## CARBONDALE BOARD OF TRUSTEES
### REGULAR MEETING
### AUGUST 27, 2019

CARBONDALE TOWN HALL
511 COLORADO AVENUE
6:00 P.M.

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<td>b. BOT 8-13-2019 Regular Meeting Minutes</td>
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<td>c. Resolution No. 8 Series of 2019 – Supporting FMLA Grant for Radio Upgrade</td>
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<td>e. Resolution No. 9 Series of 2019 – FMLD Mini Grant – Shade Structure at Pickleball Courts</td>
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<td>g. Retail Marijuana Store Renewal Application – High Q</td>
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<td><strong>Public Hearing</strong> – Village Lane North Townhomes</td>
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<td>Applicant: CBS Village Lane, LLC</td>
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<td>Ordinance 13 Series of 2019 – Establishing Licensing for Sale of Nicotine Products and Regulating the Sale of Tobacco Products</td>
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| 8:15 | 10. | Administrative Reports/Minutes  
|      | a.   | Planning and Zoning 7-11-2019 Minutes  
|      | b.   | Board of Adjustment 6-10-2019 Minutes  
|      |      | ATTACHMENT K Information Only  
| 8:15 | 11. | Adjourn  

* Please note: times are approximate
Board of Trustees Agenda Memorandum

Item No: Attachment A
Meeting Date: 08.27.2019

TITLE: Accounts Payable

SUBMITTING DEPARTMENT: Finance

ATTACHMENTS: Accounts Payable for 08.27.2019

DISCUSSION: The accounts payable include a payment to the Aspen Hope Center for $40,725.00. This is a reimbursement grant and the funds will be reimbursed in the coming month. Big Country Electrical installed solar lights in the Colorado Meadows neighborhood for $14,075.00. GMCO completed the chip sealing in various areas around town for $109,118.25.

The payroll for 8.9.19 was $174,379.46. Tax liability for the town was $10,246.47. Pension and Retirement liability was $10,521.60.

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

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Total 75-4500-3450: 36.18

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MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
AUGUST 13, 2019

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on August 13, 2019, at 6:00 p.m. in the Town Hall meeting room.

ROLL CALL:

The following members were present for roll call:

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

Arrived After Roll Call
Heather Henry

Absent
Luis Yllanes

Staff Present:

Town Manager
Jay Harrington
Town Clerk
Cathy Derby
Finance Director
Renae Gustine
Town Attorney
Tarn Udall

CONSENT AGENDA

- Accounts Payable totaling: $552,085.11
- BOT 7/23/19 Regular Meeting Minutes
- Ordinance No. 11, Series of 2019 – Amending Smoking Regulations
- Liquor License Renewal - Carbondale Beer Works
- Liquor License Renewal – Mings
- Liquor License Renewal – White House Pizza
- Liquor License Renewal – Black Nugget
- Recommendation for Appointment – Historic Preservation Commission

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

4 yes votes: Silverstein, Sparhawk, Kitching, Richardson
Trustee Meeting Minutes
August 13, 2019

Trustee Henry arrived at the meeting.

**PERSONS PRESENT NOT ON THE AGENDA**

Wildemess Workshop employee Alicia Zeringue asked the Board to consider signing a letter regarding changes to the National Environmental Policy Act (NEPA) regulations. She explained that the changes would scale back how the Forest Service analyzes forest impacts. She noted that NEPA allowed the Town to challenge the Thompson Divide oil/gas leases – it’s an incredibly important process. She stated that Aspen, Glenwood Springs, Eagle County and Pitkin County are aligning on the issue.

Trustee Henry, who is familiar with the changes, stated that the modifications have been worked on for years and it is unfair to the Forest Service to politicize the changes. If the Trustees submit a letter we should go through the categorical exclusions and only address the ones that are relevant to us. After a short discussion the Board respectfully declined to submit a letter at this time. Alicia noted that anyone can submit a personal letter.

**TRUSTEE COMMENTS**

Mayor Richardson informed the Board that tomorrow is Angie Sprang’s last day working for the Town. He thanked her for all of her help with Board projects. He said she’s responsible for the Board being so effective.

Mayor Richardson stated that the Oil & Gas Commission is looking for a local community designee. Usually this position is not held by an elected official. Jay will appoint an employee as the designee.

Mayor Richardson stated that the Colorado Municipal League (CML) district meeting is September 11th in Parachute.

Mayor Richardson received a request from the Colorado Municipal League for a Trustee to sit on the CML Policy Committee with other elected officials. No one volunteered.

Mayor Richardson told the Board that he is disappointed that Congressman Tipton’s Colorado Recreation Enhancement and Conservation (REC) Act doesn’t include Thompson Divide.

Trustee Silverstein stated that the Board received notice that police lieutenant Chris Wurtsmith and police chief Gene Schilling will be retiring next year. He said they represent community policing at its best.

Trustee Silverstein stated that Senior Matters needs volunteers for the rodeo.

Trustee Silverstein informed the Board that last Sunday was the third of the four concerts in the concerts in the park series. It was well attended.
Trustee Silverstein announced that Friday is KDNK's Hoot event.

Trustee Silverstein stated that the Our Town, One Table event is Sunday.

Trustee Sparhawk stated that she attended the Chamber Board meeting – membership is strong.

Trustee Sparhawk attended the Colorado Communities for Climate Action meeting. She co-authored an op-ed piece weighing in on Air Quality and Zero Emission Standards.

Trustee Sparhawk thanked staff and Carbondale Arts for a wonderful Mountain Fair.

Trustee Kitching thanked Mayor Richardson for writing the op-ed article on vaping.

Trustee Silverstein stated that the mobility survey was sent to the seniors at Crystal Meadows.

**ATTORNEY'S COMMENTS**

The Attorney did not have any comments.

**SPECIAL EVENT LIQUOR LICENSE – WILDERNESS WORKSHOP**

Wilderness Workshop has applied for a Special Event Liquor License for their annual party which will be held at Sopris Park. They asked to amend their application to include a bounce house and to change the start time to 4:00 p.m. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve Wilderness Workshop's Special Event Liquor License with the changes requested above. Trustee Silverstein seconded the motion and it passed with:

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

**SPECIAL EVENT LIQUOR LICENSE – COLORADO ANIMAL RESCUE**

Colorado Animal Rescue has applied for a Special Event Liquor License for their annual fundraiser which will be held at the 4th Street Plaza. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trustee Silverstein made a motion to approve Colorado Animal Rescue's Special Event Liquor License. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Henry, Sparhawk, Richardson, Silverstein, Kitching, Bohmfalk
SPECIAL EVENT LIQUOR LICENSE – CARBONDALE CLAY CENTER

Carbondale Clay Center has applied for a Special Event Liquor License for their annual fundraiser. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

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

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

PUBLIC HEARING – TRANSFER OF LIQUOR LICENSE – RHUMBA GIRL LIQUOR
Applicant: Rodney Turner
Location: 1310 Highway 133

Rhumba Girl Liquor has applied for a transfer of a retail store liquor license. All fees have been paid and the Police Department has reported no problems with the applicant or the premises. The police recommend approval.

Mayor Richardson opened the public hearing. There was no one present who wished to address the Board so Mayor Richardson closed the public hearing.

Trustee Silverstein made a motion to approve the transfer of Rumba Girl Liquor’s retail store license. Trustee Sparhawk seconded the motion and it passed with:

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

ORDINANCE NO. 12, SERIES OF 2019 – EXPANDING THE PLASTIC BAG BAN

Trustee Silverstein stated that at the last meeting the Trustees asked the Environmental Board (Eboard) if they had contacted the store owners who would be impacted by an expanded plastic bag ban. It was discovered that the correct people were not contacted and they feel that they have been blindsided.

Trustee Henry apologized that more outreach was not done. It was not the Eboard’s intent to not communicate with the retailers.

Trustee Silverstein stated that the intent of the expansion was to get rid of plastic bags, yet three of the four retailers don’t provide plastic bags to customers. Trustee Silverstein believes that the expansion will put the retailers at a competitive disadvantage. There are also cultural considerations. Trustee Bohmfalk shares Trustee Silverstein’s concerns but if it is in the best interest of the Town he will support the ban regardless of opposition by the retailers. Trustee Bohmfalk stated he is willing to change the amount the retailer can keep if it is onerous to collect the fee.

Mayor Richardson opened the meeting to public comment.
Federico Pena, owner of Sopris Liquor and Wine, stated that he is in favor of doing the right thing to save the environment. He is disappointed with the lack of communication by the Eboard. Lack of communication led to misinformation. Sopris Liquor has never provided plastic bags. He believes the expanded ban will put him at a competitive disadvantage because he will have to charge for paper bags; some of his customers will go elsewhere. He asked the Trustees if they want to see people walking around town with liquor bottles. If we expand the ban it should include all retailers – ban plastic throughout town and don’t charge a fee for a paper bag. There is also a cultural factor: 70% of the paper bags are provided to Latino customers who don’t want to draw attention to themselves.

Chris Peterson, of ACE Hardware, stated that he put the ban through the Rotary 4-Way test and if failed every part of the test. He respects the difference the Town is trying to make. He is surprised Kroeger didn’t sue the Town for being singled out during the initial ban. ACE will not be distributing (paper) bags once their plastic bag supply runs out because collecting a bag fee will be a nightmare. He asked the Board to change the definition of disposable bag by removing the door hanger bag. Also, change the definition of grocer to: any seller of goods located within the Town’s limits. He didn’t hear about this proposal until last Friday. He asked the Board to consider passing a resolution stating that they won’t pass an ordinance without contacting those who will be impacted prior to the hearing.

Colin Quinn, Chair of the Eboard, apologized that there wasn’t enough outreach. They support the town business owners. He is happy to revisit the ordinance.

Will Grambois, Editor of the Sopris Sun, stated that the Sun did an article on the proposed ban on May 15th and then they covered it again on July 24th. He would like to know how the press failed so they can do a better job.

Mayor Richardson stated that he agrees with most of the comments made except a resolution requiring every stakeholder who will be impacted be contacted – it’s not realistic. He doesn’t want to put any business in an unfair competitive disadvantage and it seems the fee complicates things for our businesses.

Trustee Henry stated that she appreciates the Rotary 4-way test. The decisions we make today should impact the next seven future generations. She heard tonight that there is support for a town-wide ban. The intent of the original ban was never to just have the ban exclusively at City Market, it was eventually going to expand. She agrees that the fee structure over complicates things. If expanded, the town-wide bag fee doesn’t make sense. Hiring a consultant to tackle reducing plastic makes sense.

Trustee Silverstein stated that the paper bag fee puts undue burden on businesses. The goal is to get rid of plastic bags.

Trustee Kilching stated that she is uncomfortable supporting the ordinance as written without fully understanding the financial impact it will have on businesses.
Trustee Bohm Falk stated he was initially sceptic about expanding the ban. The ordinance needs more work; he is not comfortable with it as written. He is worried that we are focusing on one small aspect of a problem – it can distract us. The paper bag fee presents a challenge. He noted that paper bags create a bigger carbon problem than plastic. The consumer needs to be incentivized to not get any bags which would require a fee. We should hire a consultant to help us research the issue and do the outreach.

Trustee Silverstein stated that hiring a consultant is a good idea; we need professional help. Whole Foods gives you a credit if you bring bags; it gives the customer a positive incentive to bring their own bags.

Mayor Richardson stated that three of the four businesses the ban would affect don’t distribute plastic bags. The fee has a competitive disadvantage. He does not support the ordinance. He agrees that the Town should hire a consultant.

Patrick Hunter, Eboard member, stated that it was never the intention of the Eboard to have stores switch to paper, it was to get rid of plastic. We are trying to change behavior and perceptions. A fee will make people change their habits.

The Board supported the idea of developing a scope of work and hire a consultant.

**UPDATE ON CRYSTAL RIVER PROJECT**

Jason Jaynes, representing DHM, and Quinn Donnelly, representing RiverRestoration, were present at the meeting.

They said that the project team developed two alternatives for the project area. A series of meeting were held and the stakeholders preferred to include components from both concept alternatives. The components they will be focusing on include:

- Accessible walk/stair improvements from the north side of Crystal Bridge Dr.
- Create defined access points to the river to help protect restored bank areas
- Improve existing trails
- Minimize impacts to healthy areas of the park and focus on improvements in degraded areas
- Install a kiosk with interpretive signage and a split rail fence and gate for seasonal closure
- Protect and enhance the riparian area
- Protect bird habitat
- Protect the existing wetland areas
- Improve the Weaver Headgate
- Re-establish the low flow channel
- Undertake bank improvements

Discussion ensued.
Trustee Henry asked what is the fiscal plan for long-term maintenance. Jay answered that it’s an on-going discussion.

The Board thanked Jason and Quinn for incorporating the stakeholder priorities – it dovetails with water education, water efficiency, and age friendly accessibility.

**BOARD OF TRUSTEES 2020 GOALS**

Mayor Richardson explained that identifying goals serves as guidance for budget issues.

Discussion ensued and the Board agreed to the following 2020 goals:

- Reducing Plastics
- Water Resiliency
- Capital Planning
- Workforce Housing
- Mobility
- Nicotine Policy

**ADJOURNMENT**

The August 13, 2019, regular meeting adjourned at 8:55 p.m. The next scheduled meeting will be held on August 27, 2019, at 6:00 p.m.

APPROVED AND ACCEPTED

_____________________________
Dan Richardson, Mayor

ATTEST:

_____________________________
Cathy Derby, Town Clerk
RESOLUTION NO. 8
SERIES OF 2019

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

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

B. WHEREAS, the Carbondale Police Department has submitted a Grant Application for the Purchasing and Converting Radios requesting a total award of $53,815; and

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

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

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

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

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

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

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

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

PASSED AND APPROVED ON: ____________________________

ATTEST: APPROVED BY:

Name: ____________________________ Name: ____________________________

Title: ____________________________ Title: ____________________________

Date: ____________________________ Date: ____________________________
To: Mayor Dan Richardson and
    Carbondale Board of Trustees

From: Gene Schilling
    Chief of Police, Carbondale Police Department

Ref.: Liquor License Renewal Application for Phat Thai

Date: August 21, 2019

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

Lari Ann Goode / Manager

I have found no liquor violation records that would cause me to recommend denial of this liquor license renewal.
Retail Liquor or Fermented Malt Beverage License Renewal Application

Please verify & update all information below

Licensee Name
THREE 43 MAIN INC

Doing Business As Name (DBA)
PHAT THAI

Liquor License #
07-72538-0000

License Type
Hotel & Restaurant (city)

Sales Tax License #
07725380000

Expiration Date
11/12/2019

Due Date
09/28/2019

Business Address
343 MAIN ST Carbondale CO 81623

Phone Number
9709637000

Mailing Address

Email

Operating Manager
LAZI (joone)

Date of Birth

Home Address

Phone Number

Date Filing of Last Application

1. Do you have legal possession of the premises at the street address above? □ Yes □ No

2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. □ Yes □ No

3. 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

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

5. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or leasers (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

6. Does the applicant or any of its agents, owners, managers, partners or leasers (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.

Signature

Date

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

Therefore this application is approved.

Local Licensing Authority For

Signature

Date

Attest

LIST OF LIQUOR LICENSES WITH DIRECT INTERESTS FROM OWNERS

Three43Main Inc.
Liquor License #07-72538-000

The Pullman LLC
Liquor License #14-43114-0000
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: August 27th, 2019

TITLE: GCFMLD North Face Park Shade & Shelter Project Mini-Grant Resolution No.9, Series of 2019

SUBMITTING: Parks & Recreation Department

ATTACHMENT: Resolution No. 9 - Series of 2019

Background:
Town staff, with help from the Roaring Fork Pickleball Association is submitting a Fall 2019 Garfield County Federal Mineral Lease District (GCFMLD) mini-grant application for the purchase and installation of a shade and shelter structure at the North Face Park. This would be located between the existing Darien Tennis courts and the future pickleball courts, providing a shaded area that could also be used for shelter with adverse weather.

Discussion:
This project is in alignment with the 2015 Parks, Recreation & Trails Master Plan which stated the following in recommendation. Within the GCFMLD grant application a Resolution is required from the Town governing body indicating their support for the grant submittal.

Fiscal Financial Implications:
The shade and shelter structure would be purchased and installed if the grant is received for $25,000. A local Town of Carbondale match is not required for the mini-grant program.

Recommendation:
Adoption of Resolution No.9 - 2019 supporting town submittal of a Fall 2019 GCFMLD mini-grant application.

Prepared By: Eric Brendlinger, Parks & Recreation Director

Jay Harrington
Town Manager
RESOLUTION NO. 9
SERIES OF 2019

RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A GRANT FROM THE
GARFIELD COUNTY FEDERAL MINERAL LEASE DISTRICT AND FOR THE NORTH
FACE PARK SHADE AND SHELTER PROJECT

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

WHEREAS: The Town of Carbondale has submitted a mini-grant application for public park shade and shelter project to the following municipal park lands: North Face Park, between the Darien Tennis Courts and the future pickleball court complex, requesting a total award of $25,000.00 from GCFMLD to complete the project; and

WHEREAS: The Town of Carbondale supports the grant to build a shade and shelter structure at the North Face Park if a grant is awarded by the GCFMLD.

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

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

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

3. If the grant is awarded, the Board of Trustees of the Town of Carbondale strongly supports the installation of a shade and shelter structure project at North Face Park.

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

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

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

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

PASSED AND APPROVED ON: ____________________________

APPROVED BY: _______________________________  
Dan Richardson, Mayor

ATTEST:

_____________________________  
Cathy Derby, Town Clerk
RESOLUTION NO. 10
SERIES OF 2019

A RESOLUTION UPDATING THE FEE SCHEDULE SET FORTH IN “APPENDIX A” OF THE CARBONDALE MUNICIPAL CODE

WHEREAS, Appendix A of the Carbondale Municipal Code sets forth a list of fees and charges for various Town services; and

WHEREAS, the current version of Appendix A was adopted pursuant to Resolution No. 2, Series of 2016, and later amended by Resolution No. 10, Series of 2016, Resolution No. 6, Series of 2017, Resolution No. 3, Series of 2018, Resolution No. 16, Series of 2018, and Resolution No. 2, Series of 2019.

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

Appendix A of the Carbondale Municipal Code is hereby revised and superseded by the amended Appendix A attached to this Resolution. The Town Clerk is directed to update the Carbondale Municipal Code accordingly.

INTRODUCED, READ AND PASSED this ___ day of August, 2019.

TOWN OF CARBONDALE

________________________
Dan Richardson, Mayor

ATTEST:

________________________
Cathy Derby, Town Clerk
APPENDIX A - FEE SCHEDULE

This Appendix contains the Fee Schedule for the Town of Carbondale. The Fee Schedule may be amended by resolution of the Board of Trustees. In the event of a conflict between the fees, costs, deposits, occupation taxes and other charges listed in this Appendix A and the text of any individual section of the Code, the fees, costs and deposits of this Appendix shall control.

<table>
<thead>
<tr>
<th>Code Section</th>
<th>Fee-Charge</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td></td>
<td><strong>Chapter 2</strong></td>
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<tr>
<td>2-4-120</td>
<td>Municipal Court costs</td>
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<td>2-5-80</td>
<td>VIN inspection, certified</td>
<td>$20.00</td>
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<td></td>
<td>VIN inspection</td>
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<td></td>
<td><strong>Chapter 4</strong></td>
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<td>4-3-310</td>
<td>Special event</td>
<td>$15.00</td>
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<tr>
<td>4-3-320</td>
<td>Sales tax license</td>
<td>$25.00</td>
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<tr>
<td></td>
<td><strong>Chapter 6</strong></td>
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<tr>
<td>6-2-110</td>
<td>Adult entertainment establishment license</td>
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<tr>
<td></td>
<td>Annual fee</td>
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<tr>
<td></td>
<td>Transfer of location or ownership</td>
<td>$550.00</td>
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<tr>
<td></td>
<td>Renewal</td>
<td>$400.00</td>
</tr>
<tr>
<td>6-2-190</td>
<td>Sexually oriented business license transfer</td>
<td>20% of original annual license fee</td>
</tr>
<tr>
<td>6-2-230</td>
<td>Sexually oriented business employee license</td>
<td>$50.00</td>
</tr>
<tr>
<td>Service Description</td>
<td>Fee</td>
<td>Renewal</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------</td>
<td>---------</td>
</tr>
<tr>
<td>Contractors' license fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General contractor (unlimited)</td>
<td>$250.00</td>
<td>$175.00</td>
</tr>
<tr>
<td>General contractor (commercial)</td>
<td>$250.00</td>
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<tr>
<td>General contractor (light commercial)</td>
<td>$250.00</td>
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<tr>
<td>General contractor (homebuilder)</td>
<td>$200.00</td>
<td>$125.00</td>
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<tr>
<td>Specialty</td>
<td>$100.00</td>
<td>$75.00</td>
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<tr>
<td>Contractor testing</td>
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<td>$1.00 per question</td>
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**Medical marijuana center, medical marijuana-infused product manufacturing facility, optional premises cultivation facility. Application fee is non-refundable.**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee</th>
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<tbody>
<tr>
<td>New license application</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Criminal background check, fingerprinting</td>
<td>Actual costs</td>
</tr>
<tr>
<td>New owner application for transfer</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Transfer of ownership, reallocation among current owners</td>
<td>$250.00</td>
</tr>
<tr>
<td>Transfer of location</td>
<td>$750.00</td>
</tr>
<tr>
<td>Modification or alteration of premises</td>
<td>$150.00</td>
</tr>
<tr>
<td>Modification of application</td>
<td>$100.00</td>
</tr>
<tr>
<td>Annual license renewal</td>
<td>$500.00</td>
</tr>
<tr>
<td>Late renewal fee</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>6-4-140</td>
<td></td>
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<tr>
<td>Permit Type</td>
<td>Fee</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Annual educational licensing fee</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Retail marijuana store, retail marijuana cultivation facility, retail marijuana product manufacturing facility, retail marijuana testing facility. Application fee is non-refundable.</td>
<td></td>
</tr>
<tr>
<td>Annual fee</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Criminal background check, fingerprinting</td>
<td>Actual costs</td>
</tr>
<tr>
<td>New owner application for transfer</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Transfer of ownership, reallocation among current owners</td>
<td>$250.00</td>
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<tr>
<td>Transfer of location</td>
<td>$750.00</td>
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<tr>
<td>Modification or alteration of premises</td>
<td>$150.00</td>
</tr>
<tr>
<td>Modification of license</td>
<td>$100.00</td>
</tr>
<tr>
<td>Annual license renewal</td>
<td>$500.00</td>
</tr>
<tr>
<td>Late renewal fee</td>
<td>$1,000.00</td>
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<tr>
<td>Mobile vendor permit</td>
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<tr>
<td>Tobacco product retail license or new application for transfer</td>
<td>$200.00</td>
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<td>Tobacco product retail license renewal</td>
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**Chapter 7**

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<td>Trash hauler permit</td>
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<tr>
<td>Dog license</td>
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<td>Non-neutered, nonspayed dog (3 year license)</td>
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<tr>
<td>Date</td>
<td>Service Description</td>
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<tr>
<td>------------</td>
<td>----------------------------------------------------------</td>
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<tr>
<td>7-6-170</td>
<td>Neuter, spayed dog (3 year license)</td>
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<tr>
<td></td>
<td>Dog impound (initial)</td>
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<tr>
<td></td>
<td>Impound per day</td>
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<td></td>
<td>Vaccination</td>
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**Chapter 11**

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<tr>
<td>11-2-20</td>
<td>Excavation permit application</td>
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<td>Cemetery rates</td>
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<tr>
<td></td>
<td>Purchase price of 5' x 10' lot</td>
<td>$250.00</td>
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<tr>
<td></td>
<td>Grave opening and closing (casket)</td>
<td>$300.00</td>
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<tr>
<td></td>
<td>Burial of cremains (per cremains)</td>
<td>$150.00</td>
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<tr>
<td></td>
<td>Disinterment</td>
<td>$100.00/hour</td>
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<tr>
<td></td>
<td>Reinterment</td>
<td>$250.00</td>
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<td></td>
<td>Perpetual care (Evergreen Cemetery only—payment of this fee is required at the time of grave opening or closing.)</td>
<td>$250.00</td>
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</tbody>
</table>

**Chapter 13**

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<tr>
<th>Date</th>
<th>Service Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>13-2-70</td>
<td>Water reconnection fee plus late fee</td>
<td>$25.00 plus $25.00</td>
</tr>
<tr>
<td></td>
<td>Water rates—Residential</td>
<td></td>
</tr>
<tr>
<td>13-3-70</td>
<td>Monthly minimum base rate In-Town</td>
<td>$21.84</td>
</tr>
<tr>
<td></td>
<td>Monthly minimum base rate out-of-Town</td>
<td>$32.74</td>
</tr>
<tr>
<td>Usage block (gallon)</td>
<td>Per 1,000 gal. in-Town</td>
<td>Per 1,000 gal. out-of-Town</td>
</tr>
<tr>
<td>----------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>0—6,000 gallons</td>
<td>$1.82</td>
<td>$2.78</td>
</tr>
<tr>
<td>6,000—15,000</td>
<td>$2.52</td>
<td>$3.83</td>
</tr>
<tr>
<td>15,000—40,000</td>
<td>$3.21</td>
<td>$4.81</td>
</tr>
<tr>
<td>Over 40,000</td>
<td>$3.88</td>
<td>$5.82</td>
</tr>
</tbody>
</table>

*Water rates—Commercial*

<table>
<thead>
<tr>
<th>Monthly minimum base rate in-Town</th>
<th>$21.84</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly minimum base rate out-of-Town</td>
<td>$32.74</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Usage block (gallons)</th>
<th>Per 1,000 gal. in-Town</th>
<th>Per 1,000 gal. out-of-Town</th>
</tr>
</thead>
<tbody>
<tr>
<td>n/a</td>
<td>$2.97</td>
<td>$4.44</td>
</tr>
</tbody>
</table>

*Waste water rates—Residential*

<table>
<thead>
<tr>
<th>Monthly minimum base rate in-Town</th>
<th>$12.86</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly minimum base rate out-of-Town</td>
<td>$19.30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Usage block (gallon)</th>
<th>Per 1,000 gal. in-Town</th>
<th>Per 1,000 gal. out-of-Town</th>
</tr>
</thead>
<tbody>
<tr>
<td>0—1,000 gallons</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Over 1,000</td>
<td>$7.16</td>
<td>$10.74</td>
</tr>
</tbody>
</table>

*Waste water rates—Commercial*

<p>| Monthly minimum base rate in-Town | $12.86 |</p>
<table>
<thead>
<tr>
<th>Monthly minimum base rate out-of-Town</th>
<th>$19.30</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Usage block (gallon)</strong></td>
<td><strong>Per 1,000 gal. in-Town</strong></td>
</tr>
<tr>
<td>0—1,000 gallons</td>
<td>$0.00</td>
</tr>
<tr>
<td>Over 1,000</td>
<td>$7.16</td>
</tr>
<tr>
<td><strong>Bulk Water Charges</strong>&lt;sup&gt;1&lt;/sup&gt;</td>
<td><strong>Base Rate</strong></td>
</tr>
<tr>
<td>Nonpotable water</td>
<td>$38.28/month</td>
</tr>
<tr>
<td>Potable water</td>
<td>$38.28/month</td>
</tr>
<tr>
<td>Building construction, water prior to water meter</td>
<td></td>
</tr>
<tr>
<td>Bulk water account charge</td>
<td></td>
</tr>
<tr>
<td>Administrative charge, account maintenance</td>
<td></td>
</tr>
<tr>
<td>Stormwater remediation</td>
<td></td>
</tr>
<tr>
<td>13-3-140</td>
<td>Utility shut-off or turn-on charge</td>
</tr>
<tr>
<td>13-3-170</td>
<td>Utility inspection fee</td>
</tr>
<tr>
<td>13-4-60</td>
<td>Service line extension from tap, new user</td>
</tr>
<tr>
<td>13-6-20</td>
<td>Waste of water reinstatement fee</td>
</tr>
<tr>
<td>13-10-100</td>
<td>Water rights dedication fee</td>
</tr>
<tr>
<td></td>
<td>Water rights dedication fee upon</td>
</tr>
<tr>
<td>annexation</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>15-1-30 Annexation petition (less than 10 acres)</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Annexation petition (more than 10 acres)</td>
<td>$1,800.00</td>
</tr>
<tr>
<td>Town-initiated annexation</td>
<td>$0.00</td>
</tr>
<tr>
<td>15-2-20 Deannexation or disconnection</td>
<td>$1,000.00</td>
</tr>
</tbody>
</table>

**BULK WATER CHARGES**

1 Bulk water is to be used only within the service area of the Town of Carbondale. Bulk water usage of 50,000 gallons or more must be approved by the Utility Director prior to use.

2 Please note that use of bulk water for fracking purposes is a violation of account terms and will result in the termination of bulk water privileges and possibly prosecution.

**POLICE DEPARTMENT FEES**

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fingerprint with card</td>
<td>$30.00</td>
</tr>
<tr>
<td>Fingerprint without card</td>
<td>$35.00</td>
</tr>
<tr>
<td>Background checks</td>
<td>$50.00</td>
</tr>
<tr>
<td>Accident reports</td>
<td>$10.00</td>
</tr>
<tr>
<td>CD duplication</td>
<td>$10.00 for CD; $10.00 for duplication</td>
</tr>
<tr>
<td>Records request</td>
<td>$10.00 search fee; plus $20.00 per hour personnel time; plus $0.25 per page</td>
</tr>
</tbody>
</table>

**GATEWAY RV PARK**

<p>| RV site with full hook-up (water, electric &amp; sewer) | Daily $40.00 | Weekly $252.00 | 14 Days $504.00 |</p>
<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community room rental</strong></td>
<td>Between 8:00 a.m.—5:00 p.m. $45.00, kitchen</td>
</tr>
<tr>
<td>Non-profit groups, fraternal, civic,</td>
<td>use $30.00;</td>
</tr>
<tr>
<td>educational, recreation programs,</td>
<td>After 5:00 p.m. $55.00, kitchen use $30.00;</td>
</tr>
<tr>
<td>meetings</td>
<td>$100.00 refundable damage deposit</td>
</tr>
<tr>
<td><strong>Park rental</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Events with less than 50 people</strong></td>
<td>$15.00, $100.00 refundable damage/cleaning</td>
</tr>
<tr>
<td>Alcohol permit</td>
<td>deposit $10.00</td>
</tr>
<tr>
<td><strong>Events 50—100 people</strong></td>
<td>$30.00, $100.00 refundable damage/cleaning</td>
</tr>
<tr>
<td>Alcohol permit</td>
<td>deposit $10.00</td>
</tr>
</tbody>
</table>

### TOWN POOL FEES

<table>
<thead>
<tr>
<th>Daily Admission</th>
<th>Resident (81623)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children 2 and under</td>
<td>Free</td>
</tr>
<tr>
<td>Youth (3-17) &amp; Seniors (62+)</td>
<td>$5.00</td>
</tr>
<tr>
<td>Adult (18+)</td>
<td>$7.00</td>
</tr>
<tr>
<td>20 Punch Pass</td>
<td></td>
</tr>
</tbody>
</table>
### Youth (3-17) & Seniors (62+)
- Adult (18+): $125.00
- Season pass (only valid in 2018): $104.00
- Adult (18+): $182.00
- Family: $344.00

### Pool pass & CRCC
#### Annual membership
- Youth (3-17) & Seniors (62+): $302.00
- Adult (18+): $529.00
- Family: $848.00

### Pool Pass & 3 Month CRCC Membership
- Youth/Senior: $155.00
- Adult: $265.00
- Household: $459.00

---

### TOWN FIELD, TENNIS COURT, PARK, AND ICE RINK RENTAL PERMIT

<table>
<thead>
<tr>
<th>Athletic Field of Play</th>
<th>Non-Profit/Local</th>
<th>For Profit/Non-Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per hour fee</td>
<td>$20.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>Per full day</td>
<td>$150.00</td>
<td>$175.00</td>
</tr>
<tr>
<td>*Season per head fee (club reg.)</td>
<td>$5.00</td>
<td>$10.00</td>
</tr>
<tr>
<td><strong>Seasonal rental for camps</strong></td>
<td>10% of gross profits</td>
<td>15% of gross profits</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td><em>Ice rink (Gus Doreen Ice Arena)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Half rink per hour</td>
<td>$20.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>Full rink per hour</td>
<td>$40.00</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

**CARBONDALE RECREATION AND COMMUNITY CENTER FEES**

*Daily Admissions*

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Children (2 &amp; under)</td>
<td>Free</td>
</tr>
<tr>
<td>Youth (3-17 years)</td>
<td>$5.00</td>
</tr>
<tr>
<td>Adult (18+ years)</td>
<td>$7.00</td>
</tr>
<tr>
<td>Seniors (62+ years)</td>
<td>$5.00</td>
</tr>
</tbody>
</table>

*Membership Fees*

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Youth (3-17 years) &amp; Senior (62+ years) Annual</td>
<td>$219.00</td>
</tr>
<tr>
<td>Youth (3-17 years) &amp; Senior (62+ years) Monthly</td>
<td>$29.00</td>
</tr>
<tr>
<td>Youth (3-17 years) &amp; Senior (62+ years) 3-Month</td>
<td>$72.00</td>
</tr>
<tr>
<td>Adult (18+ years) annual</td>
<td>$380.00</td>
</tr>
<tr>
<td>Adult (18+ years) monthly</td>
<td>$44.00</td>
</tr>
<tr>
<td>Adult (18+ years) 3-month</td>
<td>$116.00</td>
</tr>
</tbody>
</table>

*Household CRCC Memberships*

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Household* Monthly</td>
<td>$68.00</td>
</tr>
</tbody>
</table>
### Household* 3 Month
- $178.00

### Household* Annual
- $567.00

### 20-Visit Punch Pass

<table>
<thead>
<tr>
<th>Membership Type</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Youth (3-17 years) &amp; Senior (62+ years)</td>
<td>$89.00</td>
</tr>
<tr>
<td>Adult (18+ years)</td>
<td>$125.00</td>
</tr>
</tbody>
</table>

*Household Memberships: Must reside full-time in the same residence. Maximum 2 adults 1

---

### PRIVATE LESSONS AND PERSONAL TRAINING FEES

<table>
<thead>
<tr>
<th>Session Type</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Private Session</td>
<td>$50.00/hr</td>
</tr>
<tr>
<td>3 Private Sessions</td>
<td>$135.00 (1 hour each)</td>
</tr>
<tr>
<td>5 Private Sessions</td>
<td>$200.00 (1 hour each)</td>
</tr>
<tr>
<td>10 Private Sessions</td>
<td>$450.00 ($45.00/hr)</td>
</tr>
<tr>
<td>20 Private Sessions</td>
<td>$800.00 ($40.00/hr)</td>
</tr>
<tr>
<td>1 Buddy Session</td>
<td>$60.00 (2 people) &amp; $75.00 (3—4 people) 1 hour each</td>
</tr>
<tr>
<td>3 Buddy Sessions</td>
<td>$165.00 (2 people) &amp; $210.00 (3—4 people) 1 hour each</td>
</tr>
<tr>
<td>5 Buddy Sessions</td>
<td>$250.00 (2 people) &amp; $325.00 (3—4 people)</td>
</tr>
<tr>
<td>10 Buddy Sessions</td>
<td>$550.00 2 people/$650.00 3 people</td>
</tr>
<tr>
<td>20 Buddy Sessions</td>
<td>$1,000.00 2 people/$1,200.00 3 people</td>
</tr>
<tr>
<td>Body Composition Testing</td>
<td>$20.00</td>
</tr>
<tr>
<td>Body Composition Testing and Fitness Assessment</td>
<td>$50.00</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Body Composition Testing + Fitness Assessment + Detailed Fitness Plan</td>
<td>$90.00</td>
</tr>
</tbody>
</table>

**CARBONDALE RECREATION AND COMMUNITY CENTER PARTY PACKAGES RENTAL FEES**

<table>
<thead>
<tr>
<th>Gymnasium</th>
<th>$130.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gymnasium &amp; bounce house</td>
<td>$210.00</td>
</tr>
<tr>
<td>Climbing wall</td>
<td>$180.00</td>
</tr>
<tr>
<td>Party attendant</td>
<td>$50.00</td>
</tr>
<tr>
<td>Gym &amp; climbing wall</td>
<td>$260.00</td>
</tr>
<tr>
<td>Bounce house</td>
<td>$75.00</td>
</tr>
</tbody>
</table>

**CARBONDALE RECREATION CENTER AMENITY RENTAL FEES CLIMBING WALL RENTAL FEES**

<table>
<thead>
<tr>
<th>Non-Profit/Youth/Senior/Government</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Climbing wall</td>
<td>$46.00</td>
<td>$231.00</td>
<td>$100.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General/Business Use</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Climbing wall</td>
<td>$69.00</td>
<td>$347.00</td>
<td>$100.00</td>
</tr>
</tbody>
</table>
### Additional Staff Time

<table>
<thead>
<tr>
<th>Additional Staff Time</th>
<th>Per Hour</th>
<th>Day Rate (6 + hours)</th>
<th>n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendant #1</td>
<td>$24.00</td>
<td>$100.00</td>
<td></td>
</tr>
<tr>
<td>Attendant #2</td>
<td>$24.00</td>
<td>$100.00</td>
<td></td>
</tr>
</tbody>
</table>

### Gymnasium Rental Fees

<table>
<thead>
<tr>
<th>Non-Profit/Youth/Senior/Government</th>
<th>Per Hour</th>
<th>Day Rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full gymnasium rental</td>
<td>$92.00</td>
<td>$462.00</td>
<td>$300.00</td>
</tr>
<tr>
<td>1/2 gymnasium rental</td>
<td>$46.00</td>
<td>$231.00</td>
<td>$150.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General/Business Use</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full gymnasium rental</td>
<td>$116.00</td>
<td>$578.00</td>
<td>$300.00</td>
</tr>
<tr>
<td>1/2 gymnasium rental</td>
<td>$58.00</td>
<td>$289.00</td>
<td>$150.00</td>
</tr>
</tbody>
</table>

### Facility Room Rental Fees

<table>
<thead>
<tr>
<th>Non-Profit/Youth/Senior/Government</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitchen</td>
<td>$35.00</td>
<td>$173.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$29.00</td>
<td>$147.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>Lobby &amp; patio</td>
<td>$21.00</td>
<td>$105.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>General/Business Use</td>
<td>Per hour</td>
<td>Day rate (6 + hours)</td>
<td>Deposit</td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------</td>
<td>----------------------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kitchen</td>
<td>$46.00</td>
<td>$231.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$35.00</td>
<td>$173.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>Lobby &amp; patio</td>
<td>$23.00</td>
<td>$116.00</td>
<td>$100.00</td>
</tr>
</tbody>
</table>

**CARBONDALE RECREATION CENTER AMENITY RENTAL FEES**

*Special Events (open to the public with 250 or less participants, or private event with 200 or less)*

*Bold Rates Represent When Alcohol Is Served*

<table>
<thead>
<tr>
<th>Non-Profit/Youth/Senior/ Government</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full gymnasium rental</td>
<td>$92.00/ $121.00</td>
<td>$462.00/ $604.00</td>
<td>$300.00/ $600.00</td>
</tr>
<tr>
<td>Kitchen</td>
<td>$35.00/ $46.00</td>
<td>$173.00/ $231.00</td>
<td>$100.00/ $200.00</td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$29.00/ $38.00</td>
<td>$147.00/ $189.00</td>
<td>$100.00/ $200.00</td>
</tr>
<tr>
<td>Lobby &amp; patio</td>
<td>$21.00/ $27.00</td>
<td>$105.00/ $137.00</td>
<td>$100.00/ $200.00</td>
</tr>
<tr>
<td>Entire facility (cardio closed)</td>
<td>$189.00/ $246.00</td>
<td>$945.00/ $1,229.00</td>
<td>$1,000.00/ $2,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General/Business Use</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full gymnasium rental</td>
<td>$116.00/ $150.00</td>
<td>$578.00/ $769.00</td>
<td>$300.00/ $600.00</td>
</tr>
<tr>
<td>Kitchen</td>
<td>$46.00/ $61.00</td>
<td>$231.00/ $305.00</td>
<td>$100.00/ $200.00</td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$35.00/ $45.00</td>
<td>$173.00/ $226.00</td>
<td>$100.00/ $200.00</td>
</tr>
<tr>
<td>Lobby &amp; patio</td>
<td>$23.00/ $30.00</td>
<td>$116.00/ $152.00</td>
<td>$100.00/ $200.00</td>
</tr>
<tr>
<td>Entire facility</td>
<td>$240.00/$313.00</td>
<td>$1,176.00/$1,565.00</td>
<td>$1,000.00/$2,000.00</td>
</tr>
<tr>
<td>------------------------</td>
<td>-----------------</td>
<td>--------------------</td>
<td>---------------------</td>
</tr>
</tbody>
</table>

**Special Events (open to the public with 250 or more participants or private event with 200 or more)**

<table>
<thead>
<tr>
<th>Non-Profit/Youth/Senior/Government</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full gymnasium rental</td>
<td>$95.00/$132.00</td>
<td>$473.00/$662.00</td>
<td>$300.00/$600.00</td>
</tr>
<tr>
<td>Kitchen</td>
<td>$37.00/$51.00</td>
<td>$184.00/$257.00</td>
<td>$100.00/$200.00</td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$32.00/$44.00</td>
<td>$158.00/$221.00</td>
<td>$100.00/$200.00</td>
</tr>
<tr>
<td>Lobby &amp; patio</td>
<td>$24.00/$34.00</td>
<td>$121.00/$168.00</td>
<td>$100.00/$200.00</td>
</tr>
<tr>
<td>Entire facility (closed)</td>
<td>$206.00/$288.00</td>
<td>$1,029.00/$1,439.00</td>
<td>$1,000.00/$2,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General/Business Use</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full gymnasium rental</td>
<td>$121.00/$168.00</td>
<td>$604.00/$840.00</td>
<td>$300.00/$600.00</td>
</tr>
<tr>
<td>Kitchen</td>
<td>$48.00/$67.00</td>
<td>$242.00/$336.00</td>
<td>$100.00/$200.00</td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$37.00/$51.00</td>
<td>$184.00/$251.00</td>
<td>$100.00/$200.00</td>
</tr>
<tr>
<td>Lobby &amp; patio</td>
<td>$24.00/$34.00</td>
<td>$121.00/$168.00</td>
<td>$100.00/$200.00</td>
</tr>
<tr>
<td>Entire facility (closed)</td>
<td>$253.00/$355.00</td>
<td>$1,265.00/$1,775.00</td>
<td>$1,000.00/$2,000.00</td>
</tr>
</tbody>
</table>

**Gus Darien Riding Arena Fee Schedule**

<table>
<thead>
<tr>
<th>Rental Fee Category</th>
<th>Resident (81623 Zip Code)</th>
<th>Non-Resident/Commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Fee 1</td>
<td>Fee 2</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>Hourly rental (above full or ½ day)</td>
<td>$30.00/hr.</td>
<td>$60.00/hr.</td>
</tr>
<tr>
<td>Lights (after 7 p.m. in summer)</td>
<td>$12.00/hr.</td>
<td>$15.00/hr.</td>
</tr>
<tr>
<td>Concession building</td>
<td>$30.00/day</td>
<td>$40.00/day</td>
</tr>
<tr>
<td>Cleanup/damage deposit</td>
<td>$300.00</td>
<td>$300.00</td>
</tr>
<tr>
<td>Sound system damage deposit</td>
<td>$200.00</td>
<td>$200.00</td>
</tr>
<tr>
<td>Town employee costs (trash pick-up, additional arena grooming, etc.)</td>
<td>$30.00/hr.</td>
<td>$30.00/hr.</td>
</tr>
<tr>
<td>Town operator &amp; tractor costs</td>
<td>$40.00/hr.</td>
<td>$40.00/hr.</td>
</tr>
<tr>
<td>**Event renter use of tractor</td>
<td>$100.00/day</td>
<td>$100.00/day</td>
</tr>
<tr>
<td>Horse pen daily rental (per horse)</td>
<td>$5.00/day</td>
<td>$7.50/day</td>
</tr>
</tbody>
</table>

*Includes one town tractor arena drag & prep

**Fuel & maintenance charge for use of town tractor for event. Operator must be 18 years or older, qualified and checked out by town staff, and must be covered by the arena rental user's liability insurance.

** PARK AND STREET RENTAL AGREEMENT—SPECIAL EVENTS **

<table>
<thead>
<tr>
<th>Rental Fee Category</th>
<th>*Rental User Fee (per day)</th>
<th>*Cleanup/Damage Deposit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>100—300 attendees</td>
<td>$100.00</td>
<td>$200.00</td>
</tr>
<tr>
<td>Over 300 attendees</td>
<td>$200.00</td>
<td>$500.00</td>
</tr>
</tbody>
</table>

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

** LAND USE APPLICATION FEES **
<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subdivision conceptual plan</td>
<td>$250.00</td>
</tr>
<tr>
<td>Preliminary plat</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Final plat</td>
<td>$800.00</td>
</tr>
<tr>
<td>Subdivision or condominium exemption</td>
<td>$300.00</td>
</tr>
<tr>
<td>Minor plat amendment</td>
<td>$400.00</td>
</tr>
<tr>
<td>Major plat amendment</td>
<td>$800.00</td>
</tr>
<tr>
<td>Administrative site plan review</td>
<td>$400.00</td>
</tr>
<tr>
<td>Minor site plan review</td>
<td>$600.00</td>
</tr>
<tr>
<td>Major site plan review</td>
<td>$800.00</td>
</tr>
<tr>
<td>General rezonings</td>
<td>$600.00</td>
</tr>
<tr>
<td>PUD</td>
<td>$2,200.00</td>
</tr>
<tr>
<td>PUD—Modification or amendment of approval</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Variances and appeals</td>
<td>$300.00</td>
</tr>
<tr>
<td>Conditional use permit</td>
<td>$300.00</td>
</tr>
<tr>
<td>Conditional use permit—mobile vendor</td>
<td>$25.00</td>
</tr>
<tr>
<td>Special use permit</td>
<td>$400.00</td>
</tr>
<tr>
<td>Sign permit</td>
<td>$35.00</td>
</tr>
<tr>
<td>Annexation</td>
<td>$1,800.00</td>
</tr>
<tr>
<td>Town initiated annexation (any size)</td>
<td>$0.00</td>
</tr>
<tr>
<td>De-annexation or disconnection</td>
<td>$1,000.00</td>
</tr>
</tbody>
</table>
For building fees, consult Chapter 18 Building Regulations

Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623
Retail Marijuana Facility Renewal Application

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

Applicant is renewing a:

☐ Store
☐ Cultivation
☐ Manufactured Infused Products (MIP)
☐ Lab
☐ Other (Please Specify)

Licensee Name: (ie. Corporation Name)
HQ Sopris LLC

Trade Name (DBA)
High Q

Sales Tax No.
003514

Street Address:
922 Highway 133, Carbondale, CO 81623

Business Phone:
970-510-3067

Mailing Address
Basalt, CO 81621

email address
renee@highrockies.com

Operating Manager
Charles Reid Ewart

Home Address:
Basalt, CO 81621

Phone:

1. Do you have legal possession of the premises at the street address above? Yes ☐ No ☐
2. Is the premises owned or rented? ☐ Owned ☐ Rented. If rented, expiration date of lease 8/31/23
3. Since the date of filing of the last annual application, has there been any change in the financial interest (loans, etc.) or organizational structure (change of officers, managing members, etc.)? If yes, explain in detail and provide documentation. No
4. Since the date of the filing of the last annual application, has the applicant or any of its agents, owners, managers been convicted of a felony? If yes, attach a detailed explanation ☐ Yes ☐ No
5. Since the date of the filing of the last annual application, has the applicant hired any new employees? ☐ Yes ☐ No If yes, have they been fingerprinted? ☐ Yes ☐ No

Had a background check performed? ☐ Yes ☐ No

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Town of Carbondale Municipal Code, which affects my license.

Applicant Signature:

Date:
8/5/19

Title:
Managing Member

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

THIS APPLICATION HAS BEEN: ☐ Approved ☐ Denied

Authorized Signature:

Date:

Attest:

Date:
LEASE ---- SOPRIS SHOPPING CENTER
HQ SOPRIS LLC

THIS LEASE, executed in duplicate at Burbank, California, this 30th day of August, 2017 by and between Blyco Realty, hereinafter called Lessor, and HQ Sopris LLC, a Colorado Limited Liability Company, & Renee S. Grossman, an Individual, hereinafter called Lessee, hereinafter called respectively Lessor and Lessee, without regard to number or gender.

WITNESSETH: That Lessor hereby leases to Lessee, and Lessee hires from Lessor, a storefront for conducting therein a retail marijuana store, and for no other purpose, those certain premises with the appurtenances, situated in the City of Carbondale, County of Garfield, State of Colorado, and more particularly described as follows, to-wit:

A storefront space, approximately 990 rentable square feet in size, located at 922 Highway 133, Carbondale, CO 81623
(The statement of size is an approximation only which the parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.)

The term shall be for three (3) years, commencing on the first day of September 2017, and ending on the last day of August 2020, at the total base rent of Fifty Nine Thousand Three Hundred Seventy Dollars ($59,370), plus Common Area Maintenance Fees (CAM) as discussed in paragraph 3 below, in lawful money of the United States of America, which Lessee agrees to pay to Lessor without deduction, offset, prior notice, or demand, at such place or places as may be designated from time to time by Lessor, in installments as follows:

In summary:

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>09/01/17-02/28/18</td>
<td>$1,000 per month</td>
</tr>
<tr>
<td>03/01/18-08/31/18</td>
<td>$1,470 plus the Estimated CAM Fees of 5644=Total of 2,114 per month</td>
</tr>
<tr>
<td>08/01/18-02/28/19</td>
<td>$1,650 plus the Estimated CAM Fees of 5644=Total of 2,294 per month</td>
</tr>
<tr>
<td>03/01/19-08/31/19</td>
<td>$1,815 plus the Estimated CAM Fees of 5644=Total of 2,459 per month</td>
</tr>
<tr>
<td>09/01/19-02/28/20</td>
<td>$1,980 plus the Estimated CAM Fees of 5644=Total of 2,624 per month</td>
</tr>
</tbody>
</table>

Lessee shall forthwith pay $4,624. of which $1,000 is the rental installment due September 1, 2017, $1,000 is towards the cost of Lessee's sign insert, and the balance is additional consideration for entering into this lease and giving discounted rent.

It is further mutually agreed between the parties as follows:

1. POSSESSION: Lessee may have immediate possession of the Premises upon Lease execution.

2. INSURANCE: Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000, an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-Insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessor nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

2.1 Lessor's Insurance

(a) Building and Improvements. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground Lessor, and to any Lender.

Initials: Lessor [Signature], Lessee [Signature]
Lease of Blyco & Grossman - Continued:

Insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 2.2. If the coverage is available and commercially appropriate, such policy or policies shall be subject to all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence.

(b) Rental Value. Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable in the name of Lessor and any Lender, insuring the loss of the full Rent for one year ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

2.2 Property Insurance - Building, Improvements and Rental Value.

(a) Building and Improvements. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 2.3. If the coverage is available and commercially appropriate, such policy or policies shall be subject to all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence.

(b) Adjacent Premises. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if such increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(c) Lessee's Improvements. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

2.3 Lessee's Property; Business Interruption Insurance

(a) Property Damage. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, trade fixtures, and Lessee owned alterations and utility installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade fixtures and lessee owned alterations and utility installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) Business Interruption. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) No Representation of Adequate Coverage. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee’s property, business operations or obligations under this Lease.

(d) Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact

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Initials: Lessor [Signature] Lessee [Signature]
business in the state where the Premises are located, and maintaining during the policy term a “General Policyholders Rating” of at least B+, V, as set forth in the most current issue of “Best's Insurance Guide”, or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

(e) Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

(f) Burglar Alarm: Lessee will install a security system including a monitored burglar alarm, at Lessee’s sole cost and expense.

3. COMMON AREA MAINTENANCE: In addition to the minimum basic rent described above, Lessee shall pay Lessor the following items, herein called Adjustments:

a: All real estate taxes and insurance premiums on the premises, including land, building, and Improvements thereon. Said real estate taxes shall include all real estate taxes and assessments that are levied upon and/or assessed against the premises, including any taxes which may be levied on rents. Said insurance shall include all insurance premiums for fire, extended coverage, liability, and any other insurance that landlord deems necessary on the premises. Said taxes and insurance premiums for purpose of this provision shall be reasonably apportioned in accordance with the total floor area of the premises as it relates to the total floor area of the building, which is from time to time completed as of the first day of each calendar quarter, (provided, however, that if any tenants in said building pay taxes directly to any taxing authority or carry their own insurance, as may be provided in their leases, their square footage shall not be deemed a part of the floor area).

b: That percent of the total cost of the following items as Lessee’s total floor area bears to the total floor area of the building which is from time to time completed as of the first day of each calendar quarter.

(i) All real estate taxes, including assessments, all insurance costs, all common utilities including electrical, water, rubbish removal, outside janitorial, snowplowing, parking lot maintenance and lighting, common area signage, promotional efforts for the center including holiday decorating and lighting, and all costs to maintain, repair, and replace common areas, parking lots, sidewalks, driveways, and other areas used in common by the tenants of the building

(ii) All costs to supervise and administer said common areas, parking lots, sidewalks, driveways, and other areas used in common by the tenants or occupants of the building. Said costs shall include such fees as may be paid to a third party in connection with same and shall in any event include a fee to landlord to supervise and administer same in an amount equal to ten (10%) percent of the total costs of (i) above.

(iii) Any parking charges, utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the premises or the parking facilities servicing the premises.

Lessee shall, in addition to any base rent, pay the Common Area Maintenance Charges for the Premises. The current

Initials: Lessor [Signature] Lessee [Signature]
Lease of Blasco & Grossman - Continued:

estimated monthly Common Area Maintenance ("CAM") charge for the premises is $0.65 per square foot or $644 per month. These premises are 990 square feet of the total current space of 28,565 square feet, for an approximate 3.34% fraction of the total. Lessee shall pay the CAM fee, which represents her share of the above adjustments as described above, on a monthly basis concurrently with the payment of rent. Tenant shall continue to make said monthly payments until notified by Lessor of a change thereof. By March 1 of each year Lessor shall endeavor to give Lessee a statement showing the total adjustments for the building for the prior calendar year and tenant's allocable share thereof, prorated from the commencement of rental. In the event the total of the monthly payments which tenant has made for the prior calendar year be less than tenant's actual share of such adjustments, then tenant shall pay the difference in a lump sum within ten days after receipt of such statement from landlord and shall concurrently pay the difference in monthly payments made in the then calendar year and the amount of monthly payments which are then calculated as monthly adjustments based on the prior year's experience. Any over-payment by tenant shall be credited towards the monthly adjustments next coming due. The actual adjustments for the prior year shall be used for purposes of calculating the anticipated monthly adjustments for the then current year with actual determination of such adjustments after each calendar year as above provided; excepting that in any year in which resurfacing is contemplated landlord shall be permitted to include the anticipated cost of same as part of the estimated monthly adjustments. Even though the term has expired and tenant has vacated the premises, when the final determination is made of tenant's share of said adjustments for the year in which this lease terminates, tenant shall immediately pay any increase due over the estimated adjustments previously paid and, conversely, any overpayment made shall be immediately rebated by landlord to tenant. Failure of landlord to submit statements as called for herein shall not be deemed to be a waiver of tenant's requirement to pay sums as herein provided.

4. WASTE & ALTERATIONS: Lessee shall not commit, or suffer to be committed, any waste upon said premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the demised premises may be located. Lessee shall not make or suffer to be made any alterations of the said premises or any part thereof, without the written consent of Lessor first had and obtained, and any additions to, or alterations of, said premises, except movable furniture and trade fixtures, shall, at Lessor's option, become a part of the realty and belong to Lessor.

5. ABANDONMENT: Lessee shall not vacate or abandon the premises at any time during the term; and if Lessee shall abandon, vacate or surrender said premises or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises may be removed, and the Lessor shall have a lien upon all such property not exempt from a lien by Colorado Law. However, any bank liens for Lessee's financing thereof shall be senior to Lessor's lien. Notice of Sale and the sale to enforce said lien, shall be governed by Colorado Law. The proceeds realized from any such sale shall be applied first to the payment of the expenses of sale, reimbursement of costs to remove the property from the premises, costs of storage pending sale, and reasonable attorney's fees incurred in connection therewith; any balance remaining shall be applied to the payment of any other sums which may then or thereafter be legally due Lessor from Lessee. After satisfying all of the obligations previously enumerated, the balance, if any, shall be paid over to the Lessee.

6. ACCEPTANCE OF PREMISSES: Lessee has inspected and measured the premises and accepts them in their present "as is" condition, with the exception. As a part of the consideration for rental, Lessee shall, at its sole cost, keep and maintain said premises and appurtenances and every part including interior of the premises, in good and sanitary order, condition and repair, replace light bulbs, ballasts, and broken glazing, etc. Lessor will maintain, at a level consistent with its current condition, the roof, HVAC, parking lot, existing electrical service, landscaping, exterior walls, and major plumbing. By entry hereunder, Lessee accepts the premises as being in good and sanitary order, condition and repair and agrees on the last day of said term, or sooner termination of this Lease, to surrender unto Lessor all and singular said premises with said appurtenances in the same condition as when received and to remove all of the Lessee's signs from said premises.

7. COMPLIANCE WITH GOVERNMENT REQUIREMENTS: Lessee shall, at its sole cost, comply with all of the requirenmenta of all Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the use of said premises; and shall faithfully observe in said use all Municipal ordinances and State and Federal authorities now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Lessor in any action or proceeding against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any such ordinance or statute in said use, shall be conclusive of that fact as between Lessor and Lessee.

8. HAZARDOUS MATERIALS: To the best of Lessor's knowledge, the Building is in compliance with all Hazardous Materials laws and ordinances. Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products

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Initials: Lessor [Signature]
Lessee [Signature]
Lease of Blyco & Grossman - Continued:

or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

a. Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

b. Lessee Remediation. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

c. Lessee Indemnification. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground Lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project). Lessor's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement. and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

d. Lessor Indemnification. Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which existed as a result of Hazardous Substances on the Premises prior to the Start Date or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

e. Investigations and Remediation's. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Start Date, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in section 3 above of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

f. Lessor Termination Option. If a Hazardous Substance Condition occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and
Lease of Byco & Grossman - Continued:

remediation thereof) required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor’s rights under this Section 7, Lessor may, at Lessor’s option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor’s expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor’s desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee’s commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease, shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor’s notice of termination.

9. EXEMPTION OF LESSOR FROM LIABILITY: Lessor shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Lessee, Lessee’s employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Property or upon other portions of the Project, or from other sources or places; or (d) any act or omission of any other tenant of the Project. Lessor shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Lessee. The provisions of this Section shall not, however, exempt Lessor from liability for Lessor’s gross negligence or willful misconduct. Notwithstanding any term or provision herein to the contrary, the liability of Lessor for the performance of its duties and obligations under this Lease is limited to Lessor’s interest in the Property, and neither the Lessor nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease.

10. INDEMNITY BY LESSEE: Lessee shall indemnify Lessor against and hold Lessor harmless from and against any and all costs, claims or liability arising from: (a) Lessee’s use of the Property and adjacent areas; (b) the conduct of Lessee’s business or anything else done or permitted by Lessee to be done in or about the Property, including any contamination of the Property or any other property resulting from the presence, use, or use by Lessee’s agents, contractors or employees, of Hazardous Material (as hereafter defined); (c) any breach or default in the performance of Lessee’s obligations under this Lease; (d) any misrepresentation or breach of warranty by Lessee under this Lease; or (e) any acts or omissions of Lessee. Lessee shall defend Lessor against any such cost, claim or liability at Lessee’s expense with counsel acceptable to Lessor or, at Lessor’s election, Lessee shall upon demand reimburse Lessor for any legal fees or costs incurred by Lessor in connection with any such claim.

11. SIGNS: Lessee shall not place or permit to be placed any sign, decoration, marquee or awning on any part of said premises, including any windows or doors, without the advance written consent of Lessor. Lessor upon the request of Lessor shall immediately remove any sign or decoration which Lessee has placed or permitted to be placed in or about the premises which in the opinion of Lessor is objectionable or offensive, and if Lessee fails to do so, Lessor may enter said premises and remove or have removed the same at Lessee’s expense. Lessee agrees that any new signs will conform with the uniform sign criteria currently or hereinafter established for the building, including color scheme and design. Lessor is authorized by Lessee to arrange for repairs and service of Lessee’s signs as needed including periodic cleaning, and Lessee shall pay the cost of said repairs and service. Lessee shall pay for all its signage, and maintenance and repairs thereof.

12. UTILITIES: Lessee shall pay for all gas, heat, light, power, janitorial service, rubbish service, water, telephone service, and all other services and utilities supplied to said premises, whether or not said services are separately metered to the Premises.

13. RIGHT TO ENTER: Lessee shall permit Lessor and its agents to enter into and upon said premises upon 24 hours advance notice (However in case of an emergency, no notice is required) for the purpose of inspecting the same or for the purpose of maintaining the building in which said premises are situated, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs or for the purpose of placing upon the Property in which the said premises are located any usual or ordinary “for sale” signs, without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned. Lessee shall permit Lessor, at any time within ninety (90) days prior to the expiration date of this lease to place
Lease of Blyco & Grossman - Continued:

upon said premises any usual or ordinary "for lease" or "for rent" signs.

14. DESTRUCTION: In the event of (a) a partial destruction of said premises or the building containing same during said term which requires repairs to either said premises or building, or (b) said premises or said building being declared unsafe or unfit for occupancy by any authorized public authority for any reason other than Lessee’s act, use or occupation which declaration requires repairs to either said premises or said building, Lessor shall forthwith make such repairs, provided such repairs can be made within sixty (60) days under the laws and regulations of authorized public authorities, but such partial destruction (including any destruction necessary in order to make repairs required by any such declaration) shall in no way annul or void this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Lessee in said premises. If such repairs cannot be made within sixty (60) days, Lessor may, at its option, make same within a reasonable time, this lease continuing in full force and effect and the rent to be proportionately reduced, as in this paragraph provided. In the event that Lessor does not so elect to make such repairs which cannot be made within sixty (60) days, or such repairs cannot be made under such laws and regulation, this lease may be terminated at the option of either party.

In respect to any partial destruction (including any destruction necessary in order to make repairs required by any such declaration) which Lessor is obligated to repair or may elect to repair under the terms of this paragraph the provisions of Section 1332, subdivision (2), and Section 1333, subdivision (4), of the Civil Code of the State of Colorado are waived by Lessee. A total destruction (including any destruction required by any authorized public authority) of either said premises or said building shall terminate this lease. In the event of any dispute between Lessor and Lessee relative to the provisions of this paragraph which cannot otherwise be settled, the parties shall make application to the American Arbitration Association for binding arbitration to settle the dispute and to decide which of the parties shall bear the cost of said arbitration.

15. ASSIGNMENT: Lessee shall not assign this lease, or any interest therein, and shall not sublet said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee excepted) to occupy or use said premises, or any portion thereof, without the written consent of Lessor first had and obtained. Furthermore, this lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the written consent of Lessor first had and obtained, which consent will not be unreasonably withheld or delayed. A consent by Lessor to one assignment, subletting, occupation or use by any other person, whether by operation of law or otherwise, shall not be deemed to be a consent to any subsequent assignment, subletting occupation or use by any other person. Any such assignment or subletting, whether by operation of law or otherwise, without such written consent first had and obtained shall be void, and shall, at the option of Lessor, terminate this lease. Lessor shall charge a fee of $500 plus any legal or other costs. Lessee may incur in evaluating and responding to any requests by Lessor for Lessee’s consent to an assignment or sublease. Lessee shall pay to Lessor as additional rent 50% of any rent received by Lessee from any such assignment or sublease in excess of the monthly rent payable under this Lease or for a sublease, the rent computation shall be based on the percentage of space subleased. However, Lessor shall be able to deduct all reasonable costs of sublease or assignment from the calculation of additional rent payable to Lessor. Any assignment or sublease shall not in any way reduce Lessee’s obligations under this Lease. The above to the contrary notwithstanding, Lessee shall not have any right to assign this Lease, nor does Lessor have any obligation to agree to any such assignment, if Lessee is in default under any term or condition of this lease or if Lessee is not current on any payments due under this lease.

16. BANKRUPTCY: It is expressly understood and agreed that the Lessor is relying on the personal integrity, experience, and knowledge of the individuals operating the lessee enterprise and has relied upon their personal ability to maintain the commercial viability of the premises and the Lessor’s interest in the Property, and therefore either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act shall constitute a breach of this lease by Lessor, and shall, at the option of Lessor, terminate this lease.

16.1 DEFAULT, BREACH, and REMEDIES: A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises or where the Lessee has failed to maintain property insurance described in this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, or to fulfill any obligation under this Lease.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

Initials: Lessor [Signature] Lessee [Signature]
Lease of Blyco & Grossman - Continued:

(d) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(e) if the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty.

16.2 REMEDIES: In the event of a default by Lessee, the Lessor may, in addition to any other rights and remedies given by law, terminate this Lease, and exercise such other remedies providing notice if so required, relating to it with required notice if notice is required, or demand in accordance with the following options and rights of Lessor:

a. So long as the event of default remains uncured, Lessor shall have the right to give notice of termination to Lessee, and on the date specified in this notice, this Lease will terminate.

b. If this Lease is terminated, Lessor may, by judicial process, re-enter the Premises, remove all persons and property, and re-possess and enjoy the Premises, all without prejudice to other remedies Lessor may have due to Lessee default or the termination.

c. If this Lease is terminated, Lessor shall have all the rights and remedies provided for the Lessor in the applicable Colorado Civil Code, in addition to any other rights and remedies that the Lessor has under law. The damages which Lessor may recover include without limitation: (i) The worth of the time of award of the unpaid rent which had been earned at the time of termination, (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time the award exceeds the amount of the rental loss that Lessee proves could have been reasonably avoided; (iii) The worth at the time of award computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%) of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Lessee proves could be reasonably avoided; (iv) All reasonable legal expenses and other costs incurred by Lessor following Lessee's default; (v) All reasonable costs incurred by Lessor in repossessing the Premises to good order and condition to relet the Premises; and (vi) All reasonable costs, including without limitation, any brokerage commissions incurred by Lessor in reletting the Premises.

d. If Lessee has breached this Lease, or abandoned the Premises, Lessor has the option to continue the Lease in effect until Lessor is notified of termination of the Lease. Such rights include the right to recover the rental as it becomes due under this Lease. Lessor may also recover costs of maintenance or preservation of the Premises, including costs to relet the Premises. If the appointment of a receiver is sought by Lessor to protect Lessor's interest under the Lease or the Premises, this fact shall not constitute a termination of Lessee's right to possession.

e. The remedies provided in this Lease are in addition to any other remedies available Lessor at law, equity, by statute or otherwise.

16.3 INTEREST: Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge.

17. SURRENDER: The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies or may, at the option of Lessor, operate as an assignment to him of any or all of such subleases or subtenancies.

18. ARBITRATION OF DISPUTES: Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease, any other defaults by Lessor, or any defaults by Lessee, by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to conduct themselves at all times in strict, full, complete and timely compliance with the terms hereof, and any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. DISPUTES EXCLUDED FROM ARBITRATION: The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1) disputes for which a different method of
Lease of Blyco & Grossman – Continued:

determination is specifically set forth in this Lease; 2) claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right to possession of the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction.

C. APPOINTMENT OF AN ARBITRATOR: All disputes subject to this Arbitration Agreement shall be determined by binding arbitration before a retired judge of the State of Colorado affiliated with either JAMS-Endispute (“JAMS”) or ADR Services, Inc. (“ADRS”), or as otherwise may be mutually agreed by Lessor and Lessee (the “Arbitrator”). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the “Arbitration Notice”) of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. The Parties may agree on a retired judge from the JAMS or ADRS panel. If they are unable to agree within ten days, JAMS or ADRS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS or ADRS) will serve as the arbitrator. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

D. ARBITRATION PROCEDURE:

1. PRE-HEARING ACTIONS. The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., Applicable Colorado procedure similar to California Code of Civil Procedure Section 1282.5).

2. THE DECISION. The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any party may be represented by counsel or other authorized representative. In rendering a decision, the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., Applicable Colorado procedure similar to California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator’s decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator’s fees and costs, attorneys’ fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in its discretion.

E. WAIVER OF JURY TRIAL: The parties hereby expressly waive, relinquish and voluntarily give up any right that may under applicable law to have any action or proceeding involving the Property or arising out of this Agreement determined by a jury costs of litigation.

19. ATTORNEY’S FEES: If any Party brings an action or proceeding (including arbitration) involving this Lease, to enforce the terms hereof, or to declare rights hereunder, the prevailing party, (as hereinafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney fees and costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment of the other Party of its claim or defense. The attorneys’ fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees and costs reasonably incurred. This paragraph shall also apply to any costs or attorneys' fees incurred in the collection or enforcement of a

Initials: Lessor P. Lessee B. G.
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judgment.

20. NOTICES: All notices to be given to Lessee shall be given in writing personally or by depositing the same in the United States mail as Certified Mail, Return Receipt Requested, and addressed to Lessee at said premises, whether or not Lessee has departed from, abandoned or vacated the premises. All notices to be given to Lessor shall be given in writing personally or by depositing the same in the United States mail as Certified Mail, Return Receipt Requested, and addressed to the Lessor at the place designated by Lessor for the payment of rent, or at such other place or places as may be designated from time to time in writing by Lessor.

21. CHANGE OF OWNERSHIP OF BUILDING: If any security be given by Lessee to secure the faithful performance of all or any of the covenants of this lease on the part of Lessee, Lessor may transfer and/or deliver the security, as such, to the purchaser of the Property, in the event that the Property be sold, and thereupon Lessor shall be discharged from any further liability in reference thereto.

22. WAIVER: The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

23. HOLDING OVER: Lessee shall vacate the Property upon the expiration or earlier termination of this Lease. Lessee shall reimburse Lessor for and indemnify Lessor against all costs, expenses and damages (including attorneys' fees as provided herein) which Lessor incurs from Lessee's delay in vacating the Property. If Lessee does not vacate the Property upon the expiration or earlier termination of the Lease and Lessor thereafter accepts rent from Lessee, Lessee's occupancy of the Property shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the rent then in effect shall be increased to an amount equal to one hundred fifty percent (150%) of the rent applicable during the last month preceding the expiration or termination and except that all options, if any, granted to Lessee shall lapse and be of no further effect. When Lessee seeks to terminate its tenancy by vacating the premises at the end of the term of this lease or thereafter, Lessee agrees to give Lessor at least ninety (90) days advance written notice of its intent to vacate.

24. SUBORDINATION: This lease is subject and subordinate to all existing leases and to all mortgages and deeds of trust which may now or hereafter affect the real property of which the leased premises form a part, and to all renewals, modifications, replacements and extensions thereof. Lessee hereby agrees to execute within ten (10) after Lessor's written request any instruments for the benefit of the Lessor or a lender as may be necessary to effectuate this provision of the lease.

25. LESSEE COOPERATION:

(a) Estoppel Certificate. Upon Lessor's written request, Lessee shall execute, acknowledge and deliver to Lessor a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated (if it be the case); (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Lessor is not in default under this Lease (or, if Lessor is claimed to be in default, stating why); and (v) such other representations or information with respect to Lessee or the Lease as Lessor may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Lessee shall deliver such statement to Lessor within five (5) days after Lessor's request. Lessor may give any such statement by Lessee to any prospective purchaser or encumbrancer of the Property or this Lease. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct. If Lessee does not deliver such statement to Lessor within such five (5) day period, Lessor, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Lessor; (ii) that this Lease has not been canceled or terminated except as otherwise represented by Lessor; (iii) that not more than one month's Base Rent or other charges have been paid in advance, and (iv) that Lessor is not in default under the Lease. In such event, Lessee shall be estopped from denying the truth of such facts.

(b) Lessee's Financial Condition. Within fourteen (14) business days after written request from Lessor, Lessee shall deliver to Lessor and/or any lender designated by Lessor annual financial statements and any more recent financial statements in Lessee's possession which Lessee is not prohibited by law from disclosing to Lessor, which shall be prepared and certified by Lessee's Chief Financial Officer, unless in the ordinary course of business Lessee's financial statements are prepared by certified public accountants in which case the financial statements shall be so prepared and certified, all of which shall be prepared in accordance with generally accepted accounting principles consistently applied, as Lessor or Lessor's lender reasonably requires to verify the net worth of Lessee or any assignee, subtenant, or guarantor of Lessee. In addition, Lessee shall deliver to any lender designated by Lessor any financial statements required by such lender to facilitate the financing or refinancing of the Property or this Lease. Lessee represents and warrants to Lessor that each such financial statement is a true

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and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease. Provided that Lessee stays current with its rental payments, Lessor will not require annual reports, however should any present or future Lender require financials, Lessor will provide upon Lessor’s request.

26. TAKING BY EMINENT DOMAIN: In case the whole of the leased premises are taken by right of eminent domain or other authority of law during the period of this lease, or any extension thereof, this lease shall terminate. In case a part of the leased premises are taken by right of eminent domain or other authority of law, this lease may, at the election of either party, be terminated if written notice of such election is given within fifteen (15) days after receipt of written notice of such taking. If a part of the premises are taken by the right of eminent domain and neither party elects to terminate the lease, the rent herein stipulated shall be decreased proportionately according to the value of that part of the premises taken. Any compensation paid for the leasehold interest, excepting improvements paid for by Lessor, shall belong to Lessee. Any compensation paid for the land improvements shall belong to Lessor.

27. HEIRS: The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

28. TIME: Time is of the essence of this lease.

29. LEAKS OR INTERRUPTION OF UTILITIES: Lessor shall not be held responsible for damage or inconveniences resulting from interruption of utilities or leaks in the roof or pipes which are beyond Lessor’s reasonable control. Lessor shall take reasonable steps to correct any such problem as quickly as possible after notification of the problem, but Lessee shall continue to be obligated to pay their customary rent despite the inconvenience or damage.

30. PARKING: Lessee and his employees shall not park their cars in the immediate front parking lot area but shall reserve this space for customer parking only.

31. GENERAL: Lessee shall not conduct or permit to be conducted any sale by auction on said premises. This lease is subject and subordinate to all existing leases and all mortgages and deeds of trust which may now or hereafter affect the real property of which the leased premises form a part, and to all renewals, modifications, replacements and extensions thereof. Lessee shall pay an additional $50 for each check returned by the bank unpaid, and Lessee shall immediately replace said check with a Cashier’s or Certified check. Should this occur more than two (2) times during Lessee’s tenancy, then Lessor may, at Lessor’s sole discretion, accept only Cashier’s or Certified checks for payments due under this Lease. Lessee shall pay $300 to Lessor for any Three-Day-Notice Lessor serves on Lessee.

32. HEATING, AIR-CONDITIONING, REPAIRS & MAINTENANCE: Lessor shall maintain reasonable air conditioning to the Premises, the roof, parking lot, common areas, and structural elements of the Building. Should Lessee’s business require special or extra air-conditioning, then Lessee shall pay the cost of installing the additional air conditioning, in addition to the cost to maintain and run the equipment. Lessee shall make all repairs costing less than $250 each. In addition, Lessee shall pay for all repairs to Lessee installed - improvements regardless of the cost of said repairs. Lessor shall have the right to make alterations to the windows or any other exterior modifications it so desires at any time during the term of this lease.

33. GLASS, DOORS & LOCKS: Lessee shall be responsible for glass window replacement and repair of any damage to or defects in doors and locks. Lessee shall clean the interior of its windows at least once a month.

34. RUBBISH: Lessee shall place rubbish only in the proper containers in the rear of the premises. Lessee shall reimburse Lessor for Lessor’s cost of cleaning up Lessee’s rubbish, should Lessor choose to do so.

35. LATE CHARGES: Lessee’s failure to pay rent promptly may cause Lessor to incur unanticipated costs for processing and accounting charges, late fees and other charges which may be imposed on Lessor by a lender, the exact amount of which are extremely difficult to ascertain. To cover such costs, Lessee shall pay an additional $500 charge for any rental payment received by Lessor after the 10th of the month, which the parties agree is a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Any amount owed by Lessee to Lessor which is not paid when due shall bear interest at the rate of ten percent (10%) per annum from the due date of such amount, compounded monthly. The payment of interest or late charges on such amounts shall not excuse or cure any default by Lessee under this Lease nor prevent Lessor from exercising any of the other rights and remedies under this Lease or at law. If the interest rate specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

36. RULES & REGULATIONS: Lessor and/or its agents shall have the exclusive control and management of the common

Initials: Lessor _/ Lessee _/
 Lease of Blyco & Grossman - Continued:

areas, and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the building, grounds, parking and unloading of vehicles, and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project. "Building" or "Project" shall mean the building, parking lots, grounds and/or any appurtenances. Current Rules and Regulations are attached hereto and made a part hereof by reference herein. Lessee is entitled to quiet enjoyment as provided under law.

37. AMERICANS WITH DISABILITIES ACT: Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

38. OCCUPANCY TERMINATION: When Lessee vacates the Premises at the end of the Lease term, or as otherwise provided herein this Lease, Lessee agrees to give Lessor at least ninety (90) days advance written notice of its intent to so vacate. Should Lessee fail to give at least ninety (90) days advance written notice, then Lessee will pay rent for at least ninety (90) days from the date that such notice is given.

39. EXISTING CONSTRUCTION MATERIALS: Should Lessee desire to make any changes or modifications to the Premises, then Lessor shall be required to incur all costs that may be needed to update, remove, or remediate any non-compliant materials or conditions of the Premises.

40. LESSOR RIGHT TO CANCEL: Lessor may cancel this Lease at any time should Lessor plan to tear down the building and redevelop the site or should Lessor decide to put the property on the market for sale. Lessor agrees to give Lessee at least 120 days advance written notice of its intent to so cancel. Lessor agrees not to terminate this Lease prior to August 31, 2018.

41. COMMON AREAS: The term "Common Areas" is defined as all areas and facilities outside the premises and within the exterior boundary line of the office building project that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and of other Lessees of the building project and their respective employees, suppliers, shippers, customers, and invitees, including but not limited to common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, parking areas to the extent not otherwise prohibited by this lease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Lessor shall have the right, in Lessor's sole discretion, from time to time:

a) to make changes to the building interior and exterior and common areas, including, without limitation, changes in the location, size shape, number, and appearance thereof, including but not limited to lobbies, windows, stairways, air shafts, elevators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways.

b) to close temporarily any of the common areas for maintenance purposes so long as reasonable access to the premises remains available;

c) to designate other land and improvements outside the boundaries of the office building project to be a part of the common areas, provided that such other land and improvements have a reasonable and functional relationship to the office building project;

d) to add additional buildings and improvements to the common areas;

e) to use the common areas while engaged in making additional improvements, repairs or alterations to the office building project, or any portion thereof;

f) to do and perform such other acts and make such other changes in, to or with respect to the common areas and office building project as Lessor may, in the exercise of sound business judgment deem to be appropriate.

Initials: Lessor [Signature] Lessee [Signature]
Lease of Blyco & Grossman - Continued:

42. TENANT IMPROVEMENTS: Lessor shall give Lessee an allowance of Four Thousand Dollars ($4,000) towards its improvements to the Premises from its current “as is” condition. Said allowance will be paid after January 1, 2018 and only up to the total of receipts ‘or’ improvements Lessee has made to the Premises.

43. LESSEE’S RIGHT TO CANCEL: Prior to January 1, 2018, Lessee may terminate the lease in the event Lessee does not receive a Retail Marijuana Store License from the State of Colorado and/or Town of Carbondale.

44. MARIJUANA CONTINGENCY:
   a. The Parties acknowledge that the sale of Marijuana is Federally prohibited. Any reference to compliance with Federal Laws in this Lease shall not apply to retail Marijuana sales.
   b. If Lessor receives notification from any federal enforcement agency of any violations due to Lessee’s use of the Premises, then Lessor may cancel this Lease immediately.
   c. This Lease does not give Lessee any exclusive rights for this shopping center.
   d. Lessee acknowledges that another tenant in the shopping center is a retail marijuana location.

45. TERMINATION ALLOWANCE: When Lessee seeks to terminate its tenancy by vacating the premises at the end of the term of this lease, or thereafter, if Lessee is then current with all rental payments due, and is not in breach of any of the terms of this lease, and on specific condition that he has given Lessor at least ninety (90) days advance written notice of its intention to vacate, then Lessee will be entitled to a credit of the sum of Two Thousand Six Hundred Twenty Four Dollars ($2,524) from the rental installment due for last month of their tenancy. Said credit is agreed not to be a security deposit. Any other obligations of Lessee to Lessor including the cost to restore the Premises shall remain due to Lessor, otherwise, Lessee’s obligation to pay the rental installment and comply with all the other terms or conditions of this Lease shall remain in full force and effect. Said credit shall be paid by Lessor to Lessee subsequent to Lessee vacating and surrendering the building, provided that: 1) Lessee leaves the premises in a clean condition and in the same condition as received reasonable wear and tear excepted, and 2) Lessee vacates the Premises in a timely manner and in accordance with Notice either from Lessor or Lessee.

END OF LEASE

IN WITNESS WHEREOF, Lessor and Lessee have executed these presents, the day and year first above written.

BLYCO REALTY, LESSOR
Ronald B Stein, PRESIDENT

RENEE S. GROSSMAN, LESSEE

HQ SOPRIS LLC, LESSEE
By: Renee S. Grossman, Managing Member

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Initials: Lessor [ ] Lessee [ ]
RULES AND REGULATIONS

General Rules

1. Lessee shall not suffer or permit the obstruction of any Common Areas, including driveways, walkways and stairways.
2. Lessor reserves the right to refuse access to any persons Lessor in good faith judges to be a threat to the safety and reputation of the Premises or Building and its occupants.
3. Lessee shall not make or permit any noise or odors that annoy or interfere with the other lessees or persons having business within the Premises or Building.
4. Lessee shall not keep animals or birds within the Premises or Building.
5. Lessee shall not bring bicycles, motorcycles or other vehicles into areas not designated as authorized for same.
6. Lessee shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
7. Lessee shall not alter any lock or install new or additional locks or bolts.
8. Lessee shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities. No foreign substances of any kind are to be inserted therein.
9. Lessee shall not deface the walls, partitions or other surfaces of the Premises or Building.
10. Lessee shall not suffer or permit anything in or around the Premises or Building that causes excessive vibration or floor loading in any part of the Premises or Building.
11. Furniture, significant freight and equipment shall be moved into or out of the building only with the Lessor's knowledge and consent, and subject to such reasonable limitations, techniques and timing, as may be designated by Lessor. Lessee shall be responsible for any damage to the Building or Premises arising from any such activity.
12. Lessee shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Lessor.
13. Lessor reserves the right to close and lock the Building on Saturdays, Sundays and Building Holidays, and on other days between the hours of 7PM and 7AM of the following day. If Lessee uses the Premises during such periods, Lessee shall be responsible for securing locking any doors it may have opened for entry.
14. Lessee shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
15. No window coverings, shades or awnings shall be installed or used by Lessee.
16. No Lessee, employee or invitee shall go upon the roof of the Building.
17. Lessee shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Lessor or by applicable governmental agencies as non-smoking areas.
18. Lessee shall not use any method of heating or air conditioning other than as provided by Lessor.
19. Lessee shall not install, maintain or operate any vending machines upon the Premises or Building without Lessor's prior written consent.
20. The Premises and Building shall not be used for lodging or manufacturing, cooking or food preparation.
21. Lessee shall comply with all safety, fire protection and evacuation regulations established by Lessor or any applicable governmental agency.
22. Lessor reserves the right to waive any one of these rules or regulations, and/or as to any particular Lessee, and any such waiver shall not constitute a waiver of any rule or regulation of any subsequent application thereof to such Lessee or any other Lessee.
23. Lessee assumes all the risks from theft or vandalism and agrees to keep its Premises locked as may be required.
24. Lessor reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Project and its occupants. Lessee agrees to abide by these rules and regulations.
Lease of Byco & Grossman - Continued:

Parking Rules

1. Parking areas shall be used only for parking of vehicles no longer than full size passenger automobiles, hereinafter called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles".

2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee’s employees, suppliers, shippers, customers, or invitees to be loaded, unloaded or parked in areas other than those designated by Lessor for such activities.

3. Parking stickers or Identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holder’s parking privileges. Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices.

4. Lessor reserves the right to refuse the sale of monthly identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.

5. Lessor reserves the right to relocate all or part of parking spaces from floor to floor, within one floor, and/or to reasonably adjacent offsite location(s), and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.

6. Users of parking area will obey will posted signs and park only in the areas designated for vehicle parking.

7. Unless otherwise instructed, every person using area is required to park and lock its own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.

8. Validation, if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking.

9. The maintenance, washing, waxing or cleaning of vehicles in the parking structure or Common Areas is prohibited.

10. No overnight parking shall be permitted.

11. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.

12. Lessor reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.

13. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.

Initials: Lessor __________________________ Lessee __________________________

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LEASE AMENDMENT #1 — SOPRIS BUILDING
HQ SOPRIS LLC

That Certain Lease, executed in duplicate at Burbank, California, on the 30th day of August 2017, by and between Blyco Realty, Lessor, and HQ Sopris LLC, a Colorado Limited Liability Company, and Renee S Grossman, an individual, Lessee, hereinafter called respectively Lessor and Lessee, without regard to number or gender, concerning the Premises located at 922 Highway 133, Carbondale, CO 81623, is amended as follows:

1) IMPROVEMENTS: In addition to the tenant improvement allowance described in Section 42 of the Lease, Lessor agrees to pay directly to outside vendors or otherwise arrange repairs for the following items:

   HVAC Ducting Repair $325
   Removal of old wiring: $170
   Repair of broken floor joist.
   Relabeling of Electrical Panel

Lessee has otherwise performed a complete inspection of the Premises, and will not make any further requests for tenant improvements allowance. Future repairs and maintenance shall be handled according to the terms of the Lease.

2) All other terms and conditions of the Lease shall remain unchanged.

Date: November 21, 2017

BLYCO REALTY, LESSOR
Ronald B Stein, PRESIDENT

RENEE S. GROSSMAN, LESSEE

HQ SOPRIS LLC, LESSEE
By: Renee S. Grossman, Managing Member
LEASE AMENDMENT #2 - SOPRIS BUILDING
HQ SOPRIS LLC

THAT CERTAIN LEASE, dated August 30, 2017, and amended by that Lease Amendment #1, dated November 21, 2017, by and between Blyco Realty as Lessor, and HQ Sopris LLC, a Colorado Limited Liability Company & Renee S. Grossman, an individual as Lessee, covering the Premises at 922 Highway 133, Carbondale CO, 81623 are hereby modified as follows:

1. **LESSOR**: The Lessor is replaced as Blyco Realty, as General Partner for Stein Properties LP.

2. **TERMS AND CONDITIONS OF THE ORIGINAL LEASES AND AMENDMENT**: Except for the forgoing modifications, the terms and conditions of the original lease shall continue in full force unchanged.

IN WITNESS WHEREOF, Lessor and Lessee have executed these presents, September 18, 2018.

STEIN PROPERTIES LP, LESSOR
By: Ronald B. Stein President
Of Blyco Realty, it’s General Partner

BLYCO REALTY, LESSOR
By, Ronald B. Stein President

RENEE S. GROSSMAN, LESSEE

HQ SOPRIS LLC, LESSEE
By Renee S. Grossman, Managing Member
LEASE EXTENSION #1-SOPRIS SHOPPING CENTER
HQ SOPRIS LLC

That Certain Lease, executed in duplicate at Burbank, California, on the 30th day of August 2017, by and between Blyco Realty, as General Partner of Stein Properties, LP, a California Limited Partnership, Lessor, and HQ SOPRIS LLC, a Colorado Limited Liability Company, and Renee S. Grossman, an individual Lessee, hereinafter called respectively Lessor and Lessee, without regard to number or gender, concerning the Premises located at 922 Highway 133, Carbondale, CO 81623, is hereby amended as follows:

1) TERM: The Term of the Lease shall be extended for three (3) years ending on the last day of August 2023.

2) BASE RENT: Base Rent during the extension period shall be as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>09/01/2020 to 08/31/2021</td>
<td>$2,039 per month</td>
</tr>
<tr>
<td>09/01/2021 to 08/31/2022</td>
<td>$2,100 per month</td>
</tr>
<tr>
<td>09/01/2022 to 08/31/2023</td>
<td>$2,163 per month</td>
</tr>
</tbody>
</table>

3) CAM Fees: The current CAM fee is $844, which is due in addition to the Base Rent above. This amount may increase over time.

4) All other terms and conditions of the Lease shall remain unchanged.

Date: August 6, 2019

BLYCO REALTY, LESSOR
By: Ronald B. Stein, President

HQ SOPRIS LLC, LESSEE
By: Renee S. Grossman, Managing Member

RENEE S. GROSSMAN, LESSEE
Board of Trustee Agenda Memorandum

Item No: 6
Attachment: H
Permit No: ZU19-17
Meeting Date: 8/27/2019

TITLE: Village Lane North Townhomes Resubdivision/Final Plat

SUBMITTING DEPARTMENT: Planning Department

APPLICANT: CBS Village Lane LLC.
OWNER: CBS Village Lane LLC.
LOCATION: Lot A, A resubdivision of Lots 2 and 4 Crystal River #3
Zoning: Crystal Village PUD

ATTACHMENTS: Application
P&Z minutes 8/15/2019

BACKGROUND

This is an application to resubdivide Lot A, Crystal Village PUD into 7 townhome units located in two buildings. The Board of Trustee’s are required to hold a public hearing and either approve the application or recommend to deny it. The Board may also continue the public hearing. The planning and Zoning Commission reviewed and recommended approval of the application at its August 15 meeting, The meeting minutes are attached.

DISCUSSION

The development of Lot A was approved by Ordinance No. 14 series of 2017 after public hearings before the Planning Commission and the Board of Trustee’s. The Ordinance approved a Major Site Plan Review and Major Plat Amendment for the construction of two buildings housing 7 residential units. Two of these units are
restricted per the Recorded Community Housing Mitigation Agreement dated July 25, 2017 (attached). This agreement restricts one three-bedroom unit to be an AMI Category 2 and one other unit to be RO, or Owner Occupied.

The applicant will also be required to pay the following fee’s:

Fee in Lieu for park dedication shall be $700.00 per unit to total $4,900.00.

School impact fees required - $3,718

Fire District fees required - $5,110.

**Approval Criteria**

The Board of Trustees shall approve final plats that comply with all of the following criteria:

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

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

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

**FISCAL ANALYSIS**

Approval of the final Plat will allow the units to be individually transferred and owned.

**RECOMMENDATION**

Staff recommends that the following motion be approved:  **Move to approve the Village Lane North Townhomes Resubdivision/Final Plat with the suggested findings and conditions below.**

**Findings:**

The property is capable of accommodating structures devoted to the intended use of the land; is free from natural hazards such as flooding, falling rock, landslides and snowslides; is served by a street system providing safe and convenient access, and is provided with accessible utility installations; with all of the foregoing intended to promote the health, safety and welfare of the citizens of the town.

**Conditions:**

1. The condominium plat shall be in a form acceptable to and approved by Town Staff prior to recording. The plat shall be recorded with the Garfield County Clerk and Recorder within ninety (90) days of the date of approval.

2. The Applicant shall pay all Fire District and School impact fee’s Prior to issuance of a Certificate of Occupancy.
3. All representations of the Applicant and Applicant’s representatives at the Public Hearing shall be considered conditions of approval.

4. The Applicant shall be responsible for all recording costs and shall pay all fees associated with this application to the Town, including any professional fees, as set forth in Section 1.30.030 of the Municipal Code.

Prepared By: John Leybourne
VILLAGE LANE
NORTH TOWNHOMES

Carbondale, Colorado

Resubdivision/Final Plat

June 2019
June 27, 2019

John Leybourne, Planner
Town of Carbondale Planning Department
511 Colorado Ave.
Carbondale, CO 81623

RE: Village Lane North Townhomes Resubdivision

Dear John:

Attached find the Final Plat and Resubdivision application for the above reference project. This is to complete the development process for Lot A, a resubdivision of Lots 2 – 4, Crystal Village Filing No. 3, at Reception # 904530 in the Garfield County records. This townhome resubdivision plat is the final land use application which included a rezoning of Lot A allow residential development followed by contemporaneous Major Plat Amendment and Site Plan Review.

The application documents submitted includes three hardcopies and a digital copy of the application, a check in the amount of $800 made out to be Town and the following information:

- Master Land Use Application form and Final Plat Checklist
- Resubdivision Plat
- Draft Declaration of Covenants, Conditions and Restrictions
- Draft Affordable Housing Deed Restrictions

The applicant has complied with all conditions of Ordinance 14- Series of 2017. The draft affordable housing deed restrictions are based on those included in the recorded Community Housing Agreement. The only items that needs to be completed for these deed restrictions are the dates, cross reference recording information and signatures of the appropriate parties. The Category 2 deed restricted 3-bedroom unit is townhome unit # 2 and the RO unit is townhome unit # 6.

We have also included a copy of Ordinance 14- Series of 2017, the recorded Community Housing Agreement for everyone’s convenience and a list of property owners within 300 feet. Please note that the draft townhome plat still indicates the Rockford Ditch Easement along the northern property line. We are making efforts to vacate this since the ditch has been removed from this location as part of the City
Market Development on what is commonly known as the Marketplace property north of Main Street. I will keep you informed on that item as we move towards recordation.

Please contact me if you have any questions or if you need additional information.

Sincerely,

Mark Chain
Mark Chain, Planner
SECTION 1: APPLICATION & RELATED FORMS

Land Use Application Form
Final Plat Checklist
Project Team Directory
Town of Carbondale  
511 Colorado Ave  
Carbondale, CO 81623  
(970)963-2733

**Land Use Application**

**PART 1 – APPLICANT INFORMATION**

Applicant Name: CBS Village LLC  
Phone: 970-618-0480

Applicant Address: 235 Snowcap Circle, Carbondale, CO 81623

E-mail: Crawford Design Build@comcast.net

Owner Name: Same as Above  
Phone: 

Address: 

E-mail: 

Location of Property: provide street address and either 1) subdivision lot and block; or 2) metes and bounds:

LSTA- AIR SUBDIVISION # C: LOTS 2 & 4 CARRÉ VILLAGE # 3

**PART 2 – PROJECT DESCRIPTION**

General project description:

RESUBDIVISION OF A LOT INTO 7 TOWNHOUSE UNITS

IN CONFORMANCE WITH PREVIOUS SITE PLAN REVIEW

Size of Parcel: 34,257 SF  
# Dwelling Units: 7  
Sq Ft Gm Comm: NA

Type of Application(s): RESUBDIVISION

Existing Zoning: PUD-COMM/IND  
Proposed Zoning: SAME

**PART 3 – SIGNATURES**

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

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

Applicant Signature 

Date 06-10-2019

Signature of all owners of the property must appear before the application is accepted.


Owner Signature Date  

Owner Signature Date  

STATE OF COLORADO  
COUNTY OF GARFIELD  

The above and foregoing document was acknowledged before me this 10th day of June 2019, by Bradley S. Crawford

Witness my hand and official My commission expires: 01-30-2022

BLAIR WHIPPLE SWIFT  
Notary Public  
State of Colorado  
Notary ID # 201840005059  
My Commission Expires 01-30-2022

Notary Public
Section 2.3 of the UDC requires a pre-application meeting with planning staff prior to submittal of a land use application.

Per Section 2.3.2.B of the UDC, the Planning Director shall determine the form and number of application materials required.

Required Attachments

✓ Filing Fee of $800 and Land Use Application (separate attachment)

✓ a. The proposed subdivision drawn at a scale of not more than 100 feet to the inch depicting:
   i. Subdivision boundaries, street right-of-way lines, and lot lines in solid lines with accurate dimensions to the nearest 100th foot.

   ii. Easements and other rights of way in dashed lines with accurate dimensions to the nearest 100th foot.

   iii. Bearings of all lines and central angles, tangent distances, chord distances, and arc length of all curves shall be shown.

   iv. Location and description of all permanent survey control points.

   v. Legal description of the subdivision tract with references to its location in the records of Garfield County, Colorado.

   vi. Street names, block, and lot numbers. Include street addresses where applicable.
vii. Use, area, and setback restrictions on each lot of a Planned Development when it is different from underlying zoning.

viii. The name of the subdivision.

ix. A notarized certificate of dedication and ownership.

x. Surveyor's certificate signed by a licensed surveyor responsible for the survey and final plat.

xi. Planning and Zoning Commission Certificate of Approval.

xii. Board of Trustees Certificate for Approval and Acceptance.

xiii. Clerk and Recorder's Certificate for time recording.

☐ b. Protective covenants or restrictions placed on the subdivision;

☐ c. Engineered plans and preliminary cost estimates, prepared by an engineer licensed in the State of Colorado, for all improvements to be installed by the subdivider in dedicated land, rights-of-way, or easements, or as may be required by this Code;  **NOT PREVIOUSLY PROVIDED**

☐ d. A draft subdivision agreement to be executed by the Town and the subdivider wherein the subdivider covenants and agrees to perform all conditions imposed by the Town. The agreement shall meet the specifications of Section 2.6.5.C.2.c.i, Security Guarantee. Such conditions and agreement may include, and the Town is empowered to require, the obligation of the subdivider to pay for and install or cause to be installed water distribution structures, curbs and gutters, street base course material, asphalt wearing course material, bridges, underground wiring, street lighting, underground communications system, gas distribution systems, underground cable TV wiring, underground internet wiring, fire hydrants, fire alarms, street signs, and traffic-control devices, as may be required by and according to the specifications of the Town, and sanitary sewer collection systems. The Town may also require the subdivider to comply with the provisions of subsections f and g of this section regarding public open space dedication and park development fees, and such requirements shall be set forth in the subdivision improvement agreement. The Town may also require the subdivider to reserve sites and land areas for schools not to exceed five percent of the acreage of the subdivision, or in lieu thereof, a cash contribution in the amount of not more than five percent of the market value of the subdivision at the time of the submission of the final plat. In such event, the land or cash

Page 2 of 4

Subdivision/Final Plat

6-22-16

Planning/Forms 2016
equivalent for school shall be granted or transmitted to the Roaring Fork Valley School District RE-1 by the subdivider;

d. An agreement and covenant of the subdivider to convey ownership to the Town of all of the foregoing facilities and improvements, except for facilities, money or property of Roaring Fork School District RE-1, except for cable TV wiring and related facilities, except for those facilities which by law become the property of the state, and except for those facilities which by public utilities tariffs become the property of the public utility, its customer, or its user. At the time of the conveyance, the subdivider shall supply a statement of the costs of the facilities conveyed, mechanic's lien waivers from all involved contractors, subcontractors, and material suppliers, and existing as built specifications and other available data concerning the location, construction, operation and maintenance of such facilities. The subdivider/developer and all subcontractors shall also warrant the conveyed facilities to be fit for the purpose intended and of merchantable quality, and in addition to be free for two years from the date of conveyance from all defect in material and workmanship. The warranty shall be in writing on a form supplied by the Town. All improvements must be constructed as contained in the approved engineering plans submitted to the Town. Nothing herein shall limit the rights of the Town as to any expressed or implied warranties concerning such facilities from persons manufacturing, selling, or installing the facilities;

d. A dedication or conveyance by the subdivider to the Town of a minimum of 15 percent of the land within each residential subdivision for public open space. Public open space shall mean property that has been dedicated for use by the general public for recreational purposes and shall include land designated for use as a park. All parks shall be developed by the subdivider according to the standards set forth in the park master plan for the Town of Carbondale as it may be amended from time to time;

d. If the Town elects to accept a dedication of undeveloped park land, a park development fee, in addition to the dedication of land, shall be paid by the developer at the time of final plat approval based on the number of dwelling units created by any final subdivision plat or subdivision exemption plat. The fee shall be $700.00 per dwelling unit;

d. The Board of Trustees shall make a determination of whether or not the proposal for dedication of public open space or a fee in lieu thereof as set forth more fully in Section 2.6.4.C.1.j is acceptable, and if not acceptable, the Board of Trustees may impose additional conditions or requirements in connection with the dedication of public open space lands or a fee in lieu thereof consistent with the provisions of this Code; and

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i. All lands dedicated for public open space shall be free of all liens and encumbrances as evidenced by a current title insurance policy to be provided by the developer and shall be dedicated to the Town solely as public open space on the final subdivision plat.

Additional information requested at the pre-application meetings:

Affordable Housing Ded Resolutions
**PROJECT TEAM**

**Owner**
CBS Village Lane LLC  
235 Snowcap Circle  
Carbondale, CO 81623

**Applicant**
CBS Village Lane LLC  
235 Snowcap Circle  
Carbondale, CO 81623

**Developer**
Crawford Design Build, LLC  
1101 Village Rd Unit LL2B  
Carbondale, CO 81623  
crawforddesignbuild@comcast.net  
(970) 963-3833

**Civil Engineering**
High Country Engineering  
1517 Blake Avenue, Ste 101  
Glenwood Springs, CO 81601  
970.945.8676

**Surveying**
True North Colorado LLC  
PO Box 614  
New Castle, CO 81647

**Planning/Coordination**
Mark Chain  
Mark Chain Consulting, LLC  
811 Garfield Avenue  
Carbondale, CO 81623  
970.963.0385 (office)  
970.309.3655 (cell)  
mchain@sopris.net
Architect
George R. Winne A.I.A.
GRW Architecture LLC
4264 Carnwarth Rd.
Tallahassee, FL 32303
970.618.4346 - Cell
970.704.5062 - Fax
grwarch@gmail.com

Legal
Joslyn V. Wood
Wood Nichols, LLC
201 Main Street, Suite 305
Carbondale, CO 81623
(970) 963-2050 (direct)
(970) 963-3800 (main office)
SECTION 2

Application Documents

Townhome Resubdivision Plat
Draft Covenants/Conditions/Restrictions
updated deed restrictions
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF
VILLAGE LANE NORTH TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS of
VILLAGE LANE NORTH TOWNHOMES (the "Declaration") is made as of June____, 2019, by CBS
Village Lane, LLC, a Colorado limited liability company (the "Declarant").

RECITALS

A. Declarant is owner of that certain real property located in Garfield County, Colorado,
more particularly described as Lots 1 through 7 as shown on that certain Townhome Plat of Lot A, a
Resubdivision of Lots 2 & 4, Crystal Village PUD Filing No. 3 Town of Carbondale, according to the
Plat thereof filed on ______, 2019 as Reception ____________in the Office of the Clerk and Recorder,
Garfield County, Colorado (the "Property").

B. Declarant desires to create on the Property a townhome project pursuant to the Colorado
Common Interest Ownership Act as set forth in Colorado Revised Statute 38-33.3-101, et. seq.
(the "Act"), the name of which is the VILLAGE LANE NORTH TOWNHOMES.

ARTICLE 1
DECLARATION AND SUBMISSION

1.1 Declaration. Declarant hereby declares that the Property shall be held, sold and conveyed
subject to the following covenants, conditions, restrictions and easements which are for the purpose of
protecting the value and desirability of the Property, and which shall run with the land and be binding
on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any
part of the Property. Declarant hereby submits the Property to the provisions of the Act.

ARTICLE 2
DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, unless
inconsistent with the context of this Declaration, shall have the following meanings:

(a) "Allocated Interests" means the Sharing Ratio in Common Expenses, and
the votes in the Association. The Allocated Interests for each Residential Unit have been
allocated so that each Residential Unit's share shall be computed with the numerator being one (1) and
the denominator being the total number of Residential Units created and existing at any one time.

(b) "Annual Assessment" means the Assessment levied annually.

(c) "Articles" mean the Articles of Incorporation for the VILLAGE LANE NORTH
TOWNHOMES Homeowners Association, Inc. as amended from time to time.
(d) "Assessments" mean the Annual, Special, and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

(e) "Association" means The VILLAGE LANE NORTH TOWNHOMES Homeowners Association, a Colorado nonprofit corporation, and its successors and assigns

(f) "Association Documents" means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

(g) "Board of Directors" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

(h) "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

(I) "Common Expenses" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association, (ii) insurance premiums for the insurance carried under Article 8, and (iii) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

(j) "Declarant" means CBS Village Lane, LLC, a Colorado limited liability company, and its successors and assigns.

(k) "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements of The VILLAGE LANE NORTH TOWNHOMES.

(l) "Default Assessment" means the Assessments levied by the Association pursuant to 10.7 below.

(m) "First Mortgage" means any Mortgage that is not subject to any lien or encumbrance except liens for taxes or other liens that are given priority by statute and liens for assessments pursuant to the Declaration.

(n) "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

(o) "Lot" means a plot of land subject to this Declaration and designated as a "Lot" on any subdivision plat of the Property recorded by Declarant in the office of the Clerk and Recorder of Garfield County, Colorado.

(p) "Manager" shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time.
(q) "Member" shall mean every person or entity that holds membership in the Association.

(r) "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any Residential Unit or interest therein as security for payment of a debt or obligation.

(s) "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

(t) "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Residential Unit, and "Owner" also includes the purchaser under a contract for deed covering a Residential Unit with a current right of possession and interest in the Residential Unit, but excludes those having such interest in a Residential Unit merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Residential Unit pursuant to foreclosure or other proceedings.

(u) "Plat" means the Townhome Resubdivision Plat of Lots 1-7 of Lot A, of the Resubdivision of Lots 2 & 4; Crystal Village Filing No. 3; recorded______, Reception No.______ in the records of the Clerk and Recorder of Garfield County, Colorado and all supplements and amendments thereto.

(v) "Property" means and refers to that certain real property described in Recital A above.

(w) "Residential Unit" means a Lot together with all improvements thereon, including the individual townhome, and all other rights and burdens hereunder. A Residential Unit is also referred to as a Unit under the Act.

(x) "Sharing Ratio" means the percentage allocation of Assessments to which an Owner's Residential Unit is subject as set forth in Exhibit A attached hereto and made a part hereof.

(y) "Special Assessment" means an assessment levied pursuant to Section 10.6 below on an irregular basis.

(z) "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

(aa) "THE VILLAGE LANE NORTH TOWNHOMES" shall mean the townhome project created by this Declaration, consisting of the Lots 1, 2, 3, 4, 5, 6 and 7 upon the Property, the Residential Units, and any other improvements constructed on the Property and as shown on the Plat.
Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

ARTICLE 3
NAME, DIVISION INTO RESIDENTIAL UNITS

3.1 Name. The name of the townhome project is the VILLAGE LANE NORTH TOWNHOMES. The townhome project is a Planned Community pursuant to the Act.

3.2 Association. The name of the Association is the VILLAGE LANE NORTH TOWNHOMES ASSOCIATION, INC. Declarant has caused the Association to be incorporated under the laws of the State of Colorado as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

3.3 Number of Residential Units. The number of Residential Units in the townhome project is seven (7).

3.4 Identification of Residential Units. The identification number of each Residential Unit is shown on the Plat as filed.

3.5 Division of Property Into Residential Units. The Property is divided into fee simple estates, each such estate consisting of the separately designated Residential Units as shown on the Plat, as may be supplemented or amended from time to time. The Common Expenses shall be allocated according to the Sharing Ratios on Exhibit A. Each Residential Unit shall be allocated one (1) vote in the Association.

3.6 Modifications to Lots and Residential Units. Lots and Residential Units may not be altered without the consent of the Owners whose Residential Units are affected.

3.7 Partition of Combined Residential Units. An Owner of a Residential Unit consisting of two or more Units combined pursuant to this Declaration may partition or subdivide each Residential Unit into Units conforming to the dimensions of the original Residential Units described in the Plat. An Owner shall also have the right, upon obtaining written approval of the Board of Directors and of the first priority Mortgagee of each Residential Unit affected, to create a doorway between the Residential Units in any common wall if such Owner owns two adjacent Residential Units. This Section is not intended, however, to prohibit joint or common ownership of a Residential Unit by two or more persons or entities.

3.8 The Use of Residential Unit. Each Owner shall be entitled to exclusive ownership and possession of the interior portion of his Residential Unit. Each Owner may use the area of the Owner's Lot outside of the Residential Unit in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners, subject to such reasonable rules and regulations as may, from time to time, be established pursuant to the Bylaws of the Association.

3.9 Description of Residential Units. Each Residential Unit and the Lot on which the Unit
sits shall together comprise one (1) Residential Unit, shall be inseparable and may be leased, devised or encumbered only as a Residential Unit.

(a) Each Residential Unit and the Lot on which the Unit sits shall together comprise one (1) Residential Unit, shall be inseparable and may be leased, devised or encumbered only as a Residential Unit.

(b) Title to a Residential Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Residential Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one (1) Owner for each Residential Unit. The parties, if more than one, having the ownership of a Residential Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Residential Unit in which they own an interest.

(c) Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Residential Unit may describe it by its Lot number, VILLAGE LANE NORTH TOWNHOMES, Resubdivision of Lot A, a Resubdivision of Lots 2 & 4 Crystal Village PUD Filing No. 3; Town of Carbondale; County of Garfield, State of Colorado, according to the Plat thereof recorded ______ 2019 as Reception No. __________ and any recorded amendment or supplement thereto, and this Declaration, which will be recorded in the records of the Clerk and Recorder of Garfield County, Colorado, and any recorded amendment and supplement hereto.

(d) Each Residential Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed.

(e) Each Residential Unit shall be used and occupied solely for dwelling or lodging purposes. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Residential Unit or Units as sales offices, management offices or model residences so long as Declarant, or its successor or assigns, continues to be an Owner of a Residential Unit. The use by Declarant of any Residential Unit as a model residence, office or other use shall not affect the Unit's designation on the Plat as a separate Residential Unit.

(f) An Owner shall have the right to lease his Residential Unit upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (ii) a Residential Unit may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation, Bylaws or rules of the Association shall be a default under the lease enforceable by the Association.
ARTICLE 4
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

4.1 The Association. Every Owner of a Residential Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Residential Unit.

4.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Residential Unit and then only to the purchaser or Mortgagee of his Residential Unit.

4.3 Membership. The Association shall have one (1) class of membership consisting of all Owners including the Declarant so long as Declarant continues to own an interest in a Residential Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one (1) vote for each Residential Unit owned. When more than one (1) person holds an interest in any Residential Unit, all such persons shall be Members. The vote for such Residential Unit shall be exercised by one (1) person or an alternative person (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Residential Unit shall be suspended in the event more than one (1) person or entity seeks to exercise the right to vote on any one (1) matter. Any Owner of a Residential Unit which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one (1) vote be cast with respect to any one (1) Residential Unit.

4.4 Declarant Control. Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Board of Directors and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the office of the Clerk and Recorder for Garfield County, Colorado, but in such event, Declarant may at its option require that specified actions of the Association or the Board of Directors as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

4.5 Compliance with Association Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Residential Unit for the benefit of all other Residential Units and for the benefit of Declarant's adjacent properties.

4.6 Books and Records. The Association shall make available to Owners and to
Mortgagees for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

4.7 Manager. The Association may employ or contract for the services of a Manager to whom the Board of Directors may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board of Directors. The Board of Directors shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board of Directors.

4.8 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

ARTICLE 5
POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

The Board of Directors shall have power to take the following actions:

(1) suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in Section 10.7; and

(2) exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association or as provided by law.

ARTICLE 6
MECHANIC'S LIENS

If any Owner shall cause any material to be furnished to his Residential Unit or any labor to be performed therein or thereon, no Owner of any other Residential Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Residential Unit.
ARTICLE 7
PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT

7.1 Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements set forth in this Article 7.

7.2 Other Easements.

(a) Easements for Encroachments. If any portion of a Unit, as shown on the Plat, encroaches upon an adjoining Unit or Units, a valid easement for the encroachment and for the Maintenance of same, so long as it stands, shall and does exist. In the event that any one or more of the Units are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances on the Units.

(b) Easement for Benefit of Owners. All of the Owners of Residential Units shall have a nonexclusive right in common with all of the other Owners to use of all areas of each Lot that constitute the exterior perimeter of each building including all lawns, sidewalks, pathways, roads and streets located within the entire Property. This easement is subject to the following rights of the Association:

(i) the right to reasonably limit the number of guests (not including lessees or members of the Owner's or lessee's family residing in a Residential Unit) using any facilities on the Property;

(ii) the right to establish uniform rules as to the use of any facilities on the Property, including without limitation the right to establish and enforce parking restrictions;

(iii) the right to charge uniform and reasonable admission and any other fees to persons other than Owners, their families and guests and guests residing with Owners for the use of any limited capacity facilities on the Property; and

(iv) the right to suspend the right of an Owner, his lessees and their families or guests to use any facilities on the Property for any period of time during which any assessment against a Residential Unit remains unpaid and delinquent and also for a period of time not exceeding thirty (30) days for any single infraction of the rules of the Association.

(c) Each Residential Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Lots.

(d) There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Residential Units and the structures and improvements...
situated thereon, for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable tv and electricity. Said blanket easement includes future utility services not presently available to the Residential Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Residential Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property subject to approval by the Association as to locations.

7.3 **Access Easement and Maintenance Agreement For Adjacent Townhomes.** Owners of the adjacent townhomes known as Village Lane Townhomes ("Adjacent Townhomes") are benefited by an Access Easement and Maintenance Agreement ("Agreement") over and across the Property for the benefit of owners of lots B through G of the Adjacent Townhomes an easement and right-of-way as described on the Plat for construction, utilities, drainage, and ingress to and egress from and to Lots B through G of the Adjacent Townhomes; provided, however, that no use of such Access Easement shall be exercised by owners, guests or tenants of the Residential Units in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Adjacent Townhomes. The location of the Access Easement is defined on the Plat. The 25 Foot Wide Access Easement (Access Easement) located on Lot A as shown on the Plat shall be a perpetual easement to benefit the Adjacent Townhomes for access, egress and utilities to Lots B through G. The Lot A Owners shall contribute 50% of the maintenance costs for the Access Easement as described in the recorded Agreement.

7.4 **General Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Board of Directors or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 8 below, including the right to enter upon any Residential Unit for the purpose of performing maintenance, including but not limited to work involving drainage, irrigation and other water features, as set forth in Article 8 below.

7.5 **Association as Attorney-in-Fact.** Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Residential Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution as the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provision of this Section and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

7.6 **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to
enter upon the Property in the proper performance of their duties.

7.7 **Model Unit Reservation.** Declarant reserves for itself and for any Successor Declarant or assigns the right to construct and maintain a model unit for the purpose of Townhome sales efforts upon any Lot in the Project.

**ARTICLE 8**

MAINTENANCE, LANDSCAPING AND SPECIAL EASEMENT

8.1 **Maintenance.** In order to maintain a uniform appearance and a high standard of maintenance within The VILLAGE LANE NORTH TOWNHOMES, the Association shall have the right and obligation to maintain the following portions of each Residential Unit:

(a) the exterior of all Residential Units, which shall include and be limited to, painting and re-siding of the exterior, roof repair and replacement (unless any of the foregoing are covered by an Owner's insurance) the buildings' structural components including, but not limited to, the foundations, girders, beams, supports, bearing and structural walls; chimneys, electrical, mechanical and plumbing service installations such as gas lines, pipes, wires, conduits or systems. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Residential Units. The Owner shall be responsible for repair or replacement of broken windowpanes and all other exterior maintenance and repairs. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost; and

(b) All landscaping including but not limited to landscaping of the Lots surrounding the perimeter of the Residential Units, including lawns, trees and shrubs, parking spaces, and the Association shall also maintain all exterior walls, windows and doors, balconies, decks, gates, sidewalks and driveways and restricted parking areas located on Lot B (the maintenance provided under this Section shall include snowplow and shoveling services) and excluding the interior spaces, floors, walls and ceilings, and garages. The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine;

(c) **Association's Right to Grant Owner's Maintenance Area.** The Association reserves the right to grant the maintenance responsibility of certain areas on each Residential Unit to the Residential Unit Owner, and the Residential Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner.

8.2 **Special Easement.** The Association and the Board of Directors and their respective representatives are hereby granted a nonexclusive easement to enter the Residential Units and any area of a Lot as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 8.
8.3 **Maintenance Contract.** The Association or Board of Directors may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board of Directors. The Board of Directors shall not liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board of Directors.

8.4 **Maintenance Responsibilities of Owners.** Each Owner is responsible for providing all maintenance within their Residential Unit at their own expense, unless modified by Section 8.1(d). Such responsibility shall include, without limitation, maintenance of the interior surfaces of the walls, ceilings, doors, windows and floors within the Residential Unit and any finished or additional surfaces, decoration or materials installed by Declarant, the Owner, or their predecessors-in-interest such as carpets, wallpaper, counter tops, painting or staining, plug-in appliances and personal property of any kind in the Residential Unit. Each Owner is also responsible, at his own expense, for all machines, attachments, installations and fixtures within the Residential Unit, the interior surfaces of the walls, ceilings, doors, windows, and floors of the garages. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Residential Unit.

8.5 **Additions, Alterations, and Improvements.** Subject to the reservation of rights of Declarant hereof, no improvement to the Property (other than for maintenance) which results in a Common Expense shall be constructed except with the prior approval of the members of the Association having at least sixty-seven percent (67%) of the total number of votes outstanding and entitled to be cast at a membership meeting as provided in the Bylaws. Dissenting Owners shall not be relieved of their obligation to pay their proportionate share of any Common Expenses. An individual Owner shall do no alterations, additions, or improvements to any area that is maintained by the Association including landscaping of any kind (for his individual benefit or for the benefit of his Residential Unit) without prior written approval of the Board of Directors. No Owner shall decorate or fence any area outside the Residential Unit building without the prior written approval of 100% of the Members of the Association. Utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. All repairs, alterations or remodels are coupled with the obligation to replace materials removed with similar or better quality materials. An Owner shall do no act nor any work that will or may impair any easement without the written consent of the Board of Directors, after first proving to the satisfaction of the Executive Board that such structural soundness or integrity will be maintained during and after any such act or work shall be done or performed. Any expense to the Board of Directors for investigation under this paragraph shall be borne by the Owner. However, nothing herein contained shall be construed to permit structural modification, and any decision relating thereto shall be in the absolute discretion of the Board of Directors, including, but not limited to, the engagement of a structural engineer at the Owner's expense for the purpose of obtaining an opinion. The Board of Directors may also require, as a condition of approval, the posting of security for the completion of any approved alterations, and costs attendant thereto with respect to recording and effecting the approval. Any Owner that receives
approval for and constructs any post closing improvements of any kind, including roof decks or landscaping, must maintain such improvements in good repair and condition and must remove such improvements at the Owners' expense in the event the Board if Directors' deems that the improvements have not been properly maintained or if required for other necessary maintenance and repairs of improvements.

8.6 Owner's Failure to Maintain or Repair. In the event that a Residential Unit and the additions, alterations, or improvements thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Residential Unit lies with the Owner of the Residential Unit, or in the event that the improvements on the Residential Unit are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Residential Unit to perform such work as is reasonably required to restore the Residential Unit and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Residential Unit upon demand. All unreimbursed costs shall be a lien upon the Residential Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

8.7 Right to Combine Units. Subject to any approvals and permits which may be required by the Town of Carbondale, an Owner has the right to combine a Residential Unit with one or more adjoining Units after obtaining written approval from the Board of Directors and from each first priority Mortgagee of the Residential Units affected. A combination of Residential Units shall become effective only when the Owner of the Units which are to be combined and an officer of the Association execute and record in the office of the Clerk and Recorder of Garfield County, Colorado, a written statement describing such Residential Units and declaring that the same are to be combined. Such combination, however, shall not affect the designation or prevent the separate ownership of the Residential Units in the future. The Owners of the Residential Units requesting the relocation of boundaries must submit a signed application to the Board of Directors including the following:

(a) evidence sufficient to the Board of Directors that the applicant has complied with all local rules and ordinances and that the proposed relocation of boundaries does not violate the terms of any document evidencing a security interest;

(b) the proposed form for amendments to the Declaration, including the plats or maps, as may be necessary to show the change in altered boundaries of the combined Residential Units, and their dimensions and identifying numbers;

(c) a deposit against attorney's fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board of Directors; and

(d) such other information as may be reasonably requested by the Board of
Directors.

All costs and attorney's fees incurred by the Association as a result of such an application shall be the sole obligation of the applicant.

8.8 In the event that any property, pertaining to a Residential Unit (as described in Paragraph 8.6 hereof) located anywhere within the VILLAGE LANE NORTH TOWNHOMES are not properly maintained or are damaged or destroyed by an event of casualty and neither the Owner thereof or the Association takes reasonable measures to diligently pursue the repair and reconstruction of the damage or destruction, then the Association, after notice to the Owner, if applicable, and to the Association, shall have the right to enter the affected property and perform such work as is reasonably required to restore the property and any improvement thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owners of the affected Residential Unit(s), or by the Association upon demand. All unreimbursed costs shall be a lien upon the affected Residential Unit or Units and the property of the Association until reimbursement is made. This lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

ARTICLE 9
INSURANCE AND FIDELITY BONDS

9.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available, such insurance as the Board of Directors considers appropriate, including insurance on Residential Units that the Association is not obligated to insure to protect the Association or the Owners. Such insurance shall obtained for all improvements including the dry wall board attached to any and all party walls and all improvements located outside of such dry wall board not including any special improvements added to Residential Units such as roof decks.

9.2 Cancellation. If the insurance described in Section 9.1 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners

9.3 Policy Provisions. Insurance policies carried pursuant to Section 9.1 must provide that:

(a) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

(b) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

(c) No act or omission by any Owner, unless acting within the scope of such
Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

9.5 Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or an equitable portion of the deductible paid by the Association.

9.6 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 9.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

9.7 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

9.8 Fidelity Insurance. To the extent reasonably available, fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two (2) months' current Assessments plus reserves as calculated from the current budget of the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond may be obtained for the Manager and its officers, employees, and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation form the definition of "employees," or similar terms or expressions.

9.9 Workers' Compensation Insurance. The Board of Directors shall obtain
workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

9.10 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Board of Directors may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity or arising out of his status as a Director. The Board of Directors may obtain insurance against such other risks of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties.

9.11 Insurance Obtained by Owners. Each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefit at such Owner's expense, covering the full replacement value of the certain portions of the Owner's Residential Unit. Such insurance shall obtained for all improvements inside of the dry wall board attached to party walls including all other interior walls and any and all improvements located inside of such dry wall board attached to party walls and including any special improvements added to Residential Units. Such insurance shall also be obtained for personal property and personal liability insurance in a limit of not less than Four Hundred Thousand Dollars ($400,000.00) in respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to property, and, if higher limits shall at any time be customary to protect against tort liability, such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Residential Unit as such

ARTICLE 10
ASSESSMENTS

10.1 Obligation. Each Owner, including Declarant, by accepting a deed for a Residential Unit, is deemed to covenant to pay to the Association (i) the Annual Assessments imposed by the Board of Directors as necessary to meet the common expenses necessary to perform the functions of the Association, (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted under the Act, and (iii) Default Assessments which may be assessed against a Residential Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

10.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of The VILLAGE LANE NORTH TOWNHOMES, and for the improvement and maintenance of the Property and other areas of Association responsibility referred to herein, as more fully set for the in this Article below.

10.3 Budget Within thirty (30) days after the adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject
the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. The Board of Directors shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Board of Directors shall levy and assess the Annual Assessments in accordance with the annual budget.

10.4 **Annual Assessments.** Annual Assessments made shall be based upon the estimated cash requirements as the Board of Directors shall from time to time determine to be paid by all of the Owners, subject to Section 10.3 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Property; expenses of management; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping and of the Property; care of grounds, routine repairs and renovations, including wages; common water and utility charges; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements built and maintained by the Association, if any, on a periodic basis, as needed.

Annual Assessments shall be payable in quarterly installments on a prorated basis in advance and shall be due on the first day of each quarter. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

10.5 **Apportionment of Annual Assessments.** Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Residential Units on the basis of the Sharing Ratio in effect on the date of assessment, subject to the following provisions: Expenses (including, but not limited to, costs of maintenance, repair, and replacement) relating to fewer than all of the Residential Units, to the extent not covered by insurance, may, in the sole discretion of the Board of Directors, be assessed only to Owners of the affected Residential Units.

10.6 **Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association, if permitted under the Act, may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any unexpected repair or replacement of improvements on the Property or for such other expense incurred or to be incurred as provided in this Declaration. This Section 10.6 shall not be construed as an independent source of authority of the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 10.4, subject to the requirement that any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his
agents, servants, guests, tenants, or invitees) shall be borne by that Owner, and subject to Section 10.5 above. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than (30) thirty days after such notice shall have been given. Special Assessments are currently restricted under the Act.

10.7 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Residential Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

10.8 Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

(a) assess a late charge for each delinquency in such amount as the Association deems appropriate;

(b) assess an interest charge from the date of delinquency at the yearly rate of two (2) points above the prime rate charged by the Association's bank, or such other rate as the Board of Directors may establish, not to exceed twenty-one percent (21%) per annum;

(c) suspend the voting rights of the Owner during any period of delinquency;

(d) accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

(e) bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

(f) proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Residential Unit shall constitute a lien on such Residential Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Residential Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.
10.9 **Personal Obligation.** The amount of any Assessment chargeable against any Residential Unit shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Residential Unit. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the costs and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

10.10 **Successor's Liability for Assessments; Subordination of Lien.** The provisions of the Act shall govern and control (i) the obligations of successors to the fee simple title of a Residential Unit on which Assessments are delinquent, and (ii) the subordination by the lien of the Assessments provided for in this Declaration.

10.11 **Payment by Mortgagee.** Any Mortgagee holding a lien on a Residential Unit may pay any unpaid Assessment payable with respect to such Residential Unit, together with any and all costs and expense incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Residential Unit for the amounts paid with the same priority as the lien of the Mortgage.

10.12 **Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board of Directors and upon fourteen (14) days' written request to the Manager or the Association's registered agent, any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Residential Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Residential Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which even the date of posting shall be deemed the date of delivery) within fourteen (14) days, the Association shall have no right to assert a Hen upon the Residential Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

10.13 **Capitalization of the Association.** Upon acquisition of record title to a Residential Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to twenty-five percent (25%) of the Annual Assessment determined by the Board of Directors for that Residential Unit for the year in which the Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The unused portion of the working capital deposit shall be returned to each Owner upon the sale of his Residential Unit, provided that the new purchaser of the Residential Unit has deposited the required working capital deposit with the Association.

**ARTICLE 11**

**ASSOCIATION AS ATTORNEY-IN-FACT**

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 12. Acceptance by a grantee of a deed or other instrument of conveyance or
any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 12
DAMAGE OR DESTRUCTION

12.1 Roll of the Board of Directors. In the event of damage or destruction to any property covered by insurance written in the name of the Association, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property insured by the Association.

12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Article 12 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors or the Insurance Trustee, if any, determines to be necessary.

12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 10 .6, if permitted under the Act, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

12.5 Disbursement of Funds for Repair and Reconstruction. The insurance
proceeds held by the Association and the amounts received from the Special Assessments provided for above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Residential Unit, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE 13
DESIGN REVIEW BY OWNERS

All modifications to structures and landscaping within the Property should conform to and harmonize with existing surroundings and structures. Therefore no alteration of the exterior of a Residential Unit including balconies, decks, doors, windows or other structure located on a Lot, including repainting of the structure or installation of any landscaping by an Owner, shall be made unless first approved in writing by the Executive Board or Owners of 5 of the 7 Units.

ARTICLE 14
DURATION OF COVENANTS AND AMENDMENT

14.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

14.2 Amendment by Declarant. Until the first Lot subject to this Declaration has been conveyed by Declarant by a recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument executed by Declarant setting forth such amendment or termination.

14.3 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by members of the Association holding at least sixty-seven percent (67%) of the votes of members. The Allocated Interests shall not be amended without a vote of one hundred percent (100%) of the members. The approval of any amendment or repeal shall be evidenced by the certification by the members to the Board of Directors of the Association of the votes of members. The amendment or repeal shall be effective upon recordation of a certificate executed by the president or a vice-president and the secretary or an assistant secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the members. Any amendment to the Declaration made hereunder
shall be effective only when recorded. All amendments hereto shall be indexed in the grantee's index in the name of Declarant and the Association and in the grantor's index in the name of each person executing the amendment.

ARTICLE 15
LIMIT ON TIMESHARING

No Owner of any Residential Unit shall offer or sell any interest in such Residential Unit under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Association.

ARTICLE 16
PARKING RESTRICTIONS, MAINTENANCE AND EASEMENTS

16.1 Guest Parking Spaces.
There shall be two guest vehicle parking spots for the benefit of all residents of the Village Lane North Townhomes, located southeast of Unit 1 as shown on the Plat (Guest Parking Spaces) subject to the right of the Association to enter pursuant to Section 8.2 above for the purpose of maintaining and repairing the Guest Parking Spaces. The Association may enact rules for the use and operation of the Guest Parking Spaces, from time to time, to insure the fair and equitable use of this general common element.

16.2 Lot 3 Parking Space.
There shall be an exclusive easement for vehicle parking only for the benefit of the Owner of Lot 3 located on and between Lot 4 and Lot 5 as shown on the Plat (Lot 3 Parking Space) subject to the right of the Association to enter pursuant to Section 8.2 above. The Owner of Lot 3 shall maintain and repair the Lot 3 Parking Space. The Owner of Lot 3 may authorize use of the Lot 3 Parking Space to the owner or tenant of any Residential Unit.

16.3 Lot 6 Parking Space.
There shall be an exclusive easement for vehicle parking only for the benefit of the Owner of Lot 6 located west of Lot 7 as shown on the Plat as a limited common element (Lot 6 Parking Space) subject to the right of the Association to enter pursuant to Section 8.2 above. The owner of Lot 6 shall maintain the Lot 6 Parking Space. The Owner of Lot 6 may authorize use of the Lot 6 Parking Space to the owner or tenant of any Residential Unit.

16.4 Parking and Storage Restrictions on Lots.
There shall be no parking of any vehicles and trailers or any storage of equipment or materials or any other personal property outside of the buildings on any Lot. All Unit Owners must use their garages or other designated parking spaces for parking as required by the Town of Carbondale Unified Development Code ("UDC"), as amended from time to time and the conditions of the project approval.
ARTICLE 17
OCCUPANCY AND USE RESTRICTIONS

17.1 Use and Occupancy.

The use and occupancy of each Unit shall be restricted to one single-family dwelling unit. Each Unit may be owner occupied or leased in accordance with Town of Carbondale regulations. In no event shall more than two individuals occupy one bedroom. These restrictions shall apply based strictly on the number of bedrooms indicated for each Unit below:

<table>
<thead>
<tr>
<th>Unit</th>
<th>Bedrooms</th>
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<tbody>
<tr>
<td>Unit 1</td>
<td>3</td>
</tr>
<tr>
<td>Unit 2</td>
<td>3</td>
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<td>Unit 3</td>
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<td>Unit 4</td>
<td>3</td>
</tr>
<tr>
<td>Unit 5</td>
<td>3</td>
</tr>
<tr>
<td>Unit 6</td>
<td>2</td>
</tr>
<tr>
<td>Unit 7</td>
<td>3</td>
</tr>
</tbody>
</table>

17.2 Nuisances and Offensive Activities.

There shall be no noxious or offensive activities conducted on, in, or upon any part of the Property, and no loud noises or noxious odors shall be permitted to occur anywhere on the Property. Nothing shall be done on the Property that may be or become an unreasonable annoyance or a nuisance to any other Owner or any tenant, guest or invitee of any Unit. Each Owner shall be accountable to the other Owner for the uses and behavior of its tenants, guests and invitees.

17.3 No Unsightliness; Trash Storage.

No unsightliness or waste shall be permitted on or in any part of the Property other than in designated trash enclosures. Without limiting the generality of the foregoing, no Owner shall keep or store anything on or in any unenclosed portion of a Unit except for patio, deck and ancillary outdoor furniture and furnishings.

17.4 Animals Kept in Units.

No animals of any kind, with the exception of dogs and cats, may be kept on the Property or within any Unit. Owners who occupy their Unit may keep a total of two pets within that Unit. Owners who lease their Unit may authorize tenants to keep either one dog or two cats within a tenant occupied Unit.

17.5 Restriction on Occupancy.

Each Unit shall be used and occupied solely for residential purposes and no trade or business of any kind may be conducted on, in, or upon any Unit. Lease or rental of a Unit for residential purposes on a short term or long term basis shall not be considered a violation of this covenant and is permissible. The maintenance of a
home office shall not be considered a violation of this restriction so long as the nature and conduct of the business complies with applicable local laws and regulations of the County.

ARTICLE 18
GENERAL PROVISIONS

18.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

18.2 Enforcement.

(a) Except as otherwise provided in this Declaration, the Board of Directors, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board of Directors of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

The failure of the Association to enforce any of the limitations, restrictions, conditions or covenants contained herein shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, or incurred by, the Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Association to enforce or interpret said limitations, restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including without limitation reasonable attorney’s fees.

18.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision that shall remain in full force and effect.

18.4 Conflicts Between Documents.

In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.
DECLARANT:

CBS Village Lane, LLC, a Colorado limited liability company

STATE OF COLORADO  )
COUNTY OF GARFIELD )

The above and foregoing instrument was acknowledged before me on this ___ day of______________, 2019 by Bradley Crawford in his capacity as Manager of CBS Village__________________________, LLC

Witness my hand and seal.

My commission expires:
EXHIBIT A
TO THE
DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
VILLAGE LANE NORTH TOWNHOMES

SHARING RATIO

<table>
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<tr>
<th>Unit</th>
<th>Ratio</th>
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<tr>
<td>Unit 1</td>
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<tr>
<td>Unit 2</td>
<td>15.8%</td>
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<td>10.5%</td>
</tr>
<tr>
<td>Unit 7</td>
<td>15.8%</td>
</tr>
</tbody>
</table>
I. RECITALS

A. WHEREAS, Owner is the owner of 100% of the real property described as follows:

Section: 33 Township: 7 Range: 88 Subdivision: Lot: A of the First Amended Plat of Lot A, a Re-subdivision of Lots 2 & 4, CRYSTAL VLG P.U.D. Filing No. 3, recorded at Reception No. 904530

also known as: Village Lane North Townhomes, 45 Village Lane, Carbondale, CO 81623

B. WHEREAS, pursuant to Community Housing Mitigation Agreement recorded on March 19, 2018, Reception No. 904531, in the records of Garfield County, Colorado, Owner agreed to permanently restrict one (1) two-bedroom unit within the three-unit building (the “R.O. Unit”) at Village Lane North Townhomes designated as Resident Owner Occupied; and one (1) three-bedroom unit within the four-unit building (the “Category 2 Unit”) at Village Lane North Townhomes, to be sold to occupants at sale rates affordable to persons earning not more than 100% of the Garfield County area median income (“AMI”);

C. WHEREAS, Owner, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Community Housing Mitigation Agreement by restricting the use of the Category 2 Unit, described as Unit 2 of Village Lane North Townhomes, to be sold to occupants at sale rates affordable to persons earning not more than 100% of the Garfield County area median income (“AMI”).
North Townhomes and the R.O. Unit, described as Unit 6 of Village Lane North Townhomes (together the “Restricted Units”) as hereinafter described.

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

SECTION 1
DEFINITIONS

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

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

2. "Guidelines" shall mean the Town’s Community Housing Guidelines as amended from time to time and in effect at the time of the lease of the Restricted Units.

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

4. “Qualified Buyer” with respect to the Category 2 Unit shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred percent (100%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines. In the event that there are no Qualified Buyer whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred percent (100%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines, Qualified Buyer shall include natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one-hundred twenty percent (120%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines. A Qualified Buyer may also be an employer-owner, in which case the qualifications requirements to occupy the Category 2 Unit shall apply to the employee-occupant.

5. “Qualified Buyer” with respect to the R.O. Unit shall mean natural persons who live in the unit as the sole place of residence at least nine (9) months out of any twelve (12) months and who satisfy all other qualifications of the Guidelines. There is no (1) income limit, (2) asset limit, (3) appreciation cap, or (4) sales price restriction. A Qualified Buyer may also be an employer-owner, in which case the qualifications requirements to occupy the R.O. Unit shall apply to the employee-occupant.
SECTION 2
DECLARATION

A. For the purposes set forth herein, Owner, for itself and its successors and assigns, hereby declares that the Restricted Units shall be sold, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Unit, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who purchase a Restricted Unit shall be a Qualified Buyer, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries. Owner further represents and warrants to the Town and GCHA that that the declarations herein are free and clear of any financial liens or encumbrances.

B. Owner hereby restricts the purchase of a Restricted Unit to Qualified Buyer. Qualified Buyer may not sublet or assign a lease for a Restricted Unit in violation of this Agreement or the Guidelines.

C. By the acceptance of any purchase of a Restricted Unit, the Purchaser shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement.

SECTION 3
USE AND RENTAL OF RESTRICTED UNITS

A. Except as otherwise provided herein, the use and occupancy of the Restricted Units shall be limited exclusively to housing for a Qualified Buyer and their families. Each Restricted Unit shall be utilized as a Qualified Tenant’s sole and exclusive place of residence.

B. If an otherwise Qualified Person who occupies a Community Housing Sale or Rental Unit must leave the Employment Area for a limited period of time and desires to rent the unit during their absence, a leave of absence may be granted by the Town for one year upon clear and convincing evidence which shows a bona fide reason for leaving and a commitment to return to the area. A letter must be sent to the Town, at least 30 days prior to leaving, requesting permission to rent the unit during the leave of absence. Notice of such intent to rent and the ability to comment shall be provided to any applicable homeowners' association at the time of request to the Town. The leave of absence shall be for one year and may, at the discretion of the Town, be extended for one year, but in no event, shall the leave exceed two years. The rent for Community Housing Sale Units shall not exceed the owner's cost. Owner's cost as used herein includes the monthly mortgage principal and interest payment, plus owners’ association fees, plus utilities remaining in owner's name, plus taxes and insurance prorated on a monthly basis, plus land lease costs if any, plus $20 per month. The owner shall rent to a Qualified Person who meets the provisions of Part II, Section
1, A, B and C. Prior to the Town's qualification of a tenant, said tenant shall acknowledge as part of the lease that said tenant has received, read and understands the homeowners' association covenants, rules and regulations for the unit and shall abide by them. Enforcement of said covenants, rules and regulations shall be the responsibility of the homeowners' association. A copy of the executed lease shall be furnished by the owner or tenant to the Town. Additionally, an owner may request a one-time leave of absence for one (1) year by Special Review with all the above conditions applying. The rent for any authorized sub-tenant of a Community Housing Rental Unit shall not exceed the maximum rent allowed to be charged to the Qualified Person who is taking a leave of absence.

C. Nothing herein shall be construed to require Owner, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 4
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Unit between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours’ written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be construed as a waiver or relinquishment of the Town’s or GCHA’s right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 5
GRIEVANCE PROCEDURES

A. A grievance is any dispute that the Owner or a tenant may have with the Town or
GCHA with respect to action or failure to act in accordance with the individual tenant’s rights, duties, welfare, or status. A grievance may be presented to a Special Review Committee established by the Town and GCHA (hereinafter referred to as the “Committee”) pursuant to and under the procedures set forth in the Guidelines

SECTION 6
REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Unit, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Buyer and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney’s fees.

C. Each and every conveyance of a Property, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement. In the event that the Owner or any successor owner of either Property should desire to condominiumize or subdivide either Property into multiple ownership units, the Town may require the then-owner(s) to execute an amendment to this Deed Restriction for purposes of updating the legal descriptions to conform with the applicable condominium or subdivision plat and/or to require the Restricted Units to be further restricted as to maximum allowable appreciation and resale price in accordance with the Guidelines in effect at such time.

D. In the event that the Owner or tenant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or the appointment of a receiver to manage a Restricted Unit.

SECTION 7
DEFAULT/FORECLOSURE

A. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering either Property or to breach any of Owner’s duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured
by a deed of trust, as described herein, or of any breach of any of Owner’s duties or obligations under said deed of trust, within five (5) calendar days of Owner’s notification from lender, or its assigns or within five (5) calendar days of Owner’s notification from any other creditor specified herein, of any default, past due payment or breach.

B. Upon notification of a default as provided in Section 4.B, above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available.

C. Upon receipt of any notice of default by Owner, whether the notice described in Section 4.B, above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner’s behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney’s fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the property that includes the Restricted Unit. Otherwise, Owner’s indebtedness to the Town shall be satisfied from the Owner’s proceeds at closing upon sale of the property that includes the Restricted Unit.

D. Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall be a “person with an interest in the property……” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 et seq.

E. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the property that includes the Restricted Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the property that includes the Restricted Unit or any transfer. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be
construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.

**SECTION 8**

**GENERAL PROVISIONS**

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Owner:
Bradley S Crawford  
CBS Village Lane, LLC  
1101 Village Road, Unit LL2B  
Carbondale, CO 81623

To Town:
Town of Carbondale, Colorado  
Attn: Town Manager  
511 Colorado Avenue  
Carbondale, Colorado 81623

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.
F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado.

N. Attorney’s Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys’ fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.
CBS VILLAGE LANE, LLC

By: ______________________________

Bradley S Crawford, Manager

STATE OF COLORADO  }

} ss.

COUNTY OF GARFIELD  }

The foregoing instrument was acknowledged before me this ___ day of ____________ 2017, by Bradley S. Crawford, in his capacity as Manager of CBS Village Lane, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

__________________________________

Notary Public
ACCEPTANCE BY THE GARFIELD COUNTY HOUSING AUTHORITY AND THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE OCCUPANCY, AND LEASE OF CERTAIN UNITS LOCATED 45 VILLAGE LANE AND KNOWN AS THE VILLAGE LANE NORTH TOWNHOMES, UNIT 2 AND UNIT 6, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

By: ________________________________
Katherine Gazunis, Executive Director
Garfield County Housing Authority

STATE OF COLORADO  )
COUNTY OF GARFIELD  ) ss.

The above and foregoing document was acknowledged before me by Katherine Gazunis this ____ day of ___________________, 2019.

Witness my hand and official seal.
My commission expires:

______________________________
Notary Public
TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation

By:_______________________________________
Dan Richardson, Mayor

ATTEST:

_______________________________________
Cathy Derby, Town Clerk

STATE OF COLORADO  )
COUNTY OF GARFIELD  ) ss.

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this ____ day of __________________, 2019.

Witness my hand and official seal.
My commission expires:

___________________________
Notary Public
SECTION 3

MISCELLANEOUS DOCUMENTS

List of Property Owners within 300 feet
Ordinance No. 14- Series in 2017
Community Housing Agreement – recorded
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ORDINANCE NO. 14
SERIES OF 2017

AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING A MAJOR PLAT AMENDMENT AND SITE PLAN REVIEW FOR
LOT A, CRYSTAL VILLAGE P.U.D.

WHEREAS, CBS Village Lane, LLC, a Colorado limited liability company
("Applicant"), has submitted an application for the contemporaneous approval of a Major
Plat Amendment ("Plat Amendment") in order to eliminate a plat note that prohibited
residential use and Major Site Plan Review ("Site Plan") in order develop seven new
townhomes upon Lot A, Crystal Village P.U.D., as described on the Resubdivision of Lots
2 & 4, Crystal Village P.U.D. Filing No. 3, Town of Carbondale, Colorado recorded on
August 12, 2004 as Reception No. 658026 ("subject property"); and

WHEREAS, after all required notices, the Planning and Zoning Commission of the
Town of Carbondale reviewed this application at noticed public hearings held on April 13
and April 27, 2017, and recommended approval of the Plat Amendment with conditions;
and

WHEREAS, after all required notices, the Board of Trustees conducted a noticed
public hearing on this application on May 9, 2017, 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, on May 23, 2017, the Board of Trustees approved a Community
Housing Mitigation Plan for the proposed development; and

WHEREAS, the Board of Trustees finds and determines that the requested Plat
Amendment meets the following approval criteria set forth in Municipal Code Chapter
17.02, sub-sections 2.6.7.A.B.1 and 2.6.5.C.2.b, including:

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

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

3. The development will comply with applicable technical standards
   and specifications adopted by the Town.
WHEREAS, the Board of Trustees also finds and determines that the application also meets the following site plan approval criteria 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 subdivision plat,

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 further finds that certain conditions of approval should be imposed so that the subject property will be developed consistent with the purposes of Title 17 of the Carbondale Municipal Code and the terms of prior ordinances and regulations concerning the Crystal Village P.U.D., including Ordinance No. 10, Series of 2016.

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

1. Approval of Major Plat Amendment. The Board of Trustees hereby approves a Major Plat Amendment such that a revised plat of the subject property may be recorded that omits a prior plat note restricting use of the property to residential use. The revised final plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the revised final plat within 90 days after the date of adoption of this Ordinance. The revised final plat shall include a lienholder consent and subordination form in form acceptable to the Town Attorney to be executed by Applicant’s lender prior to recordation. The revised final plat shall also include the following plat notes:

   a. Prior to issuance of any building permits for residential development upon Lot A, the applicant shall be required to payment to the Town of Carbondale fees in lieu of water rights dedication calculated by the Public Works Director according to the terms of the Municipal Code to account for the increased water demands associated with residential development as compared to commercial development.

   b. Development of Lot A for residential purposes is conditioned upon compliance with that certain Community Housing Mitigation Agreement between CBS Village Lane, LLC and the Town of Carbondale dated January 25, 2017 and recorded in the Office
2. **Approval of Major Site Plan Review.** The Board of Trustees hereby grants Major Site Plan Review approval for the subject property (Lot A of the Crystal Village P.U.D.), subject to all terms and conditions of this Ordinance and the associated Community Housing Mitigation Agreement. The final site plan shall be delivered to the Town’s Planning Director prior to recordation of the revised final plat. The final site plan shall include adequate snow storage areas acceptable to the Town’s Public Works Director and depict a greater variety of balconies in accordance with Section 5.6.5.C.2.a.ii of Chapter 17.05 of the Municipal Code.

3. **Future Agreements and Obligations.** At the time of any future re-subdivision or condominiumization of the subject property, the Town may require the then-owner to: (1) enter into a public improvements agreement in form acceptable to the Town for purposes of requiring and guaranteeing the completion of any public improvements required to serve development upon the subject property; and/or (2) execute and record a declaration of covenants, conditions, and restrictions in form acceptable to the Town for purposes of establishing a funding mechanism for any common expense items, including the common irrigation system; and/or (3) pay per-unit school and fire impact fees to the Roaring Fork School District and the Carbondale & Rural Fire Protection District.

4. **Additional Conditions of Approval.** The Board of Trustees imposes the following additional conditions of approval:

   a. All lighting on the subject property shall be in compliance with Section 5.10 of Chapter 17.05 of the Municipal Code (Exterior Lighting).

   b. Unless inconsistent with the terms hereof, all other representations of the Applicant in written submittals to the Town or in public hearings concerning this project shall also be binding as additional conditions of approval.

   c. The Applicant shall be required to pay and reimburse the Town for professional and staff fees pursuant to Sections 13.16.180 and 1.30.030 of the Carbondale Town Code, and for all recording fees.

5. **Fees.** All Fee’s including developer reimbursable fees, shall be paid prior to the recordation of the plat.

6. **Recording.** A copy of this Ordinance shall be recorded in the Office of the Garfield County Clerk and Recorder at the expense of the Applicant. The terms and conditions of this Ordinance, which touch and concern the subject property, are intended to run with title to said property and to be binding upon any successors or assigns.
INTRODUCED, READ AND PASSED this 12th day of September, 2017.

THE TOWN OF CARBONDALE

By: [Signature]
Dan Richardson, Mayor

ATTEST:
[Cathy Derby, Town Clerk]
COMMUNITY HOUSING MITIGATION AGREEMENT
Lot A, Crystal Village P.U.D.

This COMMUNITY HOUSING MITIGATION AGREEMENT ("Agreement") is made effective this 25th day of July, 2017, between CBS Village Lane, LLC, a Colorado limited liability company (hereinafter referred to as "CBS"), and the Town of Carbondale, a Colorado home rule municipal corporation (hereinafter referred to as "Town").

A. On May 9, 2017, the Town's Board of Trustees approved a Major Site Plan Review and Major Plat Amendment to allow Lot A, Crystal Village PUD, so that seven townhomes can be developed on this property.

B. On May 23, 2017, the Town's Board of Trustees approved a Community Housing Mitigation Plan for this project, as required by Chapter 17, Section 5.11 of the Carbondale municipal code.

C. In the future, CBS upon completion of the seven townhome units, CBS intends to subdivide or condominiumize these seven units into seven separate properties.

D. Pending completion of that future re-subdivision or condominium approval process, CBS and the Town now wish to memorialize the terms of CBS' community housing obligations for Lot A, Crystal Village P.U.D., according to the final plat thereof recorded in the office of the Garfield County Clerk & Recorder on August 17, 2004 at Reception No. 658026.

NOW THEREFORE, in consideration of the mutual rights and obligations set forth in this Community Housing Mitigation Agreement, and other good and sufficient consideration, CBS and the Town further agree as follows:

1. As full satisfaction of all affordable housing mitigation requirements for all residential units within Lot A (to contain seven residential units), CBS and the Town agree that, prior to issuance of any certificates of occupancy for any of the seven future townhome units, one three-bedroom townhome unit shall be deed restricted as to occupancy, initial price, and resale, as a Category 2 unit to be owned and occupied by persons earning no more than 100% of Garfield County area median income (AMI), and that a second two-bedroom townhome unit shall be deed-restricted as an owner-occupied or "RO" unit. All deed restrictions shall be substantially consistent with the forms attached as Exhibit A, as well as subject to the 2017 Town of Carbondale's Community Housing Guidelines ("Guidelines"), as amended from time to time.

2. This Agreement is expressly contingent upon CBS's lender's execution of the "Lienholder Consent and Subordination" set forth at the end of this document.

3. This Agreement may be executed by the parties and CBS's lender in one or more counterparts, all of which taken together shall constitute one instrument.
4. Should the Town prevail in any legal action to enforce this Agreement, the Town shall be entitled to recover its costs and attorneys' fees.

5. This Agreement shall be recorded in the Office of the Garfield County Clerk and Recorder at CBS's expense. The terms and provisions of this Agreement shall run with title to Lot A, Crystal Village P.U.D., and be binding upon successors and assigns.

TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By:  

Dan Richardson, Mayor

ATTEST:

Cathy Derby, Town Clerk

STATE OF COLORADO }  
COUNTY OF GARFIELD } ss.

The foregoing instrument was acknowledged before me this 24th day of JULY, 2017, by Dan Richardson as Mayor and Cathy Derby as Town Clerk of the Town of Carbondale, Colorado.

WITNESS my hand and official seal.

My commission expires:

Notary Public

PATRICIA A. SPRANG
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20165044714
My Commission Expires November 28, 2020
Community Housing Agreement
Let A Crystal Village PUD
July 2017
Page 3

CBS VILLAGE LANE, LLC

By: Bradley S. Crawford, Manager

STATE OF COLORADO )
) ss.
COUNTY OF Garfield )

The foregoing instrument was acknowledged before me this 4th day of October 2017, by Bradley S Crawford, as manager of CBS Village Lane, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

[Signature]
Notary Public

[Signature]
Notary Public

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DEED RESTRICTION
VILLAGE LANE TOWNHOMES
TOWN OF CARBONDALE, COLORADO

DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE OCCUPANCY OF CERTAIN UNITS LOCATED AT VILLAGE LANE TOWNHOMES, LOT A CRYSTAL VILLAGE PUD, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE OCCUPANCY OF CERTAIN UNITS LOCATED AT VILLAGE LANE TOWNHOMES, LOT A, CRYSTAL VILLAGE PUD, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and executed this ______ day of ________________, 2017, (the "Effective Date"), by CBS Village Lane, LLC a Colorado limited liability company and/or its assigns (the "Owner"), for the benefit of and enforceable by the Board of Trustees of the Town of Carbondale, Colorado (the "Town") and the Garfield County Housing Authority ("GCHA"), a duly constituted housing authority established pursuant to Colorado law (together, the "Beneficiaries").

I. RECITALS

A. WHEREAS, Owner is the owner of 100% of the real property described as follows:

   Section: 33 Township: 7 Range: 88 Subdivision: CRYSTAL VLG PUD FLG 3 LTS 2-7
   Lot: A RE-SUB OF LOTS 2 & 4, FLG 3
   also known by street and number as: Village Lane Townhomes, Carbondale, CO 81623
   AND

B. WHEREAS, pursuant to Community Housing Mitigation Agreement recorded on _______________, 2017, Reception No. __________, records of Garfield County, Colorado, Owner agreed to permanently restrict one (1) two-bedroom unit within a seven-unit building at Village Lane Townhomes designated as Resident Owner Occupied and one (1) three-bedroom unit within a seven-unit building at Village Lane Townhomes, to be sold to occupants at sale rates affordable to persons earning not more than 100% of the Garfield County area median income ("AMI");

C. WHEREAS, Owner, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Community Housing Mitigation
Agreement by restricting the use of Unit 2 of Village Lane Townhomes and Unit 6 Village Lane Townhomes ("Restricted Units") as hereinafter described.

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

SECTION 1
DEFINITIONS

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

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

2. "Guidelines" shall mean the Town’s Community Housing Guidelines as amended from time to time and in effect at the time of the lease of the Restricted Units.

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

4. “Qualified Buyer” shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred percent (100%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines. In the event that there are no Qualified Buyer whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one hundred percent (100%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines, Qualified Buyer shall include natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one-hundred twenty percent (120%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.

SECTION 2
DECLARATION

A. For the purposes set forth herein, Owner, for itself and its successors and assigns, hereby declares that the Restricted Units shall be sold, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to a Restricted Unit, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA,
and their respective successors and assigns. All persons who purchase a Restricted Unit shall be Qualified Buyer, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries. Owner further represents and warrants to the Town and GCHA that that the declarations herein are free and clear of any financial liens or encumbrances.

B. Owner hereby restricts the purchase of a Restricted Unit to Qualified Buyer. Qualified Buyer may not sublet or assign a lease for a Restricted Unit in violation of this Agreement or the Guidelines.

C. By the acceptance of any purchase of a Restricted Unit, the Purchaser shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement.

SECTION 3
USE AND RENTAL OF RESTRICTED UNITS

A. Except as otherwise provided herein, the use and occupancy of the Restricted Units shall be limited exclusively to housing for Qualified Buyer and their families. Each Restricted Unit shall be utilized as a Qualified Tenant’s sole and exclusive place of residence.

B. If an otherwise Qualified Person who occupies a Community Housing Sale or Rental Unit must leave the Employment Area for a limited period of time and desires to rent the unit during their absence, a leave of absence may be granted by the Town for one year upon clear and convincing evidence which shows a bona fide reason for leaving and a commitment to return to the area. A letter must be sent to the Town, at least 30 days prior to leaving, requesting permission to rent the unit during the leave of absence. Notice of such intent to rent and the ability to comment shall be provided to any applicable homeowners’ association at the time of request to the Town. The leave of absence shall be for one year and may, at the discretion of the Town, be extended for one year, but in no event, shall the leave exceed two years. The rent for Community Housing Sale Units shall not exceed the owner's cost. Owner's cost as used herein includes the monthly mortgage principal and interest payment, plus owners’ association fees, plus utilities remaining in owner's name, plus taxes and insurance prorated on a monthly basis, plus land lease costs if any, plus $20 per month. The owner shall rent to a Qualified Person who meets the provisions of Part II, Section I, A, B and C. Prior to the Town's qualification of a tenant, said tenant shall acknowledge as part of the lease that said tenant has received, read and understands the homeowners’ association covenants, rules and regulations for the unit and shall abide by them. Enforcement of said covenants, rules and regulations shall be the responsibility of the homeowners' association. A copy of the executed lease shall be furnished by the owner or tenant to the Town. Additionally, an owner may request a one-time leave of absence for one (1) year by Special Review with all the above conditions applying. The rent for any authorized sub-tenant of a Community Housing Rental Unit shall not exceed the maximum rent allowed to be charged to the Qualified Person who is taking a leave of absence.
C. Nothing herein shall be construed to require Owner, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

SECTION 4
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Unit between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice to Owner of said inspection.

B. In the event a violation of the Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before GCHA, it shall be conducted in accordance with the hearing procedures set out in Section 7, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be construed as a waiver or relinquishment of the Town’s or GCHA’s right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

SECTION 5
GRIEVANCE PROCEDURES

A. A grievance is any dispute that the Owner or a tenant may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant’s rights, duties, welfare, or status. A grievance may be presented to a Special Review Committee established by the Town and GCHA (hereinafter referred to as the “Committee”) pursuant to and under the procedures set forth in the Guidelines
SECTION 6
REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Unit, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Buyer and/or occupants.

B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney’s fees.

C. Each and every conveyance of a Property, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement. In the event that the Owner or any successor owner of either Property should desire to condominiumize or subdivide either Property into multiple ownership units, the Town may require the then-owner(s) to execute an amendment to this Deed Restriction for purposes of updating the legal descriptions to conform with the applicable condominium or subdivision plat and/or to require the Restricted Units to be further restricted as to maximum allowable appreciation and resale price in accordance with the Guidelines in effect at such time.

D. In the event that the Owner or tenant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or the appointment of a receiver to manage a Restricted Unit.

SECTION 7
DEFAULT/FORECLOSURE

A. It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering either Property or to breach any of Owner’s duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment or breach.
B. Upon notification of a default as provided in Section 4.B, above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available.

C. Upon receipt of any notice of default by Owner, whether the notice described in Section 4.B, above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner’s behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney’s fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the property that includes the Restricted Unit. Otherwise, Owner’s indebtedness to the Town shall be satisfied from the Owner’s proceeds at closing upon sale of the property that includes the Restricted Unit.

D. Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall be a “person with an interest in the property.....” as described in CRS 38-38-103(1)(a)(1)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 et seq.

E. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the property that includes the Restricted Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the property that includes the Restricted Unit or any transfer. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.

SECTION 8
GENERAL PROVISIONS
A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Owner:
Bradley S Crawford
CBS Village Lane, LLC
235 Snowcap Lane
Carbondale, CO 81623

To Town:
Town of Carbondale, Colorado
Attn: Town Manager
511 Colorado Avenue
Carbondale, Colorado 81623

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

C. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
G. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the Parties. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

J. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

K. Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado.

N. Attorney’s Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first written above.
[this space left blank intentionally]
CBS VILLAGE LANE, LLC

By: Bradley S Crawford

STATE OF COLORADO  
COUNTY OF Garfield  

The foregoing instrument was acknowledged before me this 4th day of October 2017, by Bradley S Crawford, CBS Village Lane, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

LIVY L. FREE  
Notary Public  
State of Colorado  
Notary ID 20074025496  
My Commission Expires Jul 2, 2019
ACCEPTANCE BY THE GARFIELD COUNTY HOUSING AUTHORITY AND THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE OCCUPANCY, AND LEASE OF CERTAIN UNITS LOCATED AT LOT A CRYSTAL VILLAGE, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

By:  
Katherine Gazunis, Executive Director
Garfield County Housing Authority

STATE OF COLORADO )
COUNTY OF ) ss.

The above and foregoing document was acknowledged before me by Katherine Gazunis this 14th day of February, 2018.

Witness my hand and official seal,
My commission expires:

CHERYL R. STROUSE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19944020591
MY COMMISSION EXPIRES JANUARY 10, 2019

Notary Public
TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation

By: [Signature]
Dan Richardson, Mayor

ATTEST:

[Catherine Derby, Town Clerk]

STATE OF COLORADO
COUNTY OF Garfield

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this 25th day of July, 2017.

Witness my hand and official seal.
My commission expires:

[Notary Public]

[Seal]
MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday August 15, 2019

Commissioners Present:                      Staff Present:
Ken Harrington, Vice-Chair                   John Leybourne, Planner
Jeff Davlyn                                    Mary Sikes, Planning Assistant
Jay Engstrom
Jade Wimberley
Nicholas DiFrank (1st Alternate)

Commissioners Absent:
Michael Durant, Chair
Nick Miscione
Tristan Francis (2nd Alternate)
Marina Skiles

Other Persons Present
Mark Chain

The meeting was called to order at 7:00 p.m. by Ken Harrington.

July 11, 2019 Minutes:

Nicholas made a motion to approve the July 11, 2019 minutes. Jade seconded the motion and they were approved unanimously.

CONTINUED PUBLIC HEARING – REQUEST FOR CONTINUANCE
Crystal Acres PUD Amendment
Applicant: Jerome and Donna Dayton
Location: 315 Oak Run Road

Jeff made a motion to continue the public hearing for a PUD Amendment for the Crystal Acres PUD to August 29, 2019. Nicholas seconded the motion and it was approved unanimously.

Resolution 9, Series of 2019 - Approving RVR Minor Plat Amendment – 403 & 417 Crystal Canyon Drive

Nicholas made a motion to approve Resolution 9, Series of 2019, approving the Minor Plat Amendment at 403 and 417 Crystal Canyon Drive. Jay seconded the motion and it was approved unanimously.
Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

PUBLIC HEARING – Final Subdivision Plat/Resubdivison
Location: Lot A, Crystal Village PUD Filing No. 3
Applicants: CBS Village Lane, LLC

John said that this is an application to re-subdivide Lot A, Crystal Village PUD into 7 townhome units located in two buildings. He said that the Planning Commission is required to hold a public hearing and to recommend approval of the application or recommend to deny it. He said that the Commission may also continue the public hearing.

John stated that the development of Lot A was approved by Ordinance No. 14 series of 2017 after public hearings before the Planning Commission and the Board of Trustee’s. He said that the Ordinance approved a Major Site Plan Review and Major Plat Amendment for the construction of two buildings, housing 7 residential units. He said that two of these units are restricted per the Recorded Community Housing Mitigation Agreement dated July 25, 2017 (attached). He said that this agreement restricts one three-bedroom unit to be an AMI Category 2 and one other unit to be RO, or Owner Occupied.

Mark Chain gave the history of this application and project. He said that the Rockford Ditch has been changed and relocated. He said that not all of the final documents have been completed yet as it is complicated.

There were no members of the public to speak on this application.

Motion to Close Public Hearing

A motion was made by Jay to close the public hearing. Jeff seconded the motion and it was approved unanimously.

Jade commented that the corner of Main Street and Hendrick Drive seems to be flooding after the ditch was covered.

Motion

Jay made a motion to recommend approval of the Village Lane North Townhomes Resubdivision/Final Plat with the suggested findings and conditions. Nicholas seconded the motion and it was recommended unanimously.

Mark Chain suggested that the seating in the Board room be arranged so that there is more seating for the public. He said that at the old Town Hall there was a lot more seating for the public.
**Staff Update**

John said that the quarterly report for the Planning Department was included in the packet. He said that it’s busy along Highway 133.

Mary said that the City Market building permit was issued yesterday.

**Commissioner Comments**

Jade asked about the lighting codes in the UDC. She wanted information regarding the cobra lights on Second Street and the possibility of a petition to get the lights changed.

**Motion to Adjourn**

A motion was made by Jeff to adjourn. Nicholas seconded the motion and the meeting was adjourned at 7:25 p.m.
2019 Carbondale Update

CORE
Community Office for Resource Efficiency
WE HELP YOU SAVE ENERGY.
The Community Office for Resource Efficiency (CORE) helps you save energy and reduce carbon emissions. Founded in 1994, today we continue to advance “CORE Values” of clean air, sustainable energy, stable climate, strong economy and healthy community.
CORE has supported the Town of Carbondale’s progress towards your CAP goals through:

- Inspiration
- Outreach and Engagement
- Addressing Cost Barriers
- Technical Assistance and Resources
- Collaboration and Community Support
Inspiration

From the outset, CORE has established itself as an innovative leader, breaking ground with the nation’s first carbon mitigation fee, Colorado’s first wind energy project and one of the earliest solar rebate programs in the US.

Refining our focus to support member communities to met their CAP goals and move towards Net Zero.

Inspiring projects In Carbondale:
- ACES Near Net Zero Farm House
- Partnered with ACES and GreenLine Architects
- CORE provided technical assistance and funding
- 3 job site trainings (CLEER participated to provide AIA credits)
- Several Net Zero homes (including Marty Treadway’s)
Outreach and Engagement

Events:

Roaring Stories
Live story evening featuring Roaring Fork Valley locals, including several locals from Carbondale, telling first-person stories.

Imagine Climate
Month long exploration of climate art & technology, including 4 events, up and down the valley to spark meaningful community action and engage diverse audiences.

Sponsorships and Tabling:

Five Points Film Festival
Dandelion Days
KDNK Hoot
CLEER’s EV Sales Event
Outreach and Engagement

Ongoing:

**You Are Powerful Campaign**
A monthly social norming campaign featuring case studies of local citizens and businesses.

**Weekly Print Advertisements in Papers With High Carbondale Readership**

**Radio Spots on KDNK and Aspen Public Radio**
Addressing Cost Barriers

CORE’s rebates, grants, and assistance to obtain additional funding has helped Carbondale address the cost barriers to installing higher efficiency technologies and taking on innovative projects.

REBATES and ASSESSMENTS:

$65,221 Awarded in Carbondale

- 66 Homes
- 24 Businesses (Including Town Hall lighting retrofit.)

GRANTS:

$101,400 in Grant Funding

- ACES Farm House
- Third St. Center
- Several Net Zero Homes

SECURED FROM PARTNERS:

- $128,830 secured in additional support from partners
CORE has provided technical assistance and resources to support Carbondale’s goals through:

• Home Assessments (CORE provided 44 home energy assessments to residents in Carbondale)

• Technical assistance to grant project support (ACES Farm House, Third St. Center)

• Staff and contracted expertise (Jeff Dickenson//Biospace) to support Carbondale’s code efforts
  • Ongoing
  • Working with CLEER on Carbondale’s Path to Net Zero
Collaboration and Support

Partnered and Collaborated with other Carbondale organizations:

• Serve on Carbondale’s Eboard

Partnered with:

• CLEER
  • Fall Innovation Series
  • Buildings for a Sustainable Future (Ed Mazaria event)
  • Carbondale’s Net Zero Task Force
• Alya Howe and Writ Large
• ACES
• Solar Rollers
• KDNK
In 2020 CORE will be focusing on how we can help our member communities to reach their CAP goals and move towards Net Zero. We look forward to another successful year working with the Town of Carbondale.
MEMORANDUM

August 20, 2019

TO:        Jay Harrington, Town of Carbondale
FROM:  Tamm Udall, Holland & Hart LLP
RE:    Ordinance to Establish Tobacco Product Retail License

The draft ordinance reflects the Board of Trustees’ discussion and direction at previous meetings. It requires all retailers of tobacco products to obtain a license. It also prohibits the sale of flavored tobacco products by licensed retailers.

The definitions and many of the requirements align closely with other communities’ ordinances. The licensing provisions have been individualized for the Town. The ordinance retains many of the provisions of Chapter 10, Article 6 adopted last July by the Board to regulate the minimum age for the purchase, possession, and consumption of tobacco products.

CTU/

13386084_v1
ORDINANCE NO. 12
Series of 2019

AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO AMENDING
CHAPTER 6 OF THE MUNICIPAL CODE OF THE TOWN OF CARBONDALE TO
ESTABLISH LICENSING REQUIREMENTS FOR THE RETAIL SALE OF TOBACCO
PRODUCTS AND FURTHER REGULATING THE SALE OF TOBACCO PRODUCTS,
AMENDING CHAPTER 6, ARTICLE 7 REGARDING SUSPENSION, REVOCATION,
OR NONRENEWAL OF CERTAIN LICENSES, AND AMENDING CHAPTER 10,
ARTICLE 6 REGARDING THE MINIMUM AGE FOR THE PURCHASE,
POSSESSION, AND CONSUMPTION OF TOBACCO PRODUCTS AND THE
MINIMUM AGE FOR THE PURCHASE, POSSESSION, AND CONSUMPTION OF
ELECTRONIC SMOKING DEVICES AND RELATED SUBSTANCES

WHEREAS, Article XX of the Colorado Constitution grants to home rule municipalities
“every power theretofore possessed by the legislature to authorize municipalities to function in
local and municipal affairs;” and

WHEREAS, the Town of Carbondale (the “Town”) is a home rule municipal corporation
organized under the laws of the State of Colorado and possessing the maximum powers and
authority and privileges to which it is entitled under Colorado law; and

WHEREAS, the Centers for Disease Control and Prevention has reported a more than
800% increase in electronic cigarette use among middle school and high school students between
2011 and 2015; and

WHEREAS, approximately 96 percent of smokers begin smoking before age 21, with
most beginning before age 16, and smokers frequently transition from experimentation to
addiction between the ages of 18 and 21; and

WHEREAS, youth use of e-cigarettes and similar products is associated with future
cigarette use; and

WHEREAS, 81% of youth who have ever used a tobacco product report that the first
tobacco product was flavored; and

WHEREAS, flavored tobacco products promote youth initiation of tobacco use and help
young, occasional smokers to become daily smokers by reducing or masking the natural
harshness and taste of tobacco increasing the appeal of tobacco products; and

WHEREAS, young people are more likely than adults to use menthol-, candy- and fruit-
flavored tobacco products, including cigarettes, electronic smoking devices, cigars, cigarillos,
and hookah tobacco; and

WHEREAS, in 2019 the Colorado General Assembly enacted House Bill 19-1033 which
removed certain restrictions and penalties on local government regulation of tobacco products; and
WHEREAS, the requirement for a tobacco retail license will not unduly burden legal business activities of retailers who sell tobacco products; and

WHEREAS, the Town finds that these regulations, including licensing requirements for tobacco product retailers and prohibitions on flavored tobacco product sales, are appropriate and necessary to protect the health, safety, and welfare of the citizens of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that the Town of Carbondale Municipal Code shall be amended as follows:

1. The foregoing recitals are hereby adopted as findings and determinations of the Board of Trustees.

2. A new Article 9, Tobacco Product Retail License, shall be added to Chapter 6 of the Town of Carbondale Municipal Code regarding sales tax licenses and regulations. The new Article 9 shall read as follows:

Sec. 6-9-10. Purpose and intent.

The purpose of this Article is to establish license requirements for tobacco product retailers, to encourage responsible tobacco product retailing, to discourage sale or distribution of tobacco products to individuals under the age of 21, and to prohibit the sale of flavored tobacco products.

Sec. 6-9-20. Definitions.

The following words and phrases, as used in this Article, shall have the following meanings:

Accessory means any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco product; or (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product but (a) solely controls moisture and/or temperature of a stored tobacco product; or (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

Characterizing flavor means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a
distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a characterizing flavor.

_Cigarettes_ mean any product that contains tobacco or nicotine, including, but not limited to, premanufactured cigarettes and/or hand-rolled cigarettes, 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) 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.

_Component or part_ means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the tobacco product’s performance, composition, constituents, or characteristics; or (2) to be used with or for the human consumption of a tobacco product or electronic smoking device. Component or part excludes anything that is an accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for electronic smoking device.

_Constituent_ means any ingredient, substance, chemical or compound other than tobacco, water or a reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacturer or packaging of a tobacco product.

_Distinguishable_ means perceivable by either the sense of smell or taste.

_Electronic smoking device_ means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery or nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

_Flavored tobacco product_ means any tobacco product that contains a constituent or that imparts a characterizing flavor.
Ingredient means any substance, chemical or compound, other than tobacco, water, reconstituted tobacco sheets that are added by the manufacturer to a tobacco product during the processing, manufacture or packaging of the tobacco product.

License refers to the tobacco product retail license.

Licensee means the owner or holder of a tobacco product retail license.

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.

Minimum legal sales age means twenty-one (21) years of age or older.

Mobile vending means any sales other than at a fixed location.

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.

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 employer of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine or other coin-operated machine are forms of a self-service display.

Tobacco paraphernalia means any item designed for the consumption, use, or preparation of tobacco products.

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 smoked, heated, chewed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, bidis, snus, mints, hand gels, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cutting, and screenings of tobacco; (2) electronic smoking devices; (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. Excluded from this definition is any product that contains marijuana and any products specifically approved by the U.S. Food and Drug Administration for use in reducing, treating, or eliminating nicotine or tobacco dependence or for other medical purposes when these products are being marketed and sold solely for such approved purpose.

Tobacco product retail location means any premises where tobacco products or tobacco paraphernalia are sold or distributed to a consumer, including, but not limited to, hookah bar, lounge, or cafe, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine, or structure where tobacco products are sold.
Tobacco product retailer means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products or tobacco paraphernalia. Tobacco product retailing means 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.

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. 6-9-30. License required.

(a) 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.

(b) No license shall be issued to authorize tobacco product retailing anywhere other than at a fixed location within the Town 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.

(c) No licenses within 500 feet of schools. No licenses shall be issued to retailers located within 500 feet from any public or parochial school as determined by the Town Manager or his or her designee. This restriction shall not apply to an existing tobacco product retail location within 500 feet of a school as of the effective date of this Ordinance, but a license for such location shall not be transferable.

(d) No licenses shall be issued to applicants under the minimum legal sales age.

(e) All tobacco product retailers must submit an application for a license within 45 days of the effective date of this Ordinance.

Sec. 6-9-40. Conditions of the tobacco product retail license.

(a) Display of license. Each license shall be prominently displayed in a publicly visible location at the licensed tobacco product retail location.

(b) Display of minimum legal sales age requirements. The requirement of the minimum legal sales age for the purchase of tobacco retail products shall be prominently displayed in the entrance (or other clearly visible location) of the tobacco product retail location. Said warning signs shall have a minimum height of three inches and a width of six inches, and shall read as follows:

WARNING
IT IS ILLEGAL TO SELL TOBACCO PRODUCTS TO ANY PERSON UNDER 21 YEARS OF AGE AND IT IS ILLEGAL FOR ANY PERSON UNDER 21 YEARS OF AGE TO PURCHASE TOBACCO PRODUCTS

(c) Locations. 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.

(d) Minimum age for persons handling tobacco products. A person under the age of 21 may, while employed at a tobacco product retail location, possess or handle tobacco products or tobacco paraphernalia as part of that individual’s employment at a tobacco product retail location, so long as such individual does not sell or provide tobacco products to a person under the age of 21.

(e) Prohibition of self-service displays. No licensee shall sell or permit the sale of tobacco products by use of a self-service display. 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 products from an employee of the business to the customer.

(f) Prohibition on flavored tobacco sales. Licensees shall not sell, offer for sale, or possess with the intent to sell any flavored tobacco product(s). This prohibition shall take effect 30 days after the effective date of this Ordinance. Any sale of flavored tobacco product(s) after that date will be a violation of this Article.

(g) Requirements of positive identification. No person engaged in tobacco product retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of forty (40) years without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least the minimum legal sales age.

Sec. 6-9-50. Application procedure.

(a) All license applications shall be filed with the Town Clerk. An application for a license or a new application for a transfer of 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 Town Clerk.
(c) A licensed tobacco product retailer shall inform the Town Clerk 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 set forth in the Fee Schedule attached as Appendix A to this Code.

Sec. 6-9-60. Issuance of a retail license.

(a) The Licensing Administrator shall consider and act upon all complete applications filed with the Town Clerk in accordance with the standards and procedures set forth in this Article.

(b) Upon the receipt of a completed application for a tobacco product retail license and the paid license fee pursuant to this Article, the Licensing Administrator shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(1) The information presented in the application is incomplete, inaccurate, or false;

(2) The applicant seeks authorization for a license at a location where this Article prohibits the issuance of a license;

(3) The applicant seeks authorization for a license and the applicant’s current license is suspended or revoked;

(4) The applicant is not qualified to hold the requested license under the provisions of this Article;

(5) The applicant and/or retail location is not in full compliance with this Article or all applicable Town, state, or federal laws and regulations.

(c) If the Licensing Administrator denies the issuance of the license, the Town Clerk 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.

(d) An applicant has the right to appeal the Licensing Administrator’s denial of an application to the Board of Trustees. Such an appeal shall be initiated by filing a written request with the Town Clerk within twenty (20) days of the date of the notice of denial of the issuance of a license.

(e) 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.
Sec. 6-9-70. License term, expiration, renewal.

(a) Term. All licenses issued under this Article shall be effective for the period of one (1) year from the date of issuance. For a tobacco product retailer that also holds a current liquor license pursuant to Chapter 6, Article 1 of this Code, the term length and applicable fees of the initial term of tobacco product retail license shall be prorated, and the tobacco product retail license shall be renewed contemporaneously with the next renewal of the retailer’s liquor license.

(b) Renewal of license. A licensee shall apply for the renewal of the license and submit the renewal license fee, as set forth in the Fee Schedule attached as Appendix A to this Code, 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. 6-9-80. Transfers.

A license may be transferred from one person to another or from one location to another. However, a transfer may not occur if the license to be transferred is out of compliance with any applicable Code provision, the transferee does not qualify to hold the transferred license under the provisions of this Article, and/or the transferee and/or new retail location is not in full compliance with this Article or all applicable Town, state, or federal laws and regulations.

Sec. 6-9-90. Compliance monitoring.

The Carbondale Police Department may at its discretion conduct compliance checks, including the use of decoys, to determine compliance with this section and with other laws applicable to tobacco products. The failure of two compliance checks, performed either by the Carbondale Police Department or the State of Colorado, in one calendar year shall be grounds for suspension of the license pursuant to Chapter 6, Article 7, and the failure of three compliance checks, performed either by the Carbondale Police Department or the State of Colorado, in one calendar year shall be grounds for revocation of the license pursuant to Chapter 6, Article 7.

3. Chapter 6, Article 7 shall be amended by deleting the language stricken and adding the language underlined to read as follows:

ARTICLE 7 - Suspension, Revocation or Nonrenewal of a Liquor License, Retail Marijuana License, or Medical Marijuana License, or Tobacco Product Retail License
4. Chapter 10, Article 6 shall be amended by deleting the language stricken and adding the language underlined to read as follows:

(a) For purposes of this Code, the following words shall have the meanings ascribed hereafter:

Electronic smoking device means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately.

Licensee means the owner or holder of a tobacco product retail license pursuant to Chapter 6, Article 9.

Proprietor means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

Tobacco product retail location means any premises where tobacco products or tobacco paraphernalia are sold or distributed to a consumer, including, but not limited to, hookah bar, lounge, or cafe, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine, or structure where tobacco products are sold.

Tobacco product retailer means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products or tobacco paraphernalia. Tobacco product retailing means 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.
(b) Any person who is engaged in tobacco product retailing who knowingly sells any tobacco products to a person under the age of 21 commits an offense and, upon conviction thereof, shall be punished by a fine of $100.00 for the first offense, $250.00 or a summons with fine up to $2,650.00 for the second offense, and $500.00 or a summons with fine up to $2,650.00 for the third offense, and a summons with fine up to $2,650.00 for the fourth and any subsequent offense(s). It shall be an affirmative defense to prosecution under this subsection that the person furnishing the tobacco products was presented with and reasonably relied upon a valid state driver's license or other government-issued form of identification which identified the person receiving the tobacco products as being 21 years of age or older.

(c) Any person who sells, gives, or otherwise supplies any tobacco product(s) to a person under the age of 21 is subject to a civil penalty of $100.00 for the first violation, $250.00 for the second violation, and $500.00 for the third and any subsequent violation(s).

(d) A licensee proprietor is responsible for the actions of its agents and employees in regard to the sale of tobacco products, and the illegal sale of any tobacco products to a person under the age of 21 at the licensee's proprietor's tobacco product retail location may result in the assessment of a civil penalty to the licensee proprietor in the following amounts: up to $1,000.00 for the first violation, up to $1,500.00 for the second violation, and up to $2,000.00 for the third and any subsequent violation(s). A conviction pursuant to subsection (b), above, shall constitute prima facie evidence of a licensee's proprietor's violation of this subsection. These civil penalties may be assessed in addition to suspension or revocation of the license pursuant to Chapter 6, Article 7.

(e) Any person under the age of 21 who purchases or attempts to purchase any tobacco products, and/or is found to be in possession of any tobacco products is subject to a civil penalty of $100.00 for the first violation, $250.00 for the second violation, and $500.00 for the third and any subsequent violation(s); except that, following the issuance of a civil penalty for a first offense under this subsection, the Municipal Court in lieu of the civil penalty may permit the person to participate in a tobacco or vaping education program. The Court may also allow such person to perform community service and be granted credit against the civil penalty at the rate of $5.00 for each hour of work performed, for up to 50 percent of the civil penalty amount.

(f) For the purposes of this Section, each separate incident at a different time and occasion is a violation.

(g) No person shall sell or permit the sale of tobacco products by use of a self-service display. Tobacco product retailers 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 products from an employee of the business to the customer. Cigarettes may be sold at retail through self-service displays only in:
(1) Factories, businesses, offices or other places not open to the general public;

(2) Places to which persons under the age of 21 are not permitted access at any time during the day or night; or

(3) Places where the self-service display is under the direct supervision of the owner of the establishment or an adult employee of the owner, including, but not limited to, establishments holding a valid liquor license issued pursuant to C.R.S. Article 3 of Title 44.

(h) Any person who sells or offers to sell any tobacco products shall display a warning sign as specified in this subsection. Said warning sign shall be displayed in a prominent place in the tobacco product retail location at all times, shall have a minimum height of three inches and a width of six inches, and shall read as follows:

**WARNING**

IT IS ILLEGAL FOR ANY PERSON UNDER 21 YEARS OF AGE TO PURCHASE CIGARETTES, TOBACCO PRODUCTS, AND ELECTRONIC SMOKING DEVICES AND, UPON CONVICTION, A FINE MAY BE IMPOSED.

(i) Any violation of subsection (h) above shall not constitute a violation of any other provision of this Section.

(j) The Carbondale Police Department may at its discretion conduct compliance checks, including the use of decoys, to determine compliance with this section and with other laws applicable to tobacco products.

(k) A person under the age of 21 who possesses or handles tobacco products as part of that individual's employment at a tobacco product retail location does not commit a violation of this Section so long as such individual does not sell or provide tobacco products to a person under the age of 21.

5. This Ordinance shall be effective upon posting and publication in accordance with the Carbondale Home Rule Charter.

INTRODUCED, READ AND PASSED THIS ___ day of ________, 2019.

TOWN OF CARBONDALE, COLORADO

a Colorado home rule municipal corporation,

__________________________
Dan Richardson, Mayor
ATTEST:

Cathy Derby, Town Clerk


3. CAMPAIGN FOR TOBACCO FREE KIDS, INCREASING THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21, 1 (2015).

Use of Flavored Tobacco Products

In RE-1 schools, 37% of high school seniors used e-cigs in the past 30 days. But they also use other tobacco products:

- They had an uptick in teens using regular cigarettes.\textsuperscript{1,2}
- 25% of RE-1 11th grade students have used chew, snus, cigars, or other tobacco products (not cigarettes or e-cigs) within 30 days, and use more than the state average.\textsuperscript{3}

Youth, minorities, and those who live in low income communities are exposed to a higher level of marketing for tobacco products.\textsuperscript{5}

- Hispanic and Black adults and youth are currently the highest users of flavored tobacco products.\textsuperscript{4}

"we don’t smoke that s***. We just sell it. We reserve the right to smoke for the young, the poor, the black and stupid."

~ Tobacco Company RJ Reynolds executive, as relayed through a discussion with the former Winston Man, 1992\textsuperscript{6}

Flavored Tobacco Product Use Among Youth Current Tobacco Users (ages 12-17)\textsuperscript{8}

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hookah</td>
<td>89.0</td>
</tr>
<tr>
<td>ECigarette</td>
<td>85.3</td>
</tr>
<tr>
<td>Smokeless Tobacco</td>
<td>81.0</td>
</tr>
<tr>
<td>Snus Pouch</td>
<td>80.4</td>
</tr>
<tr>
<td>Any Cigar Type</td>
<td>71.7</td>
</tr>
<tr>
<td>Cigarettes</td>
<td>59.5</td>
</tr>
</tbody>
</table>

Menthol, like other flavors, can mask the harshness of tobacco products, making it easier to start and seem less dangerous.

- Over 1/2 of youth who use e-cigarettes OR regular cigarettes use menthol or mint.\textsuperscript{5,6}
- Kids who start with menthol are 80% more likely to become regular smokers, 25% more likely to become addicted.\textsuperscript{7}

What else comes in flavors?

New products on the market come in candy flavors, too, ie 6 flavors of Zyn, a powdered nicotine that dissolves in your mouth and is available locally.

\textbf{Halt the addiction among Carbondale's youth.} Consider a comprehensive flavor ban that protects all kids.

For more information contact Risa Turetsky  Pitkin County Public Health (970) 618-1781
COLORADO RESOURCES TO HELP YOUTH QUIT TOBACCO

This guide is for adults in youth-serving organizations. Below are free options to help young people who are starting to feel concerned about their tobacco use or vaping.

QUITLINE SERVICES

Free web and phone support for all Coloradans age 12 and older who vape or use other tobacco products.
- Personalized phone coaching
- Interactive web program featuring:
  - Simple sign up
  - Web chat
  - e-coaching
- Email and text message support
- Nicotine patches, gum, lozenges (Age 18+)

Learn more or enroll online: www.co-youth-quit-line.org or call 1-800-QUIT NOW.

APPS & TEXT PROGRAMS

SMOKEFREE TEEN
Smokefree Teen helps teens stop using tobacco by providing information grounded in scientific evidence and offering free tools that meet teens where they are—on their mobile phones. Services available include:
- SmokefreeTXT text messaging program
- quitSTART app
- LiveHelp chat

Learn more: www.teen.smokefree.gov.

TRUTH INITIATIVE QUIT PROGRAMS
The Truth Initiative offers free app and text-based cessation programs to help young people quit tobacco.

This Is Quitting
- text QUIT to (706)-222-QUIT to leave JUUL or e-cig.
- text QUITNOW to (202)-759-6436 to quit cigarettes
- download the TiQ app in the Apple and Android app stores

E-cigarette Quit Program
- Tailored content by age group
- Content for parents and caregivers looking to help their children
- text “QUIT” to (202) 804-9884

COLORADO MEDICAID

FREE COUNSELING IS AVAILABLE FOR ALL AGES.
Providers may prescribe free quit medications if appropriate.

Learn more: www.colorado.gov/hcpf/tobacco-cessation.

FOR MORE INFORMATION:
Visit www.tobaccofree.co.org/know-the-facts.
MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday July 11, 2019

Commissioners Present:
Ken Harrington, Vice-Chair
Marina Skiles
Jay Engstrom
Jade Wimberley
Nick Miscione
Nicholas DiFrank (1st Alternate)

Staff Present:
John Leybourne, Planner
Mary Sikes, Planning Assistant

Commissioners Absent:
Michael Durant, Chair
Tristan Francis (2nd Alternate)
Jeff Davlyn

Other Persons Present
Mark Chain
Randy Spurrier
Jerome & Donna Dayton

The meeting was called to order at 7:00 p.m. by Ken Harrington.

June 27, 2019 Minutes:
Jay made a motion to approve the June 27, 2019 minutes. Marina seconded the motion and they were approved unanimously with Jade and Nick abstaining.

Resolution 8, Series of 2019 - Approving Condo Exemption - 718 Lincoln Avenue

Marina made a motion to approve Resolution 8, Series of 2019, approving the Condominium Exemption at 718 Lincoln Avenue. Nicholas seconded the motion and it was approved unanimously.

Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

PUBLIC HEARING – Minor Plat Amendment
Location: 403 & 417 Crystal Canyon Drive
Applicant – Randall & Juliet Spurrier

John said that this is a public hearing to consider a Major Plat Amendment for 403 and 417 Crystal Canyon Drive. He stated that the Planning Commission is required to hold
a public hearing and approve the application or deny it. He said that the Commission may also continue the public hearing.

John said that the RVR HOA issued a letter of approval of the proposal on April 24, 2019 with four conditions of approval.

John explained that the purpose of the Major Plat Amendment is to consolidate two lots, 403 and 417 Crystal Canyon Drive.

John said that normally a consolidation would be an administrative review. Staff felt that due to the size of the lot that would be created, the application should be reviewed by the Planning Commission.

John stated that the Major Plat Amendment removes the dividing lot line and also the building setback lines along that interior lot line.

John said that the proposed new lot is 41,388 sq. ft. in size, Lot 19 is 20,638 sq. ft. and Lot 20 is 20,750 sq. ft. in size.

John stated that the building envelope has been increased in the front yard, effectively pushing the conceptual structure to the back of the lot and the side and rear setbacks increased to 20 feet from the original 10-foot setback.

John said that the property owner has also worked with neighbors on the driveway and parking layout so that there are no issues.

John stated that while Staff has reservations about the overall lot and more specifically the building envelop size, Staff is supportive of the application.

Jay asked if the setbacks needed permission from the utility companies for easements.

John said no that there were no utilities running in the setbacks.

Mark Chain introduced Randy Spurrier. He said that the owners have been working on the design for their home and that the HOA of RVR has approved and now they are wanting the Town’s approval. He explained the location on the map and said that Phase 7 was the last platted area. He continued by saying that the neighbors to the right were concerned with cars parking near their bedrooms so the parking was changed. He said one issue was the size of the building envelope and the DRC suggested pushing it north.

Mark said that in the packet there is a list of eight homes larger than 5,000 square feet. He said that the applicants accept Staff’s conditions.

Randy said that it has been our dream to live in RVR and we currently live here and we love Carbondale. He said that our current home design is 4,000 square feet and with a narrow lot. He said by using two lots that the house can be set back for Mt. Sopris
views. He said that we have designed outdoor sheds, one with a telescope. He said that they have no intention to build a McMansion and through the RVR process that they met with neighbors and they were positive meetings and that we don’t want to make an impact.

Nick thanked the applicant for the presentation and asked if the HOA has approved their consolidation.

Mark answered yes and the letter is in the packet from the HOA.

Ken added, with four conditions.

Marina asked what the final square footage was for the home.

Randy answered that their home was going to be about 4000 square feet.

Marina said that they would be allowed to build a much larger home than is proposed.

Randy said if we wanted a McMansion.

Ken disclosed that he lives in Old Town in RVR.

There were no members of the public present

**Motion to Close Public Hearing**

A motion was made by Nick to close the public hearing. Nicholas seconded the motion and it was approved unanimously.

**Motion**

Jay made a motion to approve the Major Plat Amendment for Lots 19 and 20 Block AA River Valley Ranch Phase 7 with the suggested findings and conditions indicated in the Staff report. Nick seconded the motion and it was approved unanimously.

**PUBLIC HEARING – Crystal Acres PUD Amendment**

**Location:** 315 Oak Run Road

**Applicants:** Jerome & Donna Dayton

Three letters were distributed from other owners in Crystal Acres that were not at the meeting.

John said that this is an application for a Major PUD amendment for the Crystal Acres Planned Unit Development. He said that the Planning Commission is required to hold a public hearing and either recommend to approve, deny or continue the public hearing. He continued by saying that the purpose of the amendment is to update Section 12, Special Restrictions of the PUD to better define what a “Primitive Trail” is by providing a
review through a conditional use permit with review criteria and providing design and construction details for a “low impact trail.” He stated that there are no proposed changes to any of the district zoning parameters such as setbacks and building heights. John said that the PUD was annexed in 1978/1979 and the PUD was established in 1992. He stated that the PUD consists of Residential Low Density Lots. He said that the PUD is almost entirely built out with only one lot left vacant today.

John said that comments pertaining to the application were provided by CPW, the Roaring Fork Nature Conservancy and were positive of the application as the standards would provide for a more sustainable trail that would help with percolation and the controlling of erosion and silt entering the river/riparian zone.

John outlined the following:

**Section 12, Special Restrictions: A. Riparian Zone**

This section pertains to the designated riparian zone between the building rear setback line and the Town owned Public Open space on Lots 18 through 31 along Oak Run Road. Specifically, the section states that the indicated lots are entitled to have one primitive footpath leading to the Crystal River.

Several trails have been built and they consist of several different types of construction methods. The applicant included pictures of these trails in the application packet.

**Proposed PUD language/changes**

Staff is supportive of the proposed Construction Standards indicated in the application and would suggest the following additions/changes.

**Section 12**

Staff is supportive of the change from a “one primitive footpath” to a “low impact footpath” Staff would suggest that the applicant indicate that only one footpath is allowed. Suggested language would be “one low impact footpath.”

Add a reference to the Wildfire Mitigation Permit as established in 2012 for the clearing of vegetation for defensible space.

Suggested added language to include the restriction of structures being placed in the Zone such as picnic tables, landings, shade structures, fire pits and other improvements other than the approved permitted footpath.

Add that the footpath may not exceed 24” in tread width.

Lighting. Staff would suggest that no lighting is allowed in the Hillside and Riparian Zone.

A requirement be added that a site inspection be performed as part of the application before work is to commence and after work is completed.

**Established PUD Policy**

Several owners expressed concern that the PUD amendment would lead to more changes in the overall PUD and stated that they would not be interested in larger changes to the PUD. No other changes are proposed nor would Staff recommend any at this time.
Jade said that there are numerous other trails to the river from other homes, why are we talking about this path.

John stated that there was a complaint from across the river.

Ken asked how many paths are existing.

Mark explained that there are thirteen lots on the river in Crystal Acres and that there are two paths constructed as well as a primitive one on Lot 19.

Nick asked if there was an HOA.

Frank Taverna answered that there was no HOA.

John explained that the PUD process required 50% agreement from owners.

Mark Chain introduced Jerome and Donna Dayton and said that they live at 315 Oak Run. He said that Chris Brandt of DHM Design will explain some history shortly. He said that Frank Taverna and John Segal were the developers of Crystal Acres in '91 or '92. He said that this amendment for the trails was the only change to the PUD. He said that there were forty lot owners and that twenty-two responded to go forward, five said not to, three abstained and ten did not respond.

Mark said that there had been a debate about the definition of a primitive path. He said that there is no clear definition. He recalled the history of the area and the PUD. He said that there was also a study done referencing the slope to the river and that it was decided not to remove dead trees and vegetation. He said that the riparian area is small and that the bottom area to the middle of the river was dedicated to the Town. He said that in Crystal Village there is Staircase Park.

Mark gave some historical information of the wishes of a former Trustee and that he had wanted a path along the river. He said that we are talking about the re-write of Section 12 – safe but discrete, no heavy equipment, no retaining wall, no switch backs, natural, with no elevated construction above grade and removing all excavation spoils.

Mark said that with a conditional use permit that it could be required to get a professional to get the lay of the land. He said that the Dayton’s put in steps to take care of weed management. He said that they were allowed to make a path and it is primitive with no erosion or any other disturbances.

Jerome said that he did not want his wife or guests to slip and that the bull thistle was his motivation. He said that in the spirit of the PUD he is here to clear things up.

Mark presented seasonal pictures and said that they want to honor the Town’s comments about obscuring the timbers.
Chris Brandt of DHM Design introduced himself and said that he is a landscape architect. He suggested hand construction scaled with steps that are solid, uniform flat surfaces 3-6 feet wide.

Discussion

- Appropriate width of steps
- Erosion plan
- Steps on existing paths
- Construction near root zones
- Proposed standards
- Defining minimal impact
- No lighting on path as condition of approval
- Existing paths and grandfathering
- Filter fabric to allow water to pass to other steps
- Handrails
- Clarification of egress locations

Public Comment

John Foulkrod, 1349 Wald Drive said that he was on the city council when this PUD was approved. He said that everyone was missing the point and that it was agreed to leave the river wild. He said that this included no decks or picnic tables and the rules were put there to keep the river natural. He said that it is a river and it can be treacherous. He said that in Aspen putting the bike path near the river made it no longer wild. He said keep that in mind and to keep the river paths primitive.

Frank Taverna, 405 Oak Run Road said that John Segal was his partner when they developed Crystal Acres in 1991. He said that with the designation of the riparian zone we agreed to move the boundaries of the river front lots to maintain the character of the river. He said that each owner has understood for thirty years that a primitive path to the river was allowed. He said that this is an approval of a path that was already built. He stated that not all owners were included in the mailing and that they heard about it from the public notice signs and that he questions the fairness. He said in the packet that Janet mentioned handrails which is a contradiction. He doesn’t agree with the amendment to the PUD so that every time an owner violates the covenants they can be brought into compliance.

Nick Sontag, 305 Oak Run Road said that he agrees that every owner is going to have a different description of how a primitive path looks. He said that his property on the river needs to be managed and that there is a risk with fires and that a low impact path is not a bad thing.

Gayle Wells, 320 Oak Run Road said that the path in question is so unintrusive and natural looking and that it ends before the riparian zone.
Bob Pazik, **365 Oak Run Road** said that we have a primitive path, not made by people. He said that if we built on our path trees would need to be removed, 25-50% of the trees and that it would be disruptive to the riparian zone.

**Motion to Close Public Hearing**

A motion was made by Nicholas to close the public hearing. Marina seconded the motion and it was approved unanimously.

Nicholas said that this is not about right or wrong and that he has compassion for both sides. He said that the Crystal is a jewel and that he doesn’t think the intent was a bad use of your property. He said that the biggest challenge is the definition of path. He said that there was not enough guidance and that this is an opportunity to help further to avoid this situation of having the community up in arms. He said that he is not against their path and that setting precedent will be helpful for the future.

Jay said that was great and that he understands the purpose is to protect the river and this area. He said that the definition is loose and that future owners might define it differently. He said everyone has a different opinion and that if we change the PUD text it will prevent further conflict.

Jade asked for clarification of the Commission’s role.

John stated that the Commission can either approve the PUD amendment or deny it and that it will go to the Board of Trustees. He said the Commission and Staff can draft the PUD language.

Ken asked what if the Commission didn’t want to amend the PUD.

John stated that the language would stay the same and that each owner on the river would be allowed one primitive trail.

Ken stated that the current wording of primitive trail might have different standards and it might lead to more damages etc. He said that it was only enforced after a complaint. He said that we could amend the PUD because the language is vague and maybe make another pass to clarify issues raised tonight.

Nicholas suggested looking at other towns and their thresholds, grade to steep standards.

Nick agreed that vagueness causes issues. He said that without a DRC and no executive or organization of the community to protect yourselves. He said that the best judgement is to not leave it up to the Town and to approve with conditions.

Nicholas said that the Dayton’s are the scapegoats here.
Marina thanked everyone and said that primitive path needs to be defined.

Ken asked if we are going to vote on specific language.

Jay asked if all the owners of the PUD have a say in the proposed standards.

Jade said that she heard John Foulkrod’s one sentence and his passion for a primitive path to access the river. She said we could decide as a group what language to use to protect it and make it more specific to protect the river. She said that, if you build paths, it will be developed and that we should honor language from the past.

Further discussion ensued about process.

**Motion to Continue the Public Hearing**

Nicholas made a motion to continue the public hearing to August 15, 2019 and that Staff will bring back a draft of the wording for the PUD amendment. Jay seconded the motion and it was approved unanimously.

**Staff Update**

John said that the City Market permit was close to being issued and that we are mediating the renewables.

John said that Main Street Marketplace was waiting for City Market and the retail building to begin building.

**Commissioner Comments**

Nicholas commented that Tristan might have left the valley.

**Motion to Adjourn**

A motion was made by Nicholas to adjourn. Nick seconded the motion and the meeting was adjourned at 8:48 p.m.
MINUTES
CARBONDALE BOARD OF ADJUSTMENT
Monday, June 10, 2019

Commissioners Present:
Jeff Dickinson
Ann Gianinetti
April Spaulding
Tristan Francis - Alternate
Nick Miscione - Alternate
Jade Wimberley – Alternate (Non-voting this meeting)

Staff Present:
Janet Buck, Planning Director
John Plano, Building Official
Mark Hamilton, Town Attorney
Tarn Udall, Town Attorney
Mary Sikes, Planning Assistant

Commissioners Absent:
Russ Criswell - Recused
Mark Chain – Excused
Matthew Gworek - Recused
Meredith Bullock – Excused

Persons Present to Speak
Pat Kiernan, 189 S. Third Street
Charlie Willman, 811 Blake Avenue, Glenwood Springs
Mark Mahoney, 742 Euclid Avenue
Linda Halloran, 178 Eighth Street
Jerome Whalen, 228 Eighth Street
Eric Doud, 710 Euclid Avenue
Rita Marsh, 694 Euclid Avenue
Mary Whalen, 228 Eighth Street
Dan Bullock, 682 Euclid Avenue
Frank Norwood, 765 Sopris Avenue
Richard Vottero, 75 S. Third Street

The meeting was called to order at 6:30 p.m. by Janet Buck.

Election of Chair

A motion was made by April to appoint Jeff Dickinson as Chair for this hearing. Ann seconded the motion. The motion passed with Jeff abstaining.

Janet explained that the Board of Adjustment (BOA) should have five members. She said that the code states that special alternates could be selected from the P&Z members if there were not enough BOA members. She said that we have three P&Z members here that were not involved in the matter previously.

Jeff stated that the third P&Z member will need to attend the meeting in the event that a special alternate could not attend a future meeting on this matter.
Selection of Two Alternate Members

Jeff drew two names from the P&Z for the alternate members;

- Nick Miscione
- Tristan Francis

January 30, 2019 Minutes:

April made a motion to approve the January 30, 2019 minutes. Ann seconded the motion and they were approved unanimously with Nick, Tristan and Jeff abstaining.

PUBLIC HEARING – 728 Euclid – Appeal of an Administrative Decision to Issue a Building Permit
Location: 728 Euclid Avenue
Owner: Pat Kiernan

Jeff disclosed that he had Pat as a tenant in the past and that he has not worked with him on this project. He stated that he knows most of the public in attendance and have a relationship with them. He said that he is able to be a fair judge.

No one had an issue with Jeff’s disclosure.

Jeff explained the expectations of consideration and thoughtfulness of the conduct during the hearing.

Jeff outlined the agenda and time allowances for each side.

Jeff directed a mass swearing for everyone that was going to speak. He asked do you all promise to tell the truth, the whole truth and nothing but the truth in this hearing.

Everyone answered that they do and there were no objections.

Objections of Appellants and Applicant

There was a lengthy conversation identifying objections from both sides.

Jeff stated that the discussion in both objections is whether we are to consider things that have been submitted to the BOA. He asked if the content of what has been submitted changed drastically because of the early and late sending of material and are there changes that need to be considered.

Mark Mahoney stated that he didn’t believe so and that their positions are the same.

Charlie Willman introduced himself and stated that he would be representing Pat in this matter. He explained his understanding of the processes prior to the hearing.
Charlie wanted to note for the record that Mr. Mahoney and the neighbors did not follow the procedure for the position statements.

Jeff asked the Town Attorneys to clarify and address the position statement procedures and materials that Charlie has stated cannot be considered before this hearing.

Tarn explained that tonight we are holding a quasi-judicial hearing which makes this proceeding distinct from what might happen before a judge in court. She said that it is our position that, as a quasi-judicial hearing, the types of rules that would apply before a judge like civil procedure rules, the rules of evidence, what the judge could consider how a piece of evidence might be relevant or material to the issues before the court, those rules do not apply before a quasi-judicial body. She said therefore we disagree and that the Board of Adjustment can consider anything that is presented tonight i.e., any oral statements, visual presentations and anything written that was submitted in advance of tonight’s hearing including the materials in the Staff report, the parties statements submitted pursuant to the briefing schedule. Tarn said that it was up to the BOA to determine how much weight to afford any one statement, any one fact, any one presentation. She said that is for this Board to determine.

Jeff asked the BOA if they had any questions.

There were no questions from the BOA.

Charlie stated that the case law in Colorado is clear that with a quasi-judicial hearing when you are sitting as a judge you cannot receive any ex parte communications, that is any communications outside of the formal procedure. He said the rules of evidence are certainly relaxed and that they do not need to be strictly followed in these type of proceedings. He said that the evidence considered by the BOA must be presented at the hearing and that is what the case law in Colorado says about the quasi-judicial hearings. He said that it gives us a right to confront that evidence during the hearing itself. He said that if matters are presented ahead of time that they cannot be considered because they are not subject to cross examination, which is my ability to question what those people say, which is one of our fundamental rights in a quasi-judicial hearing. He said that he agrees that is up to the BOA to determine the weight to give the evidence so we don’t disagree on that issue.

Jeff asked the BOA if they had any response.

There was no response from the BOA.

Jeff stated that it is our choice whether to review and accept the packet that we received to review and accept any of the documents that are in question and are being challenged.

April said that she read through the letters from the neighbors and the interested parties. She asked if because we have read these you are saying that they prejudice us.
Charlie stated that his view is that you cannot consider them when you later make a decision in this case. He said that he’ll assume that you heard that and that it’s not evidence tonight and that the evidence presented tonight is the only evidence I am going to consider. He said judges would get position statements and exhibits etc. in a real hearing and wouldn’t consider those, but that they are trained legal officers and that he is not casting disparagements and that is a little bit of a different standard that we have trained as lawyers to do. He said that he would trust that the Board members say that they did not consider it and make that a positive statement in the hearing. He said that you are not disqualified from proceeding as long as you understand that and follow that rule according to what I think you should be doing.

Jeff stated that this is a de novo hearing, which means that we get to make a decision as if there were no other hearings in the past. He said he sees this as if we are basically acting as sort of the Planning and Zoning Commission in that we gather all of this information, we read the packet, we review it and we have driven by the site. We are not going to stop the meeting to drive by the site to understand the neighborhood context. He said that we get to decide if we are acting in this fashion or the quasi-judicial according to Mr. Willman’s definition.

Mark Hamilton stated that we do concur with Mr. Willman that this needs to be a fair and impartial hearing and that basic due process needs to be afforded so everyone has notice and a chance to be heard. He said that is one of the reasons we set up a process so the issues would be out there in advance as we are trying to avoid trial by surprise. He said as you address these issues I would urge the Board to consider if you feel like somebody has been prejudiced, put behind because something was sprung on them, which is not what we are trying to do. He said that we also do not share Mr. Willman’s opinion in its entirety to the extent that you cannot consider what is in the packet. He said for instance the building permit application. He said that the application is what it is and that it is in writing as opposed to verbal and no one is going to read it to you tonight but do I think you could look at that building permit application and make decisions based upon it, yes. He said that there is a degree of difference here but that the bottom line is that Mr. Willman is correct that the Board needs to make up its mind based on the record before it and not conversations that you had out there in the street or knowledge that you may bring in from somewhere else. He said basically our goal here is to get all five of you up to speed on the same amount of information, whether that is information in the packet or information that comes across tonight through the parties presentations. He said that then all of you make a decision collectively based on that information and that he agrees with Tarn that the discretion in terms of how much weight to afford evidence or if somebody is being truthful or somebody is not being truthful is what the Board is appointed to do.

Nick asked what the end result is here for the evening, are we making a recommendation to the Board of Trustees?

Jeff stated that our decision is final.
Janet explained that it is a de novo hearing and that you are considering an appeal of an administrative decision to issue a building permit. She said it’s like the building permit was never issued and you are looking at all the evidence, the building permit, the plans, the code, the Comprehensive Plan. She said did Staff review and administer the code correctly or are you going to overturn the decision and find that Staff did not administer the code correctly. She said that you are weighing in on whether this building permit should be issued or not based on the code and the Comprehensive Plan. She said that that is the bottom line issue.

Jeff said that we could have all these statements read to us tonight by everyone that has read them and we could have this go on for months or we consider these letters that have been written and use them as neighbor input. He said that with a P&Z hearing you will get letters ahead of time from the neighbors and you will read them and it is part of the documents and not ex parte communication. He said that is one of the options we have.

April stated that she has not had conversation with anyone about this hearing. She said that she has read the packet.

Ann said that she needed this information because she had no knowledge of what was out there.

Nick said that he too was in the same boat and he does not know what is going on here today.

Jeff asked the Board if they were comfortable with the packet and considering that.

**Motion**

April made a motion to accept the packet as written. Ann seconded the motion and it was approved unanimously.

Jeff said that regarding the objections that have been raised, he asked what are some of the major changes that happened because of the missed deadlines. He said that we could continue the public hearing to another date to allow you, Mr. Kiernan, to prepare more information or allow you to do more research based on some of these things. He said that some of the language that was improper or used out of context could not be considered. He said that is what we are faced with or do we just move forward. He said the goal is to get all the information on the table. He said that if there is additional information it could be presented tonight if you have had enough time to consider it or it could be considered at another time.

Further discussion ensued regarding dates and objections, some inaudible.

Jeff said that we want a fair hearing and offered Charlie more time to present additional information if the hearing were to be continued.
Charlie stated that the additional time would not cure the problem. He said that he is not asking for a continuance.

Further discussion ensued regarding submittal dates.

Jeff stated that the intent is to get all the information on the table. He said that there have been things on both sides that didn’t quite meet the timeline and the agreements, and whether they were agreements or not sounds a little cloudy based on the comments tonight.

**Motion**

Nick made a motion to accept the packet as presented with no modifications and no continuance from anyone. April seconded the motion and it was approved unanimously.

Charlie said that when someone recuses themselves because there is a conflict of interest the normal procedures in municipal law is that they are not to participate at the proceeding. He said the idea is that they would have potentially undue influence over the Board. He said that some of the people that have recused themselves from this Board are present in the room tonight and have sworn to take an oath to testify and it is inappropriate. He said that he would ask that they not be allowed to testify. He referenced Mr. Chain, Ms. Bullock, Mr. Criswell and Mr. Gworek. He said that they should not be allowed to participate because they have a conflict of interest and that they should be asked to leave the meeting room.

Mark stated that many municipalities do recommend that recused members leave the room. He said that the idea behind it is to avoid passive influence on their colleagues. He said this situation is unique in several respects, one that the Board barely knows each other and that this is the first encounter for this Board. He said the issues with Mr. Chain do seem to be a little bit distinct and unique because he has been an appellant long before this current version of the Board was formed, as well as Meredith Bullock. He said that they were parties to this proceeding before the Board was constituted and that they have a right to petition for the relief that they are requesting. He said that we can note Mr. Willman’s objection and that it is ultimately up to the Board to allow their testimony or not.

Nick asked if any of the listed members submitted written statements.

Meredith said that she has.

Jeff said that the rule of thumb with the P&Z is that when he has been involved in the preparation of the submittal, he has left the room and let his associate do the presentation. He said that is how we have done it in the past with the Town of Carbondale.

Further discussion ensued regarding procedures.
Jeff stated that he doesn’t want to do anything to prejudice this hearing.

Meredith Bullock, 682 Euclid Avenue said that she joined the Board of Adjustment because she had no idea this would happen again. She said that she feels very strongly about this and that she cannot continue on the Board of Adjustment. She said that she is resigning effective this minute.

Mark Chain, 811 Garfield Avenue said that he would recuse himself. He said that he is a Board of Adjustment member and he looks forward to serving at another time. He said that you have my statement. He said that if for some reason this is continued and you want to hear his comments that he would appear and testify.

Mark Chain and Matt Gworek both left the room.

Tarn stated that the other recusal was Russ Criswell and that he was not in attendance tonight.

Charlie stated that we will continue to participate in this hearing tonight but we did not waive any objections to procedural issues for the record.

Jeff said that Janet Buck and John Plano are Town Staff that are here tonight. Jeff said that Janet is going to present the Staff report that is in the packet. Jeff explained that the Board will ask any questions after Janet’s presentation. He said that next the appellants (the neighbors) will be allowed 45 minutes to present their side. He said that it could be divided into 30 minutes with 15 minutes reserved for the rebuttal. He said Pat Kiernan will be allowed 45 minutes to present his side. He continued by saying that the neighbors would have that time, if reserved, to present their rebuttal.

Jeff stated that the Board will have a chance to ask questions of everyone that has presented, as well as Staff following the presentations. He said that we will then open the public hearing for public comment.

Charlie asked if we have the opportunity as parties to the proceeding to ask questions of any of the people testifying.

Jeff answered that the Board is considering the information, so we do.

Charlie said that he was asking procedurally and asked if the answer is no.

Jeff said that the answer is no.

Charlie stated that they object to that procedure.

Mark Hamilton suggested to the Chair that limited questioning be allowed and that it be through the Chair in order for you to keep control over the proceeding. He said that if there are specific questions, whenever you may direct the right time is for questions, if either side has questions of Staff or each other that there be an allowance for that. He
said that he doesn’t think that it needs to be a courtroom style combative cross examination and that respectful questions can be asked through the Chair by raising a hand. He said that, if you could make an allowance for that, it is just his recommendation.

Further discussion ensued regarding the process of questioning.

Janet said that this is a public hearing to consider an appeal of an administrative decision. She stated specifically, on March 31, 2017, the Building Official issued a building permit to Pat Kiernan, the owner of the property at 728 Euclid Avenue. She said that Mark Mahoney and neighboring property owners appealed the administrative decision to issue the permit.

Janet said that the letter of appeal from the Neighbors included the following points:

1. The proposed structure does not meet the Purpose Statement in the OTR zone district
2. Compliance with allowed uses in the OTR zone district
   - Single-family Detached Dwelling or Boardinghouse
3. Adequacy of parking for renters

Janet stated that the BOA is required to hold a public hearing and either uphold the Administrative Decision to issue the building permit, continue the public hearing or overturn the decision and deny the building permit.

Janet said that the Applicant applied for a building permit for a 4,400 sq. ft. structure on September 16, 2016. She stated that single-family houses are exempt from site plan review procedure. She said that building permits are reviewed and approved by the Building Official. She explained that site plans must be submitted with a building permit to allow review of the site plan to determine compliance with the UDC. She stated that depending on the type of project, the Building Official will refer the project out to various Town Departments, i.e., Public Works, Utilities, Planning, etc. She said that this permit was referred to Planning and Zoning.

Janet said that Staff reviewed the building permit based on the dimensional standards in the OTR Zone District. She stated that Staff determined that the proposal met the lot standards, minimum setbacks, building heights and other zoning parameters in the zone district. She said that these items are the quantitative standards.

Janet said in addition, Staff reviewed supplemental standards for the OTR in UDC Section 5.6.6. She stated again, the proposed structure was in compliance with the dimensional requirements.
Janet explained that the purpose section for the OTR zone district does not include dimensional standards. She stated instead that these are more qualitative standards which set forth the intent of the OTR zone district. She said that this section includes the statement that “Special emphasis shall be placed on the quality and character of the built environment in this district, and the unique lot and home sizes character of the original Townsite.” She stated that we didn’t consider this section when reviewing the building permit.

Janet said that the UDC was adopted in May of 2016. She stated that this permit was submitted in September of that year.

Janet said that the second issue was whether it was a single family or a boardinghouse.

Janet said that the floor plans showed a total of six bedrooms with 6-1/2 baths, if you consider the family room as a bedroom. She said that the floor plans and design are displayed on the wall. She stated because of that, I submitted a memo to the Building Official that the design of the structure appeared to lend itself to a more intense use such as a Boardinghouse which is not an allowed use in the OTR zone district. She stated that the Building Official shared her concern. She said that the final determination was that the UDC does not limit the number of bedrooms and/or bathrooms.

Janet stated that the third issue is adequacy of parking for renters. She said that based on the parking code, the proposed parking meets the letter of the code.

Janet said therefore, the building permit was issued to Pat Kiernan and the decision was appealed.

Janet stated that the question before the Board tonight is whether the Administrative Decision to issue the Building Permit was correct or incorrect.

Janet said after reviewing the facts involved in the matter, the BOA should consider:

1. The positive or negative impact of the requested development on the achievement of the Town’s stated goals and strategies; and

2. The impact on the Town’s ability to implement its Comprehensive Plan.

Janet stated after discussions and deliberation, the BOA should decide whether to grant the appeal reversing the Building Official’s decision or deny the appeal.

Tristan asked for clarification that the Comprehensive Plan was not considered in part of the application.

Janet said that we did not look at the Comprehensive Plan during the review.
Nick asked if the parking requirements were met assuming that it was a single family residence.

Janet stated yes assuming that it is a single family residence. She said that the code rounds it down from 2.5 to 2 parking spaces. She said that they met the two parking space requirement. She said that the code doesn’t consider anything above a three bedroom home.

Nick asked if there was a site plan review exemption on this project.

Janet explained that it is exempt to go before the Planning Commission and it is reviewed by Staff administratively.

Nick asked if there was any way for the applicant to add additional parking to this project.

John Plano stated that there is room on the lot for parking.

Jeff asked Janet if her memo to John Plano was basically a red flag.

Janet stated that she gave John the memo prior to the building permit being issued. She said that she had reservations about the design of the structure and how it fit in with the neighborhood as well as concerns about the boarding house and its appearance. She said that we looked at the UDC and that it did not limit the number of bedrooms.

Jeff asked Janet whose job is it to affirm or deny it’s appropriateness for meeting the UDC, is it yours or John’s.

John answered that it is a group effort and typically if he does have questions that he will bring it to other departments that may be concerned. He said that this time he brought it to Janet.

Janet said that in hindsight she wishes that she had stood her ground with the design and the use.

April asked if a permit was required to run a boarding house in the Town.

Janet explained that it is more of a use issue. She said that the OTR zone district is a single family neighborhood and a boarding house is not allowed.

John Plano stated that four unrelated people are allowed to occupy a single family residence. He said that when we did the review that Pat and I met several times during the design process. He said that he asked Pat to provide a statement that he did understand the occupancy standards and that he would abide by those if we did issue a building permit.

Nick asked what the Town’s position was on short term rentals in this zone district.
Janet explained that our code doesn’t address short term rentals. She said that what we look at is single family residents need to comply with the occupancy standards and the definition of family.

John stated that the definition of family has three aspects to it, one is the family unit, anyone that is related. How many people that are in a home is based on square footage 200 square feet for the first person and 150 square feet per person after that, which would lend itself to have quite a few people in a house that is 4000 square feet. He said that they would all have to be related, brothers, sisters, cousins, daughters, sons, any blood relation whatsoever. He said the second would be four unrelated people is also the definition of family or two unrelated people with their children. He said that each one of those is “or”, a family or four unrelated, or two unrelated with their children.

Nick asked if the owner could short term rent these rooms.

Janet stated that it comes down to an issue of enforcement, she said that we deal with it on a complaint basis.

Jeff said that we need to say is it allowed or not is the question.

John stated that he has done enforcement of occupancy in town quite a few times. He said that it is typically renters. He said that he contacts the owners or the property managers and he does an inspection. He said he measures the home to figure out how many people are actually allowed there. He said he talks to the tenants to see how they are related and what the situation is. He said that several times a letter has been issued and essentially make them move.

Jeff asked if a boardinghouse was allowed as a conditional use permit.

Janet answered that it was not.

Nick asked if an MEP was submitted with this building permit submittal.

John explained that an MEP was mechanical, electrical and plumbing drawings. He said that we do not require those for single family homes. He said that the design was very energy efficient.

Charlie clarified that the building permit was only for the first floor correct.

John stated that there was several unfinished areas. He said that the whole structure was submitted but that the finished portion was the first floor.

Jeff stated that he was confused because the drawings that they received showed all the walls and bathrooms with all the rooms.
John stated that the floor plans were submitted but that he was just going to finish the first floor in this phase.

Jeff stated that he did not see that in any document.

Charlie stated that is why he wanted to explain because it is confusing. Jeff stated that clearly the floor plans show the intent but not the layout.

Charlie asked Janet if she had some design questions under the OTR.

Janet answered that she had concerns about compliance with the OTR.

Charlie asked Janet if she had concerns about the boarding house concept.

Janet answered yes.

Charlie asked Janet if after speaking to the Town Attorney, Mark Hamilton, that you agreed that the permit as submitted complied with the code correct.

Janet answered that she agreed that the UDC didn’t limit the number of bedrooms.

Charlie asked Janet if the permit had to comply with the UDC and the Town code, did it not?

Janet stated that at that time she said yes.

Charlie asked the question again.

Jeff stated that Janet answered yes.

Charlie asked if Janet she reviewed the objective standards under the UDC and the OTR and that the building permit complied with those objective standards, did it not?

Further discussion ensued regarding the repeated questioning.

Charlie asked if the purpose section of the OTR sets forth a planning goal, is that not correct?

Janet stated that it sets forth the intent of the OTR zone district.

Charlie asked Janet if that was based on the Comprehensive Plan.

Janet answered yes.

Charlie asked Janet if there were any specific standards that say that a buildings architectural components has to have x number of porches or gables or different structures on it at the time that this was approved.
Janet answered that there were not defined standards. She said that the purpose section did talk about mass and scale of the neighborhood. She stated that since we have adopted the UDC over the last two years that the error was that we did not use the OTR zone district in its entirety when reviewing proposed development, including the purpose section. She said that when reviewing we look at neighborhoods, mass and scale of buildings. She said that we have had people go back and redesign them. She stated that we look at mass and scale and we ask that buildings be broken up in smaller components, request façade modulations, setbacks for upper floors, varied roof lines, changes in building materials and breaking up facades with architectural features such as dormers, porches, gables and windows. She said to answer your question, did we look at the purpose section of the OTR zone district and the intent, no when we were reviewing this building permit.

Charlie asked Janet if that is part of your job before issuing the building permit.

Jeff explained that as she stated that it was a new code and that she was trying to get comfortable with it.

Charlie stated that Mr. Kiernan was not given the opportunity to correct any design deficiencies before the issuance of the permit is that correct.

John Plano stated that Pat and he worked through a lot of issues during the review of this. He said that there were several preliminary meetings, some during the review, we discussed quite a bit of it. He said that it was not the design standards, it was nuts and bolts of how he was going to get the product that he wanted through the building permitting. He said that he did not question the design per say.

Charlie asked Janet if he wasn’t given any opportunity to correct any design issues.

Jeff told Charlie that you are going to go at them a little. He said that the applicant always has the opportunity to withdraw the application and redesign it right. He said that he wasn’t given the opportunity might be a leading question.

Charlie apologized and stated that because they had design questions and that he didn’t get the opportunity.

Jeff stated or, the more important question, was there a request made to redesign it.

Charlie asked for clarification that, after the decision, didn’t Mr. Kiernan get back to you and ask what he could do to redesign it to make it fit, do you remember that? He said that after the Planning and Zoning Commission ruled that he came back and asked how he could fix this, isn’t that right?

Janet stated that was after the last public hearing and after the appeal date.

Janet asked if she should answer if that transpired after March 31st.
Mark Hamilton answered yes anything you know through the date of tonight.

Janet stated that she remembers that Mr. Kiernan did ask if he could come in and redesign. She said certainly and that we couldn't act as designers and that he was responsible for hiring professionals or doing what he needed to do. John concurred the same.

Charlie stated that he is not contesting that but stated that now the procedure is that you would tell people to go back and redesign things as you had listed a number of things and you now do it differently.

John answered that we are now looking at them differently.

Charlie asked Janet that she indicated that the Board has two options. The Board of Adjustment has the opportunity to agree that the building permit can be issued if certain terms and conditions are met, which is also one of the options they have. He said rather than a straight up acceptance or rejection of the permit, that the Board can say we will approve this permit if x,y and z are done. He asked if they have that authority.

Janet answered yes with conditions.

There was a short break.

Mary Sikes timed all presentations by both sides.

**Appellants – Mark Mahoney on Behalf of the Neighbors**

Mark Mahoney, **742 Euclid Avenue** stated that he has lived here since 2003. He said that he has been an architectural designer in the Roaring Fork Valley for twenty seven years.

Mark made three corrections to his letter in the packet referencing home sizes in the OTR and the walls that impact the neighbors should read thirty three feet long.

Mark said that we would like to talk about the purpose statement. He stated that the purpose statement contains mandatory language that must be complied with. He said that word "shall" as defined by the UDC means it is mandatory. He continued by saying that the purpose statement says “special emphasis shall be placed on the character and quality of the built environment and the home sizes and lot sizes of the OTR.” He stated that we will not address Pat’s assertion that he is not subject to the purpose statement or the Comp Plan because the Staff report responded to his position statement better and more thoroughly than we can.

Mark said that the Staff report on page 10 does state that the Staff did not utilize this section when reviewing the building permit application. He said that we believe that the Town was in error and that it was an unintentional error in not applying this section. He
said that if a major part of the code was not applied that fact alone should be the basis for overturning a permit and at least remanding it back to the building department.

Mark outlined some of the Board of Adjustments responsibilities;

- UDC requires that the BOA consider the intent of the code, as defined in dictionary as purpose, we have a purpose statement for the OTR.
- Residential uses and densities that are consistent with the historic character of Old Town Carbondale.
- This area has unique scenic historic natural and design features that should be preserved and integrated into a new development.
- Should is a permissive standard but the UDC requires that you consider the intent of the code, the language that is in the purpose statement.
- The word historic is used twice the intention is not to be consistent with houses that were built in the last 3, 5 or 10 years but houses that were built further back in time.

Mark said historic was not defined in the UDC but that if you are talking about land use, the National Register and Secretary of Interior defines historic as fifty years old or older.

Mark stated that the positive and negative impact of the requested development on the achievement of the Town’s stated development goals and strategies and the impacts on the Town’s ability to implement its Comprehensive Code.

Mark stated some might think that we are asking for strictly subjective standards to be reviewed here, under the purpose statement. He said at some point that is correct but we can winnow it down. He said the home sizes and lot sizes are knowable quantities.

Mark said that he has compiled information from the Assessor’s website, which is listed in the packet, of home sizes. He explained his findings of square footages in the OTR compared to the proposed application. He said that people can live in the basement, which creates impact. He said that this home is one of the biggest houses in the OTR, if not the biggest. He said, to look at the lot sizes, this house is on a fairly average size lot and that it is not particularly large. He made comparisons to other lot square footages and their home sizes. He said that it is an average size lot and a very large sized house.

Mark stated that another thing that you are required to look at is design features. He said that he tried to figure out what are the basic design features of this house or houses in OTR. He said that he tried to look at it so that it was not subjective. He said that we are not looking at what color it is or the architectural style or the materials. He said that he looked at the massing. He stated that the Planning Director wrote that the OTR zone district was created because of concerns of the mass and scale of the dwelling units being constructed under the previous zone district.

Mark stated that he built a scale model which is displayed. He said that this house is basically a rectangle, the mass of the house is expressed as a rectangle. He said that he went around to every house in the OTR with a clip board and his list, asking if this
was a rectangle, yes or no. He said that he made a list of the houses. He said that the house to the west is a rectangle. He said that he looked at whether houses are broken up into multiple masses. He said that when he looked at the data, anything over 1600 square feet with one or two exceptions, broke up its mass, in different ways that Janet had explained. He explained further on the massing in the OTR zone district.

Mark said that he looked at whether houses in the OTR had the same first and second floor footprint. He said that thirty four out of thirty five houses did not. He referred to the sketches in the Comp Plan, which he said is a consistent theme throughout the OTR. He said that is the intent of the code, not being a giant mass but on a residential scale.

Mark stated that the Comp Plan talks about reducing the visual impact. He said that breaking down the mass of a building into residential scale minimizes the visual impact verses a solid block building. He stated that if you look at the home sizes, lot sizes and design features that they are not completely subjective. He asked is this house in keeping with the Comp Plan and the OTR goals.

Mark stated that the applicant stated that he is not even required to comply with the purpose statement or the Comprehensive Plan. He said that the design is consistent with that attitude and that there is no attempt to break down the mass or the scale.

Mark said that he would like to talk about the Town’s ability to implement the Comp Plan and the OTR goals. He said that the OTR zone district emphasizes the historic character of the Old Town neighborhood. He said that, if you look at the design features we just went through, that this house doesn’t do any of those, which are basic design decisions. He continued by saying that the standards promote new residential developments that relate and connect to established neighborhoods. He said that there are eleven neighbors that are surrounding this property who are here tonight to say that they do not think it connects to the established neighborhood. He said that with full disclosure that his house is the house to the west in the model displayed. He explained the impact to his property.

Charlie asked if the allotted forty five minutes is all the neighbors, not just Mr. Mahoney, correct?

Jeff stated that it is just Mr. Mahoney and that if they speak, it is just part of the public comment.

Tarn addressed the Chair and stated that we recommend that there be equal amounts of time for all appellants together collectively and Mr. Kiernan, with the public hearing be a separate process with time limits place on the individuals but not on the groups. She said that, if we need to address that now, we should discuss that now before the time lapses.

Mary stopped timing.

Mark stated that we have seventeen signatories to the appeal letter. He said that the appeal letter would carry the same weight even if he was the only one that signed it. He
said that we are essentially being punished by not having public speaking. He said that if they had not signed that they could speak as the public and that I would have forty five minutes and they would have three minutes apiece. He said that this is how we handled it in the last hearing. He stated that the applicant had a larger public presence at the last Board of Adjustment hearing.

Tarn addressed the Chair and stated that there are a number of named appellants; however, that is a different role in this proceeding than members of the public attending for a public hearing. She stated that to the extent that they all want to speak, it should be part of the same amount of time as allotted to the applicant. She said that we want it to be fair with both sides having the opportunity to get their issues before the Board so the Board can render a decision. She said that it is different than a neighbor who is not a neighbor-appellant showing up and being afforded his/her three minutes. She said that the Board may need to address how to proceed from here.

Mark suggested that the Board ultimately has control over how much time and that this is the role of the Board and particularly the Chair. He stated that if any additional time is granted he suggested that it be equivalent.

Mark stated that if there are members of the public that are not appellants, our code requires that they be given an opportunity to speak and we have traditionally given them three minutes. He said that there is also a subset of those people that are appellants and we had set up a process to give them equal time with the applicant.

Jeff stated that his intent with this is that we have all gotten the packets and we’ve seen all of the letters and he would hope that we wouldn’t have a bunch of repeating of the information. He said that we are able to hear facts with not having to hear the facts twenty times. He said that it would be his hope not to get a lot of repeating. He said that y’all have made the time to be here and we appreciate that but we don’t want to go until midnight.

Charlie stated that we prepared for a forty five minute presentation and we would ask you to stay to those deadlines or we are going to have to ask for a continuation so we can present other evidence.

Tarn suggested to the Chair if the neighbors need an opportunity to talk amongst themselves to decide how to use the remaining time we could take a break.

Jeff said that perhaps what we could do, if everyone agrees, is once you have finished your presentation we could ask you questions as the Board. He said then we will allow Mr. Kiernan’s side to make his presentation, ask questions and then we’ll take a break and let you regroup.

Charlie stated procedurally they can reserve their time but that typically it is to rebut things that we say and that is not to bring up new things because we don’t have a chance to address those new things. He said that it goes back to the original question
we had to procedures. He stated that if they are going to present things they need to do it now and they can then rebut what we have in the remaining time.

Mark stated that he agreed with Mr. Willman and that it would be preferable for the neighbors if they are going to make additional factual points as a part of their initial presentation that you do that before his presentation. He said that if they have time left and they want to reserve it for rebuttal that is how the rules work.

Jeff said that the appellants could come to the podium now and make additional comments or sit at the table with Mark.

Charlie stated that he has no problem if they want to take a five minute break to figure out how they are going to use their time.

Jeff stated that you all have twenty four minutes left if you would like to talk about it amongst yourselves.

There was a short break.

Jeff stated that this won’t count against your time while you tell us what you have decided and how you would like to proceed. He said both parties have equal time to present and the appellants are everybody that who has signed the letter. He said then there will be general public which are not those people.

Mark stated that he will finish quickly on the boardinghouse and we will keep ten minutes for the rebuttal.

Mark stated that this project is six bedrooms and six and a half baths for four unrelated adults. He stated that the applicant has stated that he wants to create rental housing. He said that we believe that this structure is laid out and arranged as a boardinghouse. He said that the upper floor has bedroom suites with sitting rooms that could be studio apartments. He said that with the pressure on housing that if you have six bedrooms and six and a half baths we believe that this is ripe for abuse. He stated that Pat might not be the person that will abuse it but the building will be here forty or fifty years and that somebody is going to buy this at some point. He said that it is an anticipated impact, which the code says all conditions of approval shall be reasonably related to anticipated impacts of the proposed use of development. He stated that it is never going to be used as a single family residence and that a nuclear family would not buy this. He said that it is always going to be used as a rental property and to its maximum capacity. He stated that on the first floor there is a guest room office with a full bath, closet and sitting area that has a direct access to the outside. He said that we believe that this is prime to be a short term rental or Airbnb. He pointed out this area on the plans displayed, which would be five adults at minimum. He said that there would be problems with parking and storage and all of the things that go along with that many unrelated adults living in a property is troublesome.
Jerome Whalen, **228 Eighth Street** stated that he is requesting that the building permit be rescinded for the following four reasons;

1) The Town erred in not applying the purpose statement to its initial review.
2) This project is a poster child for everything the OTR zone district set out to correct. The building mass, scale, architecture, parking, landscaping and neighborhood impacts are all out of compliance with the OTR zone district.
3) Pat has never once said that he is building a single family home. He has told anyone that will listen, including the Sopris Sun, in which he is quoted, that he is building co-housing. Co-housing is not an approved housing type in the OTR zone district. Co-housing, boardinghousing and bed and breakfasts are not approved in this zone district because they do not live like single family homes.
4) Pat has given you written notification that he does not intend to comply with the Town occupancy standards when he wrote “It is not my intention to use this proposed home in violation of the Town occupancy standards as currently enforced.” If that is not enough ammunition for you just look at his building plan, the plans scream boardinghouse, which is not an approved zoning type in this zone district.

Jerome stated that he urges you to rescind this building permit.

Mark Mahoney stated as the difference between how the code is written and how it is currently enforced, he displayed a picture taken this morning, the code reads within the OTR all other open parking shall occur elsewhere on the lot, outside of the front yard setback and on an improved area having a surface of asphalt, concrete, rock, gravel or similar inorganic material with a permanent border. He pointed to the picture with five vehicles parked semi-permanently, three that have been there for years, two that are semi-permanent. He said that this is how the code is written and this is how the code is enforced.

Linda Halloran, **178 S. Eighth Street** said that as much as she is here to support the appeal that she is also here in support of the UDC and the Comp Plan. She said that both Town Staff and volunteer community members invested a great deal of time and thought to come up with these documents to guide development in Carbondale. She said that while no process is ever perfect the current UDC and Comp Plan is what we have to work with and they deserve our respect. She stated that there was clear intention in both of these documents to protect the integrity of the Old Town Residential zone district. She stated that your charge as the Board of Adjustment allows you to give considerable weight to that intent. She said if Mr. Kiernan’s building permit is issued as currently configured it will set a precedent that will undermine the work of many and the integrity of the UDC and the Comp Plan. She said that this project has a long history, Mr. Kiernan initially came before the P&Z in April of 2015. She stated that at that time he was required to go through the infill process, which required a public hearing. She said that he started out asking for 6-7 variances for a new structure on a vacant lot. She stated that one of his variances was that being in a historic district was a hardship that allowed for a variance. She said that he has known of the historic significance since at least 2015. She said that she would argue that asking for that number of variances
indicates that Mr. Kiernan views complying with the code in general as a hardship. She continued by saying that his application in 2015 was denied. Linda said at that hearing the message from the members of the P&Z and the neighbors was very clear. She said that the mass, siting and scale of the project did not fit in this historic neighborhood. She stated that the Chair of the P&Z, at that time, suggested to Mr. Kiernan that he hire an architect to help him deal with some of these issues.

Linda said that his latest building permit application with the issues that Janet and John spoke about was not new information to him. She said that he was given the opportunity in 2015 to work on his building to make it more appropriate to the neighborhood. She stated that instead of taking that feedback to heart, Mr. Kiernan has now returned with an application under the UDC that changed only quantitative aspects of the project. She said that he continued to ignore qualitative issues set out in the UDC and the Comp Plan. She said that he selectively chooses language from the UDC that supports his project and ignores any language that does not. She said that he wants us to believe that he is applying for a one bedroom single family home yet the structure has three floors and 4400 square feet. She said that he states in writing that he will adhere to the occupancy requirements as enforced, not as written. She stated that his actions indicate that he has little respect for the code and sees the process as a game of words. She said that she urges the Board not to allow Mr. Kiernan to manipulate and minimize the Old Town Residential zone district, the UDC and the Comp Plan. She said that his position statement indicates that he doesn’t think the UDC in its entirety is valid nor does it apply to him. She said that for the UDC to maintain its usefulness as a guiding document it needs to be applied consistently and in its entirety. She thanked the Board for all of the time that they have volunteered.

Mary Whalen, **228 S. Eighth Street** said that her husband, Sarge, and her live two doors down from Pat’s proposed project. She said that they are part of stable community that Mark Chain writes about in his letters. She said that they have lived in their little log cabin for over thirty years and that Pat’s project feels massive. She stated that he could house more people in his building than currently live in our entire square block. She said that we feel that Old Town Residential zoning was created to prevent this kind of project and we ask that the Board consider the true potential of Pat’s submitted plan as well as the purpose statement to help maintain the integrity of our Old Town Residential neighborhood.

Dan Bullock, **682 Euclid Avenue** said that he is a member of the Tree Board. He said that one omission to this application was a landscape plan by a landscape architect. He said that it clearly states in the Municipal Code and in the UDC that a landscape plan shall take into an account the existing patterns of surrounding development and existing landscape. He said that the UDC requires, in Old Town, three large canopy trees. He said that a professional landscape plan would move the building back to accommodate large canopy street trees and reflect the existing front yards of Old Town residents. He said that he worked hard on parts of the UDC with the Tree Board, Janet, John and Public Works. He said that this is an over sight that needs to be corrected.
Meredith Bullock, **682 Euclid Avenue** said that she asked a well-known respected realtor for her opinion of how she would market the building based on the floor plans. She said that this is a quote “The way I count there are really six bedrooms, although he is calling one of them a family room. Some of the options might include reconfiguring the house into more than one dwelling depending on the zoning or even a mix of uses i.e., commercial and residential. The ad would probably be different in every zone district because it is not a traditional single family floor plan. I would explore other potential uses for the building.” She said that you all know who this person is.

Frank Norwood, **765 Sopris Avenue** said that he borders Pat’s property across the alley. He said that if this is approved that it will be opening an incredible can of worms for anyone that wants to scrape a lot, build on a new lot and wants to do the same as this application for a multi-family dwelling. He said that this will be the demise of what we treasure in Carbondale as a very pleasant place to live.

**Applicant – Pat Kiernan and Charlie Willman**

Pat said that he hopes that some of the experienced planning folks will forgive him as he is going to do a quick run through of how he understands some planning issues. He said that this is from the land use basics for elected officials, Colorado Municipal League, and the Department of Local Affairs. He said that we have the Comprehensive Plan and the intent and purpose and there needs to be a link to regulations so that they are understandable, predictable and consistent otherwise it just turns into a free-for-all. He said that a good meeting falls in a clear and consistent procedural framework and we are doing well on that front. He stated that decisions need to be based on the record and testimony and relate to the review criteria in your codes. He said it is not your job to decide if you like it or if it's a good idea and that it is related to the application to the facts presented and standardized review criteria. He said that people give him a hard time about following the nuts and bolts and not honoring the spirit of the code. He said that as you can see the spirit of the code kind of wanders all over the place. He said that with a group like this it is very easy to want to appease or placate a body of people who feel this is going to ruin their lives and their neighborhood. He said that you have to base your decision on facts.

Pat said as Tarn has mentioned, this is a quasi-judicial action and in a sense you are acting like a judge because the next step up from this is District Court. He said to think about that when you are listening to evidence and making a decision, the challenge will be through the courts. He said that he and the neighbors are entitled to due process, we are allowed to be heard, ask questions and decisions that are made based on compliance with the codes. He said that this is case law, Colorado law and the criteria must not be vague. He said that a regulation that is unconstitutional void if persons of common intelligence must necessarily guess as to its meaning and differs to its application. He said that is a lead into asking for decisions based on what’s in front of us instead of stories that get made up. He said that here are some examples of poorly drafted standards, subjective standards to the left side and objective standards that actually give some consistency and understanding to it. He continued by saying that zoning cannot regulate behavior, that is a different body of the city. Pat said that it is not
about architecture police, different people have different senses about what is appropriate or pretty and that the code is not about that, unless specifically written. He said the issues before the BOA are pretty clear, is it in compliance with the OTR purpose section due to mass, size, bulk and sizing, is it a boarding house or single family, does it have sufficient parking? He stated that this is from the UDC, the Board shall not have the power to change the terms of the code and the spirit of the code creates a shadow code and effective changes the terms of the code unless it is based on objective standards. He said that if a review is not based on objective standards in amounts amending the code under the gise of interpreting it. He said that you could see how that would be a pretty slippery slope. Pat stated that throughout the code specifics governing control, cases of conflict the more specific provisions shall govern and the same with the meaning and the intent.

Pat said that we pretty much all agree that this meets the dimensional standards so I’m going to rip through this. He said that these are spelled out pretty clearly, lot minimums, lot widths, and surface coverage. He said that he is only at 26% and that he is allowed 40% therefore there is room for more parking should it be decided that he needs it. He said that the setbacks are all appropriate to the zone district standards. He stated that the height meets the standard and it crowds it a bit but that if crowds it a bit, which you will see why later. He said that the supplemental standards also apply. Pat stated that he believes that the tree planting and landscaping may have been revised since this permit was filed as it was pretty simple at that time. He said that he met those simple requirements, three street trees, five foot planting strips and the location of those trees. He said that there are other standards, for structures adjacent to an alley step down. He said that these are meant to bring the structure in line with the OTR purpose and intent, in this case it is reducing the sidewall, near the setbacks and then have a façade that is broken up in a number of ways, dormers, porches, gables etc. He said that there is an illustration of the maximum wall height near the setback. He said that here is the floorplan and in the upper right corner, floor zero and floor two, the basement and the second floor are unfinished for this permit. He said that he put some exploratory concepts in there for how this might be finished out because he wanted to make sure this is ok if he added more bedrooms. He stated that the envelope of this permit that is the foundation of the first floor are finished. He said that he is not trying to mislead anyone of this front. He said that we’ve already talked about off-street parking requirements and that all the UDC requires is typically a maximum of two. He said that here is John Plano’s simple review of zoning and this is his worksheet, with one request for clarification on the lot coverage area. Pat said that typical of the process through this if there was something that didn’t feel right to John or that wasn’t clear that he would get in touch. He said that we had a lot of meeting and that many were about alternative construction and energy efficiency as well as minor things like landscape details, sidewalks. He said an initial site plan was submitted and reviewed and then another site plan in December, original one was September of 2016. He said that we both agreed that it was still a minimal site plan. He said that there is always room to go above and beyond. He said that you can see the planting strips and the street trees.

Pat stated that here is Janet Buck’s boardinghouse memo, while she claims that she did not review this to anything else but dimensional standards, here is a purpose and use
discussion. He said that she had some concerns about it and now some misgivings that she did not follow up on that. He said that keep in mind that a label has been applied here, think how effective “Nasty Woman” was in disparaging Clinton was during the ill-fated election. He said that when you label something that it is an interpretation. He said that this is not a professional assessment of the project. He said that the neighbors have picked up that. He said that here is a sketch of what could be done upstairs and that his concept was shared housing. He stated that he has intended for this to be his home and ideally mature adults. He said imagine if you were in this situation what kind of space you would like, would you like a bedroom with a bath down the hall or something like this. He said that is the design and with the four unrelated people as we have talked about, it meets the single family. He said that clearly if he wanted to abuse this that this is possible with any house in Carbondale. He said that there was a meth lab in a modular while back and things can be abused and that is a different question. He said that part of the space required for this house is because it is a renewable energy power plant. He said that there is a large mechanical room and storage down there. He stated that the concept for this is “open build”, so that the utilities and the layout can be easily changed without major changes to the house. He said that there is open web floor trusses, service cavities in the wall and the ceiling, so it has some flexibility in design. He said that it is clear that the UDC does not limit the number of bedrooms or bathrooms, we’ve answered that question. He said that the definition of family, one option is not more than four unrelated persons and that a single family dwelling may be occupied by four or fewer unrelated persons. He said to look at the code, the size, massing, bulk and siding of the proposed structure are in compliance with the specific dimensional and qualitative standards of the UDC. He said that these specifics standards govern rather than the general OTR purpose statement. He said the bedroom question is not of the design of a house but how it is used as well as how it’s occupied. He said that there is sufficient parking and room to grow if needed.

Pat said that John was really helpful in reviewing this process and giving me feedback as well as clarifying things and looking at things he hadn’t seen before regarding energy efficiencies that he is planning to do. He said that on March 11 that he got word that he had reviewed it for code compliance and it is stamped on the landscape site plan. He said that one thing that did not get in the materials was a solar shading analysis. He said that John and I met at length on this and discussed solar shading. He said that for years that he designed and installed renewable energy solar systems. He said that he is pretty familiar with how the sun moves. He said that if shading was a problem that this would be a reason for a re-design. He said that there is a sixteen foot solar fence on the adjacent building envelope and the parameters are specified in the code, which he explained further. He said that an important point to mention was that the appeal was originally filed on the 20th of March. He said that the Town decided that it wasn’t really an appealable decision until the permit was issued. He said that when he picked the permit on the 31st of March the appeal was filed again and according to the Town it was officially appealable. He said that what meant was that the permit was approved on March 11th, appealed on the 20th and the Town had eleven days, perhaps longer if they knew of the neighbors intention, to evaluate the claims of the appeal and review the permit application, as well as let him know before he filed and paid the permit fees and
went down this long legal journey. He said that what the Town decided was that the site plan and building were in compliance with the zoning so the permit was issued.

Pat said let’s talk about subjective standards verses qualitative. He said that the claim was floated that he is arguing that he is not subject to the code. He said that what he is saying is that he is not subject to subjective review to the Comprehensive Plan and the purpose section. He said that there is a difference between subjective and qualitative. He said that the Town is now reviewing the purpose section of the OTR, which sets out more qualitative standards. He said that standards are rules, principals or measures with which compliance is mandatory unless variance etc.

There was a short break for technical difficulties.

Pat said that poorly drafted standards are using subjective language instead of statements that are understandable in some way. He stated that these are qualitative standards, vertical wall within five feet of side yard setback shall not exceed twenty feet in height, and a façade of a dwelling facing the street shall be broken with dormers, porches, gables. He said that is truly a qualitative standard there and it is sufficiently objective and it holds weight. He said that it is understandable. He said that if you applied that understanding the purpose statement is essentially void for vagueness, which is a legal term. He said that people have to agree on what they mean and common understanding. He said so applying the vague language of the purpose statements as standards is not only a poor planning and zoning practice it is illegal. He said that it would not stand up to court review. He said that here is the letter with the email that came up earlier. He said that late June after the appeal and after he had exhausted all of the administrative options with the Town that he asked Janet and John if there was currently an available process that could provide a schematic design review that would allow him to verify that his project is compatible with the character and purpose of the OTR before he proceeds. He said that it is an expensive process to redesign and do structural and soils analysis etc. He said that Janet had said before we are not design professionals and that we are happy to review a new conceptual design for your structure, including a narrative to explain. He said that essentially that there is no way out.

Jeff asked Pat for clarification of what he just said.

Pat explained that he had asked Janet and John if they could provide him some basis in which to do a redesign. He said so that he could take another look at it to see if there was something he was violating, give him some input and he’ll redesign it based on that. He said that nothing was forthcoming and nothing specific that he could redesign to. He said that then he took it to court because he was in a position where the Town won’t tell me what to design and the neighbors are happy to and where do you go from there. He said that the Comprehensive Plan is not a land use code but an advisory document that shapes the land use code. He said that the Board of Trustees intends for this code to implement the planning policies, which is the UDC. He said that the specific standards of the UDC capture the intent of the Comprehensive Plan. He said that is the process, the Comprehensive Plan creates the vision and the goals, the purpose
statement focuses the intention and the standards implement it with objective standards. He referred to an earlier slide, the BOA must consider the requirements and the intent. He said that the project clearly meets the specific requirements but that the appellants claim that the intent has been overlooked. He said that there are legal rules for interpreting statutes and the UDC is essentially a statute. He said look at the plain language and follow the history, read it in context and harmonize if there is a conflict. Pat stated that the OTR is not a new code that the Town is learning to apply. He said that the neighbors and the Town seem to want to make that the argument. He said that it was established in 2008 and that it has changed very little since. He said that it was about concerns about mass and scale. He said that the UDC preserved the intent and captured the essence.

Pat read from the UDC further and the history of the OTR zone district as well as the boundaries. He said that the purpose statement that is nice sounding but vague and not legally binding language unfortunately. He said that the UDC was revised in March 2019 so this does not apply retroactively but now there are standards to reduce apparent mass. He said that is an intention that the neighbors would like to have retroactive but it was not in place at the time. He said so here is the criteria that you are asked to review things to, facts involved, code evidence of how it has been interpreted in the past, goals and strategies, Comp Plan. He said again specifics control over any general statements if there is a conflict. He said here are OTR houses built since 2008 and they vary a lot, with massing in parts that similar to my house, garages are no longer allowed on the street side. He explained several more examples of houses in the OTR and their characteristics. He referenced several new buildings close to his property that are not labeled boardinghouses. He continued by saying that the Carbondale Historic Survey, completed in 2010, stated that the residential areas of Carbondale were sparsely built at the turn of the century, which has resulted in considerable infill construction therefore no national registered historic district or local historic district is recommended for the Original Townsite and the Weaver Addition. He said that historic apparently means something else in this context. He explained the surrounding properties around his lot at 728 Euclid Avenue. He said that he doesn't live in a historic neighborhood by the usual sense. He referenced the old train station and the Village Smithy buildings as being rectangle in shape, which is their historic element.

Pat said that looking at the Comp Plan his house satisfies a number of things, infill development on vacant lots, residents with walkable access to the town, diversity in housing types, housing options for an aging population like himself and folks that can put up with him, ecology and renewable energy. He said that one item with infill in existing neighborhoods, special care shall be taken to ensure mass and scale conform to the existing neighborhoods beyond what is allowed in the current underlying zoning, in 2013. He said that code was updated in 2016 and the Town intends the UDC to implement the planning policies. He said what the Comp Plan intended is meant to be built into the code. He said the Environmental Bill of Rights was passed by the Town in 2017. He said that we want to “green up” our act because it matters. He said what Planning and Zoning is not about, it is not about subjective interpretations of the codes, fears of all of the possible ways my home could be used in the future in violation of the codes, whether the neighbors approve of my project or who they imagine him to be and
it is not a popularity contest. He said last time as you have heard that there were about equal numbers of people here speaking on both sides. He said either this meets the code or it doesn’t, if it doesn’t it can be explained why. He said that he doesn’t want to pit neighbors against neighbors, the point of good zoning is to make the rules clear and to avoid this Hatfield McCoy kind of feuding across boundaries. He said what it is about is does the proposed structure as designed meet the objective standards of the codes. He said with the boardinghouse thing, once built is it being used and occupied in compliance with the codes. He said does the design meet the standards of the code, in use, is it occupied in compliance with the code. He said that he is not asking for special treatment, just fundamental fairness. He said that Janet has already stated that they essentially did not do their job. He said how do we undo that. He said either it meets the code or it doesn’t, if it does comply reissue the building permit. He said that if it doesn’t that he is asking for fairness and specific objective reasons based on the evidence and the code why it doesn’t comply as well as a path to compliance.

Pat said that he paid for a permit review and responded to all of John’s requests and that he was great to work with on a not so simple project. He said that he just wants specifics on how to comply. He said that the former Mayor, Stacey Bernot, commented on the 191 Sopris Avenue project, which was fairly contentious, a four family unit, “To me it’s not about the building it’s about the people and that I want an inventory of mobile homes to mansions in this community and if we bicker about every project that comes through I think we are losing sight of those folks”. He continued by saying what makes Carbondale special, we are normally known for things like community, arts, recreation as well as diversity and inclusivity. He said that architectural historic character are not our greatest charms. He said he wonders if the appellants see Carbondale differently where architectural and historical character rises above community, which is speculation that doesn’t need to be considered. He said that this just lends some perspective of what he is up to apart from all the boarding house labels and enemy of the people.

Pat recalled last summer’s fire “It became vividly clear that this is not the same valley when I arrived in ’87 nor is it the same planet that I was born on in 1956, in a short lifespan I’ve seen the planet put in jeopardy.” He said that Tarn knows this from my adventures with her dad, the natural world has provided one of my most enduring and nurturing relationships and that’s why I am here. He said that he can’t, in good consciousness, build a house that will burden the planet for decades to come. He said that the atmosphere is like the skin of an onion and we’ve been messing it up. He said that his design is a net zero and they are fairly involved structures, the wall systems are heavily insulated so the geometries tend to be pretty simple. He said the goal with a house like this, is over the course of a year to generate as much energy as the house uses through energy conservation and renewable energy and in this case solar. He said that once again John was very helpful in helping him work out the details. He said that he has indicated from the beginning that he wants to share the house and not that he wanted to rent it. He said that cohousing is usually multiple structures, co-householding is occupying a single family structure as unrelated family and that it is a growing trend. He said that this is his design concept, simple, sustainable, shared, shelter. He said that he hopes that there is room in Carbondale for this.
Pat said in conclusion, Staff approved the site plan in compliance with the zoning. He said that the proposed use falls within the UDC definition of family, four unrelated persons. He said that at build-out it could be five bedrooms, five and a half baths plus a family room. He said is it unreasonable to think that four people plus a guest room would be a normal use for that. He said that parking is more than adequate for this phase and that it is a great fit for Carbondale’s environmental and developmental strategies and a change at looking at architecture. He said that he requests that the Board approve the building permit and deny the appeal. He thanked the Board and apologized for getting emotional.

Charlie submitted a copy of the PowerPoint as a formal exhibit and evidence on a stick as well as paper copies to the Board.

Charlie stated that Pat has covered a lot of the things that he wanted to address and that the important things to consider in his understanding of the law and that you might get different interpretations from your council, the code has different provisions that have to be looked at when you issue a building permit. He said first of all the building standards and things like that, which are in the International Residential Code if he remembers the name correctly, those are not even questions in this process. He said that remember that the building permit is just for the first floor. He said that Pat has been very transparent in what he has presented to the Town and to this Board and to the neighbors and this is what I want to do.

Charlie said that when you look at the code itself there are two sets of standards, the first are found in section 3.2.3.B, the second in 5.6.6. He said that 3.2.3B are the dimensional standards and everyone agrees that those were met by Pat in his building permit. He said that it was interesting that when Mr. Mahoney made his presentation showed all of these comparable standards out of the Garfield County Assessor’s office. He said that is great and that he doesn’t know if they are accurate or not as he did not have a chance to look at each of those to figure each of the properties he had. He said that the issue is that the Board has to decide based on what the dimensional standards are in the code. He said that Pat has met those dimensional standards. He said that it cannot be determined by size but it has to be determined on the objective standards. He said the purpose of the standards in both 3.2.3.B and 5.6.6 is to put prospective applicants for a building permit on notice of what they need to do to comply with your code. He stated that he complied with all of those standards and that is what Janet and John found when they issued the permit. He said that they were well aware of the objections of the residents. He said that Ms. Buck has indicated here today that as she thought about it that she was aware that there were some design things that quote unquote “bothered her”, which might not be her exact words that she said today. He said that she did not bring those to anyone’s attention and that she did not bring it to Pat saying that we have issues with this and maybe we should be looking at some different design things that we could maybe solve some of these issues. He said as Pat pointed out that there was maybe a ten or eleven day period there because of some confusion on when the time for the appeal was due for the Town again to look at the same questions that you are hearing here today. He said that they looked at those and that they did not revoke the approval of the permit, they issued the permit on March 31st.
Charlie said that if you look at 5.6.6 there are six different standards i.e. the trees and different things and I’d encourage you to look at the actual code. He said that for each of these six items that the Town has found that Pat has complied with. He said what is important to consider is that in 5.6.2 of the code that they talk about standards and guidelines. He said that standards under your code are rules, principals or measures with which compliance is mandatory unless modified through various procedures or altered in compliance with the code procedures. He said that Pat did the alternate compliance for a porch in the front yard setback and that was in the worksheet that Mr. Plano had done. He said that the second part of that section 5.6.2B in paragraph two is guidelines. He said guidelines are policy preferences for which no specific measures exist and that is critical. He said that it goes on to say that the development may not be denied solely for failure to comply with a guideline. He said that he is shortening it but that is generally what the code says. He said that is what the appellants want you to do, take these vague design things. He gave an example of what Mr. Mahoney admitted that the historic character he claims in the code is based on the last ten years, not the last three to ten years, but something beyond that. He said that the code does not say that, he wants to add another criteria to that. He said as far as what some of the neighbors indicated is that you might open the door and create some issues out there.

Charlie said that Pat Kiernan has a right to develop his property, right to get a building permit, under the current code. He said that if this Town determines that this code is not sufficient as Pat noted on one of his slides that there have been some changes in 2019 to deal with some of those issues. He said that if the Town determines that they are not sufficient that you can amend your code. He said that any new applications after that have to apply to that new amended code, he said that you can’t do it now and stop Pat from building his building. He said that is not how the law works.

Charlie said that you have to distinguish between standards and guidelines. He said that you have to understand that when you rule on this that Pat has complied with each of the standards. Charlie said regarding boardinghouses, the purpose statements are guidelines, Comp Plan, by its nature is a plan, it is not a guideline, it’s not a standard, it’s an aspirational goal and what a town should look at. He said that is the definition of a comprehensive plan. He said that he wanted to talk about a boardinghouse, that this property cannot have more than four unrelated occupants. He gave several examples of how his home could be rented and stated that there is nothing in the code that prevents him from leasing his property. He said that there are no short term rental restrictions here but Glenwood Springs is looking at these issues closely now. He said that when Pat applied there were no such things there. He reiterated that there is nothing in the code as to the length of leasing and that restriction cannot be imposed on him, as long as he only has four unrelated people. He said that it could be abused as every law in this country could be abused. He said that the local courts are buried in cases of people that abuse the laws.

Charlie said that co-housing is not a prohibited use and it is not wrong. He said it could be a vision of the future and the Town should be looking at adding it as a use in this and other zone districts. He said that Pat has met the parking requirements as only the first floor is subject to this building permit. He said when he finishes the rest of the house he
will have to comply with the rules and regulations at that time. He said that the future use of this property cannot be judged based on the current building permit, which is just the first floor.

Charlie said that there is nothing in the code to say that one needs a professional landscaping plan. He said that Pat has a plan, which he showed in one of his slides. He said that he shows three trees and the landscaping strip and before the certificate of occupancy is issued he will have to show that he built to the Town code or he can’t get his CO. He said that it is not grounds to deny a building permit.

Charlie said bottom line is the evidence that you have in front of you tonight, Pat’s building permit complies with the Town's code. He said that it complies with the OTR and the UDC. He said that if you determine that there is a certain provision that you think he ought to do something different that he would encourage you not to make him go back and start all over again and not make him waste all of the money that he has wasted and permit fees and all of the things that he has done. He said that if you give him direction of the things that need to be done in order to issue the building permit that would be middle ground, it is not yes or no. He said that we encourage you to approve it as is but if you determine otherwise we would ask you to say these are the things that you have to do for the permit to be issued. He thanked the Board for their time and said that he sits on these boards and it is a very difficult process.

Ann asked Pat if he intended on living there.

Pat stated that was his plan.

Ann asked if Pat lived in this neighborhood now.

Pat answered that the honest truth is that housing has gotten tricky and expensive so he is currently living at the Monastery in Old Snowmass. He said that he has lived in intentional communities in Scotland and in Wisconsin. He said that he understands how to live in community. He said that his intention was to live here and share the home. He said that the renting thing came up over and over again but that he is not sure that he wants to rent it because it creates a power imbalance in the house. He said that he hoping for some kind of shared equity but that might be too socialist for Carbondale but that he didn’t know.

Ann asked if that is the difference between a boarding house and co-housing.

Pat explained that co-house holding is a model for unrelated adults to share a single family residence. He said that if you have a model and people focusing their intention that they learn how to do it better.

Charlie said that one could easily own a home as four co-tenants, with each party owing ¼ interest in the home. He said this is a legal entity which could exist.

Ann asked if any income will be made from co-housing.
Pat stated that it will be a home and that it is not intended to be an income property, that it is intended to be a shared home.

Ann asked how it would be addressed if you sell this house, which was mentioned prior.

Pat stated that this is one of those in the future it could be misused things. He said that there is no way to manage that effectively other than to enforce your codes. He said that you cannot deny it because someone could abuse it a hundred years from now. He said fifty years from now most of us will probably be gone.

Ann asked if 2016 to 2019, there hasn’t been a change in plan, knowing controversy and nothing was redone, did she understand that right.

Pat said as Charlie mentioned that he had spent a lot of money on designing this house with structural engineering etc. and that he doesn’t have guidelines on what redesign would work. He said that the Town has not given him anything specific.

Charlie asked for clarification that from the time of denial from the P&Z to the time of applying for the building permit did he make any changes.

Ann said that this other process of going around that, nothing was adjusted.

Pat asked from 2015 to 2017. He said that a couple of things did, one of the variances was for solar orientation to turn it towards the sun. He said that was a misinterpretation of the code because it says “they prefer that” rather than “it has to be that way” so that wasn’t really a variance. He said that another variance was a detached accessory dwelling unit, he said that what he got from that was no detached accessory dwelling unit and no variances. He said that he very much redesigned it and that it used to have a garage with an accessory dwelling unit and it was a very simple conceptual design. He said that he has redesigned it, no accessory dwelling unit, no variances and still the neighbors appealed it.

Ann said that she noted in the booklet that someone had offered to redesign with a compromise with neighbors or working together to do things.

Jeff said that one of the neighbors had offered to mediate.

Pat said that would have been Eric Doud.

Charlie explained that you can always discuss settlement but when a litigation is pending and that litigation was pending at that time. He said that at that time Pat had a lot of money invested in both the plans and in the court process. He said that, just because he did not want to talk, then you have to think about where he was in the process.

April asked if we were just looking at the plans for a single level.
Charlie stated the building with only the first floor developed.

April stated that anyone could add to their home later.

John explained that it was still the entire structure that we are looking at and the part that would be finished would be the first floor. He said that some of the infrastructure would still need to be put in.

Charlie said that the second floor and basement would be open floor plans that could be changed by anyone sometime in the future.

Jeff said that he would assume plumbing and mechanical would have to go in.

John stated that the plumbing and mechanical would have to be roughed in.

Pat explained that this was an open build design and that there would be service cavities in the walls and ceiling and open web trusses, which have a lot of room. He said that there would be removable service panels in some areas. He said that it is designed so that you don’t have to modify the shell of the structure in significant ways so that it can grow over time. He said that with a building of this type that you would want build the whole shell all at once so you can do very efficient insulation and air sealing. He said then you could finish off the floors later and that it could be a master bedroom if a couple wants to be there. He said at this point it is just the first floor, finish the envelope and whatever structural is required.

Jeff said and the mechanical room.

Nick said that it sounds like you are designing with intent to build multiple bathrooms so that word intent comes up. He said that we are talking about intent on the other side as well.

Charlie said that, if the question is the infrastructure going to be there to put the bathrooms in, the answer would be yes. He said the pipes will be in the walls.

Pat said that they could be or they could be added later. He said that it would easier to rough in certain parts or a lateral up for the water and sewer and then tap into it once the configurations are complete.

Nick stated that your intent to go along with your proposal, which is part of the package with multiple bedrooms and bathrooms on the upper level, that is the intent.

Pat answered could be as drawn three bedrooms and three baths and if you were a mature adult, wouldn’t you like to have your own bath and some private areas. He said that it could end up being two master bedrooms.

Nick said that the intent is to design and build the upper level out as multiple bedrooms and bathrooms.
Pat said yes.

Charlie stated that the property could sell prior and someone else might want to do something different. He said that they would have to come back to the Town for approval.

Pat said that the size of the structure is about 2600 square foot house if you account for the thirteen inch walls. He said that is about how much living space it has above grade.

Nick said that he is not taking issue with the intent and that he just wanted to get some clarity. Is it the intent to build as proposed in the upper level layout from your presentation.

Pat stated that it is not cast in stone but the intent is that at some point it would be built out with bedrooms and bathrooms.

Charlie said that is one potential build out.

Nick asked if the Fire Marshall has seen the upper level floor plan.

John said that the Carbondale Fire District has not been involved in this.

Nick asked if it seems prudent that they should see the intended floor plan.

John said that it is still a single family home and typically the fire department gets all of our commercial plans and multi-family plans. He said that they do not get involved in single family.

Nick stated as a matter of life safety and welfare, does it make sense that the fire department should get involved in this particular case, is this an extenuating circumstance given.

John stated that it could be something that the Board deems necessary but that is not a typical review process for a single family home. He said that they have egress windows in each bedroom, smoke detectors, carbon monoxide detectors and all of the life safety parameters in the building code are taken care of. He said that the Fire District doesn’t typically get involved with any single family homes.

Tristan asked if the set of plans in the packet was the set approved by Staff.

Pat answered yes and the permit was issued.

Nick asked if there was a neighbor notification process pre-permit.

Janet said no that it is not required.

Nick asked if there were any variance requests.
Janet answered no.

Further discussion ensued regarding the time and process.

**Appellants – Rebuttal**

Mark Mahoney said that there is a lot to unpack with what was just said. He said that the basic thing that the applicant was just arguing is that the code does not apply. He said that the reviewing body cannot change the code. He said that if you listen to the applicant that you are being asked to change the code and you cannot do that. He said that the code requires you to look at the Comp Plan and it requires you to look at the intent, the purpose of the code. He said that is not an option but a responsibility and requirement that you have. He said that they may not like the code but that is the code that we have. He said that if it says that special emphasis shall be placed on these things then you have to decide, was special emphasis placed on that? He said in your heart of hearts, per the code, however you come up with that, you must decide that. He said that you cannot change it and say that the purpose statement is not legally binding, that’s not your call. He said that you cannot say that the Comp Plan is optional because that is not your call. He said that you must consider if the Comp Plan is being served by this project, if it helps the Town implement its Comp Plan. He said that you cannot change the code tonight, it’s the one we have. He said that as the neighbors, we have rights. He said that this code applies not only to the developer but to the neighborhood. He said that we rely on this and that you cannot go and change it now. He said that Pat talked about his green building and it has nothing to do with the code. He said that the Comp Plan states that energy efficiency is encouraged. He said that the code doesn’t say you can do a house a certain size because it is energy efficient. He said that you cannot make it a block building because it is an energy efficient building, it goes against what the code says about mass and scale. He said those are judgements that the Board has to make but you have to make it based on the current code, not as Pat would like it to be changed. He said that there are projects all over the neighborhood and “Old Red” is one of them. He said that went for a public notice and everyone knew about it. He said because of the way it was handled in a way that is sensitive and in compliance with the code as far as the handling of the additions and historic treatment of it that no one complained about it. He said that there is a short term rental across the street from me, it went through public process and no one complained about it. We are not dickering about every project, we are dickering about this project, as stated by the applicant. He said that we couldn’t appeal until the decision went ripe, which is when the applicant picked up the building permit. He said that we were there that day. He said that there was no eleven day waiting period, we appealed on the day that we could. He said that we went in when the applicant picked it up not when the permit was ready.

Linda Halloran said that we all have made mistakes, both in our personal lives and in our careers. She said that Janet has been pretty frank and generous in terms of what part she had in this permit being issued. She said that the Board of Adjustment has the authority to acknowledge that and send this back to the drawing board. She said that’s what I hope you will do. She said that a key issue here, multiple applicants come to the Town and get building permits. She said that they are able to read the code, if they can’t
read the code they get professional help, if they need help with design work, they hire an architect. She said that she went through the infill process twice in this Town, both times because we tried to behave in a neighborly way. She said that we looked at the code but that we looked at what, as neighbors, how we would like to be treated. She said that we did not have a single objection in either of those infill applications. She said that when Pat came to the P&Z in 2015 it was a very similar situation, he was trying to find out from the P&Z what he could do. She said that Gavin Brooke told Pat to spend a little money and hire an architect to have someone help address these issues. She said that the neighbors are not opposed to a project on this lot, we just want something that has a scale that is appropriate. She said that the tenor of the presentation tonight was the code is wrong and that it’s your problem to help me figure this out and that is not necessarily is the case. She said that Staff helps interpret the code but when it comes down to how you are going to apply that code to a particular lot, that falls on the person that is building and, if they can’t do it on their own, then they should get some help. She said that she hopes that you send Pat back to square one and start over again.

Rita Marsh, 694 Euclid Avenue said that we have lived here since 1977. She said that there has never been an issue in our neighborhood such as this. She said that it is really difficult to be here and talk about this. She said that she has known Pat and that he has an intent and that he wants to bring community together; which he has, he has brought our neighborhood together in an extraordinary way. She said that she appreciates Janet saying tonight that she wishes that she had spoken up stronger at that time. She said that she knows how that feels in my heart of hearts. She said that this is going to be a difficult structure the way it is to plop down in our neighborhood so please consider that. She said that we would like to welcome Pat with something that is more broken up and doesn’t feel like it’s going to impact the neighborhood with lots of people moving in and out.

April asked if we have a code that prohibits co-housing; we only have the four people rule?

Janet explained that our code does not address co-housing and that there are many definitions for co-housing. She said that our code does not address it or define it.

Tristan asked if the use as suggested would be a family as defined in the code.

Janet answered yes that four person unrelated by blood would be a family.

Jeff said that it could be five bedrooms.

April stated that it was mentioned that there was another being built in the same district with five bedrooms and five bathrooms.

Frank Norwood stated that we are talking about 5.5 additional bedrooms and we are talking about one person for each, what about a family of four for each of those places. He said then what do you do with the impact of cars and the number of bodies in and out every day. He asked what the maximum number for inhabiting that building.
April stated four people.

John said unrelated people.

The public hearing was opened.

Richard Vottero, 75 S. Third Street said that he is a transplant from Denver and that he is a third generation Coloradan. He said that we are a growing state whether we like it or not. He said that Carbondale is house short by a long shot for common people as means that I am to find a place to live. He said that he could get bumped out of here in the next couple of years because he cannot afford the rising rents and expenses. He said that Pat is seeking to provide a place where he can experience community and have other people live in a very decent setting. He said that with your own bedroom and bathroom that is pretty premium. He said that the house is solar oriented and very up to date as far as energy efficiency goes, which we are all finding out is more and more important. He said that regardless of what you believe the world is changing pretty rapidly on us. He said that Carbondale and this resort area is supposed to double by 2035. He said that is a short time from now and can you imagine this place doubling in population. He said that we are going to have to figure that out. He said the way for this to grow is up and not out. He said not consume more land but grow by infill and increased house sizes. He said that the neighborhood that it’s in and the idyllic feeling is fading, whether you care to admit that or not. He said that we have to adjust, not by shutting down a house that has met the code and has a building permit in hand meeting the code. He said that with the red house to the east that Pat’s house looks more in character with the neighborhood than before all of that was built.

Eric Doud, 710 Euclid Avenue said that Jan and I are in the process of designing and building the “Old Red” house as it is lovingly described. He said that he is a practicing architect and I have been at it for forty years. He said that he has worked in many jurisdictions, both on your side of the fence representing historical boards as well as private interests. He said that he has taught at the university levels and understand the value of critique and reworking of design. He said that projects only get better by review. He said that the full range of a designer’s responsibility is not only to their own values but to the neighborhoods values. He said that while Pat’s building has merits in both terms of energy efficiency and the need of public housing as it is currently designed that he does not believe that it is appropriate for the Old Town Residential district. He said that concern comes from two areas, one is from the impact of our immediate neighborhood but also what it suggest could happen to the rest of Carbondale’s historic heritage in the OTR district. He said that the first area of concern is mass and scale. He said that with the new building with Old Red that we tried to reduce their size so that they are secondary to the primary original historic house. He said that in doing this that we had to compromise on the height of the walls on the rear structures but that we felt that this was important. He said that we also added dormers and kept roof pitches that were characteristic of the older style. He said that Pat’s project while meeting the quantitative requirements to the code he believes that it fails to meet the qualitative requirements. He said that if you take a streetscape view of that he said that he has heard from others what a large project ours is, he said that with the mass and scale of Pat’s pushed
forward it will impact the entire block. He said that it fails to provide a visual variety and architectural compatibility. He said that in conclusion that this is a project that needs to go back to the drawing board. He said that architects are cheaper than attorneys.

**Motion to close the public hearing**

Tristan made the motion to close the public hearing. Nick seconded the motion and it was approved unanimously.

April said that the OTR has new buildings, she wondered if there were any historic buildings deemed by the State.

Nick said that there were not any registered but that there is history and heritage in OTR.

April said that she understands this but that we were also shown pictures of brand new homes or infill projects. She said that she personally feels that we cannot deny something for what might happen to it and that any of those homes could sell tomorrow and be turned into anything else. She said that she doesn’t think that this is our job tonight. She said that if something is to code and meeting those codes that’s what we are here for, not what someone might do later with something. She said that she has lived places in Carbondale where a lot of people are living across the street from me and everyone has got cars. She said that no one is coming through with their code and changing or enforced so that can happen anywhere in Carbondale. She said from what we have been told is that this has met code and was given the green light to go.

Jeff said that the building permit was issued.

April stated that she doesn’t think that Janet did the wrong thing, if it meets the code you get a permit. She said that people can come and say that they don’t like it but if it meets that code that’s what we are here to decide tonight, not what might happen later.

Nick said to that point, which is well taken and that he agrees however he does see some issue with how it received its permit. He said that it met the dimensional requirements of the code, the quantitative requirements of the code. He said that this was early on in the process and from the design of the house would indeed pass the qualitative requirements of the OTR at this point in time. He said that if it went in front of the P&Z that they would take issue with how the house presents from the street, which the one rendering of it was pretty unimpressive. He said that it is subjective and that the UDC is written to protect the OTR from what we don’t want it to be. He said that it does it without being capricious and arbitrary, which is what we have to be.

April said that change is hard and that people don’t like it but it is going to happen. She said that we do need places to live and that anyone that has a home could rent out a room.
Nick said that he doesn’t disagree with April but that the house doesn’t present well from the street.

Tristan said that he agrees with Nick. He said that he sees two issues, one the use of the dwelling and the intent of the OTR district. He said that he doesn’t see that it shouldn’t be approved as proposed for the use as a shared home. He said that he doesn’t think it meets the intent of the OTR district as provided for in the code, which is in there to provide some leeway and some discretion on what’s to be built in the OTR district. He said that qualitatively the scale of the building and the mass don’t make sense for the area.

Nick said if there was a minor height setback on the second story just to give it some breakdown. He said he wouldn’t want to take away too much floor area from the upper level because he thinks the intent of the upper level is pretty decent and he doesn’t take issue with the intended design of the upper level. He said that he thinks that the fire department should take a look at it. He said that if there was just a 1-2 foot setback on the Street Side or on all four sides to break up the mass to be more fitting to the character of the neighborhood.

Ann said that a couple things she sees is how it is supposed to be built out on the one level is fine for parking. She said as soon as you have other tenants then the parking is an issue. She said that you usually have to plan for that before you build the building. She said that she doesn’t understand why there can’t be a compromise and if it’s a review with Carbondale because of this, that there is some compromise on price. She said that there are parking issues, landscaping issues, mass and design. She said to go back with some compromise on all parts, everybody in this group has to compromise to some extent and make it a better project for Carbondale. She said that this has been such a long process for her to look at this from 2015 to 2019. She said that with design changes as just mentioned, it makes neighbors happier. She said that they met the rules but that we could relook at this and have it go back through.

Nick stated that we could propose an approval with conditions.

Ann said that is what she is saying and that you can’t deny that the project got a building permit. She said that there is obviously a whole lot of people that don’t agree, in this room, that it meets all of the code. She said that by going back that the project has a chance.

Nick stated that if we were going to go that route, put together an approval with conditions, what do we think those conditions would be. He said would we want to explore and discuss.

Jeff said if on P&Z you could continue a hearing and say if you break up the mass and scale a little, can you bring it back to us and then we’ll look at it again.

Janet said that you can do that, maybe provide guidance with some of the suggestions. She said that generally we have tried not to redesign during the land use process but
that it is ok. She said some of the things she had mentioned that she had listed: look at mass and scale, smaller components, facade modulation, setbacks for upper floors, vary roof lines, changes in building materials or breakup facade with architectural features such as dormers, porches, gables and windows. She said instead give them direction in order to redesign it and then look at it.

Nick asked if the applicant ever heeded the suggestion of Planning and Zoning to hire an architect.

Pat answered that there is a hidden concept in there that he couldn’t design another style house. He said that he took architecture in graduate school and that he is an engineer and that he could redesign the house easily to make it look like the one next door. He said that this is want I wanted and that architects get to make a statement. He said that this is a return to frugality with resources and energy. He said so to suggest that I should hire an architect to design something other than what I want, this is what I want to build.

Nick said that is fair but that the architect also has a responsibility to the community, which you clearly have overseen or forgotten about. He said clearly you have not done a very good job with that. He said that we have a room of people here that are very upset and maybe an architect might have helped you alleviate some of that.

April said that the two main concerns that she has heard from the neighbors is the size of it and that’s tough and things do change. She said that if it does fit in the code and the building permit code for that land use then you have to allow it. She said that it is not our choice if it fits, in then that is what we are here to rule on. She said that if that’s the law, then that’s how it is interpreted, we can’t change the interpretation.

Jeff explained that we can re-interpret it. He said that we would need to have a finding that we feel doesn’t meet the intent of the code.

April said that it sounded like it did.

Jeff stated that was the dimensional standards.

Nick stated that there is more in the UDC than just dimensional requirements.

April said then the second is the whole boardinghouse thing, which is what we have said is code enforcement. She said that we are not here tonight to rule on code enforcement either.

Jeff said that to play out the scenario and it gets built in an illegal way and then there are complaints. He said that enforcement is complaint driven.

Jeff asked Janet what zone districts are boardinghouses allowed in.
Janet said that they are only allowed in Commercial/Transitional, Historical Commercial Core and Mixed-Use.

April stated that Pat has said that he is not necessarily looking to rent out rooms. She said that she thinks that our job now is to just look at the zoning code.

Jeff asked Pat if he was willing to modify the design at all.

Pat said that if he never gets permission to build that he’ll have to modify but that it is a pretty brutal way to do it to have the permit approved and then have to redesign it. He said that he has to have standards to design it to. He said that it meets qualitative standards now and that the other interpretations are not standards because they are so subjective, they won’t hold up in court. He said qualitative standards have to be specific enough that they are understandable. He said that he has shown a number of examples that people might not like the architecture but they have been approved. He said that they are in different neighborhoods and some comparable in size.

Jeff stated that there is a section under mass and scale in the Comp Plan that says step buildings down in scale as they approach alleys. He said that it doesn’t do that and that it’s written right here and it was just not done.

Pat said that it does not approach the alley and its fifty feet away. He said that if he puts a structure in-between that structure would be adjacent to the alley. Jeff said that in his opinion that it does not step down as it approaches the alley. He said that if you added another structure that would be another project like a garage or something.

Pat asked if that would be acceptable if he stepped it down by putting another structure in there.

Jeff said that we would have to look at the design. He said if you are breaking up the mass and scale like the red house, the way those step down as separate buildings breaks up the mass.

Pat said that the problem with that is a building like that will use an enormous amount of energy over its lifetime because of all of that surface area. He said and the cost to redesign because the process is pretty faulty.

Jeff said that is where we are, we can’t go back to day one unfortunately. He said that it was approved and then it was revoked and now we are at a point. He said that the hearing was overturned actually.

Pat said that the process was overturned.

Charlie stated that the court never addressed subjective verses actual standards.
Nick said that it met the letter of the law on the dimensional requirements and that the other components of the UDC are subjective but they are there for a compelling reason. He said that they promote neighborliness. He said that we should be promoting neighborliness, we on this Board.

April said that is true and that she doesn’t want open a can of worms because historically there have been a lot of things that people have not wanted to come in their neighborhood. She said that if we had stood up and let that happen we would be living in a different time. She said that the progressive idea of shared housing that this valley needs to move forward in that direction.

Nick said that he hasn’t heard anyone on this Board dispute that fact. He said that he doesn’t think that anyone is contesting that it’s how the house presents.

Further discussion ensued about the program at the house.

Ann said that the impact of the build out with the parking, landscaping and everything for the size has not been appropriately designed for this lot. She said that she does not object but that it has to be planned better. She said that she knows that it is only the one level but that it is pretty obvious from him saying that is his intent and that it’s not a bad intent. She said that the design to her has some big gaps to make it work at that spot for anybody, if it sells or it goes. She said that she would like to see some change, some conditions. She said that it got the building permit and that she can’t deny that but that she is not gung ho that is what should be built, mass, area for parking if anything different happens there. She said that it is not going to be used as a single family if it’s totally developed.

Jeff said regarding the net zero, he has seen a lot of net zero buildings because that is what he does too and that they are not all boxes. He said that you can do a lot more with architectural interest and still have a net zero building. He said that you could add variation and still maintain the environmental integrity.

Jeff said that he is hearing that the Board is ok with the potential future use or the use as submitted. He said that it will have some neighborhood impacts. He said that he is hearing some things about mass and scale that we might want to make a recommendation on that. He said that he has also heard from the applicant that he wants very specific guidelines from us. He said that it would be hard to give more than what Janet already listed. He said that we are not the design Board and that you keep getting that same thing. He said that you want to be told exactly and we are not your designers.

Nick said that the parking really needs to be reconsidered given this and the quantitative requirements say that they had met their parking requirements but he does not agree. He said that they should triple their parking.

Ann said that the fairness of resubmitting pricewise, that the process does cost money. She said that she does not know what the Town can do if it comes back around. She
said that she is definitely about making it work but that she thinks that there has to be some changes.

Tristan agreed that there has to be some compromise.

John stated that he can address fees, once the permit is issued and they come back with revisions to an approved project, our fees are $49.50 an hour to re-review plans. He said that depending on the extent of the changes it would take eight hours maximum to give some quantitative of what he would look at. He said that if the floorplan would decrease Pat would get a credit for the tap fees. He said that our fees have not changed in a long time and $49.50 doesn’t even cover his time.

Janet read the list of items again, we look at mass and scale, we ask for smaller components rather than one large mass, buildings broken up with various methods including facade modulations, avoid long expanse of walls, setbacks for upper floors, varied roof lines, changes in building materials, breakup facade with architectural features such as dormers, porches, gables and windows.

April asked if the house to the south was ok because it was one story or is it ok because it was built before all of this. She said that it looks exactly the same to her.

Jeff stated that it was pre-existing condition and that it is the house to the west.

April asked if the roof was re-designed to make it different would that make people happier.

Jeff stated that would be one of the things.

Jeff asked if we were to go that route would we want to issue findings that listed certain elements of the UDC.

Janet stated that it depends on how you want to do it. She said that you could continue the public hearing and ask for the project to be re-designed to respond to your suggestions and bring it back and have you review the new design. She said that way the neighbors have the opportunity to review the design, it keeps it in the same arena. She said that in the Staff report she did include dates, where the public hearing could be continued on page 14 of the Staff report. She said that what she is hearing is that the Board is ok with the use, concerned about mass and scale and parking.

April asked if the applicant is willing to do that and is there any point in coming back. She said does Pat what to come back and resubmit a tweak here and there to make it a little funkier and a little more Carbondale.

Pat stated that he had indicated in one of his slides that he had indicated that if it meets the code to issue the permit and if it doesn’t give him something based on standards. He said that when you get into this subjective standards that’s an oxymoron, standards
are not subjective. He said that he is not asking for design but some standard that
would allow him to redesign to that standard.

Jeff stated that we are dealing with the code and what Janet just read, does that give
you any ideas.

Pat stated that is not in the current code.

Jeff said that is what we are helping to clarify what’s in the current code and those are
some of the words that could be used to help you design something that would be more
acceptable to the Board. He said if those are not helpful to you then we are not getting
anywhere.

Pat read from the supplemental standards of the UDC, 5.6.6 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. He said
that he thought that is what he had done and if he adds gables and he referenced a
project that Jeff had designed across from the library.

Jeff said offset façade is what I think you read.

Pat said that those things are easy to break mass up with and if I have to totally
redesign the floorplan, foundation and redo the structural that he could throw out a few
concepts like that.

April asked if Pat would like to come back and show that to us.

Charlie asked if it is a conceptual showing.

April said yes I think so.

John said yes elevations and not redoing the floor plans yet.

Jeff said that since you are trained as an architect you could do this yourself and you
could do this without having to hire a bunch of consultants.

Pat said that if he could leave the foundation and floor plan intact.

Jeff said that he is seeing that the roofline is a pretty dominant feature and that he
would look at breaking that up a little. He said the continuous eave line all the way
around, if broken up would add some interest. He said that there a number of items,
pop-outs.

Charlie asked Jeff if he was suggesting dormers.

Jeff stated that he wasn't suggesting anything.
Charlie said that there could be significant costs as well as a month or two delay and then are you getting what you want, which has been the problem all along. He said that he appreciates that you don’t want to design the building but on the other hand you haven’t said the things that Janet just read that said dormers and things like that. He said that if you put two dormers to break up the front face line would that do it.

Jeff stated that he is referring again to what Janet read if those give you more design ideas. He said that he thinks that is what the Board is looking for.

Janet said that she wanted to clarify that those are the tools that we see professionals use or what people bring in when they are applying for the OTR zone district to help meet the intent of the purpose statement. She said that is something we ask of people and give them ideas on how to break up the building to meet the intent.

Nick suggested that an option would be that we say that you are not meeting the intent of the UDC, go home redesign the house or you don’t get the permit and we’ll treat this as a multi-family dwelling. He said that to him it suggests that it is an SRO, single residential occupancy and that is not in the intent of the OTR. He said go hire an architect and get some help and do it the way it was supposed to be done. He said do the right thing!

Janet added that she keeps hearing the words that the building permit has been issued. She said that the neighbor’s appealed Staffs decision to issue a building permit, right now the building permit is not issued. She said that this is a redo so the Board is deciding whether or not the building permit should be issued and whether we acted correctly in issuing it or not.

April said that it sounds like the size of the structure in comparison to the lot is ok and that parking is an issue and the boxiness of the structure.

Nick said that no one on this Board is contesting the program of your project and why he would dig his heels in on something so minor is baffling to him that we are here at 11:00 p.m. because he won’t budge on something very simple.

April said that was the question ten minutes ago, would you consider not redoing your floor plan and should we come back if you would change it up to make it so it’s not as…

Pat answered all of those things dormers, materials, façade modulations. Nick said that this is silly.

Pat said that he is willing to do those things, those are manageable.

Nick said come on just do the right thing, ok, you have a room full of people that are upset at you do the right thing, hire an architect and get some help if you can’t do it yourself. He said that is the neighborly thing to do.

Jeff said that we want to approve the project, right?
Nick said that we want to approve this and we want to help you.

Pat said that he is willing to try some of these things and run them by you. He asked if he could get some feedback like you are on the right track before two or three months or who would I get that from.

Jeff asked if he could come to Staff for a look at it.

Janet said that if he has a redesign like we had told him before we are happy to look at it and give feedback, we can’t design it for him.

Jeff said that would be the check-in and would we continue the public hearing to a date uncertain.

Janet said to a date certain and that she put the dates in the Staff report on page 14, she said that there are three days and the end of July 29, 30 and 31st.

Jeff asked Pat how much time he would need to have something to show to Janet.

Pat said that he could have several options to her in two weeks.

Further discussion ensued regarding dates for the next meeting.

**Motion**

A motion was made by April to continue the public hearing to August 19, 2019 at 6:30 to review design options and parking. Tristan seconded the motion and it was approved unanimously.

**Motion to Adjourn**

A motion was made by Tristan to adjourn. Nick seconded the motion and the meeting was adjourned at 11:00 p.m.