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| 6:00  | 2. Consent Agenda  
   a. Accounts Payable  
   b. BOT 6/19/18 Work Session Minutes  
   c. BOT 6/26/18 Regular Meeting Minutes  
   d. Liquor License Renewal - Allegria | ATTACHMENT A  
ATTACHMENT B  
ATTACHMENT C  
ATTACHMENT D  
BOT Action Desired |
| 6:05  | 3. Persons Present Not On The Agenda | |
| 6:15  | 4. Trustee Comments | |
| 6:25  | 5. Attorney’s Comments | |
| 6:45  | 7. Special Event Liquor License – My Community Health Foundation | ATTACHMENT E  
BOT Action Desired |
| 6:50  | 8. Special Event Liquor License – KDNK - Hootenanny | ATTACHMENT F  
BOT Action Desired |
Applicant: Mladen Todorovic  
Location: 348 Main Street | ATTACHMENT G  
BOT Action Desired |
| 7:10  | 10. **Public Hearing** – Ordinance No. 9, Series of 2018 - Ole Town Residential Boundary Correction | ATTACHMENT H  
BOT Action Desired |
| 7:30  | 11. RFTA – Destination 2040 Mill Levy Increase Discussion | ATTACHMENT I  
Presentation |
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* Please note: times are approximate*
Board of Trustees Agenda Memorandum

Item No: Attachment A

Meeting Date: 07.10.2018

TITLE: Accounts Payable

SUBMITTING DEPARTMENT: Finance

ATTACHMENTS: Accounts Payable for 07.10.2018

DISCUSSION: The accounts payable include a payment for $19,181.63 to CUES for the transporter assembly for the camera van in Utilities. A hydrogritter replacement was purchased for $20,296.00 from Falcon Environmental Corporation. Work has begun on the Snowmass Drive Trail and a progress payment to Johnson Construction is included for $52,109.87.

The payroll for 6.30.18 was 164,976.74. Tax liability for the town was $10,178.17. Pension and Retirement liability was $10,066.09.

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

Renae
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- Total 41-4336-2380: $60.00
- Total 41-4336-2383: $121.53
- Total 41-4336-2385: $1,035.90
- Total 41-4336-3410: $1,582.61
- Total 41-4336-3571: $929.16
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Grand Totals: 155,904.58
MINUTES
CARBONDALE BOARD OF TRUSTEES
GARFIELD COUNTY COMMISSIONERS
JOINT WORK SESSION
JUNE 19, 2018

Mayor Dan Richardson called the Joint Work Session to order on June 19, 2018, at 6:00 p.m. in the Town Hall meeting room.

**ROLL CALL:**

The following members were present for roll call:

- **Mayor**
  - Dan Richardson

- **Trustees**
  - Heather Henry
  - Ben Bohmfalk
  - Lani Kitching
  - Marty Silverstein

- **Arrived After Roll Call**
  - Luis Yllanes

- **Absent**
  - Erica Sparhawk

- **Staff Present**
  - Town Manager
    - Jay Harrington
  - Town Clerk
    - Cathy Derby
  - Public Works Director
    - Kevin Schorzman

The Board and Commissioners discussed the following topics:

**Snowmass Drive Construction Update**

Kevin stated that currently the contractor is clearing and excavating the land. The drywell has been installed. They are starting the construction of the retaining wall tomorrow. Only one land owner has been directly impacted by the project. The project needs to be finished by August 17th.

Trustee Bohmfalk thanked the Commissioners for working with the Town to make this project happen.

**Red Hill Update**

Suzanne Stevens, Aspen Valley Land Trust Executive Director, expressed deep gratitude for the County and Town's support of the land purchase. Jay noted that the
neighbors are happy with the direction of the project. The Town hired DHM and Single Track Trails to design the trails. One hundred and eighty people participated in the planning process. The on-line survey will close on June 22nd. Single Track Trails will start GISing the project tomorrow. Option #2, which is two biking trails and one hiking trail, appears to be the most popular option. The Town is working with the County on an IGA prior to the annexation of the property. Almost all of the property will be annexed into the town. The road planning will be an on-going endeavor.

Trustee Kitching stated that she attended the DHM open house and was impressed by the diversity of attendants.

**Bears**

Deputy County Manager Fred Jarman stated that in March he met with Trustee Merriott to discuss the bear problem. They asked how can we ramp up how we deal with bears. They concluded that they needed to increase awareness. They discussed the possibility of deputizing the Carbondale police which would give them the capability of enforcing the bear laws in the mobile home park behind Red Rock Diner which is in the County. The County attorney did not believe it's possible to deputize the police. John Graves of Colorado Parks and Wildlife stated that he is constantly at the mobile home park due to the presence of bears. Glenwood Springs Police Chief Terry Wilson informed the group that they have eliminated warnings; first offense tickets are $50 and then jump to $500 for the second offense and it has been a very effective tool.

Trustee Yllanes arrived at the meeting.

**County Revenues**

Commissioner Jankovsky explained where the County gets its revenues; mainly from the oil and gas industry. Revenues from oil and gas decreased from $1.35 million in 2016 to $91 million in 2017. Property taxes from the oil and gas industry have also decreased from $32 million in 2016 to $16 million in 2017.

The County has a balanced budget. They did however go in to reserves to fund capital projects and grants.

**Miscellaneous**

Trustee Kitching asked the commissioners if they feel that economic development is a priority. They responded that they gave money to 5 Point Film Festival and the Carbondale Creative District. They noted that the Town can apply to the USDA for more money for the Revolving Loan Fund.
Trustee Yllanes asked how much water does the oil and gas industry consume. The Commissioners responded that they recycle their water and they account for less than 5% of the water used on the western slope.

ADJOURNMENT

The June 26, 2018, work session adjourned at 7:35 p.m. The Trustees then went into Incident Command Training. The next regularly scheduled meeting will be held on June 26, 2018, at 6:00 p.m.

APPROVED AND ACCEPTED

__________________________
Dan Richardson, Mayor

ATTEST:

__________________________
Cathy Derby, Town Clerk
MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
JUNE 26, 2018

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on June 26, 2018, at 6:00 p.m. in the Town Hall meeting room.

ROLL CALL:

The following members were present for roll call:

Mayor: Dan Richardson
Trustees: Marty Silverstein
         Luis Yllanes
         Lani Kitching

Absent: Erica Sparhawk
        Ben Bohmfalk
        Heather Henry

Staff Present:
        Jay Harrington
Town Manager
        Cathy Derby
Town Clerk
        Mark Hamilton
Town Attorney
        Renae Gustine
Finance Director
        Kevin Schorzman
Public Works Director

CONSENT AGENDA

- Accounts Payable totaling $321,168.16
- BOT 6/12/18 Regular Meeting Minutes
- Liquor License Renewal – Sopris Liquor
- Liquor License Renewal – Mary’s Main Street Spirits
- Crystal River – River Restoration Professional Service Agreement
- Modification of Retail Marijuana License – Change in Hours – High Q
- Colorado Product Services - Medical Marijuana Infused Product Renewal Application
- Colorado Product Services – Retail Marijuana Manufactured Infused Product Renewal Application
- Colorado Product Services Retail Marijuana Store Renewal Application
- Colorado Product Services Retail Marijuana Cultivation Renewal Application
Trustee Meeting Minutes
June 26, 2018

- Intergovernmental Agreement – Garfield County – Red Hill
- Revolving Loan Fund – Loan Request Approval - YouthEntity

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

4 yes votes: Silverstein, Kitching, Yllanes, Richardson

PERSONS PRESENT NOT ON THE AGENDA

Renee Grossman, owner of High Q Retail Marijuana Store, asked the Board if they would put the topic of lowering or eliminating the excise tax on retail marijuana on a future agenda; the Board agreed.

TRUSTEE COMMENTS

Trustee Kitching stated that she attended the Ruedi Water and Power Authority (RWAPA) meeting. The effort to eliminate evasive mussels is proving successful. Also, RWAPA has hired April Long as their new Executive Director.

Trustee Silverstein encouraged everyone to go to the Town’s website and vote for the “Best in Show” from the Art Around Town Sculptures. Trustee Silverstein also encouraged citizens to volunteer for the Senior Matters booth at the rodeo.

Trustee Yllanes told the Board that the Parks and Recreation Commission took their annual park tour. He stated that all of the parks look great with the exception of Triangle Park which is River Valley Ranch’s responsibility. The Parks and Recreation Commission will be making a recommendation for the Red Hill alignment.

Mayor Richardson stated that the Town is working with the Carbondale Creative District on Affordable Housing. He encouraged everyone to take the housing survey on the Town’s website.

Mayor Richardson told the Board that his take away from the CML conference is to create an affordable housing page on the Town’s website.

Mayor Richardson stated that he had dinner with Back Hills Energy employees and they discussed Thompson Divide. He said that counties and municipalities are drafting Memorandums of Understanding on what is and what is not acceptable in the oil and gas industry.

ATTORNEY’S COMMENTS

Mark informed the Board that the Supreme Court ruled that internet sales shall be taxed even without a brick and mortar presence.
SPECIAL EVENT LIQUOR LICENSE – COLORADO ANIMAL RESCUE

Colorado Animal Rescue has applied for a Special Event Liquor License for an event to be held at the Carbondale Recreation Center. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trusted Silverstein made a motion to approve Colorado Animal Rescue’s Special Event Liquor License Application. Trusted Kitching seconded the motion and it passed with:

4 yes votes: Richardson, Yllanes, Silverstein, Kitching

CONTINUED PUBLIC HEARING – THOMPSON PARK MAJOR SITE PLAN REVIEW

Applicant: ESA Architects
Location: Parcels 2, 3 &4, Thompson Park/Highway 133

Janet stated that this is a continued public hearing for a Major Site Plan Review, Conditional Use Permit, Extension of Vested Rights and Plat Recordation, and Amendment to the Thompson Park Annexation and Development Agreement. The Board considered this application at its June 14, 2018 meeting. The Board then continued the public hearing to June 26, 2018.

There are still some outstanding issues including:

- Affordable Housing
- Water Rights
- Engineering
- Traffic Impact Analysis
- Phasing, Vesting and Public Improvements Timeline

Janet asked that #6 in the Conditions of Approval in her memo be eliminated.

Affordable Housing

At the June 12, 2018 meeting, the Board had a fairly extensive discussion regarding affordable housing. The following is a recap:

- Eight (8) units are required to be deed restricted.

- The Annexation Agreement requires that the applicant deed restrict 20% of the lots to Category 1 or 80% AMI. The Annexation Agreement also requires a .5% RETA on initial sale of a unit and then 1% on any subsequent sale of a unit. The RETA is only collected on free market units.

- At the meeting, the applicant proposed that they be allowed to provide four 120% AMI units and four 150% AMI units.
Trustee Meeting Minutes
June 26, 2018

➤ Staff recommended compliance with UDC which would result in the following units: two 80%, two 100%, two 120%, two 150%.

➤ The Board did not accept the applicant’s proposal and indicated a preference to have some lower category units in the mix.

The applicant has submitted a new proposal (attached letter dated 6-20-2018) as follows:

Two units 100% AMI  
Three units 120% AMI  
Three units 150% AMI

The applicant also indicated a willingness to increase the real estate transfer assessment (RETA) from .5% to .7% for the initial sale. They estimate the .7% RETA would generate approximately $135,000 which could be earmarked for affordable housing. The 1% RETA on future sales would remain available as described in the Annexation Agreement.

Staff submitted the applicant’s proposal to the Garfield County Housing Authority (GCHA) for feedback. GCHA indicated by phone and by e-mail that the following mix is what they would recommend. They indicated that this is what they see as the market demand based on last year’s data:

Three units 80% AMI  
Three units 100% AMI  
One unit 120% AMI  
One unit 150% AMI

Staff would recommend that the Board accept the applicant’s proposal; however, staff recommends the Board require an additional unit be built and deed restricted at 150%. Therefore, the mix would be as follows:

Two units 100% AMI  
Three units 120% AMI  
Four units 150% AMI

Water Rights

At the time of annexation, the applicant dedicated all of the water rights appurtenant to the property. The Annexation Agreement then stated when a development is proposed, the Town’s Water Engineer would review the consumptive use of the proposed phase of development. The engineer also considers the amount of water rights which were already dedicated, to determine if fees in lieu of additional water rights are due or whether the dedication satisfied requirements.
Scott Fifer of Resource Engineering, Town’s Water Engineer, reviewed the development proposal as well as the water rights which were dedicated at time of annexation. Scott’s comments are included in the packet. The findings are that there is a shortfall so a fee-in-lieu of water rights will be required. Staff suggests that all of the fees-in-lieu of water rights be paid prior to recordation of the Development Improvements Agreement for each parcel rather than on a phase by phase basis.

ENGINEERING

The applicant submitted engineering for public improvements associated with Parcel 2 at the end of May. Town Staff has completed the review and submitted a number of review comments to the applicant. The applicant has responded and it appears that the engineering can be finalized. The comments and response from the applicant have been attached for the Board’s information.

Staff has included a condition that approval of the Major Site Plan Review is contingent upon Town Staff approval of the engineering plans.

TRAFFIC IMPACT ANALYSIS

A Traffic Impact Study (TIS) dated April 2018 was prepared by Felsburg Holt & Ullevig. Dan Roussin of CDOT reviewed the TIS and indicated support for a left-turn acceleration lane along SH 133 to receive the northbound left-turn movement from Lewie’s Lane, allowing these drivers to complete their movement in two stages (crossing southbound SH 133 first and then merging with northbound SH 133 traffic second.). He indicated that an access permit would be required to allow the work in the CDOT right-of-way if a left turn acceleration lane is made a condition of approval by the Board.

Phasing, Vesting and Public Improvements Timeline

Phasing

The application reviewed at the June 14, 2018 Board meeting included a Phasing Plan table in the text and a Phasing Plan on Sheet A100C. These have been included in this packet again since this issue wasn’t discussed at the last Board meeting.

Development of the parcels is divided into five phases. The phasing would begin with construction of the duplex and triplex (affordable housing units) on Parcel 2 beginning late summer of 2018 with completion in fall of 2019. The phasing then proceeds toward the south with Parcel 4 being completed and subdivided in fall of 2023.

On April 26, 2018, the Planning Commission approved a Subdivision Conceptual Plan application with the condition that it remain valid for a period of three years. (The Commission also recommended that the Board approve a three year deadline to
construct public improvements due to the proposed phasing.) The Commission did not have the phasing plan when they approved the application. The applicant may need to return to the Commission to request an extension of the approval of the Subdivision Conceptual Plan.

Discussion ensued on the makeup of the deed restricted AMI units. The Board and the applicant agreed to the following:

- Three units 100% AMI
- Two units 120% AMI
- Three units 150% AMI

Plus a 1% voluntary Real Estate Tax Assessment on the initial sale and all subsequent sales of free market homes.

Trustee Silverstein made a motion to approve the Major Site Plan Review, Vested Rights, Conditional Use Permit and Amendments to the Annexation and Development Agreement with the conditions listed below contingent upon approval of the Ordinance, the Amendment to the Annexation Agreement and the Development Improvements Agreement.

**CONDITIONS OF APPROVAL**

1. With the exception of the amendments approved with this application, all conditions of the Annexation and Development Agreement ("Agreement") recorded as Reception Number 816055 and recorded on March 16, 2012 remain in effect and in full force. All development shall comply with the Agreement.

2. Approval of the Major Site Plan Review is contingent upon Town Staff approval of the engineering plans for Parcel 2.

3. The engineering plans shall be revised to reflect a fire hydrant on Lewie's Circle in a location subject to approval of Town Staff and the Fire District prior to recordation of the Development Improvements Agreement.

4. The engineer's estimate shall be revised to reflect the changes in the engineering plans requested by Staff, including but not limited to the left turn acceleration lane on Highway 133, fire hydrant and street signage.

5. The Development Improvements Agreement shall allow an 18 month time frame to construct the public improvements for Parcel 2. The applicant shall submit a letter of credit which reflect terms in alignment with the 18 month timeframe. The letter of credit shall be subject to review and approval of the Town Attorney.
6. The applicant shall be responsible for installing the following signage:

Prohibit U-turn traffic along Lewie’s Lane.
Prohibit parking along Lewie’s Lane between Highway 133 and Ross Montessori.

7. Phase 1 shall include construction of the northern pedestrian trail which extends from Lewie’s Lane to Triangle Park.

8. A Subdivision Plat submitted to the Town, approved and recorded prior to issuance of any Certificate of Occupancy for any units on Parcels 2, 3 or 4. The subdivision approval documents shall include a deed restriction for the Real Estate Transfer Assessment, Master Covenants for Parcels 2, 3 and 4, Deed Restrictions for Community Housing Units (AMI), payment of fees per the Annexation and Development Agreement, including but not limited to Fire and School District Fees, etc.

9. The applicant shall be required to submit engineering plans for Parcels 3 and 4 prior to any construction on those parcels. The engineering shall be subject to review and approval of Town Staff. In addition, a Development Improvements shall be required to be approved by the Board.

10. All development of Parcels 2, 3 and 4 shall be in compliance with the Thompson Park Phasing Plan and Sheet 100C (ESA) included in the May 31, 2018 packet.

11. The Housing Mitigation Plan shall be revised to reflect that eight (8) dwelling units shall be deed restricted as follows:

| Three units | 100% AMI |
| Two units   | 120% AMI  |
| Three units | 150% AMI  |

12. The Housing Mitigation Plan shall be revised to reflect a 1% RETA on the initial sale and all subsequent sales of any free market dwelling units.

13. A sidewalk shall be constructed from Lewie’s Lane to the entrance of the dwelling for Units 3-9, Parcel 2 if the lower floor includes the living and kitchen space. The sidewalk shall be constructed prior to issuance of a Certificate of Occupancy.

14. The landscape plan shall be subject to review and approval by the Town Arborist and the Tree Board prior to installation of the street trees.

15. The final shading analysis shall be subject to review and approval by the Building Official at the time of building permit.
16. At all times and throughout all phases of construction, public vehicular access shall be maintained to the Historic House Parcel either from State Highway 133 (to the north) or North Bridge Drive (to the south), and at no time during construction shall both accesses be shut off at the same time unless otherwise permitted by the Town.

17. All representations of the Applicant and the representatives made before the Town during public hearings shall be considered additional conditions of approval of the Phase 2 Subdivision Plat.

18. The Applicant shall be required to pay and reimburse the Town for professional and staff fees pursuant to the Carbondale Town Code as well as recording fees.

19. Building permit fees, including but not limited to water and sewer tap fees, shall be required at the time of building permit.

20. Approval of the Subdivision Conceptual Plan application shall remain in place for a period of three years.

21. The applicant shall be responsible for the payment of fees in lieu of water rights prior to recordation of the Development Improvements Agreement for each parcel.

22. The Construction Management Plan shall include best practices to mitigate construction impacts on the Historic Thompson House. This Construction Management Plan shall be submitted with the Building Permit application and shall be subject to review and approval by Town Staff.

23. The subdivision plats shall reflect that the private road easements be public easements (vehicle, bicycle, and pedestrian access). Roads shall be signed as public access.

24. If the development is not subdivided, the units shall be deed restricted as affordable rental units prior to Certificate of Occupancy.

**FINDINGS**

**Findings – Major Site Plan Review**

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

2. The site plan is consistent with the conceptual subdivision plat, which was approved as part of the Thompson Park Annexation and Rezoning;
3. The site plan complies with all applicable development and design standards set forth in this Code; and

4. Traffic generated by the proposed development will be adequately served by existing streets within Carbondale.

**Findings – Conditional Use Permit**

The site, building(s), and use meet all criteria specified for the use and all applicable regulations and development standards as specified in this Code and for the zone district in which the use is located;

The proposed use is consistent with the Comprehensive Plan as it is an infill project within the Town;

The proposed use is planned in a manner that will minimize adverse impacts on the traffic in the neighborhood or surrounding uses;

The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics (including hours of operation, noise, odor, dust, and other external impacts).

Trustee Yllanes seconded the motion and it passed with:

*4 yes votes: Kitching, Yllanes, Richardson, Silverstein*

**2017 AUDIT REPORT**

Paul Backes and Kelsey Cramer of McMahan and Associates, LLC, presented the 2017 Audit.

The following points were made:

- The 2017 Budget includes a 3% cost of living increase for Town employees.
- Sales and Use tax revenue increased 6.7% from 2016. Property taxes increased by 2.6% from 2016.
- The Town's government fund balances increased $530,047, which includes the General Fund balance increase of $290,574, and the Town's business-type activities increase of $221,927.
- The Water Fund had an increase of $155,598, and the Wastewater Fund had an increase of $66,329.

Paul stated that the Town's reserve is reasonable and the Town has prudent, healthy fund balances.
Paul suggested that the Recreation software be fixed so that staff cannot adjust fees/rates.

**VAPING/TOBACCO DISCUSSION**

The Board spoke with Many Ivanov, of Eagle County Public Health and Environment (via phone), on the possibility of raising the age to buy vaping products, tobacco and nicotine products to 21. In order for it to be effective ramifications need to be in place for stores that sell it. Mandy explained that local enforcement, through licensing, lays out the expectation for retailers. Aspen and Basalt have already raised the age. Jay noted that the down side of licensing is you rarely see a license revoked; it’s a lengthy process. Usually municipalities have more success when you summons a violator to court.

Mandy stated that cigarette use and vaping is on the rise in high school students.

The Board directed staff to draft a memo with facts/issues to consider on raising the age to purchase vaping products, tobacco and nicotine products to 21. The Board also asked that staff publicize that there will be a discussion on this issue.

**WASTE HAULING UPDATE**

Kevin stated that on July 18th staff is going to set up a booth at the Farmer’s Market to talk about (possible) changes to the trash ordinance, and on the night of July 18th they will have an open house. The Board suggested that they put an announcement in the water bills.

Kevin informed the Board that he met with four of the five haulers operating in Carbondale to discuss (possible) changes to the trash ordinance. They discussed the following:

- Volume based pricing – there could be potential cost savings for small families, and an increase for larger, extended families – there is concern for increased illegal dumping
- Recycling – where does the waste end up
- Benefits of public contracts
- Reporting requirements
- Education is key to recycling – there is lots of contamination because people don’t know what they are doing

There are two large hauling companies and two small ones. The small haulers believe that a public contract is a threat to their companies. They asked if they would be required to supply bear proof containers to their customers, it’s a cash flow concern. They are also concerned about aggressive volume pricing, it could force people to pack
trash in to their container. The smaller companies feel that they offer a more specialized service.

The larger companies are not in favor of public contracts – they tend to shift costs from residential to commercial. They also believe the decrease in traffic might be less than anticipated. All of the haulers agree that recycling costs will continue to increase. The public perceives they break even, or even profit on recycling and they are wrong. Currently they all offer some type of volume pricing and they all felt that they could handle mandatory recycling. They said that the Town needs to consider how they want to handle organics.

The Board agreed that education is key.

Mayor Richardson stated that changing the frequency of pick up may be able to accomplish the same thing as volume based pricing.

**HYDRO FEASIBILITY DISCUSSION**

Mark explained that the main source of water that supplies the Nettle Creek Treatment Plant is a spring at the upper portion of S. Nettle Creek. The water is collected at this point and is piped down to the treatment plant. The difference in elevation from the spring to the plant provides the potential to use 295 feet of elevation head and 127 psi to generate electricity. The 2016 Master Plan addresses hydroelectric potential with the Nettle Creek treatment system and distribution line into town.

To date staff has taken the following actions with various agencies for pre-approval to install and operate a hydroelectric system including:

- Renewal of the USFS’s Special Use Permit for the treatment plan
- Received a matching grant with the Colorado Water Resource & Power Development Authority to conduct a feasibility study of adding a hydroelectric operation
- Solicited proposal from firms with expertise in micro-hydro development and installation

Mayor Richardson stated that hydro is a win/win project.

Trustee Kitching made a motion to authorize staff to move forward with the design and implementation of the hydro electric project. Trustee Yllanes seconded the motion and it passed with:

*4 yes votes: Kitching, Richardson, Silverstein, Yllanes*
ADJOURNMENT

The June 26, 2018, regular meeting adjourned at 8:55 p.m. The next regularly scheduled meeting will be held on July 10, 2018, at 6:00 p.m.

APPROVED AND ACCEPTED

__________________________
Dan Richardson, Mayor

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 Renewal for Allegria, Pasta, Salad and Vino at 335 Main Street

Date: June 26, 2018

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

Andreas Fischbacher / Applicant

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

I recommend the approval for the liquor license renewal.
RETAIL LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

ALLEGRIA
335 MAIN STREET
CARBONDALE CO 81623

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

Licensee Name
ALLEGRIA PASTA SALAD VINO LLC

Liquor License #
4700159

License Type
Hotel & Restaurant (city)

Operating Manager
Fischbacher

Date of Birth

Home Address
Drive, Carbondale, CO 81623

Manager Phone Number

Email Address
fischbacherandreas@gmail.com

Street Address
335 MAIN STREET CARBONDALE CO 81623

Mailing Address
335 MAIN STREET CARBONDALE CO 81623

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 6/1/2026

50. 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 □ 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

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 □ 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

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.

Type or Print Name of Applicant/Authorized Agent of Business
Fischbacher

Signature

Date 6/10/2018

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.

Local Licensing Authority For

Date

Signature

Title

Attest
To: Mayor Dan Richardson and Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for My Community Health Foundation for to be held July 20, 2018 at The Third Street Center.

Date: June 26, 2018

I have found no records that would cause me to recommend denial of this liquor license special event application to serve alcohol on July 20, 2018 from 5:00 p.m. to 8:00 p.m.

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

**TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:**

- [x] MALT, VINOUS AND SPIRITUOUS LIQUOR $50 PER DAY
- [ ] FEMENTED MALT BEVERAGE (3.2 BEER) $10 PER DAY

LICENSURE PERMIT NUMBER

1. **NAME OF APPLICANT ORGANIZATION OR POLITICAL PARTY**

   Community Health Foundation

2. **MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY**

   1460 Valley Road, Suite 100
   Basalt, CO 81621

3. **ADDRESS OF SPECIAL EVENT**

   320 North Thirst
   Gymnasium
   Carbondale, CO 81623

**NAME**

4. **PRESS/SECY OR ORG. OR POLITICAL CANDIDATE**

   Amanda Wagner

5. **EVENT MANAGER**

   Marti Barbour

**DATE OF BIRTH**

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

   - [x] NO

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

   - [x] YES

   TO WHOM?

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

   - [ ] NO
   - [x] YES

**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>Hours To</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 20, 2016</td>
<td>5:00 m</td>
<td>8:00 p m</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**

**TITLE**

**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**

**TITLE**

**DATE**

**LOCAL LICENSING AUTHORITY**

**ATTEST**
June 20, 2018

Approval to apply for liquor license from Town of Carbondale for event at Third Street Center

Roaring Fork Brain Train, a program of My Community Health Foundation, has rented our Gym for an event on July 20, 2017 from 4:00pm to 8:00pm. They have our permission to apply to the Town of Carbondale for special event liquor license for that event. All liquor consumption must stay within the Gym Room and should not be in any other part of the building. We will coordinate security for the event and building.

Sincerely,

[Signature]

Colin Laird
Director
Third Street Center
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

My Community Health Foundation

is a

Nonprofit Corporation

formed or registered on 04/15/2013 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 20131232652.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 06/20/2018 that have been posted, and by documents delivered to this office electronically through 06/21/2018 @ 10:48:50.

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 06/21/2018 @ 10:48:50 in accordance with applicable law. This certificate is assigned Confirmation Number 10967020.

[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/CertifcateSearchReturn.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 by clicking "Businesses, trademarks, trade names" and select "Frequently Asked Questions."
To: Mayor Dan Richardson and
Carbondale Board of Trustee's

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for KDNK Hootenanny with the Heathens on August 10th, 2018.

Date: June 26, 2018

I have found no records that would cause me to recommend denial of this liquor license special event application to serve alcohol at the KDNK Hootenanny with the Heathens on August 10, 2018 to be held 4th Street Plaza.

Gavin Dahl / 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
- [X] 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
- [ ] FEMINATED MALT BEVERAGE (3.2 BEER) $10 PER DAY

**LIQUOR PERMIT NUMBER**

**STATE SALES TAX NUMBER (REQUIRED)**

**1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE**

CARBONDALE COMMUNITY ACCESS 1904 E. KONK

**2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY**

PO BOX 1388
CARBONDALE, CO 81623

**3. ADDRESS OF SPECIAL EVENT**

4TH STREET MARINA

**NAME**

**DATE OF BIRTH**

**EMAIL ADDRESS**

**PHONE NUMBER**

**4. PRES/SECRY OF ORG. OR POLITICAL CANDIDATE**

ANDREA KOPPER

**5. EVENT MANAGER**

GAVIN DATH

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

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

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

**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>Hours To</th>
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<tbody>
<tr>
<td>8/10/18</td>
<td>9 am</td>
<td>10 pm</td>
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**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**

**TITLE**

**DATE**

6/25/18

**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**

**TITLE**

**DATE**

**LOCAL LICENSING AUTHORITY**

**ATTES**
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

CARBONDALE COMMUNITY ACCESS RADIO

is a Nonprofit Corporation

formed or registered on 10/13/1981 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 19871451781.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/26/2018 that have been posted, and by documents delivered to this office electronically through 03/01/2018 @ 14:48:15.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/01/2018 @ 14:48:15 in accordance with applicable law. This certificate is assigned Confirmation Number 10753343.

Wayne W. Williams
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.”*
June 25, 2018

Town of Carbondale
Board of Trustees
511 Colorado Avenue
Carbondale, CO 81623

Ladies and Gentlemen of the Board:

I am writing on behalf of KDNK & Carbondale Arts in regards to the Hootenanny event. The Town of Carbondale Parks & Recreation Department has given KDNK and permission to use 4th street, 4th street Plaza and Park area for the Hootenanny event to be held Friday, August 10, 2018. The hours for set up, for the event and break down will be:

- August 10, 2018  Set up  7:00 am to 5:00 pm
- August 10, 2018  Event  5:00 pm to 9:45 pm
- August 10, 2018  Event Breakdown  9:45 pm to 11:30 pm

Please contact the Town of Carbondale Parks & Recreation Department if you have any questions.

Sincerely,

[Signature]

Eric Brendlinger
Town of Carbondale
Parks & Recreation Department Director
July 2, 2018

4th Street Plaza Park and Street special event management plan for the KDNK 2018 Hootenanny

August 10, 2018

Special Event Liquor License BOT review by KDNK on Tuesday, July 10, 2018.

Review, comments, concerns and signatures needed. After you sign please place in subsequent staff’s box.

If you have any pressing concerns about this event please contact me and contracts can be amended to address those concerns.

Eric Brendlinger   Carbondale Parks & Recreation Director

ebrendlinger@carbondaleco.net

www.carbondalerec.com

970-510-1277 (O)   970-319-2494 (cell)

Parks & Recreation Director

Public Works Director

Police Chief

Town Manager

Town Clerk
**TOWN OF CARBONDALE**  
**PARK (OR) STREET RENTAL USE AGREEMENT**  
&  
**SPECIAL EVENT MANAGEMENT PLAN**

Completing this *Park (or) Street Rental Use Agreement and Special Event Management Plan* is required for large special events that will impact the Carbondale community. The purpose is to assist the Event Organizer in planning their special event so that it meets the requirements established by the Town of Carbondale. This Rental Use Agreement & Special Event Management Plan should be submitted 45-60 days prior to the event. After review by town staff, you will be notified if the event is approved, denied, or if additional information and/or a meeting with town staff is needed.

### SECTION 1 - EVENT SUMMARY:

1. **NAME OF EVENT:**  
   - **KONK Hootenanny AKA THE Hoot**

2. **Primary Event Organizer:**  
   - **GAVIN DATH**  
     - **Cell Phone:** 720-552-0429  
     - **Email:** GAVIN@KONK.ORG  
     - **Address:** PO BOX 1788 CARBONDALE CO 81623

3. **Secondary Event Organizer:**  
   - **Cell Phone:**
   - **Email:**
   - **Address:**

4. **EVENT LOCATION:**  
   - **4th Street Plaza**

5. **EVENT DATE(s):**  
   - **8/10/2018**

6. **EVENT TIME(s):**  
   - **5-10 pm**

7. **EVENT SET-UP TIME(s):**  
   - **7AM 8/10/18**

8. **EVENT BREAK-DOWN TIME(s):**  
   - **10 AM 8/11/18**  
   
   Procedures must be in place to avoid neighborhood noise disturbance with event break-down. Breakdown within town parks must end at 10:30 pm; and Downtown breakdown at 11:30 pm

### SECTION 2 - EVENT SUMMARY INFORMATION:

1. Approximate number of people expected to attend event: **500**

2. Approximate Event Personnel Numbers:  
   - a) Event Staff Leaders/Committee Organizers in charge: **5**
b) Event Volunteers: 30

c) Event Contractors: 1

d) Event Security Personnel: 4

e) Event Vendors: 3

BAR MANAGERS ARE TIPS TRAINED. SECURITY & GREEN TEAM WILL MEET IN ADVANCE TO REVIEW BEST PRACTICES.

3. Event training for personnel? (Yes) (No) Describe:

4. Fee charged to participants? (Yes) (No) If yes, how much?

5. Amplified music at event? (Yes) (No) If yes, times music is played (including sound checks)

Note: Amplified sound cannot exceed 90 decibels which event organizer is responsible to monitor. Amplified music must be approved by Board of Trustees; Music beyond 9 pm requires Trustee approval.

SOUND CHECK STARTS AT 2PM. EVENT STARTS AT 5PM. DJ SPINS UNTIL 6. EL JAVI (ROCK FLAMENCO DUO) PERFORMS. ATOMBA (10-PIECE APROBEAT GROUP) PLAY 8 - 9:45PM.

SECTION 3 – EVENT SITE PLAN (OR PARADE/RACE ROUTE) MAP:
Please provide an accurate detailed drawing or map depicting physical layout of event that includes the following. Must initial each requirement or write N/A (Not Applicable).

1. Boundaries
   o Delineate the boundary for the entire event venue, including the names of all streets or areas that are part of the venue and surrounding area: 
   o If the event involves a moving route of any kind, show the particular route, indicate the direction of travel, label street names, and identify any street closures: N/A
   o Locate fencing, barriers/barricades, points of ingress/egress, emergency access: 

2. Site Improvements
   o Location of stage, tents, canopies, booths, bleachers, other temporary structures: 
   o Location of generators, electricity sources, speakers, soundboards, lighting: 
   o Location area for trailers, trucks, or other event vehicles: 
   o Identify start & finish area (if a race): N/A

3. Security, Medical and Safety
   o Show security check points: 
   o Show placement of traffic control personnel: N/A
   o Locate first aid station, ambulance access point: FIRST AID KIT & KVAE BOOTH
   o Locate portable night lighting: LIGHT POLE TO BE USED FOR FRIDAY NIGHT CLEANUP

4. Transportation and Parking
   o Identify all parking areas (on/off site): N/A
   o Locate any drop-off/pick-up areas: N/A

5. Sanitation and Solid Waste
   o Locate/identify restrooms/portable toilets and hand wash stations: 
   o Locate trash and recycle containers and dumpsters: 

6. Alcohol, Food Service, Vending Booth Areas
   o Locate bar/beer garden area, with location of security fencing and entry/exit gates: 
   o Location of food service vendor booths: 
   o Location of merchandise vendor booths; information and/or demonstration booths: 

7. Smoking Area
   o Public special events on town parks/streets are non-smoking, unless area is designated: N/A
SECTION 4 – SECURITY PLAN: TIPS TRAINED BAR STAFF WILL ID WRISTBAND, FANS, AND
SECURITY WILL NOT ALLOW IN OUTSIDE BEVERAGES.

1. Have you hired a professional security company to manage event security?  (Yes) (No)
   If Yes, please provide the following information:
   - Name of Security Company:
   - Person in charge at event:
   - His Cell Phone contact at event:
   - His Cell Phone Text email address at event:
   - Number of security personnel assigned to event:
   - Event times they will be in place:
   - Describe duties & functions:

2. Will Town of Carbondale Police Dept. enforcement services be requested?  (Yes) (No)
   If Yes, please provide the following information:
   - List purposes (security; traffic/parking control; event walk-thru):
   - List # of officers & times when needed:

Town law enforcement services charged out at Town cost in an agreement with Chief of Police, who has right to place officers as deemed necessary in the best interest of public safety.

SECTION 5 – MEDICAL & EMERGENCY SERVICES PLAN:
Please describe your medical and emergency services plan.

1. Will emergency medical services be summoned through 911?  (Yes) (No)
   If Yes, please provide the following information:
   - Name & cell phone of on-site staff designated as medical point of contact:

2. Will a licensed Emergency Medical Service provider or EMT be provided on-site?  (Yes) (No)
   If Yes, please provide the following information:
   - Name & cell phone of service provider or EMT:
   - Aid Station location & hours:

SECTION 6 – TRANSPORTATION & ROAD CLOSURE TRAFFIC MANAGEMENT CONTROL PLAN:
Required of events involving a road closure. Main Street closure requests require 4-6 months notification to obtain approval. Event organizers must submit an aerial drawing or map, showing event location, along with the following information shown on the drawing or map. Must initial each section.

- Road and/or traffic lane closure request: (Yes) (No)
- Location of barricades and/or traffic cones: N/A
- Proposed traffic flow map around road closure:
- Location of informational signage within road closure area:
- Location of safety lighting bar (if needed) within road closure area:
- Running or Bike Race route description (with start & finish line) if applicable:
- Parade route description (with start & finish) if applicable: N/A

WE REQUEST YYYY STREET CLOSURE FROM MAIN TO THE ALLEY FROM 7AM FRIDAY TO 10AM SATURDAY.
With this information the Public Works Director will determine a “traffic control plan” and will indicate the required road closure barricades and road detour signage needed for the event. If equipment is supplied by the Town, it will be provided at Town cost in covering staff expenses on delivery/pickup and setup/takedown. Deposit on Town equipment may be required. At the Town’s discretion, to save expenses, Event Organizer may be requested to set up/take down and safely secure the road closure barricades and signage before and after their event with instructions from the Town. Cost to the event organizer will be determined after review of your event road closure request. If a street must be posted “No Parking” by the Town, the cost is $5.00 per side of block.

If it’s determined by the Public Works Director that the Town is unable to provide a “traffic control plan,” it may be required that the Event Organizer obtain a plan from a certified traffic control specialist. If the Public Works Director determines that the Town lacks the necessary barricades and signage due to scope and size of road closure (with limited inventory available), it may be required that Event Organizer contract all or a portion of their road closure traffic control management need services with a privately owned traffic control company.

SECTION 7 – REFUSE/TRASH PLAN:
Event organizer shall provide for the pickup and removal of all refuse/trash and recyclable materials, both on and off event site, which results from hosting the event. Throughout the duration of the event and immediately upon conclusion, the park and/or street area must be returned to a clean condition (no later than 10:00 am the next day following event). Event organizer may use Town trash receptacles available within the event area, but will need to provide additional containers at their expense, either by hiring a trash contractor who provides appropriate containers, providing their own containers, or provide a refuse removal plan that prevents the accumulation and overflow of refuse from containers provided by the Town.

Failure to perform adequate cleanup, or if damage occurs to public property due to event, and mitigation attempts fail, event organizers will be billed at full Town cost recovery rates for cleanup and repair. In addition, such failure may result in denial of future special event approval.

Event organizer is encouraged to consider a refuse/trash recycling plan for your event. Event organizer is further encouraged to consider creating a “Green” Event. These services can be provided for a fee by local companies. If using a contracted company please provide the following:

- Name of Service Provider: EVERGREEN ZERO WASTE
  - Contact Person: ALYSSA REINDL
  - Mailing Address: PO BOX 1061 ASPEN, CO 81612
  - Cell Phone: 970-987-3140 Email: ALYSSA@EVERGREENZEROWASTE.COM

SECTION 8 - PORTABLE RESTROOM PLAN:
Event organizer shall provide portable restroom facilities unless you can show the sufficient availability of both ADA accessible and non-accessible facilities in the immediate area of the event. Please make sure these facilities are shown on your site plan. Portable toilets shall be removed from event site by 11:00 am the next day following event. Event organizer is responsible for keeping both portable toilets and park bathrooms clean, unplugged, and
stocked with toilet paper from beginning to end of event. Multiple day events may require portable toilets to be pumped out daily. Please use the formula below to figure out your event's porta potty needs.

Duration of Event and number of Portable Toilets needed

<table>
<thead>
<tr>
<th>Number Of Participants</th>
<th>1 hr</th>
<th>2 hr</th>
<th>3 hr</th>
<th>4 hr</th>
<th>5 hr</th>
<th>6 hr</th>
<th>7 hr</th>
<th>8 hr</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
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<td>2</td>
<td>2</td>
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<tr>
<td>100</td>
<td>2</td>
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<tr>
<td>250</td>
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<td>500</td>
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<td>6</td>
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<td>7</td>
<td>7</td>
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<td>1,000</td>
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<td>9</td>
<td>9</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>2,000</td>
<td>9</td>
<td>12</td>
<td>15</td>
<td>16</td>
<td>17</td>
<td>17</td>
<td>18</td>
<td>18</td>
</tr>
</tbody>
</table>

Do you plan to provide portable restroom facilities at your event? (Yes) (No) If yes, how many: 4
Number of ADA accessible portable toilets: 1
Is portable handwashing station being provided? (Yes) (No)
If no, is there a sanitizer dispenser within toilet? (Yes) (No)

Please provide the following information regarding event portable restroom provider:

- Name of Service Provider: TBD
- Contact Person:
- Mailing Address:
- Cell Phone: ___________________________ Email: ___________________________

WE WILL ALSO HAVE ACCESS TO RESTROOMS AT LAUNCHPAD FOR EVENT VOLUNTEERS, ARTISTS, AND CREW.

SECTION 9 – ALCOHOL MITIGATION PLAN & PERMIT REQUIRED:
Responsible sale and/or distribution of alcohol is critical to a safe and successful event. A Town of Carbondale Liquor License Special Event permit application ($50.00 payable to: Town of Carbondale) must be obtained from the Town Clerk, and submitted and approved by the Board of Trustees to sell alcohol (beer & wine) at your event. Only an incorporated non-profit organization is eligible for obtaining a special event liquor permit. The special event permit you receive will prohibit the consumption of alcohol outside of a controlled area or beer garden. Liquor liability coverage with a $1,000,000 limit must be included on your certificate of insurance (also naming the Town as additionally insured). You must submit your special event liquor license application to the Town Clerk at least 30 days prior to your event. Applications submitted to the Town will require a hearing before the Town Trustees. Event Organizer must post a notice at event site 10-days prior to hearing before Town Trustees. Town Clerk will schedule hearing and provide notice board to be posted by event organizers.

If your event is going to involve the sale and/or distribution of alcoholic beverages, please provide following information:

- Hours of operation of event (include dates & times): 5-10 pm 8/10/18
Attorney: 5-9:45 PM (required ending is 15 minutes prior to event shutdown, although 30 minutes prior is recommended)

A designated fenced-in or secured area for the dispensation and consumption of alcoholic beverages is required. Show this area on your site plan and describe measures taken to secure the area:
The entire event area will be fenced with one north and one south entrance/exit.

Must provide non-transferable ID bands/bracelets for persons 21 and over (Describe your process for identifying legal vs underage patrons): Staff will check ID and wristband adults who wish to purchase alcohol.

Describe how TIPS trained servers will monitor alcohol consumption and intoxication: No intoxicated person will be served and roving security will add a layer of safety in addition to gate security.
(Note: Servers should not consume alcohol while working a shift, and should not return to shift if they consumed alcohol)

Describe how Security staff and/or event server volunteers will provide friendly intervention to individuals who appear intoxicated: Staff will stay with any intoxicated individual to assess if they need to be escorted off site, or if a 911 call is needed.

Consider (but not required) designating a "family friendly" seating area. If included, describe the location and include on site plan: The family friendly seating area will be on the grass inside 4th street plaza.

Will event provide alternative beverages to alcohol? If so, what? Food vendors will offer non-alcoholic beverages and DQ will serve kid-friendly choices too.

Will food be available at all times? If so, what? Yes. 2-3 food vendors TBD

Is there a designated smoking area? If so, describe the location and show it on your site plan: No

How will you handle and mitigate an obviously intoxicated person who is drunk and may be driving home? Find a sober friend or neighbor, help them ourselves from among 30 volunteers, or alert police if needed.

SECTION 10 – FOOD PLAN & PERMIT:
These guidelines should assist you in developing plans for food handling, preparation, and distribution in the most responsible and legal manner. Garfield County Public Health Department paperwork process for Temporary and Special Food Service Events must be followed if you will be having any event in Garfield County where food will be sold to the public. (This includes, fairs, festivals, carnivals, farmers markets.) All vendors must obtain a retail food establishment license to serve open foods (including ice), and potentially hazardous foods that need to be temperature controlled. The event organizer is required to fill out a Garfield County Public Health Event Coordinator Plan Review (appendix A) and each vendor at your event must fill out and apply for an annual
Garfield County Public Health Temporary Vendor Application (Appendix B) and a Garfield County Public Health Commissary Agreement (Appendix C) Temporary Vendor Permit Flow Chart (Appendix D). All food vendors at your event must have their original Colorado Retail Food Establishment license on premise at all times.

- Please list food vendors at your event, name of vendor and product (s) served: ❌BP

- Vendors Exempt from Licensing (Exempt foods include popcorn or kettle corn, raw agricultural commodities such as honeycomb and uncut produce, commercially pre-packaged products that do not require refrigeration and cottage foods such as pickled fruits and vegetables, spices, teas, dehydrated produce, nuts, seeds, honey, jams, jellies, preserves, fruit butter, flour and baked goods, including candies, fruit empanadas, tortillas and other similar products that do not require refrigeration for safety. Please list food vendors exempt from licensing at your event, name of vendor and product (s) served: /A

SECTION 11 – SALES TAX LICENSE SUBMITTAL PLAN:
If goods and/or services (including the sale of alcohol and food) are to be sold at event, each vendor must obtain a Town of Carbondale Sales Tax License, which they must purchase and pay for at Carbondale Town Hall, 511 Colorado Avenue. Cost is $15.00 for a temporary one-day license; $25.00 for an annual license; and FREE for a governmental agency or charitable organization. Note: A governmental agency or charitable organization must still obtain a Sales Tax License, and if making taxable sales, they shall collect sales tax and consumers shall pay sales tax on such sales.

Event organizer is responsible for submitting a list of Vendors working event to the Town of Carbondale Recreation Dept. no later than one week prior to your event. Vendors who did not obtain a Sales Tax License, and who attempt to work the event, shall be shut down by Event Organizers and/or Town staff. Event Organizers are responsible to visually verify and make sure that each vendor has their license and that it is posted within booth.

SECTION 12 – LIABILITY INSURANCE:
Liability insurance coverage must be provided for special event. If your event includes alcohol, liquor liability coverage must also be included. At least one week prior to the event, a certificate of insurance must be submitted to the Town Clerk. The certificate shall name the Town of Carbondale as an additional insured (for example: "Town of Carbondale, its officers, employees, & agents"). This commercial general liability insurance certificate requires the following minimum amount of coverage. Please initial each section.

- $1,000,000 each occurrence; $2,000,000 aggregate: ❌
- Host and general liquor liability insurance required in the same amounts listed above: ❌
SECTION 13 – EVENT DEBRIEFING:
An event debriefing may be held following your event at Town of Carbondale staff discretion. You are encouraged to attend this debriefing to help offer insight into the success of your event. The purpose of the debriefing will be to identify areas of success, and also areas in need of improvement, should you decide to hold your event annually.

SECTION 14 – FEES AND DEPOSITS

PARK RENTAL USER FEE:
○ $100.00 User Fee per each day of use between 100 – 300 participants   Paid Date 1/16
○ $200.00 User Fee per each day of use with over 300 participants   Paid Date 2/16

PARK (OR) STREET CLEANUP/DAMAGE DEPOSIT FEE:
○ $200.00 Cleanup/Damage Deposit Fee for event with 100 – 300 participants   Paid Date 2/16
○ $500.00 Cleanup/Damage Deposit Fee for events with over 300 participants   Paid Date 3/4/18

These amounts may be increased if it is deemed necessary for a particular event or activity.

Event Organizer shall submit two (2) checks payable to: TOWN OF CARBONDALE

One check designated for Rental User Fee of the Park/Street, and the other check designated for Park/Street Cleanup/Damage Deposit Fee. These fees must be submitted with your application and will be returned if denied. Please note that if the Town deems necessary, a portion of the cleanup/damage deposit fee may be utilized by the Town for the purpose of payment of unforeseen costs necessary to insure and protect public safety during the event, and to ensure the terms and conditions of this Rental Agreement are fulfilled. The deposit shall not limit Event Organizer from liability for such expenses in excess of the Cleanup/Damage Deposit Fee submitted. A refund check for deposit amount (minus any deductions if required) will be issued after the event.

Initial here:  

SECTION 15 – LICENSES, PERMITS, AND FEES
Event Organizer shall adhere to all local and state requirements regarding business licenses, taxes, vending, and special event permits and policies.

Initial here:  

SECTION 16 – INDEMNIFICATION:
Event Organizer agrees to indemnify the Town, its officers, agents and employees, and to hold them harmless as to any claim, liability or damages, including attorney fees and court costs, arising out of, or directly or indirectly resulting from the conduct of the event.

Certificates of insurance shall be provided to the Town Clerk at least one week prior to event.

Initial here:  

SECTION 17 – CANCELLATION OF EVENT:
Event may be cancelled by the Carbondale Town Manager, or his designee, if a recommendation is made by the Parks & Recreation Director, Public Works Director, or Chief of Police that the terms of this Agreement and Event Management Plan are not substantially fulfilled in a timely manner, or in the event of an unforeseen catastrophic event or act of God. In the event of such cancellation, the Town shall remit to Event Organizer all rental fees and damage deposits minus any expenditures incurred by the Town. Neither party shall be liable to the other for any lost profits, lost revenues or consequential damages in the event of such cancellation.

Initial here: ☑

SECTION 18 – RELEASE OF LIABILITY:
The Town assumes no responsibility whatsoever, for any non-municipal property used within the premises of Event, and the Town is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to any person or property of Event Organizer, its employees, agents and concessionaires, or of any performer or spectator that may be sustained by reason of the occupancy within the premises of event under this Agreement.

Initial here: ☑

SECTION 19 – AUTHORITY TO CONTRACT:
The Town of Carbondale and Event Organizer represent that each has the power to enter into this Agreement, and grant or receive as the case may be, the license herein granted; each represents that it does not require the consent of any other person or entity (governmental or otherwise), and that this Agreement constitutes a valid and binding obligation of the Town of Carbondale and Event Organizer which is enforceable against the respective parties in accordance with the terms hereof.

Initial here: ☑

SECTION 20 – ATTORNEY’S FEES:
In the event that suit is brought (or arbitration instituted) or any attorney is employed or retained by any party to this Agreement to enforce the terms of this Agreement, to collect any money due there under, or to collect any money damages for breach thereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney’s fees and costs incurred in connection therewith, including the reasonable value of salaried attorney’s time.

Initial here: ☑

Event Organizer Name (Please print): GAVIN DAVI

Signature: ___________________________ Date: 6/25/18
SPECIAL EVENT MANAGEMENT PLAN STAFF REVIEW & RECOMMENDATION
(With Comments, Conditions, and/or Requirements for Event)

PARKS & RECREATION DIRECTOR:
- Use of pine stage is contingent upon volunteer labor to transport and set it up and take it down the following day. If volunteer is not open, 3 additional party permits needed.

Approval: ☑ Approval Pending: _______ (see above) Denial: _______
Signature: ______________________________ Date: 7/1/2018

PUBLIC WORKS DIRECTOR:

______________________________________________________________

Approval: __________________________________ Approval Pending: _______ (see above) Denial: _______
Signature: __________________________________ Date: 7/1/2018

CHIEF OF POLICE:
- Make sure 4th St open Friday night

______________________________________________________________

Approval: X Approval Pending: _______ (see above) Denial: _______
Signature: __________________________________ Date: 7/5/2018

TOWN CLERK: (Liquor Licensing Approval)
Liquor license pending

______________________________________________________________

Approval: ☑ Approval Pending: _______ (see above) Denial: _______
Signature: ______________________________ Date: 7/5/2018

TOWN MANAGER:
- Must follow noise request and permit site

______________________________________________________________

Approval: ☑ Approval Pending: _______ (see above) Denial: _______
Signature: ______________________________ Date: 7/5/2018
To: Mayor Dan Richardson and Carbondale Board of Trustee's

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Application for Roosters

Date: June 6, 2018

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

Mladen Todorovic DOB: 08/05/1979

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

I recommend the approval for the liquor license application.
Colorado Liquor
Retail License Application

[X] 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
   [X] Limited Liability Company  [ ] Association or Other
   [ ] Corporation (includes Limited Liability and Husband and Wife Partnerships)

2. If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation
   Entity Name: Group LLC
   FEIN Number:

2a. Trade Name of Establishment (DBA)
   DBA Name: DOOSTERS
   State Sales Tax Number:
   Business Telephone:

3. Address of Premises (specify exact location of premises, include suite/unit numbers)
   348 MAIN STREET
   City: CARPEDIEM
   County: GARFIELD
   State: CO
   ZIP Code:

4. Mailing Address (Number and Street)
   City or Town: ASPEN
   State: CO
   ZIP Code:

5. Email Address: @EMAIL.COM

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

<table>
<thead>
<tr>
<th>Present Trade Name of Establishment (DBA)</th>
<th>Present State License Number</th>
<th>Present Class of License</th>
<th>Present Expiration Date</th>
</tr>
</thead>
</table>

Section A: Nonrefundable Application Fees

- Application Fee for New License: $1550.00
- Application Fee for New License w/Concurrent Review: $1750.00
- Application Fee for Transfer: $1550.00

Section B: Liquor License Fees

- Lodging & Entertainment - L&E (County): $500.00
- Manager Registration - H & R: $75.00
- Manager Registration - Tavern: $75.00
- Manager Registration - Lodging & Entertainment: $75.00
- Manager Registration - Campus Liquor Complex: $75.00
- Master File Location Fee: $50.00 X Total
- Master File Background: $500.00 X Total
- Optional Premises License (City): $500.00
- Optional Premises License (County): $500.00
- Racetrack License (City): $500.00
- Racetrack License (County): $500.00
- Resort Complex License (City): $500.00
- Resort Complex License (County): $500.00
- Related Facility - Campus Liquor Complex (City): $160.00
- Related Facility - Campus Liquor Complex (County): $160.00
- Retail Gaming Tavern License (City): $500.00
- Retail Gaming Tavern License (County): $500.00
- Retail Liquor Store License – Additional (City): $227.50
- Retail Liquor Store License – Additional (County): $312.50
- Retail Liquor Store (City): $227.50
- Retail Liquor Store (County): $312.50
- Tavern License (City): $500.00
- Tavern License (County): $500.00
- Viénners Restaurant License (City): $750.00
- Viénners Restaurant License (County): $750.00

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>License Account Number</th>
<th>Liability Date</th>
<th>License Issued Through (Expiration Date)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>56 of 238</td>
<td>Type of License</td>
<td>Account Number</td>
</tr>
<tr>
<td>------</td>
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<td>----------------</td>
<td>---------------</td>
</tr>
<tr>
<td>7.</td>
<td>Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>8.</td>
<td>Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):</td>
<td></td>
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<tr>
<td></td>
<td>(a) Been denied an alcohol beverage license?</td>
<td></td>
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<td>(b) Had an alcohol beverage license suspended or revoked?</td>
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<td>(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?</td>
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<td>If you answered yes to 8a, b or c, explain in detail on a separate sheet.</td>
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<td>9.</td>
<td>Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the proceeding two years? If “yes,” explain in detail.</td>
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<tr>
<td>10.</td>
<td>Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?</td>
<td>Waiver by local ordinance?</td>
<td>Other:</td>
</tr>
<tr>
<td>11.</td>
<td>Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (&gt; ) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.</td>
<td></td>
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<tr>
<td>12.</td>
<td>Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (&lt; ) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13a.</td>
<td>For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?</td>
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<td>13b.</td>
<td>Are you a Colorado resident?</td>
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<td>14.</td>
<td>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.</td>
<td></td>
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<tr>
<td>15.</td>
<td>Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement?</td>
<td>Ownership</td>
<td>Lease</td>
</tr>
<tr>
<td></td>
<td>a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:</td>
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<td></td>
<td>b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.</td>
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<td></td>
<td>c. Attach a diagram 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&quot; X 11&quot;.</td>
<td></td>
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<tr>
<td>16.</td>
<td>Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will own or loan 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.</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>Optional Premises or Hotel and Restaurant Licenses with Optional Premises: Has a local ordinance or resolution authorizing optional premises been adopted?</td>
<td></td>
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<tr>
<td>18.</td>
<td>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?</td>
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<td>If “yes” a copy of license must be attached.</td>
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<tr>
<td>19.</td>
<td>Club Liquor License applicants answer the following: Attach a copy of applicable documentation</td>
<td></td>
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<tr>
<td></td>
<td>(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>(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?</td>
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<td></td>
<td>(c) How long has the club been incorporated?</td>
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<td>(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?</td>
<td></td>
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<td>20.</td>
<td>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)</td>
<td></td>
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</table>
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?  
       Yes  No
       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  8404-1 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>TOPOVUCI</td>
<td>NAZAD</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
      If yes, please provide a map of the geographical location within the Campus Liquor Complex.
      If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.
   b. Designated Manager for Related Facility - Campus Liquor Complex

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

25. Tax District 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 district 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 8404-1 (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>TOPOVUCI</td>
<td></td>
<td></td>
<td>OWNER</td>
<td></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.
Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license.

Notice: This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely)

1. Name of Business: ENYA GROUP LLC
   Home Phone Number
   Cellular Number

2. Your Full Name (last, first, middle): TOMORIC BLADEX

3. List any other names you have used:

4. Mailing address (if different from residence): Email Address: 36NAIL.COM

5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)

<table>
<thead>
<tr>
<th>Current</th>
<th>Previous</th>
</tr>
</thead>
<tbody>
<tr>
<td>STREET</td>
<td>ADDRESS</td>
</tr>
<tr>
<td>Aspen</td>
<td>Aspen</td>
</tr>
<tr>
<td>CO</td>
<td>CO</td>
</tr>
<tr>
<td>81611</td>
<td>81611</td>
</tr>
<tr>
<td>05/01/16</td>
<td>01/01/16</td>
</tr>
</tbody>
</table>

6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)

<table>
<thead>
<tr>
<th>Name of Employer or Business</th>
<th>Address (Street, Number, City, State, Zip)</th>
<th>Position Held</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sake Restaurant</td>
<td>110 Carriage Way, Snowmass, CO 81656</td>
<td>Waiter</td>
<td>01/11/17</td>
<td>04/12/18</td>
</tr>
<tr>
<td>Aspen Over Easy</td>
<td>324 E. Hopkins St. Aspen, CO 81611</td>
<td>Manager</td>
<td>10/11/17</td>
<td>11/01/17</td>
</tr>
<tr>
<td>The Cat Sushi</td>
<td>320 Hill St, Aspen, CO 81611</td>
<td>Waiter</td>
<td>01/10/12</td>
<td>04/10/14</td>
</tr>
</tbody>
</table>

7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry:

<table>
<thead>
<tr>
<th>Name of Relative</th>
<th>Relationship to You</th>
<th>Position Held</th>
<th>Name of Licensee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></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.)

\[V\] Yes \[N\] No

\[V\] My LLC dba Aspen Over Easy license expired 2017 business closed.

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.)

\[N\] Yes \[V\] 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.

13a. Date of Birth  b. Social Security Number  c. Place of Birth  d. U.S. Citizen □ Yes ☑ No

e. If Naturalized, state where  f. When  
g. Name of District Court

13h. Naturalization Certificate Number  i. Date of Certification  j. If Alien, give Alien’s Registration Card Number  k. Permanent Residence Card Number

14. Financial Information.

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

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. $ 150,000

* If corporate investment only please skip to and complete section (d)
** Section b should reflect the total of sections c and e

c. Provide details of the personal investment described in 14b. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

<table>
<thead>
<tr>
<th>Type: Cash, Services or Equipment</th>
<th>Account Type</th>
<th>Bank Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASH</td>
<td>CHECKING</td>
<td>ALPINE BANK</td>
<td></td>
</tr>
</tbody>
</table>


d. Provide details of the corporate investment described in 14 (a). You must account for all of the sources of this investment. (Attach a separate sheet if needed) □ / / N  / K

<table>
<thead>
<tr>
<th>Type: Cash, Services or Equipment</th>
<th>Loans</th>
<th>Account Type</th>
<th>Bank Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


e. Loan Information (Attach copies of all notes or loans) □ / / N  / A

<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>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Oath of Applicant**

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature  Print Signature  Title  Date

[Signature]  [Print Signature]  [Title]  [Date 06/01/18]
I, the undersigned, am aware that an application for a **NEW** liquor license has been filed with the Carbondale Licensing Authority by: **ENYA GROUP LLC**

dba **ROOSTERS**, and proposed to be located at **348 MAIN STREET, CARBONDALE CO 81623**. I am at least 21 years of age and am a resident or owner or manager of a business located within the defined neighborhood boundaries of the proposed liquor establishment. I have indicated below whether I consider the granting of the above-mentioned liquor license to be desirable and necessary for the reasonable requirements of the neighborhood:

<table>
<thead>
<tr>
<th>#</th>
<th>Signature</th>
<th>Printed Name</th>
<th>Address</th>
<th>Business Owner, Business Manager, Resident?</th>
<th>Date Signed</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td>Debbi Faraggi</td>
<td>320 MAIN STREET</td>
<td>Mag.</td>
<td>5-30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>M. Sutfin</td>
<td>320 MAIN STREET</td>
<td>VET</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td>Juliene Varco</td>
<td>327 MAIN ST</td>
<td>Lawyer Schafer</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td>D. Walker</td>
<td>351 MAIN ST</td>
<td>Manager</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td>Micah Mills</td>
<td>320 MAIN ST. 102</td>
<td>Owner</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>7.</td>
<td></td>
<td>Olivia Fish</td>
<td>320 MAIN ST. 103</td>
<td>Owner</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.</td>
<td></td>
<td>Jenna Galleries</td>
<td>320 MAIN ST. 103</td>
<td>Resident</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>9.</td>
<td></td>
<td>Megan Hanley</td>
<td>320 MAIN ST. 103</td>
<td>Owner</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>10.</td>
<td></td>
<td>Diane Achech</td>
<td>1272 Cress Hill Loop</td>
<td>Resident</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>11.</td>
<td></td>
<td>Sally Norwood</td>
<td>391 MAIN ST</td>
<td>Owner</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>12.</td>
<td></td>
<td>Darcy Stewart</td>
<td>592 54/33</td>
<td>Owner</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>13.</td>
<td></td>
<td>Rachel Murphy</td>
<td>2303 BLAINE AVE</td>
<td>RES</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>15.</td>
<td></td>
<td>Kristen Dura</td>
<td>215 N. 10TH ST. 300</td>
<td>Resident</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>17.</td>
<td></td>
<td>Sharpe Hudson</td>
<td>362 S 8th St.</td>
<td>Resident</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>18.</td>
<td></td>
<td>Michael Fulton</td>
<td>8888 1002 Colorado</td>
<td>Resident</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>19.</td>
<td></td>
<td>Payton Jenkins</td>
<td>16695 Hwy 82</td>
<td>Resident</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>20.</td>
<td></td>
<td>Matt Hoogenboom</td>
<td>410 E. MILE ST.</td>
<td>Resident</td>
<td>5/30</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>22.</td>
<td></td>
<td>Patrick Keenan</td>
<td>42 FEIGE WAY</td>
<td>Resident</td>
<td>5/31</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>23.</td>
<td></td>
<td>Margaret Wampur</td>
<td>99999999999</td>
<td>RES</td>
<td>5/31</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
COMMERCIAL LEASE
(NNN)

THIS COMMERCIAL LEASE ("Lease") is made and entered into as of the last dated signature below by and between 348 Main, LLC, a Texas limited liability company whose registered principal office address is PO Box 195607, Dallas, TX, 75219 ("Landlord"), and Emma Group, LLC, a Colorado limited liability company whose registered principal office address is 324 Harold Ross Ct, Aspen, CO 81611 ("Tenant"). Landlord and Tenant may be collectively referred to herein as the "Parties" and each may be referred to individually as a "Party."

1. Premises: In consideration of and pursuant to the covenants, agreements, and conditions set forth in this Lease, including but not limited to payment of the Rent (as defined below) and all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay, effective as of commencement of the Primary Term (as defined below), Landlord does lease, let, demise, and rent unto Tenant, and Tenant does rent and lease from Landlord, on and subject to the terms, conditions, and provisions of this Lease, that certain real property located in the County of Garfield, State of Colorado at 348 Main Street, Carbondale, Colorado 81623 more particularly described as:

Lot 6 & 7,
Block 12,
TOWN OF CARBONDALE, according to the Plat thereof filed
December 17, 1887, at Reception No. 5889 (the "Real Estate")

The Real Estate is improved with an existing building of mixed brick masonry, concrete masonry, and wood-framed floor and roof construction having a floor area of 3,464 square feet, of which 2,973 square feet is located at street level and 491 square feet is basement, and a partially covered outdoor concrete patio (the "Improvements"). The Real Estate and the Improvements, which are more particularly depicted on the Improvement Survey Plat attached as Exhibit A-1 and the internal survey of the existing building attached as Exhibit A-2, shall collectively be referred to hereafter as the "Premises."

2. Term:

a. Primary Term: The initial term of this Lease shall, commence at 12:00 a.m. on June 1, 2018 and extend through 11:59 P.M. MST on May 30, 2023 ("Primary Term"), unless earlier terminated pursuant to the terms of this Lease. Possession of the Premises shall be delivered upon commencement of the Primary Term.

b. Additional Term Options: Unless Landlord or Tenant notifies the other in writing of its intention to terminate this Lease, and provided Tenant is not in default under terms of this Lease or any other agreement with Landlord, Tenant shall have the option to renew this Lease for one additional five (5) year term at the end of the Primary Term, and for a second additional five (5) year term at the end of the first additional term (each an "Additional Term"). The Primary Term and any Additional Term are collectively referred to in this Lease as the "Term." Any notice from Landlord or Tenant to terminate this Lease, or any notice by Tenant to exercise an Additional Term option must be given in writing, and delivered as prescribed by this Lease, at least six (6) months prior to the expiration of the Primary Term or an Additional Term. The Lease shall not renew at the conclusion of the second Additional Term, if any, and any new tenancy of Tenant in the Premises shall be created by a new agreement between the Parties.

3. Rent.

Page 1 of 13

Initials: [Signature] (Landlord) [Signature] (Tenant)
a. **First Year Rent:** Rent for the first year of the Primary Term (August 1, 2018 – May 31, 2019) shall be Sixty Five Thousand and No/100 Dollars ($65,000.00), payable in equal installments of Six Thousand Five Hundred and No/100 Dollars ($6,500.00) in advance to Landlord on the first day of each calendar month, without notice (the "Rent"); provided, however, that Rent for August 2018 shall be payable by Tenant concurrently with execution of this Lease. Rent, and all payments due under this Lease, including Additional Rent (as defined below), shall be mailed or delivered to Landlord at PO Box 195607, Dallas, TX, 75219 or at such other place as Landlord may designate in writing.

b. **Rent for Additional Term:** In the event Tenant exercises its option to renew this Lease for an Additional Term, Rent for the first year of the Additional Term shall be set at the annual fair market rental value of the Premises as of the expiration of the Primary Term or the first Additional Term, as the context indicates. The initial determination of fair market rental value shall be made by Landlord within thirty (30) days following delivery of Tenant’s notice of exercise of a renewal option. In any event the rental increase shall be no more the ten percent over the 5th year rental rate.

c. **Rent Adjustments:** Rent, including as increased pursuant to Subparagraph 3.b., shall be adjusted upward annually by 3% for the next succeeding year of the Term. For example, Rent for the second year of the Primary Term (June 1, 2019 – May 31, 2020) shall be Eighty Thousand Three Hundred Forty and No/100 Dollars ($80,340.00), and Rent for the second year of Primary Term shall be Eighty-Two Thousand Seven Hundred Fifty and 20/100 Dollars ($82,750.20). Rent, as adjusted, shall be paid in equal monthly installments as described in Subparagraph 3.a.

4. **Additional Rent – Landlord’s Insurance:** Tenant shall pay all of the following for the Premises as “Additional Rent”:

a. **Utilities:** Tenant shall be responsible for paying the all of the utilities on the Premises, inclusive of, but not limited to, electric, gas, water, sewer, phone, cable/satellite T.V., internet access, and refuse and grease disposal.

b. **Tax Costs:** Tenant shall be responsible for paying annual taxes, assessments, and governmental charges relative to the Premises (“Tax Costs”). The Tax Costs shall include, but not be limited to, all federal, state, county, municipal, or other governmental or quasi-governmental taxes or assessments levied upon, charged against, or assessed in connection with the use of the Premises. Tax Costs shall not include state, or federal income taxes owed by Landlord.

c. **Landlord’s Insurance and Costs:** The Landlord shall procure and maintain such fire and casualty, loss of rents, and liability insurance on the Premises as it deems proper and appropriate in its sole discretion (the “Insurance”), and Tenant shall be responsible for paying the costs of such Insurance. Notwithstanding the foregoing, Landlord agrees to obtain building liability and adequate hazard insurance for the Premises, which covers replacement cost of the Premises. Such Insurance shall not be required to cover any of the Tenant’s property and the Tenant shall have no interest in any of the proceeds of such Insurance.

5. **Payment of Additional Rent:** All Additional Rent shall be paid by Tenant to Landlord in equal monthly installments concurrent with the Rent. Payments of Additional Rent shall be calculated as follows: on, or before the commencement date of the Term, Landlord shall give Tenant a statement of the estimated annual Tax Costs and Insurance Costs for the Premises (“Estimate of Costs”) for the first year of the Term. Tenant shall pay monthly Additional Rent to Landlord based upon the Estimate of Costs divided by twelve (12). The Estimate of Costs shall be the basis of such Additional Rent calculated until

Initials: [Signature]

Landlord

[Signature]

Tenant
Tenant is notified by Landlord of a change thereof. Within ninety (90) days of the end of each calendar year, Landlord shall compute actual Tax Costs and Insurance Costs for the preceding year of the Term (the “Actual Costs”), and shall provide Tenant with a statement of Actual Costs. In the event that Tenant’s payment of Additional Rent for said year of the Term totals less than the Actual Costs, Tenant shall be obligated to pay Landlord, within ten (10) days of receipt of statement, the difference between the Actual Costs and the Additional Rent actually paid for said year. In the event Tenant’s Additional Rent actually paid for said year of the Term exceeds the Actual Costs, such excess shall be credited to Tenant’s next Rent payment. The Actual Costs of the prior year shall be used for the purpose of calculating the Estimate of Costs for the then current year.

6. **Late Payments.** If any Rent, Additional Rent, or other payment is received later than five (5) days after the date when due, the Parties agree that Additional Rent in the amount of ($100.00) dollars per day for each day a payment is late shall also be due and payable by Tenant. The addition of such amount and the collection thereof shall not operate to waive any other rights of Landlord for nonpayment of Rent, or for any other reason.

7. **Payments/Dishonored Checks:** Payments shall be deemed received when actually delivered to, and received by, Landlord at the payment location. Dishonored checks and any checks received late in the mail will be treated as late payments. Additional bank and handling charges may also be assessed in the event of a dishonored check. The foregoing items shall be deemed Additional Rent. Landlord may require Tenant to replace such dishonored check with a money order, cashier’s check, or other good funds. Landlord may further require that all subsequent payments after a dishonored check be paid with a money order, cashier’s check, or other good funds.

8. **Partial Payment:** If any partial payment is made by Tenant, it shall be allocated first to the payment of Additional Rent, including, without limitation, utilities and other expenses; and second to unpaid Rent. Acceptance by Landlord of any partial payment shall not waive the right of Landlord to require immediate payment of the unpaid balance of Rent or waive or affect Landlord’s rights to institute legal proceedings including, without limitation, an eviction action.

9. **No Offset:** No assent, express or implied, to any Default (as defined below) of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other Default. The covenants set forth in this Lease are independent. Tenant shall have no right to withhold or set off any Rent due Landlord.

10. **Security Deposit:**

   a. **Security Deposit:** To secure the faithful performance by Tenant of all of Tenant’s covenants, conditions, and agreements in this Lease, prior to taking possession of the Premises Tenant shall deposit with Landlord a security, cleaning, and damage deposit in the amount of Six Thousand Five Hundred and No/100 Dollars ($6,500.00) (the “Security Deposit”). The Security Deposit may also be used in the event of termination of this Lease by re-entry, eviction, or otherwise. Security Deposit shall be paid at time of execution of the Lease along with rent for August for a total amount of $15,000.00.

   b. **Application of Security Deposit:** The Parties agree: (1) that the Security Deposit or any portion thereof, may be applied to the curing of any Default that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that the Landlord may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied, which shall be added to the Security Deposit so it will be restored to its original amount; (2) that should the Premises be conveyed by Landlord, the Security Deposit or any portion thereof may be turned over to Landlord’s grantee,
and if the Security Deposit is turned over, Tenant agrees to look to such grantee for such application or return; (3) that Landlord shall not be obligated to hold the Security Deposit as a separate fund; (4) that upon increase in the Rent, the Security Deposit shall be increased in the same proportion within thirty (30) days of such Rent increase; and (5) that should a Default occur, Landlord may, as an additional remedy, increase the Security Deposit at its sole discretion.

c. **Return of Security Deposit:** If Tenant shall perform all of its respective covenants and agreements in this Lease, the Security Deposit, or the portion thereof not previously applied pursuant to the provisions of this Lease, together with a statement, shall be returned to Tenant without interest, no later than sixty (60) days after the expiration of the Term, provided Tenant has vacated the Premises and surrendered possession thereof to Landlord.

11. **Condition of Premises and Representations:** Tenant is familiar with the physical condition of the Premises. Except as may otherwise be provided in this Lease, Landlord makes no representations, or warranties as to the physical condition of the Premises or its suitability for Tenant’s intended use. Landlord has agreed to certain renovations, build-out, and labor and materials for the improvement of the Premises, to be effected by Tenant, as specified and agreed to between in the “Work Letter” attached as Exhibit B. The “Work Letter” shall constitute a part of this Lease. Other than the work to be performed pursuant to Tenant’s Work Letter, the Premises are rented “as is,” in current condition, and all warranties are hereby expressly disclaimed. Landlord makes no representations, or warranties as to the suitability of the Premises for Tenant’s intended use. Landlord further makes no representations, or warranties as to whether Tenant’s intended use will necessitate changes, or alterations to the Premises in order to comport with local, state, or federal laws and regulations. Such laws and regulations include, but are not limited to: health code regulations, access regulations (including, but not limited to, the Americans with Disabilities Act), and zoning regulations. Tenant understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Premises into compliance with any local, state, or federal laws and regulations because of Tenant’s intended use, Tenant shall be solely responsible for any and all associated costs and expenses relative thereto. Tenant further indemnifies and agrees to hold Landlord harmless from any and all claims and liabilities that may arise by virtue of Tenant’s use of the Premises in violation of any local, state, or federal laws and regulations.

12. **Check-In Inspection:** Landlord and Tenant may conduct an inspection of the Premises at the time of possession. A check-in inspection sheet shall be completed if a check-in inspection is performed, and the information contained therein shall be sufficient and satisfactory proof of the condition of the Premises at the time of possession.

13. **Use of the Premises:**

   a. **Use Allowances and Limitations:** Absent the express written consent of Landlord, the use and occupancy of the Premises shall be limited to café, restaurant, bar, and nightclub use, or other reasonably comparable legal use. Tenant shall, at its expense, cause the Premises to comply with all governmental statutes, laws, rules, orders, regulations, and ordinances affecting the Premises or any part thereof, or the use thereof. Tenant shall not use or permit the Premises to be used in a manner that creates damage, waste or a nuisance, or that interferes with the quiet enjoyment of or disturbs or causes damage to neighboring premises or properties. Further, Tenant shall not use or permit the Premises to be used in a manner that may result in an increase of the rate or cost to insure the Premises.

   b. **Suitability for Allowed Use:** Landlord’s consent to the aforementioned use is not an assurance, or warranty that the Premises’ attributes are sufficient for Tenant’s use. Tenant represents and warrants that it has conducted sufficient due diligence to assure itself that the Premises are suitable for its use, and that such use is permitted by applicable law.

Page 4 of 13

Initials: [Signature]

Landlord

[Signature]

Tenant
c. **Signage:** Subject to Landlord’s prior review and approval, which shall not be unreasonably withheld, Tenant shall be permitted to erect a sign or signs upon the Premises, provided all signage is in compliance with size and other requirements of Landlord and as may be set forth by applicable ordinances and regulations including, but not limited to, sign and design ordinances. All signage shall conform to aesthetic and design criteria, themes, and standards of the Improvements.

d. **Pets and Animals:** Subject to applicable laws, dogs may be permitted in the outdoor concrete patio constructed on Lot 6 of the Real Estate. Pets or animals shall not be permitted upon the indoor portion of the Premises.

e. **Storage/Trash:** Tenant shall store all personal property entirely within the Premises. Tenant, at its own cost, shall keep the Premises and the property surrounding the Premises free and clear of all debris, garbage, and rubbish. Tenant shall store all trash and refuse in adequate containers in designated areas, which Tenant shall maintain in a neat and clean condition, so as not to create any unsightliness or health or fire hazard.

f. **Keys/Locks:** Tenant shall not place any additional locks upon the Premises, including, but not limited to, exterior and interior doors. Tenant shall not cause any of the locks or cylinders therein to be changed or re-keyed.

g. **Hazardous Material Prohibited:** Tenant shall not cause or permit any hazardous material to be brought upon, kept or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Premises caused, or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs for which Tenant is responsible to Landlord for resulting damage, then Tenant shall indemnify, defend, and hold Landlord harmless from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

h. **Quiet Enjoyment:** Landlord agrees that upon Tenant paying the Rent and performing Tenant’s obligations under this Lease, Tenant shall peacefully and quietly have, hold, and enjoy the Premises throughout the Term or until this Lease is terminated pursuant to its terms. Landlord shall not be responsible for the acts or omissions of any third party that may interfere with Tenant’s use and enjoyment of the Premises. In the event of any transfer or transfers of Landlord’s interest in the Premises, other than a transfer for security purposes only, the Landlord shall be automatically relieved of any and all obligations and liabilities accruing from and after the date of such transfer.

14. **Subletting or Assignment:** Tenant shall not sublet the Premises or any part thereof, nor assign this Lease or any interest therein, without the prior written consent of Landlord. Such consent shall be at the sole discretion of Landlord. As a condition of assignment or sublease, Landlord may require the continued liability of Tenant or a separate personal guaranty by Tenant or its principal. Any change in Tenant’s ownership of more than thirty percent (30.0%) (over any period) of the ownership interest shall be deemed an assignment of this Lease. In the event an assignment or sublease is permitted, all payments from assignee or sublessee shall be made directly by said party to Landlord, and not through Tenant.

15. **Surrender of Premises:** Tenant will return the Premises to Landlord at the expiration of the Term in as good order and repair as when Tenant took possession, loss by casualty and normal wear and tear excepted. Any deterioration or damage caused by accident, abuse, carelessness, or negligence shall not be considered normal wear and tear. In the event that Tenant fails to redeliver the Premises in
appropriate condition, Landlord may restore the Premises to appropriate condition, including repair, replacement, and cleaning. The cost of any work necessitated shall be deducted from the Security Deposit; if the Security Deposit is insufficient to cover work performed, Tenant shall be obliged to pay the additional balance.

16. Removal of Fixtures/Redelivery: Tenant shall remove, at the termination of this Lease, provided Tenant is not in Default, Tenant's moveable trade fixtures and other items of personal property that are not permanently affixed to the Premises. Tenant shall remove the alterations and additions and signs made by Tenant as Landlord may request and repair any damage caused by such removal. Tenant shall peaceably yield up the Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove); and all fixtures, furnishings, floor coverings, and equipment that are permanently affixed to the Premises which shall thereupon become the property of the Landlord. Any personal property of Tenant not removed within five (5) days following such termination shall, at Landlord's option, become the property of Landlord.

17. Repairs and Maintenance of the Premises.

a. Tenant's Obligations. Tenant, at its sole cost, shall maintain, repair, and replace the plumbing, exterior plate glass, other windows, and window frames, electric wiring, HVAC equipment, fixtures, appliances, and interior walls, doorways, and appurtenances belonging thereto installed for the use or used in connection with the Premises. Tenant shall make as and when needed all repairs to the Premises and to all such equipment, fixtures, appliances, and appurtenances necessary to keep the same in good order and condition. Tenant repairs shall include all replacements, renewals, alterations, and betterments (the "Tenant Repairs"). All Tenant Repairs shall be equal or better in quality and class to the original work. In the event Tenant fails to complete Tenant Repairs, Landlord may obtain them and bill Tenant for such work as Additional Rent. The Tenant shall further properly irrigate and care for all trees, shrubbery, and lawn, if any, and shall keep all sidewalks on or around the Premises free and clear of ice and snow.

b. Landlord's Obligations. Landlord, at its cost, shall maintain, repair, replace and keep the structural components, interior and exterior walls, floors, ceiling, roofs, and water and sewer connections of the Improvements in good order, repair, and condition. Landlord's responsibility for certain repair, maintenance, or replacement shall be limited to: (i) any repairs, replacements, restorations, or maintenance that have been necessitated by reason of ordinary wear and tear, and (ii) any repairs, replacements, restorations, or maintenance that have been necessitated by sudden natural forces, or acts of God, or by fire not caused by Tenant. The cost of any maintenance, repairs, or replacements necessitated by the act, neglect, misuse, or abuse of Tenant, its agents, employees, customers, licensees, invitees, or contractors shall be paid by Tenant to Landlord promptly upon billing. Landlord shall use reasonable efforts to cause any necessary repairs to be made promptly; provided, however, that Landlord shall have no liability whatsoever for any delays in causing such repairs to be made.

c. No Abatement for Repairs. There shall be no allowance to Tenant for a diminution of value and no liability on the part of Landlord, by reason or inconvenience, annoyance or injury to, or interruption of business, arising from Landlord, Tenant or others making any repairs, restorations, replacements, alterations, additions or improvements in or to any portion of the Premises, or in or to fixtures, appurtenances, or equipment thereof.

18. Tenant Improvements: Unless otherwise provided in the Work Letter, Tenant shall be solely responsible for any and all improvements and alterations within the Premises necessary for Tenant's intended use of the Premises, including, but not limited to, electrical wiring, HVAC, plumbing.
framing, drywall, flooring, finish work, telephone systems, wiring, and fixtures necessary to finish the Premises to a condition suitable for Tenant’s use (the "Tenant Work").

19. **Improvements/Prior Landlord Consent:** Tenant agrees to submit to Landlord complete plans and specifications, including engineering, mechanical, and electrical work covering any and all contemplated Tenant Work, if applicable, and any subsequent improvements or alterations of the Premises. The plans and specifications shall be in such detail as Landlord may require, and in compliance with all applicable statutes, ordinances, regulations, and codes. As soon as reasonably feasible thereafter, Landlord shall notify Tenant of any failures of Tenant’s plans to meet with Landlord’s approval. Tenant shall cause Tenant’s plans to be revised to the extent necessary to obtain Landlord’s approval. Tenant shall not commence any Tenant Work, or any other improvements, or alterations of Premises until Landlord has approved Tenant’s plans.

20. **Tenant Work and Repairs/Compliance with Codes/Mechanic Liens:** Tenant shall procure all necessary permits before undertaking Tenant Work or Tenant Repairs. Tenant shall perform all Tenant Work or Tenant Repairs in a good and workmanlike manner. Tenant shall use materials of good quality and perform Tenant Work or Tenant Repairs only with contractors previously approved of in writing by Landlord. Tenant shall comply with all laws, ordinances, and regulations, including, but not limited to, building, health, fire, and safety codes. Tenant hereby agrees to hold Landlord and Landlord’s agents harmless and indemnified from all injury, loss, claims, or damage to any person or property (including the cost for defending against the foregoing) occasioned by, or growing out of Tenant Work or Tenant Repairs. Tenant shall promptly pay when due the entire cost of any Tenant Work or Tenant Repairs on the Premises undertaken by Tenant, so that the Premises shall at all times be free of liens for labor and materials. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless of and from all liability, loss, damages, costs, or expenses, including reasonable attorneys’ fees, incurred in connection with any claims of any nature whatsoever for work performed or, or materials, or supplies furnished to Tenant, including lien claims of laborers, materialmen, or others. Should any such liens be filed or recorded against the Premises or the Improvements with respect to work done for, or materials supplied to, or on behalf of Tenant, or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within five (5) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado’s mechanic’s lien statutes. If Tenant shall be in default in paying any charge for which such mechanic’s lien or suit to foreclose such lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but without being required to do so) pay such lien or claim and any associated costs, and the amount so paid, together with reasonable attorneys’ fees incurred in connection therewith, shall be immediately due from Tenant to Landlord as Additional Rent.

21. **Default:** If Tenant is in arrears in the payment of any installment of Rent, any Additional Rent, or any portion thereof; is in violation of any other covenants or agreements set forth in this Lease; or the Premises are left vacant and unoccupied for over thirty (30) days (a "Default"), and such event(s) of Default remains uncorrected for a period of three (3) days after Landlord has given written notice thereof, then Landlord may, at Landlord’s option, undertake any of the following remedies without limitation: (a) declare the Term of this Lease ended; (b) terminate Tenant’s right to possession of the Premises and reenter and repossess the Premises pursuant to applicable provisions of the Colorado Forcible Entry and Unlawful Detainer statute; (c) recover all present and future damages, costs, and other relief to which Landlord is entitled; (d) pursue Landlord’s lien remedies; (e) pursue breach of contract remedies; and (f) pursue any and all available remedies in law or equity. If Tenant or any Guarantor (as defined below) files a petition of bankruptcy or seeks reorganization under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors’ rights generally; is adjudged insolvent; assigns all or substantially all of its assets for the benefit of creditors or such assets are subject to levy by virtue of a writ of court of competent jurisdiction; is subject to appointment of a receiver,
trustee or other similar official; or made any material representation to Landlord which shall prove to have been false, such events shall also constitute a Default, but shall not be subject to the three (3) day cure period provided in this Paragraph for other events of Default. In the event possession is terminated by reason of a Default prior to expiration of the Term, Tenant shall remain responsible for the Rent and Additional Rent, subject to Landlord’s duty to mitigate such damages. Pursuant to §§ 13-40-104(d.5) and (e.5), and 13-40-107.5, C.R.S., hereby incorporated by reference, in the event repeated or substantial Defaults(s) under this Lease occur, Landlord may terminate Tenant’s possession upon a written Notice to Quit, without a right to cure. Upon such termination, Landlord shall have available any and all of the remedies listed above. In furtherance of the terms of this Paragraph, Tenant hereby grants Landlord permission to obtain from time to time investigative consumer reports to ascertain the creditworthiness of Tenant and Tenant’s Guarantors.

22. **Re-Entry:** In the event of re-entry by Landlord as a result of abandonment or a Default by Tenant:

   a. Tenant shall be liable for damages to Landlord for all loss sustained, including, without limitation, the balance of the Rent and Additional Rent, court costs, and reasonable attorneys’ fees;

   b. Tenant’s personal property and the personal property of any guest, invitee, or licensee may be removed from the Premises and left on the street or alley, or, at Landlord’s option, it may be removed and stored, or disposed of at Landlord’s sole discretion. Landlord shall not be deemed a bailee of the property removed and Landlord shall not be held liable for the property. Tenant shall indemnify Landlord for any expense in defending against any claim by Tenant or a third party and for any legal expense, cost, fine, or judgment awarded to a third-party as a result of Landlord’s action under the terms of this Lease;

   c. Landlord may attempt to relet the Premises for such rent and under such terms as Landlord believes appropriate;

   d. Landlord may enter the Premises, clean and make repairs, and charge Tenant accordingly;

   e. Any money received by Landlord from Tenant shall be applied first to Rent, Additional Rent, and other payments due; and

   f. Tenant shall surrender all keys and peaceably surrender and deliver up possession of the Premises.

23. **Negligent Damages:** Tenant shall be responsible for and reimburse Landlord for any and all damages to the Premises and persons and property therein caused by the negligent, grossly negligent, reckless, or intentional acts of itself, its employees, agents, invitees, licensees, or contractors.

24. **Liability Indemnification/Insurance:** Tenant shall hold Landlord, Landlord’s agents, and their respective successors and assigns, harmless and indemnified from all injury, loss, claims, or damage to any person or property while on the Premises, or arising in any way out of Tenant’s business, which is occasioned by a negligent, intentional, or reckless act, or omission of Tenant, its employees, agents, invitees, licensees, or contractors. Tenant shall maintain public liability insurance insuring Landlord and Landlord’s agents, as their interest may appear, against all claims, demands, or actions for injury to or death in an amount of not less than one million dollars ($1,000,000) arising out of any one occurrence, made by, or on behalf of any person, firm, or corporation, arising from, related to, or connected with the conduct and operation of Tenant’s business, including, but not limited to, events on the Premises. Tenant
shall also obtain coverage in the amount of one million dollars ($1,000,000) per occurrence covering Tenant’s contractual liability under the aforesaid indemnification clauses.

25. Fire/Casualty Insurance: Tenant shall maintain plate glass insurance covering all exterior plate glass in the Premises, fire, extended coverage, vandalism, and malicious mischief insurance and such other insurance as Tenant may deem prudent, for Tenant’s stock in trade, fixtures, furniture, furnishings, floor coverings, and equipment in the Premises.

26. Tenant’s Insurance Requirements: All of Tenant’s insurance related to the Premises shall be from responsible and well-rated companies satisfactory to Landlord, shall name Landlord as an additional insured, and shall provide that the insurance will not be subject to cancellation, termination, or change except after at least thirty (30) days prior written notice to Landlord. The policies or duly executed certificates for such insurance shall be provided to Landlord prior to commencement of the Primary Term and otherwise upon request of Landlord.

27. Waiver of Liability: Landlord and Landlord’s agents and employees shall not be liable for, and Tenant waives all claims for, damage to property sustained by Tenant, employees, agents or contractors, or any other person claiming through Tenant, resulting from any accident in or upon the Premises, including, but not limited to, claims for damage resulting from: (1) any equipment or appurtenances becoming out of repair; (2) Landlord’s failure to keep the Premises in repair; (3) injury done or occasioned by wind, water, or other act of God; (4) any defect in, or failure of, plumbing, heating, or air-conditioning equipment, electric wiring, or installation thereof, gas, water and steam pipes, stairs, porches, railings, or walks; (5) broken glass; (6) the backing-up of any sewer pipe, or downspout; (7) the bursting, leaking, or running of any tank, tub, sink, sprinkler system, water closet, waste pipe, drain, or any other pipe or tank in, upon, or about the Premises; (8) the escape of steam, or hot water; (9) water, snow, or ice being upon, or coming through the roof, skylight, doors, stairs, walks, or any other place upon, or near the Premises, or otherwise; (10) the falling of any fixtures, plaster, or stucco; (11) fire or other casualty; and (12) any act, omission, negligence, or criminal activity of third parties.

28. Indemnification Fees and Costs: In case any claim, demand, action, or proceeding is made or brought against Landlord, its agents, or employees, by reason of any obligation on Tenant’s part to be performed under the terms of this Lease or arising from any act of negligence of Tenant or its agents or employees, or which gives rise to Tenant’s obligation to indemnify Landlord, Tenant shall be responsible for all costs and expenses, including, but not limited to, reasonable attorneys’ fees incurred in defending or prosecution of the same, as applicable.

29. Destruction or Condemnation of Premises: Landlord’s and Tenant’s duties and responsibilities are as follows when destruction or condemnation of the Premises occurs:

   a. Partial Destruction of the Premises: In case of partial destruction of the Premises by fire, or other casualty, Landlord at its discretion may repair the Premises with reasonable dispatch after notice of said partial destruction. Tenant shall remain responsible for payment of Rent. Subparagraph (d) of this Paragraph shall apply if Landlord determines that the partial destruction will not be repaired.

   b. Premises Untenable: If the Premises are made totally untenable by fire, the elements, or other casualty, or the Premises are partially destroyed to the point where Landlord, within a reasonable time, decides not to rebuild, or repair, then Subparagraph (d) of this Paragraph shall apply.
c. **Condemnation:** If the whole or part of the Premises are taken by any authority for any public or quasi-public use, or purpose, then Subparagraph (d) of this Paragraph shall apply. All damages and compensation awarded for any taking shall be the sole property of Landlord.

d. **Termination of Term:** Tenant agrees that if Landlord decides not to repair, or rebuild the Premises where the destruction has occurred as described in Subparagraphs (a) and (b) of this Paragraph, the Term hereby granted by this Lease shall cease and the Rent and Additional Rent shall be prorated and payable up to the time of the cessation of the Term. A refund will be given for the balance of any Rent and Additional Rent (once the Actual Costs and any overpayment of Additional Rent can be determined) paid in advance for which Tenant did not have use of the Premises due to the cessation of the Term under the conditions of this Paragraph. Where the Premises have been taken due to condemnation as described in Subparagraph (c) of this Paragraph, the Term of this Lease shall cease and terminate upon the date that possession of the Premises is taken by the authority. Rent and Additional Rent shall be prorated and payable up to the time of the cessation of the Term. Tenant shall not hold Landlord liable for any damages as a result of any of the acts or events described in this subparagraph.

30. **Holdover:** Tenant shall vacate the Premises and remove all of Tenant’s personal property from the Premises prior to 11:59 p.m. on the date the Term expires, and Landlord may immediately commence eviction proceedings at its sole discretion. If, after the expiration of this Lease, Tenant shall remain in possession of the Premises and continue to pay Rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to one-hundred fifty percent (150%) of the last month’s Rent paid under this Lease, and subject to all the terms and conditions of this Lease.

31. **Entry by Landlord:** Landlord may enter the Premises at reasonable hours for reasonable purposes (such as repairs, inspections, or re-letting to prospective new tenants), upon reasonable notice to Tenant. Landlord may also enter the Premises in the event of emergency, without notice, or in the event of vacancy of the Premises.

32. **Guarantor:** This Lease is guaranteed. Each person guaranteeing this Lease (each a “Guarantor”) hereby absolutely guarantees Tenant’s obligations and performance under this Lease. Each Guarantor further agrees to be bound by the same covenants and conditions of this Lease and hereby makes the same warranties and representations as Tenant hereunder. If Tenant defaults in the performance of its obligations under this Lease, Guarantor will perform said obligations. Reference is made to any guaranties for additional terms and conditions concerning guaranty of this Lease.

33. **Subordination/Estoppen/Attornment:** The Lease shall be subordinate to all existing and future mortgages, deeds of trust, and other security interests on the Premises and to any and all extensions, renewals, refinancing, and modifications thereof. Tenant shall execute and deliver whatever instruments may be required for such purposes, or for the purpose of informing a potential or existing lender or purchaser of the Premises as to the status of its tenancy. Any such instruments or estoppel letters shall contain all information reasonably required by Landlord or other entity in conjunction with such transaction. Tenant agrees to attorn to a lender or other party coming into title to the Premises upon written request of Landlord.

34. **Notices:** All notices required to be sent under this Lease shall be in writing and either: (i) delivered as provided by applicable law, including, inter alia, § 13-40-101, C.R.S., et seq., (Colorado Forcible Entry and Unlawful Detainer statute); (ii) personally delivered, with proper proof of service; or (iii) sent via U.S. first class mail, postage prepaid. All notices required to be sent to Landlord shall be sent or delivered to the address where the Rent is to be paid, and all notices required to be sent to Tenant shall be sent or delivered to the Premises and to 324 Harold Ross CT, Aspen, CO 81611. Notwithstanding the
foregoing, all notices involving or concerning § 13-40-101, C.R.S., et seq. shall be delivered as provided by statute.

35. **Attorneys’ Fees:** In the event Tenant or Landlord fails to perform any of its obligations under this Lease, or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party, or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys’ fees.

36. **Governing Law - Venue:** This Lease shall be governed by and construed in accordance with the laws of the State of Colorado. Venue shall be proper in Garfield County.

37. **Amendments and Termination:** Unless otherwise provided in this Lease, this Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

38. **Captions:** The paragraph titles or captions in this Lease are for convenience only and shall not be deemed to be part of this Lease.

39. **Pronouns; Joint and Several Use of Certain Terms:** Whenever the terms referred to in this Lease are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa. All references to the “Landlord” shall mean Landlord and/or its authorized agents, contractors, or employees as may be required by the specific context. All references to the “Tenant” shall mean each and every person comprising Tenant, or an individual person, or combination of persons comprising Tenant, as may be required by the specific context.

40. **Waivers:** No right under this Lease may be waived except by written instrument executed by the party who is waiving such right. No waiver of any breach of any provision contained in this Lease shall be deemed a waiver of any preceding or succeeding breach of that provision, or of any other provision contained in this Lease. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

41. **Heirs, Assigns, Successors:** The Lease is binding and inures to the benefit of the heirs, assigns, and successors in interest to the Parties, subject to the restrictions on assignment.

42. **Time of the Essence:** Time is of the essence of this Lease, and each and all of its provisions.

43. **Entity Authorization:** Each individual executing this Lease on behalf of an entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with a duly adopted resolution or other authorization and this Lease is binding upon the entity in accordance with its terms. Tenant agrees to provide Landlord with such a resolution or authorization within five (5) days of Tenant’s request.

44. **Severability:** If any term, covenant, condition, or provision of this Lease, or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, or provision to persons, or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

45. **Lead-Based Paint Disclosure Rule:** Improvements built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978
structures, landlords must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenant must also receive a federally approved pamphlet on lead poisoning prevention. In the event the Premises were constructed before 1978, Landlord shall comply with the Lead-Based Paint Disclosure, 42 U.S.C. § 4852d.

46. **ADA Compliance.** Tenant shall not cause or permit any violation of the Americans with Disabilities Act (the “ADA”) to occur on, or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses that arise during or after the Term as a result of such violation. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any remedial work required by any federal, state, or local governmental agency or political subdivision because of any ADA violation present on or about the Premises. Tenant shall be permitted to make such alterations to the Premises as may be necessary to comply with the ADA, at Tenant’s sole expense and upon the prior written consent of Landlord. Without limiting the foregoing, if the presence of any ADA violation on the Premises caused or permitted by Tenant results in remedial work on the Premises, Tenant shall promptly take all actions at its sole expense as are required by any authority to comply with the ADA; provided that Landlord’s consent to such actions shall first be obtained, which shall not be reasonably withheld.

47. **Entire Agreement.** This Lease and the Exhibits hereto embody the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof. The Exhibits to this Lease are as follows:

   Exhibit A-1 – Peak Surveying, Inc.’s Improvement Survey Plat for the Real Property dated January 10, 2018
   Exhibit B – Work Letter

48. **Counterparts.** This Lease may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Lease.

49. **Contingency.** Full performance of this Lease is subject to the appropriate authority granting a liquor license to Tenant for the Premises and its intended use thereof by Tenant no later than the commencement of the Primary Term. In the event Tenant is not granted a liquor license by the Primary Term commencement, this Lease shall terminate and Landlord shall refund to Tenant all funds paid by it to Landlord, except that, Tenant and Landlord agree that Landlord shall retain the sum of Four Thousand and No/100 Dollars as liquidated damages.
THE PARTIES SHOULD INITIAL EACH PAGE OF THE LEASE AND SIGN BELOW. EACH PARTY SHOULD RECEIVE A SIGNED COPY OF THE LEASE AND ANY ADDENDA.

LANDLORD:

348 Main, LLC, a Texas limited liability company

By: [Signature]
Stephan A. Beal, Manager

Date: 5/24/18

TENANT:

Emma Group, LLC; a Colorado limited liability company

By: [Signature]
Mladen Todorovic

Its: President/Owner
Date: 05/23/2018
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Emma Group LLC

is a

Limited Liability Company

formed or registered on 05/18/2018 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 20181398782.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 05/25/2018 that have been posted, and by documents delivered to this office electronically through 05/30/2018 @ 12:38:18.

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 05/30/2018 @ 12:38:18 in accordance with applicable law. This certificate is assigned Confirmation Number 10928155.

[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.”
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
Emma group LLC

This Single-member LLC Operating Agreement represents Emma group LLC that was formed in the State of Colorado on May 18th 2018, hereinafter known as the "Company".

Mladen Todorovic of 324 Harold Ross ct, Aspen, Colorado, 81611 is recognized as the sole member of the Company (the "Member(s)").

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Name and Principal Place of Business

The name of the Company is Emma group LLC with a principal place of business at 348 Main Street, Carbondale, Colorado, 81623. The mailing address shall be the same address as the principal office location.

2. Registered Agent

The name of the Registered Agent is Geib & Fox P.C. with a registered office located at 205 S.Mill street #301 a, Aspen, Colorado, 81611 for the service of process as of May 30th 2018. This may change at any time by the Company filing an amendment with the Secretary of State, or respective office, in the State of Colorado.

3. Formation

The Company was formed on May 18th 2018, when the Member(s) filed the Articles of Organization with the office of the Secretary of State pursuant to the statutes governing limited liability companies in the State of Colorado (the “Statutes”).

4. Purpose

The purpose of the Company is to engage in and conduct any and all lawful businesses, activities or functions, and to carry on any other lawful activities in connection with or incidental to the foregoing, as the Member(s) in their discretion shall determine.

5. Term

The term of the Company shall be perpetual, commencing on the filing of the Articles of Organization of the Company, and continuing until terminated under the provisions set forth herein.

6. Member(s) Capital Contributions

The Member(s) shall be making a Capital Contribution described as: $120,000 in cash.

7. Distributions.

The Member may make such capital contributions (each a “Capital Contribution”) in such amounts and at such times as the Member shall determine. The Member shall not be obligated to make any
Capital Contributions. The Member may take distributions of the capital from time to time in accordance with the limitations imposed by the Statutes.

A “Capital Account” for the Member’s shall be maintained by the Company. The Member’s Capital Account shall reflect the Member’s capital contributions and increases for any net income or gain of the Company. The Member’s Capital Account shall also reflect decreases for distributions made to the Member and the Member’s share of any losses and deductions of the Company.

8. Books, Records and Tax Returns

The Company shall maintain complete and accurate books and records of the Company’s business and affairs as required by the Statutes and such books and records shall be kept at the Company’s Registered Office and shall in all respects be independent of the books, records and transactions of the Member.

The Company’s fiscal year shall be the calendar year with an ending month of December. The Member intends that the Company, as a single member LLC, shall be taxed as a S-Corporation in accordance with the provisions of the Internal Revenue Code.

9. Bank Accounts

All funds of the Company shall be deposited in the Company’s name in a bank account or accounts as chosen by the Member(s). Withdrawals from any bank accounts shall be made only in the regular course of business of the Company and shall be made upon such signature or signatures as the Member(s) from time to time may designate.

10. Management of the Company

The business and affairs of the Company shall be conducted and managed by the Member(s) in accordance with this Agreement and the laws of the State of Colorado.

Mladen Todorovic, as sole member of the Company, has sole authority and power to act for or on behalf of the Company, to do any act that would be binding on the Company, or incur any expenditures on behalf of the Company. The Member shall not be liable for the debts, obligations or liabilities of the Company, including under a judgment, decree or order of a court. The Company is organized as a “member-managed” limited liability company. The Member is designated as the initial managing member.

11. Ownership of Company Property

The Company’s assets shall be deemed owned by the Company as an entity, and the Member shall have no ownership interest in such assets or any portion thereof. Title to any or all such Company assets may be held in the name of the Company, one or more nominees or in “street name”, as the Member may determine.

Except as limited by the Statutes, the Member may engage in other business ventures of any nature, including, without limitation by specification, the ownership of another business similar to that operated by the Company. The Company shall not have any right or interest in any such independent ventures or to the income and profits derived therefrom.

12. Dissolution and Liquidation
The Company shall dissolve and its affairs shall be wound up on the first to occur of (i) At a time, or upon the occurrence of an event specified in the Articles of Organization or this Agreement. (ii) The determination by the Member that the Company shall be dissolved.

Upon the death of the Member, the Company shall be dissolved. By separate written documentation, the Member shall designate and appoint the individual who will wind down the Company’s business and transfer or distribute the Member’s Interests and Capital Account as designated by the Member or as may otherwise be required by law.

Upon the disability of a Member, the Member may continue to act as Manager hereunder or appoint a person to so serve until the Member’s Interests and Capital Account of the Member have been transferred or distributed.

13. Indemnification

The Member (including, for purposes of this Section, any estate, heir, personal representative, receiver, trustee, successor, assignee and/or transferee of the Member) shall not be liable, responsible or accountable, in damages or otherwise, to the Company or any other person for: (i) any act performed, or the omission to perform any act, within the scope of the power and authority conferred on the Member by this agreement and/or by the Statutes except by reason of acts or omissions found by a court of competent jurisdiction upon entry of a final judgment rendered and un-appealable or not timely appealed (“Judicially Determined”) to constitute fraud, gross negligence, recklessness or intentional misconduct; (ii) the termination of the Company and this Agreement pursuant to the terms hereof; (iii) the performance by the Member of, or the omission by the Member to perform, any act which the Member reasonably believed to be consistent with the advice of attorneys, accountants or other professional advisers to the Company with respect to matters relating to the Company, including actions or omissions determined to constitute violations of law but which were not undertaken in bad faith; or (iv) the conduct of any person selected or engaged by the Member.

The Company, its receivers, trustees, successors, assignees and/or transferees shall indemnify, defend and hold the Member harmless from and against any and all liabilities, damages, losses, costs and expenses of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by the Member (including amounts paid in satisfaction of judgments, in settlement of any action, suit, demand, Investigation, claim or proceeding (“Claim”), as fines or penalties) and from and against all legal or other such costs as well as the expenses of investigating or defending against any Claim or threatened or anticipated Claim arising out of, connected with or relating to this Agreement, the Company or its business affairs in any way; provided, that the conduct of the Member which gave rise to the action against the Member is indemnifiable under the standards set forth herein.

Upon application, the Member shall be entitled to receive advances to cover the costs of defending or settling any Claim or any threatened or anticipated Claim against the Member that may be subject to indemnification hereunder upon receipt by the Company of any undertaking by or on behalf of the Member to repay such advances to the Company, without interest, if the Member is Judicially Determined not to be entitled to indemnification as set forth herein.

All rights of the Member to indemnification under this Agreement shall (i) be cumulative of, and in addition to, any right to which the Member may be entitled to by contract or as a matter of law or equity, and (ii) survive the dissolution, liquidation or termination of the Company as well as the death, removal, incompetency or insolvency of the Member.
The termination of any Claim or threatened Claim against the Member by judgment, order, settlement or upon a plea of nolo contendere or its equivalent shall not, of itself, cause the Member not to be entitled to indemnification as provided herein unless and until Judicially Determined to not be so entitled.

14. Miscellaneous

This Agreement and the rights and liabilities of the parties hereunder shall be governed by and determined in accordance with the laws of the State of Colorado. If any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

The captions in this Agreement are for convenience only and are not to be considered in construing this Agreement. All pronouns shall be deemed to be the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. References to a person or persons shall include partnerships, corporations, limited liability companies, unincorporated associations, trusts, estates and other types of entities.

This Agreement, and any amendments hereto may be executed in counterparts all of which taken together shall constitute one agreement.

This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof. It is the intention of the Member(s) that this Agreement shall be the sole agreement of the parties, and, except to the extent a provision of this Agreement provides for the incorporation of federal income tax rules or is expressly prohibited or ineffective under the Statutes, this Agreement shall govern even when inconsistent with, or different from, the provisions of any applicable law or rule. To the extent any provision of this Agreement is prohibited or otherwise ineffective under the Statutes, such provision shall be considered to be ineffective to the smallest degree possible in order to make this Agreement effective under the Statutes.

Subject to the limitations on transferability set forth above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and assigns.

No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

IN WITNESS WHEREOF, the Member(s) have executed this Agreement on May 30th 2018.

The Member(s) of Emma group LLC

Mladen Teodorovic
Affidavit - Restrictions On Public Benefits

I, **MLADEN TODOROVIC**, 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.
- **[x]** I am not a United States citizen but I am lawfully present in the United States pursuant to Federal law.
- [ ] I am a foreign national not physically present in the United States.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature: [Signature]

Date (MM/DD/YY): 06/01/18
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

**Emma Group LLC**

(If you are filing as a registered foreign limited liability company, write the name of your home state immediately after the entity name. Section 7-90-301(1) C.R.S.)

(Caution: The use of certain terms or abbreviations is 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**

324 Harold Ross Ct

**City**

Aspen

**State**

CO

**Zip Code**

81611

(Mailing address)

(leave blank if same as street address)

348 Main Street

Carbondale

CO

81623

3. The registered agent name and registered agent address of the limited liability company’s initial registered agent are

**Name**

or

(if an entity)

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

**Street address**

324 Harold Ross Ct

**City**

Aspen

**State**

CO

**Zip Code**

81611

(Mailing address)

(leave blank if same as street address)
4. The true name and mailing address of the person forming the limited liability company are

<table>
<thead>
<tr>
<th>Name</th>
<th>Todorovic</th>
<th>Mladen</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Last)</td>
<td>(First)</td>
<td>(Middle)</td>
</tr>
</tbody>
</table>

or

(if an entity)

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

Mailing address

324 Harold Ross Ct

(Street number or P.O. Box Information)

Aspen | CO | 81611

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

(Province - if applicable) | United States |

(Country)

(if the following statement applies, adopt the statement by marking the box and include an attachment)

[ ] 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.

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.)

(if the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format)

The delayed effective date and, if applicable, time of this document is/are

[ ]

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.
This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

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

<table>
<thead>
<tr>
<th>Todorovic</th>
<th>Mladen</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Last)</td>
<td>(First)</td>
</tr>
<tr>
<td>324 Harold Ross ct</td>
<td></td>
</tr>
<tr>
<td>(Street number and name or Post Office Box information)</td>
<td></td>
</tr>
<tr>
<td>Aspen</td>
<td>CO</td>
</tr>
<tr>
<td>(City)</td>
<td>(State)</td>
</tr>
<tr>
<td>United States</td>
<td></td>
</tr>
<tr>
<td>(Province - if applicable)</td>
<td></td>
</tr>
<tr>
<td>(Country)</td>
<td></td>
</tr>
</tbody>
</table>

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:
This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user’s legal, business or tax advisor(s).
TOWN OF CARBONDALE LIQUOR LICENSING AUTHORITY
DOCUMENT CHECKLIST for CORP. / LLC / PARTNERSHIP
ATTACHMENT G
NEW LICENSE
Italics=Local Authority Requirement

Name of Applicant ___________________________________________  Date of Application ___________  __/____/____

1. ___ Public Hearing Date ___________ [must be noticed 30 days prior to hearing date]
2. ✓ Posted on Premises on (date) ___________ [must be posted 10 days prior to hearing date]
3. ✓ (Form DR8404) Retail License Application
4. ✓ Follow Checklist and Worksheet on page 2 of Form DR8404
5. ✓ Diagram of premises (see requirements on page 2, Sec. II of Form DR8404) outlined in red with a “square box” to indicate where alcohol will be permitted.
6. ✓ Proof of Property Possession (see requirements on Page 2, Sec. III of Form DR8404)
   Lease must run for at least one year concurrent with the Liquor License & in the name of the applicant as it appears on page 1, #2 of Form DR8404.
7. ✓ (Form DR8404-4I) Individual History Record(s) - For each officer/member/partner and for manager registration
8. ✓ Fingerprints for Individual History Applicants (Police Department)
9. N/A Purchase Agreement, Stock Transfer Agreement
10. N/A List of all notes and loans

CORPORATION APPLICANT:
11. ___ Certificate of Incorporation (and/or) Certificate of Good Standing (if Incorporated more than 2 years ago).
12. ___ List of officers, directors and stockholders of parent corporation (designate 1 person as “principal officer”).

PARTNERSHIP APPLICANT:
13. ___ Partnership Agreement (general or limited). Not needed if husband and wife.

LIMITED LIABILITY COMPANY APPLICANT:
14. ✓ Copy of Articles of Organization (date stamped by Colorado Secretary of State)
15. ✓ Copy of Operating Agreement
16. ___

<table>
<thead>
<tr>
<th>Fees:</th>
<th>STATE</th>
<th>TOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPLICATION FEE FOR ONE OF THE FOLLOWING LICENSES: With Concurrent Review</td>
<td>$1950.00</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>$2050.00</td>
<td>1000</td>
<td></td>
</tr>
<tr>
<td>HOTEL &amp; RESTAURANT LICENSE</td>
<td>500.00</td>
<td>75.00</td>
</tr>
<tr>
<td>BEER &amp; WINE LICENSE</td>
<td>351.25</td>
<td>48.75</td>
</tr>
<tr>
<td>OPTIONAL PREMISES</td>
<td>500.00</td>
<td>75.00</td>
</tr>
<tr>
<td>3.2% BEER (on or off premises)</td>
<td>96.25</td>
<td>3.75</td>
</tr>
<tr>
<td>RETAIL LIQUOR STORE LICENSE</td>
<td>227.50</td>
<td>22.50</td>
</tr>
<tr>
<td>MGR REG. (H&amp;R/Tavern only)</td>
<td>75.00</td>
<td>75.00</td>
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<tr>
<td>FINGERPRINTS (TOC Police Dept.)</td>
<td>35.00/p</td>
<td>35</td>
</tr>
</tbody>
</table>

TOTAL $                                     

$2,550                                        $1,110

Dept. of Revenue Town of Carbondale

COLORADO BUREAU OF INVESTIGATION

$38.50
(Fingerprint Investigation $38.50/person)
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

Printed Name and Title

Date

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

Date application filed with local authority

Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application)

The Local Licensing Authority hereby Affirms that each person required to file DR 8404-1 Individual History Record or a DR 8000 Manager Permit has been:

☐ Fingerprinted
☐ Subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license

(Show One)

☐ Date of inspection or anticipated date __________________________

☐ Will conduct inspection upon approval of state licensing authority

☐ 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

Print

Title

Date

Telephone Number

☐ Town, City

☐ County

Signature

Print

Title

Date
Board of Trustees Memorandum

Item No: 10
Attachment: H
Meeting Date: 7/10/2018

TITLE: Old Town Residential Zone District Boundary Correction

SUBMITTING DEPARTMENT: Planning

ATTACHMENTS: Ordinance No. 5 Series of 2008
Minutes from May 13, 2008 Trustee meeting
Letters from J. Ray Barlow dated January and May of 2008
Ordinance No. 9 Series of 2018

BACKGROUND

Ordinance No. 5 series of 2008 established the Old Town Residential Zone District (OTR) within a certain area of Town to better accommodate historical structures and to establish district development standards to protect the historic nature of the district.

DISCUSSION

Staff was made aware that seven (7) lots located at the corner of Sopris Avenue and Third Street were not to be included in the OTR zone district. Staff researched the Trustee minutes from the May 13, 2008 meeting that approved Ordinance No. 5 Series of 2008. Staff noted that there was a motion that included that the seven lots at the southeast corner of Sopris Avenue and Third Street were not to be included in the OTR district. Originally these lots were zoned as Residential Low Density, and would revert from the OTR to the original zoning of R/LD.
RECOMMENDATION

Staff recommends the following motion be approved: **Move to approve Ordinance No. 9 Series of 2018, Correcting the Old Town Residential District boundaries and reverting the lots in question to the Residential Low-Density Zone district.**

Prepared By: John Leybourne
ORDINANCE NO. 5
SERIES OF 2008

AN ORDINANCE AMENDING TITLE 18
OF THE CARBONDALE TOWN CODE CONCERNING:

THE CREATION OF A NEW OTR ZONE DISTRICT, REVISIONS TO RESIDENTIAL DEVELOPMENT STANDARDS, REVISIONS TO SPECIAL USE AND INFILL DEVELOPMENT REVIEW PROCEDURES AND REVIEW CRITERIA, AND THE REZONING OF PORTIONS OF THE R/LD ZONE DISTRICT TO THE NEW OTR ZONE DISTRICT

WHEREAS Town Staff initiated proposed changes to the Town's zoning code to create a new zone district for certain residential areas south of downtown that are currently zoned Residential/Low Density (R/LD), which new zone district would be known as the Old Town Residential (OTR) zone district; and

WHEREAS, after posting and publishing notice in accordance with the Carbondale Municipal Code, the Planning and Zoning Commission conducted a public hearing on August 30, 2007, which hearing continued on September 27, 2007, October 25, 2007, November 15, 2007, November 29, 2007, and closed on December 13, 2007, at which times various elements of these zoning changes were discussed; and

WHEREAS, on January 24, 2008 the Planning and Zoning Commission then recommended certain zoning changes to the Board of Trustees; and

WHEREAS, after posting and publishing notice in accordance with the Carbondale Municipal Code, the Board of Trustees of the Town of Carbondale conducted a public hearing on February 26, 2008, which public hearing continued on March 11, 2008 and closed on March 25, 2008;

WHEREAS, during said hearing, the Board of Trustees heard and considered the statements of Town staff, the Planning and Zoning Commission’s recommendation, and any members of the public who wished to speak, and reviewed and considered all other information presented, all as required by law; and

WHEREAS, the Board of Trustees of the Town of Carbondale finds that it is appropriate to approve changes to Title 18 of the Carbondale Municipal Code to create a new OTR zone district for part of the existing R/LD district, which new district will better accommodate the historical structures and present and future land use patterns within this unique residential zoning area that is adjacent to downtown Carbondale, and otherwise to update the Town’s special use permit procedures, infill development review procedures and zoning definitions with regard to accessory dwelling units; and
WHEREAS, the rezone of the subject property described herein from R/LD to OTR will otherwise fulfill the purposes set forth in Section 18.05.015 of the Municipal Code.

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

Section 1: The Carbondale Municipal Code Section 18.20.015, entitled "General Regulations for all residential districts" is amended to add a new subsection 18.20.015(F), to read as follows:

F. Accessory Dwelling Units. Accessory apartments or dwelling units ("ADUs") must comply with the following standards.

1. ADU’s are allowed in the OTR and R/LD zone districts only when granted Infill Development approval pursuant to Section 18.55.085.

2. ADU’s are allowed in Planned Unit Developments (PUD), or any residential zone designated there under, only when specifically designated as an allowed use or a conditional or special use in the PUD zone and approval is granted by the Town.

3. Except as set forth below, an ADU shall be fully attached to or within the principal structure on the lot. "Attached" shall mean at least one quarter of the total wall area or the floor or ceiling of the ADU shall be fully connected to a wall, floor or ceiling of the principal residential structure.

4. Additional ADU requirements for residential structures of historical significance within the OTR zone district:

   a. A residential structure in the OTR zone district is of historical significance if the majority of the predominate elements of the structure were constructed prior to 1925.

   b. Although detached ADU’s may be permitted upon a lot containing a residential structure of historic significance within the OTR zone district, the maximum height of a detached accessory structure on a lot of 7,000 square feet or less shall be 14 feet unless it is determined through the infill approval process set forth in Section 18.55.085 in the discretion of the Planning and Zoning Commission that a greater height will result in the preservation of the architectural character of the structure(s) of historical significance on the lot; provided, however, that in no event shall the height exceed 21 feet. Any such infill approval may be conditioned upon the imposition of specific measures (such as permanent deed restrictions) to preserve the character of the historic structure.

   c. The Planning and Zoning Commission may also allow a reduction in the parking standards for an ADU pursuant to Section 18.50.050 (D) when it
is demonstrated that the reduction will contribute to the preservation of the historical character of a residence of historical significance within the OTR zone district and such reduction will not adversely affect neighboring properties.

5. Every ADU shall have a separate exterior entrance from the principal dwelling unit and shall contain cooking, sleeping, and sanitary facilities.

6. The minimum size of an ADU shall be three hundred fifty square feet.

7. The maximum size of an ADU shall be ten (10) percent of the total lot size up to a maximum of 650 square feet.

8. An ADU shall not have more than one bedroom.

9. All other zoning requirements set forth in Chapter 18.20 (such as lot coverage, set backs and building height) shall be met.

10. ADU’s shall also comply with all of the applicable requirements of Sections 18.50.070 and 18.50.075, including open space, private outdoor space, bulk, storage, energy conservation guidelines, as well as Section 18.55.085(D) (Infill Development Guidelines).

11. Separate water or sewer service for the ADU shall not be provided by the Town. Separate metering of other utilities shall be allowed.

12. Ownership of the ADU may not be legally severed from ownership of the associated lot and any other structures on such lot.

Section 2: Municipal Code Section 18.20.020 (entitled “Allowed uses in residential districts”) is repealed and replaced with the following Section 18.20.020 (entitled “Residential Zone District Development Standards”) which includes standards for the new OTR zone district:

18.20.020 Residential Zone District Development Standards.

A. Allowed uses within residential districts.

1. The following table of uses lists the uses which are appropriate for the various zone districts. Permitted uses are designated by “P”. Conditional uses are designated as “C”. Special Uses are designated “S”. Prohibited uses are not designated (blank).

<table>
<thead>
<tr>
<th>USE</th>
<th>AG</th>
<th>RR</th>
<th>OTR</th>
<th>R/LD</th>
<th>R/MD</th>
<th>R/HD</th>
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</thead>
<tbody>
<tr>
<td>Accessory dwelling unit</td>
<td></td>
<td></td>
<td>S</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Activity</td>
<td>Accessory building</td>
<td>Animal husbandry</td>
<td>Bed and breakfast establishments with:</td>
<td>Commercial farming, plant husbandry, commercial greenhouse</td>
<td>Country clubs operated for the benefit of members and as nonprofit business entities</td>
<td>Day care home caring for:</td>
</tr>
<tr>
<td>----------</td>
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<td>-------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td></td>
<td>P</td>
<td>P</td>
<td>Two or fewer guest rooms</td>
<td>C</td>
<td>C</td>
<td>Fewer than seven children</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Three to five guest rooms</td>
<td>S</td>
<td>C</td>
<td>Seven or more children</td>
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<td></td>
<td></td>
<td></td>
<td>Church, convent, monastery</td>
<td>S</td>
<td>S</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>P</td>
<td>Commercial farming, plant husbandry, commercial greenhouse</td>
<td>P</td>
<td></td>
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<td></td>
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<td></td>
<td>Day care home caring for:</td>
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<td></td>
<td>Dwellings</td>
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<td></td>
<td></td>
<td></td>
<td>One single-family dwelling</td>
<td>P</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Two or more single family dwelling unit(s) on existing lot</td>
<td>P</td>
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<td></td>
<td>Multifamily dwelling units</td>
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<td></td>
<td></td>
<td>Group homes</td>
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<td>Licensed senior housing project</td>
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<td></td>
<td></td>
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<td>Home occupations</td>
<td>C</td>
<td>C</td>
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<td></td>
<td></td>
<td></td>
<td>Mobile home</td>
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<td></td>
<td></td>
<td>Mobile home parks</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Noncommercial recreational facilities</td>
<td>Playgrounds, parks</td>
<td>P</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Noncommercial gardening</td>
<td>P</td>
<td></td>
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<td></td>
<td></td>
<td>Radio tower</td>
<td>C</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Riding academy, dude ranch</td>
<td>S</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Sale of produce and plants raised on premises</td>
<td>P</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Schools, public and private</td>
<td>P</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Veterinary clinic or kennel</td>
<td>P</td>
<td></td>
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<td></td>
<td></td>
<td>Water reservoirs</td>
<td></td>
<td></td>
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<td></td>
<td>Solar energy devices</td>
<td>P</td>
<td></td>
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<td></td>
<td>Wind energy devices</td>
<td>S</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Satellite receiving dishes</td>
<td>P</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>Garage, carport, utility shed</th>
<th>Animal husbandry</th>
<th>Bed and breakfast establishments with:</th>
<th>Commercial farming, plant husbandry, commercial greenhouse</th>
<th>Country clubs operated for the benefit of members and as nonprofit business entities</th>
<th>Day care home caring for:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>P</td>
<td>P</td>
<td>Two or fewer guest rooms</td>
<td>C</td>
<td>C</td>
<td>Fewer than seven children</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Three to five guest rooms</td>
<td>S</td>
<td>C</td>
<td>Seven or more children</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Church, convent, monastery</td>
<td>S</td>
<td>S</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>P</td>
<td>Commercial farming, plant husbandry, commercial greenhouse</td>
<td>P</td>
<td></td>
<td></td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Day care home caring for:</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Dwellings</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>One single-family dwelling</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Two or more single family dwelling unit(s) on existing lot</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Multifamily dwelling units</td>
<td>S</td>
<td>S</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Group homes</td>
<td>S</td>
<td>S</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Licensed senior housing project</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Home occupations</td>
<td>C</td>
<td>C</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Mobile home</td>
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<td>Mobile home parks</td>
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<td></td>
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<td></td>
<td>Noncommercial recreational facilities</td>
<td>Playgrounds, parks</td>
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<td></td>
<td></td>
<td>Noncommercial gardening</td>
<td>P</td>
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<td></td>
<td>Radio tower</td>
<td>C</td>
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<td></td>
<td>Riding academy, dude ranch</td>
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<td></td>
<td></td>
<td>Sale of produce and plants raised on premises</td>
<td>P</td>
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<td></td>
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<td></td>
<td></td>
<td>Schools, public and private</td>
<td>P</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Veterinary clinic or kennel</td>
<td>P</td>
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<td></td>
<td>Water reservoirs</td>
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<td>Solar energy devices</td>
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<td>Wind energy devices</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Satellite receiving dishes</td>
<td>P</td>
<td></td>
</tr>
</tbody>
</table>
Key:
AG Agricultural
RR Rural residential
R/LD Low density residential
R/MD Medium density residential
R/HD High density residential
P Permitted use
C Conditional use permit required
S Special use permit required
Blank Not permitted
Not listed See Section 18.55.045

See Section 18.15.020 for information regarding the interpretation of the above symbols.

B. The table of uses listed in subsection A provides examples of the types of uses which are appropriate for the various zone districts. Other uses may be allowed per the process in Section 18.55.045.

C. Permits and Procedures. Procedures contained in Chapter 18.55 shall be followed for conditional use permits, special use permits, sign permits, building permits, certificates of occupancy, other applicable permits or development reviews.

**Section 3.** Municipal Code Section 18.20.025 (entitled “Residential development standards”) is retitled “Residential Area Development Standards” and amended to read as follows:

**18.20.025 Residential Area Development Standards.** The following standards shall regulate lot size and dimensions, building height, setbacks, lot coverage, and minimum unit sizes within all of the residential districts as designated.

A. Minimum Site and Lot Sizes.

<table>
<thead>
<tr>
<th>Minimum net site area</th>
<th>Zone District</th>
</tr>
</thead>
<tbody>
<tr>
<td>AG 10 Ac RR 2 Ac</td>
<td>OTR 5500</td>
</tr>
<tr>
<td></td>
<td>R/MD 3000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum lot area/dwelling unit</th>
<th>Zone District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family dwelling 10 Ac RR 2 Ac</td>
<td>OTR 5500</td>
</tr>
<tr>
<td>Multifamily dwelling Studio 3000 1050</td>
<td></td>
</tr>
<tr>
<td>1-bedroom 3000 1450</td>
<td></td>
</tr>
<tr>
<td>2-bedroom 3000 1650</td>
<td></td>
</tr>
<tr>
<td>3-bedroom 3000 1850</td>
<td></td>
</tr>
<tr>
<td>4-bedroom 3000 2050</td>
<td></td>
</tr>
</tbody>
</table>
* Minimum lot size for R/LD in any portion of the original townsite, Weaver's addition and Fender's addition is five thousand five hundred square feet.

B. Minimum Lot Dimensions. All developable lots within a residential zone district shall comply with the following lot dimensional standards.

<table>
<thead>
<tr>
<th>Zone District</th>
<th>AG</th>
<th>RR</th>
<th>OTR</th>
<th>R/LD</th>
<th>R/MD</th>
<th>R/HD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Depth</td>
<td>Note 1</td>
<td>Note 1</td>
<td>100</td>
<td>100</td>
<td>50**</td>
<td>50**</td>
</tr>
<tr>
<td>Lot Width</td>
<td>Note 1</td>
<td>Note 1</td>
<td>50</td>
<td>60*</td>
<td>25**</td>
<td>25**</td>
</tr>
</tbody>
</table>

* Lots located in the original townsite and Weaver's addition may have a minimum fifty-foot lot width.

** Lot width, depth and side yard setbacks may vary from above in R/MD and R/HD if approved through subdivision process. Zero lot line may be established at time of subdivision.

Note 1: No minimum standards. These items will be reviewed at subdivision to insure that lots are buildable and that they meet basic zone district criteria.

C. Maximum Building Height. The maximum height of buildings within residential zone districts shall comply with the following standards.

<table>
<thead>
<tr>
<th>Zone District</th>
<th>AG</th>
<th>RR</th>
<th>OTR</th>
<th>R/LD</th>
<th>R/MD</th>
<th>R/HD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal dwelling unit</td>
<td>27</td>
<td>27</td>
<td>25, except those portions of the structure within 5 feet of a side setback shall not exceed 22.5 feet</td>
<td>27</td>
<td>27</td>
<td>35*</td>
</tr>
</tbody>
</table>

** Accessory building on Lots 7,000 square feet or less

<table>
<thead>
<tr>
<th>AG</th>
<th>RR</th>
<th>OTR</th>
<th>R/LD</th>
<th>R/MD</th>
<th>R/HD</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>20</td>
<td>14</td>
<td>18</td>
<td>18</td>
<td>18</td>
</tr>
</tbody>
</table>
Accessory building on Lots greater than 7,000 square feet

* A screening parapet wall, exceeding the maximum height limit, is allowed up to two (2) feet on building containing more than one dwelling unit.

** See OTR zone district design guidelines in Section 18.48.020.

*** A pitched roof on an accessory structure shall be at least four:twelve. Any style roof with a pitch of less than four:twelve shall be considered flat and shall comply with standard height allowance for the accessory structure, without an accessory dwelling unit (ADU). Height shall be measured as set forth in Section 18.70.130.

D. Minimum Building Setbacks by Lot Size for all Residential Zone Districts.

<table>
<thead>
<tr>
<th>Net Lot Area</th>
<th>Front</th>
<th>Side*</th>
<th>Rear*</th>
</tr>
</thead>
<tbody>
<tr>
<td>43,560 or more</td>
<td>50</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>20,000 or more</td>
<td>35</td>
<td>15</td>
<td>35</td>
</tr>
<tr>
<td>15,000 or more</td>
<td>30</td>
<td>12.5</td>
<td>15**</td>
</tr>
<tr>
<td>12,500 or more</td>
<td>30</td>
<td>12.5</td>
<td>10**</td>
</tr>
<tr>
<td>10,000 or more</td>
<td>25</td>
<td>10</td>
<td>10**</td>
</tr>
<tr>
<td>7,500 or more</td>
<td>20</td>
<td>7.5***</td>
<td>10**</td>
</tr>
<tr>
<td>6,000 or more</td>
<td>15</td>
<td>7.5***</td>
<td>7.5**</td>
</tr>
<tr>
<td>5,500 or more</td>
<td>15</td>
<td>5***</td>
<td>7.5**</td>
</tr>
<tr>
<td>5,499 or less</td>
<td>15</td>
<td>5</td>
<td>7.5**</td>
</tr>
</tbody>
</table>

* Storage sheds less than one hundred twenty square feet in size may be placed up to three feet from a rear or side property line if they are not placed on a permanent foundation and are easily moved in the opinion of the planning director or building inspector. The planning director may make an administrative decision in terms of whether such a structure meets these criteria. Recognized easements must be honored.

** For any lot less than 20,000 s.f. in size the rear yard setback may be reduced by five feet when adjacent to an alley, but in no instance shall the rear yard setback be less than five (5) feet.

*** In OTR district only, lots between 7,500 and 9,999 square feet shall require 10 foot side setback, and lots between 5,500 square feet and 7,499 square feet shall require 7.5 foot side setback.
E. Maximum Impervious Lot Coverage. Lot coverage in each zone district shall not exceed the following percentages (provided that lot coverage in any category shall not exceed the amount of lot coverage allowed in the next higher category (e.g., 5,750 square foot lot x 0.42 = 2,415 square foot of lot coverage would be limited to the amount of coverage in the next higher category - 6,000 square foot lot x 0.40 = 2,400 square feet of lot coverage)):

<table>
<thead>
<tr>
<th>Net Lot Area /%</th>
<th>AG</th>
<th>RR</th>
<th>OTR</th>
<th>R/LD</th>
<th>R/MD</th>
<th>R/HD</th>
</tr>
</thead>
<tbody>
<tr>
<td>400,000 sf or larger</td>
<td>5</td>
<td>5</td>
<td>1.5</td>
<td>5</td>
<td>60</td>
<td>60</td>
</tr>
<tr>
<td>200,000 sf or larger</td>
<td>7</td>
<td>2</td>
<td>7</td>
<td>60</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>87,120 sf or larger</td>
<td>15</td>
<td>4</td>
<td>15</td>
<td>60</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>43,560 sf or larger</td>
<td>8</td>
<td>20</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20,000 sf or larger</td>
<td>16.5</td>
<td>25</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15,000 sf or larger</td>
<td>21</td>
<td>33</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12,500 sf or larger</td>
<td>24</td>
<td>35</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10,000 sf or larger</td>
<td>29</td>
<td>42</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7,500 sf or larger</td>
<td>34</td>
<td>45</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6,000 sf or larger</td>
<td>40</td>
<td>52</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4,000 sf or larger</td>
<td>42</td>
<td>52</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3,999 sf or less</td>
<td>44</td>
<td>52</td>
<td>60</td>
<td>60</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

F. Minimum Floor Area Per Dwelling Unit.

<table>
<thead>
<tr>
<th>Zone District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detached single dwelling</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>Multifamily dwellings</td>
</tr>
<tr>
<td>Studio</td>
</tr>
<tr>
<td>1 bedroom</td>
</tr>
<tr>
<td>2 bedroom</td>
</tr>
<tr>
<td>3 bedroom</td>
</tr>
<tr>
<td>4 bedroom</td>
</tr>
</tbody>
</table>

G. Maximum Fence Heights.

<table>
<thead>
<tr>
<th>Maximum Fence Heights</th>
<th>Interior Lot</th>
<th>Corner Lot</th>
<th>Through Lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front yard</td>
<td>42 in.</td>
<td>42 in.</td>
<td>42 in.</td>
</tr>
</tbody>
</table>
Exceptions to fence heights:

1. Fence heights for through lots and street side yards adjacent to an arterial street may be eight feet in rear yard if no access is provided and eight feet on rear half of side yard.

2. Front yard fence height in AG and RR district may be up to six feet in height.

Section 4. A new Section 18.20.037 (entitled “Old Town Residential district OTR (Area)”) shall be added to the Municipal Code to read as follows:

18.20.037 Old Town Residential district (OTR) – (Area).

A. Purpose

1. The purpose of the old town residential district is to allow residential uses and densities that are consistent with the historic character of the Old Town neighborhood. This area has unique scenic, historic, natural and design features that should be generally be preserved and integrated into new development. Residential uses will be provided in a comfortable, healthy, safe and pleasant environment, together with improvements for pedestrian accessibility and to the public realm associated with the residential lots that are necessary for a quality and sustainable living environment.

2. Special emphasis shall be placed on the quality and character of the living environment created in this district, the unique lot and home sizes that are characteristic of a late 1800’s subdivision, and prevention of overcrowded conditions. This residential district should allow reasonable flexibility compatible with the lifestyle.

B. Permitted Uses. Uses which are permitted by right or permitted with a conditional use permit or special use permit in the old town residential zone district are enumerated under the symbol “OTR” in Section 18.20.020.

C. Development Standards. All use of property shall conform to applicable residential development standards contained in Section 18.20.025, under the symbol “OTR” and with applicable regulations and development standards in Chapters 18.48 and 18.50.

Section 5. A new Chapter 18.48 (entitled “Old Town Residential District Special Design Standards”) shall be added to the Municipal Code to read as follows:
Chapter 18.48

OLD TOWN RESIDENTIAL DISTRICT SPECIAL DESIGN STANDARDS

Sections:

18.48.010  Purpose
18.48.015  Public Streetscape Adjacent to Residential Lots in the OTR zone district
18.48.020  Massing Forms for All Structures in the OTR zone district
18.48.025  Parking Guidelines

18.48.010  Purpose.  The following design standards shall be applied to all new development within the Old Town Residential zone district.  An application for a building permit, conditional or special use permit for a single family dwelling and accessory dwelling unit shall demonstrate compliance with these standards.

18.48.015  Public Streetscape Adjacent to Residential Lots in the OTR zone district.

   A.  A minimum of one (1) deciduous canopy tree (street tree) with a minimum of a two (2) inch caliper and of a species that meets Town standards for street trees shall be provided in the public right-of-way immediately adjacent to the front yard of a property for each 25 feet of lot width, or fraction thereof.  The property owner shall be responsible for the irrigation and maintenance of the trees, as approved by the Public Works Director.

   B.  When possible street trees shall be located between the edge of the paved street and the property line.  If placement of street trees within the right-of-way immediately adjacent to the property will interfere with utility lines or on-street parking spaces, trees shall be planted in the front yard setback adjacent to the sidewalk or elsewhere in the public right-of-way as close to the property as possible, the location of which shall be determined by the Public Works Director.

18.48.020  Massing Forms for All New Structures within the OTR zone district.

   A.  The dominant ridgeline should be oriented parallel with the long dimension of the lot.

   B.  The roof line of any structures adjacent to an alley shall step down in scale as the structure approaches the alley.

   C.  A vertical wall of the principal structure that is both parallel to and within five (5) feet of a side yard setback shall not exceed twenty (20) feet in height.
D. The façade of a dwelling facing the street shall be broken up with dormers, porches, offset gables or other features such that the façade does not present an unbroken face to the street.

Section 6. The portion of the chart in Section 18.50.050(D) of the Municipal Code regarding the number of off-street parking spaces required for Residential Uses is amended to add the following requirements pertinent to Accessory Dwelling Units (ADU's):
Accessory dwelling unit 2 per ADU; may be reduced to 1 space only when there shall be reserved on the lot sufficient open space to accommodate the additional space should the Town, based on parking related complaints from nearby property owners, require said parking to be provided on the lot. The area reserved for the reserved parking space shall be included in the lot coverage calculation.

Section 7. Section 18.55.015(B)(2) of the Municipal Code, which relates to the application requirements for special use permits, is amended to read as follows:

2. Step 2--Submittal of Application. A completed town application for a special use permit shall be submitted by the applicant to the community development director prior to the first day of the month preceding the month during which the application will be heard by the planning commission at a public hearing. The application shall include:

   a. A letter requesting the review of the proposed plan for the building project.

   b. Proof of property ownership.

   c. All required information as listed in the application and requested at the pre-application meeting.

   d. A site plan showing the footprint of all buildings, existing and proposed parking configurations, trash locations, driveways and circulation, alleys, sidewalks, fences, open space, the location of all utilities and easements, and the design of each structure proposed, and other details demonstrating conformance with regulations and development standards applicable to the proposed use, the site, and the zone district in which the use will be located.

   e. A description of the uses on the adjacent properties (including the number of dwelling units if known) and on the surrounding block, to the extent this can be determined by observation and photographs taken of the streets (and, where applicable, alleys) to document the existing site, surrounding uses and parking conditions.

   f. Rules and regulations to govern the proposed use if applicable.

   g. If applicable, conceptual building elevations with notes indicating types of construction, exterior finishes, location of entry doors, decks, etc. Such plans shall be drawn at a scale suitable for definitive review.
h. Parking counts for the entire block if the proposed use will generate the need for additional parking (both sides of street and in the alley if applicable). These counts shall be taken at 7:30 a.m. and 7:30 p.m. one day during the week and on a weekend day (allowances will be given for winter applications);

i. A table of site data calculations indicating:
   
   i. Total number of dwelling units and number of each type of unit (studio, one bedroom, etc.);
   
   ii. Total area of all impervious surfaces, including area covered by primary buildings and accessory buildings, area covered by parking areas and garages, driveways, decks, sidewalks and other pervious surfaces;
   
   iii. Building or structure height;
   
   iv. Total landscaped area;
   
   v. The amount of private outdoor open space and the amount of bulk storage space.
   
   vi. Approximate size of each type of dwelling unit.
   
   j. The appropriate fee as listed in Chapter 1.30 of the municipal code.
   
   k. A list of all property owners within three hundred feet.
   
   l. A map showing adjoining zone districts within three hundred feet if this area includes different zone districts than the subject site.
   
   m. Other details, plans or proposals that will aid the determination of whether the proposed use is in conformance with all regulations, development standards and review criteria applicable to the proposed use, the site, and the zone district in which the use will be located, or otherwise demonstrate that any impacts of the proposed use which may be detrimental to the surrounding uses have been mitigated or minimized or, in the case of group homes, evidence that any such impacts will not have an unreasonable adverse impact upon surrounding uses.
   
   n. For group homes, there shall be the following additional submittal requirements:
   
   i. An operating program that is intended to ensure that the proposed facility will operate as a suitable living environment for the intended occupants;
ii. The proposed number of residents/occupants of the facility; and

iii. The name(s) and addresse(s) of the owner, operator, and any attendant of the facility.

Section 8. Section 18.55.015(C)(2) of the Municipal Code, entitled “Criteria Applicable to all other Special Uses” is amended to add the following additional review criteria:

e. There are no impacts of the proposed use on adjacent properties and the surrounding neighborhood or such impacts have been minimized in a satisfactory manner.

f. The impacts of the use, including but not limited to its design and operation, parking and loading, traffic, noise, access to air and light, impacts on privacy of adjacent uses, and others, shall not create a nuisance and such impacts shall be borne by the owners and residents of the property on which the proposed use is located rather than by adjacent properties or the neighborhood.

g. Access to the site shall be adequate for the proposed use, considering the width of adjacent streets and alleys, and safety.

h. The project is in scale with the existing neighborhood or will be considered to be in the scale with the neighborhood as it develops in the immediate future.

i. The project maximizes the use of the site’s desirable, natural characteristics.

j. Where applicable, the use will provide well located, clean, safe and pleasant additional dwelling units in an existing neighborhood.

Section 9. Section 18.55.085(A) of the Municipal Code relating to projects that require Infill Development Approval is amended to read as follows:

A. Infill development projects are required to have prior approval by the Planning Commission before obtaining a building permit for development of:

1. An accessory dwelling unit (ADU) in the OTR or R/LD zone districts;

2. A vacant property where more than one dwelling unit will be built;
3. An addition to an existing structure or structures which results in an increase in the number of dwelling units;

4. The total redevelopment of the property for the same or greater number of dwelling units in the OTR, R/LD, R?MD, R/HD or C/T zone districts;

5. When any subdivision exemption will create a new lot for development purposes in the following areas:
   a. The OTR or R/LD zone districts;
   b. Any residential/medium density zone district that is not within an approved Planned Unit Development zone district;
   c. Any residential/high density zone district that is not within an approved Planned Unit Development zone district.

Section 10. Section 18.55.085(C)(2) of the Municipal Code relating to Applications for Infill Development Approval is amended to read as follows:

2. Step 2-Submittal of Application. A completed application for a special use permit shall be submitted by the applicant to the town planning director. As set forth below in Section 18.55.085(E), an applicant may concurrently request a variance from applicable zone district development standards by including the variance request in the application. Following a review by the planning director to determine that the application is complete and includes all required information and is otherwise sufficient to enable a thorough review by the Town, the planning director shall schedule public hearings as set forth below in this Section. The application shall include:
   a. A letter requesting the review of the proposed plan for the building project;
   b. Proof of property ownership;
   c. Fifteen sets of a site plan on a dimensioned plat of the property clearly indicating the following information:
      i. Site location and dimensions of the property,
      ii. Immediately adjoining properties (either side and across the alley if applicable), showing the approximate location of the structures on all adjacent properties. This may be done with a separate sketch plan if appropriate,
      iii. A description of the uses on the adjacent properties (including number of dwelling units if known) and on the surrounding block, to the extent this can be determined by simple observation,
iv. The location on the site of all buildings, parking areas, driveways, sidewalks, fences and other structures existing or proposed; proposed landscaping; proposed outdoor storage facilities; location of streets, alleys, trails; provisions for solid waste containers,

v. The location and size of existing and proposed utilities, existing and proposed easements with an indication of any changes in these utilities that will be necessitated by the proposed project;

d. A table of site data calculations comparing the proposed project with all of the area and bulk requirements in Section 18.20.025, indicating:

i. Total number of dwelling units and number of each type of unit (studio, one bedroom, etc.),

ii. Lot size and dimensions,

iii. The maximum height of all principal and accessory buildings,

iv. Setback that will be maintained,

v. Floor area of each dwelling unit,

vi. Total area of all impervious surfaces, including area covered by primary buildings and accessory buildings, area covered by parking areas and garages, driveways, decks, sidewalks and other impervious surfaces,

vii. The amount of private outdoor open space and the amount of bulk storage space.

viii. Total landscaped area, and

ix. Total number of parking spaces provided,

e. Fifteen sets of conceptual building elevations with notes indicating type of construction, exterior finishes, location of entry doors, decks, etc. Such plans shall be drawn at a scale suitable for definitive review;

f. Parking counts for the entire block (both sides of street and in the alley if applicable). These counts shall be taken at 7:30 a.m. and 7:30 p.m. one day during the week and on a weekend day (allowances will be given for winter applications);

g. Photographs taken of the street and alley (where applicable) during the time when the parking counts are done;
h. Photographs of the adjoining properties taken from the subject property.

i. Any other information deemed necessary by the town planner to allow sufficient review by the planning and zoning commission.

Section 11. Section 18.55.085(C)(4)(a)(vii) of the Municipal Code relating to approval criteria for Applications for Infill Development Approval is amended to read as follows:

vii. The application meets the Infill Development Guidelines in Section 18.55.085(F), below. Where applicable, the application shall also meet the multifamily design standards and guidelines as contained in Sections 18.50.075 and 18.50.077 of the Carbondale zoning regulations and the criteria in other sections of the town subdivision and zoning regulations where such an application is being processed concurrently (e.g., where a subdivision exemption application is being processed concurrently with an infill review).

Section 12. A new sub-section 18.55.085(F) of the Municipal Code relating to guidelines for infill development is added to read as follows:

F. Infill Development Guidelines. While each zone district sets forth minimum area and bulk standards for development, it is the intent of these Infill Development Guidelines to ensure that such development is in harmony and character with the surrounding neighborhood and community character. All Infill Development shall comply with the following standards. Development which complies with the area and bulk standards of Section 18.20.020 but which does not comply with these Infill Guidelines shall not be approved. Additional landscaping to serve as buffer areas; wider setbacks from property lines; modifying the orientation of buildings; providing screening walls or privacy fences; and/or reducing the size or number of proposed dwelling units may be necessary.

1. Lot Layout/Open Space.

a. There shall be a front yard maintained as open space.

b. The primary orientation of architectural elements on the property shall be toward the front yard and adjoining street(s). Architectural elements of the proposed structure, including porches, dormers, doors and windows, shall be consistent with the architectural treatments of adjacent structures, including those immediately across a street from the proposed development.

c. The largest structures on the lot shall be oriented toward the front yard and the adjoining street and smaller structures and detached accessory dwelling units shall be located to the rear of the lot unless such a location is not possible.
d. Entryways shall be oriented to the front yard. Entryways oriented to a side yard area will not be allowed, especially when such entryways would be directly across from primary living areas on adjacent properties with windows that are oriented to the same side yard, unless it is demonstrated that there is no other reasonable design solution. If it is determined that a side yard entry is the best solution, such solution will only be allowed if adequate landscaping or screening methods can be provided across from primary living areas of adjacent properties in a manner that does not significantly impact the quality of the living environment on the adjacent lot.

e. Safety lighting associated with entryways shall be located away from existing, adjacent residences. In no case shall an exterior safety light on a proposed new structure or addition be located directly across from an existing window on an adjacent property.

f. Residents shall have access to open space without having to cross vehicular circulation or parking areas.

g. Each site shall preserve a “useable open space” area within the lot. Useable open space is an open area that is generally rectangular in shape, is unencumbered by structures or landscaping, the majority of which is not located within a side yard setback. The Town may allow open space to be divided among individual lots instead of being provided in common use areas when the proposal is for townhouse units or other unit types the ownership of which is typically fee simple.

2. Circulation and Parking. The visual appearance of driveways, parking surface and parked vehicles on adjacent properties and public streets shall be minimized as follows:

a. On-site parking shall be accommodated in rear yards unless it is demonstrated that due to existing structures that parking in the rear yard or the rear one half on the lot is not possible.

b. Access to on-site parking areas shall utilize alleys unless for reasons of congestion, over utilization, legal encroachments, or safety conditions in the alley, another alternative is deemed preferable.

c. On-site parking areas shall be screened from adjacent properties and public streets to the greatest extent possible.

d. Head-in parking along entire front of property shall be prohibited.

e. All parking shall occur on the subject property and shall comply with all dimensional requirements of Section 18.50.050.

3. Service Areas/Trash Collection and Storage.
a. Where sites include three or more dwelling units the site shall include designated areas for trash collection in addition to the “open space” and “yard” requirements identified in the Land Use Code.

b. Storage areas shall be delineated on the site plan or floor plan. Storage for any infill application shall be provided as per Section 18.50.075 E.2. of the Municipal Code. A minimum of one cubic foot of storage for each 3 square feet of gross floor area of the dwelling unit shall be provided. Storage areas may be located within the primary structure.

c. Sheds and other enclosures (other than a garage providing parking in accordance with the on-site parking requirements of the Land Use Code) may qualify as storage.

d. Structures or enclosures used to accommodate storage shall be designed as an integral part of the project and should be integrated with the architectural character of the other structures on the site.

e. Locate service areas, trash collection and storage areas, if applicable, in rear yards where possible.

f. Where sites include three or more dwelling units, trash collection receptacles shall be screened from view from adjacent properties and public streets. Screening can be in the form of fencing, walls, landscaping or any combination of these elements, provided the materials used to are similar to those used elsewhere on the site.

4. Building Mass and Separation. Building mass and location shall be sensitive to existing structures on adjacent lots and appear similar in scale and character to other structures within the surrounding neighborhood.

a. The design and location of structures shall preserve solar access for adjacent properties so that no more than fifty (50) percent of the adjacent facade is shaded on December 21st between 10:00 AM and 2:00 PM.

b. Larger projects shall be divided into a series of smaller masses consistent with other structures in the neighborhood.

c. Buildings shall step down in scale as they approach alleys and smaller structures on adjacent lots.

d. Where there are multiple detached residential structures on a single lot, there shall be a minimum of 10 feet between structures.

5. Architectural Elements and Materials.
a. Entryways shall be clearly defined. Use of elements such as porches, porticos, emphasizing roof forms and prominent doors may be necessary to achieve this requirement.

b. Where existing structures are being remodeled or redeveloped, additions shall respect the architectural character, detailing, lines and proportions of the existing structure.

c. Use of a variety of materials may be necessary to achieve these objectives.

Section 13. Municipal Code Section 18.70.040 (definition of “Accessory Building”) is amended to read as follows:

18.70.040 Accessory building. “Accessory building” means a detached subordinate building located on the same lot as the principal building, the use of which is incidental to the principal building or use of the lot; such building shall not be used for living or sleeping quarters in a residential district and shall not contain plumbing capable of facilitating a bathroom or a kitchen, (with the exception of detached accessory dwelling units specifically approved under Section 18.20.020).

Section 14. The real property described on the map attached as Exhibit A, attached hereto and incorporated herein by reference, which property is located within the Town of Carbondale, is hereby deleted from the Residential/Low Density (R/LD) zone district and rezoned as part of the new Old Town Residential (OTR) zone district. The Zoning Map for the Town of Carbondale is hereby amended to designate the zoning of the subject property as within the new OTR district.

Section 15. Except as specifically amended hereby, the Carbondale Municipal Code and the various secondary codes adopted by reference therein shall continue in full force and effect.

Section 16. The Board of Trustees hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of the Town of Carbondale and the inhabitants thereof. The Board of Trustees also specifically finds that these changes comply with the standards set forth in Carbondale Municipal Code Section 18.55.025 and otherwise fulfill the purposes set forth in Section 18.05.015.

Section 17. This Ordinance shall be published and become effective as provided by Section 3-3 of the Carbondale Home Rule Charter.
INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED this 13th day of May, 2008.

TOWN OF CARBONDALE

Michael Hassig, Mayor

ATTEST:

Cathy Derby, Town Clerk
Old Town Residential Zone District
MAY 13, 2008

Zone District boundaries correspond to the center line of the designated street, except along the south lot lines of adjacent lots and between lot 5 and 6, Block 6, Carbondale Original Townsite.
Trustee Meeting Minutes
May 13, 2008

Michael Hassig asked what elements are occurring outside of the boundaries of the OTR? Doug responded that the setbacks have been changed and they could affect areas outside of the OTR. The proposed setback changes are:

5,500 - 7,499 - side and rear setback change from 5' to 7.5'
7,500 - 9,999 - side and rear setback change from 7.5' to 10'

Michael Hassig stated he is adverse to the proposed setback changes, it will be problematic in that it will create a whole class of non-conforming ADU's in other areas; Stacey Bernot agreed. It was clarified that the setback changes would not apply to houses located in Planned Unit Developments (PUD's.)

Doug stated the Planning & Zoning Commission heard from neighbors in the OTR and the common complaint was that the houses are getting too big for the size of the lot.

The Board agreed that the setback changes should apply only in the OTR.

John Hoffmann stated this Ordinance is lacking a Sidewalk Ordinance and he read a proposed ordinance. Michael Hassig stated the (proposed) sidewalk ordinance is worthy of discussion but it's not germane to tonight's hearing.

Stacey Bernot suggested scheduling a sidewalk discussion on a future agenda. Michael Hassig stated maybe the Board should think about a sidewalk impact fee or a fee in lieu of.

Michael Hassig opened the public hearing.

J. Ray Barlow, corner of 3rd and Sopris, likes the idea of "keeping old town old town." Mr. Barlow stated his house is long and linear and as a result it loses 1,000 sq. ft. of developable area. He was hoping to build a garage with an ADU above. However, the impervious requirements will make it problematic or possibly impossible for him to build a 500 sq. ft. ADU. Mr. Barlow would like his house to be excluded from the OTR.

John Foulkrod made a motion to close the public hearing; Stacey Bernot seconded the motion and it passed unanimously.

Stacey Bernot made a motion to approve Ordinance No. 5 Series of 2008 with the following amendments: the side setbacks will only change in the OTR – for lots ranging from 5,500 sq. ft. up to 7,499 sq. ft. the side setback will be 7.5 feet, and for lots ranging from 7,500 sq. ft. up to 9,999 sq ft. the side setback will be 10 feet. The seven lots at the southeast corner of Sopris Avenue and Third Street will remain R/LD; John Hoffmann seconded the motion and it passed with:
06 May 08

Town of Carbondale
Town Council Trustees

J. Ray Barlow
326 South Third Street
Carbondale, Co 81623

RE: Rezoning Residential/Low Density Zone District

Dear Trustees,

I live at the corner of Third Street and Sopris Avenue and have followed the discussion regarding the rezoning from low density to the new OTC district through the Planning Commission review and now into your review process.

I would like to thank you for removing the rezoning item from the consent agenda at the April 24th meeting. When the recommendations from the Planning Commission were forwarded to the Town Council regarding the new district, one of their recommendations was that my parcel be removed from the OTC zone district and left in the "Low Density" zone district.

I attended the initial Town Council meeting on the topic and there wasn't any discussion on the Planning Commissions recommendations. I assumed, incorrectly, that their recommendations would stay intact and missed at least one of the subsequent Town Council meetings regarding the OTC zone district. Knowing my position regarding the proposed district and how it would affect my property, town staff notified me that the recommendation to remove my property from the OTC had been reversed and my property would now be included in the rezoning.

I have attached the letter that I sent to the Planning Commission on 22 Jan 08 for your review and consideration. I will be at the May 8th meeting and would like to discuss my concerns and answer any questions that you might have of my concerns.

Again, I sincerely appreciate the Council slowing down the process so that everyone has the opportunity to understand and be informed about the rezoning issue.

Thank you for your time in this matter,

J. Ray Barlow
22 Jan 08

Town of Carbondale
Planning and Zoning Commission

J. Ray Barlow
326 South Third Street
Carbondale, Co 81623

RE: Rezoning Residential/Low Density Zone District

Dear Commissioners,

I live at the corner of Third Street and Sopris Avenue and have been following the discussion regarding the rezoning from low density to the new OTC district. I am traveling out of state unable to be at the meeting on the 24th but felt that it was important for you to know my concerns regarding the rezoning.

My property is the portion of the proposed OTC district that lies between Third and Second Street to the south of Sopris Avenue. It has been my intention since purchasing the property in 2004 to add a garage with an ADU to the current house.

When I moved to the valley in 1995, I lived within walking distance of downtown Basalt and found that all I needed was a bus pass and a bike to go anywhere in the valley. I now call Carbondale home (since 2000) and my lifestyle has changed slightly with the addition of wife and children, but I still enjoy the proximity to Main Street. The reality is that the smaller affordable housing options, close to town, that I sought ought in my early years in the valley are diminishing and consequently impacting the fabric of our town. I don’t think that the ADU on my property will solve the housing problem, but it could give someone like me the opportunity to gain a foothold in the town that might otherwise not experience what a wonderful place Carbondale is to live.

When the town decided to construct the sidewalk along the south side of Sopris Avenue, I met with the Public Works Department to coordinate the curb location to accommodate my future garage’s driveway. The garage and ADU in my mind were not a matter of if, but when.

The area of my lot is 8250 sf, which, under the existing low density zone district allows for 45% lot coverage. My rough calculations show that I have approximately 32% existing lot coverage and would require 40% lot coverage to construct the garage/ADU and associated drive. At the proposed 34% lot coverage for lots between 7500 sf and 10,000 sf in the OTC district I would be unable to construct the garage/ADU.
I have spoken with Doug Dotson regarding some possible options that would allow me to build a garage with an ADU on my property. They are as follows:

1. Increase the impervious lot coverage percentage from 34% to 40% in the proposed OTC district, or
2. Realign the boundary of the proposed OTC zone district so that Sopris Avenue between Second and Third Street becomes the southern boundary of the district and not at mid block points as it is currently defined.

The second option would leave my parcel as residential/low density zone district located between the residential medium district and the OTC district. I would be in support, of being re-zoned into the adjacent residential medium density districts if the commission wanted to “clean up” the zoning in this area in the future.

Again, I wish that I could be in attendance to answer any questions or provide any additional information that you might need to make your decision.

Thank you for your consideration,

J.Ray Barlow

The parcels surrounding my property to the east and south are currently residential medium density and the parcel directly to the west (across Third Street) is part of the newly rezoned Carbondale school property.
ORDINANCE NO. 9
SERIES OF 2018

AN ORDINANCE AMENDING THE ZONING MAP
OF THE CARBONDALE TOWN CODE CONCERNING:

A CORRECTION TO THE OLD TOWN RESIDENTIAL ZONE DISTRICT
BOUNDARIES

WHEREAS, the Board of Trustees of the Town of Carbondale conducted a public hearing on July 10, 2018;

WHEREAS, during said hearing, the Board of Trustees heard and considered the statements of Town staff, and any members of the public who wished to speak, and reviewed and considered all other information presented, all as required by law; and

WHEREAS, the Board of Trustees of the Town of Carbondale finds that it is appropriate to amend the Zoning Map of the Town of Carbondale to correctly reflect the boundaries of the Old Town Residential Zone District as previously approved by Ordinance No. 5 series of 2008 and as demonstrated in Exhibit A; and

WHEREAS, the correction of the Zone District boundary meets the criteria as set forth in Section 17.02.4.2.3.b of the Municipal Code as follows:

i. The amendment will promote the public health, safety, and general welfare;

ii. The amendment is consistent with the Comprehensive Plan and the purposes stated in this Unified Development Code;

iii. The amendment is consistent with the stated purpose of the proposed zoning district(s);

iv. The amendment is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation, or such impacts will be substantially mitigated;

v. The amendment is not likely to result in material adverse impacts to other property adjacent to or in the vicinity of the subject property; and

vi. Facilities and services (including roads and transportation, water, gas, electricity, police and fire protection, and sewage and waste disposal, as applicable) will be available to serve the subject property while maintaining adequate levels of service to existing development.
NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO:

Section 1. Except as specifically amended hereby, the Carbondale Municipal Code and the various secondary codes adopted by reference therein shall continue in full force and effect.

Section 2. The Board of Trustees hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of the Town of Carbondale and the inhabitants thereof. The Board of Trustees also specifically finds that these changes comply with the standards set forth in Carbondale Municipal Code Section 17.02.4.2.

Section 3. This Ordinance shall be published and become effective as provided by Section 3-3 of the Carbondale Home Rule Charter.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED this ______ day of _____, 2018.

TOWN OF CARBONDALE

_________________________
Dan Richardson, Mayor

ATTEST:

______________________________
Cathy Derby, Town Clerk
Agenda

- RFTA Funding History
- Summary of “no mill levy” alternative
- Project list update
- Financial capacity analysis
- RFTA May 2018 Board Retreat Summary
- Polling Results
- Discussion
- Next Steps
RFTA Funding History

- 2000 – RFTA was approved by voters and formed. Member jurisdictions came in at varying rates of sales tax.
- 2004 – Region-wide .2% sales tax increase approved by voters. New Castle joined RFTA.
- 2008 – Region-wide .4% sales tax increase approved by voters for BRT.
- The 2008 tax intended to keep RFTA financially fit for 12 years (until 2020).
No Mill Levy Scenario

- Keeping the current service with bus replacements results in immediate yearly deficit and negative fund balance starting in 2027.
- Service needs to be reduced to have a yearly surplus and a positive fund balance.
- Little or no ability to leverage additional State and Federal funds. Any new State and Federal funding will probably be discretionary (competitive) and not formula funding.
### Table: No Mill Levy Scenario - Service Reductions - Winter Down Valley

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*Use caution when interpreting this data as it may be subject to change.*

*Note: This table represents service scenarios for winter in the Down Valley area.*
No Mill Levy Scenario—Service Reductions—Winter Up Valley
Project List

- Projects grouped into three categories:
  - Improvements for the Environment
  - Improvements for Reducing Congestions and Improving Mobility
  - Improvements for Sustainability and Safety
- Costs updated
- Projects renumbered to coincide with project map
PROPOSED IMPROVEMENTS

IMPROVEMENTS FOR REDUCING CONGESTION AND IMPROVING MOBILITY
1. Service Increase, 30-minute Valley Service
2. Bus Expansion (DAG) for New Services
3. Service Increase, Weekends BRT (Spring/Summer)
4. I-70 Grand Hogback Service - 27th Street to New Castle, 30 min headways
5. Extend BRT to Downtown GWS and Service on Hwy 62/4
6. Better transit service connections to Snowmass Village on Brush Creek Road
7. Improvements to WWII Valley Hwy 82 Bus Shelters
8. GWS BRT Station Parking Expansion
9. Carbondale BRT Station Parking Expansion
10. Aspen Junction (Bussells) PNR Expansion
11. New Castle Parking Improvements
12. Improvements to Town of Snowmass Village Transit Center
13. Upper Valley Congestion Management Study
14. Buttermilk Parking Management
15. BRT Enhancements to Brush Creek Interbay Lot
16. Micro Transit Accommodations at BRT Stations

IMPROVEMENTS FOR SUSTAINABILITY AND SAFETY
17. Pedestrian Crossings of 27th Street and Highway 82 in Glenwood Springs
18. South Bridge Highway 82 Connection in Glenwood Springs
19. Pedestrian Crossing at 23rd Street in Glenwood Springs
20. Buttermilk Pedestrian Crossing in Pitkin County
21. Enhanced Crossing of Rio Grande Trail at 136th Street in Glenwood Springs
22. Upper Maintenance Facility Expansion
23. RFTA Glenwood Springs Maintenance Facility Expansion
24. ROA Block Grand Avenue in Line Transit Stations in Glenwood Springs
25. New Transit Station at Glenwood Springs
26. Replacement and Expansion of Employee Housing and Carbondale Office Space

IMPROVEMENTS FOR THE ENVIRONMENT
27. Bus Replacement (Electric, CNG, Clean Diesel)
28. Hale Share Expansion
29. Real Time Travel Information
30. RFTA T/F/Construction from Glenwood Springs to New Castle
31. Rio Grande Trail Maintenance and Improvements

LEGEND
1. Trail Improvement
2. Parking Improvement
3. Station Improvement
4. Proposed Improvements
5. Roadway Improvements
6. Routes/Trails
7. Hogback Route
8. Ski Route
9. Snowmass Route
10. Village Route
11. Rio Grande Trail
Financial Capacity Analysis

- Assists in initial analyses of project delivery timing and affordability
- Higher level in scope
- Results are used as starting point for analyses within more detailed planning model to refine results of feasibility
Financial Capacity Analysis

- Four scenarios
  - Status Quo (with battery electric buses)
  - Sustainable Growth
  - Destination 2040 Stakeholder Recommendations
  - All-In Regional RFTA Member Projects
- Project list determined for each scenario
- Mill levy determined for each scenario based on cash flow, bonding, interest, inflation
## Destination 2040 Financing Plan Scenarios

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<td>Not Included</td>
</tr>
<tr>
<td>C4</td>
<td>A11F I-70 Grand Hogback Service - 27th Street to New Castle, 30 minute headways</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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</tr>
<tr>
<td>C5</td>
<td>A5 Expand Service in Glenwood Springs (Val to GWPNR and BRT to Downtown GWS)</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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</tr>
<tr>
<td>C6</td>
<td>A4 Better transit service connections to Snowmass Village on Brush Creek Road</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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<tr>
<td></td>
<td></td>
<td>All-In: 4.5 Mill</td>
<td>Stakeholder Rec: 1.5 Mill</td>
<td>Sustainable Growth: 1.55 Mill</td>
<td>Status Quo (BBB): 2 Mill</td>
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<tr>
<td>---</td>
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<tr>
<td>E5</td>
<td>C2</td>
<td>Rio Grande Trail Maintenance and Improvements</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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<td>C7</td>
<td>B4</td>
<td>Improvements to Highway 82 Bus Stations</td>
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<tr>
<td>S6</td>
<td>E4</td>
<td>Aspen Maintenance Facility Expansion Phase 9 (Replacement of Fuel Farm)</td>
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<td>S6</td>
<td>E4</td>
<td>Aspen Maintenance Facility Expansion Phase 5 (Two Story Offices and Electric Charging)</td>
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<td>E4</td>
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<td>S7</td>
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<td>E2</td>
<td>A6</td>
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<td>E3</td>
<td>A16</td>
<td>Real Time Traveler Information</td>
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<td>L8</td>
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<td>Glenwood Springs 27 Street BRT Station Parking Expansion</td>
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<td>C9</td>
<td>B3</td>
<td>Willis BRT Station Parking Expansion</td>
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<td>C10</td>
<td>B3</td>
<td>Carbondale BRT Station Parking Expansion</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>C11</td>
<td>B3</td>
<td>Aspen Junction (Basalt) PINA Expansion</td>
<td>Included</td>
<td>Included</td>
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<tr>
<td>C11</td>
<td>B6</td>
<td>New Castle Park and Ride Expansion Burning Mountain Avenue</td>
<td>Included</td>
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<td>C13</td>
<td>B7</td>
<td>Improvements to Town of Snowmass Village Transit Center</td>
<td>Included</td>
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<tr>
<td>C14</td>
<td>A15</td>
<td>Upper Valley Parking Management System Study</td>
<td>Included</td>
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<tr>
<td>C15</td>
<td>A15</td>
<td>Buttermilk Parking Management</td>
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<td>L8</td>
<td>B2</td>
<td>BRT Enhancements to Brush Creek Intersect Lot</td>
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<td>E2</td>
<td>B5</td>
<td>Micro Transit Accommodations at BRT Stations</td>
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<td>Aspen Maintenance Facility Expansion Phase 7 (Additional Indoor Bus Storage)</td>
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<td>500 Block Grand Avenue In-Line Transit Stations in Glenwood Springs</td>
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<td>S9</td>
<td>B8</td>
<td>New Transit Station in Glenwood Springs</td>
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<td>S10</td>
<td>E3</td>
<td>Expansion of Employee Housing and Carbondale Office Space</td>
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<tr>
<td>E4</td>
<td>C1</td>
<td>OVA Trail Construction from Glenwood Springs to New Castle</td>
<td>Included</td>
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<tr>
<td>S2</td>
<td>D5</td>
<td>South Bridge Highway 82 Connection in Glenwood Springs</td>
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<tr>
<td>S3</td>
<td>D3</td>
<td>Pedestrian Crossing at 23 Street in Glenwood Springs</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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<tr>
<td>S4</td>
<td>D2</td>
<td>Buttermilk Pedestrian Crossing in Pitkin County</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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<td>S5</td>
<td>D6</td>
<td>Enhanced Crossing of Rio Grande Trail at 14th Street in Glenwood Springs</td>
<td>Included</td>
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<td>S6</td>
<td>E4</td>
<td>Aspen Maintenance Facility Expansion Phase 8 (CNG Compressor/Fueling)</td>
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<tr>
<td>C18</td>
<td>A10</td>
<td>Expanded Circulators: Carbondale</td>
<td>Included</td>
<td>Not Included</td>
<td>Not Included</td>
</tr>
<tr>
<td>C19</td>
<td>A10</td>
<td>Expanded Circulators: Basalt</td>
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<td>Not Included</td>
<td>Not Included</td>
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<tr>
<td>C20</td>
<td>A10</td>
<td>Expanded Circulators: New Castle</td>
<td>Included</td>
<td>Not Included</td>
<td>Not Included</td>
</tr>
<tr>
<td>E6</td>
<td>D3</td>
<td>Rio Grande Trail Connectivity and Safety Improvements</td>
<td>Included</td>
<td>Not Included</td>
<td>Not Included</td>
</tr>
</tbody>
</table>
What would a proposed 3.65 RFTA Mill Levy Cost a Homeowner?

Assessment Rate of 7.2%

$10.95 PER MONTH
For $500K actual value home at 3.65 Mill

$131.40 PER YEAR
For $500K actual value home at 3.65 Mill
What would a proposed 3.65 RFTA Mill Levy Cost a Commercial Property Owner?

Assessment Rate 29%

$88.21
PER MONTH
For $1M actual property value at 3.65 Mill

$1,058.52
PER YEAR
For $1M actual property value at 3.65 Mill
Roaring Fork Transportation Authority (RFTA)

Proposed 3.65 Mill Levy for Congestion Relief & Regional Mobility

impact to Residential and Commercial Property Taxes by RFTA Member Communities

Note: The eight current members of RFTA are City of Aspen, Town of Snowmass Village, Town of Basalt, Town of Carbondale, City of Glenwood Springs, Town of New Castle, Incorporated and unincorporated Pitkin County and only the precincts 7, 8, 24 and 25 in the Roaring Fork Valley sector of Eagle County. For more information please visit www.rfta.com.

Note: The 3.65 million levy estimates are net of collection fees, and are based on the Assessed Valuations provided by Garfield County, Eagle County and Pitkin County from Fall 2017.

- **NEW CASTLE**
  - 3.65 Mill Levy Tax Increase: $185,500

- **GLENWOOD SPRINGS**
  - 3.65 Mill Levy Tax Increase: $524,332

- **CARBONDALE**
  - 3.65 Mill Levy Tax Increase: $530,582

- **EAGLE COUNTY PRECINCTS 7, 8, 24, 25**
  - 3.65 Mill Levy Tax Increase: $345,888

- **BASALT**
  - 3.65 Mill Levy Tax Increase: $579,060

- **SNOWMASS VILLAGE**
  - 3.65 Mill Levy Tax Increase: $1,668,358

- **PITKIN COUNTY (Unincorporated)**
  - 3.65 Mill Levy Tax Increase: $3,313,025

- **ASPEN**
  - 3.65 Mill Levy Tax Increase: $5,632,002

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Town-City Boundary
County Boundary
RFTA Tax Jurisdictions
RFTA Bus Routes
Potential Future Connections
Río Grande Rail-Trail Corridor

Cartography: Jason White, RFTA
Source: Open Source & County GIS Dept.
Regional Polling Results

- Regional Poll
- Conducted May 29-June 7, 2018
- Purpose is to recheck public support/messaging
- Includes about 20 questions
- 305 responses
Survey Overview

- Our second poll finds very little overall movement in attitudes since our last poll in January.
- Voters remain positive about RFTA services, and concerned about traffic congestion, and focused on protecting the environment.
- Less than half of voters say they are familiar with the proposal, and less than 20% are very familiar.
- Currently voters are evenly divided (44% YES / 43% NO) on the ballot question. *NOTE: The ballot question was notably and importantly modified from our last poll, to include bonding language, so its not a perfect comparison to last poll."
  - The strongest supporters tend to be younger, male, Democratic, RFTA users and in Pitkin County.
  - The detractors tend to be older, women, Republican, non-RFTA users, and down-valley.
- After messaging, support for the ballot grows to a majority 51%, with 40% opposed.
  - The soft battleground targets are young GOP, older IND men, older DEMs.
- Another 9% of voters who are NO or UNSURE on first ballot, but say YES to a lower cost 2.6 Mill proposal.
- The top messages remain revolved around electrification of buses for the environment, more transit options, the multi-use trail and keeping fares down for seniors.
Over seven-in-ten likely voters still (74%) give RFTA a grade of A or B on administering transportation services in the region.

5. If you were to grade RFTA on how they are handling their job of administring transportation services in this region, would you give RFTA an A, B, C, D, or an F?

### RFTA Grading

<table>
<thead>
<tr>
<th>Grade</th>
<th>January 2018</th>
<th>June 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>43%</td>
<td>39%</td>
</tr>
<tr>
<td>B</td>
<td>36%</td>
<td>35%</td>
</tr>
<tr>
<td>C</td>
<td>8%</td>
<td>14%</td>
</tr>
<tr>
<td>D</td>
<td>5%</td>
<td>2%</td>
</tr>
<tr>
<td>F</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Unsure</td>
<td>5%</td>
<td>8%</td>
</tr>
</tbody>
</table>

**79% A-B**

**74% A-B**
Undecided likely voters decrease four-points (9%) after messaging, and over half (51%) support the mill levy.

Now that you have learned more about the RITA ballot measure ... if the election was held today, and you had to vote on the 3.65 mill property tax ballot question, would you vote "yes" in favor or "no" in opposition to this mill levy override proposal?

<table>
<thead>
<tr>
<th>Q23 3.65 mill Property Tax Ballot Question</th>
<th>Initial</th>
<th>Informed</th>
</tr>
</thead>
<tbody>
<tr>
<td>No/Definitely</td>
<td>28%</td>
<td>31%</td>
</tr>
<tr>
<td>No/Probably</td>
<td>6%</td>
<td>5%</td>
</tr>
<tr>
<td>No/Lean</td>
<td>13%</td>
<td>9%</td>
</tr>
<tr>
<td>Unsure</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Yes/Lean</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Yes/Probably</td>
<td>26%</td>
<td>27%</td>
</tr>
<tr>
<td>Yes/Definitely</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

| Total Yes                                 | 44%     | 61%      |
| Total No                                  | 43%     | 40%      |
Next Steps

- Summer 2018 Outreach Plans
- TAC Meeting in late July
- August 9th RFTA Board Meeting – Public Hearing to give municipalities, counties, and the public an opportunity to weigh in on the proposed mill levy increase before the Board takes formal action
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Item No: 12- Attachment J

Meeting Date: July 10, 2018

TITLE: Red Hill Trails Design Presentation

SUBMITTING: Eric Brendlinger, Parks & Recreation Director

PRESENTING: DHM- Jason Jaynes & Chris Brandt

ATTACHMENTS: DHM Project Outreach Report & Trail Plan
Red Hill Council Letter
Minutes from Parks & Recreation Commission Meeting, June 13, 2018
Memo from Bike, Pedestrian & Trails Commission Chair Darryl Fuller

PURPOSE: Seeking Board of Trustees approval for the final trail design presented by DHM and Singletrack Trails, Inc. in accordance with the Red Hill Trails RFP. The Red Hill Trails will connect to existing trails on Red Hill Special Recreation Management Area (BLM) and will eventually provide a trailhead that takes pedestrians and bikes off of the County Road 107. The trail plan includes the conceptual design of a hiking trail alignment, which will be used by Roaring Fork Outdoor Volunteers (RFOV) to construct a trail from the property to the existing hiking trails on Mushroom Rock, beginning on July 24th. Singletrack Trails, Inc. will mobilize in the Fall of 2018 for the construction of the additional trails.

BACKGROUND: The Town of Carbondale recently acquired 25 acres at the western base of Red Hill through AVLT's "Save Red Hill" fundraising campaign. This effort included budget for public outreach, trail planning, design, construction and maintenance. The stakeholders reviewing the trail design options included, AVLT, Town of Carbondale Parks & Recreation Commission and the Bike, Pedestrian and Trails Commission, BLM, The Red Hill Council, Pitkin County Open Space and Trails, Roaring Fork Outdoor Volunteers and the Roaring Fork Mountain Bike Association. The contractor selected, Singletrack Trails, Inc. teamed up with DHM, to handle the trail planning and design services gathered through stakeholder meetings, a trail specific domain website and three public outreach meetings. Public outreach included a First Friday open house at DHM, a Red Hill trailhead specific open house and trail user information gathering session, and a booth at the Pedaleando, a multicultural bike specific event produced by AVSC, Valley Settlement Project and ACES at the North Face Park.

RECOMMENDATION: When this phase of the trail design work is complete the Town will enter into negotiations with the contractor to build the preferred trails with a Guaranteed Maximum Price submittal. Staff would recommend approval of the final trail design as presented. The public outreach was successful and along with the stakeholder feedback, a strong consensus was reached to separate the trail users as much as possible. The hiking only and biking only downhill trail accomplish this while
taking into consideration the limitations of the topography of the site and utilizing the natural benches for trail alignment on the property.

Staff recommends the following motion be made: *Motion is made to approve the option 2 (revised) Red Hill trail design as presented by DHM and Singletrack Trails, Inc.*

**Prepared By:** Eric Breadlinger, Parks & Recreation Director

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**JH**

Town Manager-Jay Harrington
MEMORANDUM

DATE: July 03, 2018

TO: Eric Brendlinger – Town of Carbondale

RE: Red Hill Access Trails – project update for Board of Trustees meeting July 10, 2018

Eric –

This memo is intended to summarize the project process to date in route design and public outreach for the access trails at the newly acquired Red Hill parcel.

The project officially kicked off on May 15th with representatives of the Town of Carbondale, Bureau of Land Management, Red Hill Council, Roaring Fork Outdoor Volunteers, and Roaring Fork Mountain Bike Association. This meeting set the overall project schedule and critical path milestones for public outreach and RFOV Trail Construction.

Following the kick-off, the design/build team developed the full public outreach plan. This plan included three open house events; two tied to community activities and one at the trailhead itself. The team developed graphic boards to define the project goals, illustrate the existing property conditions, and test access trail alternatives.

We consider the public outreach to have been significant and successful. The number of ‘touches’ of individual trail users and general public exceeded our expectations. The outreach process was also genuine – the trends of public opinion from the process are reflected in the revised, preferred trail alignment alternative (Option 2, revised”). Our records show that we had approximately 180 participants and a total of 48 questionnaires filled out, plus another 36 comments via email and the website. All public outreach responses and comments were compiled into a table and summarized in a memorandum dated June 22, 2018.

Public Feedback Summary:

- Open House #1 (6/1/18 First Friday) - Approximately (108) outreach interactions with the community, (30) comments filled out.
- Open House #2 (6/6/18 On-site Red Hill Parking Lot) - Approximately (39) outreach interactions with the community, (10) comments filled out.
- Open House #3 (6/10/18 Community Pedaleando + Latino Outreach) - Approximately (33) outreach interactions with the community, (8) comments filled out.
- Website Comments (closed 6/15/18) – (34) posted.
- Emailed Comments – (2)
Project goals were introduced at the open houses, and include (1) Safety: Reduce bike and pedestrian traffic on County Road 107; (2) Enjoyment: Improve user access experience; (3) Use: Reduce user conflicts; (4) Longevity: Implement sustainable trail alignments. Public support of these overarching goals was clear. Additionally, the overwhelming majority of respondents preferred a three-trail solution including a hiker-only trail, a shared-use up-track (and hiking down-track), and a bike-only down-directional trail. Of the two versions proposed, a majority preferred Option 2 with specific modifications to improve use-ability.

Other important public comment trends included maintaining the trail character of Red Hill on the new routes, clearly signing the routes and uses, and implementing educational/interpretive signage for topics ranging from the ecology of Red Hill to trail etiquette. It is worth noting that the public is very interested in the continued master planning of the project site and the ultimate implementation of recreation parking and a permanent trailhead on the Town parcel.

Based on public feedback, Option 2 was revised, route alignments were evaluated in the field, and specific GPS tracks of the route were taken by Singletrack Trails staff. This layout was shared with the Bike and Pedestrian Committee, BLM, and Red Hill Council. Formal letters of support were not available at the time of writing of this document, but we understand that “Option 2 revised” was well received by each of those entities. DHM and Singletrack Trails recommends proceeding with “Option 2 revised” as the preferred conceptual solution. For specific description of “Option 2 revised” please see the June 22nd project summary and the graphic plan package (included in this packet).

We look forward to presenting the project to the Trustees, and to the implementation of these improvements to the access at Red Hill. Please let us know if you have any questions or concerns.

Regards,

Jason Jaynes  
Principal

Chris Brandt  
Associate Landscape Architect
PROJECT GOALS

This project is focused on access trails and will address the following goals:

SAFETY: Reduce bike and pedestrian traffic on County Road 107
ENJOYMENT: Improve user access experience
USE: Reduce user conflicts
LONGEVITY: Implement sustainable trail alignments

PROJECT ASSUMPTIONS

TRAIL TYPES: New trails may be shared-use or focused use; uni-directional trails may be appropriate
NUMBER OF TRAILS: Multiple trails servicing different use types may be appropriate
HIKING ACCESS: A hiking-specific trail will be built to directly access Mushroom Rock and Blue Ribbon Trails
TRAILHEAD: The existing trailhead will be relocated; access to CR107 at the existing trailhead will be closed/reclaimed
BANDIT TRAIL: The trail connecting Three Poles to CR107 will be formally closed and reclaimed

FUTURE PROJECTS

This is just the beginning! Future planning at the parcel may include:

Improvements to the County Road and Highway 82/133 Intersection
Recreation parking
Permanent trailhead improvements/amenities
Regulatory, wayfinding, interpretive, and informational signage
OBJETIVOS DEL PROYECTO

Este proyecto es sobre los caminos accesos y va a cubrir estos objetivos:

SEGURIDAD: Menos circulación de peatones y bicicletas en County Road 107
PLACER: Mejorar la experiencia para los peatones
USO: Menos conflictos
LONGEVIDAD: Caminos que duran tiempo y son fáciles para mantener

SUPUESTOS DEL PROYECTO

TIPOS DE CAMINOS: Caminos nuevos van a ser compartidos por diferentes usos; caminos con una dirección pueden ser apropiado
NUMERO DE CAMINOS: Los caminos van a ser para diferentes tipos de uso
ACCESO DE ESCALAR: Un camino a cerro va a ser construidos directamente a Mushroom Rock y Blue Ribbon
COMIENZO DEL CAMINO: El comienzo del camino que existe va a ser reubicado; acceso a CR107 va a ser cerrado
EL CAMINO BANDIT: El camino que esta connectando Three Poles a CR107 va a ser cerrado

PROYECTOS DEL FUTURO

Esto no mas es el comienzo! Planes para el futuro de la propiedad incluyen:

Las mejoras a County Road 107 y la intersección de Highway 82/133
Estacionamiento
Permanente mejoras desde el comienzo del camino
Letreros y mapas para navegar los caminos
Open House Photos:
EXISTING CONDITIONS: CHALLENGES
EXISTING TERRAIN CHARACTER
CONCEPTS: OPTION 1a
Mr. Eric Brendlinger  
Carbondale Recreation Director  
511 Colorado Avenue  
Carbondale, CO 81623

Dear Eric,

The Red Hill Council greatly appreciates being a stakeholder in the trail planning and design process for the recently purchased property at the base of Red Hill. As you know, this property is a critically important parcel at the entrance to Carbondale and because it is adjacent to the BLM Red Hill Special Recreation Management Area (SRMA).

The Red Hill Council met on Wednesday, June 27, 2018 with Chris Brandt representing DHM design to discuss trail alignment and design options that will connect from the recently purchased property to the Red Hill SRMA. Based upon those discussions, the Red Hill Council offers the following input on the plan.

1. We support “Option 2” revised June 26, 2018 that shows three routes from the parking area uphill to the Red Hill trail System. The three routes are identified as “Shared Access Trail”, “Hiking Trail” and “Downtrack”. One of the key points is the “connector” route that would allow users easy access from the bottom of Three Gulch to the new down track without having to climb up the Mushroom Rock trail to get on the dedicated downhill route.

2. Closure of the existing Red Hill system trailhead and getting people off the County Road will be critically important to the success of these new access points to/from Red Hill. Timing of that closure must coincide with completion of the new routes along with adequate notification to the public. In addition, closure of the existing trailhead must be substantial and may have to include fencing to prevent users from heading up the road with the expectation of accessing the trails. The goal of this new acquisition and trail construction is to get the users off the County Road. The Red Hill Council has discovered that changing user habits can be very difficult.

3. Adequate signage is also important to create and reinforce good trail use ethics and to inform the public about the new trails and the Red Hill trail system. As you know, the existing informational way-sides were removed during the construction of the game fence on Highway 82. The Red Hill Council would like to see way-sides and an informational kiosk reestablished at the trailhead along with installation of doggy pots. The Red Hill Council would be happy to coordinate with the town on the design and placement of these improvements. BLM has a kiosk and waysides in their inventory and has expressed a willingness to donate these to the Red Hill SRMA.

4. The Red Hill Council strongly recommends that the town require dogs on leash on the town owned property. Leashes are recommended but are not required by BLM on
Red Hill. Dogs off leash on Red Hill have been a frequent and significant source of user conflict. It is our hope that a requirement for dogs on leash on the town property will set a standard and support use of leashes on the Red Hill trail system.

5. The Council recommends that Carbondale work with CDOT on establishment of temporary parking on the town owned property until a permanent parking area is established. It is our opinion that moving the trail access parking and trailhead to the west will pull the users away from the County Road when this new access is opened. It is imperative that this new use pattern be established early, otherwise, users will continue to attempt to gain access to the trails from the old trailhead or other locations on the road. We are concerned that it may take up to two years for the new intersection to be completed and forcing users to continue accessing off of the County Road will make changing habits in the future more difficult and will continue to be a source of non-motorized/motorized conflict.

6. The three new trail routes need to intersect with the existing Red Hill trail system in a logical and seamless manner. It is recognized that these three new routes must traverse very challenging steep terrain. Careful design and construction is required to ensure that the connections provide smooth transitions and are designed to control speeds of bikers coming downhill to minimize use conflict.

Thank you again for including us as a stakeholder group in this process. The Red Hill trail system is critically important to Carbondale and the Valley and we appreciate AVLT and Carbondale’s forward thinking efforts to acquire the property and plan this new access to Red Hill. Red Hill Council is ready and willing to assist the Town of Carbondale in any way as this project moves forward.

Sincerely,

[Signature]

Davis Farrar
President - Red Hill Council
MINUTES
CARBONDALE PARKS & RECREATION COMMISSION
June 13, 2018

Becky Moller called the Carbondale Parks & Recreation Commission meeting to order at 7:00 p.m. on June 13, 2018, in the Town Hall meeting room.

ROLL CALL
The following members were present for roll call:

Members:
Becky Moller, Chair
Tracy Wilson, Vice Chair
John Williams, Member
Todd Chamberlin, Member
Camy Britt, Alternate
Rcse Rossello, Member
Ashley Allis, Member

Town Staff Present:
Eric Brendlinger, Parks & Recreation Director
Jessi Rochel, Rec Center and Program Manager
Luis Ylanes, Board of Trustee’s Liaison
Angie Sprang, Boards & Commissions Clerk

MINUTES APPROVAL
Tracy moved to approve the minutes from the June 2018 P&R Commission meeting. Seconded by Todd. Unanimously approved.

PERSONS PRESENT NOT ON THE AGENDA
There was no one present not on the agenda who wished to address the board.

RED HILL TRAILS REPORT – ERIC CONCEPTUAL DESIGN OPTIONS
Eric reported that there was an excellent turn out and public feedback during the red hill trails public outreach events. The website is still open for written public comments through Friday 6/15. Once all feedback is compiled, an overall preferred option for trail design will be revealed. Eric presented each trail option briefly to the commission. Details regarding all three options are located online (https://www.redhillaccesstrails.com/).

Tracy made a motion to move forward with the conceptual design that includes three trails with a downhill only option for Mt. bikers with a potential combination of Option 1-a and Option 2 for this trail with a design that mitigates erosion and is appealing and useful. Seconded by Todd. Unanimously approved.

Camy Britt’s alternate membership term expires this month. Discussion ensued.

Todd moved to recommend Camy for one more year as a member on the P&R Commission. Seconded by Ashley. Unanimously approved.

REPORT AND UPDATES – STAFF AND COMMISSION MEMBERS
Eric – Carbondale middle school and the resource center received a grant providing incoming 6th – 8th graders to have a summer pass at the recreation center and pool. The grant is in place for 3 years, and it’s being offered to 260 kids this summer. Farmers market started today. The first concert in the park of the season happened on Sunday and around 250 people were in attendance.

Eric – Repurposing the tennis courts financed by GoCo into pickle ball courts may be acceptable with public outreach showing that it what the people want. If it is proven that it’s what the public
DATE: July 5, 2018

TITLE: Red Hill Trail feedback

SUBMITTING COMMISION: Bike, Pedestrian, and Trails Commission

BACKGROUND

DHM Design provided three possible trail alignments connecting the recently acquired property at the base of Red Hill connecting this parcel with the existing trails on the BLM Special Recreation Management Area at Red Hill. The BPT commission has been following this project and discussed possible details of new trail alignments.

RECOMMENDATION

The Bicycle, Pedestrian, and Trails commission agrees that any new trail alignments needs to address the current challenges, while also anticipating and minimizing future user conflicts. Re-aligning and designing trails to move bicycle and pedestrian traffic off off the county road is important to provide for a safer user and resident experience. Additionally, current Red Hill use is significant and there are reasons to believe that these improvements, including potential future increased parking capacity as well as population growth and enhanced awareness of the trails will increase its use. Therefore we believe that the best solution will be to design and build trails that can minimize user conflicts, by separating users in the most heavily trafficked area near the trailhead to provide for safe and enjoyable experiences.

Option “2” appears to be the best solution with a significant caveat. Human nature being what it is we would suggest an important addition to option 2 to enhance the success of the trails. While a majority cyclists choose to ride up the Three Gulches trail, and down the Three Poles trail, some cyclists do prefer to descend the slightly less technical Three Poles trail. As option 2 is presented it requires cyclists riding down Three Gulch trail to then ascend the bottom of the Three Poles trail before being able to descend the downhill bike trail to the new trailhead. We believe this will create a potential lack of compliance resulting in some people choosing to ride down the uphill only trail, or may create incentive for bandit trails descending down to the county road to descend to the parking lot (at or near the existing trailhead).

We would suggest that a connector trail be added to Option 2 from the lower end of Three Gulch to cut over to the cycling descent trail. We would also recommend that to effectively close the existing trailhead along the county road that both trails be effectively moved uphill and away from the county road. Failure to modify the existing trailhead is likely to result in a fair bit of
continued bicycle and pedestrian traffic exiting the trails and continuing to travel along the county road.

Prepared by: Darryl Fuller
Bike, Pedestrian, & Trails Commission, Chair
Meeting Date: 7-10-2018

TITLE: Thompson Park – Final Documents

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS: Ordinance No. 10, Series of 2018
Thompson Park Development Improvements Agreement
Eighth Amendment to the Annexation and Development Agreement

BACKGROUND

On June 26, 2018, the Board approved the Thompson Park development application and directed Staff to prepare approval documents for the Board’s consideration.

DISCUSSION

Attached please find Ordinance No. 10, Series of 2018 memorializing the approval of Thompson Park application for the Board’s consideration. Also attached is the Development Improvements Agreement for Parcel 2 and the Eighth Amendment to the Annexation and Development Agreement.

RECOMMENDATION

Staff recommends that the following motion be approved: Move to approve Ordinance No. 10, Series of 2018, Thompson Park Development Improvements Agreement and Eighth Amendment to the Annexation and Development Agreement.

Prepared By: Janet Buck, Planning Director
ORDINANCE NO. 10
SERIES OF 2018

AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING MAJOR SITE PLAN REVIEW AND SUBDIVISION CONCEPTUAL
PLAN REVIEW FOR PARCELS 2, 3 and 4, AND A CONDITIONAL USE
PERMIT FOR PARCELS 2 AND 3, THOMPSON PARK SUBDIVISION

WHEREAS, Cerise Park, LLC, a Delaware limited liability company
(“Applicant”), has submitted an application for the contemporaneous approval of a Major
Site Plan for Parcels 2, 3 and 4, a Subdivision Conceptual Plan for Parcels 2, 3 and 4, and
a Conditional Use Permit for Parcels 2 and 3, in order develop up to 40 new homes
(including 33 townhomes/multi-family units and 7 single family homes) within Parcels 2,
3 and 4, Thompson Park Subdivision, according to the Master Plat thereof recorded in the
Garfield County real property records on May 19, 2015 at Reception No. 862909
(“subject property”); and

WHEREAS, Applicant has also requested certain amendments to the Annexation
Agreement\(^1\) for the Thompson Park Subdivision, principally for the purpose of increasing
the allowable residential density from 27 to 40 units and to change the affordable housing
plan; and

WHEREAS, staff has recommended approval of a conditional use permit to allow
multi-family construction, conditioned upon Conceptual Subdivision Plan approval by
the Planning and Zoning Commission and Major Site Plan approval by the Board of
Trustees, based upon the following staff findings required by Municipal Code Chapter
17.02, Sub-Sections 2.5.1.C.3.a.(a), -(b), -(d) and -(e):

a. The site, building(s), and use meet all criteria specified for the use and all
applicable regulations and development standards as specified in this Code and
for the zone district in which the use is located;

b. The proposed use is consistent with the Comprehensive Plan as it is an
infill project within the Town;

d. The proposed use is planned in a manner that will minimize adverse
impacts on the traffic in the neighborhood or surrounding uses; and

\(^1\) The “Annexation Agreement” refers to that certain Annexation and Development Agreement Relating to
the Thompson Park Property, Town of Carbondale, recorded in the Office of the Garfield County Clerk and
Recorder on March 16, 2012, Reception No. 816055, as amended by the First, Second, Third, Fourth, Fifth,
and Sixth, and Seventh Amendments to the same, which amendments were recorded at Reception Nos.
854368, 847651, 851116, 859604, 859605, 862912 and 881125.
e. The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics (including hours of operation, noise, odor, dust and other external impacts); and

WHEREAS, after all required notices, the Planning and Zoning Commission of the Town of Carbondale reviewed this application at a noticed public hearing held on March 8, 2018, and continued on April 12 and April 26, 2018, and thereafter approved a Subdivision Conceptual Plan authorizing the Applicant to proceed to a preliminary plat application within the next three years, based upon the following findings pursuant to Municipal Code Chapter 17.02, Sub-Sections 2.6.3.C.3.a(i) through —(vi), inclusive:

i. The proposed subdivision complies with all applicable use, density, development, and design standards set forth in this Code and that would affect or influence the layout of lots, blocks, and streets. Applicants shall avoid creating lots or patterns of lots in the subdivision that will make compliance with such development and design standards difficult or infeasible;

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

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

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

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

vi. As applicable, the proposed phasing for development of the subdivision is rational in terms of available infrastructure capacity and the feasibility for the project to receive future financing; and

WHEREAS, the Planning and Zoning Commission also contemporaneously recommended that the Board of Trustees approve Major Site Plan Approval for this project, with conditions; and
WHEREAS, after all required notices, the Board of Trustees conducted a noticed public hearing on this application on June 12, 2018, and continued on June 26, 2018, during which public hearing the Board of Trustees heard and considered the statements of Town staff, the Applicant's representatives, and members of the public, and reviewed and considered all other relevant documents and information presented at such hearing, all as required by law; and

WHEREAS, the Board of Trustees hereby finds and determines that the application meets the following approval criteria for Major Site Approval set forth in Municipal Code Chapter 17.02, Sub-Sections 2.5.3.C.1 through 4, inclusive, including:

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

2. The site plan is consistent with the conceptual subdivision plat, which was approved as part of the Thompson Park annexation initial zoning;

3. The site plan complies with all applicable development and design standards set forth in this Code; and

4. Traffic generated by the proposed development will be adequately served by existing streets within Carbondale; and

WHEREAS, the Board of Trustees also ratifies and adopts staff’s approval of a conditional use permit to allow multi-family construction of townhomes and the Planning and Zoning Commission’s recommended approval of Subdivision Conceptual Plan review for Parcels 2, 3, and 4, upon the terms and conditions set forth in this Ordinance; and

WHEREAS, the Board of Trustees also finds that certain conditions of approval should be imposed so that Parcels 2, 3 and 4 of the Thompson Park Subdivision will be developed consistent with the purposes of Chapter 17 of the Carbondale Municipal Code and the terms of the Annexation Agreement. Exhibit C to the Annexation Agreement sets forth the Thompson Park Development Plan, which terms and conditions apply to the Development in addition to applicable provisions of the Carbondale Municipal Code. In addition to the terms and conditions of this Ordinance, all conditions of the Development Plan shall be met as well as the terms and conditions of a Development Agreement for Parcel 2 (“Phase 2 Development Agreement”) to be entered into between the Town and Applicant prior to issuance of any building permits for development upon Parcel 2.

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

1. **Major Site Plan Review Approval.** The Board of Trustees hereby grants Major Site Plan Review approval for Parcels 2, 3 and 4 of the Thompson Park
Subdivision, subject to all terms and conditions of this Ordinance, the Phase 2 Development Agreement, and the Annexation Agreement. The final site plan shall be delivered to the Town’s Community Development Director prior to issuance of any building permits for Phase 2, and no building permits shall issue for Parcels 3 and 4 until the Town and the Developer enter into development agreement(s) for those Parcels. This approval is subject to all conditions of approval set forth below in Section ___.

2. **Subdivision Conceptual Plan Approval.** The Board of Trustees hereby ratifies and adopts the Planning and Zoning Commissions approval of a Subdivision Conceptual Plan for Parcels 2, 3 and 4 of the Thompson Park Subdivision, subject to all terms and conditions of this Ordinance, which approval shall extend for three (3) years from the effective date of this Ordinance. If the Applicant does not record final plats for Parcels 2, 3 and/or 4 within said three years, then the Applicant shall be required to seek an extension of said approval or an alternative new Subdivision Conceptual Plan approval from the Planning and Zoning Commission prior to proceeding with preliminary or final subdivision plat review for any Parcels that have not been subdivided at that time, nor shall any building permits issue for any development upon any Parcels at any time when a Subdivision Conceptual Plan approval is not in effect. And, no certificates of occupancy shall issue for any residential unit constructed upon Parcels 2, 3, or 4 until a final subdivision plat is recorded establishing each such residential unit constructed as a separate alienable lot, together with all associated public easement dedications, affordable housing deed restrictions, restrictive covenants, a declaration of real estate transfer assessment (RETA), and payment of all required fees (including school and fire district impact fees) for each such unit.

3. **Conditional Use Permit Approval.** The Board of Trustees hereby ratifies and adopts staff’s recommended approval of a conditional use permit to allow multi-family development upon Parcels 2 and 3 of the Thompson Park Subdivision, subject to all terms and conditions of this Ordinance. The term of this conditional use permit approval shall also extend for three years from the effective date of this Ordinance. If the Applicant does not complete the construction of multi-family units upon Parcels 2 and 3 within said three years, then the Applicant shall be required to seek renewal of this conditional use permit approval prior to proceeding with preliminary or final subdivision plat review for any Parcels that have not been subdivided at that time, nor shall any building permits issue for any multi-family development at any time when a conditional use permit approval is not in effect. Except as provided herein with regard to the establishment of an initial three year term, this approval shall remain subject to the duration, termination and revocation provisions set forth in Municipal Code Chapter 17.02, Sub-section 2.5.1.C.4.

4. **Eighth Amendment to Annexation Agreement Approval.** In connection with and as a condition of the approvals set forth herein, the Mayor is authorized to execute an Eighth Amendment to Annexation Agreement in the form approved by the Board of Trustees for purposes of: (1) increasing and reallocating residential density upon Parcels 2, 3 and 4 (maximum of 40 units allocated across Parcels
2, 3, and 4 as further specified in the Agreement); (2) amending affordable housing requirements to change income categories for eight deed-restricted affordable housing units to include three 100% AMI units, two 120% AMI units, and three 150% AMI units; (3) increasing the real estate transfer assessment (" RETA") on free market units from 0.5 % of first sale to 1.0% of first sale and all subsequent sales; and (4) extending the Phase 2 Plat recording deadline until May 18, 2019, retroactive to May 18, 2018. Any lender with a lien against Parcel 2, 3 or 4 shall sign a consent and lien subordination for the Eighth Amendment to the Annexation Agreement prior to recordation. Additionally, although the Applicant may choose to complete the development of Parcels 2, 3 and 4 in up to five separate phases as permitted by the Annexation Agreement, nothing herein shall alter the vested rights provisions set forth in prior approvals and in the Annexation Agreement, as amended, which shall continue to require recordation of a Phase 2 subdivision plat on or before May 18, 2019, and additional Phase Plats to be recorded within successive three year periods in order to retain statutory vesting. Finally, except as amended, all conditions of the Annexation Agreement shall remain in full force and effect and all development shall comply with said Agreement. To the extent that the Major Site Plan approved hereby varies from any standards set forth in the Thompson Park Development Plan attached to the Annexation Agreement as Exhibit C, including in particular building design and street, sidewalk and trail layout standards, these differences are approved in the discretion of the Board of Trustees and shall not exempt future development from all terms of the Annexation Agreement, as amended.

5. Development Improvements Agreements. The Applicant and the Town shall enter into a Development Improvements Agreement for each of Parcels 2, 3 and 4 prior to the issuance of any building permits for development upon each Parcel acceptable to the Town setting forth all terms and conditions approved by the Board of Trustees. All conditions of each Development Improvements Agreement are incorporated as conditions of this Ordinance. Said Development Improvements Agreements shall generally set forth all of the obligations of the Applicant in connection with the infrastructure for each Parcel, including, without limitation, obligations relating to installation of utilities, construction of roadways, and construction of other improvements on the subject property as well as off-site improvements. Each Development Improvements Agreement shall be recorded with the Garfield County Clerk and Recorder prior to the issuance of any building permits for development upon the affected Parcel. Prior to issuance of any building permits, the Applicant shall also submit an unconditional irrevocable letter of credit to secure required public improvements, in form, with terms, and issued by a bank approved by the Town Attorney. The term of each letter of credit shall extend at least 30 days longer than the completion deadline. The Applicant shall be responsible for the construction and cost of all infrastructure improvements. The construction of the infrastructure shall be initiated and completed in a timely manner, within the deadline set forth in each Development Improvements Agreement (typically one year from commencement unless otherwise agreed by the Town), unless such deadline is extended by the Board of Trustees according to the terms of the Development Improvements Agreement. If construction is not timely commenced and completed, the Town may revoke or amend this Ordinance.
6. **Master Declaration of Covenants.** A Master Declaration of Covenants, Conditions and Restrictions ("Master Declaration") for the Thompson Park Subdivision in the form approved by Town staff and the Town attorney shall be recorded contemporaneously with the Phase 2 Plat. The Applicant shall also incorporate a homeowners association as a Colorado non-profit corporation to hold title to all common areas in accordance with the Colorado Common Interest Ownership Act prior to recordation of the Phase 2 Plat. No properties outside of the Thompson Park Subdivision shall be included in the common interest community for the Thompson Park Subdivision without prior approval of the Board of Trustees. At the time of future subdivision of Parcels 3 and 4 and into residential lots, those lots shall be incorporated into the common interest community and commence paying assessments for common expenses in the same manner as the lots shown on the Phase 2 Plat. Affordable housing units shall have full voting rights but shall only pay 50% of the assessments levied against free market residential units within the community. These provisions of the Master Declaration shall not be amended in the future except with advance approval of the Town’s Board of Trustees.

7. **Real Estate Transfer Assessment (RETA).** Pursuant to the Annexation Agreement, as amended, Applicant shall record a Real Estate Transfer Assessment against all free market residential lots or units within the Thompson Park Subdivision requiring a 1.0% transfer fee payable to the Town on the initial sale or any subsequent sale. The RETA, in a form approved by the Town Attorney, shall be recorded prior to the issuance of any building permits.

8. **Affordable Housing Deed Restrictions.** Eight future units to be constructed by the Applicant (five on Parcel 2, three on Parcel 3) shall be subject to Deed Restrictions to be recorded in the Office of the Garfield County Clerk & Recorder for purposes of establishing income qualifications, and occupancy and resale restrictions, to preserve the affordability of these eight residential units. The eight affordable housing units shall be restricted to preserve their affordability to families in the following income categories: three Category 2 (100% AMI); two Category 3 (120% AMI) and three Category 4 (150% AMI). The units on Parcel 2 shall include two Category 2 units, one Category 3 unit, and two Category 4 units. The units on Parcel 3 shall include one Category 2 unit, one Category 3 unit, and one Category 4 unit. The Applicant shall execute and record the Deed Restrictions for all five Parcel 2 affordable housing units in forms approved by Town staff and the Town Attorney prior to the issuance of any certificates of occupancy for free market units upon Parcel 2. And, likewise, no certificates of occupancy shall issue for free market units upon Parcel 3 until the Deed Restrictions for all three Parcel 3 affordable housing units are recorded. Finally, no certificates of occupancy will issue for Parcel 4 until all eight Deed Restrictions for the Parcel 2 and Parcel 3 Category Units are recorded.

9. **Additional Conditions of Approval.** The following additional conditions are imposed by the Board of Trustees on the foregoing approvals:
a. Except as otherwise expressly authorized by the Town of Carbondale, all lawn and garden, common space, open space and parkland irrigation uses within Thompson Park shall be from a separate private raw water irrigation system or systems that shall not be connected to the domestic in-house supply for any residence or to the non-potable irrigation system that serves the Historic House Parcel. Each lot shall have no more than 2500 square feet of irrigated lawn and garden area.

b. There shall be non-exclusive public access and utility easements for the benefit of the Town of Carbondale throughout all private roadway or alley areas for purposes of allowing perpetual public access (including vehicular, bicycle and pedestrian ingress/egress), and the construction, operation, maintenance and repair of public utilities to be located within these areas, including but not limited to public water and sewer mains. These easements shall be dedicated on the first final subdivision plat for each of Parcels 2, 3 and 4. Neither the private roadways nor the alley shall be signed as private property or in any way that limits public access to or use of streets and sidewalks to be constructed within these areas. Despite the public having access to these areas, the homeowners association for the Thompson Park Subdivision shall have perpetual responsibility for maintenance, repair and replacement of all sidewalks, curbs, gutters, drainage and paved street areas within private roadway or alley areas. The Applicant shall also dedicate non-exclusive public utility easements to the Town for each Parcel. The Town shall not accept or assume ownership or maintenance of any public utility improvements within each Parcel until public utility easements are dedicated for that Parcel. Prior to dedication of access and utility easements, the Applicant shall provide the Town Attorney with an updated title commitment showing that such dedications shall be free and clear of all encumbrances, except those shown on the final plat, or subject only to such exceptions as may be approved by the Town Attorney. Any lender with a lien against Parcel 2, 3 or 4 shall sign consents and lien subordinations for the final subdivision plat that includes the easement dedications for that Parcel.

c. Major Site Plan approval is contingent upon Town Staff approving final, revised engineering plans for Parcel 2 on or before August 15, 2018, which approval shall not be unreasonably withheld or delayed. Town Staff may extend said approval date as appropriate. In the absence of said approval, Major Site Plan Review approval shall lapse and be of no further force or effect. Prior to submittal
of final plans to Town Staff for review, the Applicant shall revise the preliminary engineering plans to reflect a fire hydrant on Lewie’s Circle in a location subject to approval of Town Staff and the Fire District prior to recordation of the Development Improvements Agreement for Parcel 2. The Applicant shall also be responsible for installing the following street signage: (1) a sign prohibiting U-turns along Lewie’s Lane; and (2) a sign prohibiting parking along Lewie’s Lane between Highway 133 and the Ross Montessori School. The engineer’s estimate of the cost of public improvements shall be revised to reflect all changes in the engineering plans requested by Staff, including but not limited to the fire hydrant and street signage. Final engineering plans for Parcels 3 and 4 shall be submitted for review and approval by the Town prior to the issuance of any building permits for development upon each Parcel. Final engineer’s cost estimates approved by the Town shall be signed and stamped by a Colorado-registered professional engineer retained by Applicant and attached as an exhibit to reach recorded Development Agreement for each Parcel.

g. Sidewalks shall be constructed from Lewie’s Lane to each of the entrances of dwelling units 3-9, Parcel 2, if the lower floor of such unit will include the living and kitchen space. These sidewalks shall be constructed prior to issuance of any certificates of occupancy for the affected units.

h. A landscape plan for each Parcel shall be subject to review and approval by the Town Arborist and the Tree Board prior to installation of any street trees or the issuance of any building permits for that Parcel.

i. A final shading analysis shall be subject to review and approval by the Building Official for each Parcel prior to issuance of any building permits for that Parcel.

j. At all times and throughout all phases of construction, public vehicular access shall be maintained to the Historic House Parcel either from State Highway 133 (to the north) or North Bridge Drive (to the south), and at no time during construction shall both accesses be shut off at the same time unless otherwise permitted by the Town. Heavy truck traffic (including deliveries of building materials, concrete, etc.) shall be prohibited during the hours that school children are arriving and departing the adjacent Ross Montessori School (7:30-8:30am, and 2:45-3:30pm, on school days). The Applicant shall also implement reasonable and
appropriate dust control measures. The bike path/sidewalk along Graceland Court adjacent to Lots 2, 3, 4, 23, & 24 shall remain open and fenced during construction to continue to allow safe access between the School and Triangle Park. All staging areas shall be located as far away from the School as reasonably practicable. The dust control plan, fencing for the bike path, and staging areas shall be subject to review and approval by the Town’s Public Works Director.

k. The first phase of development of Parcel 2 shall include construction of the northern pedestrian trail which extends from Lewie’s Lane to Triangle Park. The southern pedestrian trail upon Parcel 2 shall be completed prior to any development of Parcels 3 or 4.

l. The Development Improvements Agreement for Parcel 2 shall include an 18-month time frame to construct the public improvements for Parcel 2. The Applicant shall submit a letter of credit to secure the public improvements which shall extend at least 30 days longer than the required completion date for the public improvements. The letter of credit shall be subject to review and approval of the Town Attorney.

m. Preliminary and final subdivision plat applications shall be submitted to the Town, approved, and recorded prior to the Town’s issuance of any certificates of occupancy for any units on Parcels 2, 3 or 4. The subdivision approval documents shall include but noted be limited to recordation of a Declaration of Transfer Assessment (if not recorded prior), Master Covenants for Parcels 2, 3 and 4, and Permanent Deed Restrictions for all required affordable housing units.

n. Building permit fees, including but not limited to water and sewer tap fees, shall be required for each Phase at the time of issuance of any building permit(s) for development within that Phase.

o. Fees in lieu of water rights dedication shall be due for each Parcel prior to issuance of any building permits for development on that Parcel. The fee for Parcel 2 shall be $29,558, Parcel 3 shall be $8,303, and Parcel 4 shall be $4,905, for a total of $42,765.

p. A Construction Management Plan shall be provided to the Town for each Phase, which Plan shall include best practices to mitigate construction impacts on the Historic Thompson House. This Construction Management Plan shall be submitted with the first
building permit application within each Phase and shall be subject to review and approval by Town Staff.

10. **Fees.** The following fees shall be paid by the Applicant:

   a. The $29,558 fee in lieu of water rights dedication for Parcel 2 shall be paid by the Applicant to the Town prior to issuance of any building permits for Parcel 2. Additional fees in lieu of water rights dedication will be due and payable to the Town for Parcels 3 and 4 prior to the issuance of any building permits for the respective Parcels.

   b. Additional impact fees shall be payable to the Carbondale and Rural Fire Protection District and the Roaring Fork School District for each residential unit at the time that a Phase Plat is recorded subdividing a residential lot for that unit.

11. **Other Representations by the Applicant.** All other representations of the Applicant and its representatives made in written submittals to the Town or during Town public hearings shall be considered additional conditions of this approval.

12. **Cost Reimbursement.** The Applicant shall be required to pay and reimburse the Town for professional and staff fees pursuant to the Annexation Agreement and Sections 13.16.180 and 1.30.030 of the Carbondale Town Code, for recording fees, and for additional review and inspection expenses as set forth in the Phase 2 SIA.

13. **Recording.** A copy of this Ordinance shall be recorded in the Office of the Garfield County Clerk and Recorder at the expense of the Developer. The terms and conditions of this Ordinance and related agreements, which touch and concern Parcels 2, 3 and 4 of the Thompson Park Subdivision, are intended to run with title to said property and to be binding upon any successors or assigns.

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INTRODUCED, READ AND PASSED this ___ day of __________, 2018.

THE TOWN OF CARBONDALE

By: ____________________________

Dan Richardson, Mayor

ATTEST:

______________________________

Cathy Derby, Town Clerk
EXHIBIT A

PARCELS 2, 3 and 4 of the Thompson Park Subdivision
according to the MASTER PLAT thereof recorded on May 19, 2015 as Reception No.
862909, Garfield County, Colorado
DEVELOPMENT IMPROVEMENTS AGREEMENT
PARCEL 2, THOMPSON PARK SUBDIVISION
TOWN OF CARBONDALE, COLORADO

THIS AGREEMENT is made and entered into between the Town of Carbondale, Colorado ("Town"), and Cerise Park, LLC, a Delaware limited liability company (referred to herein as "Developer"), to become effective___________, 2018 ("Effective Date"), regardless of the date when the parties actually sign it.

1. Recitals

For the purpose of interpreting and giving effect to this Agreement, the Town and Developer agree to the truth and the accuracy of the following:

a. Developer is the owner in fee simple of that real property described on Exhibit A attached hereto and incorporated herein by reference, which property is part of a development comprising Parcels 2, 3 and 4, Thompson Park Subdivision, Town of Carbondale ("Development").

b. Developer has submitted to the Town an application for major site plan approval for the Development ("Site Plan") and desires that the Town to approve the same.

c. The development of Parcels 2, 3 and 4 is controlled by the Annexation and Development Agreement Relating to the Thompson Park Property, Town of Carbondale, recorded in the Office of the Garfield County Clerk and Recorder on March 16, 2012, Reception No. 816055, as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Amendments to the same, which amendments were recorded at Reception Nos. 854368, 847651, 851116, 859604, 859605, 862912, 881125, and _________ (said agreement, as amended, is referred to herein as the "Annexation Agreement"). Exhibit C to the Annexation Agreement sets forth the Thompson Park Development Plan, as amended, which terms and conditions apply to the Development, in addition to applicable provisions of the Carbondale Municipal Code and the Carbondale Public Works Manual, which also regulate development of this project.

d. The terms of this Agreement shall constitute the Development Improvements Agreement between the Town and Developer applicable to Parcel 2 of the Development; Parcels 3 and 4 shall be subject to future separate Development Improvements Agreements with the Town.

e. Developer's obtaining Site Plan approval for the Development will inure to Developer's benefit.
f. Developer recognizes and acquiesces in the jurisdiction and the power of the Town to impose the restrictions and conditions required of Developer in this Agreement, joins in the imposition of them, and agrees to perform each and every one of them.

g. On June 12, 2018, the Board of Trustees of the Town of Carbondale, after holding all necessary public hearings, approved Ordinance No. 10, Series of 2018 (the "Approval Ordinance"), which document is recorded in the Office of the Garfield County Clerk and Recorder at Reception No. _________. The terms and conditions of the Approval Ordinance are incorporated herein by this reference as if set forth herein verbatim, and the approvals cited above are contingent upon the express condition that all of the obligations and duties set forth in this Agreement, the Annexation Agreement, and the Approval Ordinance are faithfully performed by the Developer.

2. Specific Conditions.

Developer hereby agrees to the following conditions of approval by the Town:

a. That all representations of Developer made in the written application materials and in statements during the meetings and public hearings before the Town, as reflected in the minutes and recordings of said meetings, shall be considered conditions of approval. In the event it is determined by the parties that there is an omission in this Agreement or that this Agreement or other agreement between the parties does not correctly address or include all such representations of Developer, the agreement of the parties, or the conditions of approval by the Town, the parties shall execute an amendment to this Agreement or such other agreement as may be necessary to correct such omitted or incorrect matter.

b. That Developer has submitted a Major Site Plan for the Development in a form acceptable to and approved by Town staff. If any changes are proposed, a revised draft shall be submitted to the Town for approval prior to proceeding with any of the work provided for herein.

c. That the public improvements and certain of the private improvements identified below and required to be completed by Developer in conjunction with the Town's approval of the Site Plan and other obligations of Developer shall be secured prior to issuance of a building permit for the same.

a. All development fees and professional fees which are the obligation of Developer pursuant to the Annexation Agreement, Approval Ordinance, and or Chapter 1 of Article 8 of the Carbondale Municipal Code shall be paid prior to the issuance of any building permits for work to be performed on the parcel to which the development and/or professional fee(s) relate.
d. That Developer shall comply with all of the terms and conditions of the Approval Ordinance, the Annexation Agreement, and this Agreement.

3. Site Plan Approval.

Pursuant to the Approval Ordinance, the Town has approved a Major Site Plan which contemplates the future subdivision of Parcels 2, 3, and 4 into 35 lots containing a total of 40 residential dwelling units and two private streets ("Private Streets"). The Private Streets or easements for the same shall be owned and maintained by the homeowners association for the Thompson Park Subdivision and used for construction, operation, maintenance, repair and replacement of sidewalks, curb and gutter, drainage features, paved private street areas, and public and private utility purposes, as well as for general public access purposes, all subject to the terms and conditions of the Approval Ordinance, the Annexation Agreement, this Agreement, future Development Improvements Agreements for Parcels 3 and 4, and the performance of all of these conditions and agreements by Developer. The public easement dedications set forth below shall be (1) free and clear of all encumbrances, excepting any encumbrances that may be accepted by the Town after review of current title insurance commitments, as more fully described below; (2) granted by a separate instrument provided by the Town and recorded as provided in this Agreement; and (3) reflected on the future subdivision plats for the Development. Any lenders holding liens upon the Development property shall execute a lien subordination and consent with regard to the content of the Site Plan and this Agreement.


Developer hereby agrees to the following conditions of approval by the Town for installation of the Public Improvements and Required Private Improvements within the Development:

a. The Public Improvements to be installed by the Developer on or with respect to Parcel 2 are generally described as follows and more particularly described on the Engineered Plans and Specifications, to wit:

   (i) **Drainage.** All construction shall be in accordance with the Drainage Report prepared by Gamba & Associates, Inc., dated January 30, 2015, and approved by the Town in connection with the Master Plat of the Thompson Park Subdivision, as well as a hydrologic or stormwater analysis prepared for each parcel in the Development by a Colorado-registered professional engineer.

   (ii) **Water Distribution System.** The water distribution system shall include, by way of example, fire hydrants, water lines, and appurtenances, and shall be installed in accordance with the Engineered Plans and Specifications and the Town’s Public Works Manual. All water service lines shall be owned and maintained from the carb
stop near the property line to the building by the owner(s) of the property or properties receiving service from such line. Developer shall include the location and elevation of all individual water service lines installed in conjunction with the Public Improvements on the as-builts required in Subsection 4(a)(xii), below.

   (iii) **Sanitary Sewage Collection System.**

       (a) The Sanitary Sewage Collection System, including, by way of example, all sewer mains and laterals, shall be installed in accordance with the Engineered Plans and Specifications. Developer shall include the location and elevation of all sanitary individual sewer services lines installed in conjunction with the Public Improvements on the as-builts required in Subsection 4(a)(xii), below.

       (b) All sewer service lines shall be owned and maintained by the owner(s) of the property or properties receiving service from such line from the main sewer line connection to the building served thereby.

   (iv) **Electric.** Underground electrical wiring shall be installed in accordance with requirements and plans and specifications approved by Xcel Energy, and all plans for installation shall be submitted to the Town for its approval prior to installation.

   (v) **Project Lighting.** Design and spacing of lighting shall be in accordance with standards approved by the Town.

   (vi) **Underground Communication Systems.** Underground communication systems shall be installed in accordance with requirements and plans and specifications of CenturyLink and Comcast, as approved by the Town.

   (vii) **Gas Distribution System.** The natural gas distribution system shall be installed in accordance with the requirements and plans and specifications of Black Hills Energy, and shall be submitted to the Town for its approval prior to installation.

   (viii) **Signs.** All street signs and traffic control devices, as required by the Town, shall be installed as required by the Manual on Uniform Traffic Control Devices (MUTCD) and as required and approved by the Town.

   (ix) **Soils Testing.** A preliminary soils report prepared by Hepworth-Pawlak Geotech, Inc., dated January 30, 2015, has been submitted to the Town. This report includes a cursory review for the entire project and was not meant to support site specific construction. Developer has also submitted a soils report specific to Parcel 2 prepared by Hepworth-Pawlak Geotech, Inc., dated July 27, 2016. The Town may require additional site-specific soils reports for each parcel at the time of excavation upon
inspection by Developer's engineer or Town Staff. Additional soils reports addressing foundations and dry wells may also be required prior to issuance of any building permits.

(x) **Dust/Street Cleanup.** During construction, Developer shall comply with all reasonable directives of the Town to suppress dust and shall take steps to require that all construction traffic be free of mud when entering public streets within the Town of Carbondale. Developer shall promptly clean up such mud or other debris from the construction site on Town streets.

(xi) **Street Cuts.** Except as otherwise provided below in Section 12, any street cuts made by Developer shall be full-width cuts ten (10) feet in both directions and repaved with a lay-down machine.

(xii) **As-Builts.** Upon completion of the project, Developer will have a Colorado-registered Professional Surveyor who has personally inspected the site prepare and submit to the Town one paper copy and one electronic copy of surveyed as-builts showing all of the Public Improvements constructed.

(xiii) **Computer Construction Drawings.** An electronic computer file in CAD format of the as-built construction drawings referred to in the prior paragraph will also be submitted to the Town upon completion of the improvements required by this Agreement.

(xiv) **Video Recording of Sewer Line.** At completion of sewer line installation, a video recording and log showing interior of pipe shall be provided to Town in an acceptable electronic format.

(xv) **Stub-outs.** Developer shall clearly mark with steel or wooden posts stub-outs for all utilities and swing ties, and depth to these stub-outs from permanent objects shall be on the as-builts.

b. The private improvements to be installed by Developer ("Required Private Improvements") are generally described as follows and more particularly described on the Engineered Plans and Specifications (provided, Security shall only be required for those certain Required Private Improvements specifically identified on Exhibit B and supplements thereto, which Required Private Improvements shall be referred to herein as the "Secured Private Improvements"):

(i) **Streets and Parking Areas.** All paved street access areas, sidewalks, curbs, gutters, and parking areas, including those within the Private Street areas, shall be constructed by Developer in accordance with the Engineered Plans and Specifications.
(ii) **Landscaping.** Landscape improvements shall be installed in accordance with the Engineered Plans and Specifications and the Town-approved landscape plan attached as *Exhibit C*. Prior to commencement, the landscape plan shall be revised to show species, caliper, and location of all plantings, which additional details shall be subject to review and approval by the Community Development Director. Only landscaping within the public rights-of-way shall be secured as set forth in Exhibit B. Notwithstanding the deadlines to complete all Public Improvements and Secured Private Improvements, the Developer may defer installation of landscaping until after completion of any other construction activities that could potentially damage the landscaping and, if necessary, during the next growing season when irrigation water will be available, provided that any required security for the landscaping improvements remains in place.

(iii) **Non-potable irrigation system.** All outdoor irrigation for the Development shall be supplied by a private, non-potable irrigation system to be owned, operated, maintained, repaired, and replaced by the homeowners association for the Thompson Park Subdivision, except for the Historic House Parcel and areas immediately adjacent to the Ross Montessori School ("RMS") (including the landscape strip in the public right of way) as provided in the Master Subdivision Improvements Agreement recorded as Reception No. 862913, as amended, and other written agreements between Developer, the Town, and/or RMS. The irrigated areas within public rights-of-way at the entrance to the Thompson Park Subdivision located on the east side of Lewie’s Lane and north of the northern portion of Lewie’s Circle as shown on the Site Plan shall also be connected to the system referred to in the first sentence of this paragraph prior to the Town’s acceptance of the Public Improvements required hereunder. Only that portion of the irrigation system within the public right-of-way shall be secured as set forth in Exhibit B.

c. Developer has presented to the Town and the Town has approved the engineered plans and specifications prepared by Gamba & Associates, Inc. listed below ("Engineered Plans and Specifications") necessary and required for construction and installation of the Public Improvements and Required Private Improvements located on or necessary for the legal habitation of Parcel 2 of the Development ("Parcel 2 Improvements"):

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<thead>
<tr>
<th>TITLE</th>
<th>SHEET</th>
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<tbody>
<tr>
<td>Site Plan</td>
<td>Sheet 2</td>
<td>5-21-2018</td>
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<tr>
<td>Lewie’s Circle Plan and Profile</td>
<td>Sheet 3</td>
<td>5-21-2018</td>
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<tr>
<td>Jewel’s Court Plan and Profile</td>
<td>Sheet 4</td>
<td>5-21-2018</td>
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<tr>
<td>Water System Plan and Profile</td>
<td>Sheet 5</td>
<td>5-21-2018</td>
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<tr>
<td>Water System Details</td>
<td>Sheet 6</td>
<td>5-21-2018</td>
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<tr>
<td>Sanitary Sewer System Plan and Profile</td>
<td>Sheet 7</td>
<td>5-21-2018</td>
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<td>Sanitary Sewer System Details</td>
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<td>Shallow Utility and Irrigation Plan and</td>
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d. The estimated cost of completion of all Parcel 2 Improvements required to be secured under the terms of this Agreement, including 10% contingency, is $301,538.13, according to the cost estimate prepared and certified by a Colorado-registered professional engineer that is attached as Exhibit B hereto. The Public Improvements and Required Private Improvements for Parcel 2 shall be constructed and installed in accordance with the Engineered Plans and Specifications heretofore approved by the Town. Developer agrees to pay the entire cost of installation and construction of all of such Public and Required Private Improvements and shall install and construct the same within the deadlines set forth below in Section 11, unless an extension of such deadlines is approved pursuant to Section 16.

e. The Town shall not approve the Parcel 2 Improvements and accept the Public Improvements, or issue any certificates of occupancy for residences upon Parcel 2, unless and until a final subdivision for Parcel 2, or a portion thereof, that includes the public dedication of all easements to the Town required for the Town to operate, maintain and repair the Parcel 2 Public Improvements, and establishing public access rights across all private street and alleys, is approved by the Town and recorded in the Garfield County records, all as required by the Approval Ordinance.

f. Security for the Public and Secured Private Improvements shall be provided prior to issuance of any building permits for Parcel 2.

g. All development fees which are the obligation of Developer pursuant to the Approval Ordinance shall be paid prior to issuance of any building permits for Parcel 2.

h. Developer shall dedicate any and all required public easements for the Town to be located upon Parcel 2 to the Town free and clear of all encumbrances at the time that the first Phase Plat for Parcel 2 is recorded. At the time of dedication, Developer shall also provide a current title insurance commitment to the Town evidencing that such dedications are free and clear of all encumbrances except any which may be expressly accepted by the Town after reviewing a title insurance commitment. Any title insurance premiums shall be paid by Developer. Any security interest in such easements in favor of Developer’s lender shall be released or subordinated prior to or contemporaneously with the required easement dedications. A current title insurance commitment shall be provided to the Town for review no later than ten (10) days prior to dedications to the Town and recordation of the instruments granting the same.

i. Upon completion of portions of the Public and Required Private
Improvements, Developer will cause its engineers (who shall have been actively engaged in observing the construction of the Public and Required Private Improvements and be registered in the State of Colorado) to provide a written certification that the Public and/or Required Private Improvements have been completed, to the best of their knowledge and professional judgment, in conformance with all standards, plans and specifications as submitted to and previously approved by the Town, or the pertinent utility supplier. As-built plans shall be submitted with these certifications in the form described in Section 4(a)(xii), above. The Town may withhold or suspend the processing of building permits, certificates of occupancy, or plats for future phases until all information required by this paragraph is provided to the Town.

5. **Construction Management.**

Town staff shall approve a Construction Management Plan submitted by Developer for the Parcel 2 Improvements prior to the issuance of a building permit for the Parcel 2 Improvements. The terms and conditions of such Plan shall be deemed incorporated fully herein as terms and conditions of this Agreement, provided that in the case of any inconsistency between the terms of such Plan and the terms of this Agreement, this Agreement shall govern. Further, the Plans shall provide that: (1) on days that RMS is in session, Developer’s contractors and subcontractors shall utilize their best efforts to minimize heavy truck traffic relating to construction in Thompson Park (including deliveries of building materials, concrete, etc.) through the intersection of Lewie’s Lane and Highway 133 and upon Lewie’s Lane adjacent to RMS during the hours of 7:30 to 8:30 am and 2:45 to 3:30 pm, and Developer’s contractors and subcontractors shall cooperate with RMS with respect to any reasonable request for reduced speed limits or monitors to supervise the safety of school children and to maintain the efficient flow of school-related traffic; (2) reasonable and appropriate dust control measures shall be implemented; (3) the bike path/sidewalk along Graceland Court crossing the north end of Parcel 2 shall remain open and fenced during construction to continue to allow safe access between RMS and Triangle Park, provided that said bike path may be temporarily moved, with appropriate signage, to accommodate construction upon condition that prior to any relocation the plan for temporarily re-routing the path shall be subject to review and approval by the Public Works Director, who may require additional financial security to the Town to guarantee restoration of the current bike path upon completion of construction; (4) all staging areas on Parcel 2 shall be located as far from RMS as is reasonably practicable; (5) the dust control plan, fencing for the bike path, and staging area shall be subject to review and approval by the Town’s Public Works Director; and (6) after construction is completed, all soils that are disturbed during construction shall be reseeded, irrigated to re-establish vegetation, and thereafter kept reasonably free of noxious weeds. Developer or Developer’s representatives shall have a pre-construction meeting with Town representatives in attendance. However, nothing in this Section 5 shall restrict the Town’s Chief of Police or his designee from implementing additional traffic control restrictions that he deems necessary to protect public safety.
6. **Inspections**

During the installation by Developer of the Public and Secured Private Improvements described in Section 4 above, the Town may:

a. Inspect the work in progress with such personnel as the Town deems necessary.

b. Require the production and inspection of the plans and specifications of Developer and any contractor or subcontractor working on its behalf in connection with the work in progress.

c. Require Developer to obtain and pay for inspections, soils composition tests, compaction tests, cement tests, or such other tests of materials and work as may be necessary in the Town's opinion to ensure that the work in progress is being performed according to the Town's specifications and the applicable Engineered Plans and Specifications.

d. Any Town inspector shall have the authority to immediately order that all construction in the Development be suspended if the inspector determines that such a stop work order is needed to protect the Town's interest, or in the event of a violation of this Agreement, the Carbondale Municipal Code, or any sewer and water utility installation requirements. The Town may utilize staff personnel for inspections, or hire an outside inspector, in either case the reasonable cost of which will be reimbursed by Developer.

7. **Non-Liability upon Approval and Acceptance**

The Town's approval of the Engineered Plans and Specifications for each Parcel shall not be deemed an adoption of them or a representation or warranty to Developer or any other person or entity that the Engineered Plans and Specifications, or any work performed under them, is fit for the purpose intended or otherwise safe.

The Town's approval of the Engineered Plans and Specifications, acceptance of the installation of the Public Improvements described below, or the use and maintenance of such Public Improvements shall not be deemed to be any of the activities listed in C.R.S. 24-10-106(a)(1) for which sovereign immunity is waived. No action or inaction by the Town in connection with its approval of this Development shall be deemed a waiver of its sovereign immunity.

The Town does not warrant or make any representations whatsoever concerning the suitability of its public improvements, including water distribution system, sewer system, or any other device or system owned or controlled by the Town which may be used in
improving or serving the Development. Without limiting the foregoing, Developer assumes the risk of all costs associated with installations for improving or serving the Development as described above and of all costs necessary to improve or serve the Development.

8. **Warranties**

Developer shall warrant the installation of the Public Improvements described in Section 4 above against all defects in materials and workmanship for a period of two (2) years after the date of acceptance of the work by the Town, and all curative work under this warranty shall itself be warranted for an additional one-year period or the expiration of the original two (2) year warranty, whichever is greater. In the event of any defect, the Town may require Developer to correct the defect in material or workmanship. The Secured Private Improvements shall not be warranted to the Town, but any contractor’s warranty shall be assigned to the homeowners’ association along with any conveyance of such improvements to the association. No warranty security shall be required for any unsecured Required Private Improvements.

9. **Legal Compliance**

Developer shall comply with all state, federal and local laws, ordinances, rules, and regulations, including, by way of example, Chapter 17 of the Carbondale Municipal Code pertaining to zoning and subdivisions (the Unified Development Code or “UDC”), all other ordinances and regulations of the Town relating to streets, water lines, and sewer lines, including the Town’s Public Works Manual. Developer, or its successors in interest, shall pay all system improvement fees for utilities as required by the Town’s ordinances and regulations in effect as of the date of application for the tap, provided that if connection is not made to said system before expiration of the associated building permit, Developer shall pay any additional system improvement fees which may be applicable under Town Code in effect on the date of actual connection.

10. **Dedications and Conveyances to Town**

Upon completion and acceptance of those Public Improvements described in Section 4 above, such Public Improvements shall be the property of the Town, without further action of either party, except as otherwise herein provided. Any easements required to be granted or dedicated to the Town or the public under this Agreement or the Approval Ordinance shall be made by recording the appropriate conveyance document in the Garfield County real property records prior to the issuance of a certificate of occupancy for the first unit in the Development. Such easements shall also be identified and depicted on each Phase Plat for the Development.
11. Certificates and Permits

No certificate of occupancy shall be issued for or relating to any structure or improvement within Parcel 2 until the Public Improvements have been completed by Developer as described in this Agreement and the Approval Ordinance. As acknowledged in the Approval Ordinance, Developer may phase the completion of the Public Improvements and the Required Private Improvements as follows:

a. All Parcel 2 Improvements shall be completed within eighteen (18) months of the commencement of construction thereof, and no certificates of occupancy shall issue for a residential dwelling unit upon Parcel 2 until Developer has recorded a final subdivision plat creating a separate alienable lot for said dwelling unit and completed required public easement dedications associated therewith as set forth above, and Developer’s engineer provides written certification to the Town that the improvements described in this Section 11(a) are complete according to all applicable plans and specifications, and such improvements are inspected and approved by the Town.

b. The affordable housing units on Parcel 2 must be completed prior to issuance of certificates of occupancy for any free market housing units on Parcel 2. The affordable housing units proposed for Parcel 3 must be completed prior to the issuance of certificates of occupancy for any free market housing units on Parcel 3 or Parcel 4.

Except as provided in this Section 11, nothing herein shall limit the obligations of Developer imposed by any of the Town’s ordinances concerning the issuance of a certificate of occupancy. Without limiting any of its rights under this Agreement, the Town may, but need not, issue certificates of occupancy and grant extensions of time for the completion of construction and the installation by Developer of any improvement, but only as is provided in Paragraph 16, below. No extension of time for completion shall impair the Town’s rights under any instrument of security described in Paragraph 15, and the parties obligated under such security instrument shall be deemed to have consented to the Town’s extension of time whether the Town gives actual notice or not to the party liable on the instrument of security.

12. Improvement Sequence

a. Specific sections of public or private street improvements to be installed by Developer shall not be installed until all master/main utility lines to be placed in or under the applicable street section have been completely installed.

b. Notwithstanding the deadlines to complete the Parcel 2 Improvements set forth in this Agreement, the Developer may defer installation of landscaping on each Parcel of the Development until after completion of any other construction activities that could potentially damage the landscaping and, if necessary, during the next growing
season when irrigation water will be available, provided that any required security for the landscaping improvements remains in place.

13. Repairs

To the extent, if any, that Developer’s installation of improvements or utilities to serve the Development causes damage to public roads in Thompson Park or other Town-owned roadways outside of Thompson Park, Developer shall repair and repave such damaged streets and roads. The road repairs shall be to the middle of the street damaged and two feet in either direction from the outermost edges of the damage (i.e., if the damage is ten feet long, the repaving would be 14 feet long by the width to the middle of the street).

14. Completion by Town

In addition to all other remedies, upon default hereunder by Developer, at its option the Town may undertake all work necessary to install and complete all the Public Improvements which Developer must complete pursuant to Section 4 of this Agreement. If the Town does so, Developer shall pay for all costs expended by the Town, including, but not limited to, costs for materials, labor of Town employees, and labor of non-Town employees utilized on the job, plus fifteen percent (15%) of such costs for overhead and administrative time and costs.

15. Security

Developer has prepared an engineered preliminary cost estimate for the Public Improvements that are to be installed by Developer on Parcel 2 and dedicated for the use of the public or in publicly-conveyed land, rights-of-way, and easements, which is attached as Exhibit B and incorporated herein by this reference. Exhibit B also includes the cost of those certain Secured Private Improvements on Parcel 2. To secure its obligations to install the Public Improvements and Secured Private Improvements described above, Developer shall obtain and deliver to the Town the following Security (defined below):

a. Prior to the issuance of a building permit for the Parcel 2 Improvements, Developer shall deliver an unconditional, irrevocable letter of credit or a cash deposit to the Town in the amount of $301,538.13 (“Security”).

b. The form of any letter of credit shall be subject to approval by the Town Attorney, and any letter of credit shall be issued by a State or National chartered commercial bank (the “Bank”) approved by the Town and shall, among other things, entitle the Town to draw on the Security by presentation to the issuing Bank of a certificate that Developer is in default in its obligations to install Public Improvements or Secured Private Improvements under this Agreement, that a sum certain is required to cure the default, and that the Bank shall forthwith deliver the sum certain to the Town. Any cash deposit may be
subject to a separate escrow agreement between Developer and the Town, subject to the Town’s right to review and approve the terms of any such escrow agreement. Subject to the release procedures set forth below, the Security shall remain effective until 30 days following the deadline for completion of the Public Improvements set forth above in Section 11. The Security shall also provide for automatic extensions for successive one year periods unless, at least 90 days prior to the then-applicable expiration date, the Town receives notification from the issuing Bank (via certified U.S. Mail, return receipt requested) that the Bank does not elect to extend the expiration date.

c. Unless otherwise agreed in writing by the Town, the Security shall be irrevocable and shall remain in place as provided herein. Developer shall pay all costs incurred in obtaining the Security. If Developer fails to install improvements or otherwise perform as required above, the Town may pursue its remedies under the Security. Nothing herein shall limit any other remedies available to the Town.

d. As construction of the Parcel 2 Improvements progresses, Developer will be allowed to apply for partial releases of the Security. If a partial release is desired, Developer shall cause its engineer to provide the Town with a written application stating what Public and/or Secured Private Improvements have been completed and the amount of the Security for which partial release is sought. Developer’s engineer shall certify that the Public and/or Secured Private Improvements for which the partial release of the Security is sought have been installed and completed according to the terms hereof, the applicable Engineered Plans and Specifications, and all Carbondale Municipal Code and Public Works Manual requirements, as applicable. Once reviewed and approved by the Public Works/Utility Departments, the Town Engineer, and any independent inspector hired by the Town, and after Developer has reimbursed the Town for any legal or engineering fees due pursuant to Article 8 of Chapter 1 of the Municipal Code and the Annexation Agreement, the request will be timely submitted to the Board of Trustees for final review and approval at a regular meeting. The documentation associated with any such partial release shall be in a form approved by the Town.

e. Notwithstanding the foregoing, Developer shall not be entitled to the release of more than eighty percent (80%) of the Security prior to the completion and acceptance of all Public and Secured Private Improvements for Parcel 2. The Town’s partial release of the Security shall not constitute formal acceptance by the Town for purposes of commencing the warranties required by Section 8. Such warranties shall commence as provided in the following subsection.

f. Upon Developer’s completion of 100% of the Public and Secured Private Improvements required by this Agreement (provided that completion of landscaping may be deferred until the next growing season per Section 4(b)(ii)), Developer shall have its engineer provide the Town Engineer with certification that all Public and Secured Private Improvements (other than any deferred landscaping) have been completed in accordance
with the approved Engineered Plans and Specifications, all required as-builts, and a request for formal acceptance of the Public Improvements. The Town Engineer shall timely provide Developer's Engineer with a list of any items requiring correction or completion. Upon the Town Engineer's satisfaction that all required Public and Secured Private Improvements have been completed as required, and confirmation of receipt of all required as-builts, the Town Engineer shall timely recommend to the Town's Board of Trustees that the Public Improvements be formally accepted, and that any remaining amount of the corresponding Security for such Public Improvements or completed Secured Private Improvements be fully released (less any portion retained to guarantee completion of landscaping). Then, the Town shall timely schedule an agenda item for a public meeting of the Board of Trustees in order for the Board to review and approve formal acceptance of the Public Improvements. The warranty period shall commence upon the Board of Trustees' vote to approve formal acceptance of the Public Improvements. Within thirty (30) days after formal acceptance, the entire remaining amount of the Security (less any amount retained to guarantee completion of landscaping) shall be released, provided that an amount equal to ten percent (10%) of the original amount of the Security for the Public Improvements (but not the Secured Private Improvements) shall remain in place (or Developer may provide a cash deposit, letter of credit, or other replacement security to secure the warranty, in an amount and in a form acceptable to the Town, which replacement security would be substituted for release of the entire amount of the Security).

16. Extension of Due Date

The construction completion date for installation of Public and Secured Private Improvements required in Section 11 may be extended for a reasonable time by the Town, after a written request from Developer and any third-party that provided security to the Town to guaranty completion of the Public and Secured Private Improvements. Town Staff shall have the discretion to grant one extension of up to six (6) months, but any further extensions shall require approval by the Board of Trustees at a public meeting. Any such extension shall be conditioned upon Developer continuing to post Security in amounts and with terms required above to guarantee completion of all required Public and Secured Private Improvements, for a period extending at least 30 days longer than any extended completion deadline.

17. Non-Suit

The Town's approval of the Site Plan and this Agreement shall not make it liable for any loss or damage suffered within or by use of the Development for any act, condition or omission occurring or arising out of or in connection with the Town's approval of the Site Plan. Neither Developer nor anyone acting through it shall attempt to hold the Town liable for any loss or damages arising out of or in connection with the Town's approval of the Phase 2A Plat.
18. **Benefit**

The provisions of this Agreement shall bind and inure to the benefit of the parties, their assigns as allowed by this Agreement, and their successors-in-interest of all kinds.

19. **Non-Waiver**

Any indulgence by the Town to Developer as to the performance of any portion of this Agreement and any waiver by the Town as to Developer's performance or non-performance of any part of this Agreement shall not be deemed or considered to be an indulgence or waiver of any other part of this Agreement or any subsequent non-performance by Developer.

20. **Breach by Developer; Town's Remedies**

In the event of a breach of any of the terms and conditions of this Agreement by Developer, the Town may take such action as the Town deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship, which action may include the following:

a. The refusal to issue to Developer any building permit or certificate of occupancy.

b. The recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or his designee, stating that the terms and conditions of this Agreement have been materially breached by Developer. Upon the recording of such an affidavit, no lots or parcels may be sold, conveyed or further developed within the property until the default has been cured; an affidavit signed by the Town Manager or his designee and approved by the Board of Trustees stating that the default has been cured shall remove this restriction.

c. Drawing upon the Security for the purpose of undertaking completion or remediation work on the Public and/or Secured Private Improvements after providing Developer with the ten-day notice specified below. The Security may be applied by the Town toward all costs incurred in remediating Developer's default, including inspections, testing, and legal and engineering services.

d. The refusal to consider further development plans, building permits or certificates of occupancy within the Development.

e. Any other right or remedy available at law or in equity.
Should the Town prevail in any action to enforce this Agreement or any associated ordinances or approvals against Developer, the Town shall be awarded its court costs, attorneys’ fees, and an amount to compensate the Town for the time of its employees or any experts in the preparation of and/or participation in such action.

Unless necessary to protect the immediate health, safety, and welfare of the Town, and where reasonably practicable to do so, the Town Manager shall provide Developer ten (10) days written notice of intent to take any action under this Section during which ten (10) day period Developer may cure the breach described in said notice and prevent further action by the Town.

21. **Indemnification/Insurance.**

   Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the subdivision of the Development, including, without limitation, indemnification against any claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and any amendments thereof, and any claims by the issuer of the Security against the Town with regard to any claim or draw by the Town upon the Security. This indemnification shall include actual attorney's fees and costs incurred in the event that any party brings an action against the Town for any of the approvals described herein. The parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this section. Therefore, the parties hereto agree to reasonably cooperate to prevent duplicate expenses incurred as a result of the indemnification herein described. Developer shall be obligated to reimburse the Town for all legal or other expenses reasonably incurred by the Town in connection with investigation or defense of any such loss or claim. The Developer shall also cause the Town to be named as an additional insured under the terms of the liability insurance policy maintained by the Developer. A certificate showing such insurance shall be provided to the Town prior to commencement of any work by the Developer, which insurance shall not be subject to cancellation or non-renewal without at least fifteen (15) days prior written notice to the Town.

22. **Waiver of Defects**

   In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein or in the other documentation being executed contemporaneously, and concerning the procedure, substance, and form of the ordinances or resolutions approving the Development and adopting this Agreement.

23. **Final Agreement**
To the extent that this Agreement is in conflict with any prior agreement between the parties, this Agreement supersedes and controls with respect to said areas of conflict. In all other respects, said prior agreements shall remain in full force and effect.

24. Modifications

This Agreement shall not be amended, except by subsequent written agreement of the parties.

25. Release of Liability

It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town of Carbondale Code and Ordinances and the laws of the State of Colorado, and that Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town officers or agents or their designees which is subsequently held unlawful by a court of law.

26. Invalid Provision

If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

27. Governing Law

The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.

28. Notice

All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective upon delivery or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.
29. **Recording Fees**

   Developer shall pay for the costs of recording this Agreement and any documents which may be recorded according to the terms of this Agreement.

30. **Titles**

   The Section titles in this Agreement are for convenience only and are not to be used to construe or interpret this Agreement.

31. **Estoppel/Completion.**

   The Town agrees that it will, at any time and from time to time, within thirty (30) days following receipt of a written request from Developer or an independent third party who is a proposed or existing lender, seller or purchaser of property within the Development, execute, acknowledge and deliver to the party making such request, a statement certifying: (i) that this Agreement has not been modified, supplemented or amended and is in full force and effect (or if there have been any such modifications,
supplements or amendments, reference to the same will be made); and (ii) that to the best of the Town's knowledge and belief, the obligations of Developer hereunder requiring performance prior to the time of the request, have been performed in compliance with this Agreement (or, if there has been default in such performance, reference to the same will be made). Such statement shall not constitute a waiver by the Town of any claims against Developer and such statement shall in no event subject the Town to any affirmative liability whatsoever to Developer or to any independent third party, notwithstanding the negligence or other inadvertent failure of the Town to investigate, disclose, or correct any deficiency in performance. Prior to or at the time the Town delivers any such statement, the party making such request shall pay to the Town its reasonable costs and attorneys' fees incurred in preparing, executing and delivering such statement.
THE TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By: ___________________________________________
    Dan Richardson, Mayor  (date)

ATTEST:

__________________________
Cathy Derby, Town Clerk

STATE OF COLORADO    )
    ) ss.
COUNTY OF GARFIELD    )

The above and foregoing document was acknowledged before me this ____________
day of ______________________ 2018, by Dan Richardson, as Mayor for the Town of
Carbondale and by Cathy Derby as Town Clerk for the Town of Carbondale.

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

Notary Public
DEVELOPER:

CERISE PARK, LLC
a Delaware limited liability company

By: ________________________________
David Bauer, Manager

Date: ______________

STATE OF _______________ )
 ) ss.
COUNTY OF _______________ )

The above and foregoing document was acknowledged before me this __________ day of _________________ 2018, by David Bauer as Manager of Cerise Park, LLC, a Delaware limited liability company.

Witness my hand and official
My commission expires:

_____________________________________
Notary Public
EXHIBIT A

LEGAL DESCRIPTION

Parcel 2 of the THOMPSON PARK SUBDIVISION according to the MASTER PLAT thereof recorded May 19, 2015, as Reception No. 862909, Garfield County, Colorado.
EXHIBIT B

COST ESTIMATE FOR PUBLIC IMPROVEMENTS AND SECURED PRIVATE IMPROVEMENTS

[INSERT]
EXHIBIT C

LANDSCAPE PLAN

[INSERT]
EIGHTH AMENDMENT TO THE
ANNEXATION AND DEVELOPMENT AGREEMENT
RELATING TO THE THOMPSON PARK PROPERTY
TOWN OF CARBONDALE

This “Eighth Amendment” to the Annexation and Development Agreement relating to the Thompson Park Property, which document was recorded in the Office of the Garfield County Clerk & Recorder on March 16, 2012, at Reception No. 816055, as amended (the “Annexation Agreement”), is made by and between the TOWN OF CARBONDALE, COLORADO, a Colorado home rule municipal corporation (the “Town”), whose address is 511 Colorado Ave., Carbondale, CO 81623, and CERISE PARK, LLC, a Delaware limited liability company (the “Developer”), whose address is 1880 Lazy O Road, Old Snowmass, CO 81654, to be effective ________________, 2018.

Recitals

A. The Developer is the owner of 100% of the property depicted and described on the Thompson Park Subdivision Master Plat (“Property”) recorded on May 17, 2015, at Reception No. 862909 (“Master Plat”).

B. The Developer and the Town have previously entered into the Annexation Agreement, which includes the following amendments:
   a. First Amendment dated October 22, 2013, recorded as Reception No. 854368;
   b. Second Amendment dated February 25, 2014, recorded as Reception No. 847651 and re-recorded without complete signatures for reasons unknown as Reception No. 852656 (the fully-executed first version of which controls);
   c. Third Amendment dated June 24, 2014, recorded as Reception No. 851166;
   d. Fourth Amendment dated December 9, 2014, recorded as Reception No. 859604;
   e. Fifth Amendment dated February 24, 2015, recorded as Reception No. 859605;
   f. Sixth Amendment dated May 19, 2015, recorded as Reception No. 862912; and
   g. Seventh Amendment dated June 22, 2016, recorded as Reception No. 880318, and re-recorded as Reception No. 881125.

C. The Annexation Agreement incorporates by reference the Thompson Park Development Plan (“Development Plan”) which was amended as part of the Seventh Amendment.

D. The Annexation Agreement and Development Plan, as amended, generally addresses requirements and conditions for the annexation and development of the Thompson Park Subdivision on the property described on the Master Plat.
E. As originally approved, the total density of development of the property subject to the Annexation Agreement was limited to 45 residential dwelling units.

F. Pursuant to the First Amendment, the total density for the Property was reduced to 27 units and the Master Plat was deemed to satisfy the Master Plat and Phase 1 Plat requirements set forth in the Annexation Agreement.

G. Developer now desires to construct a total of 40 units on the Property, which is permissible under the Property’s Residential Medium Density (R/MD) zoning designation.

H. Section 10 of the Annexation Agreement requires that 20% of the units or lots developed on the Property must be deed restricted to have sale prices affordable to purchasers earning no more than 80% of the Garfield County area median income ("AMI") (i.e., Category 1 housing), but does not require that units or lots be Resident Occupied (RO) units.

I. The Town’s current affordable housing guidelines require a developer to restrict 20% of the developed units to be affordable for those with incomes ranging from 80% to 100% to 120% to 150% of AMI (Categories 1 – 4, respectively) and require that 30% of the remaining free market lots be restricted to owner-occupants.

J. To ensure that the development of the Property is both economically feasible and a benefit to the Town, Developer desires to revise the affordable housing mix on the Property and in exchange has agreed to increase the initial real estate transfer assessment ("RETA") imposed pursuant to Section 11 of the Annexation Agreement; and

K. Section 11 of the Annexation Agreement requires that the RETA be paid on all free market units, but that the bulk sale of any undeveloped Parcel or Parcels was expressly exempted from the RETA; and

L. Developer intends to subdivide and develop Parcel 2 as shown on the Master Plat in several phases, leaving certain portions of that parcel undeveloped and to be reserved for future development, and Developer desires to clarify that any undeveloped portion of Parcels 2, 3, and 4 as shown on the Master Plat that are reserved for future development shall be exempt from the RETA set forth in Section 11 of the Annexation Agreement.

M. Since the Master Plat was recorded, Developer has worked diligently to record a Phase Plat within three years thereof pursuant to Sections 4(H) and 6(A) of the Annexation Agreement but will be unable to meet that deadline. Developer has therefore requested a one-year extension of the deadline to record its next Phase Plat and extend its vested rights accordingly.

N. The Developer and the Town now desire to amend the Annexation Agreement as set forth herein in accordance with the foregoing.
NOW THEREFORE, in consideration of the parties’ mutual commitments and agreements, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following additional amendments to the Annexation Agreement:

1. **Prior Agreements.** The Annexation Agreement, including the amendments listed in the recitals above, is hereby ratified and incorporated by reference except only as expressly modified below. Any defined terms in the Annexation Agreement shall have the same meaning herein.

2. **Density.** The Annexation Agreement and the Development Plan are hereby amended to provide that Developer shall be allowed to construct no more than forty (40) residential dwelling units on the Property. Further, the table in Section 3(C) of the Development Plan is amended to read as follow:

<table>
<thead>
<tr>
<th>Developable Area</th>
<th>Maximum Units Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area C</td>
<td>4 – 7 units</td>
</tr>
<tr>
<td>Area D</td>
<td>8 – 15 units</td>
</tr>
<tr>
<td>Area E</td>
<td>1 – 5 units</td>
</tr>
<tr>
<td>Area F</td>
<td>1 – 6 units</td>
</tr>
<tr>
<td>Area G</td>
<td>4 – 7 units</td>
</tr>
</tbody>
</table>

3. **Affordable Housing.** Section 10(A) of the Annexation Agreement is hereby amended to exclude the last sentence of that Section. Section 10(B) is hereby amended to read as follows, with added language in **bold** and removed language **stricken**. All portions of Section 10 of the Annexation Agreement not expressly amended herein shall remain unchanged and in full force and effect.

B. Instead, at the time of recordation of each Phase Plat, Developer shall, subject to the provisions of Section 10(C) below, permanently deed restrict 20% of the units or lots developed on the Property to have sales prices affordable to purchasers earning no more than 80% between **100% and 150%** of the Garfield County AMI at the time the unit or lot is produced. So, by way of example, if the Phase 1 Plat contains 10 lots, 2 of these lots shall be permanently deed restricted to be affordable to purchasers earning no more than 80% AMI. And, at build-out, if the final total density of the Project is 45 units, nine (9) of these units shall be permanently deed restricted to be affordable to purchasers earning no more than 80% AMI. In all calculations, the resulting number of units shall be rounded to the
nearest whole number. If 40 total units will be developed consistent with the Major Site Plan approved by the Town pursuant to Ordinance No. 10, Series of 2018, eight affordable housing units will be required. Of these, five affordable units will be on Parcel 2, to consist of two units affordable to purchasers earning no more than 100% AMI, one unit affordable to purchasers earning no more than 120% AMI, and two units affordable to purchasers earning no more than 150% AMI. The other three affordable units to be developed on Parcel 3 shall consist of one 100% AMI unit, one 120% AMI unit, and 150% AMI unit.

4. **RETA.** Section 11 of the Annexation Agreement is hereby amended to increase the initial RETA from 0.5% to 1%, consistent with the long term RETA on subsequent sales, to restrict funds generated from the initial RETA for affordable housing, and to provide that the RETA imposed thereby shall not apply to the bulk sale of (a) any Parcel or Parcels shown on the Master Plat or (b) any parcel or parcels shown on any subsequent Phase Plat that are expressly designated on the Phase Plat as “RESERVED FOR FUTURE DEVELOPMENT.”

5. **Extension.** The deadline for Developer to record the next Phase Plat is hereby extended by one year, to and including May 18, 2019. Said extension shall have retroactive effect such that the extension is deemed to have been approved prior to May 18, 2018.

6. **Notices.** Section 17(P) of the Annexation Agreement is hereby amended to provide as follows:

   Developer: Cerise Park, LLC
   c/o David Bauer
   833 E. Michigan Street, Suite 1500
   Milwaukee, Wisconsin 53202

   Jacques Machol
   700 17th Street, Suite 200
   Denver, Colorado 80202

   with copy to: Garfield & Hecht, P.C.
   901 Grand Avenue, Suite 201
   Glenwood Springs, Colorado 81601

7. **Vested Rights.** Nothing herein shall be deemed a waiver or amendment of Developer’s statutory vested rights pursuant to Section 6 of the Annexation Agreement, except to the extent that the extension of the plat recordation deadline set forth above in Section 5 shall constitute an extension of Developer’s statutory vested rights through such extension date.
8. **Recording.** A fully-executed copy of this Eighth Amendment shall be recorded in the Office of the Garfield County Clerk & Recorder by the Town at the expense of the Developer.

TOWN OF CARBONDALE, COLORADO,
a Colorado home rule municipal corporation,
acting by and through its Board of Trustees

By: ______________________________

Dan Richardson, Mayor

ATTEST:

By: ______________________________

Town Clerk

STATE OF COLORADO  )
COUNTY OF GARFIELD  ) ss.

The foregoing instrument was signed before me this _____ day of __________, 2018,
by the Mayor and Town Clerk of the Town of Carbondale, Colorado.

Witness my hand and official seal

My commission expires:

Notary Public

DEVELOPER:

CERISE PARK, LLC, a Delaware limited liability company,

By: ______________________________

David Bauer, Manager

STATE OF COLORADO  )
COUNTY OF__________) ss.

The foregoing instrument was signed before me this _____ day of __________, 2018,
by David Bauer as Manager of Cerise Park, LLC, a Delaware limited liability company.
Witness my hand and official seal

My commission expires:

Notary Public
Board of Trustees Agenda Memorandum

Item No: 14
Attachment: L
Meeting Date: 7/10/18

TITLE: Tobacco and Vaping Discussion

SUBMITTING DEPARTMENT: Town Manager

ATTACHMENT: Information on Basalt’s Ordinance and Process
Memo from Holland and Hart and Mandy Ivanov (was in previous packet)
Draft Implementation Planning Document
Public Health Policy Brief, Retail Impact of Raising Tobacco Sales Age to 21

BACKGROUND:
The Town Board has discussed the possibility of raising the age to purchase and possess tobacco and vaping products to 21 at various meetings over the past two months. Attached is a significant amount of information from the Basalt process, the information from our last packet, a draft planning document and a public health brief.

DISCUSSION:
Staff needs direction on the following items prior to drafting legislation:
- Do we raise the age to 21?
  Staff recommends we raise it.
- Do we institute a separate licensing requirement for retailers of vape and tobacco products? Staff recommends we hold off on the separate licensing until we see how the age increase is functioning.
- Do we pass a separate tobacco and vape tax?
  Staff recommends we consider at a later date. Timing is tight to have a well-conceived tax question on the 2018 ballot.

RECOMMENDATION:
Town Staff appreciates any direction on what to include in drafting legislation.

Prepared By: Jay Harrington

JH
Jay Harrington, Town Manager
## Program Start Up/Admin Costs

<table>
<thead>
<tr>
<th>Personnel Cost (Officer)</th>
<th>Number</th>
<th>Hours</th>
<th>Salary rate/hour</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop Operative Protocols/Operational Procedures</td>
<td>1</td>
<td>8</td>
<td>$53.12</td>
<td>424.96</td>
</tr>
<tr>
<td>Compile Master List of Retailers</td>
<td>1</td>
<td>1</td>
<td>$53.12</td>
<td>53.12</td>
</tr>
<tr>
<td>Coordinate with Prosecuting Attorney</td>
<td>1</td>
<td>1</td>
<td>$53.12</td>
<td>53.12</td>
</tr>
<tr>
<td>Retailer Initial Education - Chief of Police</td>
<td>1</td>
<td>2</td>
<td>$72.08</td>
<td>148.16</td>
</tr>
<tr>
<td>Other - Camera Purchase</td>
<td></td>
<td></td>
<td>$85.00</td>
<td>150.00</td>
</tr>
<tr>
<td>Town Clerk (Issuance of Business Licenses)</td>
<td>1</td>
<td>9</td>
<td>$45.28</td>
<td>407.52</td>
</tr>
</tbody>
</table>

**Total Program Start Up Costs**

- Number of stores in the enforcement area: 9
- Start up cost per store: $137.43
- Total: $1,236.88

## Enforcement Expenses

<table>
<thead>
<tr>
<th>Personnel Costs</th>
<th>Number</th>
<th>Hours</th>
<th>Salary rate/hour</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation (Police Department)</td>
<td>1</td>
<td>3</td>
<td>$53.12</td>
<td>159.36</td>
</tr>
<tr>
<td>Recruit/Train Operative</td>
<td>1</td>
<td>1</td>
<td>$53.12</td>
<td>53.12</td>
</tr>
<tr>
<td>Operational Planning</td>
<td>1</td>
<td>1</td>
<td>$53.12</td>
<td>53.12</td>
</tr>
<tr>
<td>Mobilization of Resources</td>
<td>1</td>
<td>1</td>
<td>$53.12</td>
<td>53.12</td>
</tr>
<tr>
<td>Conducting the Operation</td>
<td></td>
<td></td>
<td>$34.16</td>
<td>34.16</td>
</tr>
<tr>
<td>Officer</td>
<td>1</td>
<td>1</td>
<td>$34.16</td>
<td>34.16</td>
</tr>
<tr>
<td>Sergeant</td>
<td>1</td>
<td>1</td>
<td>$53.02</td>
<td>53.02</td>
</tr>
<tr>
<td>Dispatcher - Call for Service Cost</td>
<td>1</td>
<td>1</td>
<td>$24.08</td>
<td>24.03</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Follow Up (Police Department/Administration)</th>
<th>Number</th>
<th>Hours</th>
<th>Salary rate/hour</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Department - Court Case Filings</td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Town Clerk - Violation Notices to Business Owners</td>
<td>1</td>
<td>3</td>
<td>$45.28</td>
<td>135.84</td>
</tr>
<tr>
<td>Town Clerk - Database Entry</td>
<td>1</td>
<td>3</td>
<td>$45.28</td>
<td>135.84</td>
</tr>
<tr>
<td>Municipal Court Expense (Judge/Attorney/Clerk)</td>
<td></td>
<td></td>
<td></td>
<td>535.84</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other Expenses</th>
<th>Number</th>
<th>Hours</th>
<th>Salary rate/hour</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence Processing and Handling</td>
<td></td>
<td></td>
<td>$0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Buy Money (Three Purchased Items at $7.00 Each)</td>
<td></td>
<td></td>
<td>$21.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Food for Participant and Sergeant</td>
<td></td>
<td></td>
<td>$25.00</td>
<td>25.00</td>
</tr>
<tr>
<td>Operative Incentive - Amazon Gift Card</td>
<td></td>
<td></td>
<td>$25.00</td>
<td>25.00</td>
</tr>
<tr>
<td>Miscellaneous Supplies</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Expense Per Operation**

- Total: $1,255.33

**Number of Operations Per Year**

- Total Enforcement Cost Per Year: $2,510.66
- Number of stores visited per year: 9
- Enforcement cost per store: $278.96

## NOTES

The license fee should cover the cost of administration, implementation and enforcement. The police department should be able to determine an estimated enforcement cost. Finance departments and business license departments should be able to determine their costs of administering the tobacco license based on historical data from other licenses they administer.

It is recommended that costs and fees be evaluated every 2-3 years to determine whether retailer fee should be adjusted.
Town of Basalt
2018 Additions to the Fee Schedule
(Excerpt from Ordinance No. 09, Series of 2018)

This fee schedule covers fines, penalties and administrative fees for various activities and services provided by the Town of Basalt.

![Table Image]

Town of Basalt
Police Department
2018 Additions to the Schedule of Fines, Penalties and Administrative Fees

<table>
<thead>
<tr>
<th>Code Section</th>
<th>Subject</th>
<th>2018 Fee</th>
</tr>
</thead>
</table>
| Section 6-154 (b) | Conditions of the Tobacco Product Retail License | 1<sup>st</sup> Offense - $50  
2<sup>nd</sup> Offense - $150 or summons with fine up to $2,650  
3<sup>rd</sup> Offense - $300 or summons with fine up to $2,650  
4<sup>th</sup> & Subsequent Offense(s) – summons with fine up to $2,650 |
| Section 6-163 (a) | Penalties and Fines                     | Fines up to $2,650                                                   |
| Section 6-163 (b) | Penalties and Fines                     |                                                                      |

Town of Basalt
Clerk's Department
2018 Additions to the Schedule of Fines, Penalties and Administrative Fees

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<td>Section 6-160 (a)</td>
<td>New and Annual Fee for Tobacco Product License</td>
<td>$275.00 **</td>
</tr>
</tbody>
</table>

** The License fee is being prorated for the remainder of 2018 to $137.50. The full license fee of $275.00 will be due beginning January 1, 2019 concurrent with the annual Business and Sales Tax License fees.
Town of Basalt
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4\(^{th}\) & Subsequent Offense(s) – summons with fine up to $2,650 |
| Section 6-163 (a)  
Section 6-163 (b) | Penalties and Fines | Fines up to $2,650 |

---

Town of Basalt
Clerk’s Department
2018 Additions to the Schedule of Fines, Penalties and Administrative Fees

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TOWN OF BASALT, COLORADO
ORDINANCE NO. 05
SERIES OF 2018

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO; AMENDING CHAPTER 6 OF THE MUNICIPAL CODE OF THE TOWN OF BASALT – BUSINESS LICENSES AND REGULATIONS - TO ADD A NEW ARTICLE VI ENTITLED: LICENSING OF TOBACCO RETAILERS.

WHEREAS, Smoking rates in the U.S. have declined substantially since the Surgeon General’s 1964 report, from 42 percent to now about 18 percent; however, it remains one of the biggest public health problems in the United States as almost 500,000 Americans still die prematurely each year from diseases related to cigarette smoking. This makes up 85% of deaths from lung cancer. In Colorado, like most other states, it is the number one cause of preventable death, and accounts for 5,100 deaths a year; and

WHEREAS, 90% of adult smokers started smoking before the age of 18 and each day more than 3,000 adolescents in the U.S. try their first cigarette; and

WHEREAS, Since 2014, after decades of effective anti-smoking campaigns and decreasing smoking rates in the U.S., there has been a surprising upturn in youth tobacco use; and

WHEREAS, over 225 U.S. localities and the states of California and Hawaii have enacted into law regulations prohibiting the sale of tobacco products to individuals under the age of 21 and research has shown such regulations are effective in decreasing high school tobacco use by up to 50%; and

WHEREAS, Research has shown that teens purchase cigarettes from their peers and that 90% of the “social sources” (friends and family) of tobacco for the 12-18 year olds are 18-21 year olds. It has also been shown that youth typically do not make the effort to travel to neighboring localities if the age has increased to 21 in their city; and

WHEREAS, the Town Council finds that this ordinance furthers and is necessary for the promotion of the public health, safety, and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BASALT, COLORADO:

Section 1.

That Chapter 6 – Business Licenses and Regulations - of the Municipal Code of the Town of Basalt, Colorado, is hereby amended by the addition of a new Article VI – Licensing of Tobacco Retailers, which Article shall read as follows:
Article VI

LICENSING OF TOBACCO RETAILERS

Sec. 6-150 Incorporation of general licensing provisions.

The provisions of Chapter 6 Town of Basalt Municipal Code (Business Licenses and Regulations) and Sec. 2-238 (Fines, Penalties and Administrative Fees), shall apply to this Article except where they are specifically modified by the provisions of this Article.

Sec. 6-151 Definitions.

The following definitions shall apply throughout this Article:

(a) *Cigarette* means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

   1. any roll of tobacco wrapped in paper or in any substance not containing tobacco;

   2. tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or

   3. any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1)(a) above.

   4. the term includes all “roll-your-own,” i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by consumers as tobacco for making cigarettes.

(b) *Electronic Smoking Device* means an electronic device that, when activated, emits a vapor, aerosol, fume or smoke that may be inhaled or absorbed by the user, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah and similar devices. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance, with or without nicotine, intended to be aerosolized, vaporized or produces a fume or smoke during the use of the device intended for human consumption.

(c) *Licensee* means the owner or holder of a Tobacco Product Retailer License.

(d) *License* refers to the Tobacco Product Retailer license.

(e) *Licensing Administrator* means the person(s) within the Town government designated with responsibilities by the Town Manager for license issuance, renewal and collection of fees.

(f) *Minimum Legal Sales Age* means twenty-one (21) years of age or older.
(g) **Mobile Vending** means any sales other than at a fixed location.

(h) **Person** means natural person, a joint venture, joint-stock company, partnership, association, firm, club, company, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer or employee of any of them.

(i) **Self-Service Display** means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

(j) **Tobacco Product** means 1) any product which contains, is made or derived from tobacco or used to deliver nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to Cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, mints, hand gels; and 2) electronic smoking device; 3) notwithstanding any provision of subsections 1) and 2) to the contrary, “tobacco product” includes any component, part, accessory or associated tobacco paraphernalia of a tobacco product whether or not sold separately. 4) The term “Tobacco Product” does not include: (i) any product that contains marijuana; and (ii) any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

(k) **Tobacco Product Retail Location or Retail Location** means any premises where Tobacco Products are sold or distributed to a consumer including, but not limited to, hookah bar, lounge or café, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine or structure where Tobacco Products are sold.

(l) **Tobacco Product Retailer** means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Tobacco or Nicotine Products, or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(m) **Tobacco Product Retailing** means the selling, offering for sale, or exchanging for any form of consideration a Tobacco Product.

(n) **Tobacco Paraphernalia** means any item designed for the consumption, use or preparation of Tobacco Products.

(o) **Vending machine** shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses product.

Sec. 6-152 Minimum legal sales age.

Tobacco Products shall not be sold to any person under the Minimum Legal Sales Age.
Sec. 6-153 License requirements and prohibitions.

(a) Tobacco Product Retailer License required.

(1) It shall be unlawful for any person to act as a Tobacco Product Retailer in the Town unless he or she has obtained a License and maintains the same in full force and effect pursuant to this Article for each location where Tobacco Product Retailing occurs.

(2) No license may be issued to authorize Tobacco Product retailing anywhere other than at a fixed location that is designated in the License application and approved by the Licensing Administrator. Tobacco Product Retailing by persons on foot, from vehicles or through Mobile Vending is prohibited.

(3) Tobacco Retailing without a valid License is a nuisance as a matter of law.

(b) Display of License. Each License shall be prominently displayed in a publicly visible location at the licensed Tobacco Product Retail Location.

(c) Display of Minimum Legal Sales Age Requirements. The requirement of the Minimum Legal Sale Age for the purchase of Tobacco Retail Product shall be prominently displayed in the entrance (or other clearly visible location) of the Tobacco Product Retail Location.

(d) Other Prohibitions.

(1) A Tobacco Product Retail Location may only have one active License at one time. Every License is separate and distinct and specific to a designated location. The License cannot be assigned, delegated, sold, inherited or otherwise transferred between persons or transferred to a different location, except as provided in this Article. No Licensee shall exercise the privileges of any other License or delegate the privileges of its own License.

(2) A person or entity may not apply for a License for a one year period after a License has been revoked.

Sec. 6-154 Conditions of the Tobacco Product Retail License.

The following conditions shall apply to the Licensee:

(a) Prohibition of self-service displays. Licensees shall stock and display all Tobacco Products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the Tobacco Product from an employee of the business to the customer.

(b) Restriction on sales to underage person. No person engaged in Tobacco Product Retailing shall sell or transfer a Tobacco Product to another person unless that recipient is at least twenty-one (21) years of age. It is an affirmative defense to prosecution that the seller was presented with the ID showing the person to be over the minimum age.
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(c) No Licenses shall be issued within 500' of schools. No Licenses will be issued to retailers located within 500 feet from any public or parochial school as determined by the Licensing Administrator. This restriction shall not apply to an existing Retail Location within 500 feet of a school.

Sec. 6-155 Application procedure.

(a) An application for a License shall be submitted and signed by an individual authorized by the person or entity making application for the License. It is the responsibility of each applicant and/or Licensee to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of said License. No applicant and/or Licensee may rely on the issuance of a License as a determination by the Town that the proprietor has complied with all applicable tobacco retailing laws.

(b) All applications shall be submitted on a form supplied by the Licensing Administrator.

(c) A licensed Tobacco Product Retailer shall inform the Licensing Administrator in writing of any change in the information submitted on an application for a License within thirty (30) business days of a change.

(d) All License applications shall be accompanied by the payment in full of all fees as required in the Basalt Municipal Code, Sec. 2-381 Fines, penalties and administrative fees.

Sec. 6-156 Issuance of a Tobacco Product License.

Upon the receipt of a completed application for a License as required by this Article, the Licensing Administrator shall sign and issue a License within thirty (30) days which period may be extended by the Licensing Administrator for good cause unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(a) The information presented in the application is incomplete, inaccurate or false;

(b) The applicant seeks authorization for a License at a location where this Article prohibits the issuance of a License;

(c) The applicant seeks a License for a location that is not appropriately zoned for the use;

(d) The applicant seeks authorization for a License and the applicant's current License is suspended or revoked;

(e) The applicant is not qualified to hold the requested License under the provisions of this Article; or

(f) The applicant and/or retail location is not in compliance with all Town, state or federal laws;

(g) The applicant is indebted to, or obligated in any manner to the Town for unpaid taxes, liens or other monies; or
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(h) The payment of the licensing fee in the full amount chargeable for such License does not accompany such License application.

Sec. 6-157 Denial of Tobacco Product License.

(a) If the Licensing Administrator denies the issuance of the License, the Licensing Administrator shall notify the applicant in writing by regular mail postage prepaid on the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.

(b) An applicant has the right to appeal the Licensing Administrator's denial of an application to the Hearing Officer that shall be appointed by the Town Manager. Such an appeal shall be initiated by filing a written request with the Licensing Administrator within twenty (20) days of the date of the notice of denial of the issuance of a License.

(c) The applicant's failure to timely appeal the decision of the Licensing Administrator is a waiver of the applicant's right to contest the denial of the issuance of the License.

(d) The appeal, including any right to further appeals, shall be conducted and controlled by the provisions of Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The standard of proof at such appeal shall be a preponderance of the evidence and the burden of proof shall be upon the applicant. The Licensee's failure to timely appeal the decision is a waiver of the Licensee's right to contest the suspension or revocation of the License.

Sec. 6-158 License term, renewal and expiration.

(a) Term. All Licenses issued under this Code shall be for the period of one (1) year or a fraction thereof and shall expire on the last day of December of each calendar year unless otherwise specifically provided.

(b) Renewal of License. A Licensee shall apply for the renewal of the License and submit the renewal License fee no later than thirty (30) days prior to expiration of the existing term. The Licensing Administrator shall renew the License prior to the end of the term, provided that the renewal application and fee were timely submitted and the Licensing Administrator is not aware of any fact that would have prevented issuance of the original License or issuance of the renewal.

(c) Expiration of License. A License that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a License requires submission of a new application. There shall be no sale of any Tobacco Products after the License expiration date and before the new License is issued.

Sec. 6-159 License non-transferable.

(a) A License shall not be transferred from one (1) person to another or from one location to another.
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(b) When a License has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new License for the remainder of the term of that License. All rights and privileges granted under the original License shall continue in full force and effect as to such survivors for the balance of the term of the License.

Sec. 6-160 Fee for License.

(a) The fee to issue or to renew a License shall be pursuant to the Town’s Fee Schedule, a copy of which may be obtained from the Town Clerk and is available at Town Hall. The Town Council will adopt the Fee Schedule which may be changed from time to time by ordinance of the Town Council. The fee shall be calculated so as to recover the direct and indirect costs of administration and enforcement of this Article, including, for example, issuing a License, administering the License program, retailer education and training, retailer inspection, community outreach and education, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Article. Fees are nonrefundable except as may be required by law. In addition, from time to time, as deemed appropriate by License Administrator, the License fee may be increased in accordance with Article X Section 20 of the Colorado Constitution.

(b) The amount of fees charged by the Town pursuant to this Section shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the Town in connection with the adoption, administration and enforcement of this Article.

(c) The amount of the fees charged by the Town pursuant to this Article shall be fixed by Town Council pursuant to Sec. 2-381 Fines, penalties and administrative fees of the Municipal Code.

Sec. 6-161 Compliance monitoring.

(a) Compliance monitoring of this Article shall be by the Basalt Police Department, as the Basalt Police Department (or designee) deems appropriate.

(b) The Basalt Police Department shall have discretion to consider previous compliance check history or prior violations of a Licensee in determining how frequently to conduct compliance checks of the Licensee with respect to individual Licensees.

(c) The Basalt Police Department shall inspect each Tobacco Product Retailer at least two (2) times per twelve (12) month period. Nothing in this paragraph shall create a right of action in any Licensee or other Person against the Town or its agents.

(d) Compliance checks shall be conducted as the Basalt Police Department deems appropriate, including the use of decoys, so as to allow the Basalt Police Department to determine, at a minimum, if the Tobacco Product Retailer is conducting business in a manner that complies with laws regulating access to Tobacco Products. When the Basalt Police Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to Tobacco Products.
Sec. 6-162  Suspension or Revocation of License.

(a) The following shall be grounds for suspension or revocation of the Licensee's License:

(1) A violation by a Licensee or Licensee's officers, agents, or employees of any of the provisions of this Article, or any laws of the United States, the State of Colorado or ordinances of the Town relating to the sale or furnishing of tobacco or Cigarettes to minors, or the storage or display of Cigarettes or tobacco products.

(2) Violations of any conditions imposed by the Licensing Administrator or Hearing Officer in connection with the issuance or renewal of a License.

(3) Failure to pay State or local taxes that are related to the operation of the business associated with the License.

(4) Loss of right to possession of the licensed premises.

(5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application;

(b) The Town Manager shall appoint a Hearing Officer to hear all actions relating to the suspension or revocation of Licenses pursuant to this Article. The Hearing Officer shall have the authority to suspend, revoke, or impose remedial sanctions for violations.

(c) The Licensing Administrator shall commence suspension or revocation proceedings by petitioning the Hearings Officer to issue an order to the Licensee to show cause why the Licensee's License(s) should not be suspended or revoked. The Hearing Officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the Licensee's License. The order to show cause shall set the matter for a public hearing before the Hearing Officer.

(d) Notice of the order to show cause order and hearing date shall be mailed to Licensee by regular mail, postage prepaid, at the address shown on the License no later than thirty (30) days prior to the hearing date. Notice is deemed to have been properly given upon mailing.

(e) The notice to show cause hearing and any subsequent right to appeal shall be conducted and controlled by the provisions of Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The standard of proof at such hearings shall be a preponderance of the evidence and the burden of proof shall be upon the Licensing Administrator.

(f) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Hearing Officer shall consider the following factors:

(1) The nature and circumstances of the violation;
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(2) Corrective action, if any taken by the Licensee;

(3) Prior violations, if any by the Licensee;

(4) The likelihood of recurrence of the violation;

(5) Whether the violation was willful; and

(6) Previous sanctions, if any, imposed on the Licensee.

Sec. 6-163 Penalties and fines.

(a) Licensees: penalties and fines. In addition to any other penalty authorized by law, and if the Hearing Officer determines based on a preponderance of the evidence, that the Licensee, or any of the Licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions of this Article, or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law relating to the sale of tobacco to minors including but not limited to C.R.S. sections 18-13-121 and 24-35-503, the Hearing Officer may consider a fine pursuant to the Town’s Fee Schedule and/or suspension or revocation of the License.

The actual sanction imposed upon a Licensee for any violation may vary from the above-stated guidelines when warranted by the specific facts and circumstances of the case.

(b) After the effective date of this ordinance, it shall be unlawful for any Tobacco Product Retailer to sell a Tobacco Product without a License as mandated under this Article, or with a suspended or revoked License. In addition, the Hearing Officer may impose civil penalties pursuant to the Fee Schedule for each separate Tobacco Product sold during the period of non-compliance with this Article. A retailer whose License has been suspended or revoked shall not display Tobacco Products in public view during the timeframe in which the License is suspended or revoked; and 2) advertisements relating to Tobacco Products that promote the sale or distribution of such products from the location that could lead a reasonable person to believe that such products can be obtained from that location shall not be displayed.

Sec. 6-164 Enforcement.

(a) The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity. In addition to other remedies provided by this Article or by other law, any violation of this Article may be remedied by a civil action brought by the Town Attorney, including but not limited to nuisance abatement proceedings and injunctive relief.

(b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article shall cause the offender to be subject to the penalties set forth herein or in the Basalt Municipal Code.
Sec. 6-165   No rights in License.

Every License issued under this Article confers only a limited and conditional privilege subject to the requirements, conditions, limitations and qualifications of this Article. The License does not confer a property right of any kind. The License and privilege created by the License may be further regulated, limited or completely extinguished at the discretion of Town Council or the electorate of the Town, as provided in this Article, without any compensation to the Licensee. Nothing contained in this Article grants to any Licensee any vested right to continue operating under the provisions of this Article as they existed at the time the License was approved or issued, and every License shall be subject to any ordinance or prohibition adopted after the License was approved or issued.

Sec. 6-166   Effective date.

This Article shall become effective as of July 1, 2018 and enforceable on and after that date. Any Tobacco Product Retailer without a License after the effective date will be in violation of this Article.

Section 2: Litigation

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 3: Severability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 4: Public Hearing

A public hearing shall be held at second reading of this Ordinance on the 27th day of March, 2018, in the Town Council Chambers, Town Hall, Basalt, Colorado. Notice of said public hearing will be in a newspaper of general circulation within the town of Basalt, not less than 3 days prior to the public hearing.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON TUESDAY, March 27, 2018 by a vote of 7 TO 0 this 13th day of March, 2018.

AFTER A PUBLIC HEARING AND SECOND READING, THE ORDINANCE WAS ADOPTED by a vote of 4 to 0 on March 27, 2018.
TOWN OF BASALT, COLORADO

BY: ______________________________
   Jacque R. Whitsitt, Mayor

ATTEST:

_______________________________
Pamela K Schilling, Town Clerk

APPROVED AS TO FORM:

_______________________________
Tom Smith, Town Attorney

Ord 05 2018 - Increasing Age to 21 for Tobacco and Nicotine Sales in Basalt

First Publication: 03/22/18
Final Publication: 04/05/18
Effective date: 04/19/18
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, SUBMITTING TO THE ELECTORATE OF THE TOWN OF BASALT, A QUESTION SEEKING AUTHORITY TO INCREASE TAXES ON THE SALE OF CIGARETTES AND OTHER TOBACCO AND NICOTINE PRODUCTS

Town of Basalt, Colorado
Resolution No. 01
Series of 2018

WHEREAS, the Town of Basalt, Colorado (the "Town"), is a duly organized and existing home-rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and its Home Rule Charter (the "Charter");

WHEREAS, the members of the Town Council of the Town of Basalt (the "Council") have been duly elected and qualified;

WHEREAS, the Council hereby finds that tobacco and nicotine addiction is a leading cause of preventable death, that people should be deterred from starting the use of tobacco and nicotine products and encouraged to quit the use of tobacco and nicotine products, and that taxes on the sale of tobacco and nicotine products are effective at preventing and reducing tobacco and nicotine use;

WHEREAS, the Council hereby designates that revenues collected through this tax would be placed in the General Fund with the specific purpose of financing health and human services, tobacco related health issues, and addiction and substance abuse education and mitigation.

WHEREAS, Section 11-1 of the Charter authorizes the Town to levy and collect sales taxes for municipal purposes;

WHEREAS, Article X, Section 20 of the Colorado Constitution ("TABOR") requires voter approval for any increase in taxes;

WHEREAS, pursuant to Section 2.3 of the Town Charter, the regular Town election is to be held on the first Tuesday in April of even numbered years, and pursuant to Section 2.1 the Town elections are governed by the Colorado municipal election laws except as otherwise provided in the Town Charter or by ordinance; and

WHEREAS, TABOR requires the Town to submit ballot issues (as defined in TABOR) to the Town's electorate on limited election days before action can be taken on such ballot issues;

WHEREAS, April 3, 2018, is one of the election dates at which ballot issues may be submitted to the electorate of the Town pursuant to TABOR;

WHEREAS, the Council hereby determines that it is in the interests of the Town and its residents to submit to the electorate of the Town, the question of authorizing a tax increase on the sale of tobacco and nicotine products at its regular municipal election to be held on April 3, 2018; and
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, THAT:

Section 1. All action heretofore taken (not inconsistent with the provision of this resolution) by the Town and the officers thereof, directed towards the election and the objects and purposes herein stated is hereby ratified, approved and confirmed.

Section 2. Unless otherwise defined herein, all terms used herein shall have the meanings defined in the Municipal Election Code, C.R.S. Title 31, Articles 10 and 11.

Section 3. The following ballot issue, certified in substantially the form set forth below, is hereby referred to the electorate of the Town and shall appear on the ballot of the Town at the regular municipal election of April 3, 2018, with the following ballot title which is set pursuant to C.R.S. 31-11-111.

Tax Increase on the Sale of Tobacco and Nicotine Products.

BALLOT TITLE AND TEXT:

SHALL TOWN TAXES BE INCREASED BY SUCH AMOUNTS AS MAY BE GENERATED ANNUALLY BY THE IMPOSITION OF NEW TAXES AS FOLLOWS:

BEGINNING JULY 1, 2018, THERE SHALL BE A NEW TAX OF TEN CENTS PER CIGARETTE OR TWO DOLLARS PER PACK OF TWENTY CIGARETTES SOLD;

BEGINNING JULY 1, 2018, THERE SHALL BE A NEW SALES TAX OF 40% ON THE SALES PRICE OF ALL OTHER TOBACCO AND NICOTINE PRODUCTS;


THE TAX REVENUES SHALL BE USED FOR THE SPECIFIC PURPOSES OF FINANCING TOBACCO RELATED EDUCATION AND TOBACCO RELATED HEALTH ISSUES, AND ADDICTION AND SUBSTANCE ABUSE EDUCATION AND MITIGATION;

AND THAT THE TOWN MAY COLLECT, RETAIN AND EXPEND ALL OF THE REVENUES OF SUCH TAXES AND THE EARNING THEREON, NOTWITHSTANDING THE LIMITATION OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

Section 4. The Town Clerk is hereby appointed as the designated election official of the Town for purposes of performing acts required or permitted by law in connection with the election.
Section 5. The officers of the Town are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions of this resolution.

Section 6. If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provision of this resolution.

Section 7. All resolution or parts of resolution inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any resolution or part of any resolution heretofore repealed.

Section 8. The effective date of this resolution shall be immediately upon adoption.

INTRODUCED, READ AND ADOPTED by the Town Council of the Town of Basalt on the 9th day of January, 2018.

READ AND ADOPTED by a vote of 6 to 0 on January 9, 2018.

TOWN OF BASALT, COLORADO

By: ____________________________
Jacque R Whitsitt, Mayor

ATTEST:

________________________
Pamela K Schillling, Town Clerk

Res 01 2018 – Setting Tobacco Tax Question for Ballot
MEMORANDUM

June 7, 2018

TO: Jay Harrington, Town of Carbondale

FROM: Tarn Udall and Mark Hamilton, Holland & Hart LLP

RE: Update on Regulatory Approaches – Tobacco and Vaping

Per your request, this memorandum provides an update for your and the Board of Trustees’ consideration concerning regulatory approaches to reducing youth access to tobacco and vape products in the Town of Carbondale. Following the April 10, 2018 meeting of the Board of Trustees, we were asked to look at (1) how to define “vape products” and “vape juices” and (2) the possibility of creating an enforcement scheme based on the assessment of civil fines.

Definition of “Vape Products” and/or “Vape Juices”

In raising the purchase age for tobacco and vape products to 21, the City of Aspen broadly defined “electronic smoking device” to include the substances intended to be consumed through use of such a device. An electronic smoking device is defined in the Aspen Municipal Code as follows:

Electronic Smoking Device means an electronic device that, when activated, emits a vapor, aerosol, fume or smoke that may be inhaled or absorbed by the user, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah and similar devices. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance, with or without nicotine, intended to be aerosolized, vaporized or produces a fume or smoke during the use of the device intended for human consumption.

Aspen Mun. Code, Section 13.25.020(c) (Definitions).

The Aspen Municipal Code language is a useful template in that it captures products and solutions with and without nicotine. The Aspen Municipal Code further provides that “tobacco
products," which include electronic smoking devices, may not be sold to anyone under the age of 21. Section 13.25.020(i), (g); Section 13.25.030.

Enforcement Options

The Board asked us to consider the legal issues regarding an enforcement scheme that relied solely on the assessment of civil fines. Specifically, the question was raised as to whether the Town could ticket store owners and/or managers for a store employee’s selling tobacco or vape products to an individual under the age of 21. While we would need to conduct additional research before providing a definitive answer, it is likely feasible from a legal standpoint to assess a civil fine to a store owner or manager.

As you know, we have engaged in dialogue regarding the issues of local enforcement with Mandy Ivanov with Eagle County Public Health & Environment. Ms. Ivanov provided the enclosed memorandum regarding policy options for reducing youth access to vape products in Carbondale. The memorandum provides Ms. Ivanov’s perspective on enforcement challenges and current evidence and best practices. Ms. Ivanov’s memorandum notes that no municipality in Colorado has raised the minimum legal sales age to 21 without a licensing scheme.

Additionally, we met with Ms. Ivanov at Town Hall on June 5. During that discussion, Ms. Ivanov mentioned another possible issue with penalty assessment. The State Tobacco Education and Prevention Program (STEPP) has raised the question of whether levying a fine for selling cigarettes could be interpreted as a fee or tax, which is prohibited by the Colorado “share-back statute.” The share-back statute provides that “[i]n order to qualify for distributions of state income tax moneys, units of local government are prohibited from imposing fees, licenses, or taxes on any person as a condition for engaging in the business of selling cigarettes or from attempting in any manner to impose a tax on cigarettes.” C.R.S. § 39-22-623(II)(A).
STEPP has requested guidance from the Attorney General on this question, but it may take some time before the Attorney General’s office issues an opinion. We have not done any independent research, so we are only flagging this topic as an area of potential concern.

CTU/

Encl.
MEMORANDUM

Date: May 4, 2018

To: Jay Harrington, Town Manager
    Mark Hamilton, Town Attorney

From: Mandy Ivanov, Western Mountain Region Tobacco Control Coordinator

RE: Response to April XX, 2018 conversation - Minimum Legal Sales Age (MLSA) to 21.

This memo is in response to the conversation I had with Mr. Harrington on April 18, 2018, regarding the Town of Carbondale Elected Officials inquiry about raising the minimum legal sales age (MLSA) to 21 for all tobacco products (Tobacco 21) including vape products, devices & paraphernalia.

Raising the MLSA is a viable tobacco control measure to curb adolescent and young adult uptake of tobacco use. Public support for Tobacco 21 is consistently strong across all regions of the country. Tobacco 21 policies are also perceived as less politically risky than other tobacco control measures such as smoke-free policies.

A key component of best practices for T21 policies is regular enforcement. As you are likely aware, to be effective, youth access laws must be rigorously enforced. With regard to Carbondale’s concern about retaining the Colorado Department of Revenue (DOR) for compliance checks under a local T21 policy, Colorado and federal MLSA is 18 years of age. This means that both DOR and FDA would continue to enforce MLSA provisions applicable to persons under 18 years of age, however these entities would not enforce Carbondale’s stronger T21 MLSA policy. Local enforcement would be necessary to support compliance checks under a local 21 MLSA ordinance. The good news is that Tobacco Retail Licensing (TRL) at the local level is self-sustaining. A nominal annual fee covers the cost of local administration, education and enforcement. Additionally, a local license would promote local control of MLSA issues in Carbondale where issues can be addressed quickly and appropriately in Carbondale.

Carbondale’s illegal sales rate for Jan 1, 2015-current is 12%. The state average is 8%. State and federal compliance checks indicate that Carbondale would benefit from a strong enforcement of T21 provisions with a local license because to date Carbondale has multiple retailer violations under current law, including 7-Eleven 22088 and Teresa’s Food Inc. Unfortunately, state and federal enforcement of MLSA laws are not only intermittent, but penalties are very weak prompting little consequences for bad actors. With a strong local licensing program, Carbondale could consider other options for violations such as suspension of a retail license for repeat offenders for a period of time, usually 3-7 days as other Colorado communities have done, to send a strong message that Carbondale is very serious about protecting its youth from tobacco.
Q: Has anyone else in CO passed just T21 without licensing?

No. There are currently 10 communities in Colorado with comprehensive tobacco retailer licensing (TRL) laws. With regular local enforcement, compliance in the City of Fountain went from 56% to 100% in under three years. Two of the ten CO communities have also raised the MLSA to 21. Aspen and Basalt are now set up to be successful in their efforts to curtail youth tobacco use in their communities through strong licensing and an MLSA of 21. There are other communities currently promoting TRL and T21 to ensure strong local enforcement and local control.

Q: Does the federal government or any state statute restrict who can sell vape products and under what conditions, or prohibit municipalities from doing so?

The short answer is no. The US Food and Drug Administration (FDA) issued a final rule in 2016 deeming e-cigarettes within the scope of the 2009 Family Smoking Prevention and Tobacco Control Act. Under the Tobacco Control Act, states and localities retained their authority to further restrict sale and usage.

No State or Federal preemptions exist to prohibit home rule municipalities from increasing the legal sales age of tobacco paraphernalia to 21, nor prohibit the sale of vape devices or other tobacco products.

One potential issue triggered by a sale prohibition on vape paraphernalia would be pushback from retailers who are currently selling vape products. A second issue would be with enforcement in the absence of a license.

In sum, I would just like to convey that we applaud the town of Carbondale for their desire to strengthen protections for young people and change the social norm around tobacco and vape products. Carbondale schools and Roaring Fork School Health Centers urge Carbondale to consider the merits of a comprehensive tobacco control policy with regular and rigorous local enforcement. At a time when youth nicotine addiction has been deemed an “epidemic”, the Roaring Fork Valley is developing as the State-wide leader in strong tobacco control policies aimed at protecting our children. My agency (Eagle County Public Health & Environment), the Colorado School of Public Health, and the State Tobacco Education & Prevention Partnership stand ready to help Carbondale solidify these efforts. We can offer expertise to help town leadership develop an enforcement strategy that does not strain limited resources, calculate a licensing fee that supports a strong program, and provide education to tobacco and vape retailers to promote compliance.

I look forward to hearing from you.

Respectfully,

Mandy Ivanov, MPH, Western Mountain Region Tobacco Control Coordinator
Retail Impact of Raising Tobacco Sales Age to 21 Years

The majority of tobacco use emerges in individuals before they reach 21 years of age, and many adult distributors of tobacco to youths are adults aged between 18 and 20 years. Raising the tobacco sales minimum age to 21 years across the United States would decrease tobacco retailer and industry sales by approximately 2% but could contribute to a substantial reduction in the prevalence of youth tobacco use and dependency by limiting access. (Am J Public Health. 2014;104:e18-e21. doi:10.2105/AJPH.2014.302174)

RECENT RESEARCH HAS HIGHLIGHTED the susceptibility of the young adult brain to rapid nicotine addiction. While individuals are still experimenting with tobacco use and before they are aware of their own level of addiction, they first want, then crave, then need cigarettes, at which point they are unable to quit. Individuals who begin smoking at a young age are more likely to become addicted, progress to daily smoking, become heavier tobacco users as adults, and have difficulty quitting. The US Surgeon General has expressed concern about the potential long-term cognitive effects of exposure to nicotine during brain development with the potential for lasting adverse consequences.

For many years, public health strategies focused on preventing the onset of nicotine addiction by relying on the strict enforcement of laws that prevent the sale of tobacco to minors younger than 18 years. Indeed, successful efforts to limit tobacco access of minors by disrupting the sale of tobacco to minors have made an important contribution toward reductions in the prevalence of tobacco use among minors.

A factor that might limit the impact of preventing the sale of tobacco to minors is the fact that, in most communities, 18- to 20-year-olds who can legally purchase cigarettes provide them to younger friends and family members. The majority (59%) of 18- and 19-year-olds have been asked by someone younger than 18 years to buy cigarettes for them. Also, high-school students are less likely to have 21-year-old adults than 18- to 20-year-old adults in their social circles, suggesting reduced opportunities to access tobacco from older buyers. Inhibiting this well-established distribution cycle provides one rationale for increasing the legal age for tobacco sales to 21 years. Another rationale stems from the 2012 Surgeon General’s report finding that almost 90% of smokers in the United States began smoking before the age of 21 years. The report concludes that if young people can remain free of tobacco, most will never start to smoke. Currently, people who reach the age of 21 years as a non-smoker have a minimal chance of ever becoming a smoker. For these reasons, there is interest in extending the benefits of restricting tobacco sales to individuals younger than 21 years.

RECENT CHANGES IN US TOBACCO SALES AGE LAWS

In consideration of the potential beneficial public health impact of raising the tobacco sales age to 21 years, some US cities and counties (New York City, Suffolk County, NY; Hawaii County, HI; and Needham, Arlington, Sharon, Canton, Ashland, Wellesley, Dedham, Dover, Norwood, Scituate, West Boylston, Hudson, Winchester, Wakefield, Reading, and Melrose counties, MA) have already approved legislation for raising the age to 21 years, and other cities, counties, and states are making legislative or regulatory efforts to approve similar proposals. With a single exception, all of those measures were adopted in either 2013 or 2014. Clearly, the idea of increasing the minimum tobacco sales age to 21 years has momentum.

The tobacco industry and retailers argue that raising the sales age to 21 years will significantly hurt businesses that depend on tobacco sales. We sought to determine the proportion of the current legal tobacco market (≥ 18 years) that is consumed by 18- to 20-year-old smokers to determine the potential impact to retailers if the tobacco sales age of 21 years was universally implemented and enforced.

We obtained self-reported data regarding cigarette consumption by age from the 2011 National Health Interview Survey (NHIS). The survey includes both citizen and noncitizen noninstitutionalized civilian American households. We analyzed data from 33,014 respondents who were asked questions about smoking in the NHIS Sample Core Adult Health Behavior Section (≥ 18 years) database. Current smokers were identified as having smoked at least 100 cigarettes in their lifetime and still smoking when surveyed. We sought to calculate the volume of cigarette products consumed by individuals, between the ages of 18 and 20 years. Because the data were derived from self-reported cigarette smoked, it accounts for any tobacco used to "roll your own," as well as small cigars that are functionally identical to cigarettes. Tobacco consumed by 15- to 17-year-old smokers was not included as sales to this population are already illegal under federal law.
We used SAS version 9.3 (SAS Institute, Cary, NC) to conduct data analysis. We calculated mean average daily and annual cigarette consumption for current smokers aged 18 to 20 years and those aged 21 years or older to determine the proportion of total cigarette consumption that is attributable to 18- to 20-year-old smokers.

In our sample of 33,014 (Table 1), there were 6138 (18.6%) current smokers, 188 (15.2% smoking prevalence) in the 18- to 20-year-old group and 5950 (18.7% smoking prevalence) in the group aged 21 years and older. The 18- to 20-year-old group of current smokers were 49% female, 77% White, 18% Hispanic, and 16% Black, and the current smokers aged 21 years or older were 40% female, 77% White, 12% Hispanic, and 17% Black. About 37% of 18- to 20-year-old respondents lived with 3 or more household members compared with 40% of those aged 21 years or older (P < .001).

Table 2 demonstrates the lower daily cigarette consumption of those aged 18 to 20 years versus those aged 21 years or older (8.6 per day vs 12.5 per day; P < .001). We also found that 18- to 20-year-old smokers make up 3.06% of the total adult smoking population but account for just 2.12% of cigarette consumption.

**EFFECTS ON TOBACCO INDUSTRY AND RETAILERS**

If one assumes that the number of cigarettes smoked by 18- to 20-year-old smokers corresponds to the number of cigarettes sold to them or to others on their behalf, the maximum immediate loss of sales would be just 2% of the total cigarette sales in the United States. If we assume that this intervention would have a long-term impact on the prevalence of smoking by adolescents and young adults, the gradual aging of this low-tobacco-use cohort would give plenty of time for small businesses to adjust to changing market conditions were the minimum legal tobacco sales age raised to 21 years.

Similar objections were raised decades ago when the national minimum drinking age was proposed to be raised to 21 years. After the law was passed and implemented by most states in the 1980s, a reduction in drinking, problematic drinking, drinking and driving, and alcohol-related crashes among youths was seen.13 The alcohol industry still survived by adapting to the changing market despite the loss of sales to those younger than 21 years. Furthermore, retailers are already required under federal rules to check the ID of anyone who appears to be younger than 27 years seeking to purchase tobacco,14 so an age-21 requirement would place additional compliance burdens on their staff. The fact that more than one third of the 18- to 20-year-old young adults live with 3 or more individuals highlights the additional potential for blocking the transfer of tobacco use behavior to other household members.

**OVERALL IMPLICATIONS**

The evolving neuroscience of the young adult brain demonstrates

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**TABLE 1—Basic Characteristics of Respondents and Current Smokers: 2011 National Health Interview Survey, United States**

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Respondents Aged 18-20 Years (n = 1235), No. (%) or Mean ±SD</th>
<th>Current Smokers Aged 18-20 Years (n = 188), No. (%) or Mean ±SD</th>
<th>Respondents Aged ≥21 Years (n = 31,775), No. (%) or Mean ±SD</th>
<th>Current Smokers Aged ≥21 Years (n = 5,955), No. (%) or Mean ±SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>610 (49.23)</td>
<td>96 (51.06)</td>
<td>14281 (44.69)</td>
<td>3112 (52.30)</td>
</tr>
<tr>
<td>Female</td>
<td>629 (50.77)</td>
<td>92 (48.94)</td>
<td>17574 (55.31)</td>
<td>2638 (47.70)</td>
</tr>
<tr>
<td>Race/ethnicity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>867 (63.98)</td>
<td>144 (76.6)</td>
<td>24207 (76.18)</td>
<td>4570 (76.81)</td>
</tr>
<tr>
<td>Black</td>
<td>245 (18.77)</td>
<td>31 (16.49)</td>
<td>4948 (15.57)</td>
<td>1031 (17.33)</td>
</tr>
<tr>
<td>American Indian/Alaska Native</td>
<td>22 (1.78)</td>
<td>2 (1.06)</td>
<td>375 (1.18)</td>
<td>198 (1.22)</td>
</tr>
<tr>
<td>Asian Indian</td>
<td>9 (0.73)</td>
<td>0 (0)</td>
<td>394 (1.24)</td>
<td>28 (0.47)</td>
</tr>
<tr>
<td>Chinese</td>
<td>19 (1.53)</td>
<td>1 (0.53)</td>
<td>458 (1.44)</td>
<td>35 (0.59)</td>
</tr>
<tr>
<td>Filipino</td>
<td>18 (1.45)</td>
<td>3 (1.6)</td>
<td>450 (1.42)</td>
<td>49 (0.82)</td>
</tr>
<tr>
<td>Other Asian</td>
<td>43 (3.47)</td>
<td>6 (3.18)</td>
<td>775 (2.44)</td>
<td>100 (1.68)</td>
</tr>
<tr>
<td>Not released</td>
<td>4 (0.32)</td>
<td>0 (0)</td>
<td>74 (0.23)</td>
<td>8 (0.13)</td>
</tr>
<tr>
<td>Multiple race</td>
<td>12 (0.97)</td>
<td>1 (0.53)</td>
<td>94 (0.30)</td>
<td>21 (0.35)</td>
</tr>
<tr>
<td>Hispanic</td>
<td>318 (25.57)</td>
<td>33 (17.55)</td>
<td>5549 (17.46)</td>
<td>721 (12.12)</td>
</tr>
<tr>
<td>Household number per family</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>524 (42.29)</td>
<td>87 (46.28)</td>
<td>22369 (70.4)</td>
<td>4368 (73.41)</td>
</tr>
<tr>
<td>2</td>
<td>257 (20.74)</td>
<td>55 (28.20)</td>
<td>6159 (25.08)</td>
<td>1328 (22.32)</td>
</tr>
<tr>
<td>3</td>
<td>305 (24.52)</td>
<td>34 (18.09)</td>
<td>841 (2.65)</td>
<td>178 (2.93)</td>
</tr>
<tr>
<td>4</td>
<td>153 (12.35)</td>
<td>12 (6.38)</td>
<td>408 (1.28)</td>
<td>76 (1.28)</td>
</tr>
<tr>
<td>Mean ±SD</td>
<td>2.12 ± 1.2</td>
<td>1.88 ± 1.07</td>
<td>1.36 ± 0.66</td>
<td>1.33 ± 0.66</td>
</tr>
<tr>
<td>Current smoker</td>
<td>188 (15.2)</td>
<td></td>
<td>5950 (18.7)</td>
<td></td>
</tr>
</tbody>
</table>

Note. The sample size was n = 33,014 participants.
a special vulnerability to even experimental tobacco use. Low minimum sales age laws exploit that vulnerability to addicts youth to cigarettes for life, with relatively few cigarettes. Meanwhile, raising the sales age would appear likely to have a significant effect on current tobacco use rates among youth, decreasing the chances of a person ever becoming tobacco dependent. By some estimates, raising the tobacco sales age to 21 years would reduce tobacco use prevalence by 55% for 15- to 17-year-old adolescents within 7 years. In 2005, Needham, Massachusetts, was the first town in the country to implement the law to raise the tobacco sales age to 21 years. Following the implementation of the law, the Youth Risk Behavior Surveillance System and Metro West Health Foundations’ Adolescent Health survey data showed a 47% reduction in Needham high-school smoking rate in the 4 years (2006-2010) after the law was implemented. Of note, no tobacco retailers have gone out of business in Needham since implementation.

LIMITATIONS

Although we have not specifically accounted for other non-cigarette tobacco or smokeless tobacco sales, we have accounted for any tobacco that is smoked and self-reported as a cigarette, the form that has the highest disease burden. According to the Centers for Disease Control and Prevention’s Morbidity and Mortality Weekly Report, about 90% of all combustible tobacco consumption is cigarettes among adult smokers. In addition, 2012 National Youth Tobacco Survey data indicate that the majority of tobacco consumption remains cigarettes, and high-school students in the young adult age range (17-18 years) are 3 times more likely to smoke cigarettes daily than use any other combination of cigars, bids, and cigarillos on a daily basis.

Adult versus youth smokeless tobacco use rates and amount consumed are much harder to quantify and we intentionally excluded these to avoid reporting bias. In addition, the US retail cigarette market is more than 30 times greater than the smokeless tobacco market, making any adult versus youth consumption discrepancy unlikely to change our overall estimate of the tobacco sales impact.

CONCLUSIONS

Overall, a small percentage of total tobacco sales (2%) is attributed to those younger than 21 years, yet most lifetime tobacco users start smoking before the age of 21 years. Early tobacco initiation during young adulthood comes with a high probability of addiction, progression to daily smoking, and heavier tobacco use in adulthood, and has long-term harmful health consequences. Action on this critical issue of raising the minimum tobacco sales age to 21 years across the United States has excellent public health and ethical rationales, and costs almost nothing to implement through existing regulatory frameworks.

Contributors

J. P. Winickoff originated and designed this study, drafted the article and revised it, and takes full responsibility for the final submission. L. Hartman, M. Gottlieb, E. Nabi-Burza, and J. R. DiFranza made substantial intellectual contributions to the conceptualization and design of the study, and to editing the article. M. L. Chen advised on and conducted data analyses, and participated in the interpretation of results. All authors approved the final article as submitted.

Acknowledgments

This study was supported by the National Institutes of Health, National Cancer Institute grant RO1-CA127127 (J. P. Winickoff) and K01CA087571 (M. Gottlieb), the National Institute on Drug Abuse, and the Agency for Health- care Research and Quality. Note. The funders had no role in the design or conduct of the study, analysis and interpretation of the data, or preparation, review and approval of the article.

Human Participant Protection

This study was exempt from institutional review board approval because it is a secondary data analysis of a publicly available data set.

References

4. US Department of Health and Human Services. Preventing tobacco use...


6. DiFonzo JJ. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? Tob Control. 2012;21(4):436–442.


15. Cigarettes and smokeless tobacco, 21 CFR § 1140.14(b).


17. MetroWest Health Foundation. 2006 and 2010 MetroWest AdLence
Emerging evidence for retail licensing

It is working! Colorado Licensed communities found that on average their sales to youth were reduced by 76%.

<table>
<thead>
<tr>
<th>City</th>
<th>Pre license violation rate</th>
<th>Post license violation rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steamboat Springs</td>
<td>6% (2010)</td>
<td>2% (2012)</td>
</tr>
<tr>
<td>(passed 2011)</td>
<td></td>
<td></td>
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<tr>
<td>Fountain</td>
<td>44% (2014)</td>
<td>14% (2015)</td>
</tr>
<tr>
<td>(passed 2011)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golden</td>
<td>23% (2011)</td>
<td>0% (2013)</td>
</tr>
<tr>
<td>(passed 2012)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pueblo</td>
<td>13% (2012)</td>
<td>4% (2014)</td>
</tr>
<tr>
<td>(passed 2012)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The pre- and post-license violation rates are based on Department of Revenue compliance checks in those communities.
ATTACHMENT 2

LICENSING TOBACCO RETAILERS LOCALLY

Protecting kids, protecting business

CURRENT LAWS DESIGNED TO PROTECT CHILDREN FROM THE ILLEGAL SALE OF TOBACCO ARE NOT WORKING.

68% of youth who attempt to buy tobacco products are sold tobacco illegally.\(^1\)

Tobacco retailers in jurisdictions with weaker enforcement are more likely to sell tobacco to minors than those that require licensing and enforce the law.\(^2\)

HOW CAN WE PROTECT YOUTH IN OUR COMMUNITY?

TOBACCO RETAILER LICENSING

In Colorado, local licenses are required to sell goods ranging from marijuana and alcohol to ice and Christmas trees. Yet there is no license required to sell the deadliest consumer product — tobacco.

A small annual licensing fee helps ensure all retailers follow the law.\(^3\)

Enforcement paired with meaningful penalties — such as license suspension and revocation — motivates tobacco retailers to comply with the laws.\(^4\)

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3 Data compiled from retailers self-report of average monthly revenue from sale of tobacco in three Colorado cities. CSPH Training and IA Team, September 2016.
Early planning for implementation and enforcement that engages all key players is essential to a successful program. Usually these efforts are coordinated by local public health. Many of the decisions below need to be made in tandem with your town or city staff. If you have any questions about the items below, please contact Mandy Ivanov, 970-328-8808.

<table>
<thead>
<tr>
<th>Item</th>
<th>Tip</th>
<th>Notes/Outcome</th>
<th>Person(s) responsible</th>
<th>Date completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Create a database (perhaps Excel) of all local retailers who sell tobacco AND nicotine products (be sure to include vaping stores, Hookah bars, etc.)</td>
<td>If you do not have this information, consider first checking with your city or town clerk or finance department to get a list of all local business licenses. You may also consider contacting the Department of Revenue and the FDA NAICS.</td>
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<tr>
<td>Calculate the license fee</td>
<td>See the “cost of enforcement tool” provided by CSPH.</td>
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<tr>
<td>Modify/customize a license information packets or FAQ for your local retailers. CSPH TA has examples from other communities.</td>
<td>Keep the information short and sweet. They do not have a lot of time. Do not use jargon and confusing legal language. Keep it clear and simple.</td>
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<tr>
<td>Identify the License Administrator/issuer who provides and receives applications, collects fees, issues License</td>
<td>This is often the city or town clerk. <strong>IMPORTANT:</strong> For larger communities, you may need to develop a plan to stretch out the application process so they are not over-burdened by demand.</td>
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</tr>
<tr>
<td>Create an application packet for retailers. CSPH TA has a licensing toolkit with examples of these materials.</td>
<td>Frequently Asked Questions with contact information. Letter with a short summary of the ordinance, the cost, and contact</td>
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<tr>
<td>Create the actual License to be displayed in the retail outlet.</td>
<td>Usually done by the city clerk. CSPH TA has a model template that has been used by other communities in CO.</td>
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<tr>
<td>Create a notice of license suspension/revocation</td>
<td>This would be included in the retailer toolkit and in the ordinance.</td>
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<td></td>
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</tr>
<tr>
<td>Create a document detailing internal policies and procedures for your local licensing program. Include city administration and others at the table.</td>
<td>Some of this will be found in your ordinance language. Work with city/town administration to complete it and have all parties sign the final document.</td>
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<tr>
<td>Encourage city administration to create a new line item in the budget to house all licensing revenue.</td>
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<tr>
<td>Identify educational outreach and public relations activities to make sure all stakeholders are on the same page.</td>
<td>MEDIA! Coalition members, Elected officials, law enforcement agencies, businesses affected by the provisions of the law, general public. Consider using templates design developed for Aspen and Basalt for consistent branding of T21 in the mountain region</td>
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</tbody>
</table>

**Post Ordinance Passage - The Compliance Checks**

<table>
<thead>
<tr>
<th>Item</th>
<th>Tip</th>
<th>Notes/Outcome</th>
<th>Person(s) responsible</th>
<th>Date completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work with city officials and</td>
<td><em>Studies have shown that tobacco law</em></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Item</td>
<td>Tip</td>
<td>Notes/Outcome</td>
<td>Person(s) responsible</td>
<td>Date completed</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
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</tr>
<tr>
<td>enforcement agency to decide how often retailers will be inspected</td>
<td>enforcement efforts, with retailer education, reduce illegal sales of tobacco products to minors. Similarly, studies support effective law enforcement as an essential component of a comprehensive tobacco control program. <strong>What isn’t in the literature is the number of checks per year that should be conducted.</strong> Encourage at least <strong>two unannounced compliance checks for each tobacco retailer per year.</strong> Violators should be rechecked within <strong>X months.</strong> In large cities, you may need to check a % of retailers.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Decide which retailers will be inspected during an operation.</td>
<td>This usually depends on the size of community and # of retailers. It might be X% of retailers 2X a year. It might be all retailers. Work with the enforcing agency (usually police). You may have to focus on retailers within X distance from a school if a large community.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Decide which requirements and prohibitions will be enforced.</td>
<td>Review the language in the ordinance and prioritize for compliance checks.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identify who will conduct the operations</td>
<td>Local law enforcement, code division, health department, etc. – a new funding stream has been created to support stronger compliance checks</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Encourage city administration to work with the enforcement agency to</td>
<td>A line item should be established in the city budget to cover the cost of invoiced time.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedure to cover the cost of enforcement.</td>
<td><strong>Draft Document</strong></td>
<td></td>
<td></td>
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<tr>
<td>-------------------------------------------</td>
<td>-------------------</td>
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<td></td>
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</tr>
<tr>
<td>Create a database for compliance results</td>
<td>You'll have to work closely with the enforcement agency to obtain this data. Make sure you have a baseline pre-ordinance – this means trying to do undercover buys before the policy passes. How will you track current inspections from DOR and FDA? Who is responsible?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For those who fail inspection, when will they be rechecked?</td>
<td>Within 30 days, within 60 days? How will they be rechecked - undercover buy?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For those who fail inspection, who will review DOR/FDA inspection data to see if they have additional marks?</td>
<td>Those will count against a license – need to track all sources to see what their penalty is. Who will have final say on # of penalties in a timeframe?</td>
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<tr>
<td>Who will send the notice of non-compliance (and compliance)</td>
<td>Retailers usually like to know when they passed, as well as failed, inspection</td>
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<tr>
<td>Who will send notice of suspension or notice of violation and date of hearing?</td>
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<tr>
<td>Decide when to conduct re-inspection of failed retailers</td>
<td>Work closely with city manager and enforcing agency on what is realistic</td>
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<tr>
<td>Determine whether violations automatically trigger a hearing or if hearings are a right upon appeal</td>
<td>Work with city attorney and city manager on these important and often overlooked details</td>
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<tr>
<td>Identify which agency will hold the administrative hearings</td>
<td>Check with the city attorney. There is probably a protocol already in place.</td>
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<tr>
<td>Identify who will serve as the hearing officer (e.g. city manager, existing hearing officer, etc.)</td>
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<tr>
<td>Create a system to track suspension and account for the</td>
<td>This look-back period should be in the ordinance language.</td>
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</table>
### "look-back" period (the period in which multiple violations are counted).

<table>
<thead>
<tr>
<th>Minor Operative Item</th>
<th>Tip</th>
<th>Notes/Outcome</th>
<th>Person(s) responsible</th>
<th>Date completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identify who will recruit for the minor operative program.</td>
<td><em>Don’t forget to obtain parental consent. If it is a small town, consider recruiting youth from a neighboring community.</em></td>
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<tr>
<td>Identify who will train youth for the minor operative program.</td>
<td><em>Sometimes DOR is available to do the training or offer guidance. Most local PD’s are very experienced in this from their alcohol work.</em></td>
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<tr>
<td>Obtain parental consent letters and Immunity letters from the District Attorney</td>
<td><em>CSPH TA has a template for parental consent and Immunity from DA.</em></td>
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</table>

### On-going Maintenance

<table>
<thead>
<tr>
<th>Item</th>
<th>Tip</th>
<th>Notes/Outcome</th>
<th>Person(s) responsible</th>
<th>Date completed</th>
</tr>
</thead>
</table>
| Determine what activities you will conduct to demonstrate ongoing support for the law: | • Sponsor recognition events for the public officials who supported the new law  
• Conduct educational visits to elected officials to inform them of the success of the law and the public support for the law  
• Continue to provide education to retailers on the new law and state |               |                       |                |
<table>
<thead>
<tr>
<th>and federal tobacco laws.</th>
<th>Issue a year-end report to key stakeholders (police, decision-makers, city officials) with data from your evaluation demonstrating compliance with the law</th>
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</thead>
<tbody>
<tr>
<td>Evaluate the number of compliance checks conducted annually; the number of stores assessed during each check, the number of stores that pass and the number of stores that fail.</td>
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<tr>
<td>Develop an anniversary event to remind the public and key opinion leaders and retailers of the law and its goals.</td>
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