

Attest  
Title:  
Date:
Town of Carbondale  
511 Colorado Avenue  
Carbondale, CO 81623  
Retail Marijuana Facility Renewal Application

Annual Fee: $2,000.00  
Renewal License Fee $500  
TOTAL DUE $3,500

Applicant is renewing a:  
- [ ] Store  
- [ ] Cultivation  
- [x] Manufactured Infused Products (MIP)  
- [ ] Lab  
- [ ] Other (Please Specify)

<table>
<thead>
<tr>
<th>Licensee Name: (ie. Corporation Name)</th>
<th>Trade Name (DBA)</th>
<th>State Tax No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sopris Labs, LLC</td>
<td>Sopris Labs, LLC</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Street Address:</th>
<th>Business Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>695 Buggy Circle, Carbondale CO 81623</td>
<td>954-415-2092</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mailing Address</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Same as above</td>
<td><a href="mailto:denise@soprislabs.com">denise@soprislabs.com</a></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Operating Manager</th>
<th>Home Address:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapman Ducote</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Do you have legal possession of the premises at the street address above? Yes [x]  No [ ]  
   Is the premises owned or rented [x] Owned  [ ] Rented. If rented, expiration date of lease __________________.

2. Is the establishment within 500 ft. of a school? Yes [ ]  No [x]

3. Since the date of filing of the last annual application, has there been any change in the financial interest (loans, etc.) or organizational structure (change of officers, managing members, etc.)? If yes, explain in detail and provide documentation. NO

4. Since the date of the filing of the last annual application, has the applicant or any of its agents, owners managers been convicted of a felony? If yes, attach a detailed explanation [x] Yes  [ ] No

5. Since the date of the filing of the last annual application, has the applicant hired any new employees? Yes [x]  No [ ]  
   If yes, have they been fingerprinted? Yes [x]  No [ ]  
   Had a background check performed? Yes [x]  No [ ]

**OATH OF APPLICANT**

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 Town of Carbondale Municipal Code, which affects my license.

Applicant Signature:  
Date: 1/18/2019  
Title: Managing Member

Has the local authority conducted a site visit to ensure that the premises is in compliance with Town Code? Yes [x]  No [ ]

THIS APPLICATION HAS BEEN: [x] Approved  [ ] Denied

Authorized Signature:  
Title:  
Date:

Attest:  
Title:  
Date:
Affidavit of Mailing

The undersigned certifies that he/she mailed the attached Notice of Hearing by First Class Mail, postage prepaid as required by the Carbondale Municipal Code. The people on the attached list were sent the Notice of Hearing. In addition, notices were posted on the property.

Date of mailing: 2/8/2019

By: [Signature]

Subscribed and sworn before me this 14 day of February, 2019.

(seal)

My commission expires: 8/18/2026

(Notary)
Town of Carbondale Police Department
511 Colorado Avenue, Suite 911 Carbondale, Colorado 81623 (970) 963-2662

To: Mayor Dan Richardson and
   Carbondale Board of Trustees

From: Gene Schilling
       Chief of Police, Carbondale Police Department

Ref.: Liquor License Application Transfer from Pan & Fork to Homestead Bar & Grill

Date: January 29, 2019

I have completed the requested record checks for the following individual(s):

Red Cunningham—Owner/Manager

I recommend approval of the liquor license renewal 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**

## 1. Applicant is applying as a/an

- Individual  
- Limited Liability Company  
- Association or Other  
- Corporation  
- Partnership (includes Limited Liability and Husband and Wife Partnerships)

## 2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation and FEIN Number

**Cunningham Golf, LLC**

## 3. Address of Premises (specify exact location of premises, include suite/unit numbers)

**303 River Valley Ranch Road**

## 4. Mailing Address (Number and Street)

**303 River Valley Ranch Rd**

## 5. Email Address

**rcj@rvrgolf.com**

## 6. If the premises currently has a liquor or beer license, you must answer the following questions

### Present Trade Name of Establishment (DBA)

**PAN AND FORK**

### Present State License Number

**03-04843**

### Present Class of License

**Hotel & Restaurant**

### Present Expiration Date

**09/11/2019**

### Section A

<table>
<thead>
<tr>
<th>Description</th>
<th>Application Fee</th>
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<tbody>
<tr>
<td>Application Fee for New License</td>
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<td>Application Fee for New License w/Concurrent Review</td>
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<td>Application Fee for Transfer</td>
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### Section B

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<tr>
<th>Description</th>
<th>Liquor License Fees</th>
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<tr>
<td>Add Optional Premises to H &amp; R</td>
<td>$100.00 X 4 Total 400</td>
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<tr>
<td>Add Related Facility to Resort Complex $75.00 X 4 Total</td>
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<tr>
<td>Arts License (City)</td>
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<td>Arts License (County)</td>
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<tr>
<td>Beer and Wine License (City)</td>
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<td>Club License (City)</td>
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<tr>
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### Section B (Cont.)

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<td>Retail Liquor Store License (County)</td>
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### Questions? Visit: www.colorado.gov/enforcement/liquor for more information

Do not write in this space - For Department of Revenue use only

<table>
<thead>
<tr>
<th>Liability Information</th>
<th>License Account Number</th>
<th>Liability Date</th>
<th>License Issued Through (Expiration Date)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Name: Cunningham Golf, LLC

Type of License: Colorado Liquor Retail Lic.

Account Number: 

7. Is the applicant (including any of the partners if a partnership; members or managers if it is a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years? Yes ☐ No ☒

8. Has the applicant (including any of the partners if a partnership; members or managers if it is a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):
   (a) Been denied an alcohol beverage license?
      ☐
   (b) Had an alcohol beverage license suspended or revoked?
      ☐ ☒
   (c) Had interest in another entity that had an alcohol beverage license suspended or revoked?
      ☐ ☒

If you answered yes to 8a, b or c, explain in detail on a separate sheet.

9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.
   ☐ ☒

10. 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? ☐ ☒

Waiver by local ordinance? ☐ ☒

Other: 

11. 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 (> =) 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. ☐ ☒

12. 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 (<) 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. ☐ ☒

13a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016? ☐ ☒

13b. Are you a Colorado resident? ☐ ☒

14. 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. ☐ ☒

15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement?
   ☐ Ownership ☒ Lease ☐ Other (Explain in Detail)

   a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:

   Landlord: Crystal Outdoors, a Colorado Limited Liability Company
   Tenant: Cunningham Golf, LLC
   Expires: 2-9-21

   b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16. ☐ ☒

   c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, 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" X 11".

16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) 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.

Last Name  First Name  Date of Birth  FEIN or SSN  Interest/Percentage

Last Name  First Name  Date of Birth  FEIN or SSN  Interest/Percentage

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 general or conditional in any way by volume, profit, sales, giving of advice or consultation.

17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:
   Has a local ordinance or resolution authorizing optional premises been adopted? ☐ ☒

   Number of additional Optional Premise areas requested. (See license fee chart) ☐ ☒

18. Liquor Licensed Drugstore (LLDS) applicants, answer the following:
   (a) Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise?
      ☐ ☒

   If "yes" a copy of license must be attached.

19. Club Liquor License applicants answer the following: Attach a copy of applicable documentation
   (a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?
      ☐ ☒

   (b) is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?
      ☐ ☒

   (c) How long has the club been incorporated?

   (d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?
      ☐ ☒

20. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:
   (a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)
      ☐ ☒
### 21. Campus Liquor Complex applicants answer the following:

- (a) Is the applicant an institution of higher education?  
  - Yes ☐  No ☑

- (b) Is the applicant a person who contracts with the institution of higher education to provide food services?  
  - If “yes” please provide a copy of the contract with the institution of higher education to provide food services.

### 22. For all on-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 - DR 8404-I and fingerprints.

- b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints.

<table>
<thead>
<tr>
<th>Last Name of Manager</th>
<th>First Name of Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cunningham</td>
<td>Ted</td>
</tr>
</tbody>
</table>

### 23. 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.

- Yes ☐  No ☑

### 24. Related Facility - Campus Liquor Complex applicants answer the following:

- a. Is the related facility located within the boundaries of the Campus Liquor Complex?  
  - Yes ☐  No ☑

- b. Designated Manager for Related Facility - Campus Liquor Complex.

### 25. Tax Distraint 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 distraint issued to them by the Colorado Department of Revenue?  

- Yes ☐  No ☑

- If yes, provide an explanation and include copies of any payment agreements.

### 26. 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 8404-I (Individual History Record), and submit fingerprint cards to the local licensing authority.

<table>
<thead>
<tr>
<th>Name</th>
<th>Home Address, City &amp; State</th>
<th>DOB</th>
<th>Position</th>
<th>%Owned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Cunningham</td>
<td>Colorado, CO</td>
<td></td>
<td>General Manager</td>
<td>100%</td>
</tr>
</tbody>
</table>

**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.
Name: Cunningham Golf, LLC
Type of License: Colorado Liquor Retail License
Account Number

Oath Of Applicant
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 Beer Code which affect my license.

Authorized Signature: [Signature]
Printed Name and Title: [Red Cunningham, General Manager]
Date: 1/28/19

Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority: January 26, 2019
Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application): February 26, 2019

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:

- X Fingerprinted
- X 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.

(Check One)

- X Date of inspection or anticipated date:
- □ Date of inspection or anticipated date:

Will conduct inspection upon approval of state licensing authority.

- X Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?
- □ Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 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.

- □ Does the Liquor Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?

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 46 or 47, C.R.S., and Liquor Rules. Therefore, this application is approved.

Local Licensing Authority for:

Signature: [Signature]
Print: [Print]
Title: [Title]
Date: [Date]

Telephone Number: [Telephone Number]

Signature: [Signature]
Print: [Print]
Title: [Title]
Date: [Date]
# 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.)

<table>
<thead>
<tr>
<th>1. Name of Business</th>
<th>Cunningham Golf, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Your Full Name (last, first, middle)</td>
<td>Red Cunningham</td>
</tr>
<tr>
<td>3. List any other names you have used</td>
<td>Kevin Cunningham</td>
</tr>
<tr>
<td>4. Mailing address (if different from residence)</td>
<td>3 carrot golf.com</td>
</tr>
<tr>
<td>5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)</td>
<td></td>
</tr>
<tr>
<td>Current</td>
<td>509 Black Bear Trail 81623</td>
</tr>
<tr>
<td>Previous</td>
<td>509 Black Bear Trail 81623</td>
</tr>
<tr>
<td>6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)</td>
<td></td>
</tr>
<tr>
<td>Name of Employer or Business</td>
<td>Durango 11 1240x 81623</td>
</tr>
<tr>
<td>Position Held</td>
<td>Gm</td>
</tr>
<tr>
<td>From</td>
<td>7/2012</td>
</tr>
<tr>
<td>To</td>
<td>7/2014</td>
</tr>
<tr>
<td>Name of Relative</td>
<td>Relationship to You</td>
</tr>
<tr>
<td>Name 1</td>
<td>Relationship 1</td>
</tr>
<tr>
<td>Name 2</td>
<td>Relationship 2</td>
</tr>
<tr>
<td>Name 3</td>
<td>Relationship 3</td>
</tr>
<tr>
<td>Name 4</td>
<td>Relationship 4</td>
</tr>
<tr>
<td>Name 5</td>
<td>Relationship 5</td>
</tr>
</tbody>
</table>

8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.)

□ Yes □ No

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
10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (if yes, explain in detail.) □ Yes □ 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 □ No

12. Have you ever had any professional license suspended, revoked, or denied? (if yes, explain in detail.) □ Yes □ 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.

<table>
<thead>
<tr>
<th>Date of Birth</th>
<th>Social Security Number</th>
<th>Place of Birth</th>
<th>U.S. Citizen</th>
<th>Naturalized, state where</th>
<th>Date of Certification</th>
<th>Alien Registration Card Number</th>
<th>Permanent Residence Card Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>N Y</td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
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</table>

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<tr>
<th>Height</th>
<th>Weight</th>
<th>Hair Color</th>
<th>Eye Color</th>
<th>Gender</th>
<th>Race</th>
<th>Driver's License/ID?</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>RED</td>
<td></td>
<td>M</td>
<td>W</td>
<td>☐ Yes No</td>
<td>CO</td>
</tr>
</tbody>
</table>

14. Financial Information.

a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other. $60K

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. $60K

* 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>
</tr>
</thead>
<tbody>
<tr>
<td>ALPINE BANK</td>
<td>Checking</td>
<td>Alpine</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Loans</th>
<th>Account Type</th>
<th>Bank Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

<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></td>
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14. (a). 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>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N/A</td>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Loan Information (Attach copies of all notes or loans)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Lender</td>
</tr>
<tr>
<td>----------------</td>
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</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: RED CUNNINGHAM
Title: President
Date: 2/9/19
- Alcohol allowed in kitchen area for storage
MASTEB PLAN
River Valley Ranch
CARBONDALE, COLORADO
A Development by CRYSTAL RIVER LIMITED PARTNERSHIP

4 optional premises - 4 road crossings

Golf Community Facilities
East Golf Course
Melody Links
North Golf Course
South Golf Course

Residential

Real Estate
211
Commercial
9.6
Retail
1.1
Industrial
1.2
Storage
3.3
Manufacturing
2.0
Agriculture
19.6
Road Rights of Way
58.5

Total
249.8

October 2001

Robert Lambart
Planners, Architects, and Landscape Architects
San Francisco, New York
**MASTER PLAN**

**River Valley Ranch**

**Carbondale, Colorado**

A Development by CRYSTAL RIVER LIMITED PARTNERSHIP

Golf Course Parcels, including Club House, are outlined in red. Optional Premises are shown with Red circles.
River Valley Ranch - Site Plan

Food & beverage cart on golf course only
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,

Cunningham Golf LLC

is a Limited Liability Company formed or registered on 12/07/2018 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 20181958397.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/28/2019 that have been posted, and by documents delivered to this office electronically through 01/29/2019 @ 12:18:19.

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 01/29/2019 @ 12:18:19 in accordance with applicable law. This certificate is assigned Confirmation Number 11358573.

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/ click “Businesses, trademarks, trade names” and select “Frequently Asked Questions.”
Articles of Organization
filed pursuant to § 7-90-301 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is

Cunningham Golf LLC

(The name of a limited liability company must contain the term or abbreviation “limited liability company”, “LLC”, “limited liability company”, “limited liability co.”, “llc”, “l.l.c.”, “llc”, or “llc”. See §7-90-601, C.R.S.)

(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)

2. The principal office address of the limited liability company’s initial principal office is

Street address

11 Duroux Ln

(City)

Basalt

(State)

CO

81621

(Province – if applicable)

United States

(Country)

Mailing address

(Street number and name or Post Office Box information)

(City)

(City)

(State)

(State)

(State)

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4. The true name and mailing address of the person forming the limited liability company are

Name
(if an individual)

or

(if an entity)

Legalzoom.com, Inc.

(Caution: Do not provide both an individual and an entity name.)

Mailing address

101 N. Brand Blvd

11th Floor

Glendale, CA 91203

(City) (State) (ZIP/Postal Code)

Located in United States

(The following statement is adopted by marking the box.)

☐ The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

5. The management of the limited liability company is vested in

☐ one or more managers.

or

☒ the members.

6. (The following statement is adopted by marking the box.)

☒ There is at least one member of the limited liability company.

☐ This document contains additional information as provided by law.

7. (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.

8. (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.)

The delayed effective date and, if applicable, time of this document is/are: mm/dd/yyyy hour minute am/pm.

Notice:

Caoising 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.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

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(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.

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Registered Agent Notice of Service

Dear Customer,

As part of your customized company formation package from LegalZoom, you have selected us to serve as your registered agent. United States Corporation Agents is a wholly owned subsidiary of LegalZoom.com and will be the entity that will act as your Registered Agent.

State statutes require that you designate and maintain a registered agent at all times. United States Corporation Agents will act as the representative for accepting Service of Process on behalf of your company. In addition, we will also forward all documents that arrive from the Secretary of State, State Agencies, Federal Agencies or the IRS.

Important Note: If your address changes, it is critically important that you notify us of the change to ensure that you receive all official state notices and Service of Process. To notify us of an address change, simply call us at (866) 698-0052, Mon-Fri: 5 a.m.-8 p.m. PT, Sat-Sun: 7 a.m.-4 p.m. PT.

Your annual registered agent fee is due on the anniversary date of your company formation and will be invoiced directly by LegalZoom.

Resident Agent Services Division Contact Information
Phone: (866) 698-0052  Mon–Fri: 5 a.m.–8 p.m. PT, Sat–Sun: 7 a.m.–4 p.m. PT
E-mail: raservices@legalzoom.com

Sincerely,

[Signature]

Mike Wilson
Vice President of Operations
Operating Agreement

Cunningham Golf LLC,
a Colorado Limited Liability Company

THIS OPERATING AGREEMENT of Cunningham Golf LLC (the "Company") is entered into as of the date set forth on the signature page of this Agreement by each of the Members listed on Exhibit A of this Agreement.

A. The Members have formed the Company as a Colorado limited liability company under the Colorado Limited Liability Company Act. The purpose of the Company is to conduct any lawful business for which limited liability companies may be organized under the laws of the state of Colorado. The Members hereby adopt and approve the articles of organization of the Company filed with the Colorado Secretary of State.

B. The Members enter into this Agreement to provide for the governance of the Company and the conduct of its business, and to specify their relative rights and obligations.

ARTICLE 1: DEFINITIONS

Capitalized terms used in this Agreement have the meanings specified in this Article 1 or elsewhere in this Agreement and if not so specified, have the meanings set forth in the Colorado Limited Liability Company Act.

"Agreement" means this Operating Agreement of the Company, as may be amended from time to time.

"Capital Account" means, with respect to any Member, an account consisting of such Member’s Capital Contribution, (1) increased by such Member’s allocated share of income and gain, (2) decreased by such Member’s share of losses and deductions, (3) decreased by any distributions made by the Company to such Member, and (4) otherwise adjusted as required in accordance with applicable tax laws.
"Capital Contribution" means, with respect to any Member, the total value of (1) cash and the fair market value of property other than cash and (2) services that are contributed and/or agreed to be contributed to the Company by such Member, as listed on Exhibit A, as may be updated from time to time according to the terms of this Agreement.

"Exhibit" means a document attached to this Agreement labeled as "Exhibit A," "Exhibit B," and so forth, as such document may be amended, updated, or replaced from time to time according to the terms of this Agreement.

"Member" means each Person who acquires Membership Interest pursuant to this Agreement. The Members are listed on Exhibit A, as may be updated from time to time according to the terms of this Agreement. Each Member has the rights and obligations specified in this Agreement.

"Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including the right to any and all benefits to which a Member may be entitled as provided in this Agreement and under the Colorado Limited Liability Company Act, together with the obligations of the Member to comply with all of the terms and provisions of this Agreement.

"Ownership Interest" means the Percentage Interest or Units, as applicable, based on the manner in which relative ownership of the Company is divided.

"Percentage Interest" means the percentage of ownership in the Company that, with respect to each Member, entitles the Member to a Membership Interest and is expressed as either:

A. If ownership in the Company is expressed in terms of percentage, the percentage set forth opposite the name of each Member on Exhibit A, as may be adjusted from time to time pursuant to this Agreement; or

B. If ownership in the Company is expressed in Units, the ratio, expressed as a percentage, of:

(1) the number of Units owned by the Member (expressed as "MU" in the equation below) divided by

-2-
(2) the total number of Units owned by all of the Members of the Company (expressed as “TU” in the equation below).

\[
\text{Percentage Interest} = \frac{MU}{TU}
\]

“Person” means an individual (natural person), partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

“Units” mean, if ownership in the Company is expressed in Units, units of ownership in the Company, that, with respect to each Member, entitles the Member to a Membership Interest which, if applicable, is expressed as the number of Units set forth opposite the name of each Member on Exhibit A, as may be adjusted from time to time pursuant to this Agreement.

ARTICLE 2: CAPITAL CONTRIBUTIONS, ADDITIONAL MEMBERS, CAPITAL ACCOUNTS AND LIMITED LIABILITY

2.1 Initial Capital Contributions. The names of all Members and each of their respective addresses, initial Capital Contributions, and Ownership Interests must be set forth on Exhibit A. Each Member has made or agrees to make the initial Capital Contribution set forth next to such Member’s name on Exhibit A to become a Member of the Company.

2.2 Subsequent Capital Contributions. Members are not obligated to make additional Capital Contributions unless unanimously agreed by all the Members. If subsequent Capital Contributions are unanimously agreed by all the Members in a consent in writing, the Members may make such additional Capital Contributions on a pro rata basis in accordance with each Member’s respective Percentage Interest or as otherwise unanimously agreed by the Members.

2.3 Additional Members.

A. With the exception of a transfer of interest (1) governed by Article 7 of this Agreement or (2) otherwise expressly authorized by this Agreement, additional Persons may become Members of the Company and be issued additional Ownership Interests only if approved by and on terms determined by a unanimous written agreement signed by all of the existing Members.
B. Before a Person may be admitted as a Member of the Company, that Person must sign and deliver to the Company the documents and instruments, in the form and containing the information required by the Company, that the Members deem necessary or desirable. Membership Interests of new Members will be allocated according to the terms of this Agreement.

2.4 Capital Accounts. Individual Capital Accounts must be maintained for each Member, unless (a) there is only one Member of the Company and (b) the Company is exempt according to applicable tax laws. Capital Accounts must be maintained in accordance with all applicable tax laws.

2.5 Interest. No interest will be paid by the Company or otherwise on Capital Contributions or on the balance of a Member’s Capital Account.

2.6 Limited Liability; No Authority. A Member will not be bound by, or be personally liable for, the expenses, liabilities, debts, contracts, or obligations of the Company, except as otherwise provided in this Agreement or as required by the Colorado Limited Liability Company Act. Unless expressly provided in this Agreement, no Member, acting alone, has any authority to undertake or assume any obligation, debt, or responsibility, or otherwise act on behalf of, the Company or any other Member.

ARTICLE 3: ALLOCATIONS AND DISTRIBUTIONS

3.1 Allocations. Unless otherwise agreed to by the unanimous consent of the Members any income, gain, loss, deduction, or credit of the Company will be allocated for accounting and tax purposes on a pro rata basis in proportion to the respective Percentage Interest held by each Member and in compliance with applicable tax laws.

3.2 Distributions. The Company will have the right to make distributions of cash and property to the Members on a pro rata basis in proportion to the respective Percentage Interest held by each Member. The timing and amount of distributions will be determined by the Members in accordance with the Colorado Limited Liability Company Act.

3.3 Limitations on Distributions. The Company must not make a distribution to a Member if, after giving effect to the distribution:

A. The Company would be unable to pay its debts as they become due in the usual course of business; or
B. The fair value of the Company’s total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of Members, if any, whose preferential rights are superior to those of the Members receiving the distribution.

ARTICLE 4: MANAGEMENT

4.1 Management.

A. Generally. Subject to the terms of this Agreement and the Colorado Limited Liability Company Act, the business and affairs of the Company will be managed by the Members.

B. Approval and Action. Unless greater or other authorization is required pursuant to this Agreement or under the Colorado Limited Liability Company Act for the Company to engage in an activity or transaction, all activities or transactions must be approved by the Members, to constitute the act of the Company or serve to bind the Company. With such approval, the signature of any Members authorized to sign on behalf of the Company is sufficient to bind the Company with respect to the matter or matters so approved. Without such approval, no Members acting alone may bind the Company to any agreement with or obligation to any third party or represent or claim to have the ability to so bind the Company.

C. Certain Decisions Requiring Greater Authorization. Notwithstanding clause B above, the following matters require unanimous approval of the Members in a consent in writing to constitute an act of the Company:

(i) A material change in the purposes or the nature of the Company’s business;

(ii) With the exception of a transfer of interest governed by Article 7 of this Agreement, the admission of a new Member or a change in any Member’s Membership Interest, Ownership Interest, Percentage Interest, or Voting Interest in any manner other than in accordance with this Agreement;

(iii) An amendment to the Articles of Organization;
(iv) The merger of the Company with any other entity or the sale of all or substantially all of the Company's assets; and

(v) The amendment of this Agreement.

4.2 Officers. The Members are authorized to appoint one or more officers from time to time. The officers will have the titles, the authority, exercise the powers, and perform the duties that the Members determine from time to time. Each officer will continue to perform and hold office until such time as (a) the officer's successor is chosen and appointed by the Members; or (b) the officer is dismissed or terminated by the Members, which termination will be subject to applicable law and, if an effective employment agreement exists between the officer and the Company, the employment agreement. Subject to applicable law and the employment agreement (if any), each officer will serve at the direction of Members, and may be terminated, at any time and for any reason, by the Members.

ARTICLE 5: ACCOUNTS AND ACCOUNTING

5.1 Accounts. The Company must maintain complete accounting records of the Company's business, including a full and accurate record of each Company transaction. The records must be kept at the Company's principal executive office and must be open to inspection and copying by Members during normal business hours upon reasonable notice by the Members wishing to inspect or copy the records or their authorized representatives, for purposes reasonably related to the Membership Interest of such Members. The costs of inspection and copying will be borne by the respective Member.

5.2 Records. The Members will keep or cause the Company to keep the following business records.

(i) An up to date list of the Members, each of their respective full legal names, last known business or residence address, Capital Contributions, the amount and terms of any agreed upon future Capital Contributions, and Ownership Interests, and Voting Interests;

(ii) A copy of the Company's federal, state, and local tax information and income tax returns and reports, if any, for the six most recent taxable years;
(iii) Minutes of any special or annual meetings ordered pursuant to Colorado law;

(iv) A copy of the articles of organization of the Company, as may be amended from time to time ("Articles of Organization"); and

(v) An original signed copy, which may include counterpart signatures, of this Agreement, and any amendments to this Agreement, signed by all then-current Members.

5.3 Income Tax Returns. Within 45 days after the end of each taxable year, the Company will use its best efforts to send each of the Members all information necessary for the Members to complete their federal and state tax information, returns, and reports and a copy of the Company’s federal, state, and local tax information or income tax returns and reports for such year.

5.4 Subchapter S Election. The Company may, upon unanimous consent of the Members, elect to be treated for income tax purposes as an S Corporation. This designation may be changed as permitted under the Internal Revenue Code Section 1362(d) and applicable Regulations.

5.5 Tax Matters Member. Anytime the Company is required to designate or select a tax matters partner or partnership representative, pursuant to Section 6223 of the Internal Revenue Code and any regulations issued by the Internal Revenue Service, the Members must designate one of the Members as the tax matters partner or partnership representative of the Company and keep such designation in effect at all times.

5.6 Banking. All funds of the Company must be deposited in one or more bank accounts in the name of the Company with one or more recognized financial institutions. The Members are authorized to establish such accounts and complete, sign, and deliver any banking resolutions reasonably required by the respective financial institutions in order to establish an account.

ARTICLE 6: MEMBERSHIP - VOTING AND MEETINGS

6.1 Members and Voting Rights. The Members have the right and power to vote on all matters with respect to which the Articles of Organization, this Agreement, or the Colorado Limited Liability Company Act requires or permits. Unless otherwise stated in this Agreement (for example, in Section 4.1(c)) or required under the Colorado Limited Liability Company Act.
Limited Liability Company Act, the vote of the Members holding at least a majority of
the Voting Interest of the Company is required to approve or carry out an action.

6.2 Meetings of Members. Annual, regular, or special meetings of the Members
are not required but may be held at such time and place as the Members deem
necessary or desirable for the reasonable management of the Company. Meetings may
be called by any Member or Members, holding 10% or more of the Percentage Interests,
for the purpose of addressing any matters on which the Members may vote. A written
notice setting forth the date, time, and location of a meeting must be sent at least ten
(10) days but no more than sixty (60) days before the date of the meeting to each
Member entitled to vote at the meeting. A Member may waive notice of a meeting by
sending a signed waiver to the Company’s principal executive office or as otherwise
provided in the Colorado Limited Liability Company Act. In any instance in which the
approval of the Members is required under this Agreement, such approval may be
obtained in any manner permitted by the Colorado Limited Liability Company Act,
including by conference call or similar communications equipment. Any action that
could be taken at a meeting may be approved by a consent in writing that describes the
action to be taken and is signed by Members holding the minimum Voting Interest
required to approve the action. If any action is taken without a meeting and without
unanimous written consent of the Members, notice of such action must be sent to each
Member that did not consent to the action.

ARTICLE 7: WITHDRAWAL AND TRANSFERS OF MEMBERSHIP INTERESTS

7.1 Withdrawal. Members may withdraw from the Company prior to the
dissolution and winding up of the Company (a) by transferring or assigning all of their
respective Membership Interests pursuant to Section 7.2 below, or (b) if all of the
Members unanimously agree in a written consent. Subject to the provisions of Article 3,
a Member that withdraws pursuant to this Section 7.1 will be entitled to a distribution
from the Company in an amount equal to such Member’s Capital Account.

7.2 Restrictions on Transfer; Admission of Transferee. A Member may transfer
Membership Interests to any other Person without the consent of any other Member. A
person may acquire Membership Interests directly from the Company upon the written
consent of all Members. A Person that acquires Membership Interests in accordance
with this Section 7.2 will be admitted as a Member of the Company only after the
requirements of Section 2.3(b) are complied with in full.

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ARTICLE 8: DISSOLUTION

8.1 Dissolution. The Company will be dissolved upon the first to occur of the following events:

(i) The unanimous agreement of all Members in a consent in writing to dissolve the Company;

(ii) Entry of a decree of judicial dissolution under Colorado Limited Liability Company Act;

(iii) At any time that there are no Members, unless and provided that the Company is not otherwise required to be dissolved and wound up, within 90 days after the occurrence of the event that terminated the continued membership of the last remaining Member, the legal representative of the last remaining Member agrees in writing to continue the Company and (i) to become a Member; or (ii) to the extent that the last remaining Member assigned its interest in the Company, to cause the Member's assignee to become a Member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining Member;

(iv) The sale or transfer of all or substantially all of the Company's assets;

(v) A merger or consolidation of the Company with one or more entities in which the Company is not the surviving entity.

8.2 No Automatic Dissolution Upon Certain Events. Unless otherwise set forth in this Agreement or required by applicable law, the death, incapacity, disassociation, bankruptcy, or withdrawal of a Member will not automatically cause a dissolution of the Company.

ARTICLE 9: INDEMNIFICATION

9.1 Indemnification. The Company has the power to defend, indemnify, and hold harmless any Person who was or is a party, or who is threatened to be made a party, to any Proceeding (as that term is defined below) by reason of the fact that such Person was or is a Member, officer, employee, representative, or other agent of the
known address for notice on record. (b) Any party to this Agreement may change its notice address by sending written notice of such change to the Company in the manner specified above. Notice will be deemed to have been duly given as follows: (i) upon delivery, if delivered personally or by reputable overnight carrier or (ii) five days after the date of posting if sent by certified mail.

10.2 Entire Agreement; Amendment. This Agreement along with the Articles of Organization (together, the “Organizational Documents”), constitute the entire agreement among the Members and replace and supersede all prior written and oral understandings and agreements with respect to the subject matter of this Agreement, except as otherwise required by the Colorado Limited Liability Company Act. There are no representations, agreements, arrangements, or undertakings, oral or written, between or among the Members relating to the subject matter of this Agreement that are not fully expressed in the Organizational Documents. This Agreement may not be modified or amended in any respect, except in a writing signed by all of the Members, except as otherwise required or permitted by the Colorado Limited Liability Company Act.

10.3 Governing Law; Severability. This Agreement will be construed and enforced in accordance with the laws of the state of Colorado. If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, the unenforceable provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and the Agreement will be deemed amended accordingly.

10.4 Further Action. Each Member agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

10.5 No Third Party Beneficiary. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person or entity will have or acquire any right by virtue of this Agreement. This Agreement will be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.
10.6 Incorporation by Reference. The recitals and each appendix, exhibit, schedule, and other document attached to or referred to in this Agreement are hereby incorporated into this Agreement by reference.

10.7 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all of the Members signed the same copy. All counterparts will be construed together and will constitute one agreement.

[Remainder Intentionally Left Blank.]
IN WITNESS WHEREOF, the parties have executed or caused to be executed this Operating Agreement and do each hereby represent and warrant that their respective signatory, whose signature appears below, has been and is, on the date of this Agreement, duly authorized to execute this Agreement.

Dated: _______________________

Signature of Red Cunningham
EXHIBIT A
MEMBERS

The Members of the Company and their respective addresses, Capital Contributions, and Ownership Interests are set forth below. The Members agree to keep this Exhibit A current and updated in accordance with the terms of this Agreement, including, but not limited to, Sections 2.1, 2.3, 2.4, 7.1, 7.2, and 10.1.

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LEASE SUMMARY
COMMERCIAL LEASE AGREEMENT
RIVER VALLEY RANCH GOLF COURSE
RESTAURANT/PRO SHOP/ OFFICES/GOLF CART STORAGE

This is a summary of certain of the terms, provisions and conditions of the Commercial Lease Agreement ("Lease") between CRYSTAL OUTDOORS, LLC, a Colorado limited liability company ("Landlord") and Cunningham Golf, LLC ("Tenant").

1. Tenant: Cunningham Golf, LLC

2. Landlord: Crystal Outdoors, a Colorado limited liability company

3. Leased Premises and Equipment: Lot 1, Bock P, River Valley Ranch, Phase I, according to the Plat thereof recorded September 27, 1996 under Reception No. 498928, and according to the Second Boundary Adjustment Plat for Golf Course Parcel 2, and Amended Plat of Block P, River Valley Ranch, Phase I, recorded July 19, 2000 under Reception No. 566514, in Carfield County, Colorado, including the building containing a restaurant, golf course pro shop, offices and cart storage, together with parking facilities. The property being leased to Tenant shall include all furniture, fixtures and equipment located within the building on the Leased Premises and utilized in the operation of the restaurant, pro shop, cart storage and office.

4. Initial Term: Two (2) years commencing February 9, 2019 and expiring on February 9, 2021.

5. Rent:

   a. Minimum Annual Rent, payable in monthly installments as follows:
      i. January through May, 2019 - $0 annual and $0 monthly
      ii. June through December, 2019 - $12,000.00 Annual, $2,000 monthly
      iii. 2020 - $36,000.00 annual, $3,000.00 monthly

   b. Percentage Rent as Provided in Article III of the Lease, payable as follows:
      i. January through May, 2019 – 0%
      ii. June through December, 2019 – 6%
      iii. 2020 – 8%

   c. Minimum Annual Rent described above shall be considered fully paid as soon the sum of payments of the monthly installments of Minimum Annual Rent plus percentage rents paid during a calendar year meets or exceeds the Minimum Annual Rent. At that point, future payments of monthly installments of Minimum Annual Rent are no longer due for that particular calendar year and only percentage rent, if any, shall be due. For example, if by May 20, 2020, Tenant has paid Landlord a total of $36,000 in the form of monthly installments of Minimum Annual Rent plus monthly percentage payments, then Tenant’s obligation to pay Minimum Annual Rent for the remainder 2020 calendar year shall be deemed satisfied.

6. Security Deposit: None

7. Use: Restaurant, Golf Course Pro Shop and Cart Storage together with offices for Golf Course operations.
COMMERCIAL LEASE AGREEMENT

RIVER VALLEY RANCH GOLF COURSE
RESTAURANT/PRO SHOP/OFFICES/GOLF CART STORAGE/PARKING

THIS COMMERCIAL LEASE AGREEMENT IS MADE AND ENTERED INTO THIS 14th day of JAN, 2019, between CRYSTAL OUTDOORS, LLC, a Colorado limited liability company, (hereinafter referred to as “Landlord”), and CUNNINGHAM GOLF, LLC, a Colorado limited liability company (hereinafter referred to as “Tenant”).

ARTICLE I
Leased Premises

Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the “Leased Premises” described in Section 3 of the Lease Summary of attached hereto and also known as 303 River Valley Ranch Rd., Carbondale, CO 81623 and made a part hereof by this reference (“Lease Summary”).

ARTICLE II
Term

The term of this Lease is stated in Section 4 of the Lease Summary.

ARTICLE III
Rent

1. Tenant agrees to pay Landlord a fixed minimum annual rental for each Lease Year during the term of the Lease, which rent is specified in Section 5 of the Lease Summary. This minimum rental is payable as described in Section 5 of the Lease Summary.

2. In addition to the payment of the fixed minimum annual rental as of hereinafore provided, Tenant shall pay to Landlord during each Lease Year during the term hereof, as percentage rental, a percentage of all gross sales (defined below) made in, on or from the Leased Premises, less any monthly installment of minimum annual rental paid under the first paragraph of the this Article III, above, without prior demand therefore and without any set-off or deduction whatsoever. The percentage rental amount for each Lease Year is set forth in Section 5 of the Lease Summary.

a) Tenant shall begin to pay the percentage rent for the gross sales received in June 2019. Tenant shall pay its first monthly percentage rent (for June 2019) on or before July 20, 2019 and thereafter it shall pay the required percent of each month’s gross sales by the twentieth (20th) day of the following month (e.g., percentage rent for July 2019 is due no later than August 20, 2019). Monthly percentage rent payments are not required if the minimum monthly installment has been paid and the percentage of rent payment is less than such installment. For example, if percentage rent for January 2020 is $2,000.00, Tenant is
not obligated to pay the percentage rent for that month because of the minimum monthly installment is $3,000. Once the cumulative payment of monthly installments of minimum annual rent plus any percentage rent equals the minimum annual rent for any calendar year, for the remainder of said calendar year the Tenant is only obligated to pay percentage rent. Tenant shall submit to Landlord an itemized statement of gross sales and a sales tax report for the preceding month on or before the twentieth (20th) day of each calendar month during the term of this Lease, whether percentage rent is due or not, and any renewal, extensions, or holding over hereunder.

b) In addition, within thirty (30) days after the end of each Lease Year, Tenant shall deliver to Landlord a written statement signed by a certified public accountant or by some other person acceptable to Landlord, setting forth the amount of Tenant's gross sales for the preceding Lease Year. The accountant or other person shall certify that the gross sales have been computed in accordance with the definition given below, and the statement shall be sufficiently detailed to show it was in fact prepared in accordance with such definition. If the percentage rent for the Lease Year is more than the total thereof actually paid by Tenant, Tenant shall pay the balance due to Landlord within thirty (30) days of delivery of the annual statement.

c) The term "gross sales" as used in this Lease shall mean the full amount of the actual sales price of all food, beverage, merchandise or services sold for cash or credit in or from the Leased Premises by Tenant or any permitted subtenants, or any other income from use of the Leased Premises minus any sales tax paid. (Landlord may require a different percentage rent as a condition for approving a subtenant, concessionaire, licensee or assignment of the Lease.) The figure for gross sales will include deposits not refunded to customers, orders of any kind received or filled at the Leased Premises, receipts from vending machines located upon the Leased Premises, and any other receipts which Tenant ordinarily would credit to his business. Each credit or installment sale will be treated as a sale for the full price in the month it is made, and there will be no deductions for uncollected accounts or bad debts. Refunds or customer discounts included in gross sales shall be deducted from gross sales.

d) During the term of the Lease, Tenant shall keep accurate records of all his operations. These records shall conform to generally accepted accounting practices, and shall include records of gross sales and of receipts and deliveries of all merchandise. Tenant shall keep all the documents relating to Tenant's operations for at least thirty-six (36) months from the end of the Lease Year to which they apply. If any audit is required, or Tenant and Landlord disagree about the rent, Tenant will keep his records until the audit is completed or the disagreement is settled.

e) At any reasonable time, and following at least ten (10) days notice in writing to Tenant, Landlord or Landlord's authorized representative may audit any of Tenant's records of gross sales. If, when Landlord audits the records for a Lease Year based on normal accounting procedures, he finds that Tenant has understated its gross sales for the Lease Year by three percent (3%) or more, Tenant shall be required to pay for the audit, and shall promptly deliver to Landlord the difference Tenant owes it, plus interest on such
difference at the rate of eighteen percent (18%) per annum from the first day of the current Lease Year to the date such difference is paid. However, Tenant is not responsible for the costs of Landlord’s audit or interest on any understated gross sales if the independent audit, as discussed below, finds that Tenant has not understated its gross sale for the Lease Year by three percent (3%) or more. If Landlord’s audit discloses that Tenant has understated his gross sales for that Lease Year by six percent (6%) or more, Landlord shall be permitted to treat such event as a material default hereunder. However, if an independent audit, as discussed below, finds that Tenant has not understated its gross sales by six percent (6%) or more, Tenant’s understatement of gross sales shall not be deemed a material breach. If Tenant disputes Landlord’s audit, Tenant and Landlord shall jointly retain an independent auditor to conduct a separate audit of gross sales which shall be conclusive and binding on the parties for the purposes of this section.

ARTICLE IV
Penalties for Late Payment of Rent

1. If Tenant fails to pay monthly installments of rent as specified herein by the twentieth (20th) day of the month in which it is due as described in Section 5 of the Lease Summary, Tenant shall pay as a late fee an additional five percent (5%) of the monthly installment rent payment. If Tenant fails to pay a monthly percentage rent payment as specified herein by the twentieth (20th) day of the month in which it is due, Tenant shall pay as a late fee an additional five percent (5%) of the percentage rent due.

2. Landlord need not give any notice to be entitled to this payment, and such additional rentals or penalties shall in no way be construed to limit the Landlord’s remedies in the event of such default, which remedies shall in all cases hereunder be deemed to be cumulative.

3. In the event all or part of the rent as described in paragraph 1 of this Article is delinquent beyond the 30th day of the month in which it is due, the delinquent amount shall bear interest at the rate of one and one-half percent (1.5%) per month.

ARTICLE V
Insurance

1. Tenant agrees at its own expense to maintain in full force during the lease term policies of comprehensive insurance written by one or more responsible insurance companies licensed to do business in Colorado which will insure Tenant and Landlord against liability for injury to persons and/or property, and death of any person or persons occurring in or about the Leased Premises and damage to the furniture, fixtures and equipment being leased hereunder. Each policy shall be approved as to form and insurance company by Landlord. The liability under such insurance shall not be less than $1,000,000 for any one person injured or killed, and not less than $1,000,000 for any one accident, and not less than $100,000 property damage. The policies shall name as insured parties, Tenant and Landlord and any persons, firms or corporations designated by Landlord, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Landlord fifteen (15) days’ prior written notice. A copy of the policy or a certificate of insurance shall be delivered to the Landlord. If Tenant fails to comply
with this paragraph, Landlord shall have the right to obtain the said insurance and pay the premiums therefore, and in such event the entire amount of such premium shall be immediately paid by Tenant to Landlord.

2. Tenant agrees that it will at all times during the lease term maintain in full force and effect on all its furniture, fixtures and equipment in the Leased Premises a policy or policies of fire insurance with the standard extended coverage endorsement attached to the extent of at least eighty percent (80%) of their insurable value, the proceeds of which will, so long as this Lease is in effect, be used for the repair or replacement of fixtures and equipment so insured. It is understood that the Landlord shall have no interest in the insurance upon Tenant's equipment and fixtures, and will sign all documents necessary or proper in connection with the settlement of any claim or loss by Tenant.

3. Landlord shall obtain and pay the cost of fire, casualty, liability and extended coverage insurance covering the Leased Premises against loss or damage by fire and by other risks now or hereafter embraced by "extended coverage," so called, in amount of the full insurable value of the Leased Premises (both the exclusive and nonexclusive premises.)

ARTICLE VI

Utilities

1. Tenant shall pay for all trash removal, telephone, gas and electricity separately supplied to the Leased Premises.

2. With regard to all utilities, it is mutually agreed that Landlord shall not be liable in damages or otherwise for any interruption or failure thereof when such interruption or failure is not due to the negligence of Landlord.

3. Tenant further agrees that Tenant will not install any equipment which will exceed or overload the capacity of any utility facility, and that if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with the plans and specifications which have received prior written approval by Landlord.

ARTICLE VII

Maintenance and Repairs

Subject to the provisions of Article XII, Tenant shall maintain and repair the Leased Premises and keep the associated land and parking area and landlord's furniture, fixtures and equipment subject to this Lease in good appearance, condition and repair during the term of this Lease.

ARTICLE VIII

Taxes
Landlord shall pay before delinquency any and all real and personal property taxes assessed or imposed upon the Leased Premises and Landlord's furniture, fixtures and equipment subject to this Lease during the Lease Term.

ARTICLE IX
Prohibited Uses

1. Tenant will not use, occupy, or permit the Leased Premises or any part thereof to be used or occupied for any unlawful or illegal business, use, or purposes deemed by the Landlord to be disreputable, or hazardous, nor in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, State of Colorado, County of Garfield, Town of Carbondale, or other municipal, governmental, or lawful authority whatsoever.

2. Tenant shall not do or permit anything to be done in or about the Leased Premises or bring or keep anything therein which will in any way increase the rate of fire insurance upon the Leased Premises. Tenant shall, at its sole cost and expense, comply with any and all requirements pertaining to the Leased Premises of any insurance company necessary for the maintenance of reasonable fire and public liability insurance covering the Leased Premises. Tenant shall promptly comply with all laws, ordinances, orders, and regulation affecting the Leased Premises and the cleanliness, safety, and use of the same, including installation of additional facilities as required for the conduct and continuance of Tenant's business on the Leased Premises. No auction for fire or bankruptcy sales may be conducted on the Leased Premises without Landlord's consent.

ARTICLE X
Nuisance and Cleanliness

1. Tenant covenants that it will exercise the highest duty of care to maintain the Leased Premises in a clean condition and to provide for sufficient trash and garbage service.

2. Tenant shall not permit any noxious or offensive odors to exist in or around the Leased Premises.

3. Tenant shall not perform any act or carry on any practices which may adversely affect the Leased Premises. A breach of any of the terms or conditions contained in this Article X shall constitute a material breach of this Lease.

ARTICLE XI
Repairs, Alterations, Improvements and Replacements

1. Landlord shall keep in good order, condition, and repair, the exterior foundation, exterior walls, downspouts, gutters and roof of the building located on the Leased Premises, electrical systems, the plumbing and sewage system on the Leased Premises (but excluding the
exterior and interior of all windows, doors, and repairs required by any casualty or acts of God except as otherwise covered by ARTICLE XVI hereof), except for reasonable use and wear, and any damage, caused by any act of negligence of Tenant, its agents, employees, invitees, lessees or contractors; provided, however, that there shall be no obligation to do so until after the expiration of ten (10) days' written notice to Landlord of the need thereof.

2. Tenant shall at all times keep the Leased Premises and Landlord's furniture, fixtures and equipment subject to the Lease, including maintenance of all windows, partitions, doors, door jams, door closers, door hardware fixtures, equipment and appurtenances thereof (including electrical lighting, heating, plumbing and plumbing fixtures and any air conditioning system, including accessories under the control of Tenant) in good order, condition, and repair, including replacements (including reasonable periodic painting as determined by Landlord), damage by unavoidable casualty excepted, except for structural portions of the Leased Premises and except any damage, caused by any act of negligence of Landlord, its agents, employees, invitees, lessees or contractors. Landlord may add the cost of such repairs in the next installment of rent which shall thereafter become due.

3. Except as provided in Agreement Regarding Golf Course Lease and Restaurant Building Lease, Tenant shall not have the right to make any alterations, improvements, and/or additions to the Leased Premises which affect the exterior or any structural or mechanical, electrical component without first obtaining Landlord's written consent.

4. Tenant is entitled to utilize and shall maintain all fixtures and equipment provided pursuant to this Agreement for its useful life. To the extent that such equipment or fixtures that are not the responsibility of Landlord under Paragraph 1 above require replacement, Tenant shall be responsible for 100% of the replacement costs. Notwithstanding the forgoing, Landlord shall be responsible for 100% of replacement costs for any furnace or water heaters on the Leased Premises that require replacement. Tenant shall be entitled to retain such equipment or fixtures upon termination of this Lease unless Landlord reimburses Tenant for the unamortized costs thereof, in which case the replacement equipment or furniture shall be the property of Landlord.

ARTICLE XII
Landlord Not Liable for Damages

Except for damage that arises as a consequence of the acts or omissions of Landlord, its officers, employees, agents, or any person or entity acting under this authorization, Landlord shall not be liable to Tenant or to any other person whatsoever for any damage occasioned by falling plaster, electricity, plumbing, gas, water, steam, sprinkler or other pipe and sewage system or by the bursting, running or leaking of any tank, washstand, closet or waste to other pipes in or about the Leased Premises, nor for any damage occasioned by water being upon or coming through the roof, or vent, or otherwise for any damage arising from any acts or neglect of the public, nor shall Landlord be liable in damages or otherwise for any failure to furnish, or interruption of service of any water, gas electricity, heated water, steam and/or chilled water, caused by fire, accident, riot, strike, labor disputes, acts of God, or the making of any repairs or improvements or other causes beyond the control of Landlord.
ARTICLE XIII
Indemnification

Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions or damages or liability or expense in the loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon, or at the Leased Premises, or the occupancy or use by Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, servants, lessees or concessionnaires, unless said claims, actions or damages or liability or expense in the loss of life, personal injury, and/or damage to property arises as a consequence of the acts or omissions of Landlord, its officers, employees, agents, or any person or entity acting under this authorization. In case Landlord shall without fault on its part be made a party to any litigation commenced by or against Tenant, then Tenant shall fully protect and hold the Landlord harmless and pay all costs, expenses, and reasonable attorney's fees incurred or paid by Landlord in connection with such litigation.

Landlord will indemnify Tenant and save it harmless from and against any and all claims, actions or damages or liability or expense in the loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon, or at the Leased Premises occasioned wholly or in part by any act or omission of Landlord, its officers, employees, agents, or any person or entity acting under this authorization.

In case Tenant shall without fault on its part be made a party to any litigation commenced by or against Landlord, then Landlord shall fully protect and hold the Tenant harmless and pay all costs, expenses, and reasonable attorney's fees incurred or paid by Tenant in connection with such litigation.

ARTICLE XIV
Assignment and Subletting

Tenant shall not assign or in any manner transfer or encumber this Lease or any estate or interest therein, or sublet the Leased Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Leased Premises without the prior written consent of Landlord. This prohibition includes, without limitation, (i) any subletting or assignment, which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure; (ii) an assignment or subletting to or by a receiver or trustee in any Federal or State bankruptcy, insolvency or other proceedings; (iii) the sale, assignment or transfer of all or substantially all of the assets of Tenant, with or without specific assignment of this Lease; (iv) the sale, encumbrance or other disposition of stock in a corporate Tenant, or ownership in a limited liability company Tenant, which results in the present shareholders or members therein owning or controlling less than 51 percent of the stock or ownership thereof; (v) the change in control in a Tenant partnership, directly or through a change or changes in the ownership of 50 percent or more of the stock or ownership of one or more corporate or limited liability company general partners; (vi) the change in control in a Tenant limited liability company through a change or changes in the ownership of 50 percent or more of
the stock of one or more corporate members or of a corporate general partner of a partnership member, and (vii) the death of an individual Tenant. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. Any attempted assignment or subletting by Tenant in violation of the terms and covenants of this Paragraph 14 shall be void. Notwithstanding any approved assignment or subletting, Tenant and any guarantor of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rental herein specified and for compliance with all of Tenant's other obligations under this Lease.

ARTICLE XV
Access to Premises

1. Landlord and its authorized representative shall have the right to enter upon the Leased Premises at all reasonable hours (and in emergencies, at all times) to inspect the same, to make repairs, additions or alterations to the Leased Premises and for any lawful purpose. Landlord agrees to provide Tenant with reasonable notice whenever it deems necessary to enter upon the Premises.

2. For a period commencing ninety (90) days prior to the end of the lease term, Landlord may have reasonable access to the Leased Premises for the purpose of exhibiting the same to prospective tenants and to post any usual "For Lease" signs upon the Leased Premises.

3. Landlord is entitled to use the “back office” as shown Exhibit A hereto as a personal office during the term of the Lease. To the extent that Landlord would like to make any modifications to the back office (e.g., install a new door or doors to the back office or furnace room) it may do at its sole cost and expense, so long as such modifications do not interfere with Tenant’s business operations. Tenant has the right to access the back office and furnace room, as necessary, and any other portion of the Leased Premises that can be conveniently accessed through said office.

ARTICLE XVI
Damage or Destruction

In the event the Leased Premises be destroyed or become untenable as a result of damage by fire or other casualty, Tenant shall give immediate notice to Landlord and Landlord shall have the obligation to repair and restore the Leased Premises to their former state and condition within ninety (90) days from and after the date of said casualty; provided, however, such repairs and restoration can be reasonably so accomplished within said period of time. If the damages are so extensive that such repairs and restoration cannot be reasonably be made within said ninety (90) day period, then this Lease shall be deemed terminated unless otherwise agreed by the parties. If the Leased Premises are repaired and restored as herein provided, then rent shall abate during the time the Leased Premises remain untenable. If the Lease be terminated by reason of such casualty and non-repair, Tenant's obligations for the payment of rent shall cease as of the day following such casualty. If such fire or other casualty shall be covered by Tenant's insurance on the Leased Premises, then the proceeds of such insurance shall be paid over to Landlord to the extent of Landlord's costs and expenses to make
repairs provided for herein, and such insurance carriers shall have no recourse against Landlord for reimbursement.

**ARTICLE XVII**  
**Eminent Domain**

If the whole or any part of the Leased Premises shall be taken by any public authority under the power of eminent domain or by any party by condemnation (the "taking"), then this Lease shall terminate as to the part so taken, as of the date such authority or party obtains the right to possession, and rent shall abate thereafter in the same proportion taken. If, in Tenant's opinion, such taking renders the balance of the Leased Premises unfit for its intended purpose, then either party hereto shall have the right to terminate this Lease within thirty (30) days after the taking. No rights or interest in and to any awards to rights in condemnation or payments in lieu thereof shall accrue to Tenant under or by virtue of this Lease, except that Tenant shall retain the rights to any awards in connection with costs and expenses of relocating the business.

Tenant agrees to execute and deliver any instruments, at the expense of Landlord, as may be deemed necessary or required to expedite any condemnation proceedings or to effectuate a proper transfer of title to such governmental or other public authority, agency, body, or public utility seeking to take or acquire Tenant's lands and/or the Leased Premises or any portion thereof. Tenant covenants and agrees to vacate the premises, remove all Tenant's personal property therefrom and deliver up peaceable possession thereof to Landlord or to such other party designated by Landlord in writing. Failure of Tenant to comply with any provisions in this clause shall subject Tenant to such costs, expenses, damages and losses Landlord incurs by reason of Tenant's breach hereof.

**ARTICLE XVIII**  
**Default by Tenant and Landlord's Remedies**

1. **Event of Default Defined.** Any one or more of the following events shall constitute an "Event of Default" by Tenant under this Lease.

   a) Tenant shall fail to pay when due any installment or other form of rent or additional rent payable under this Lease, and shall not cure such failure within ten (10) days after written notice from Landlord demanding payment of rent or surrender of possession pursuant to Section 13-40-104 (d) (1973 C.R.S.).

   b) Tenant shall fail to comply with or shall otherwise violate any term, provision, condition, representation or covenant of this Lease, other than the payment of rent or additional rent due hereunder, and shall not cure such failure within fifteen (15) days after written notice thereof to Tenant.

   c) Filing by or against Tenant or any guarantor of Tenant's obligations under this Lease, in any court pursuant to any statute either of the United States or of any state, of a petition of bankruptcy or insolvency, or for reorganization, or for the appointment of a
receiver or trustee, of all or a portion of the Tenant's or any guarantor's property, if within sixty (60) days after the commencement of any such proceeding involving the Tenant or a guarantor such petition shall not have been dismissed.

d) After having opened the Leased Premises to the public, Tenant shall desert, vacate or not open for business any substantial portion of the Leased Premises, when Tenant is required to be open for business, for a total of more than thirty (30) consecutive days without Landlord's prior written approval or Tenant shall inform Landlord that it intends to abandon the Premises.

e) Tenant's removal or attempt to remove from the Leased Premises of any inventory, equipment, fixtures or improvements other than in the ordinary course of business.

f) The business operated by Tenant shall be closed by governmental authority for failure to pay any sales or other tax as required or for any other reason.

g) This Lease or the estate of Tenant hereunder or any beneficial interest in Tenant shall be transferred to or shall pass to or devolve upon any other person or party except in the manner herein provided.

h) The interest of Tenant in this Lease, the Leased Premises or any part of the Leased Premises shall be levied on or under execution or by other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant and said attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof.

i) Any material representation of Tenant to Landlord shall prove to have been false.

j) Any other act or omission identified as an Event of Default elsewhere in this Lease.

Any cure period provided by statute shall be deemed to run concurrently (rather than sequentially) with any cure period provided for herein.

2. Remedies. Upon the occurrence of any such Event of Default, all of Tenant's rights to possession of the Leased Premises shall automatically terminate, and Landlord shall have the option to pursue any one or more of the remedies available at law, in equity, or under this Lease, without any notice or demand whatsoever, including without limitation the following:

a) Upon the termination of Tenant's possessory rights, Tenant shall immediately and peacefully surrender the Leased Premises to Landlord, and if Tenant fails to do so, Landlord, without prejudice to any other remedy which Landlord may have for possession, damages, or arrearages in rental, may enter upon and take possession of the Leased Premises through legal process or, if no individual person is then actually on or
about the Leased Premises and breach of the peace can be avoided, without use of legal process. Thereafter Landlord may have, hold and enjoy the Leased Premises and the right to receive all rental income therefrom, and may alter all locks and other security devices at the Leased Premises.

b) At any time after such termination of Tenant's possessory rights, Landlord may relet the Leased Premises or any part thereof, in the name of Landlord or otherwise for such term (which may be greater or less than the balance of the term of this Lease) and on such conditions as Landlord, in Landlord's absolute discretion, may determine, and may collect and receive the rents therefor.

c) **Non-Termination of Lease.** Unless Landlord so elects as below provided, no such termination of Tenant's possessory rights shall cause a termination of this Lease or otherwise relieve Tenant's liability and obligations under this Lease, and such liability and obligations shall survive any such termination. In the event of any such termination of Tenant's possessory rights, Tenant shall immediately pay to Landlord the sum of all fixed minimum monthly rental payments to the extent still due pursuant to Section 5 of the Lease Summary, any percentage rental and other indebtedness accrued to date of such repossession, and thereafter Tenant shall pay to the Landlord all fixed minimum monthly rental payments to the extent still due pursuant to Section 5 of the Lease Summary and any additional rental required to be paid by Tenant to Landlord during the remainder of the term of the Lease until the date of expiration of said term, diminished by any net sums thereafter received by Landlord through reletting the Leased Premises during said period (after deducting expenses incurred by Landlord as provided in subparagraph (g) below). In no event shall Tenant be entitled to any excess of any rental obtained by reletting over and above the rental herein reserved. Actions to collect amounts due by Tenant to Landlord as provided in this subparagraph (c) may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until the expiration of the term of this Lease.

d) **Termination of Lease.** In the alternative, at any time within the ninety (90) day period following the termination of Tenant's possessory rights, Landlord may elect to terminate this Lease by written notice to Tenant. Upon such Lease termination, or in the event a court shall otherwise construe this Lease as terminated following Tenant's loss of its possessory rights hereunder, Landlord shall have and exercise all rights of ownership of the Leased Premises, and Tenant shall pay to Landlord in one lump sum the sum of all fixed minimum monthly rental payments to the extent still due pursuant to Section 5 of the Lease Summary, any percentage rental, and additional rental and other indebtedness to Landlord accrued to date of such termination, plus, as and for liquidated damages for Tenant's default, an amount equal to the present value of the total fixed minimum monthly payments would have become due during the remainder of the term of this Lease but for termination hereof, less the amount of rental loss for the same period that Tenant proves could have been avoided through the exercise of such mitigation efforts as are legally required of Landlord. If such sum is not paid to Landlord on the termination date, said sum shall bear interest at the rate of eighteen percent (18%) per annum until paid. For purposes of this section, "present value" shall be computed by discounting the amount in question to
present worth at a discount rate equal to one percentage point above the discount rate then
in effect at Chase Manhattan Bank or any successor thereto.

e) **Not a Surrender.** Exercise by Landlord of any one or more remedies herein
granted or otherwise available shall not be deemed to be an acceptance of surrender of the
Leased Premises by Tenant, whether by agreement or by operation of law, it being
understood that such surrender can be effected only by the written agreement of Landlord
and Tenant.

f) **Property Left on Leased Premises.** Any property of Tenant, or of anyone
claiming under, by or through Tenant, which is left on the Leased Premises more than
fifteen (15) days after expiration of the term of the Lease or termination of possessory rights
shall be conclusively deemed abandoned, and Landlord may keep, use, remove, store, sell,
destroy, discard, or otherwise deal with it in Landlord's absolute discretion without liability
of any sort to Tenant or anyone claiming under, by or through Tenant.

g) **Additional Costs of Default.** In case of any Event of Default, Tenant shall
also be liable for and shall pay to Landlord, in addition to any sum provided to be paid
above, broker's fees incurred by Landlord in connection with reletting the whole or any
part of the Leased Premises; the reasonable costs of removing and storing or otherwise
disposing of Tenant's or other occupant's property; the reasonable costs of repairing,
altering, remodeling or otherwise putting the Leased Premises into condition acceptable to
a new tenant or tenants; and all reasonable expenses incurred by Landlord in enforcing or
defending Landlord's rights and/or remedies, including reasonable attorneys' fees.

h) **No Duty to Relit.** In the event of termination of possessory rights or
repossession of the Leased Premises for an Event of Default, Landlord shall not have any
greater obligation to relet or attempt to relet the Leased Premises, or any portion thereof,
or to collect rental on the Leased Premises after reletting than is required by applicable law
with respect to mitigation of damages; and in the event of reletting, Landlord may relet the
whole or any portion of the Leased Premises for any period, to any tenant, and for any use
and purpose.

i) **Landlord's Right to Cure.** If Tenant should fail to make any payment or
cure any default hereunder within the time herein permitted, Landlord, without being under
any obligation to do so and without thereby waiving such default, may make such payment
and/or remedy such other default for the account of Tenant (and enter the Leased Premises
for such purpose), and thereupon Tenant shall be obligated, and hereby agrees, to pay as
additional rental, all reasonable costs, expenses and disbursements (including reasonable
attorneys' fees) incurred by Landlord in taking such remedial action. Such action taken by
Landlord may include commencing, appearing in, defending, or otherwise participating in
any actions or proceedings, and paying, purchasing, contesting, or compromising any
claim, right, encumbrance, charge or lien with respect to the Leased Premises.
j) **Landlord's Right to Use Furniture, Fixtures and Equipment.** In the event that Landlord shall have taken possession of the Leased Premises pursuant to the authority herein granted, then Landlord shall have the right to keep in place and use all of the furniture, fixtures and equipment of the Leased Premises, including that which is owned by or leased to Tenant, at all times prior to any foreclosure thereon by Landlord or repossession thereof by a lessor thereof, or third party having a lien thereon. Landlord shall also have the right to remove from the Leased Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within the County in which the Leased Premises are located, and in such event, Tenant shall be liable to Landlord for reasonable costs incurred by Landlord in connection with such removal and storage and shall indemnify and hold Landlord harmless from all loss, damage, cost, expense and liability in connection with such removal and storage.

k) **Landlord's Lien.** To secure the payment of all rental and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby grants to Landlord an express contract lien and security interest on all tangible property belonging to Tenant (including fixtures, equipment, inventory, furniture, and furnisheing) which may be placed in the Leased Premises, and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed from the Leased Premises, except for merchandise sold in the ordinary course of business, without the written consent of Landlord until all arrearages in rental and other sums of money then due to Landlord hereunder shall first have been paid. All exemption laws are hereby waived in favor of said lien and security interest. The provisions of this subparagraph (m) shall constitute a security agreement under the Uniform Commercial Code. This lien and security interest is given in addition to any statutory lien to which Landlord is entitled and shall be cumulative thereto upon the occurrence of an Event of Default. This lien may be foreclosed with or without court proceedings by public or private sale, provided Landlord gives Tenant at least ten (10) days notice of the time and place of said sale, and Landlord shall have the right to become the purchaser, upon being the highest bidder at such sale. Contemporaneous with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code Financing Statements in sufficient form to reflect this grant and/or any proper amendment or modification in or continuation of the aforesaid contract lien and security interest hereby granted. Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact to execute on Tenant's behalf any such Financing Statements. Tenant agrees to pay the reasonable attorneys' fees incurred by Landlord in the event Landlord must foreclose upon the security interest and lien granted by Tenant herein. Notwithstanding the preceding, Landlord agrees to subordinate its security interest and lien granted hereunder to any purchaser money mortgage or any other loan to Tenant, the proceeds of which are used exclusively in furtherance of Tenant's business conducted on the Leased Premises, in an amount reasonably acceptable to Landlord, secured by any personal property or fixtures of Tenant in the Leased Premise.
ARTICLE XIX
Abandonment

1. Tenant shall not vacate or abandon the Leased Premises at any time during the term of this Lease. Abandonment shall be deemed to have occurred if Tenant is absent from the Leased Premises for more than thirty (30) days without having paid a rent payment required per Article III. If Tenant should violate this prohibition or be dispossessed of the Leased Premises involuntarily, by operation of law or otherwise, any personal property belonging to Tenant left on the Leased Premises shall be deemed to be abandoned, at the Landlord's option, or Landlord may store such property in Tenant's name and at Tenant's expense without notice to Tenant.

2. Upon abandonment of the Leased Premises, the Landlord at its election may reenter and relet the Leased Premises to the benefit of the Tenant without effecting a termination of the Lease and apply any rent received as a result of that reletting the amounts due Landlord from Tenant under the Lease. In the alternative, Landlord upon abandonment of the Leased Premises may treat the Lease as being terminated.

3. The rights and remedies of Landlord under this Article XIX are in addition to and not exclusive of any other right or remedy of Landlord herein given or which may be permitted by law.

ARTICLE XX
Covenant of Landlord

Landlord covenants that it is the owner of the Leased Premises and has the power and authority to grant and make this Lease; that Landlord shall perform all covenants and obligations on its part to be performed under any mortgage, deed of trust, or other security instrument to which Lessor is a party or shall become a party, to the extent that the same may in any way affect the Leased Premises; and that so long as Tenant is not in default hereunder during the base term hereof and any renewal or extension hereof, Tenant shall peaceably and quietly occupy and enjoy the Leased Premises subject to the terms hereof. Landlord warrants and agrees to defend the title to the Leased Premises.

ARTICLE XXI
Accord and Satisfaction

No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder, nor shall the endorsement or statement accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept any such check or payment without a prejudice to the Landlord trying to recover the balance of such rent or pursue any other remedy provided in this Lease.
ARTICLE XXII

Subordination

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter created upon the Leased Premises, and to any renewals or extensions thereof. Landlord is hereby irrevocably vested with full power and authority, on behalf of Tenant, to subordinate this Lease to any mortgage, deed of trust or other lien hereafter placed upon the Leased Premises, and Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request. At the request of any mortgagee or deed of trust beneficiary, Tenant shall attorn to the purchaser at a foreclosure sale on that mortgage or deed of trust. Notwithstanding the foregoing, if this Lease is hereafter subordinated to any mortgage, deed of trust, or other lien to which this Lease would not be subordinate but for this Article XXII, or actions taken pursuant to this Article XXII, Tenant shall then and thereafter be entitled to demand and obtain a nondisturbance agreement from the holder of such interest on such terms as said holder may reasonably specify, which terms shall not require modification of this Lease or expenditure of funds by Tenant other than for Tenant's own review and negotiation of the nondisturbance agreement.

ARTICLE XXIII

Estoppel Certificates

Tenant agrees at any time and from time to time, upon no less than ten (10) days' prior request by the Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the fixed rent and other charges have been paid in advance, if any, and confirming Tenant's acceptance of the Premises, the commencement of the lease term, and the rent provided under the Lease, it being intended that such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser, mortgagee, or assignee of any mortgagee of the Leased Premises.

ARTICLE XXIV

Waiver

One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. The subsequent acceptance of rent hereunder by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No waiver of any provision of this Lease shall be effective unless it is in writing and signed by the Landlord.
ARTICLE XXV

Hold Over

If Tenant should remain in possession of the Leased Premises after the expiration of the lease term and without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

ARTICLE XXVI

Surrender of Premises: Treatment of Tenant's Alterations at Expiration of Lease

Upon termination of this Lease for any reason, all improvements constructed or installed by Tenant shall remain a part of the Leased Premises and the property of Landlord; provided, however, that Tenant shall be permitted to remove all such improvements if the removal of which can be accomplished without damage to the Leased Premises, which include but are not limited to, the items listed in Paragraph 9 of the Agreement Regarding Golf Course Lease and Restaurant Building Lease; and provided further that Landlord shall have the right to require Lessee to remove improvements designated by Landlord and restore the Leased Property to its former condition. In the event the Landlord shall so elect to require Tenant to remove improvements, and Tenant shall restore the Leased Premises to its original condition at the commencement hereof, normal wear and tear excepted, at its own costs and expense prior to the expiration or termination of the term hereof; or if Tenant fails to do so at Tenant's expense. Also, at the expiration of the lease term, Tenant shall remove all of his movable trade fixtures which shall not be the property of Landlord under the foregoing provisions of this paragraph. Tenant's obligations to perform the covenants contained in this Paragraph of this Lease shall survive the expiration or other termination of this Lease.

ARTICLE XXVII

Signs, Displays, and Other Advertising Media

Tenant is hereby authorized to utilize the domain name RVR Golf in connection with its operation hereunder. Tenant shall not erect or install any exterior or interior window or door signs, advertising media, window or door lettering, or placecards without Landlord's written consent. Tenant agrees to install an exterior sign which shall be in strict conformance with Landlord's sign criteria as to design, material, colors, location, size and style of lettering. The cost of such sign shall be Tenant's sole expense. Tenant agrees not to use an advertising media or other media that shall be deemed objectionable to Landlord or other tenants, such as loudspeakers, phonographs, or radio broadcasts in a manner to be heard outside the Leased Premises. Tenant shall not install any exterior lighting, decoration, painting, or awning, or make any changes to the exterior of the Leased Premises without Landlord's written consent.

ARTICLE XXVIII

Mechanic's Liens

1. Tenant's Responsibilities. Tenant shall pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Leased Premises and for all
materials furnished for or in connection with such work. Tenant shall indemnify Landlord against and hold Landlord, the Leased Premises and the project free, clear and harmless of and from all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work.

2. **Posting of Notices.** Landlord hereby designates Tenant as its agent for the sole purpose of posting within five (5) days of the intended erection, construction, alteration, removal, addition, repair or other improvements, in a conspicuous place upon the premises a notice containing substantially the following language which Tenant shall post prior to commencement of any work which will or may result in liens:

"NOTICE. THE PREMISES UPON WHICH THESE IMPROVEMENTS ARE BEING CONSTRUCTED IS LEASED BY CRYSTAL OUTDOORS, LLC, AS LANDLORD TO AS TENANT. THE INTEREST OF LANDLORD IN THE PREMISES AND THE BUILDING AND LANDS UPON WHICH IT IS SITUATED SHALL NOT BE SUBJECT TO ANY LIEN BY VIRTUE OF WORK DONE OR MATERIALS OR EQUIPMENT SUPPLIED BY ANY CONTRACTOR OR OTHER PERSON. THIS NOTICE IS GIVEN PURSUANT TO 1973 COLORADO REVISED STATUTES 38-22-105(2), AS AMENDED."

**ARTICLE XXIX**

**Notices**

1. All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing.

   **To Landlord:**
   Crystal Outdoors, LLC  
   201 Crystal Canyon Drive  
   Carbondale, CO  81623

   **To Tenant:**
   Cunningham Golf, LLC  
   11 Duroux Lane  
   Basalt, CO  81621

2. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.
ARTICLE XXX
Attorney's Fees

In the event of any litigation or other action or proceeding between the parties hereto arising out of the performance or non-performance of this Lease, or enforcement of any rights or remedies hereunder, including any indemnities herein contained, the prevailing party shall be entitled in such litigation, action or proceeding to also recover as part of any judgment, award or other relief, its reasonable attorneys' fees and costs incurred.

ARTICLE XXXI
Personal Guarantee

Red Cunningham shall execute the Personal Guarantee set forth below.

ARTICLE XXXII
Right to Renew Lease

1. Renewal Term. So long as Tenant is not in default under this Lease, and subject the provisions subparagraph 2 below, Tenant may renew the Lease for five (5) terms of two (2) years each (each two (2) year term is hereinafter referred to as the "Renewal Term"). Tenant shall exercise a Renewal Term, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the Initial Term or Renewal Term, as the case may be. In any Renewal Term, the minimum annual rent shall be $60,000 payable in monthly installments of $5,000, and percentage rent shall be paid on 9% of gross sales. Otherwise, all covenants, conditions and provisions set forth herein shall apply during any Renewal Term.

2. Conditions/Termination Upon Sale. Tenant’s right to renew is contingent upon the following:

   a. A comprehensive agreement between Tenant and Landlord describing a plan to reconfigure the Golf Course and to revise or replace the Restaurant Lease as contemplated in paragraphs 2 and 4 of Agreement Regarding Golf Course Lease and Restaurant Building Lease referenced in Article XXXIII, paragraph 11, below (the “Agreement”);

   b. Approval of Rezoning and the granting of such other approvals as may be required by the Town of Carbondale for redevelopment of the Practice Area as contemplated in paragraph 1 of the Agreement; and

   c. If the Leased Premises is sold during the Renewal Term, the Buyer shall have the right, but not the obligation, to terminate this Lease by providing written notice thereof to Tenant following acquisition. The notice shall specify the date on which this Lease shall terminate, which shall not be earlier than the first full golf season (opening day to closing day) following the date of said notice.
ARTICLE XXXIII
Miscellaneous Provisions

3. **Relationship of Landlord and Tenant.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between parties hereto, it being understood and agreed that neither the method of computation of rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each gender.

4. **Captions.** The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

5. **Waiver.** One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

6. **Entire Agreement and Execution.** This Lease contains the entire agreement between the parties and no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought. This Lease shall not be effective or binding on Landlord or Tenant until fully executed by both and delivered by each to the other. This Lease may be executed in counterparts. Each counterpart shall be deemed to be an original hereof.

7. **Governing Law; Jurisdiction.** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Lease. Landlord and Tenant understand and agree that the Federal and State courts located in the State of Colorado shall have subject matter jurisdiction to entertain any action brought to enforce this Lease or otherwise arising hereunder and, by execution hereof, Landlord and Tenant voluntarily submits to the personal jurisdiction of such courts.

8. **Successors and Assigns.** The terms, provisions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representatives except as otherwise herein expressly provided.

9. **Invalid Provisions.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of the Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby; and it is also the intention of the parties that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there shall be substituted a legal, valid and
enforceable clause or provision as similar to such illegal, invalid or unenforceable clause or provision as may be possible.

10. **Authority to Enter into Lease.** Tenant and the party or parties executing this Lease on behalf of Tenant represent to Landlord that such party or parties are authorized to do so by requisite action of Tenant's board of directors, or partners, or managers, as the case may be, and agreed upon request to deliver to Landlord a resolution or similar document to that effect. Tenant and the party or parties executing this Lease on behalf of Tenant represent to Landlord that such party or parties are authorized to do so by requisite action of Tenant's board of directors, or partners, or managers, as the case may be, and agreed upon request to deliver to Landlord a resolution or similar document to that effect.

11. **Corporate and Limited Liability Company Tenants.** If Tenant is a corporation or a limited liability company, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly constituted corporation or limited liability company qualified to do business in the state in which the Leased Premises are located; all Tenant's franchise and corporate or limited liability company taxes have been paid to date; and all future forms, reports, fees and other documents necessary for Tenant to comply with applicable laws will be filed by Tenant when due.

12. **Time of the Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

13. **Agreement Regarding Golf Course Lease and Restaurant Building Lease.** This Agreement is subject to the terms of the Agreement Regarding Golf Course Lease and Restaurant Building Lease of even date.

**IN WITNESS WHEREOF,** the parties have executed this Lease on the day and year first above written.

**LANDLORD:**

CRystal OUTDOORS, LLC

By: [Signature]

Dan Coleman, Manager

1-14-2019

**TENANT:**

CUNNINGHAM GOLF, LLC

By: [Signature]

Red Cunningham, Manager
PERSONAL GUARANTEE

In consideration of Landlord's agreement to enter into the foregoing Lease as an inducement to Landlord therefor, Red Cunningham hereby personally and unconditionally guarantees the payment of 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 Landlord's expenses, including its reasonable attorneys' fees incurred in enforcing this Guarantee.

Red Cunningham

Date: 14 Jan 2019
## Wholesaler Affidavit of Compliance

**Section 12-47-303(1)(d), C.R.S.**

<table>
<thead>
<tr>
<th>Wholesaler Licensee Name (If an LLC; partnership; corporation or name of corporation)</th>
<th>License Number</th>
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<tr>
<td>Mountain Beverage Co LLC</td>
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<th>Trade Name of Establishment/Doing Business As (DBA)</th>
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<td>Mountain Beverage</td>
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<table>
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<tr>
<th>Email Address</th>
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<tr>
<td><a href="mailto:cindy.hosman@mountainbeverage.com">cindy.hosman@mountainbeverage.com</a></td>
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<tr>
<td>303 River Valley Ranch Drive</td>
<td>Carbondale</td>
<td>CO</td>
<td>81623</td>
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</tbody>
</table>

The above wholesaler affirms that all alcohol beverages delivered to the above transferor retailer are:

- [x] 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:**

Mountain Beverage Co LLC

**Signature:**

Cindy Hosman

**Print:**

Cindy Hosman

**Title:**

Controller

**Date:**

01/22/19
Wholesaler Affidavit of Compliance  
Section 12-47-303(1)(d), C.R.S.

Wholesaler Licensee Name (If an LLC; partnership; corporation or name of corporation)  
SOUTHERN GLAZER'S WINE AND SPIRITS  
Trade Name of Establishment/Doing Business As (DBA)  
License Number  
4055351-0002

Physical Address  
5270 FOX STREET  
City  
DENVER

Email Address  
qledezma@agws.com

Transferor Retailer Licensee Name  
License Number  
304843

Trade Name of Establishment/Doing Business As (DBA)  
PAN AND FORK

Physical Address  
303 RIVER VALLEY RANCH DR  
City  
CARBONDALE

Phone Number  
303-292-1711

Phone Number  
970-963-7006

ZIP  
80216

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  
SGWS OF COLORADO

Signature  
Print  
GLORIA LEDEZMA  
Title  
CUSTOMER CARE MANAGER  
Date  
1/22/19
Wholesaler Affidavit of Compliance
Section 12-47-303(1)(d), C.R.S.

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<td>303 River Valley Ranch Dr</td>
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  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:
Republic National Distributing Company LLC

<table>
<thead>
<tr>
<th>Signature</th>
<th>Print Name</th>
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<tr>
<td></td>
<td>Savannah Torres</td>
<td>AR Clerk</td>
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**Wholesaler Affidavit of Compliance**

**Section 12-47-303(1)(d), C.R.S.**

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- [ ] Not Paid in Full

**Wholesaler:**

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<th>Signature</th>
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<th>Title</th>
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<tbody>
<tr>
<td>Tamara Colon</td>
<td>Tamara Colon</td>
<td>Accounting Department</td>
<td>01/22/19</td>
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Wholesaler Affidavit of Compliance

Section 12-47-303(1)(d), C.R.S.

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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:

Orrison Distributing

Signature: [Signature]

Print: Roger Janicek

Title: General Manager

Date: 01/22/19
Wholesaler Affidavit of Compliance  
Section 12-47-303(1)(d), C.R.S.

<table>
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<tr>
<th>Wholesaler Licensee Name (If an LLC; partnership; corporation or name of corporation)</th>
<th>License Number</th>
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<tbody>
<tr>
<td>Beverage Distributors Company LLC</td>
<td>6661-40-04782-0004</td>
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<tr>
<td>Trade Name of Establishment/Doing Business As (DBA)</td>
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<tr>
<td>Breakthru Beverage Colorado</td>
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<tr>
<td>Physical Address</td>
<td></td>
</tr>
<tr>
<td>3980 Central Park Blvd</td>
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<tr>
<td>City</td>
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<tr>
<td>Denver</td>
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<td>ZIP</td>
<td>80238</td>
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<tr>
<td>Email Address</td>
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</tr>
<tr>
<td><a href="mailto:JJOHNSON@BREAKTHRUVEV.COM">JJOHNSON@BREAKTHRUVEV.COM</a></td>
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<table>
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<tr>
<th>Transferor Retailer Licensee Name</th>
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<td>303 River Valley Ranch Drive</td>
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<td>Carbondale</td>
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</tr>
<tr>
<td>CO</td>
<td>81623</td>
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</table>

The above wholesaler affirms that all alcohol beverages delivered to the above transferor retailer are:

☑ Yes, 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.

☐ No, Not Paid in Full

Wholesaler:  
Breakthru Beverage Colorado

Signature:  
Jaime J Johnson

Print:  
Jaime J Johnson

Title:  
Credit Associate III

Date:  
1/23/19
Affidavit - Restrictions On Public Benefits

I, RED CUNNINGHAM, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

☐ 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

Date (MM/DD/YYYY) 01/28/19
MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday January 24, 2019

Commissioners Present:
Michael Durant, Chair
Nick Miscione
Marina Skiles
Jay Engstrom
Tristan Francis (2nd Alternate)
Jeff Davlyn
Nicholas DiFrank (1st Alternate)

Commissioners Absent:
Ken Harrington, Vice-Chair
Jade Wimberley

Other Persons Present
Richard Camp, 231 Euclid Avenue
Dan Muse, 289 Sopris Avenue
Kenny Teitler, 206 S. Third Street
Karen Good, 201 E. Silver Street, Marble
Mark Chain, 811 Garfield Avenue
Jeff Dickinson, 82 Weant Blvd. #201
Kristin Carroll, 240 Euclid Avenue
Kurtis Sparrow, 240 Euclid Avenue

The meeting was called to order at 7:02 p.m. by Michael Durant.

January 10, 2019 Minutes:

Jeff made a motion to approve the January 10, 2019 minutes. Nicholas seconded the motion and they were approved unanimously with Nick, Marina, Jay and Tristan abstaining.

Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

Special Use Permit-615 Buggy Circle-P&C Express- Medical Marijuana Cultivation

Jeff made a motion to approve the Special Use Permit for a medical marijuana cultivation facility. Marina seconded the motion and it was approved unanimously.
Special Use Permit - 615 Buggy Circle- Durango Alternative-Medical Marijuana Cultivation

Nicholas made a motion to approve the Special Use Permit for a medical marijuana cultivation facility. Marina seconded the motion and it was approved unanimously.

Public Hearing – Minor Site Plan Review, Special Use Permit, Conditional Use Permit and Variances - 296 S. 3rd- Applicants: Kristin Carroll, Kurtis Sparrow & Pamela Maguire

Janet said that this is a public hearing to consider a Minor Site Plan Review and Special Use Permit for a new Single Family Dwelling with an Accessory Dwelling Unit, Variances and Conditional Use Permit. She stated that the Planning Commission is required to hold a public hearing and approve the application, deny it or continue the public hearing.

Janet explained that there currently is a single family home on the lot. She said that the applicants are proposing to demolish the structure and construct a single family dwelling with an ADU.

Janet continued by saying that the house would be a two-story structure with a full basement. She stated that the single family residence would be 3,880 sq. ft. with a 440 sq. ft. ADU for a total of 4,320 sq. ft.

Janet stated that the property is located in the OTR zone district. She said that because of the size of the lot, it is a legal non-conforming lot. She said that the UDC allows a nonconforming lot to be developed as long as all development criteria are met with the exception of lot size and/or minimum lot dimensions.

Janet explained that the application includes a number of variances. She noted the following:

1. Variance from the minimum lot size
2. Variance from the required off-street parking requirements
3. Variance for the size of the ADU
4. Variance from allowed maximum impervious lot coverage
5. Variance from the street side setback
6. Variance from the allowed height of a wall within five feet of a side yard setback
7. Variance for an eave projection
8. Variance from allowed fence height

Janet said that the application is complete and detailed. She stated that overall, the design of the building is attractive and appears to be in compliance with the building design standards in the OTR zone district. She stated however, Staff does not support this proposed application.

Janet stated that the variances requested are not the minimum amount required in order to reasonably develop the property. She said that the property could be developed with a fewer number of variances.

Janet said that the purpose section of the OTR zone district states that the mass and scale of new development should integrate into the neighborhood. She stated that she’s not sure that this has been accomplished with this design.

Janet stated that the Infill goals in the Comprehensive Plan require that special care should be taken to ensure mass and scale conform to the existing neighborhoods.

Janet said that while Staff doesn’t support this proposal as currently designed, we recognize that variances may be needed to reasonably develop this property. She stated that this could include a street side setback variance and a variance to have eaves project into the side yard setback. She said that a variance from the maximum impervious lot coverage may also be needed but it should be the minimum necessary.

Janet continued by saying that the mass and scale of the structure should be brought down to scale with the neighborhood. She said that Staff would suggest that the length of the building be reduced and two parking spaces constructed off the alley.

Janet explained that with a special use permit that we need to make sure that the impacts of a development are mitigated upon the surrounding neighborhood. She said that she did not include the special use criteria in the Staff report but that it is a key finding.

Janet stated that Staff’s recommendation is for denial of the project and the Commission may also continue the public hearing.

Janet explained that the applicants knew that she had concerns early on and that she thinks that they have heard from the neighbors. She said that she also thinks that they are willing to change their design to reduce the number of variances requested and would need time to complete this.

Janet said that if the Commission is inclined to continue the item, Staff would recommend that it be continued to the February 28, 2019 meeting so there is time to review the application for conformance with the UDC.

Nick asked if the existing building was listed on the historic survey.
Janet said that it was not and that she didn’t believe a survey was done previously.

Nick asked if this property was eligible for a survey.

Janet stated that it was hard to say because the survey is what determines the integrity and the history. She said that we do not have any regulations that would prohibit the demolition of the building. She continued by saying that the only time we can do a stay of demolition is if the building is located in the HCC zone district and if it is over fifty years old. She said that the applicants’ intent when they bought the property was to rehabilitate it but that further problems were discovered. Janet noted that the applicants’ were planning on reusing some of the materials from the home.

Marina asked for clarification of the demolition of historical property and that the HCC zone district was the only zone district that a building cannot be demolished.

John answered that it is correct.

Janet stated that even in the HCC that a stay of demolition is only good for 180 days, which allows time for the CHPC and the Town to negotiate with the property owners. She said that after the 180 days that if negotiations fail the property owners can demolish the property. Janet stated that our historic preservation ordinance is owner consent.

Nick asked if the applicant has reached out to HPC.

Janet stated that she didn’t believe so.

Michael said that is a question for the applicant when it is their turn. He added that with these questions he wondered if everyone has seen the same building that he has seen.

Nick stated that from a historic perspective it shouldn’t matter whether it is a mansion or a shed. He said that it is not a determining criteria for historic significance.

John said that what he thinks Michael is speaking to is its’ condition.

Michael commented that if there had been any historical significance that it was gone two or three remodels ago.

Jay asked if there might be any potential for redoing the sidewalks for this intersection and this corner.

Janet said that there are no plans that she knew of but that she would also have to check with the Public Works Director.

Jay said that three corners of this intersection have a pedestrian crosswalk but that this corner does not have one.
Mark Chain introduced himself, the applicants, Kristin Carroll and Kurtis Sparrow, Designers, Jeff Dickinson and Robin Sher. He said that the owners have been working hard on this for six months meeting with twelve households of neighbors as well as Staff. He said that the application includes six variances and a special use permit with a site plan review.

Mark said that there are new designs to come into conformance as much as possible and to reduce the number of variances.

Mark gave a PowerPoint presentation outlining the following:

- The nonconforming lot with a house that was built in 1888
- Encroachments in the right-of-way
- Explanation of the request for variances
- Structural issues with current home
- Comprehensive Plan requirements
- Old Town Residential (OTR) zoning requirements
- Initial design layout
- Revised design/ layout
  - Rear yard, which could have parking
  - Height reduction
  - Building step-down to the alley
  - Fence variance removed for the front yard
  - ADU has been removed
  - Vertical side wall reduction
- Two variances with the revisions, eve projections and side yard setback
- Drainage improvements

Jeff Dickinson explained the drawings on the wall, referencing the site plan. He said that this a “forever-home” for the applicants so they went out and met with their neighbors.

Jeff Dickinson said that the mass of the home has been brought down as well as the height and length. He said that the impervious area has been reduced to 44%, which is what is allowed by code. He said that there is now a nice backyard that can be fenced in as well as in the front yard. Jeff said that the owners have sacrificed a lot and that there has been a lot of effort on their part.

Michael asked Mark if the changes were reflected in the application in the packet.

Mark explained that the changes are not in the packet but that they are in the slides and the drawings on the wall. He said that there are images in the PowerPoint.

Jeff Dickinson said that they revised the drawings in the last month and that they were wanting to get the Commission’s take on them.
Marina commented that this home is straw bale which takes up a lot of square footage on a really tight site.

Jeff Dickinson said that the applicants want a straw bale home and that is one of their top criteria.

Nick asked if there were any other buildings in the Town of Carbondale that were straw bale.

Jeff Dickinson answered yes about a dozen.

Kristin said that they currently rent an ADU close by that is a straw bale where they have lived for ten years. She listed many reasons for their choice of straw bale.

Nick asked what the oldest straw bale in town was.

Jeff Dickinson said 1992.

Nick asked if they had run dew point calculations on their assembly including its location.

Jeff Dickinson explained that it was a breathable assembly in the middle of the wall.

Jay asked if the square footage was on the outer dimensions of the building.

Jeff Dickinson answered yes.

Marina said that this is the corner of Third Street and Sopris Avenue and that you are putting the back side of your house on the main street. She said that this is the OTR and that we need to consider this different than any other part of town.

Kristin explained the changes to their design and that they love this location.

Michael stated that we have an application and the building that is going to be proposed is not reflected in the application in the packet. He said that we also have eight variances in this application and that he doesn’t see eight variances passing. Michael explained that there are specific criteria for a variance and that several of these variances don’t even come close to fitting the criteria. He said that he doesn’t see how this lot could be developed without a variance or two. He continued by saying that this is a public hearing and that he doesn’t want to ask the applicant questions on a design that won’t be happening.

**Richard Camp**, 231 Euclid Avenue said that he is in favor of the proposed plan that the Commission hasn’t seen. He said that they have gone to great strides to reduce the mass of this house and respond to the neighbors’ concerns. He said what it comes down to is that they are asking for a setback variance and an overhang variance, which will create a developable lot. He said that the applicants are a working family and that it
is important to keep them in town. He said that this was the only lot that they could afford and that he likes the direction that they are going with the house. He asked the Commission to please consider a variance on the setbacks.

**Dan Muse**, 289 Sopris Avenue said that he and his wife are the property on the east side. He said that it seems to be an outlier with the cost of the house and the cost of the lot. He said that he has not seen the revised plans. He said that the applicants are great people as well as everyone involved. He said that this corner has always been a funny ignored corner in town so it would be nice to see the corner get developed and embraced by the houses around it. He said that he can’t speak to the revised plans as he hasn’t had a chance to see them yet.

**Kenny Teitler**, 206 S. Third Street said that he is two doors down from them. He said that he appreciates how Kristin and Curtis have listened to the feedback that they have been given. He said that he appreciates the new proposal and that the side setback is fine. He said that he has lived on this street for twenty years and that he can’t count the number of people that have lived in this house because it is not livable as it. He said it would be great to have people that have already been our neighbors and that it would be great to see them have a good life here.

**Karen Good**, 201 E. Silver Street, Marble, said that Kristin and Curtis are personal friends. She said that she has seen firsthand the stress and hardship that they have been going through. She said that there are a lot of problems with the current house regarding safety issues. She said that she admires their perseverance and willingness to work with the neighbors and the Town to figure out a good fit. She said that with their new plan that it seems like a no-brainer. She said that it will benefit everybody and she hopes that they get their place the way they want it.

Nicholas asked if the windows in the new plan were egress windows.

Inaudible discussion followed.

Jeff asked if the applicant was going to pursue the variance for the off street parking for the single family dwelling.

Inaudible discussion followed.

Mark Chain suggested that the backyard would be good for the applicant to have their nest and as the surroundings change maybe make parking in the future when needed.

Jay said that he has concern with the two big trees and the foundation going in for the basement. He asked what kind of trees they were.

Mark Chain said that the trees were Siberian Elms.

Further discussion ensued about trees.
Janet said that the Town Arborist could weigh in on the trees.

Marina reiterated the corner and that it shouldn’t feel like a back yard as well as how the corner creates community. She added that she wasn’t sure why the ADU went away.

Inaudible discussion followed.

Mark Chain stated that the applicants were listening to their neighbors.

Further discussion ensued regarding design.

Nicholas asked where the window well was in relation to the setback.

Jeff Dickinson said that it doesn’t go outside of the property line and that they are not egress windows on the west side. He said they could possibly put in a railing.

Nicholas said that he thinks that a fence is inappropriate on the corner and that he would love to work with them personally.

Further discussion ensued regarding the corner.

**Motion to Continue the Public Hearing**

Jeff made a motion to continue the public hearing to February 28, 2019. Marina seconded the motion and it was approved unanimously.

**Garfield County Referral – Go Self Storage – 12744 Highway 82**

John stated that Planning Staff received a referral from Garfield County. He said that the referral concerns an application for the development of a mini storage facility to be located at 12744 Highway 82. He explained that the site is currently used by the Planted Earth Nursery located in the Dixon Subdivision for material and equipment storage and is 2.7 +/- acres in size. John said that it appears that Planted Earth will continue operations on the other adjacent parcels. He stated that the County review of the application includes a limited impact review similar to our Site Plan Review and also included a Land Use Change permit for the change of uses on the site. He said that the Property is Zoned Rural.

John stated that the facility is to be a three-story self-contained storage building to be approximately 99,407 +/- square feet in size.

John said that the operation is to include a self-service kiosk for 24-hour service to rent and move into units at any time. He added that there will also be an onsite office that will be open from 8:30 am to 5:30 pm Monday through Friday and Saturday from 9:00 am to 1:00 PM.
John stated that these units are climate controlled and the facility will be fenced with a computerized gate access and security cameras to prevent theft. He said that the facility will also have on hand trucks and trailers for delivery and moving services. He stated that no outdoor storage is allowed on the site.

John noted that the applicant has indicated that the building will use non-reflective materials and will follow the Garfield County lighting standards to minimize impacts of the exterior lighting.

John said that the County standards are similar to the Towns in that lighting is required to be downcast and fully shielded from view.

John continued by stating that in the memo dated 11-20-18 from Yancy Nichol of Sopris Engineering, he points out that the existing Dixon Subdivision does not appear to have an existing CDOT Access Permit and that it may be a “grandfathered” access point, the memo goes on to state that the change in use may require a new access permit to be issued dependent on the traffic generated. The memo is attached and includes estimated traffic counts.

John stated that Staff recommends that the Planning Commission review the attached application then discuss the referral. He said that the Commission may then direct staff to provide comments to Garfield County by Thursday January 31, 2019.

Points for referral letter:

- Comprehensive Plan, significant parcels pages 73 & 74
- Comprehensive Plan, gateways page 46.
- Perform line of sight from the Town.
- Entryway to the Town of Carbondale.
- RV storage too close to the highway.

**Garfield County Referral – Blue Mountain Self Storage – Intersection of County Road 100 and Colorado Highway 82**

John stated that Planning Staff has received a referral from Garfield County.

John said that the referral concerns an application for the development of a mini storage facility to be located on the northwest corner of Highway 82 and County Road 100. He stated that the site is part of the T.O. Ranch Subdivision (Lot 1) and is 5.988 acres in size. He explained that the County review of the application includes a Limited Impact Review similar to our Site Plan review and also includes a Land Use Change permit for the change of uses on the site. He said that the property is Zoned Rural.

John said that the facility is to be a three-story self-contained storage building to be approximately 96,900 +/- square feet in size with 32,300 square feet per floor. He stated that no outdoor storage is allowed on the site.
John stated that the applicant has indicated that the building will use materials that reflect the natural environment of the location and its surroundings. He stated that the applicant indicates that the lighting will be 0.00-foot candles at the perimeter of the property and will conform to County lighting standards. He said that the county standards are similar to the Towns in that lighting is required to be downcast and fully shielded from view.

John stated that the memo from Yancy Nichol of Sopris Engineering indicates that a CDOT access permit is not required as access is off of County Road 100.

John stated that Staff recommends that the Planning Commission review the attached application then discuss the referral. He said that the Commission may then direct Staff to provide comments to Garfield County by Friday, February 1, 2019.

Points for referral letter:

- Zoning is a Village Center.
- Water tank height in berm.
- Artificial barrier for surrounding property owners.
- It is a residential parcel, why change to commercial?

Staff Update

Janet said that the Board of Adjustment now has seven members and that they will meet next Wednesday January 30th. She asked the Commission if there were three Commissioners that could sit on the Board of Adjustment if needed. Nicholas and Tristin volunteered and Jay was tentative.

Commissioner Comments

There were no comments from the Commissioners.

Motion to Adjourn

A motion was made by Jeff to adjourn. Nick seconded the motion and the meeting was adjourned at 9:14 p.m.
January 27, 2019

Town of Carbondale
511 Colorado Ave
Carbondale, CO 81623-4001

Dear Town of Carbondale,

Your gift of $1,980.00 has already made an impact...

LIFT-UP provides food and services to those in need through our food pantries, two thrift stores, extended table (soup kitchens) and student lunch program. We continue to expand and cultivate partnerships and sponsorships that allow us to stretch resources, provide new options and further educate the valley on the impact of hunger and the ongoing need to help our neighbors.

As the Marketing & Development Director, I would like to personally thank you for making our work possible. Your kindness supports the fight against hunger throughout our valley from Aspen to DeBeque.

Your generosity allows us to put our full effort and heart into helping those who are having a difficult time feeding themselves and their families. We are deeply humbled and privileged to be part of providing essential humanitarian assistance in the communities we serve.

Our current and future success of providing food is made possible by the generosity of our community partners, amazing volunteers and donations like yours. In the coming year, LIFT-UP plans to continue to support and serve those in need through expanded outreach. We will keep you updated on the exciting progress!

With deep gratitude,

Debbie Patrick
Director of Development and Marketing