CARBONDALE BOARD OF TRUSTEES  
REGULAR MEETING  
FEBRUARY 14, 2017  

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

STUDENT OF THE MONTH  
AWARD  

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<tr>
<th>TIME*</th>
<th>ITEM</th>
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<tbody>
<tr>
<td>6:10</td>
<td>1. Roll Call</td>
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| 6:10   | 2. Consent Agenda  
<p>|        | a. Accounts Payable                                                 | ATTACHMENT A    |
|        | b. BOT 1/24/17 Regular Meeting Minutes                             | ATTACHMENT B    |
|        | c. Liquor License Renewal &amp; Tasting Renewal – WineTime           | ATTACHMENT C    |
|        | d. Resolution No. 2, Series of 2017 – FMLD Grant for LED Retrofits | ATTACHMENT D    |
|        | e. Chip Seal 2017 Contract                                         | ATTACHMENT E    |
|        | f. Crystal River Retail Marijuana Cultivation Renewal Application  | ATTACHMENT F    |
|        | g. Environmental Board Recommendations for Board Reappointments   | ATTACHMENT G    |
|        | h. Authorization for Mayor to Sign Senior Programs Contract        | ATTACHMENT H    |
|        | i. Liquor License Renewal – White House Pizza                     | ATTACHMENT I BOT Action Desired |
| 6:15   | 3. Trustee Swearing In Ceremony                                   | Ceremony        |
| 6:20   | 4. Persons Present Not On The Agenda                               |                 |
| 6:30   | 5. Trustee Comments                                                |                 |
| 6:40   | 6. Attorney’s Comments                                             |                 |
| 6:45   | 7. Public Hearing - Black Dog, LLC – Retail &amp; Medical Marijuana Cultivation Renewal Applications | ATTACHMENT J BOT Action Desired |</p>
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<tr>
<th>Time</th>
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<tr>
<td>6:55</td>
<td>9. Modification of Premises – RX Green, LLC Retail and Medical Marijuana Infused Products Establishment</td>
<td>BOT Action Desired</td>
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<td>7:00</td>
<td>10. Special Event Liquor License Application – Ducks Unlimited</td>
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<td>7:05</td>
<td>11. Special Event Liquor License Application – Carbondale Arts Fashion Show</td>
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<td>7:10</td>
<td>12. Space to Create Discussion</td>
<td>BOT Action Desired</td>
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<td>7:40</td>
<td>13. Ordinance No. 3, Series of 2017 – Approving Thompson Park Phase 2 and Subdivision Improvement Agreement</td>
<td>BOT Action Desired</td>
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<td>8:35</td>
<td>15. Town Engineering Services Contract</td>
<td>BOT Action Desired</td>
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<td>8:50</td>
<td>16. RFTA – Letter Supporting HB 17-1018 – Extending RTA for 10 Years</td>
<td>BOT Action Desired</td>
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<td>9:00</td>
<td>17. Board Minutes/Correspondence</td>
<td>Information Only</td>
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<td></td>
<td>a. Environmental Board 11/28/16 Minutes</td>
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<td>b. Environmental Board 12/30/16 Minutes</td>
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<td>c. Community Grant Thank You Letters– Project Graduation; Family Resource Center</td>
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<td>9:00</td>
<td>18. Adjourn</td>
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* Please note: times are approximate
Board of Trustees Agenda Memorandum

Item No: Attachment A
Meeting Date: 02.14.17

TITLE: Accounts Payable

SUBMITTING DEPARTMENT: Finance

ATTACHMENTS: Accounts Payable for 02.14.17

DISCUSSION: The accounts payable include payment to the snowshoe winners from the recreation fee revenue account. The prize money was received from a sponsor and deposited into this account. The memberships for Mountain States Employers Council, $5,400.00 and for Garfield Clean Energy, $25,000.00 are in the accounts payable. Clean Energy was paid $22,666.40 for the final 2016 billing on the home buyer assessment and efficiency programs. The bills for tire chains referencing the 2000 Volvo Grader are not duplicates. They were for 4 sets of chains and links to repair them when they break. A 20’ storage container was purchased for $2,500.00 and will be placed below the wastewater plant. The reimbursement for 2016 taps at River Valley Ranch for water and sewer are included for $62,049.27. This agreement will expire at the end of 2017. The annual dues and ANS contribution to Ruedi Water & Power Authority is $10,750.00 for 2017.

The payroll for 1.27.17 was $149,753.49. Tax liability for the town was $8,717.74. Pension and Retirement liability was $9,625.11. The payroll for 2.10.17 was $164,080.91. Tax liability for the town was $9,508.87. Pension and Retirement liability was $11,050.25.

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

Renae
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**Total:** 167.01

| 01-1411     | OFFICE SUPPLY INVENTORY | 18220      | Sandys Office Supply               | 1/31/17    | 9588  | 01/31/2017   | 48.00  |
| 01-1411     | OFFICE SUPPLY INVENTORY | 5820       | Paper and Staples                  | 1/31/17    | 9588  | 01/31/2017   | 54.74  |
| 01-1411     | OFFICE SUPPLY INVENTORY | 5820       | Battery                            | 1/31/17    | 9588  | 01/31/2017   | 1.60   |
| 01-1411     | OFFICE SUPPLY INVENTORY | 5820       | Enveloper, Pen, Paper              | 1/31/17    | 9588  | 01/31/2017   | 3.00   |

**Total:** 108.34

| 01-2201     | DEPOSITS HELD            | 19830      | Figueroa, Dolores                  | 1136912    | 9560  | 01/20/2017   | 500.00 |

**Total:** 500.00

| 01-34-73    | RECREATION FEES         | 20025      | Dancing-Light, Lisa                | 2016059    | 02/06/2017 | 75.00 |
| 01-34-73    | RECREATION FEES         | 52511      | Klish, John                        | 1016057    | 02/06/2017 | 100.00 |
| 01-34-73    | RECREATION FEES         | 52508      | Patrick, Sawyer                    | 1016085    | 02/06/2017 | 25.00  |
| 01-34-73    | RECREATION FEES         | 52509      | Smith, Michelle                    | 1016080    | 02/06/2017 | 100.00 |

**Total:** 400.00

| 01-4012-3520 | ATTORNEY FEES       | 48100      | Sophis Engineering LLC             | 110451702  | 9573  | 02/06/2017 | 3,805.75 |

**Total ATTORNEY DEPT:** 3,805.75

| 01-4025-3310 | ADVERTISING        | 48250      | Sophis Sun                         | 1/31/17    | 9557  | 01/31/2017 | 135.00  |

**Total MUNICIPAL ELECTIONS DEPT:** 135.00

| 01-4111-2400 | MISCELLANEOUS EXPENSE | 52880     | UMB Bank                           | January 20 | 9574 | 01/31/2017 | 337.54  |

**Total BOARD OF TRUSTEES DEPT:** 337.54

<p>| 01-4111-3700 | TRAVEL AND CONFERENCE | 52880     | UMB Bank                           | January 20 | 9574 | 01/31/2017 | 225.00  |</p>
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Total EXPENDITURES: 

2,501.78

| 14-4800-7000 | CHAMBER OF COMMERCE        | 9790       | LODGING TAX                         | 1/31/2017  | 9551  | 01/31/2017   | 6,190.69 |

Total: 

6,190.69

| 31-34-43   | TAP FEES                   | 63645      | Reimb Agreement Water/Sewer T       | 1/23/17    | 9520  | 01/23/2017   | 35,197.78|

Total: 

35,197.78

| 31-36-80   | OTHER REVENUES             | 63645      | Administration Fee                  | 1/23/17    | 9520  | 01/23/2017   | 3,519.78 |

Total: 

3,519.78

| 31-4335-2100 | POSTAGE                     | 53380      | UB POSTAGE                          | 1/25/17    | 92818 | 01/25/2017   | 1,560.00 |

Total WASTEWATER DEPT: 

1,560.00

| 31-4335-2110 | OFFICE SUPPLIES            | 45920      | LABELS, FOLDERS, SCISSORS.          | 1/31/17    | 9568  | 01/31/2017   | 20.80    |
| 31-4335-2110 | OFFICE SUPPLIES            | 52880      | INK FOR LAB PRINTER                 | JANUARY 20 | 9574  | 01/31/2017   | 54.99    |

Total WASTEWATER DEPT: 

75.79

| 31-4335-2111 | LAB SUPPLIES               | 52880      | BUFFER PACK, ACID POWDER.           | JANUARY 20 | 9574  | 01/31/2017   | 775.27   |

Total WASTEWATER DEPT: 

775.27

| 31-4335-2200 | DRUG & ALCOHOL TESTING     | 92062      | DOT DRUG TEST                       | 13651      | 52839 | 01/31/2017   | 82.00    |
| 31-4335-2200 | DRUG & ALCOHOL TESTING     | 54120      | DOT PHYSICAL                        | 19647C9028 | 6558  | 01/24/2017   | 169.00   |

Total WASTEWATER DEPT: 

251.00

| 31-4335-2280 | GENERAL SUPPLIES           | 52880      | CLEANING SUPPLIES AND PAP           | JANUARY 20 | 6574  | 01/31/2017   | 171.14   |

Total WASTEWATER DEPT: 

171.14

| 31-4335-2282 | UNIFORMS                   | 52880      | WORK BOOTS, PANTS                   | JANUARY 20 | 6574  | 01/31/2017   | 259.02   |

Total WASTEWATER DEPT: 

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**Total MUNICIPAL POOL DEPT.**

50.00

**Grand Totals:**

301,238.50
MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
JANUARY 24, 2017

CALL TO ORDER:

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on January 24, 2017 at 6:09 p.m. in the Town Hall meeting room.

ROLL CALL:

The following members were present for roll call:

Mayor
Dan Richardson

Trustees
Katrina Byars
Frosty Merriott
Heather Henry

Arrived After Roll Call
Marty Silverstein

Absent
Ben Bohmfalk

Staff Present:
Town Manager
Jay Harrington

Town Clerk
Cathy Derby

Finance Director
Renae Gustine

Recreation Director
Jeff Jackel

CONSENT AGENDA

• Accounts Payable totaling $193,718.86
• BOT 1/10/17 Regular Meeting Minutes
• BOT 1/17/17 Work Session Minutes
• Revolving Loan Fund – Fourth Quarter 2016 Report
• Crack Seal Contract
• Liquor License Renewal Application – Peppino’s Pizza
• DOLA Grant – Waste Water Treatment Plant
• DOLA Grant Extension – Nettle Creek Treatment Plant

Mayor Richardson requested that page 3 of the 1/10/17 Regular Meeting Minutes be corrected to read that SGM will probably be doing engineering work for the bank (not City Market.)
Trustee Byars made a motion to approve the Consent Agenda with the correction to the 1/10/17 regular meeting minutes. Trustee Henry seconded the motion and it passed with:

4 yes votes: Richardson, Henry, Merriott, Byars

PERSONS PRESENT NOT ON THE AGENDA

Tom Bleskan informed the Board that he has a retail marijuana cultivation license in Carbondale. He said that his landlord won’t renew his license and staff informed him that he is not able to relocate because it would be a non-conforming use. Tom asked the Board to consider giving him an extension. Tom stated he believes the Board reduced the cap due to odor issues. Mayor Richardson stated that odor wasn’t the only reason the cap was reduced. Trustee Byars stated that she believes the issue warrants a discussion – it is almost an unintended consequence. Staff explained that the license expires on January 27th and the Board would need to call a special meeting in the next three days and pass an emergency ordinance. The Board agreed that they do not want to revisit the cap issue at this time.

Trustee Silverstein arrived at the meeting.

TRUSTEE COMMENTS

Trustee Henry asked the Board to consider putting the following topics on future agendas:

Environmental Charter/Strategic Plan – Jay told the Board that they will be discussing the Climate Action Plan at their February Work Session. The Board agreed to put this issue on the March Work Session Agenda.

Affordable Housing – Trustee Henry stated that there are two (2) opportunities for affordable housing. Rental housing is being built in New Castle and municipalities can secure units. Also, the Aspen Skiing Company is retrofitting the Basalt campground with tiny houses. It would be beneficial to hear from the project manager what they are experiencing. Trustee Byars stated that she would like to discuss the housing options. Jay informed the Board that staff was asked about the New Castle housing and there was no interest. Housing is scheduled on the June 20th work session.

Trustee Merriott thanked staff for setting up for First Friday in the cold.

Trustee Merriott told the Board that he attended the Tree Board meeting. The Tree Board is moving forward with the Heritage Tree Program and they hope to have it finished by Arbor Day.

Trustee Silverstein proposed the Town offer an experimental once-a-month recycling program. Jay stated that the previous Board had discussed this and it is cost prohibitive.
Mayor Richardson stated that he attended the CORE Board meeting; there was a presentation on the Communication Plan. He also attended the Federal Mineral Lease District luncheon. Mayor Richardson attended police officer Mark Luttrell’s retirement party.

Trustee Byars informed the Board that she was invited to the Colorado Oil & Gas Symposium on April 20th. She encouraged the Trustees to attend because it’s a great event.

ATTORNEY’S REPORT

The attorney was not present at the meeting.

SPECIAL EVENTS & MAIN STREET CLOSURES

Jeff Jackel presented the proposed 2017 special events and Main Street Closures. Changes from 2016 include:

- First Friday Closures – add September to the summer months that Main Street is closed to Snowmass Drive.
- Our Town One Table – extend closure one more block (to Sopris Avenue).
- Family Block Party – moving to the 4th Street Plaza – they may apply for a liquor permit.
- Mountain Fair – hour changes - Friday closure from 9:00 p.m. to 9:30 p.m.; Sunday closure from 9:00 p.m. to 7:00 p.m.
- Festival Las Americas – moving from August to May 5th.
- Cajun Clay Night – moving from May to September
- KDNK Blues and BBQ – not scheduled this year.
- Celtic Fest – requesting a street closure from 4th Street to Euclid Ave.
- 5 Point Film Festival – requesting Colorado Ave. in front of the Recreation Center be closed on Thursday April 20th.

Discussion ensued.

Trustee Henry asked if staff has any concerns with Festival las Americas changing to First Friday and it’s also Cinco de Mayo. Committee Chair Jake Boyles responded that the neighbors are happy and supportive of the change. Jay explained that it’s easier for staff because extra staff are always scheduled for First Friday.

Trustee Byars made a motion to approve the 2017 Special Events and Main Street Closures. Trustee Merriott seconded the motion and it passed with:

5 yes votes: Byars, Henry, Merriott, Richardson, Silverstein
Mayor Richardson thanked Jeff Jackel for his 16 years of service to the Town and he wished him luck in his retirement.

**2017 BOARD OF TRUSTEE GOALS**

The Trustees discussed their goals for 2017. They came to a mutual agreement that the common three (3) goals/issues include:

- Environmental Stewardship – create a charter
- Affordable Housing
- Funding Infrastructure

**TRUSTEE INTERVIEWS**

The Trustees interviewed the following applicants for Trustee:

- Jim Breasted
- Becky Moller
- Beth Broome
- Erica Sparhawk
- Sarah Johnson
- April Spaulding

Doc Philip, who submitted an application, did not come to the interviews.

Trustee Silverstein made a motion to appoint Jim Breasted to the Board. There was no second so the motion failed.

Trustee Merriott made a motion to appoint Erica Sparhawk to the Board. Trustee Henry seconded the motion and it passed with:

4 yes votes: Henry, Merriott, Richardson, Byars
1 abstain: Silverstein

**ADJOURN**

The January 24, 2017, regular meeting adjourned at 9:25 p.m. The next regularly scheduled meeting will be held on February 14, 2017, at 6:00 p.m.

**APPROVED AND ACCEPTED**

__________________________
Dan Richardson, Mayor

**ATTEST:**

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

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref: Liquor License Renewal for Winetime

Date: January 18th, 2017

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

Sigrid Pieper/Manager

I have found no in-house liquor violation records. The State Liquor Division conducted compliance checks March 1st 2016 and Winetime passed that compliance check.

I recommend the approval for the liquor license application.
WINETIME  
PO BOX 2049  
CARBONDALE CO 81623

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

<table>
<thead>
<tr>
<th>Licensee Name</th>
<th>WINETIME LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquor License #</td>
<td></td>
</tr>
<tr>
<td>License Type</td>
<td>Liquor Store (city)</td>
</tr>
<tr>
<td>Operating Manager</td>
<td>Sales Tax License #</td>
</tr>
<tr>
<td>Signature</td>
<td>Expiration Date 03/24/2017</td>
</tr>
<tr>
<td>Name</td>
<td>Due Date 02/07/2017</td>
</tr>
<tr>
<td>Date of Birth</td>
<td>Home Address Carbondale</td>
</tr>
<tr>
<td>Manager Phone Number</td>
<td>Email Address <a href="mailto:signa@winetime-llc.com">signa@winetime-llc.com</a></td>
</tr>
<tr>
<td>Street Address</td>
<td>Phone Number 9702744494</td>
</tr>
<tr>
<td>Mailing Address</td>
<td>PO BOX 2049 CARBONDALE CO 81623</td>
</tr>
</tbody>
</table>

1. Do you have legal possession of the premises at the street address above? ☑ YES ☐ NO
   Is the premises owned or rented? ☑ Owned ☐ Rented* "If rented, expiration date of lease 08/21"

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

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

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

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

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

AFFIRMATION & CONSENT

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

Type or Print Name of Applicant/Authorized Agent of Business Signa Vieper

Signature Date 01/13/16

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. THEREFORE THIS APPLICATION IS APPROVED.

Local Licensing Authority For Date

Signature Title

Attest
TASTINGS PERMIT APPLICATION

FEE: $100 (covers one year) Payable to the Town of Carbondale

DATE: 01/13/16

Licensee Name: WineTime LLC

DBA: WineTime

Physical Address: 786-798 Highway 133

Mailing Address (if different): 90 Box 2049

State License Number: ________________ License Expiration: 03/17

Business Phone Number: 970-963-0474 Business Fax Number: ________________

✓ ATTACH list of employees who have attended the "Tastings Responsible Serving Class", and the date which they attended.

✓ ATTACH a written Control Plan to establish how the Licensee will conduct tastings without violating the provisions of the State Statutes and applicable provisions of the Town of Carbondale Municipal Code.

✓ ATTACH list of event dates. If unsure of future dates, submit list to Town Clerk's Office at least one week prior to the event.

CERTIFICATION:

* I hereby certify that the information in this application is true, correct and complete to the best of my knowledge.

* I further certify that it is my responsibility to ensure that all current and future employees complete a server training program.

* I acknowledge and agree that it is my responsibility and the responsibility of my agents and employees to comply with all applicable laws, including all applicable provisions of the State of Colorado Liquor and Beer Codes and Regulations, Town of Carbondale Municipal Code, and policies and regulations which affect my license.

* As required by Ordinance No. 5, Series of 2005, I further agree, if a permit is approved, to notify the Town Clerk's office of all Tasting Events, in writing, at least seven days in advance.

Signature of Licensee: ___________________________ Print name: Sigrid Pieper

OFFICE USE ONLY - Approval of Local Authority

Application received on: ___________________________ To LLA: ___________________________

Approved or Denied on: ___________________________ Conditions of Approval: ___________________________

______________________________

______________________________
Town of Carbondale
Liquor Board

Carbondale, January 13, 2017

Tasting license renewal WineTime LLC

1. List of employees with TIPS certification
   
   Sigrid Pieper: certified on 06/23/2009, renewed on 08/04/2015
   
   Alexander Heinig: certified until 05/20/2017 – will renew in time
   
   Streeter Bowen: certified on 07/22/2015

2. Control plan
   
   • We check the ID of very tasting attendant who looks 30 yrs or younger prior to pouring.
   • We use a special measure glass/pourer to make sure only 1OZ of wine or beer resp ½ OZ of liquor is poured. Only 4 different tastes of wine/beer or liquor are granted to each attendee. We keep a record of who has tasted which wine already to avoid double servings to one person.
   • Visibly intoxicated persons are being refused to attend the tasting and escorted out of the store.
   • A cell phone reminder is set at each tasting to make sure we finish at the indicated hour.

3. Tasting schedule

   Our tastings are scheduled for every Friday from 4pm to 7pm, except Thanksgiving Friday. There might be additional tastings scheduled throughout the year which are being announced to Cathy Derby with at least 1 week notice each time.

Sincerely,

Sigrid Pieper
WineTime LLC
P.O. Box 2049
Carbondale, CO 81623
TOWN OF CARBONDALE  
511 COLORADO AVENUE  
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: February 14, 2017

TITLE: GCFMLD LED Lighting Retrofit Grant - Resolution No. 2, Series of 2017

SUBMITTING: Parks & Recreation Department

ATTACHMENT: Resolution No. 2-2017

Background:
Town staff is submitting a Garfield County Federal Mineral Lease District (GCFMLD) mini-grant application for a LED Lighting Retrofit of the Third Street Center and Recreation Community Center. Within the GCFMLD grant application a Resolution is required from the Town governing body indicating their support for the grant submittal.

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

Recommendation:
Adoption of Resolution No. 2 - 2017 supporting town submittal of a GCFMLD mini-grant application.

Staff recommends the following motion be approved: "Move to approve Resolution No. 2 - 2017"

Prepared By: Eric Brendlinger, Parks & Recreation Director

Jay Harrington  
Town Manager
RESOLUTION NO. 2
SERIES OF 2017

RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A GRANT FROM THE GARFIELD COUNTY FEDERAL MINERAL LEASE DISTRICT AND COMPLETION OF A TOWN OF CARBONDALE MUNICIPAL BUILDING LED LIGHTING RETROFIT PROJECT (THIRD STREET CENTER & RECREATION COMMUNITY CENTER)

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 Grant Application for a LED Lighting Retrofit of the following municipal buildings: Third Street Center & Recreation Community Center, requesting a total award of $25,000.00 from GCFMLD; and

WHEREAS: The Town of Carbondale supports the completion of the Municipal Building LED Lighting Retrofit Project if a grant is awarded by the GCFMLD.

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

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

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

3. If the grant is awarded, the Board of Trustees of the Town of Carbondale strongly supports the completion of the Carbondale Municipal Buildings LED Lighting Retrofit Project at the Third Street Center and Recreation Community Center.

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 Carbondale Third Street Center and Recreation Community Center 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
TOWN OF CARBONDALE
PUBLIC WORKS
511 Colorado Avenue
Carbondale, CO 81623

Board of Trustees Agenda Memorandum

Item No: 2E

Meeting Date: February 14, 2017

TITLE: 2017 Chip Seal Program Contract

SUBMITTING DEPARTMENT: Public Works

ATTACHMENTS: 2017 Chip Seal Agreement

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

DISCUSSION
The 2017 Chip Seal Program consists of applying oil and chips to approximately 57,000 square yards of Town streets. The 2017 Program will address streets shown on the map in Attachment "A" of the agreement.

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

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>GMCO, LLC</td>
<td>Rifle, CO</td>
<td>$2.48</td>
<td>$141,484.00</td>
</tr>
<tr>
<td>United Compaines of Mesa County</td>
<td>Grand Junction, CO</td>
<td>$2.67</td>
<td>$152,323.50</td>
</tr>
</tbody>
</table>

GMCO has performed chip sealing for the Town for many years. They have been good to work with, and have provided a high-quality end product for the Town. Staff recommends that the Board accept GMCO's bid for the project and authorize the Mayor to execute the attached agreement for the work.

FISCAL ANALYSIS
The unit price for this year's chip sealing is approximately 6.5% lower than last year. The 2017 budget contains $212,500.00 for the Street Resurfacing Program.
Crack Sealing Program Cost:

- Application cost at $1.32/pound $26,400.00
- Estimated Bituminous material cost $12,000.00
- Crack Sealing Program Cost $38,400.00

Total Street Surface Program Cost:

- Crack Sealing Program cost $38,400.00
- Chip Seal Program cost @ 2.48/sqyd $141,484.00
- Estimated Street Surface Program cost $179,884.00
- Street Surface Program budget $212,500.00

RECOMMENDED MOTION

Staff recommends that the following motion be approved: I move to award the 2017 Chip Seal Program bid to GMCO, LLC with a unit price of $2.48 per square yard and authorize the Mayor to sign the attached agreement.

Prepared by: Kevin Schorzman

_______________________________
Town Manager
2017 Town of Carbondale
Chip and Seal Program

CONSTRUCTION AGREEMENT
(unit prices)

THIS AGREEMENT is entered into by and between GMCO, LLC, a Colorado Limited
Liability Company, P.O. Box 1480, Rifle, CO 81650 ("Contractor"), and the Town of
Carbondale, Colorado, a Colorado home rule municipal corporation ("Town"). This Agreement
is to be effective February 14, 2017, regardless of the date of signature(s) below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. **INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ALL OTHER OWNERS OF LAND UPON WHICH THE WORK WILL OCCUR, AND THEIR RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, CLAIMS AND LIABILITIES RELATING TO BODILY INJURY OR PROPERTY DAMAGE), DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE WORK, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY CONTRACTOR OR ITS Subcontractors TO PROPERLY PERFORM THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, OR NEGLIGENCE OR MISCONDUCT OF CONTRACTOR OR CONTRACTOR'S OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS.

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

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

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

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

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

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

11. **Timing.** Time is of the essence. All Work shall be completed by Contractor between May 15, 2017, and June 30, 2017, unless otherwise agreed in writing by the Town Manager or Public Works Director and Contractor.

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

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

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

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

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

17. Termination.

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

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

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

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

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

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

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

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

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

24. Agreement Administration and Notice. For purposes of administering this Agreement, the Town’s Public Works Director shall represent the Town in carrying out the purposes and intent of this Agreement. Any notices required to be given pursuant to this Agreement shall be delivered as follows:

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

Copy to: Town Attorney
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

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

25. Entire Agreement. This Agreement shall be binding upon the parties hereto, their successors and assigns. This contract and the documents incorporated herein by reference constitute the entire Agreement between the parties and may be altered, amended or repealed only by duly executed written Agreement.
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this 14th day of February, 2017.

TOWN:

TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By: ____________________________
   Dan Richardson, Mayor

ATTEST:

______________________________

CONTRACTOR:

GMCO, LLC, a Colorado Limited Liability Company

By: ____________________________
   Jim Terry

STATE OF COLORADO )
 ) ss.
COUNTY OF GARFIELD )

The foregoing AGREEMENT was acknowledged before me this ___ day of __________, 2017 by ____________________________.

Witness my hand and official seal.

My commission expires: ____________________________

______________________________
Notary Public
### ATTACHMENT “A”

#### 2017 Town of Carbondale Chip Seal Program

**STREET LISTING**

<table>
<thead>
<tr>
<th>Road</th>
<th>Square Yards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Village Road</td>
<td>8,100</td>
</tr>
<tr>
<td>Wheel Drive</td>
<td>3,250</td>
</tr>
<tr>
<td>Wheel Circle</td>
<td>3,950</td>
</tr>
<tr>
<td>Surrey Road</td>
<td>4,950</td>
</tr>
<tr>
<td>Buckboard Court</td>
<td>575</td>
</tr>
<tr>
<td>Spring Wagon Court</td>
<td>525</td>
</tr>
<tr>
<td>Latigo Loop</td>
<td>6,100</td>
</tr>
<tr>
<td>Latigo Court</td>
<td>525</td>
</tr>
<tr>
<td>Cowen Drive/8(^{th}) Street</td>
<td>8,875</td>
</tr>
<tr>
<td>Heritage Drive</td>
<td>8,825</td>
</tr>
<tr>
<td>Lakeside Drive</td>
<td>2,175</td>
</tr>
<tr>
<td>Cedar Creek Drive</td>
<td>2,875</td>
</tr>
<tr>
<td>Industry Place</td>
<td>3,225</td>
</tr>
<tr>
<td>Village Lane</td>
<td>3,100</td>
</tr>
</tbody>
</table>

**Total:** 57,050
# ATTACHMENT “B”

## Town of Carbondale
### 2017 Chip Seal Program Bid Form

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Chip Seal Surfacing</td>
<td>57,050</td>
<td>SQYD</td>
<td>$2.48</td>
<td>$141,484.00</td>
</tr>
</tbody>
</table>

Unit Price in words: Two dollars and Forty-Eight cents per square yard

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

---

**Bid submitted on behalf of:**
GMCO LLC of Colorado

(Company)

**Bid submitted by:**

Member GMCO LLC of Colorado

(Name and title of authorized agent)

**Date of bid:** February 3, 2017
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: 2/14/17

TITLE: Crystal River Growers Retail Marijuana Cultivation Renewal Application

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: Retail Marijuana Cultivation Renewal Application

BACKGROUND: Staff received Crystal River Growers Retail Marijuana Cultivation application on January 27, 2017, the day it was due to expire. Crystal River Growers has had no major changes in their business organization so the applicant was permitted to apply on the one page renewal application.

Marijuana Cultivations are required to provide 30% of the energy they consume in the form of renewable energy. However, to date, Crystal River Growers has not begun cultivation operation. The applicant has been informed that if he does not begin operation within one year from the date of issuance of the license the license will not be renewed.

Staff has not received any complaints regarding Crystal River Growers.

FISCAL ANALYSIS All required fees have been paid.

DISCUSSION

The Board may wish to determine if the retail marijuana cultivation applications is complete, and meet all of the criteria set forth in Ordinance No. 11, Series of 2013, and the Colorado Retail Marijuana Code as adopted.

RECOMMENDATION

Staff recommends that the Board make the following motion:

Move to approve Crystal River Growers Retail Marijuana Cultivation Renewal Application.

Prepared By: Cathy Derby, Town Clerk

[Signature]
Jay Harrington Town Manager
# Town of Carbondale
## 511 Colorado Avenue
Carbondale, CO 81623

Retail Marijuana Facility Renewal Application

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Fee:</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Renewal License Fee:</td>
<td>$500.00</td>
</tr>
<tr>
<td><strong>TOTAL DUE</strong></td>
<td><strong>$2,500.00</strong></td>
</tr>
</tbody>
</table>

Applicant is renewing a:

- [ ] Store
- [ ] Lab
- [X] Cultivation
- [ ] Other (Please Specify)
- [ ] Manufactured Infused Products (MIP)

<table>
<thead>
<tr>
<th>Licensee Name: (ie. Corporation Name)</th>
<th>Trade Name (DBA)</th>
<th>Sales Tax No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tom Bleskan</td>
<td>Crystal River Growers, LLC</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Street Address:</th>
<th>Business Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>220 N. 12th St Unit A</td>
<td>970 948 6008</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mailing Address</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>10101 Hwy 133 Carbondale CO 81623</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operating Manager</th>
<th>Home Address</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tom Bleskan</td>
<td>10101 Hwy 133 Carbondale</td>
<td></td>
</tr>
</tbody>
</table>

1. Do you have legal possession of the premises at the street address above? [ ] Yes [ ] No [ ]
   - Is the premises owned or rented? [ ] Owned [ ] Rented [ ]
   - If rented, expiration date of lease: 1/30/2018 [ ]

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

3. Since the date of filing of the last annual application, has there been any change in the financial interest (loans, etc.) or organizational structure (change of officers, managing members, etc.)? If yes, explain in detail and provide documentation. [ ] Yes [ ] 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.

<table>
<thead>
<tr>
<th>Applicant Signature:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1/27/17</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Authorized Signature:</th>
<th>Title:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Attest</th>
<th>Title</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

Crystal River Growers, LLC

is a

Limited Liability Company

formed or registered on 09/17/2014 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20141563924.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/26/2017 that have been posted, and by documents delivered to this office electronically through 01/27/2017 @ 12:03:21.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/27/2017 @ 12:03:21 in accordance with applicable law. This certificate is assigned Confirmation Number 10044932.

******************************End of Certificate******************************

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State’s Web site, http://www.sos.state.co.us/Biz/CertificateSearchCriteria.do entering the certificate’s confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click “Businesses, trademarks, trade names” and select “Frequently Asked Questions.”
BUSINESS LEASE

THIS LEASE is made this 1st day of February 2017, between Joiner Real Estate, LLC. (the "Lessor") and Crystal River Growers LLC (the "Lessee").

In consideration of the payment of the rent and the performance of the covenants and agreements by the Lessee set forth below, the Lessor does hereby lease to the Lessee the following described property situated in the County of Garfield, in the State of Colorado, the street address of which is 220 N. 12th Street, Unit A, Carbondale, CO 81623.

TO HAVE AND TO HOLD the same with all the appurtenances unto the said Lessee from twelve o'clock noon on the 1st day of February 2017 and until twelve o'clock noon on the 31st day of January 2018 at and for a rental for the full term of two years, payable in monthly installments of $1,000 each, on or before twelve o'clock noon on the 1st day of each calendar month during the term of this lease at the office of the Lessor at 220 N. 12th Street, Carbondale, CO 81623 without notice.

The Lessee, in consideration of the leasing of the premises agrees as follows:

1. To pay the rent for the premises above-described.

2. To pay the Lessor those items listed below, or the Lessee's proportional share (50%) thereof, which amount shall be considered as additional rent, and shall be due on the presentation of the appropriate bill to the Lessee;

   a. All premiums for fire and extended coverage insurance, property damage, and liability insurance in such amounts as the Lessor may reasonably require; Lessee's insurance must cover any improvements and betterments Lessee constructs in Unit "A" and as well as all of Lessee's personal property and business supplies and equipment.

   b. All costs and expenses of repairing and maintaining Lessee's side of the building, all of its components, and all land surrounding Lessee's side of the building with the exception of any damages directly caused by T.J. Concrete Construction employees or its representatives. Such costs and expenses shall be solely for any repairs and maintenance for Unit "A" that are directly caused by Lessee.

3. To keep the improvements upon the premises, including sewer connections, plumbing, wiring and glass in good repair, all at Lessee's expense, and at the expiration of this lease to surrender the premises in as good condition as when the Lessee entered the premises, loss by fire, inevitable accident, and ordinary wear excepted. To keep all sidewalks on and around the premises free and clear of ice and snow, and to keep the entire exterior premises in a clean and sanitary condition as required by the ordinances of the city and county in which property is situated.

4. To sublet no part of the premises, and not to assign the lease or any interest therein without the written consent of the Lessor.
5. To use the premises only as a commercial marijuana grow facility and to use the premises for no purposes prohibited by the laws of the United States or the State of Colorado, or of the ordinances of the city or town in which said premises are located, and for no improper or questionable purposes whatsoever, and to neither permit nor suffer any disorderly conduct, noise or nuisance having a tendency to annoy or disturb any persons occupying adjacent premises.

6. To neither hold nor attempt to hold the Lessor liable for any injury or damage, either proximate or remote, occurring through or caused by the repairs, alterations, injury or accident to the premises, or adjacent premises, or other parts of the above premises not herein demised, or by reason of the negligence or default of the owners or occupants thereof or any other person, nor to hold the Lessor liable for any injury or damage occasioned by defective electric wiring, or the breakage or stoppage of plumbing or sewage upon said premises, or the walls or floors thereof, to be endangered by overloading, nor said premises to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous, nor make any alterations in or changes in, upon, or about said premises without first obtaining the written consent of the Lessor therefore, but to permit the Lessor to place a "For Rent" card or sign upon the leased premises at any time after sixty (60) days before the end of this lease.

7. To allow the Lessor to enter upon the premises at any reasonable hour abiding by all rules and regulations stipulated by the State of Colorado and the Town of Carbondale for access to said premises of a grow facility. Lessee agrees to abide by all rules and regulations of the State of Colorado and the Town of Carbondale for anyone who access the premises.

8. To pay all charges for utilities, including but not limited to, water rent, heating and lighting of Unit A of the building, in which said premises are located.

IT IS EXPRESSLY UNDERSTOOD AND AGREED BETWEEN LESSOR AND LESSEE AS FOLLOWS:

9. No assent, express or implied, to any breach of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other breach. Any payment by Lessee, or acceptance by Lessor, of a lesser amount than due shall be treated only as a payment on account.

10. If the premises are left vacant and any part of the rent reserved hereunder is not paid, then the Lessor may without being obligated to do so, and without terminating this lease, retake possession of the said premises and rent the same for such rent, and upon such conditions as the Lessor may think best, making such change and repairs as may be required, giving credit for the amount of rent so received less all expenses of such changes and repairs, and the Lessee shall be liable for the balance of the rent herein reserved until the expiration of the term of this lease.

11. The Lessor acknowledges receipt of a deposit in the amount of __________ to be held by the lessor of the faithful
performance of all of the terms, conditions and covenants of this lease. The Lessor may apply the deposit to cure and default under the terms of the lease and shall account to the Lessee for the balance. The Lessee may not apply the deposit hereunder to the payment of the rent reserved hereunder or the performance of other obligations.

12. If any part of the rent provided to be paid herein is not paid when due, or of any default is made in any of the agreements by Lessee contained herein, it shall be lawful for the Lessor to declare the term ended, and to enter into the premises, either with or without legal process, and to remove the Lessee or any other person occupying the premises, using such force as may be necessary, without being liable to prosecution, or in damages therefore, and to repossess the premises free and clear of any rights of the Lessee. If, at any time, this lease is terminated under this paragraph, the Lessee agrees to peacefully surrender the premises to the Lessor immediately upon termination, and if the Lessee remains in possession of the premises, the Lessee shall be deemed guilty of forcible entry and detained of the premises, and, waiving notice, shall be subject to forcible eviction with or without process of law.

13. In the event of any dispute arising under the terms of this lease, or in the event of non-payment of any sums arising under this lease and in the event the matter is turned over to an attorney, the party prevailing in such dispute shall be entitled, in addition to other damages or costs, to receive reasonable attorney's fees from the other party.

14. In the event any payment required hereunder is not made within five (5) days after the payment is due, a late charge in the amount of $50.00 will be paid to the Lessor hereunder, the Lessee waiving all right to any such payments.

15. In the event of a condemnation or other taking by any government agency, all proceeds shall be paid to the Lessor hereunder, the Lessee waiving all right to any such payments.

16. This lease is made with the express understanding and agreement that, in the event the Lessee becomes insolvent, or is declared a bankrupt, then, in either, the Lessor may declare this lease ended, and all rights of the Lessee hereunder shall terminate and cease.

THIS LEASE shall be binding on the parties, their personal representative, successors and assigns.

ADDITIONAL PROVISIONS

1. Lessee shall pay Lessee's prorated share of the monthly billing for gas, water and sewer and one hundred percent (100%) of the monthly billing for electric. Said prorated share will be determined by any increase of usage based on last year's actual utility billings. Lessor shall bill Lessee each month for the above expenses.
2. If Lessee does not receive the permits, registration and licensing required for a marijuana grow facility from the State and the Town of Carbondale this lease shall become null and void. Lessee's $2,500 deposit will be returned at this time.

3. If Lessee does receive the permits, registration and licensing required for a marijuana grow facility then Lessee agrees to work with Lessor in a timely manner as the current Lessee transitions out of the building and the Lessee moves into the building. Lessee recognizes the fact that the Lessor does not want to lose it's current tenant in the event the marijuana grow facility use is not approved. At this time Lessee agrees to pay first and last month's rent in addition to the security deposit that was paid upon execution of this lease.

4. If the odor caused by the harvesting of the marijuana adversely affects the normal function of business for TJ Concrete Construction, Inc. Lessee agrees to insure that the marijuana is harvested after normal business hours or on the weekends. Lessee agrees to work with Lessor to insure that its normal course of business continues without interruption.

5. Lessor agrees that during the term of this initial lease the building will not be sold if the effect of such sale will put Lessee out of a place to do business. After January 31, 2018, however, Lessor reserves the right to sell the building if it is to the advantage of Lessor to do so. In the event of a sale of the building after January 31 2018, Lessor agrees to try to keep Lessee as the Lessee if at all possible in the terms of the sale.

6. Lessor further agrees to grant Lessee a right of first refusal regarding any sale of the premises.

7. Lessee and Lessor agree that if it is determined that the use of this facility as a marijuana grow facility should prevent Lessor from accepting rental funds from Lessee and placing them in a federal banking institution then this lease will become null and void.

8. Lessee and Lessor agree that if it is determined that the use of this facility as a marijuana grow facility should prevent Lessor from obtaining insurance on the building and its premises then this lease will become null and void.

Dated and signed this 27th day of January, 2017.

Lessors: Joiner Real Estate, LLC.
By: Thomas S. Joiner, Member
By: Mary Beth Joiner, Member

Lessee: Crystal River Growers, LLC.
By: Tom Bleskan, Member
BOARD OF TRUSTEES AGENDA MEMORANDUM

**TITLE:** Environmental Board Member Application Review

**SUBMITTING DEPARTMENT:** Boards and Commissions

**ATTACHMENTS:** Environmental Board membership applications from January 23, 2017 meeting

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**BACKGROUND**

On January 23, 2017, the Environmental Board reviewed membership applications submitted by Jason White (full-time – 2 year term), Julia Farwell (full-time – 2 year term), and Matt Gwost (alternate – 1 year term). The commission moved to recommend the applicants for reappointment to the Carbondale Environmental Board.

**RECOMMENDATION**

Town Staff recommends the Board of Trustees move to approve that Jason White and Julia Farwell be reappointed as regular voting members, and Matt Gwost as an alternate of the Environmental Board.

Prepared by: Angie Sprang  
Boards and Commissions Clerk

---

Town Manager
TOWN OF CARBONDALE

APPLICATION FOR APPOINTMENT OR REAPPOINTMENT
TO TOWN ADVISORY BOARDS AND COMMISSIONS

THIS IS AN APPLICATION FOR APPOINTMENT ___ REAPPOINTMENT X

NAME OF APPLICANT: JASON WHITE
MAILING ADDRESS: 39 CRYSTAL RD
STREET ADDRESS OF RESIDENCE: same
TELEPHONE: (Work) ____________________________ (Home) 970-379-4303
OTHER PHONE: ____________________________ E-MAIL: coldmountainstream@yahoo.com

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

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

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

______________________________________________
Environmental Board

NEW APPOINTMENT ONLY:

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

4 years of service environmental sciences background, active in Carbondale culture

______________________________________________
Signature

Y/r/17
Date

CONGRATULATIONS! The ____________________________ has appointed you to the ____________________________ by official action taken on ____________________________. Your term will expire ____________________________.

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

Mayor and Board of Trustees
Town of Carbondale
TOWN OF CARBONDALE
APPLICATION FOR APPOINTMENT OR REAPPOINTMENT
TO TOWN ADVISORY BOARDS AND COMMISSIONS

THIS IS AN APPLICATION FOR APPOINTMENT ___ REAPPOINTMENT ___

NAME OF APPLICANT: Julia Farwell
MAILING ADDRESS: 188 N. 7th Street
STREET ADDRESS OF RESIDENCE: Carbondale CO 81623
TELEPHONE: (Work) 927-6488 (Home) 963-4735
OTHER PHONE: Cell 379-4777 E-MAIL: juliafarwell1@gmail.com

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

juliafarwell1@gmail.com

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

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

Environmental Board

NEW APPOINTMENT ONLY:

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

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

_____________________________ Jan 6, 2017
JULIA FERWELL Date

CONGRATULATIONS! The __________________________ has appointed you to the __________________________ by official action taken on _____________. Your term will expire _____________.

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

Mayor and Board of Trustees
Town of Carbondale
TOWN OF CARBONDALE

APPLICATION FOR APPOINTMENT OR REAPPOINTMENT TO TOWN ADVISORY BOARDS AND COMMISSIONS

THIS IS AN APPLICATION FOR APPOINTMENT ____ REAPPOINTMENT ____

NAME OF APPLICANT: Matt Gwost
MAILING ADDRESS: PO Box 1024
STREET ADDRESS OF RESIDENCE: 396 S 3rd St #2
TELEPHONE: (Work) __________________ (Home) 9709040518
OTHER PHONE: __________________ E-MAIL: matlly.gwost@hotmail.com

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

email

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

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

E Board Alternate

NEW APPOINTMENT ONLY:

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

__________________________

Signature

1/23/17

Date

CONGRATULATIONS! The __________ has appointed you to the __________ by official action taken on __________. Your term will expire __________.

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

Mayor and Board of Trustees
Town of Carbondale
January 24, 2017

Jay Harrington, Town Manager  
Town of Carbondale  
511 Colorado Avenue  
Carbondale, CO 81623  

Linn Stickler, Exec. V.P.  
Colorado Mtn. College  
831 Grand Avenue  
Glenwood Springs, CO 81601

Pamela Woods, Town Administrator  
Town of Silt  
Box 70  
Silt, CO 81652  

Tom Baker, Town Administrator  
Town of New Castle  
Box 90  
New Castle, CO 81647

Dan Blankenship, Chief Exec. Officer  
Roaring Fork Transportation Authority  
2307 Wulfsohn Road  
Glenwood Springs, CO 81601  

Debra Figueroa, City Manager  
City of Glenwood Springs  
101 West 8th Street  
Glenwood Springs, CO 81601

Matt Sturgeon, City Manager  
City of Rifle  
Box 1908  
Rifle, CO 81650

Re: 2017 8 Party Memorandum of Understanding Regarding Garfield County Senior Programs

Dear Parties:

Enclosed, please find one (1) full copy and (8) copies of the signature page of the 2017 8-Party MOU regarding Garfield County Senior Programs for your review, consideration and submittal to your Town/City Council or Board for authorization for the appropriate official to execute.

After execution, please return one (1) fully executed IGA and all seven (7) signature pages to Diane White in the enclosed envelope.

Once this office receives signature pages from all entities and after signature by the Chairman of the Board, you will be sent a fully executed original for your files.
If you have any questions, please do not hesitate to contact me at (970) 625-5282 extension 3233 or dwhite@garfield-county.com.

Sincerely,

Diane K. White
Services Administrator

Attachments (IGA & 7 signature pages)
8-PARTY MEMORANDUM OF UNDERSTANDING REGARDING GARFIELD COUNTY SENIOR PROGRAMS FOR 2017

This Memorandum of Understanding is entered into between:

The Garfield County Board of County Commissioners, ("BOCC")
The City of Rifle, Colorado,
The City of Glenwood Springs, Colorado,
The Town of Carbondale, Colorado,
The Town of New Castle, Colorado,
The Town of Silt, Colorado,
Colorado Mountain College ("CMC"), and
Roaring Fork Transportation Authority, ("RFTA")

(collectively, the "8-Parties") in order to set forth the terms and conditions of their cooperative provision, administration and funding of a county-wide meal and transportation services for the Garfield County Senior Programs for calendar year 2016 (the "MOU"). This MOU is effective as of January 1, 2017, regardless of the dates on which it is signed.

BACKGROUND

A. Each of the 8-Parties is authorized to make the most efficient and effective use of their governmental powers, responsibilities and monies by cooperating and contracting with other governments. Colo. Const. art. XIV §§ 18(2)(a) and (2)(b); Colorado Revised Statutes § 29-1-201.

B. In 2009, 9-Parties entered into an Intergovernmental Agreement to set forth the terms and conditions of their cooperative provision, administration and funding of meal and transportation services to senior citizens of Garfield County ("the 9-Party IGA"). This 9-Party IGA is recorded in records of the Garfield County Clerk and Recorder at Reception No. 776142.

C. In accordance with the 9-Party IGA, in 2009 and each consecutive year thereafter, the 9 parties entered into a Memorandum of Understanding that sets forth each party’s annual commitment to share the administrative and operational costs of the Senior Programs meal and transportation services and determines the methodology by which those costs will be allocated among them (the "MOU").

D. In 2016, The Town of Parachute withdrew from membership and opted not to participate in the services provided by Garfield County Senior Programs in 2017.
E. Each of the remaining 8-Parties desires to continue to provide meal and transportation services to eligible Garfield County senior citizens in 2017 in accordance with the terms of the original 9-Party IGA.

NOW, THEREFORE, for and in consideration of mutual covenants and agreements set forth below, the 8-Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The foregoing Recitals are incorporated as if set forth in full.

2. Purpose of this Agreement. The purpose of this IGA is to define the terms and conditions by which the 8-Parties will collectively provide, administer and fund county-wide meal and transportation services for the Garfield County Senior Programs for calendar year 2017.

3. Term of Agreement. This Agreement shall have an Effective Date of January 1, 2017 regardless of the dates signed and shall terminate on December 31, 2017.

4. Senior Services to be Provided. The BOCC, through its Department of Human Services Senior Programs, will organize and administer the congregate meal and transportation services described in this MOU for eligible senior citizens of Garfield County on behalf of Rifle, Glenwood Springs, Carbondale, New Castle, and Silt (collectively, the “Municipalities”). In exchange, the Municipalities will reimburse the BOCC for their proportionate shares of the cost of such services as calculated in accordance with the Cost Methodologies defined in this Agreement.

5. Congregate Meal Services. The BOCC, CMC and Municipalities agree that Senior Program meals will be provided at seven (7) locations throughout Garfield County on the days and times set forth in Attachment A and further agree that the costs to provide such services will be allocated among them as follows:

a. Cost Methodology – Nutrition: The BOCC agrees to pay forty percent (40%) of total budgeted cost to provide Congregate Meal Services in 2017. The Municipalities each agree to pay a proportionate share of the remaining balance, less all anticipated grant and program funding income, based upon the percentage of total meals served between July 2015 and June 2016 to the residents of each Municipality. The BOCC agrees to be responsible for all meals served to residents of unaffiliated Garfield County and Battlement Mesa as well as any shortfall in grant and program funding income.

b. Application of Cost Methodology to the 2017 Budget: As illustrated in Attachment B, which is incorporated here for all purposes, the total budgeted cost to provide Congregate Meal Services in 2017 is $331,157.00. The BOCC’s 40% share of that amount equals $127,157. Anticipated grant and program funding
income for 2017 is $204,000.00. Since the grant and program funding plus County contribution is sufficient to cover the nutrition costs for 2017, no Municipality contribution is required.

6. **Transportation Services.** The BOCC, RFTA and Municipalities agree that Senior Program transportation services will be provided to Garfield County residents sixty-five (65) years old and older who have difficulty utilizing public transportation ("Seniors") and citizens under the age of sixty-five (65) with a functional disability affecting the ability to use public transportation on the schedule set forth in Attachment C. These services will be provided by RFTA’s Traveler bus system and will be wheelchair accessible, door-to-door, demand-responsive, driver assisted transportation and will also include the delivery of meals to the meal site locations. The cost to provide these transportation services will be shared by the BOCC, RFTA, and the Municipalities in accordance with the following Cost Methodology:

a. **Cost Methodology - Transportation:** The BOCC agrees to be responsible for fifty-percent (50%) of the total budgeted cost to provide Senior Transportation Services in 2017. The remaining fifty-percent is paid for by grant and program funding income and allocated payments from the Municipalities based upon the number of rides provided to residents of each Municipality. RFTA agrees to be responsible for the cost of the transportation services provided to the three Municipalities that are current RFTA members: the Town of Carbondale, the Town of Glenwood Springs, and the Town of New Castle. The remaining non-RFTA member Municipalities, the Town of Rifle and the Town of Silt, agree to pay their proportionate share of transportation costs based upon the number of rides provided to the residents of each. The BOCC agrees to be responsible for all rides provided to residents of unaffiliated Garfield County as well as any shortfall in anticipated grant and program funding income.

b. **Application of Cost Methodology to 2017 Budget.** As illustrated in Attachment D, the total budgeted cost to provide Senior Transportation Services in 2016 is $706,000.00. This cost represents the costs to the BOCC and to RFTA to provide such services in the amounts of $525,000.62 and $150,999.38, respectively, less the amount of $30,000 received by RFTA from other sources who utilize the Traveler bus system pursuant to a contractual agreement that is unrelated to this MOU. The BOCC’s 50% share of this amount equals $370,011.00. Anticipated grant and program funding income for 2017 is $101,312.00. The remaining balance of $268,699.00 is distributed among the Municipalities based upon the portion of total rides provided to residents of each Municipality between July 2015 and June 2016, which results in the following amounts due:
RFTA
Dan Blankenship, Chief Executive Officer
Roaring Fork Transportation Authority
2307 Wulfsohn Road
Glenwood Springs, CO 81601
(970) 384-4981
dblankenship@rfta.com

Rifle
Matt Sturgeon, City Manager
City of Rifle
202 Railroad Ave
P. O. Box 1980
Rifle, CO 81650
(970) 625-6266
msturgeon@rifleco.org

Silt
Pamela Woods, Town Administrator
Town of Silt
231 N. 7th Street, PO BOX 70
Silt, CO 81652
970-876-2353, ext. 813
administrator@townofsilt.org
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed effective January 1, 2017.

ATTEST: 

TOWN OF CARBONDALE, COLORADO

By: ____________________________

Dan Richardson, Mayor

Date: __________________________

ATTEST: 

COLORADO MOUNTAIN COLLEGE

By ____________________________

Date: __________________________

ATTEST: 

BOARD OF COUNTY COMMISSIONERS
GARFIELD COUNTY, COLORADO and
BOARD OF SOCIAL SERVICES

By: ____________________________

John Martin, Chairman

Date: __________________________
ATTEST:

City Clerk

By: Michael Gamba, Mayor

Date:

ATTEST:

Town Clerk

By: Art Riddle, Mayor

Date:

ATTEST:

Secretary to the Board of Directors

By: _________________, Chair

Date:
ATTEST:               CITY OF RIFLE, COLORADO

City Clerk

By: _____________________________  Randy Winkler, Mayor  

Date: ____________________________  

ATTEST:               TOWN OF SILT, COLORADO

Town Clerk

By: _____________________________  Rick Aluise, Mayor  

Date: ____________________________  

2017 8-Party Memorandum of Understanding
Regarding Senior Meal and Transportation Programs
T:\IGAA\Senior Services\2017 8-Party MOU
## 2017 Senior Programs Congregate Meal Schedule 2017

<table>
<thead>
<tr>
<th>Meal Site Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jerilyn Nieslanik, Manager</td>
</tr>
<tr>
<td>Crystal Meadows Senior Housing</td>
</tr>
<tr>
<td>1250 Hendrick Drive</td>
</tr>
<tr>
<td>Carbondale, CO 81623</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valley View Hospital</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wednesday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Site Name/location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roaring Fork &amp; Spoon</td>
</tr>
<tr>
<td>Crystal Meadows Senior Housing 1250 Hendrick Drive in the Romminger Room</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Samuel Schroyer, Coordinator of Continuing Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado Mountain College (CMC)</td>
</tr>
<tr>
<td>802 Grand Avenue</td>
</tr>
<tr>
<td>Glenwood Springs, CO 81601</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valley View Hospital</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday/Friday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Site Name/location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chat n' Chew</td>
</tr>
<tr>
<td>1402 Blake Avenue</td>
</tr>
<tr>
<td>Glenwood Springs, CO 81601 in Lucy Huntley Senior Center</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Monique Hermosillo, Site Coordinator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunnyside Retirement Center</td>
</tr>
<tr>
<td>601 21st Street #106</td>
</tr>
<tr>
<td>Glenwood Springs, CO 81601</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valley View Hospital</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday/Thursday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Site Name/location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunnyside</td>
</tr>
<tr>
<td>601 21st Street in the Kitchen</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Leslie Means, Property Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Castle Valley Ranch Senior Housing</td>
</tr>
<tr>
<td>201 Castle Valley Blvd</td>
</tr>
<tr>
<td>New Castle, CO 81647</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchen</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Rifle</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Site Name/location</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Gathering</td>
</tr>
<tr>
<td>201 Castle Valley Blvd in the Community Room</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bob Campbell, Board President</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valley Senior Center</td>
</tr>
<tr>
<td>PO BOX 932</td>
</tr>
<tr>
<td>Parachute, CO 81635-0932</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchen</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Rifle</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wednesday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Site Name/location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valley Senior Center</td>
</tr>
<tr>
<td>540 N. Parachute</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Colorado River Fire Rescue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1850 Railroad Avenue</td>
</tr>
<tr>
<td>Rifle, CO 81650</td>
</tr>
<tr>
<td>Attention: Chief Rob Jones</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchen</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Rifle</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wednesday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Site Name/location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meet n' Eat</td>
</tr>
<tr>
<td>611 Main Street in Silt</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Matt Sturgeon, City Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Rifle</td>
</tr>
<tr>
<td>Included in the meal contract</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchen</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Rifle</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday, Thursday &amp; Friday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Meal Site Name/location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Delight</td>
</tr>
<tr>
<td>50 Ute Avenue at Rifle Senior Center</td>
</tr>
</tbody>
</table>
ATTACHMENT B

2017 CONGREGATE MEAL BUDGET AND COST METHODOLOGY
### Nutrition Budget

<table>
<thead>
<tr>
<th>Category</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages</td>
<td>$103,327.00</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$56,230.00</td>
</tr>
<tr>
<td>Professional - Other</td>
<td>$133,000.00</td>
</tr>
<tr>
<td>Prof Oth - County Attorney Contr</td>
<td>$500.00</td>
</tr>
<tr>
<td>Rental of Land &amp; Buildings</td>
<td>$500.00</td>
</tr>
<tr>
<td>Communications</td>
<td>$650.00</td>
</tr>
<tr>
<td>Printing and Binding</td>
<td>$600.00</td>
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<tr>
<td>DHS - Destruction of Records</td>
<td>$150.00</td>
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<tr>
<td>Travel</td>
<td>$700.00</td>
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<tr>
<td>Motor Pool Charges</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>Professional Affiliations</td>
<td>$100.00</td>
</tr>
<tr>
<td>Training</td>
<td>$500.00</td>
</tr>
<tr>
<td>Office Supplies</td>
<td>$1,000.00</td>
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<tr>
<td>Operating Supplies</td>
<td>$7,500.00</td>
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<tr>
<td>Computer Supplies</td>
<td>$300.00</td>
</tr>
<tr>
<td>Freight, postage, Delivery</td>
<td>$2,800.00</td>
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<tr>
<td>Other Supplies</td>
<td>$1,200.00</td>
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<tr>
<td>Copy Machine Usage</td>
<td>$1,600.00</td>
</tr>
<tr>
<td>Food - non travel related</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>$4,000.00</td>
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<tr>
<td>Computer Equipment</td>
<td>$500.00</td>
</tr>
</tbody>
</table>

**Total 12 Month Budget**: $331,157.00

### NUTRITION BREAKDOWN SUMMARY FOR MUNICIPALITIES

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th># of Meals</th>
<th>Percent of Total</th>
<th>Contribution</th>
<th>2016</th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Meals</td>
<td>Contributions</td>
<td>Meals</td>
</tr>
<tr>
<td>Carbondale</td>
<td>1,239</td>
<td>6.96%</td>
<td>$0.00</td>
<td>1395</td>
<td>$487.43</td>
<td>1336</td>
</tr>
<tr>
<td>Glenwood Springs</td>
<td>4,400</td>
<td>24.72%</td>
<td>$0.00</td>
<td>4788</td>
<td>$1,672.98</td>
<td>5162</td>
</tr>
<tr>
<td>New Castle</td>
<td>797</td>
<td>4.62%</td>
<td>$0.00</td>
<td>838</td>
<td>$313.77</td>
<td>928</td>
</tr>
<tr>
<td>Sill</td>
<td>1,990</td>
<td>11.16%</td>
<td>$0.00</td>
<td>2020</td>
<td>$705.81</td>
<td>1871</td>
</tr>
<tr>
<td>Parachute</td>
<td>108</td>
<td>0.00%</td>
<td>$0.00</td>
<td>108</td>
<td>$37.74</td>
<td>69</td>
</tr>
<tr>
<td>Rifle</td>
<td>9,383</td>
<td>52.72%</td>
<td>$0.00</td>
<td>10491</td>
<td>$3,683.67</td>
<td>10280</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipal Total</td>
<td>17,799</td>
<td>100.00%</td>
<td>$0.00</td>
<td>19700</td>
<td>$6,883.40</td>
<td>19644</td>
</tr>
<tr>
<td>Garfield County</td>
<td>243</td>
<td></td>
<td></td>
<td>2500</td>
<td></td>
<td>2500</td>
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<tr>
<td>Parachute</td>
<td>108</td>
<td></td>
<td></td>
<td>22206</td>
<td></td>
<td>22150</td>
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<tr>
<td>Grand Total</td>
<td>20,342</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Based on July 2014 - June 2015  
Based on July 2013 - June, 2014  
Based on July 2012 - June, 2013

*Parachute # is for Parachute residents meals only with the remainder of Battlement Mesa residents included in Garfield County along with the Volunteer Banquet numbers*
ATTACHMENT C

2017 SENIOR TRANSPORTATION SERVICES SCHEDULE
## Traveler Transportation Schedule - 2017

<table>
<thead>
<tr>
<th>COMMUNITY</th>
<th>DAY OF WEEK OR MONTH</th>
<th>SERVICE DESCRIPTION</th>
<th>NORMAL HOURS OF OPERATION</th>
<th>NUMBER OF VEHICLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenwood Springs</td>
<td>Monday-Friday</td>
<td>Customer transportation and/or local shopping</td>
<td>8 a.m. – 5 p.m.</td>
<td>2-4</td>
</tr>
<tr>
<td>Tuesday</td>
<td></td>
<td>Meal transportation</td>
<td>11 a.m. – 2 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>2nd and 4th and 4th Thursday of the month</td>
<td>Customer transportation to/from Grand Junction, picking up customers Carbondale through Battlement Mesa</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Thursday</td>
<td></td>
<td>Carbondale to Battlement Mesa with stops in Glenwood, New Castle, Silt, New Castle &amp; Rifle</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>Friday</td>
<td></td>
<td>Meal transportation</td>
<td>11 a.m. – 2 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>Carbondale</td>
<td>Monday-Friday</td>
<td>On call basis for customers</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>Wednesday</td>
<td></td>
<td>Meal transportation and local shopping</td>
<td>11 a.m. – 4 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>2nd and 4th Thursday of the month</td>
<td>Customer transportation to/from Grand Junction, picking up customers Carbondale through Battlement Mesa</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Thursday</td>
<td></td>
<td>Carbondale to Battlement Mesa with stops in Glenwood, Silt, New Castle and Rifle</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>Thursday</td>
<td></td>
<td>Battlement Mesa to Carbondale with stops in Glenwood, Silt, New Castle and Rifle</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>Rifle</td>
<td>Monday</td>
<td>Customer transportation</td>
<td>8 a.m. – 5 p.m.</td>
<td>2</td>
</tr>
<tr>
<td>Tuesday</td>
<td></td>
<td>Customer transportation/Meal transportation</td>
<td>8 a.m. – 5 p.m.</td>
<td>2-3</td>
</tr>
<tr>
<td>Wednesday</td>
<td></td>
<td>Customer transportation/Meal transportation/Shopping</td>
<td>8 a.m. – 5 p.m.</td>
<td>3-4</td>
</tr>
<tr>
<td>Thursday</td>
<td></td>
<td>Customer transportation/Meal transportation</td>
<td>8 a.m. – 5 p.m.</td>
<td>2-3</td>
</tr>
<tr>
<td>2nd and 4th Thursday of the month</td>
<td>Customer transportation to/from Grand Junction, picking up customers Carbondale through Battlement Mesa</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Thursday</td>
<td></td>
<td>Carbondale to Battlement Mesa with stops in Glenwood, Silt and New Castle</td>
<td>8 a.m. – 5 p.m.</td>
<td>2-3</td>
</tr>
<tr>
<td>Thursday</td>
<td></td>
<td>Battlement Mesa to Carbondale with stops in Glenwood, Silt, New Castle</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>COMMUNITY</td>
<td>DAY OF WEEK OR MONTH</td>
<td>SERVICE DESCRIPTION</td>
<td>NORMAL HOURS OF OPERATION</td>
<td>NUMBER OF VEHICLES</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>---------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Battlement Mesa</td>
<td>Friday</td>
<td>Customer transportation/Meal transportation</td>
<td>8 a.m. – 5 p.m.</td>
<td>2-3</td>
</tr>
<tr>
<td></td>
<td>Monday – Friday</td>
<td>On call basis for customers</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Tuesday</td>
<td>Shopping day in Rifle</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Wednesday</td>
<td>Meal transportation</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2nd and 4th Thursday of the month</td>
<td>Customer transportation to/from Grand Junction, picking up customers Carbondale through Battlement Mesa</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Thursday</td>
<td>Battlement Mesa to Carbondale with stops in Rifle, Silt, New Castle, and Glenwood Springs</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Thursday</td>
<td>Carbonate to Battlement Mesa</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>Silt</td>
<td>Monday – Friday</td>
<td>On call basis for customers</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Wednesday</td>
<td>Meal transportation/shopping</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2nd and 4th Thursday of the month</td>
<td>Customer transportation to/from Grand Junction, picking up customers Carbondale through Battlement Mesa</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Thursday</td>
<td>Battlement Mesa to Carbondale with stops in Rifle, Silt, New Castle, Glenwood Springs and Carbondale</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Thursday</td>
<td>Carbonate to Battlement Mesa with stops in Rifle</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>New Castle</td>
<td>Monday – Friday</td>
<td>On call basis for customers</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Monday</td>
<td>Meal transportation/shopping</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2nd and 4th Thursday of the month</td>
<td>Customer transportation to/from Grand Junction, picking up customers Carbondale through Battlement Mesa</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Thursday</td>
<td>Battlement Mesa to Carbondale with stops in Glenwood Springs and Carbondale</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Thursday</td>
<td>Carbonate to Battlement Mesa with stops in Silt, Rifle, and Parachute</td>
<td>8 a.m. – 5 p.m.</td>
<td>1</td>
</tr>
</tbody>
</table>
ATTACHMENT D

2017 TRANSPORTATION BUDGET
AND COST METHODOLOGY
<table>
<thead>
<tr>
<th>Transportation Budget</th>
<th>Annual</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages</td>
<td>$ 41,849.00</td>
<td>Staff: 50% Manager</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ 18,123.00</td>
<td>25% Case Services Alde</td>
</tr>
<tr>
<td>Prof Oth - County Attorney Contr</td>
<td>$ 500.00</td>
<td></td>
</tr>
<tr>
<td>Language Translation</td>
<td>$ 200.00</td>
<td></td>
</tr>
<tr>
<td>Communication</td>
<td>$ 650.00</td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>$ 50.00</td>
<td></td>
</tr>
<tr>
<td>Printing and Binding</td>
<td>$ 200.00</td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>$ 1,000.00</td>
<td></td>
</tr>
<tr>
<td>Office Supplies</td>
<td>$ 200.00</td>
<td></td>
</tr>
<tr>
<td>Computer Supplies</td>
<td>$ 50.00</td>
<td></td>
</tr>
<tr>
<td>Freight, Postage, Delivery</td>
<td>$ 1,200.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total County Expenses</strong></td>
<td>$ 64,022.00</td>
<td></td>
</tr>
</tbody>
</table>

| RFTA                   | $ 706,000.00 | Projected based on RFTA Actual Expenditures |
| MINUS GWS Paratransit  | $ 30,000.00 |  |
| **Total RFTA Expenses** | $ 676,000.00 |  |

| **Total Expenses** | $ 740,022.00 |  |
| Less Program Income  | $ 33,000.00 |  |
| Less CSBG             | $ 68,312.00 |  |
| **Total GIP Income**  | $ 101,312.00 |  |
| Less 50% County Share | $ 370,011.00 |  |
| **Total County Share** | $ 370,011.00 |  |
| **Total Revenue**     | $ 471,323.00 |  |
| **Total Expenses**    | $ 740,022.00 |  |
| Income less expenses  | $ 268,699.00 |  |

| Municipal Budget Share for Distribution | $ 268,699.00 |  |

---

### TRANSPORTATION BREAKDOWN Based on July 2015 - June 2016 Usage

**2017**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th># of Rides Provided</th>
<th>Percent of Total</th>
<th>Transportation Contribution</th>
<th># Rides</th>
<th>Contributions</th>
<th># Rides</th>
<th>Contributions</th>
<th># Rides</th>
<th>Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbondale*</td>
<td>264</td>
<td>2.48%</td>
<td>$6,675.12</td>
<td>244</td>
<td>$5,460.83</td>
<td>482</td>
<td>$8,725.79</td>
<td>387</td>
<td>$6,147.09</td>
</tr>
<tr>
<td>Glenwood Springs*</td>
<td>5041</td>
<td>47.44%</td>
<td>$127,459.46</td>
<td>6164</td>
<td>$137,953.16</td>
<td>7737</td>
<td>$146,128.59</td>
<td>8081</td>
<td>$128,358.22</td>
</tr>
<tr>
<td>New Castle*</td>
<td>667</td>
<td>6.28%</td>
<td>$16,664.80</td>
<td>1117</td>
<td>$24,998.98</td>
<td>477</td>
<td>$9,009.09</td>
<td>340</td>
<td>$5,400.54</td>
</tr>
<tr>
<td>Silt</td>
<td>322</td>
<td>3.03%</td>
<td>$8,141.63</td>
<td>437</td>
<td>$9,780.26</td>
<td>591</td>
<td>$11,162.21</td>
<td>647</td>
<td>$10,276.62</td>
</tr>
<tr>
<td>Parachute</td>
<td>0.00%</td>
<td></td>
<td>$0.00</td>
<td>147</td>
<td>$3,289.93</td>
<td>262</td>
<td>$4,948.39</td>
<td>431</td>
<td>$6,845.98</td>
</tr>
<tr>
<td>Rifle</td>
<td>4333</td>
<td>40.77%</td>
<td>$109,557.99</td>
<td>5075</td>
<td>$113,580.84</td>
<td>5460</td>
<td>$103,122.93</td>
<td>7288</td>
<td>$115,762.25</td>
</tr>
</tbody>
</table>

**MUNICIPAL TOTAL**

| 10,627 | 100.00% | $268,699.00 | 13,184 | $295,064.00 | 14,989 | $283,097.00 | 17,174 | $272,791.00 |

* RFTA Members

<p>| Rural Garfield County | 3,674 | 2,352 | 2,137 | 1,567 |
| Mt. Valley            | 1,173 |  |  |  |
| Parachute             | 147  |  |  |  |
| <strong>Total</strong>             | 15,621 | 15,536 | 17,126 | 18,741 |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Annual</th>
<th>Staff: 36% Program Coordinator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages</td>
<td>$22,785.00</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$12,645.00</td>
<td></td>
</tr>
<tr>
<td>Licenses and permits</td>
<td>$500.00</td>
<td></td>
</tr>
<tr>
<td>Travel</td>
<td>$850.00</td>
<td></td>
</tr>
<tr>
<td>Motor Pool Charges</td>
<td>$1,500.00</td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>$800.00</td>
<td></td>
</tr>
<tr>
<td>Food - non travel related</td>
<td>$550.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total 12 Month Budget</strong></td>
<td>$39,810.00</td>
<td></td>
</tr>
<tr>
<td><strong>Less AAA funding</strong></td>
<td>$39,324.00</td>
<td></td>
</tr>
<tr>
<td><strong>Grant &amp; Program Income Total</strong></td>
<td>$39,324.00</td>
<td></td>
</tr>
<tr>
<td><strong>Income less expenses</strong></td>
<td>$486.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total County Match</strong></td>
<td>$486.00</td>
<td></td>
</tr>
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</table>
## COMBINED CONTRIBUTION BREAKDOWN

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbondale</td>
<td>$0.00</td>
<td>$6,675.12</td>
<td>-</td>
<td>$6,675.12</td>
<td>$0.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$0.00</td>
</tr>
<tr>
<td>Glenwood Springs</td>
<td>$0.00</td>
<td>$127,459.46</td>
<td>-</td>
<td>$127,459.46</td>
<td>$0.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$0.00</td>
</tr>
<tr>
<td>New Castle</td>
<td>$0.00</td>
<td>$16,864.80</td>
<td>-</td>
<td>$16,864.80</td>
<td>$0.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$0.00</td>
</tr>
<tr>
<td>Silt</td>
<td>$0.00</td>
<td>$8,141.63</td>
<td>-</td>
<td>$8,141.63</td>
<td>$0.00</td>
<td>-</td>
<td>$8,141.63</td>
<td>-</td>
<td>$8,141.63</td>
</tr>
<tr>
<td>Parachute</td>
<td>$0.00</td>
<td>$0.00</td>
<td>-</td>
<td>$0.00</td>
<td>$0.00</td>
<td>-</td>
<td>$0.00</td>
<td>-</td>
<td>$0.00</td>
</tr>
<tr>
<td>Rifle</td>
<td>$0.00</td>
<td>$109,557.99</td>
<td>-</td>
<td>$109,557.99</td>
<td>$0.00</td>
<td>-</td>
<td>$109,557.99</td>
<td>-</td>
<td>$109,557.99</td>
</tr>
<tr>
<td>Garfield County</td>
<td>$127,157.00</td>
<td>$370,011.00</td>
<td>$486.00</td>
<td>$497,654.00</td>
<td>$127,157.00</td>
<td>$370,011.00</td>
<td>$486.00</td>
<td>$497,654.00</td>
<td>$615,353.62</td>
</tr>
</tbody>
</table>

| Totals         | $127,157.00                  | $638,710.00                      | 486.00                        | $766,353.00                | $150,998.38                           | $127,157.00                      | $487,710.62                        | 486.00                                | $615,353.62                    |

*Use Costs per July 2015 - June 2016*
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed effective January 1, 2017.

ATTEST:

TOWN OF CARBONDALE, COLORADO

By: __________________________

Dan Richardson, Mayor

Date: __________________________

ATTEST:

COLORADO MOUNTAIN COLLEGE

By: __________________________

Date: __________________________

ATTEST:

BOARD OF COUNTY COMMISSIONERS
GARFIELD COUNTY, COLORADO and
BOARD OF SOCIAL SERVICES

By: __________________________

John Martin, Chairman

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

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Renewal for White House Pizza

Date: February 6, 2017

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

Kurt Korn - Owner / Manager

I have found no liquor violation records that would cause me to recommend denial of this liquor license renewal. The State Liquor Division conducted compliance checks in March 2016 and White House Pizza passed that compliance check.

I recommend the approval for the liquor license renewal.
Retail Liquor or 3.2 License Renewal Application

Please verify & update all information below

<table>
<thead>
<tr>
<th>Licensee Name</th>
<th>Doing Business As Name (DBA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pepperoni Pizza Kitchen</td>
<td>White House Pizza</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liquor License #</th>
<th>License Type</th>
<th>Sales Tax License #</th>
<th>Expiration Date</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>801 Main Court Carbondale CO 81623</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>801 Main Court Carbondale CO 81623</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mailing Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>801 Main Court Carbondale CO 81623</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operating Manager</th>
<th>Date of Birth</th>
<th>Home Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kurt Korn</td>
<td>21634 GWS CO 81601</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>970-274-1754</td>
</tr>
</tbody>
</table>

1. Do you have legal possession of the premises at the street address above? Yes No
   - Are the premises owned or rented? Yes No
   - If owned, expiration date of lease

2. 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 owners, directors, managing members or general partners)? Yes No
   - If yes, attach a detailed explanation.

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

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

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

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

<table>
<thead>
<tr>
<th>Type or Print Name of Applicant/Authorized Agent of Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maria Korn</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maria Korn</td>
<td>2-1-17</td>
</tr>
</tbody>
</table>

Report & Approval of City or County Licensing Authority
The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S., and Liquor Rules.

Therefore this application is approved.

<table>
<thead>
<tr>
<th>Local Licensing Authority For</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Attest</th>
</tr>
</thead>
</table>
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: 2/14/17

TITLE: Public Hearing for Black Dog Valley, LLC’s Retail and Medical Marijuana Cultivation Renewals

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: Black Dog Valley, LLC Retail and Medical Marijuana Cultivation Applications, Lease, Certificate of Good Standing, Public Hearing Affidavit of Mailing

BACKGROUND: Black Dog Valley, LLC, received their retail and medical cultivation licenses on January 13, 2016; the licenses expired on January 13, 2017. However, the applicant submitted the renewal applications to the town clerk on January 10, 2017. The Applicant/Agent Steven Garcia resides in the 81623 area and has lived in Colorado for at least two (2) years. He owns 100% of Black Dog Valley, LLC.

The Municipal Code requires a public hearing be held for the first two consecutive years a marijuana facility is in business. Since they are beginning their second year in business a public hearing is required.

Black Dog, LLC has not begun growing marijuana. Thus, the requirement to provide 30% of the energy they consume in the form of renewable energy is not applicable at this time. The applicant has been informed that if the Board grants his license renewals and he does not begin operation within one year from the date of issuance of the licenses the licenses will not be renewed in 2018.

The Applicant mailed the public hearing notices to businesses/residences located within 300 feet on January 19, 2017. Staff published the public hearing notices in the January 19, 2017 Sopris Sun.

FINANCIAL: All fees have been paid.

DISCUSSION: The Board may wish to determine if the retail marijuana cultivation application is complete, and meets all of the criteria set forth in Ordinance No. 11, Series of 2013, and the Colorado Retail Marijuana Code as adopted.

RECOMMENDATION: Town staff recommends that the Board of Trustees move to approve the Retail and Medical Marijuana Cultivation Renewal Applications for Black Dog, LLC

Prepared By: Cathy Derby, Town

Jay Harrington, Town Manager
Renewal

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)
BLACK DOG CATTLE, LLC

Trade Name (DBA)

Business Phone: 970-981-1577

Street Address: 195 Buggy Circle

Mailing Address: Carbondale

Home Address: steve_garcia@yahoo.com

Operating Manager
Steven Garcia

1. Do you have legal possession of the premises at the street address above? Yes ☐ No ☐
   Is the premises owned or rented? Owner ☐ Rent ☐ If rented, expiration date of lease ____________

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

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

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

5. Since the date of 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: [Signature]
Date: 11/10/17
Title: Owner

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

Affidavit: [Signature]
Title: [Title]
Date: [Date]
<table>
<thead>
<tr>
<th>Street Address</th>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>818 Lakeside Drive</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>2602 Champ Road Circle</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>78 Black Bear Lane</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>149 Meadow Court</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>1230 Willow Trail</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>1000 Colores Way, Suite 0</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>2249 Deers Way</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>652 Village View Road</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>380 E Main Street, Suite 1</td>
<td>ASPEN, CO</td>
</tr>
<tr>
<td>380 E Main Street, Suite 2</td>
<td>ASPEN, CO</td>
</tr>
<tr>
<td>990 12th Street</td>
<td>ASPEN, CO</td>
</tr>
<tr>
<td>368 Buck Board Court</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>132 Park Avenue</td>
<td>CARBONDALE, CO</td>
</tr>
<tr>
<td>366 Woods Road</td>
<td>ASPEN, CO</td>
</tr>
<tr>
<td>346 Woods Road</td>
<td>ASPEN, CO</td>
</tr>
</tbody>
</table>
ATTACHMENT J

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

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

$ 1,000
$ 500
TOTAL DUE $ 1,500

Applicant is renewing a:
☐ Store
☐ Cultivation
☐ Manufactured Infused Products (MIP)
☐ Lab
☐ Other (Please Specify)

Licensee Name: [ie. Corporation Name]
Beechwood Valley, LLC

Street Address:
295 Buggy Circle

Mailine Address:
295 Buggy Circle

Operating Manager:
Steven Martin

Trade Name (DBA):

Business Phone: 970-948-1577

Email address: steve.garcia@yahoo.com

Home Address:

Phone:

1. Do you have legal possession of the premises at the street address above? Yes ☐ No ☐
Is the premises owned or rented? Owned ☐ Rented ☐ If rented, expiration date of lease 10/31/2018

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

3. Since the date of filing of the last annual application, has there been any change in the financial interest (loans, etc.) or organizational structure (change of officers, managing members, etc.)? If yes, explain in detail and provide documentation.

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

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 ☐

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.

Authoried Signature: Date: Title:

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

THIS APPLICATION HAS BEEN: ☐ Approved ☐ Denied

Authorized Signature: Date:

Attest: Title: Date:
COMMERCIAL LEASE

THIS COMMERCIAL LEASE (this "Lease") is made and entered into as of the 30th day of October, 2015 (the "Effective Date"), by and between 695 Buggy Circle, LLC, a Colorado limited liability company ("Landlord") and Black Dog Valley, LLC ("Tenant").

WHEREAS, Landlord is the owner of certain commercial real property located at 695 Buggy Circle, Carbondale, Colorado 81623 (the "Premises").

WHEREAS, Tenant desires to lease the Premises from Landlord, and Landlord is willing to lease the Premises to Tenant pursuant to the terms and conditions set forth in this Lease.

NOW THEREFORE, in consideration of payment of rent and the performance of the covenants and promises of Tenant all as set forth below, Landlord and Tenant hereby agree as follows:

I. GOVERNMENT APPROVALS

Landlord and Tenant acknowledge that Tenant is pursuing licensing and other approvals ("Government Approvals") through the State of Colorado, Marijuana Enforcement Division (the "MED") and the Town of Carbondale (the "Town") to operate a marijuana grow operation in the Premises (the "Business"). As set forth below, this Lease is contingent upon Tenant obtaining (and maintaining in good standing) all necessary Government Approvals applicable to the Business.

II. LEASED PREMISES AND TERM

In consideration of the mutual covenants and agreements set forth herein, Landlord does hereby lease to Tenant, and Tenant does hereby rent from Landlord the Premises, commencing on October 30, 2015 (the "Commencement Date"), for a term thirty-six (36) months and expiring on October 31, 2018 (the "Lease Term"). Tenant shall have an option to extend the Lease Term for one twenty-four (24) month period (the "Option Period"). Rent for the first year of the Option Period shall be subject to a 10% increase, and rent for the second year of the Option Period shall be subject to a 5% increase. Landlord reserves the right to further increase rent in each year of the Option Period at a reasonable rate determined by Landlord and based on market conditions. Tenant shall give Landlord written notice to exercise the option not less than six (6) months and no more than nine (9) months prior to expiration of the Lease Term. The written notice from Tenant shall serve as an extension of the Lease Term and all terms herein. This option is personal to Tenant and shall not be sold or assigned without the prior written consent of Landlord.

In the event that Tenant is unable to obtain Government Approvals on or before March 1, 2016, either Tenant or Landlord may elect to terminate this Lease by giving the other party thirty (30) days written notice to the other party. Unless, and until, Tenant obtains Government Approvals, Tenant shall not begin operation of the Business, provided that, Tenant may begin Tenant Improvement Work (as defined herein) and any other activities permitted in preparation
of starting operations for the Business, subject always to applicable law.

III. RENT

The total rent for the Lease Term shall be $688,508.00, payable as follows: (i) equal monthly installments in months one through twelve (i.e., year one) of $18,200.00; (ii) equal monthly installments in months thirteen through twenty-four (i.e., year two) of $19,110.00; and (iii) equal monthly installments in months twenty-five through thirty-six (i.e., year three) of $20,065.50. Simultaneously with execution of this Lease, Tenant shall deliver to Landlord the first month’s rent in the amount of $18,200.00, last month’s rent in the amount of $20,065.50 and the Security Deposit (defined below). All rent payments shall be payable, in advance, on or before the first day of each calendar month by check to the order of Landlord at the following mailing address: c/o Feder Bookkeeping, P.O. Box 74, Carbondale, CO 81623. Rent payments provided for hereunder shall be deemed timely if actually received by Landlord at the address above or post-marked on or before the first day of the month. In addition Tenant covenants and agrees to pay all taxes, insurance and maintenance costs as further set forth herein.

In the event that any payment of rent is not received by Landlord within five (5) days after the due date such payment is due, a late charge in the amount of $25.00 per day for each day that rent is mailed or made after such due date shall be paid by Tenant. In addition, interest shall accrue on all past rents or other sums not timely paid at the rate of ten percent (10%) per annum. If Tenant makes any payment to Landlord by check that is returned for insufficient funds, a $25.00 “bad check” fee shall be paid by Tenant. Tenant agrees that all of the foregoing charges are reasonable in order to defray Landlord’s administrative costs and are not a penalty. Should any Tenant check be returned for insufficient funds twice during the Lease Term, Landlord shall not be required to accept any more checks from Tenant, and thereafter all rent payments must be in the form of cash (if personally delivered) or cashier’s check drawn on a local commercial bank. To the extent Tenant is required to pay any other charges to Landlord under this Lease, such charges shall also be considered rent and, unless otherwise provided herein, shall be payable together with the next installment of monthly rent. If not so paid, Landlord shall have the same rights or remedies as with the failure to pay timely any monthly installments of rent.

Landlord’s acceptance of any late payment by Tenant shall not constitute a waiver of Tenant’s default caused by such late payment or prohibit Landlord from exercising any of its other rights or remedies under this Lease or by law. Landlord’s failure to demand damage reimbursement, late payment charges or other charge or obligations due by Tenant to Landlord shall not be deemed a waiver of such Landlord’s right to demand such payments.

IV. SECURITY DEPOSIT

Upon execution of this Lease, Tenant shall deposit with Landlord the sum of twenty thousand sixty five and 50/100 ($20,065.50) (the “Security Deposit”) as set forth herein as security for the performance by Tenant of all of Tenant’s covenants and obligations under this Lease, it being expressly understood that such Security Deposit is not an advance payment of rent or a measure of Landlord’s damages in case of default by Tenant. The Security Deposit shall be held by Landlord in a separate account. The Security Deposit shall not bear interest. Landlord shall have the right to retain all or any part of the Security Deposit at the expiration of the Lease.
Term or earlier termination of the Lease in full or partial satisfaction, as the case may be, of the covenants and obligations of Tenant under this Lease, including, but not limited to, unpaid rent, damages to the Premises, cleaning, and attorneys’ fees or other expenses or obligations chargeable to Tenant. Within sixty (60) days following the expiration of the Lease Term or sooner termination of this Lease, Landlord shall return to Tenant any portion of the Security Deposit not so retained by Landlord. The Security Deposit shall not be construed as a provision for liquidated damages, and retention by Landlord of all or any part shall not affect Landlord's right to obtain full performance of the obligations herein imposed upon Tenant.

In the event of the failure of Tenant to keep and perform any of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant, then Landlord at its option may apply the Security Deposit, or so much thereof as may be necessary, to compensate Landlord for loss or damage suffered by Landlord due to such failure on the part of Tenant. Should Landlord so apply the Security Deposit or any portion thereof during the Lease Term, Tenant shall, within five days after the written demand of Landlord, remit to Landlord sufficient funds to restore the Security Deposit to the original amount deposited.

V. USE OF PREMISES

A. Authorized Use. Tenant shall use and occupy the Premises only for the Business (i.e., marijuana grow operation) and in a manner authorized and consistent with the laws and regulations of the Town and the MED. Tenant will not use the Premises to sell or consume retail marijuana products.

B. Covenants Regarding Use.

(i) Once Government Approvals have been obtained by Tenant to operate the Business, Tenant shall maintain and adhere to, at all times throughout this Lease, Governmental Approvals applicable to the Business.

(ii) Tenant shall use and maintain the Premises in a careful, safe, and proper manner, free of any nuisance and hazardous activity.

(iii) Tenant shall at all times and at its expense maintain compliance with the Colorado Constitution and Specifically Article XVIII: Section 16, and all Statutes and Regulations comprised of C.R.S. §§ 12-43.4-101 et seq.

(iv) Tenant shall at all times and at its expense based on a commercially reasonable standard, keep the Premises and every aspect thereof in a good, safe, clean, and attractive condition, free from dirt, rubbish, snow, ice, obstructions, and other unsightly or hazardous conditions, and free from objectionable noise, odors, and nuisances.

(v) Tenant shall not use or occupy the Premises or permit the Premises to be used or occupied for any purpose prohibited by law, ordinance, or governmental regulation now in effect or which hereafter may be in effect; for any purpose deemed by Landlord to be disreputable or hazardous; or in such a manner as to constitute a nuisance of any kind, based on a commercially reasonable standard.

(vi) Tenant shall not do or permit anything to be done in or about the Premises or bring
or keep anything therein which will in any way increase the rate of fire insurance upon the property wherein the Premises are situated. Tenant shall, at its sole cost and expense, comply with any and all requirements of any insurance company necessary for the maintenance of reasonable fire and public liability insurance covering the property and/or the Premises.

(vii) No fire, auction, going out of business, or bankruptcy sales may be conducted on or about the Premises without Landlord's prior written consent.

(viii) Tenant shall not suffer, permit, or commit any waste or damage on or to the Premises or any part thereof.

(ix) Tenant shall be responsible to reimburse Landlord the fair market value in the event of any seizure of any property belonging to Landlord, in the event of any civil or criminal enforcement action as a direct result of Tenant's occupancy of the Premises. In addition, in the event of any civil or criminal enforcement action, including but not limited to civil forfeiture actions, by law enforcement, prosecution or other lawful authority, Tenant agrees to defend, indemnify and hold harmless Landlord.

(x) Tenant shall promptly comply with all laws, rules, ordinances, orders, directions, regulations and requirements of state, county and municipal authorities, now in force or which may hereafter be in force, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation, cleanliness, safety or alteration of the Premises, including the installation of such additional facilities as may be required for the conduct and continuance of Tenant's business on the Premises, all at Tenant's sole cost and expense.

VI. CONDITION OF THE PREMISES

Tenant acknowledges that Tenant has inspected the Premises and accepts the Premises in its present condition, "as is", with the exception of the Tenant Improvement Work set forth in Section VII(C) below. Tenant has undertaken and made such investigations as are necessary to satisfy Tenant as to the condition of the Premises and that the Premises are suitable for Tenant's intended use. Tenant represents that Tenant has not relied and is not relying on any representations or statements of Landlord regarding the condition of the Premises, and Landlord has made no promise to Tenant to decorate, alter, or improve the Premises either before or after the execution of this Lease. The parties hereto affirm that, except as otherwise provided in this Lease, Landlord has made no representations or warranties to Tenant with respect to the condition of the Premises or the suitability of the Premises for the conduct of Tenant's business therein.

VII. MAINTENANCE, REPAIRS, AND ALTERATIONS

A. Tenant's Repairs, Maintenance and Alterations. Tenant agrees to keep and maintain the Premises and each and every aspect thereof, including without limitation non-structural elements and improvements, interior walls, floors, ceilings, utility systems and components, glass, doors, fixtures, leasehold improvements, equipment, and other personality, in
a clean, safe and attractive condition and in good working order and repair (including reasonable
periodic painting as determined by Landlord), at Tenant's sole cost and expense. Tenant shall
maintain all plumbing fixtures (e.g., sinks, toilets, and drains) and all electrical fixtures within
the Premises to the plumbing and electrical stub-outs. Tenant shall make all repairs to the
Premises that are made necessary as a result of any misuse or neglect by Tenant or by its
employees, agents or invitees. Other than as set forth in Section VII(B), Landlord shall have
no obligation whatsoever to alter, remodel, improve, repair, decorate or paint the Premises or
any part thereof. Tenant agrees that any repairs to or replacements of properties of any kind
within or upon the Premises shall be at least equal in quality to the original properties repaired
or replaced and that all work shall be done in a good workmanlike manner in full compliance
with all applicable codes, ordinances, and regulations. In the event Tenant fails or refuses to
perform any of such covenants within a twenty (20) day period following written notice of the
need therefor from Landlord to Tenant, Tenant shall be in default under this Lease, and
Landlord shall have the right but never the obligation to accomplish such maintenance or repair
and to add the cost thereof as additional rent to the next installment of rent which becomes
due hereunder. Upon the expiration or other termination of this Lease, Tenant shall deliver up
the Premises to Landlord in good order and condition, ordinary wear and tear from the
reasonable use thereof excepted.

B. Landlord's Repair and Maintenance. Landlord shall maintain in good condition
and repair: the roof, exterior walls, and structural portions of the building in which the Premises
is located; plumbing to the point it reaches the Premises; HVAC to the stub in; and electrical
systems to the main electric panel, unless the need for such maintenance or repairs is caused in
part or in whole by the act, omission, neglect, or fault of Tenant, its employees, agents, licensees,
invitees, or approved subtenants, in which case Tenant shall pay to Landlord the reasonable cost
of such maintenance and repairs. Landlord shall not be liable for any failure to make any such
repairs or to perform any maintenance unless Landlord has failed or refused to commence such
repairs or maintenance for at least twenty (20) days after Tenant provides Landlord written
notice of the need for such repairs or maintenance. Notwithstanding the preceding, in the event
of an emergency, repairs shall be commenced as soon as reasonably practicable following
Landlord’s receipt of notice (which may be verbal) of such emergency. Tenant covenants and
agrees to notify Landlord promptly of any accident to or defect in the plumbing, water pipes, fire
suppression system (if any), heating, ventilating and air conditioning system, electrical system
ducts, wires, ducts, and other parts of the building, and of any injury or damage to the
Premises or the building, however caused. Notwithstanding the foregoing provisions of this
Section VII(B) or any other provisions of this Lease, Landlord shall not be responsible for any
alterations, additions, or improvements done by Tenant to the Premises or any portion thereof.

C. Alterations. Tenant shall have the right to make improvements to the Premises,
including, but not limited to, finishing of the walls and floors, painting, installation of shelving,
lighting and other fixtures (the “Tenant Improvement Work”). Prior to commencement of any
Tenant Improvement Work, Tenant shall first provide Landlord, for Landlord’s approval, which
shall not be unreasonably withheld, plans and specifications for the Tenant Improvement Work,
the anticipated cost thereof, and the names and addresses of suppliers of materials and labor for
such Tenant Improvement Work. Landlord’s approval shall create no responsibility or liability
on the part of Landlord for the completeness or design sufficiency of such plans, specifications,
or drawings or for the compliance thereof with all laws, rules, and regulations of governmental
authorities. No Tenant Improvement Work shall be undertaken unless and until Landlord has approved the proposed plans in writing and Tenant has posted notice on the Premises that Landlord is not responsible for payment and the Premises is not subject to mechanic’s lien for the Tenant Improvement Work. Tenant shall promptly pay the full cost and expense of all materials used and work performed on the Premises. Any and all Tenant Improvement Work shall be done in a good workmanlike manner in full compliance with all applicable codes, ordinances, and regulations, and all materials and fixtures used in such Tenant Improvement Work shall be of good quality. Unless otherwise agreed by the parties in advance and in writing, any Tenant Improvement Work made by Tenant upon the Premises shall remain as the property of Landlord after expiration or other termination of the Lease, without compensation to Tenant; provided, however, that Landlord, at its option, may require Tenant to remove such Tenant Improvement Work upon the expiration or other termination of the Lease and to repair any resulting damage to the Premises, all at Tenant’s sole cost and expense.

D. Tenant Liens. Tenant shall not suffer any mechanics’ or materialmen’s lien to be filed against the Premises or any part thereof by reason of work, labor, services, or materials performed or furnished to Tenant or anyone holding any part of the Premises under Tenant. Tenant agrees that it will make full and prompt payment of all sums necessary to pay for the costs of all maintenance, repairs, Alterations, and other work done by or for the benefit of Tenant on or to the Premises. Tenant further agrees to indemnify and hold harmless Landlord from and against any and all costs, expenses, and liabilities (including reasonable attorney fees and costs) incurred by Landlord for any and all construction, mechanics’, materialmen’s, laborers’, and other statutory or common law liens arising out of or from such work, or the cost thereof, which may be asserted, claimed or charged against all or any part of the Premises or the property in which the Premises is located. Tenant’s obligations to observe and perform any of the provisions of this section shall survive the expiration of the Lease or the earlier termination thereof.

VIII. UTILITIES

Tenant shall be responsible for and pay the cost of all utilities and services to the Premises, including, but not limited to, water, sewer, gas, electric, trash collection, snow removal and any other utility services desired by Tenant (such as telephone, internet or television).

Landlord shall not be liable to Tenant in damages or otherwise if any utilities or services, whether or not furnished by Landlord, are interrupted or terminated because of installation, maintenance, repairs, or improvements, or any other cause beyond Landlord’s reasonable control; nor shall any such interruption or termination relieve Tenant of any of its obligations under this Lease.

IX. INSURANCE

A. Liability Insurance. Tenant agrees at its own expense to maintain in full force during the Lease Term policies of comprehensive insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Colorado which insure both Tenant and Landlord against any and all liability or claims of liability for injury to persons and/or property, and death of any person or persons, occurring in or about the Premises.
or otherwise arising in connection with Tenant’s use or occupancy of the Premises. Each policy shall be approved as to form and insurance company by Landlord and Tenant’s liability policy must be written on an occurrence basis. The liability limits under such insurance shall not be less than $2,000,000.00 per occurrence for bodily injury, death and/or property damage and not less than $4,000,000.00 aggregate for any one policy period. If in the considered opinion of Landlord’s insurance advisers, the amount of such coverage is not adequate, Tenant agrees to increase such coverage to such commercially reasonable limits as Landlord’s advisers shall deem adequate. Tenant shall also maintain and keep in force plate glass insurance coverage on all exterior plate glass in the Premises. The policies shall name Landlord as an additional insured party and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord thirty (30) days’ prior written notice. Copies of the policies or certificates of insurance shall be delivered to Landlord, and renewals thereof shall be delivered to Landlord at least 30 days prior to the expiration of the original policy term. If Tenant fails to comply with this paragraph, Landlord shall have the right and option, but not the obligation, to obtain the said insurance and pay the premiums therefor, and in such event the entire amount of such premiums shall be immediately paid by Tenant to Landlord as additional rent.

B. Other Tenant Insurance. Tenant shall maintain during the Lease Term grow insurance and coverage for the Business. Tenant further agrees that it will at all times during the Lease Term maintain in full force and effect on all its leasehold improvements, furniture, fixtures, equipment, and other personal property in or about the Premises a policy or policies of fire and casualty insurance with the standard extended coverage endorsement attached to the extent of at least one hundred percent (100%) of their replacement cost, the proceeds of which will, so long as this Lease is in effect, be used for the repair or replacement of leasehold improvements, furnishings, fixtures, and equipment so insured. It is understood that Landlord shall have no interest in this insurance.

C. Landlord Insurance. Landlord agrees to maintain liability and property insurance on the building in which the Premises is located in an amount determined by Landlord to be reasonable. Landlord is not responsible for insuring Tenant or Tenant’s leasehold improvements, furniture, fixtures, equipment, and other personal property against injury, loss, or damage due to theft, vandalism, fire, water, rain, criminal or negligent acts of others, or any other cause.

D. Waiver of Claims and Subrogation. Landlord and Tenant each waives its right of subrogation against the other for any reason whatsoever, and any insurance policies required herein shall contain an express waiver of any right of subrogation by the insurer against the other.

X. INDEMNITY

It is specifically understood by Tenant that the insurance coverages and policy limits provided for in Article IX above shall in no way limit or otherwise affect the liability or responsibility of Tenant hereunder. Tenant agrees to and shall save, hold and keep harmless, and indemnify and defend Landlord from and against any and all expenses, costs, judgments, awards, damages, liabilities, or claims (including reasonable attorney fees and costs) arising from or in connection with: (i) any loss or damage to property, injury or death to persons, or other
occurrence in or upon the Premises; (ii) any acts or omissions or negligence of Tenant, its agents, employees, guests, invitees, customers, licensees, contractors, subcontractors, and subtenants which occur in or relate to the Premises or other parts of Landlord's building; (iii) any failure by Tenant to perform or comply with any of the covenants or agreements of Tenant contained in this Lease; (iv) any failure of Tenant or its employees, agents, contractors, or subcontractors to comply with any governmental law, ordinance, or regulation; (v) any mechanic's lien or security interest filed against the Premises or Landlord's building arising out of work performed by or on behalf of Tenant; or (vi) any other occurrence, cause, or reason whatsoever arising out of, or in any way connected with, Tenant's use or occupancy of the Premises or the conduct of Tenant's business. In case Landlord shall without fault on its part be made a party to any litigation commenced by or against Tenant, then Tenant agrees to and shall indemnify and hold Landlord harmless from and shall promptly pay or reimburse Landlord for all costs, expenses, and reasonable attorney fees incurred or paid by Landlord in connection with such litigation. This indemnification section shall survive the expiration or other termination of this Lease.

XI. ADDITIONAL COVENANTS AND OBLIGATIONS OF TENANT

In addition to all other covenants, obligations, and agreements of Tenant set forth in this Lease, Tenant hereby covenants with Landlord as follows:

(i) Tenant shall maintain and keep the sidewalks for the Premises and the parking spaces at the front and side of the Premises, free of snow, ice, and debris.

(ii) Unless otherwise specified in this Lease, Tenant shall not make any changes or alterations to the exterior of the Premises, excluding signage, or the building in which the Premises is located – including without limitation the lighting, awning, windows, and signs – without the prior written consent of Landlord, such consent shall not be unreasonably withheld. Any such change authorized by Landlord shall be made by Tenant at its sole cost and expense.

(iii) Tenant shall not change the locks or install additional or different locks on any doors or windows of the Premises without the prior written permission of Landlord. If Landlord's permission is given, Tenant must give a set of new keys to Landlord. If Landlord does not have set of key(s) and an emergency arises requiring entry into the Premises, Tenant will be responsible for any damage to the door and lock and for any other damage to the Premises resulting from such failure to provide keys.

(iv) Tenant shall not install any drapes, blinds, shades, or other coverings of exterior windows or doors without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

(v) Notwithstanding any such consent by Landlord, Tenant shall be solely responsible, at its sole cost and expense, to comply with all Town codes, ordinances, and regulations regarding signs. All signs installed by Tenant shall be kept in good condition and repair at all times. Tenant shall remove all signs at the expiration or other termination of this Lease, and any damage caused by such removal shall be repaired by Tenant at its expense. Landlord agrees to fully cooperate with reasonable signage related request(s).

(vi) Tenant shall not install any equipment in the Premises that will exceed or overload the
capacity of any utility facilities serving Landlord’s building. If any equipment installed by Tenant requires additional utility facilities, plans and specifications for such additional facilities shall be subject to the prior review and written approval of Landlord and, if approved, the additional utility facilities shall be installed at Tenant’s sole cost and expense. Tenant shall be responsible to pay for one hundred percent (100%) of the regular utility or service charges associated with such additional utility facilities.

(vii) Tenant shall not suffer the Premises or any part thereof, including without limitation the walls or floors, to be endangered by overloading.

(viii) Tenant shall not permit any person to remain overnight in the Premises or otherwise reside in the Premises.

XII. QUIET ENJOYMENT

Tenant, upon payment of all rent herein required and upon performance of all of Tenant’s other covenants and agreements contained in this Lease, shall and may peacefully and quietly hold and enjoy the Premises for the Lease Term.

XIII. ASSIGNMENT AND SUBLETTING

A. By Tenant. Tenant shall not assign, transfer, or encumber this Lease or any interest therein or sublet the Premises or any part thereof or grant any license, concession or other right to occupy any portion of the Premises without the prior written consent of Landlord, and such consent shall not be unreasonably withheld. If Tenant is a corporation, limited liability company, or other entity that is not a natural person, any change in ownership of more than thirty percent (30%) (over any period) of the ownership interest in Tenant shall be deemed an assignment of this Lease. Consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for Landlord’s consent to any subsequent assignment or subletting. Tenant, Guarantors, and any assignee of Tenant’s obligations under this Lease shall at all times remain fully responsible and liable for the payment of rent and for compliance with all of Tenant’s other obligations, covenants, and agreements under this Lease throughout the Lease Term.

B. By Landlord. In the event of the transfer and assignment by Landlord of its interest in this Lease and in the Premises to a person expressly assuming Landlord’s obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor-in-interest of Landlord for performance of such obligations. The Security Deposit and any other non refundable security given by Tenant to secure performance of Tenant’s obligations hereunder may be assigned and transferred by Landlord to such successor-in-interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

XIV. LANDLORD ACCESS

A. Landlord and its authorized representatives shall have the right to enter upon the Premises at all reasonable hours (and in emergencies, at all times) to inspect the same, to make
repairs, improvements or maintenance to the Premises, to protect Landlord's rights, and for any other lawful purpose. Except in emergencies, Landlord agrees to provide Tenant with 24 hours' advance verbal notice whenever it deems it necessary to enter upon the Premises.

B. During the Lease Term, Landlord shall have the right of entry into the Premises for the purpose of showing the Premises to prospective purchasers of Landlord's building.

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

XV. DAMAGE AND DESTRUCTION

A. Repair or Restoration. During the Lease Term, if any of the Premises is damaged or destroyed by fire, flood, storm, civil commotion, or other casualty not caused by the negligence or willful act or omission of Tenant, its agents, employees, or invitees, Landlord shall, except as provided in subsection C below, diligently repair or rebuild those portions damaged, excepting any Alterations made by Tenant, to substantially the same condition as existed on the Commencement Date. Tenant shall be solely responsible for the cost to repair or replace of any Tenant's Alterations, leasehold improvements, furniture, fixtures, equipment, and other personal property. Tenant shall not be entitled to any compensation or damages from Landlord for the loss of the use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, destruction, repair, or restoration.

B. Abatement of Rent. During such period of repair or rebuilding, if continuation of Tenant's ability to do business is materially interfered with, then Tenant's rent shall be wholly or partially abated, in proportion to the extent that Tenant is deprived of the use of the Premises, from the date the damage or destruction occurred until repair or restoration is substantially complete or until Tenant's business is totally or partially resumed, whichever first occurs. Notwithstanding the foregoing, if the damage or destruction is caused by the negligence or willful act or omission of Tenant, its agents, employees, or invitees, there shall be no abatement of rent.

C. Option to Terminate. If the Premises is damaged or destroyed to the extent that is based on a commercially reasonable judgment, the Premises cannot be reasonably or substantially repaired or restored within ninety (90) days after the damage or destruction occurred, either party shall have the option to terminate this Lease by giving written notice to the other party within thirty (30) days of Landlord's determination. Landlord shall, within fifteen (15) days following the written demand of Tenant, deliver to Tenant written notice of Landlord's determination as to whether or not the Premises can be repaired or restored as set forth herein. If the Lease is terminated pursuant to the terms of this Section, Tenant shall promptly surrender the Premises to Landlord, and all rent due shall then be accounted for by and between Landlord and Tenant up to the date of such termination, with Tenant paying rentals up to the termination date and Landlord refunding any rentals collected beyond such date, as reduced by the proportionate amount, if any, that rent was abated following the damage or destruction.

XVI. EMINENT DOMAIN
In the event that the Premises are taken in whole or in part by condemnation proceedings or eminent domain, or in the event that Landlord (and Tenant if necessary) shall convey all or a part of the Premises in avoidance or in settlement of such condemnation proceedings or threat thereof (either of which is referred to hereinafter as "the taking"), Landlord and Tenant herein agree as follows. If such taking shall render the remainder of the Premises unsuitable for the use to which it has been put immediately prior to such taking, then at Tenant’s option this Lease shall terminate. Such option must be exercised by written notice of termination given to Landlord no later than 30 days after the date physical possession is taken by the condemning authority, failing which this Lease shall continue in full force and effect as to the remainder of the Premises. All compensation awarded for any taking (or the proceeds of any private sale in lieu thereof) of the real property in which the Premises is located, or any part thereof (including without limitation the Premises and/or any common areas) shall be the sole property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord; provided, however, that Landlord shall have no interest in any separate award made to Tenant for loss of business, for relocation, or for any taking of Tenant’s leasehold improvements and trade fixtures and other personal property.

**XVII. WAIVER**

Unless due to the gross negligence or willful misconduct of Landlord, Landlord shall not be liable for injury or damage, and Tenant waives all claims against Landlord for injury or damage, including but not limited to consequential damages to person, property or otherwise, sustained by Tenant or any person claiming through Tenant resulting from any accident of occurrence in or upon any part of the Premises, including but not limited to claims for injury or damage resulting from: (a) Landlord’s failure to keep the Premises or any part thereof in repair if Landlord does not have knowledge of the disrepair; (b) fire, wind, water, or other natural element; (c) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (d) broken glass; (e) the backing up of any sewer pipe or downspout; (f) the bursting, leaking or running of any tank, tub, washtub, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Premises; (g) the escape of steam or hot water, (h) water, snow, or ice upon the Premises; (i) the falling of any fixture; (j) damage to or loss by theft or otherwise of property of Tenant or others; and (k) acts or omissions of persons on the Premises or any other persons. All property of Tenant kept in the Premises is kept at Tenant’s risk only, and Tenant shall save Landlord harmless from claims arising out of damage to the same, including subrogation claims by Tenant’s insurance carrier. This waiver section shall survive the expiration or other termination of this Lease.

**XVIII. GUARANTY OF LEASE**

This Lease is being signed and guaranteed by Josh Meacham and Steve Garcia (collectively, “Guarantors”), whom are associated with Tenant. Guarantors do hereby, unconditionally, irrevocably, jointly and severally guarantee the prompt and faithful performance of all of the terms and provisions of this Lease by Tenant and any assignee of Tenant, including, but not limited to, the payment of all installments of rent and other sums due to Landlord under
this Lease. Guarantors hereby waive each and every notice under this Lease or to which Guarantors may be entitled under this Lease, or otherwise, and expressly consents to any extension of time, leniency, modification, waiver, forbearance, or any change which may be made in any term and condition of this Lease, and no such change, modification, extension, waiver or forbearance shall release Guarantors from any liability or obligation hereby incurred or assumed. The liability of Guarantors hereunder shall in no way be affected by, and Guarantors expressly waives any defenses that may arise by reason of, (a) the release or discharge of Tenant in any creditors, receivership, bankruptcy or other proceedings; (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant’s said liability under this Lease, resulting from the operation of any present or future provision of the Bankruptcy Code or other statute or from the decision in any court; (c) the rejection or disaffirmance of this Lease in any such proceedings; (d) the modification, assignment or transfer of this Lease by Tenant; (e) any disability or other defense of Tenant; or (f) the cessation from any cause whatsoever of the liability of Tenant. It is specifically understood and agreed that, in the event of a default by Tenant under the terms and provisions of this Lease, Landlord shall be entitled to commence any action or proceeding against Guarantors (or either of them) without first commencing any action or otherwise proceeding against Tenant or otherwise exhausting any or all of its available remedies against Tenant. In the event that any action be commenced by Landlord to enforce the provisions of the Guaranty contained herein, Landlord shall be entitled, if it shall prevail in any such action or proceeding, to recover from Guarantors (or either of them) jointly and severally all reasonable costs incurred in connection therewith, including reasonable attorneys’ fees.

\[\text{Steve Garcia}\]
\[\text{Tenant Initial}\]
\[\text{Landlord Initial}\]

XIX. DEFAULT / REMEDIES

A. Default by Tenant. Tenant’s rights under this Lease depend on the performance and keeping of the covenants, agreements, duties, and obligations of Tenant set forth in this Lease. Tenant is in default of this Lease if Tenant abandons the Premises, fails to pay when due any rent or other sum payable under this Lease, or if Tenant violates any other term, condition, covenant, or agreement of this Lease, including, but not limited to, failure to comply with any Government Approvals for the Business.

B. Landlord’s Remedies. In the event that: (a) Tenant fails to make any rental payment or any other payment required by this Lease within three (3) days after Landlord’s notice of nonpayment provided pursuant to Colorado Revised Statutes; (b) Tenant abandons the Premises; or (c) Tenant, after having received written notice from Landlord specifically describing the breach by Tenant of any provision of this Lease, except for rent or other payments, fails to cure said breach within ten (10) days after the date of said notice, then Landlord shall have the following rights and remedies in addition to all other rights and remedies provided in this Lease or by law:

1. Landlord may terminate this Lease and all rights of Tenant in and to the Premises, in which event all of Tenant’s payments and other obligations due under this Lease

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up to the date of such termination shall be paid and performed by Tenant, and the leasehold estate hereby created shall cease to exist. Upon the termination of this Lease, Tenant shall peacefully surrender the Premises to Landlord. At any time after such termination, Landlord may, without further notice, reenter the Premises and repossess it by summary proceedings, ejectment, or otherwise. Landlord may dispossess Tenant and remove Tenant and all other persons and property from the Premises; and Landlord may have, hold, and enjoy the Premises and the right to receive all rental income therefrom. Landlord may also, at its option, and without being liable to Tenant for any damage therefor, remove and store, at Tenant's cost, all personal property and effects of Tenant upon the Premises, without responsibility for loss or damage, so long as Landlord uses reasonable care in the removal thereof. Landlord shall have a valid lien on such property for any damages due Landlord under this Lease and for any costs incurred by Landlord in such removal or storage. The exercise by Landlord of its rights to possession of the Premises for nonpayment of rent or other defaults by Tenant shall not in and of itself be a termination of this Lease. Tenant shall remain liable for any and all rent due under the Lease, subject only to Landlord's duty to mitigate its damages.

(ii) Landlord shall be entitled to damages for breach of this Lease.

(iii) The foregoing remedies shall not be exclusive, and Landlord may exercise any and all other remedies available under this Lease or under the laws of the State of Colorado. All of the rights and remedies provided for herein may be invoked by Landlord at any time, both before and after the exercise of any one or more of the other rights and remedies granted herein. The various rights, remedies, options and elections of Landlord, expressed herein, are cumulative, and the failure of Landlord to enforce strict performance by Tenant of the conditions and covenants of this Lease or to exercise any election or option or to resort or have recourse to any remedy herein conferred or the acceptance by Landlord of any installment of rent after any breach by the Tenant, in any one or more instances, shall not be construed or deemed to be a waiver or a relinquishment for the future by Landlord of any such conditions and covenants, options, elections or remedies, but the same shall continue in full force and effect.

C. Tenant Bankruptcy. Landlord shall have the right and option to terminate this Lease and recover possession of the Premises by summary proceedings if: (i) Tenant files a petition in bankruptcy; (ii) Tenant is adjudicated bankrupt; (iii) Tenant makes a general assignment for the benefit of creditors; or (iv) if in any proceeding based upon insolvency of Tenant, a receiver for Tenant is appointed.

D. Property Left on Premises. Any property of Tenant, or of anyone claiming by, through or under Tenant, that is left on the Premises more than 15 days after expiration or other termination of the Lease or more than 15 days after termination of Tenant's possessory rights shall be conclusively deemed abandoned, and Landlord may keep, use, remove, store, sell, destroy, discard, or otherwise deal with it in Landlord's absolute discretion without liability of any sort to Tenant or anyone claiming by, through, or under Tenant.
E. Additional Costs of Default. In case of any default by Tenant, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above: (i) broker's fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (ii) the reasonable costs of removing and storing or otherwise disposing of Tenant's or other occupant's property; (iii) the reasonable costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants; and (iv) all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney fees and costs.

F. Waiver of Redemption. Tenant hereby expressly waives any and all rights of redemption, and no right of redemption shall be exercised under any present or future law of the State of Colorado in case Tenant shall be dispossessed of the Premises for any cause or if Landlord shall in any other manner obtain possession of the Premises in consequence of Tenant's violation of any of the covenants and agreements contained herein.

G. No Waiver. Landlord's acceptance of all or any part of rent or other payments due under this Lease after default by Tenant shall not operate as waiver of that or any other default of the terms and conditions of this Lease.

H. Default by Landlord. Landlord shall not be charged with any default of any of its obligations under this Lease unless and until Landlord shall have failed to perform such obligations for twenty (20) days (or such additional time as reasonably required to correct any such default) after written notice by Tenant to Landlord specifically describing such default.

XX. ACCORD AND SATISFACTION

Landlord is entitled to accept, receive, and cash or deposit any payment by Tenant for any reason whatsoever and apply the same at Landlord's option to any obligations of Tenant under this Lease, and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same. No endorsement or statement accompanying any check or payment made by Tenant shall be deemed an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's right and attempt to recover any and all amounts owed by Tenant hereunder and pursue any other available remedy.

XXI. SURRENDER OF PREMISES

A. Surrender of Premises. At the expiration or earlier termination of this Lease, Tenant shall surrender up the Premises to Landlord in the same condition as when Tenant first took possession, reasonable wear and tear excepted, and shall deliver to Landlord all keys for the Premises. If Tenant fails to surrender the Premises in the required condition, Landlord may restore the Premises to such condition, including repair, replacement, and cleaning. Landlord may deduct the cost of any such work from the Security Deposit, and if the Security Deposit is insufficient to cover such cost, Tenant shall pay Landlord the additional balance.

Tenant shall not be considered to have surrendered the Premises to Landlord unless all persons, furniture, and other property of Tenant have been removed. If any property of Tenant
remains in the Premises after expiration of the Lease Term or earlier termination of the Lease, Landlord, in its sole discretion, may either: (i) treat Tenant as still in possession and Tenant holdover provisions of Section XXI(B) below will apply; or (ii) Landlord may consider that Tenant has abandoned the Premises, including any property remaining in the Premises, except any property related to the marijuana grow business which Landlord may not assume pursuant to applicable laws. In the latter event, Landlord may dispose of the property, and Tenant agrees to pay Landlord for all costs and expenses incurred in removing and disposing of such property.

B. Tenant Holdover. Tenant must vacate the Premises and remove all of Tenant’s personal property and belongings therefrom upon expiration of the Lease Term, or Landlord may immediately commence eviction proceedings in its sole discretion. In the event Tenant does not so vacate the Premises, Tenant’s holding over shall not be deemed a tenancy of any kind of nature whatsoever. Tenant shall pay Landlord an additional $200.00 per day for every day Tenant remains on the Premises after expiration of the Lease Term. Payments made by Tenant to Landlord during such hold over shall not create any rights in Tenant of any kind or nature whatsoever, and Tenant shall remain subject to eviction without further notice. There shall be no renewal of this Lease by operation of law.

XXII. SUBORDINATION

A. Subordination. This Lease shall be secondary, junior, subordinate, and inferior at all times to the lien of any mortgage and to the lien of any deed of trust or other method of financing or refinancing now or hereafter existing against all or any part of the Premises and to all renewals, modifications, replacements, consolidations and extensions thereof. Tenant shall promptly execute and deliver all documents requested by any mortgagee or security holder to evidence such subordination.

XXIII. ESTOPPEL STATEMENTS

Each party agrees to execute, acknowledge and deliver to the other party at any time within seven (7) days of the other party’s written request, a writing ratifying this Lease and certifying: (a) that Tenant has entered into occupancy of the Premises and the date of such entry if such is the case; (b) that this Lease is in full force and effect, and has not been assigned, modified, supplemented or amended in any way (or if there has been any assignment, modification, supplement or amendment, identifying the same); (c) that this Lease represents the entire agreement between Landlord and Tenant as to the subject matter hereof (or if there has been any assignment, modification, supplement or amendment, identifying the same); (d) the dates of commencement and expiration of the Lease Term; (e) that all conditions under this Lease to be performed by the other party have been satisfied (and if not, what conditions remain unperformed); (f) that to the knowledge of the signer of such writing no default exists in the performance or observance of any covenant or condition in the Lease and there are no defenses or offsets against the enforcement of this Lease by the other party (or specifying such default, defense or offset of which the signer may have knowledge); (g) the amount of the Security Deposit deposited with Landlord; (h) the amount of any advanced rent paid by Tenant; and (i) the date to which the rental has been paid under this Lease.
XXIV. BROKERS

Each of Landlord and Tenant represent and warrant that, except with respect to Amore
Realty, LLC, ("Landlord Broker") on behalf of Landlord, they have dealt with no brokers or
salespersons in connection with this transaction and each party agrees that, in the event of any
claim by any broker or salesperson who may have rendered services in connection with this
transaction at the request of such party or with the knowledge or consent of such party, then such
party shall defend, hold harmless and indemnify the other party against such claims and all costs
and expenses (including reasonable attorney fees and court costs), liabilities, and judgments
resulting therefrom.

XXV. NOTICES

Any notice, demand, or document which either party is required or may desire to give,
deliver or make to the other party shall be in writing and may be personally delivered or may be
sent by overnight courier or U.S. First Class Mail, postage prepaid, addressed to a party at its
address set forth below or to any different address a party may designate by notice delivered in
the same manner as provided herein. All notices so given shall be considered effective: (i) if
hand-delivered, when received; (ii) if by overnight courier, one (1) day after deposit with the
overnight courier company; or (iii) if by U.S. Mail, two (2) days after deposit with the U.S.
Postal Service.

Notice to Landlord: 695 Buggy Circle, LLC
c/o Amore Realty
711 Main St
Carbondale, CO 81623

With Copy to: Avery S. Nelson, Esq.
Garfield & Hecht, P.C.,
601 E Hyman Avenue
Aspen, CO 81611
Fax: (970) 925-3008
E-mail: anewton@garfieldhecht.com

Notice to Tenant: Black Dog Valley, LLC
695 Buggy Circle
Carbondale, Colorado 81623

XXVI. MISCELLANEOUS

A. Binding Effect. All of the terms, conditions, and provisions of this Lease shall
bind and inure to the benefit of the parties and their respective heirs, successors, administrators,
extectors and assigns, except that no rights under this Lease shall inure to the benefit of any
assignee or subtenant of Tenant unless the assignment or sublease was first approved by
Landlord in writing as provided this Lease. If Tenant is more than one (1) person, they shall be
bound jointly and severally by this Lease.
B. **Landlord's Agents.** Landlord may from time to time designate (or remove) in writing one or more parties to act as agent for Landlord, including Landlord Agent. Such party or parties so designated by Landlord shall be agents solely for the purposes of assisting Landlord in the carrying out of the terms of this Lease. As used in this Lease, the term Landlord shall, where the context requires, mean and include any agent designated by Landlord, except that such agent or agents shall not be Landlord's agents for purposes of acceptance of service of process.

C. **Governing Law, Jurisdiction and Venue.** This Lease shall be construed in accordance with and governed by the laws of the State of Colorado. Jurisdiction and venue for any action arising out of this Lease shall rest with the Colorado State Courts for Garfield County, Colorado.

D. **Entire Agreement.** This Lease contains the entire agreement between the parties on the subject matter hereof and supersedes all prior understandings, negotiations, and representations, written and oral, not contained herein. It may not be amended or modified except by an agreement in writing signed by Landlord and Tenant.

E. **Waiver.** The failure of either party to enforce any provision of this Lease shall not be construed as a waiver or limitation of that party's right to do so or to enforce any other provision of this Lease. No remedy herein conferred upon either party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder regardless of whether existing by virtue of law, equity, or statute, except as limited by the terms of this Lease. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof except as limited by the terms of this Lease.

F. **Attorney Fees.** The prevailing party in any legal action to enforce any provision of, or for any breach of any provision of, this Lease (including all indemnifications) shall be entitled to an award of reasonable attorney fees, costs, and the expense of litigation.

G. **Invalid Provision.** If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then the remainder of this Lease shall be interpreted to as fully as possible give force and effect to the intent of the parties as evidenced by the original terms and conditions of this Lease, including the invalidated provision.

H. **Recording Prohibited.** Without the prior consent of Landlord, which consent may be withheld in Landlord's sole discretion, Tenant shall not record this Lease or any evidence of this Lease.

I. **WAIVER OF JURY TRIAL.** IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, EACH OF LANDLORD AND TENANT HEREBY EXPRESSLY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR CROSSCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER AND ANY RIGHTS TO A TRIAL BY JURY UNDER ANY STATUTE, RULE OF LAW, OR PUBLIC POLICY IN CONNECTION WITH ANY MATTER
WHATEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS LEASE OR ANY PROVISION HEREOF. ALTHOUGH SUCH JURY WAIVER IS INTENDED TO BE SELF-OPERATIVE AND IRREVOCABLE, LANDLORD AND TENANT EACH FURTHER AGREE, IF REQUESTED, TO CONFIRM SUCH WAIVERS IN WRITING A THE TIME OF COMMENCEMENT OF ANY SUCH ACTION, PROCEEDING, COUNTERCLAIM, OR CROSS-CLAIM.

J. Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, the provisions of this section shall at no time operate to excuse Tenant from the timely payment of rent.

K. Captions. The captions or headings used herein are for convenience only and do not limit or amplify the provisions hereof.

L. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

M. Change in Federal Law. In the event the federal government's enforcement priorities change and become more restrictive toward enforcement and prosecution for growth, manufacture and sales of marijuana in states where such activities have been legalized on the state level, Tenant or Landlord may give written notice to terminate the Lease, such termination to be effective thirty (30) days after providing such written notice.

N. Landlord Has No Participation. Landlord specifically acknowledges and states that Landlord has no participation express or implied, in any marijuana related operations of Tenant. Notwithstanding anything to the contrary contained herein, the term "property" when used herein shall specifically exclude any fixtures used directly in the sale of Retail Marijuana or Retail Marijuana Product (each as defined in Rule R 103 promulgated under Title 12, Article 43 4, C.R.S. (2013)), and related equipment and inventory.

O. Tenant Formation. This Lease is contingent upon Landlord’s receipt of proof from the Colorado Secretary of State that Tenant is a legally formed entity in good standing to do business in the State of Colorado.
IN WITNESS WHEREOF, Landlord, Tenant and Guarantors have executed this Lease as of the day and year first set forth above.

LANDLORD:

695 Buggy Circle, LLC

By: [Signature]

BooShap [Signature]
Manager

TENANT:

Black Dog Valley, LLC

[Signature]

Name: [Signature]
Title:

GUARANTORS:

[Signature]

Steve Garcia
Black Dog Valley, IL

PLEASE READ:

You have requested mailing addresses and/or other information from the Garfield County Assessor's office. The information contained herein is believed to be accurate and dependable. However, no warranties implied or expressed exist regarding the veracity of the data.

Please signify that you understand the above by signing below:

[Signature]

I understand that the Assessor's office is not warranting the information that I have received.

Print name legibly below.

[Signature]

[Email Address]

500 ft from 695 Buggy Circle

Canonsdale, CO 81423
Affidavit of Mailing

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

Date of mailing: 1/19/17

By: Steven Comers

Subscribed and sworn before me this 19 day of January, 2017.

ROLP K. HERMANSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 2005403732B
MY COMMISSION EXPIRES 03-28-2017

(Notary)

My commission expires: 9-26-2017
PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held before the Board of Trustees for the purpose of considering a Retail and Medical Marijuana Grow Facility. The property is located at 695 Buggy Circle Carbondale, CO 81623. The applicant and owner is Steve Garcia.

Said Public Hearing will be held at the Carbondale Town Hall, 511 Colorado Avenue, Carbondale, CO at 6:00 p.m. on February 14th, 2017.

Copies of the proposed application are on file in the Clerks Office, Carbondale Town Hall, 511 Colorado Avenue, Carbondale, CO, and may be examined by interested person during regular business hours, 8:00 a.m. through 5:00 p.m., Monday through Friday.
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PROOF OF PUBLICATION

SOPRIS SUN

STATE OF COLORADO

COUNTY OF GARFIELD

I, THERESA RITCHIE, do solemnly swear that I am an employee of The Sopris Sun. That the same Weekly newspaper is printed, in whole or in part, in the County of Garfield, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Garfield and is the legally designated Newspaper of Record for the Town of Carbondale, per Carbondale Resolution No. 5 Series of 2009; that the annexed legal notice or advertisement was published on the following date(s): JAN. 19, 2017

In witness whereof has here unto set my hands this 19th day of January, 2017.

Therese Ritchie
Sopris Sun Employee

Subscribed and sworn to before me, a notary public in and for the County of Garfield, State of Colorado this 19th day of January, 2017.

[Notary Public]

My Commission expires: 12/22/2018

NOTICE
PURSUANT TO THE LAWS
OF COLORADO

BLACK DOG VALLEY LLC
HAS REQUESTED THE LICENSING OFFICIALS
OF THE TOWN OF CARBONDALE TO GRANT A
RENEWAL MEDICAL MARIJUANA CULTIVATION
LICENSE, AND GRANT A RENEWAL RETAIL
MARIJUANA CULTIVATION LICENSE, TO GROW
RETAIL AND MEDICAL MARIJUANA AT
525 BUGGY CIRCLE
CARBONDALE, CO 81623

HEARING ON APPLICATION TO BE HELD AT:
CARBONDALE TOWN HALL
511 COLORADO AVENUE
CARBONDALE, COLORADO

DATE AND TIME: FEBRUARY 14, 2017, AT 6:00 PM
DATE OF APPLICATION: JANUARY 10, 2017

BY ORDER OF: DAN RICHARDSON, MAYOR

APPLICANT: STEVEN GARCIA

License application information may be obtained from, and Petitions or Remonstrances may be filed with the Town Clerk. Special Use application information may be obtained from, and Petitions or Remonstrances may be filed with the John Leybourne, Planning Department. Carbondale Town Hall, 511 Colorado Avenue. Carbondale, CO 81623

Published in The Sopris Sun on January 19, 2017.
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: 2/14/17

TITLE: Public Hearing for Black Dog Valley, LLC's Medical Marijuana Dispensary Renewal Application

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: Black Dog Valley, LLC Medical Marijuana Dispensary Renewal Application, Affidavit of Mailing, Public Hearing Notice, Certificate of Good Standing

BACKGROUND: Black Dog Valley, LLC, received their medical marijuana dispensary license on February 10, 2016; the license expires on February 10, 2017. The applicant submitted the renewal application to the town clerk on January 12, 2017. The Applicant/Agent Steven Garcia resides in the 81623 area and has lived in Colorado for at least two (2) years. He owns 100% of Black Dog Valley, LLC.

The Municipal Code requires a public hearing be held for the first two consecutive years a marijuana facility is in business. Since they are beginning their second year in business a public hearing is required. Black Dog, LLC has not begun operation. The Applicant has been informed that if the Board renews the license and he does not begin operation within one year from the date of issuance of the license the license will not be renewed in 2018.

The Applicant mailed the public hearing notices to businesses/residences located within 300 feet of the establishment on January 28, 2017. Staff published the public hearing notice in the January 19, 2017 Sopris Sun.

FINANCIAL: All fees have been paid.

DISCUSSION: The Board may wish to determine if the new medical marijuana dispensary application is complete, and meets all of the criteria set forth in Ordinance No. 11, Series of 2013, and the Colorado Retail Marijuana Code as adopted.

RECOMMENDATION: Town staff recommends that the Board of Trustees move to approve or deny Black Dog Valley's New Medical Marijuana Dispensary Application.

Prepared By: Cathy Derby, Town Clerk

Jay Harrington, Town Manager
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

Medical Marijuana Facility Renewal Application

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

TOTAL DUE $1,500.00

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

Licensee Name: BLACK DOG VALLEY, LLC
Trade Name (DBA):
Street Address: 985 Hig Hwa 9, 138
Business Phone: 970-948-1577
Mailbox Address: CARBONDALE
email address: STEVE_GARCIA@yahoo.com

Operating Manager: STEVE GARCIA
Home Address: Phone: 970-948-1577

1. Do you have legal possession of the premises at the street address above? Yes ☑ No □
   Is the premises owned or rented? Owned ☑ Rented: If rented, expiration date of lease: 11/30/2018
2. Is the establishment within 500 ft. of a school? Yes ☑ No □
3. Since the date of filing of the last annual application, has there been any change in the financial
   interest (loans, etc.) or organizational structure (change of officers, managing members, etc.)? If yes,
   explain in detail and provide documentation. ☑
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: 11/14/14 Title: Owner

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

THIS APPLICATION HAS BEEN: ☑ Approved □ Denied

Authorized Signature: Date:

Attest: Title: Date:
COMMERCIAL LEASE AGREEMENT

THIS LEASE (this "Lease") dated this 12th day of November, 2015

BETWEEN:

Mark Luttrell of PO BOX 831 Carbondale, Co. 81623
Telephone: 970 401 1994 Fax: __________________________
(the "Landlord")

OF THE FIRST PART

- AND -

Black Dog Valley LLC of 178 Caballo St. Carbondale, Co. 81623
Telephone: 1-970-948-1577
(the "Tenant")

OF THE SECOND PART

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

Definitions

1. When used in this Lease, the following expressions will have the meanings indicated:

a. "Additional Rent" means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;

b. "Building" means all buildings, improvements, equipment, fixtures, property and facilities from time to time located at 985 Hwy 133 Carbondale, Co. 81623, as from time to time altered, expanded or reduced by the Landlord in its sole discretion with consent of tenant if any such actions impacts the premises.

c. "Common Areas and Facilities" mean:

i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are not designated or intended by the Landlord to be leased to tenants of the Building including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas,
retaining walls and maintenance, cleaning and operating equipment serving the Building; and

those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;

d. "Leasable Area" means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined, calculated and certified by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements;

e. "Premises" means the office space at 985-B Hwy 133 Carbondale, Co. 81623.

f. "Proportionate Share" means a fraction, the numerator of which is the Leasable Area of the Premises and the denominator of which is the aggregate of the Leasable Area of all rentable premises in the Building.

Leased Premises

2. The Landlord agrees to rent to the Tenant the office space municipally described as 985-B Hwy 133 Carbondale, Co. 81623, (the "Premises"). The Premises will be used for only the following permitted use (the "Permitted Use"): Recreational and Medical retail Marijuana sales and or any other lawful purpose with owners consent for retail spaces of this type. Neither the Premises nor any part of the Premises will be used at any time during the term of this Lease by Tenant for any purpose other than the Permitted Use.

3. No pets or animals are allowed to be kept in or about the Premises or in any common areas in the building containing the Premises without the prior written permission of the Landlord. Upon thirty (30) days notice, the Landlord may revoke any consent previously given under this clause.

Term

4. The term of the Lease is a periodic tenancy commencing at 12:00 noon on November 12, 2015 and continuing until November 30, 2016. Unless the Tenant provides the Landlord 30 days notice to the contrary, this Lease shall automatically renew for a two year period.
on the same terms as set forth herein. Successive terms shall be negotiated between the parties.

5. Upon 3 days notice, the Landlord may terminate the tenancy under this Lease if the Tenant has defaulted in the payment of any portion of the Rent when due.

6. Upon 30 days notice, the Landlord may terminate the tenancy under this Lease if the Tenant fails to observe, perform and keep each and every of the covenants, agreements, stipulations, obligations, conditions and other provisions of this Lease to be observed, performed and kept by the Tenant and the Tenant persists in such default beyond the said 30 days notice.

7. [Reserved]

8. [Reserved]

9. [Reserved]

Rent

10. Subject to the provisions of this Lease, the Tenant will pay a base rent of $1,250.00, payable per month, for the Premises (the "Base Rent").

11. The Tenant will pay the Base Rent on or before the first of the month of each and every month of the term of this Lease to the Landlord at PO BX 831 Carbondale, Co. 81623, or at such other place as the Landlord may later designate.

12. The Tenant will be charged an additional amount of $25.00 per day for any Rent that is received after the due date.

Operating Costs

13. In addition to the Base Rent, the Tenant is responsible for directly paying to the appropriate suppliers the following operating costs:

   a. Security of the Premises

14. The Landlord will be responsible for paying the following operating costs:

   a. window cleaning;

   b. repairs and replacements to the Building and any component of the Building;

   c. provision, repair, replacement and maintenance of heating, cooling, ventilation and air conditioning equipment throughout the Building;

   d. all outdoor maintenance including landscaping and snow removal;
e. operation and maintenance of parking areas;

f. preventive maintenance and inspection; and

g. insurance relating to the Building as placed by the Landlord from time to time, acting prudently and within commercially reasonable standards; provided, however, Tenant shall pay its Proportionate Share of such cost within 30 days of receiving a bill from Landlord.

15. For any rent review negotiation, the basic rent will be calculated as being the higher of the Base Rent payable immediately before the date of review and the Open Market Rent on the date of review.

Use and Occupation

16. The Tenant will use and occupy the Premises only for the Permitted Use and for no other purpose whatsoever. The Tenant will carry on business under the name of Steve Garcia, Black Dog Valley LLC, VERDE, or any other brand names or business names (actual or assumed) adopted by the Tenant in the operation of its business within the definition of Permitted Use; provided, however, the Tenant shall provide written notice to Landlord of any additional brand names prior to their use. The Tenant will open the whole of the Premises for business to the public fully fixture, stocked and staffed within 15 days after the Tenant obtains all necessary regulatory approvals needed for it to conduct the Permitted Use on the Premises and throughout the term, will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be permitted by local regulatory authorities.

17. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of the state of Colorado and the municipality of Carbondale, CO. and will not do anything on or in the Premises in contravention of them.

Advance Rent and Security Deposit

18. On execution of this Lease, The Tenant will pay the Landlord advance rent (the "Advance Rent") to be held by the Landlord without interest and to be applied on account of the first and last two installments of Base Rent as they fall due and to be held to the extent not so applied as security for and which may be applied by the Landlord to the performance of the covenants and obligations of the Tenant under this Lease.

19. On execution of this Lease, The Tenant will pay the Landlord a security deposit equal to the amount of $2,500.00 (the "Security Deposit") to be held by the Landlord without interest. The Landlord will return the Security Deposit to the Tenant at the end of this tenancy, less such deductions as provided in this Lease but no deduction will be made for damage due to reasonable wear and tear.
20. The Tenant may not use the Security Deposit as payment for the Rent.

**Quiet Enjoyment**

21. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

**Distress**

22. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as rent, or any part of the rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.

23. If the Tenant continues to occupy the Premises without the written consent of the Landlord at the expiration or other termination of the term, then the Tenant will be a tenant at will and will pay to the Landlord, as liquidated damages and not as rent, an amount equal to twice the Base Rent plus any Additional Rent during the period of such occupancy, accruing from day to day and adjusted pro rata accordingly, and subject always to all the other provisions of this Lease insofar as they are applicable to a tenancy at will and a tenancy from month to month or from year to year will not be created by implication of law; provided that nothing in this clause contained will preclude the Landlord from taking action for recovery of possession of the Premises.

**Inspections and Landlord's Right to Enter**

24. The Landlord and the Tenant will complete, sign and date an inspection report at the beginning and at the end of this tenancy.

**Tenant Improvements**

25. The Tenant will obtain written permission from the Landlord before doing any of the following:

a. applying adhesive materials, or inserting nails or hooks in walls or ceilings other than two small picture hooks per wall;

b. painting, wallpapering, redecorating or in any way significantly altering the appearance of the Premises;

c. removing or adding walls, or performing any structural alterations;
d. installing a waterbed(s);

e. changing the amount of heat or power normally used on the Premises as well as installing additional electrical wiring or heating units;

f. placing or exposing or allowing to be placed or exposed anywhere inside or outside the Premises any placard, notice or sign for advertising or any other purpose, such consent shall not be unreasonably withheld; or

g. affixing to or erecting upon or near the Premises any radio or TV antenna or tower.

Utilities and Other Costs

26. The Landlord is responsible for the payment of the following utilities and other charges in relation to the Premises: water and sewer.

27. The Tenant is responsible for the direct payment of the following utilities and other charges in relation to the Premises: telephone, Internet and cable.

28. The Tenant is responsible for paying to the Landlord its Proportionate Share of the following utilities and other charges: electricity, natural gas and garbage.

Insurance

29. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. The Tenant is advised that, if insurance coverage is desired by the Tenant, the Tenant should inquire of Tenant's insurance agent regarding a Tenant's Policy of insurance.

Governing Law

30. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Colorado, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

31. If there is a conflict between any provision of this Lease and the applicable legislation of the State of Colorado (the 'Act'), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

Assignment and Subletting
32. Unless consented to in writing by the Landlord, the Tenant will not assign this Lease, or sublet or grant any concession or license to use the Premises or any part of the Premises. An assignment, subletting, concession, or license without prior Landlord approval, whether by operation of law or otherwise, will be void and will, at Landlord's option, terminate this Lease.

Additional Provisions

33. Tenant is to carry $1,000,00.00 in liability insurance with proof of renewal yearly. Tenant has first right of refusal on purchase of building in the event of sale. Tenant has first right of refusal on renting additional office space in the event Re-max moves out. Tenant is responsible for all cost of security to the premises in regards to what is required by law for operations. There will be no growing or processing of marijuana on site.

33. Tenant, at tenant's option, will be released from all obligations under the terms of this lease if Tenant's application for retail sales of recreational and medical marijuana is denied for any reason by any regulatory agency with approval rights for such activity. Tenant shall be entitled to a full refund of all the security deposit in this case, but not any previously paid rent.

Care and Use of Premises

34. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.

35. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable opinion of the Landlord, disturbs the comfort or convenience of other tenants.

36. The Tenant will not engage in any trade or activity deemed to be illegal under the laws of the State of Colorado on or about the Premises.

37. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

Surrender of Premises

38. At the expiration of the lease term, the Tenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

Hazardous Materials

39. The Tenant will not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on
the Premises or that might be considered hazardous by any responsible insurance company.

Rules and Regulations

40. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot, laundry room and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

General Provisions

41. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease will not operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Landlord's rights in respect of any subsequent default or breach.

42. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.

43. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recovered by the Landlord as rental arrears.

44. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.

IN WITNESS WHEREOF the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this 12th day of November, 2015.

Mark Luttrell (Landlord)
Black Dog Valley LLC (Tenant)

BY: STEVE GARCIA
(MANAGING MEMBER)
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

Black Dog Valley, LLC

is a Limited Liability Company

formed or registered on 10/30/2015 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20151705885.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/06/2017 that have been posted, and by documents delivered to this office electronically through 01/11/2017 @ 15:11:22.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/11/2017 @ 15:11:22 in accordance with applicable law. This certificate is assigned Confirmation Number 10015092.

 Secretary of State of the State of Colorado

******************************************************************************End of Certificate******************************************************************************

Notice: A certificate issued electronically from the Colorado Secretary of State’s Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State’s Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate’s confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/click “Businesses, trademarks, trade names” and select “Frequently Asked Questions.”
PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held before the Board of Trustees for the purpose of considering a Medical Marijuana Store. The property is located at 985 Highway 133, Carbondale, CO 81623. The applicant and owner is Steve Garcia.

Said Public Hearing will be held at the Carbondale Town Hall, 511 Colorado Avenue, Carbondale, CO at 6:00 p.m. on February 14, 2017.

Copies of the proposed application are on file in the Clerks Office, Carbondale Town Hall, 511 Colorado Avenue, Carbondale, CO, and may be examined by interested person during regular business hours, 8:00 a.m. through 5:00 p.m., Monday through Friday.

Sent 1/19/2017

-JR
Affidavit of Mailing

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

Date of mailing: 1/19/17

By: Steven Garcia

Subscribed and sworn before me this 19 day of January, 2017.

(Notary)

My commission expires: 9.25-2017
PROOF OF PUBLICATION  
SOPRIS SUN  
STATE OF COLORADO  
COUNTY OF GARFIELD  

I, Therese Ritchie, do solemnly swear that I am an employee of The Sopris Sun. That the same Weekly newspaper is printed, in whole or in part, in the County of Garfield, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Garfield and is the legally designated Newspaper of Record for the Town of Carbondale, per Carbondale Resolution No. 5 Series of 2009; that the annexed legal notice or advertisement was published on the following date(s): JAN. 19, 2017

In witness whereof has here unto set my hands this 19th day of January, 2017.

Sopris Sun Employee

Subscribed and sworn to before me, a notary public in and for the County of Garfield, State of Colorado this 19th day of January, 2017.

Notary Public

My Commission expires: 12/22/2018

NOTICE
PURSUANT TO THE LAWS
OF COLORADO
BLACK DOG VALLEY, LLC

HAS REQUESTED THE LICENSING OFFICIALS
OF THE TOWN OF CARBONDALE TO GRANT A
RENEWAL MEDICAL MARIJUANA DISPENSARY
LICENSE TO SELL MEDICAL MARIJUANA AT
985 HIGHWAY 133
CARBONDALE, CO 81623

HEARING ON APPLICATION TO BE HELD AT:
CARBONDALE TOWN HALL
511 COLORADO AVENUE
CARBONDALE, COLORADO

DATE AND TIME: FEBRUARY 14, 2017, AT 6:00 P.M.
DATE OF APPLICATION: JANUARY 10, 2017

BY ORDER OF: DAN RICHARDSON, MAYOR

APPLICANT:
STEVEN GARCIA

License application information may be obtained from, and Petitions or Remonstrances may be filed with the Town Clerk. Special Use application information may be obtained from, and Petitions or Remonstrances may be filed with the John Leybourne, Planning Department, Carbondale Town Hall, 511 Colorado Avenue, Carbondale, CO 81623.

Published in The Sopris Sun on January 19, 2017.
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board Trustees Agenda Memorandum

Meeting Date: 2/14/17

TITLE: Laughing Dog Group, LLC Retail and Medical Marijuana Infused Product Facility (MIP) Modification of Premises Applications

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: Modification of Premises Applications, Site Plans,

BACKGROUND: Laughing Dog Group, LLC recently made a minor modification to their MIP premises (they added a privacy wall and two doors). The Marijuana Enforcement Division visited the facility, noticed the change, and advised them to apply for a modification of premises in order to be in compliance with local and state laws.

FINANCIAL: All fees have been paid.

RECOMMENDATION: Staff recommends that the Board move to approve Laughing Dog Group, LLC’s Retail and Medical Marijuana Modification of Premises Applications.

Prepared By: Cathy Derby

Town Manager
RETAIL MARIJUANA LICENSE APPLICATION

Date of Application: 1/14/17
Date Application Deemed Complete: 1/16/17

Date of Public Hearing: N/A
To be scheduled within 45 days from date application deemed complete

This application is for the following Premises Location License Type (please check only one [1] license type and file a separate complete RM License Application if another license type is applicable):

☐ Retail Marijuana Store  ☐ Retail Marijuana Cultivation Facility*
☐ Retail Marijuana Products Manufacturing Facility*  ☐ Retail Marijuana Testing Facility
☐ Transfer of Ownership (reallocation among current owners)  ☐ Transfer of location
☐ Testing Facility  ☐ Modification/Alteration of Premises
☐ Change of Corporation or LLC Structure

* Cultivation Facility and Marijuana Infused Products requires a Public Hearing before the Planning and Zoning Commission for a Special Use Permit

*Applicant* is defined as the Legal Name of Individual or Business Entity that will hold license if approved.

Applicant is applying as (attach organizational documents):

☐ Corporation  ☐ Sole Proprietor
☐ Limited Liability Company  ☐ Association or Other
☐ Partnership

Applicant Name: __________________________

Trade Name of Establishment (doing business as): __________________________

Applicant Contact Name (please print): __________________________

Address of Premises Location:

Street Address ____________ City ______ State ______ Zip Code ______

Business Mailing Address (if different from Premises location):

Street Address ____________ City ______ State ______ Zip Code ______

Business Phone: _______________  Emergency Phone: _______________

Business Email Address: __________________________  Website Address: __________________________

Town Sales Tax License No: _______________  State Sales Tax License No: _______________

State Medical Marijuana License No: _______________
Local Residency Requirement Applicable to Licenses for Retail Marijuana Stores, Cultivation Facilities, and Product Manufacturing Facilities: The applicant seeking licensure must provide the Town of Carbondale with the name of an agent of the proposed licensee who will serve as a point of contact for the Town. Such agent shall hold at least a partial ownership interest in the retail marijuana store, cultivation facility, or product manufacturing facility and shall have a primary home (as the term is defined in Chapter 5.26) within the 81621, 81623, or 81601 Colorado zip codes. THE AGENT LISTED BELOW MUST COMPLETE A RETAIL MARIJUANA BUSINESS LICENSE BACKGROUND CHECK AND MUST BE FINGERPRINTED by the Carbondale Police Department.

<table>
<thead>
<tr>
<th>NAME</th>
<th>HOME ADDRESS, CITY, STATE, ZIP</th>
<th>DOB</th>
<th>POSITION</th>
<th>% OWNED</th>
<th>AGENT</th>
</tr>
</thead>
</table>

The Applicant’s Agent shall present for recording one (1) of the following forms of identification:
- An identification card issued in accordance with Section 42-2-302, C.R.S.;
- A valid Colorado driver’s license;
- A United States military identification card;
- A valid passport; or
- An alien registration card.

Applicant must list any person having a financial interest in a retail marijuana business. If Applicant is a corporation, partnership, association or limited liability company, Applicant must list ALL OFFICERS, DIRECTORS, PARTNERS, MEMBERS AND MANAGING MEMBERS OF THE ENTITY, AS WELL AS EACH PERSONS HAVING A FINANCIAL INTEREST IN THE ENTITY. For purposes of this requirement and the following question regarding felony convictions, a “financial interest” means any ownership interest including, without limitation, a membership, directorship, officership or any creditor interest, whether or not such interest is evidenced by a written document.

ALL PERSONS LISTED BELOW MUST COMPLETE A RETAIL MARIJUANA BUSINESS LICENSE BACKGROUND CHECK AND MUST BE FINGERPRINTED by a Police Department. If necessary, provide additional information on a separate sheet.

<table>
<thead>
<tr>
<th>NAME</th>
<th>HOME ADDRESS, CITY, STATE, ZIP</th>
<th>DOB</th>
<th>POSITION</th>
<th>% OWNED</th>
</tr>
</thead>
</table>

The Applicant shall present for recording one (1) of the following forms of identification:
- An identification card issued in accordance with Section 42-2-302, C.R.S.;
- A valid Colorado driver’s license;
- A valid driver’s license containing a picture issued by another state;
- A United States military identification card;
- A valid passport; or
- An alien registration card.

Has any person listed above ever been convicted of a felony in a federal, state, or other court?

☐ Yes ☐ No

If the answer is yes, please provide the following (if necessary, please provide additional information on a separate sheet):
<table>
<thead>
<tr>
<th>Name of Person</th>
<th>Name &amp; Location of Court</th>
<th>Charge Convicted Of</th>
<th>Sentence</th>
<th>Date of Sentencing</th>
<th>Last Date of Incarceration/Parole/Probation or Other Discharge of Sentence</th>
</tr>
</thead>
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</table>

Does the Applicant have legal possession of the premises for at least one (1) year from the date that this license will be issued by virtue of ownership, lease or other arrangement? Yes ☐ No ☐

If the answer is yes, please provide proof of possession (i.e. lease, etc.)

☐ Ownership ☐ Lease ☐ Other (explain in detail):

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

<table>
<thead>
<tr>
<th>Landlord</th>
<th>Tenant</th>
<th>Expires</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Building Owner's Mailing Address:

<table>
<thead>
<tr>
<th>Street Address</th>
<th>City</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

Contact Phone Numbers: ☐ ☐ ☐ ☐ ☐ ☐

Is this proposed premises to be licensed within 500 feet of any school or licensed child care facility? Yes ☐ No ☐

Is this proposed premises to be licensed within 500 feet of any alcohol or drug treatment facility? Yes ☐ No ☐

If this proposed premises is a retail marijuana store located on Main Street between 7th Street and Snowmass Drive, is the proposed retail marijuana store within 400 feet of another retail marijuana store? Yes ☐ No ☐

Is this proposed premises location the only location that is affiliated with this business? Yes ☐ No ☐

If there is another location associated with this business entity, please list all other premises location addresses both in and outside of the Town of Carbondale (e.g. all medical/retail marijuana centers, medical/retail cultivation operations and medical/retail marijuana-infused products manufacturing operations which operate in concert to form this business entity):

<table>
<thead>
<tr>
<th>Type of Business</th>
<th>Location (Street, City, State, Zip Code)</th>
</tr>
</thead>
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</table>

Name of on-site manager for licensed premises:

<table>
<thead>
<tr>
<th>Home Address</th>
<th>Street Address</th>
</tr>
</thead>
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<tr>
<td></td>
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</tr>
</tbody>
</table>

Street Address

3
Business Cell Phone Number: 143 of 335
Email Address: 143 of 335

Driver's License Number: 143 of 335 Jurisdiction that issued Driver's License: 143 of 335

Who, besides the owners or other persons listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, or equipment to, or for use in, this business or will receive money from this business? If necessary, please provide additional information on a separate sheet.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS, CITY STATE, ZIP</th>
<th>DOB</th>
<th>%% OWNED</th>
</tr>
</thead>
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</table>

Attach a summary list of all loans, notes and security instruments, gifts, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation. Executed and complete copies of same.

Please provide the names and addresses of any employee or proposed employees of the retail marijuana business. ALL PERSONS LISTED BELOW MUST COMPLETE A RETAIL MARIJUANA BUSINESS LICENSE BACKGROUND CHECK AND MUST BE FINGERPRINTED by a Police Department.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS, CITY, STATE, ZIP</th>
<th>DOB</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
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</tbody>
</table>

State the hours of operation (between 8:00 a.m. and 12:00 a.m. Mountain Standard Time) each day:

Monday: 8:00 a.m. to 5:00 p.m.  Friday: 8:00 a.m. to 5:00 p.m.
Tuesday: 8:00 a.m. to 5:00 p.m.  Saturday: 8:00 a.m. to 12:00 a.m.
Wednesday: 8:00 a.m. to 5:00 p.m.  Sunday: 8:00 a.m. to 12:00 a.m.

Will there be ANY remodeling or building alterations?  
☐ Yes ☐ No

If YES, have you applied for a building permit?  
☐ Yes ☐ No

Will you be installing a new sign or changing an existing sign?  
☐ Yes ☐ No

If YES, have you applied for a sign permit?  
☐ Yes ☐ No

Does the Applicant have a comprehensive business operating plan?  
☐ Yes ☐ No

The business operating plan must be attached and contain, at a minimum the following:
• Lease
• Operating Agreement
• A description of the security provisions and systems which must include, at a minimum:
  o Security surveillance cameras installed and properly maintained to monitor each
    entrance along the interior and exterior of the premises to discourage crime and to
    facilitate the reporting of criminal acts as well as nuisance activities; security video
    shall be preserved in the manner and for the period of time set forth in the Colorado
    Marijuana Enforcement Division Rules, as amended from time to time;
  o Robbery and burglary alarm systems that are professionally monitored and
    maintained in good working condition;
  o Exterior lighting that illuminates the exterior walls of the business during evening
    hours and is compliant with Town Code;
  o A secure safe that is utilized for the purposes of storing cash and marijuana that is
    not then being actively cultivated when the business is not open; and
  o Locking systems for exterior doors that are designed and installed in such fashion
    as to deter unlawful entry and provide safe emergency egress.
• A description of all goods to be sold;
• An exterior lighting plan;
• A description of any cultivation activities within the marijuana business which includes,
  without limitation, the area in which plants will be grown, a description of the lighting
  system for the lighting system for cultivation, a description of the ventilation and odor
  filtration system for the premises, if any, and a description of the automatic fire suppression
  system, if any; and
• Any additional information that the Authority reasonably determines to be necessary in
  connection with the investigation, review and determination of the application.
• List and addresses of all residents and businesses located within 300 feet of facility. Note:
  Applicant must provide written notice of the public hearing to the list of businesses and
  residents at least 15 days prior to the public hearing.

---

**Oath of Application**

I declare under penalty of perjury in the second degree that this application and all attachments are true,
correct, and complete to the best of my knowledge and belief. 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 and all Rules and Regulations which govern my Retail Marijuana
License Application. I further acknowledge that it is my responsibility to provide the Town with
amendments to this application in the event that any information provided herein changes after the
date of application.

<table>
<thead>
<tr>
<th>Authorized Signature</th>
<th>Printed Name and Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
<td>[Name]</td>
<td>12/15/19</td>
</tr>
</tbody>
</table>
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

Medical Marijuana Facility Permit Application

New Permit Application or Transfer of License Fee: $1,000.00
On site Associated Licenses: $520.00
New Associated facility on-site/off-site Associated facilities: $500.00
Renewal Application Fee w/ All Onsite Facilities: $500.00
Associated Offsite Facilities Renewal: $250.00
Additional Employee/Change of Manager/Owner Fee: $100.30
Modification of Premises Fee: $100.00
Other Associated Fees: $250.00

License Fee: $75.00
Educational Fee New/Renewal: $1,000.00

Please choose ONE:

- □ Center (Dispensary)
- □ Cultivation Premises
- □ Infused Product Manufacturing
- □ Transfer
- □ Renewal Permit
- □ Modification of Premises
- □ Other
- □ Additional Employee/Change of Manager/Owner
- □ Associated Facility (Same Applicant)

Applicant is applying as a:

- □ Corporation
- □ Individual
- □ Limited Liability Company
- □ Other (Specify)
- □ Partnership (includes Limited Liability and Husband/Wife Partnerships)

Applicant Name:  

THE LAUGHING DOG GROUP, LLC

Social Security Number:  

DOB:  

Applicant’s Address:  

500 Buggy Circle LLC

Applicant’s Home or Cell Phone:  

List Previous Addresses for the Past Two Years

<table>
<thead>
<tr>
<th>Previous Address</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>120 N. Eatman Ave</td>
<td></td>
</tr>
<tr>
<td>120 N. Eatman Ave</td>
<td></td>
</tr>
</tbody>
</table>

Trade Name of Establishment (DBA):  

THE LAUGHING DOG

Business Phone:  

970 476 1877

Address of Premises:  

500 Buggy Circle LLC

Town Sales Tax Number:  

Mailing Address:  

PO Box 1342 CARBONDALE, CO 81623

If applicant is a naturalized citizen, when did he or she become a Resident of the State of Colorado?

If applicant is a corporation, list name and address of any officer or director of the corporation, and all persons of the issued and outstanding capital stock of any member that has an interest therein. If the applicant is partnership, association or company, list the name and address of any member that has an interest therein. If the applicant is a limited liability company, the name and address of the manager of the limited liability company and the name of all members of the LLC.
<table>
<thead>
<tr>
<th>Name:</th>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steven Garcia</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Manager or Proposed Manager:</th>
<th>Address of Manager or Proposed Manager:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steven Garcia</td>
<td>Same</td>
</tr>
</tbody>
</table>

Is the applicant or associated partners (if a partnership); member or manager (if a limited liability company); officers, stockholders or directors (if a corporation); facility manager, or employees under the age of twenty-one?

☐ Yes  ☑ No

Please provide the names and addresses of any employees or proposed employees of the medical marijuana facility. (Use an Additional Sheet of Paper if Needed.)

<table>
<thead>
<tr>
<th>Employee Name:</th>
<th>Employee Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Doe</td>
<td></td>
</tr>
</tbody>
</table>

Has the applicant or associated partners (if a partnership); member or manager (if a limited liability company); officers, stockholders or directors (if a corporation); facility manager, or employees ever:

- Been denied a medical marijuana license of any kind? If so, explain: ☑ No

- Had a license suspended or revoked? If so, explain: ☑ No

- Been charged with any crime (felony, misdemeanor, petty offense, or traffic offense which carries 8 points or more within the last ten years. If so, describe the charge and disposition of the case:

- Yes ☑ No

**Required Attachments**

- ☐ Filing Fee
- ☐ Lease which shall be valid for the duration of the term of the license or proof of ownership.
- ☐ Area map drawn to scale depicting a 1,000 foot radius from the boundary of the facility property to the boundary of all school properties.
- ☐ Description of the products and services to be made, sold, or grown by the facility.
- ☐ Floor plan drawn to scale showing layout of the medical marijuana facility.
- ☐ Copy of license(s) granted by any jurisdiction permitting the growth or sale of plants cultivated at the facility.
- ☐ Letter from jurisdiction establishing permission for cultivation facility to operate that specific zone district.
- ☐ Document outlining expected number of marijuana plants to be grown on site.
- ☐ Description of the ventilation system, lighting system, storage system, and system for the control of marijuana odors for the premises.
- ☐ Completed registration form and fingerprint card for all applicant; or associated partners (if a partnership); members or managers (if a limited liability company); officers, stockholders or directors (if a corporation); facility managers, and employees.
- ☐ Additional information including:
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 Ordinance No. 3 Series of 2011, which affects my license.

| Applicant/Signature | Date: 12/5/10 | Title: Owner |

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY

THE TOWN CLERK HERBY AFFIRMS THAT EACH PERSON REQUIRED HAS:

- Been fingerprinted: Yes ☑ No ☐
- Been subject to a background investigation: Yes ☑ No ☐
- That the local authority as conducted, or intends to conduct, an inspection of the proposed premises to ensure that the application is in compliance with and aware of the Town of Carbondale's Medical Marijuana Licensing provisions: Yes ☑ No ☐

THIS APPLICATION HAS BEEN:

☑ Approved ☐ Denied

Authorized Signature: ________________________

Planning and Zoning: REVIEW AND COMMENTS:

RECOMMENDATION: ☐ Approved ☑ Denied

Conditions Suggested:

Building Department: REVIEW AND COMMENTS:

RECOMMENDATION: ☐ Approved ☑ Denied

Conditions Suggested:

Town of Carbondale Police Department: REVIEW AND COMMENTS:

RECOMMENDATION: ☐ Approved ☑ Denied

Conditions Suggested:

Town Manager: REVIEW AND COMMENTS:

RECOMMENDATION: ☐ Approved ☑ Denied

Conditions Suggested:
Before LL 3 and 4

THE LAUGHING TOG GROUP, LLC
500 Buggy circle
CARBONDALE, CO 81623

YORK - 00207
To: Mayor Dan Richardson and
Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for Ducks Unlimited to be held at the Orchard on March 4, 2017

Date: January 24, 2017

I have found no records that would cause me to recommend denial of this liquor license special event application for Ducks Unlimited to be held at the Orchard on March 4, 2017.

Garret Jammaron / representative

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

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

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

TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:

☒ MALT, VINOUS AND SPIRITUOUS LIQUOR $50 PER DAY
☐ FEMENTED MALT BEVERAGE (3.2 BEER) $10 PER DAY

LIQUOR PERMIT NUMBER

STATE SALES TAX NUMBER (REQUIRED)

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE

Ducks Unlimited

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY

11299 Flying P Ranch
Basalt, CO 81621

3. ADDRESS OF SPECIAL EVENT

110 Snowmass Drive
Carbondale, CO 81623

NAME

DATE OF BIRTH

EMAIL ADDRESS

PHONE NUMBER

4. PRES/SECY OF ORG OR POLITICAL CANDIDATE

Geoff Jamieson

5. EVENT MANAGER

Geoff Jamieson

5. EVENT MANAGER

Same

Same

Same

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

☒ NO

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

☐ YES

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

☐ NO

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

Date
2/1/17

Hours From
5:00 pm
To
10:00 pm

Date

Hours From

To

Date

Hours From

To

OATH OF APPLICANT

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

SIGNATURE

TITLE

DATE

REPOR AND APPROVAL OF LOCAL LICENSING AUTHORITY

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

THEREFORE, THIS APPLICATION IS APPROVED.

SIGNATURE

TITLE

DATE

LOCAL LICENSING AUTHORITY

ATTEST
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

DUCKS UNLIMITED, INC.

is an entity formed or registered under the law of District Of Columbia, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19891072746.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/17/2017 that have been posted, and by documents delivered to this office electronically through 01/23/2017 @ 09:55:36.

I have affixed hereeto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/23/2017 @ 09:55:36 in accordance with applicable law. This certificate is assigned Confirmation Number 10033062.

STATE OF COLORADO

1876

Secretary of State of the State of Colorado

End of Certificate

Note: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site. http://www.sos.state.co.us/CertificateSearch/verify.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site. http://www.sos.state.co.us click Businesses, trademarks, trade names and select Frequently Asked Questions.
1. Event Fee Payments & Building Use

A. At or before the time of execution of this contract, Renter shall pay to The Orchard a non-refundable down payment in the amount of $2100. This payment secures the Entire Facility on Saturday, March 4, 2017 from 5-10 PM. This down payment shall be applied toward the Event Fee or cancellation fees, whichever is applicable.

B. No less than 45 days prior to the Event, Renter shall pay to The Orchard an additional payment in the amount of $2100. This additional payment shall be applied toward the Event Fee or cancellation fees, whichever is applicable.

C. Renter shall pay The Orchard the balance of the Event Fee owed on or before the 7th business day prior to the Event.

D. The Gathering Center is a ministry of The Orchard. The Orchard can, at its discretion, deny anyone use of the facilities without explanation or reason.

E. Renter and its guest will occupy the premises for the purposes stated and will only occupy the space(s) leased as detailed in the attached Event Order identified. Renter will respect the rights of others to use other portions of The Orchard’s facility during normal hours of operation, and will not permit any noise or nuisance which might have a tendency to annoy or disturb any persons occupying other portions of the building.

F. Rental of The Orchard facilities does not include wait staff or dish washing. If you need staffing for food service, it is available at an additional charge of $20 per hour per staff person. Following is the minimum guidelines for proper staffing – Cocktail Party: 1 server / 50 people | Buffet Meal: 1 Server / 30
people / Plated Meal: 1 Server / 20 people. Dishwashing and/or scullery will be staffed at 1 person / 50 people. Arrangements for staffing must be made at least 2 weeks in advance.

G. The Gathering Center décor will change regularly and may be different than what you saw at the time of signing this contract. Artwork is not to be removed. Nothing is to be placed on the walls, ceilings or windows without prior written consent. Absolutely NO GLITTER OR CONFETTI of any kind. Absolutely no nails, staples or holes. Only blue painters tape is to be used to hang items on the walls. Any & all decorations must be approved and is limited to the rented space only. All decorating must be done by closing time (if being done the day before).

H. All Decorations must be taken down and removed from The Gathering Center immediately following the Event. Decorations that must be removed by The Orchard staff will be charged the hourly rate of $350 per hour.

I. Storage will not be provided for decorations, food, or other supplies prior to the Event unless arrangements have been made ahead of time.

J. Sound equipment, piano, furniture and art MAY NOT be moved without permission. (additional charges may apply) – Stage will be cleared of all equipment except the piano and the drum booth. Soft furniture will be moved out of usable spaces for event.

K. The Orchard is a NONSMOKING facility. In accordance with Colorado law smoking is not allowed within 15 feet of any entrance or in any area where food is being served and/or consumed.

L. Renter is responsible for the conduct of guests and all damages incurred to The Orchard’s facilities.

M. The Orchard assumes no responsibility for the damage or loss of articles left on The Orchard’s premises prior to, during or following the Event.

N. The Orchard reserves the right to change the location(s) and/or room(s) of the event.

O. The Renter agrees to be responsible for the conduct of its guests. Renter agrees that at the request of The Orchard, it will remove from its premises any guest The Orchard considers in its sole discretion exhibiting inappropriate conduct. In the event any state law or local ordinances are being violated, The Orchard will terminate the Event at Renter’s expense.

P. Sound Volume – For the safety and comfort of guests, performers, staff and volunteers, The Orchard reserves the right to control the volume of its events. Music is not to be played above a decibel of 100. Orchard staff will monitor this level and will ask a band/DJ to adjust their sound accordingly. Refusal to comply will result in an immediate termination of the event.
2. Event Exceeding Specified Time

If the duration of The Event exceeds the Event Duration specified above, Renter will pay The Orchard an additional fee of $350 per each hour the actual duration of the Event exceeds the specified Event Duration. **All Orchard Events must end at 10 PM. There are no exceptions to this.**

3. Cancellation Fees

If the Event is cancelled, the following cancellation fees payable on the date of cancellation apply:

- Event cancelled 45 days or less before the Event Date: 100% of the Event Fee
- Event cancelled 46 to 90 days before the Event Date: 75% of the Event Fee
- Event cancelled 91 days or more before the Event Date: 50% of the Event Fee

4. Method of Payment

Payment may be made by cash, check, cashier’s check, Visa, or MasterCard. Any payment not received by the stipulated due date, the payment will automatically be charged to your credit card on file. In the event of an “overpayment”, The Gathering Center shall issue a refund check for the difference within 10 business days after the Event Date.

If Renter is a Tax-exempt Organization, a photocopy of the tax-exempt certificate must be on file in the before Renter will be set-up as tax-exempt. Any organization found using a false tax-exempt number will be charged back taxes in the total amount due.

5. Advertising

A. The Orchard maintains an Upcoming Events page on its website. If Renter would like to provide a link information for the Event, please forward us that information. A copy of Renter’s poster, flyer, etc. will be posted at Renter’s request.

B. When advertising the event venue, please refer to us as The Orchard, The Gathering Center or The Gathering Center at The Orchard. Any questions relating to such use should be directed to The Orchard.

6. Alcohol

A. The Orchard does not provide, or sell alcoholic beverages.
B. Alcohol served at the Event is limited to beer and wine only. A signature cocktail for this group is OK.

C. Any beverage which contains alcohol must always be clearly labeled and in its original container.

D. Alcoholic beverages must be served by certified bartender(s). No self-serve is permitted. A copy of the bartender’s certification must be on file with The Orchard 1 week prior to the Event. Upon request, The Orchard will provide Renter with a list of certified bartenders.

E. The certified bartender(s) must be willing to refuse service when they determine a person appears to be intoxicated. The Orchard’s staff and elders will support the decision if an issue arises from the decisions to refuse alcohol to a person. The bar will be attended the entire time alcohol is being served.

F. Alcohol will not be sold by The Orchard at functions held at The Orchard. Alcohol cannot be sold by Renter at the Event unless Renter has first obtained a Special Event Permit from the Town of Carbondale.

G. Food must also be served at the Event if alcohol is being served.

H. Under no circumstances will alcohol be served to or consumed by any person under the age of 21 even when accompanied by their parents. If any person under the age of 21 is found consuming alcoholic beverages, The Orchard reserves the right to terminate the Event at the Renter’s expense.

I. Drinking alcohol will never be a social requirement. Whenever alcohol is served in any form, non-alcoholic alternatives must also be offered. Non-alcoholic beverages must be served with the same attractiveness and accessibility as those containing alcohol, so that those who choose not to drink alcoholic beverages need not feel any embarrassment, discomfort or inconvenience in exercising their preference.

J. All applicable Federal, State and Local laws and ordinances governing the use/distribution/sale of alcohol must be adhered to when serving alcoholic beverages including the requirement to obtain a Special Event Permit from the Town of Carbondale if alcohol will be sold at the Event.

K. Groups not affiliated with The Orchard shall have security on-site as deemed necessary by the Gathering Center Director.

L. During Events requiring a Special Event Permit from the Town of Carbondale, alcohol will be consumed only in areas specifically identified in the License. However, under no circumstances will alcohol be permitted in the parking lot.

M. Renter agrees to be responsible for the consumption of alcoholic beverages by all guests.

N. All licenses and permits required must be posted in a conspicuous place in the licensed area for the general public to observe. The licenses and permits required include, but are not limited to the following:
   a. Special Event Permit – State
   b. Special Event Permit – City
   c. Minor Warning Sign – The Orchard has these signs on file and will provide to Renter for the Event upon request
   d. State Sales Tax License – Even though these permits are issued to non-profit organizations, the retail sale of alcohol beverages to consumers is still subject to state and local sales taxes. Special Event Permit applicants should contact the Department of Revenue at (303) 238-7378 to determine the correct method or remitting the sales tax.
   e. Other local licenses as required – Check with the local authority, Town of Carbondale

Q. Per the guidelines stipulated in the Special Event Permit Guide from the Colorado Department of Revenue Liquor Enforcement Division, donated beverages cannot be resold.
Alcohol beverages received from other non-licensed or private sources may not be sold, served or consumed at Event[s requiring a Special Events Permit.

Client Initials

7. Additional Terms & Conditions

A. Use of the fire pits requires adult supervision.

B. Youth groups must be supervised by adult sponsors in the following ratios: children 13 and younger require 1 adult per .0 children. Teens aged 14 and older require 1 adult per 15 teens.

C. Children 8 years old and younger MUST have constant supervision while their parents or guardians are using the facility.

O. During the time of the Event, the Renter and its guests shall obey all laws of the State of Colorado and ordinances of the Town of Carbondale.

P. Renter authorizes The Orchard to charge the credit card identified below for any fees set forth in this Agreement that have not been paid by Renter by the respective due dates. **If the Renter does not wish to provide a valid credit card, a deposit of $1000 cash is required.**

Q. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Neither The Gathering Center/The Orchard nor the undersigned shall be required to perform any term, conditions, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, or any other cause not reasonably within the control of The Gathering Center/The Orchard or Client and which by the exercise of due diligence of The Gathering Center/The Orchard or Client is unable, wholly or in part, to prevent or overcome. This Agreement and attachments embody the entire agreement and understanding of the parties relating to the subject matter hereof, is nonassignable, may not be amended except in writing signed by both parties, and supersedes any prior representations, agreements, and understandings, oral or written, if any, relating to such subject matter.

R. Renter agrees to indemnify The Orchard and save The Orchard harmless from any and all damages or losses The Orchard may suffer, including attorney's fees, as a result of claims, demands, costs, or judgments against it arising out of the use of The Orchard facility by the renter.

Client Initials

The Renter and The Orchard through their authorized signatures below agree to the terms and conditions of this Facility Rental Agreement including all attachments thereto.

Renter: Ducks unlimited

By: /s/ Melissa Miller

Date: 10/19/16

The Orchard

Title: Gathering Center Director

Date: 10/19/16

Authorized Signature of Renter
To: Mayor Dan Richardson and Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for the Carbondale Arts Fashion Show to be held at the Carbondale Recreation Center on March 10-11, 2017.

Date: January 25, 2017

I have found no records that would cause me to recommend denial of this liquor license special event application to serve alcohol at the Carbondale Recreation Center being held March 10-11 2017.

Jessica Cabe

Amy Kimberly

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

IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NON-PROFIT
AND ONE OF THE FOLLOWING:
- SOCIAL
- ATHLETIC
- FRATERNAL
- CHARTERED BRANCH, LODGE OR CHAPTER
- PATRIOTIC
- OF A NATIONAL ORGANIZATION OR SOCIETY
- POLITICAL
- RELIGIOUS INSTITUTION

TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:
- MALT, VINOUS AND SPIRITUOUS LIQUOR $50 PER DAY
- FEMENTED MALT BEVERAGE (3.2 BEER) $10 PER DAY

LIQUOR PERMIT NUMBER
STATE SALES TAX NUMBER (REQUIRED)

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE
CARBONDALE ARTS

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY
PO BOX 175
CARBONDALE, CO 81623

3. ADDRESS OF SPECIAL EVENT
Carbondale Rec Center
567 Colorado Ave.
Carbondale, CO 81623

NAME

DATE OF BIRTH

EMAIL ADDRESS

PHONE NUMBER

4. PRES/SEY OF ORG. OR POLITICAL CANDIDATE
JESSICA CARE

5. EVENT MANAGER
AMY KIMBERLY

6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR?
\(\checkmark\) NO \(\square\) YES HOW MANY DAYS?

7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE?
\(\checkmark\) NO \(\square\) YES TO WHOM?

8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED?
\(\checkmark\) NO \(\square\) YES HOW MANY DAYS?

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Hours From</th>
<th>Hours To</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/10/17</td>
<td>5 pm</td>
<td>11 pm</td>
</tr>
<tr>
<td>3/11/17</td>
<td>5 pm</td>
<td>11 pm</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

SIGNATURE

DATE 3/23/17

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

THEREFORE, THIS APPLICATION IS APPROVED.

SIGNATURE

DATE

LOCAL LICENSING AUTHORITY

ATTEST
To the Carbondale Board of Trustees,

Thank-you for considering our request for a Special Event license for the Green Is the New Black on March 10 and 11. This is a big community event that brings people to town, generates sales tax and raises money for our Arts Education programs. The show is in its 9th year and will be run the same as it has in the past. Evan Cree is our Event Manager. He is TIPS trained and also oversees the Mountain Fair cantina. We are working with local companies Marble Distillery and Roaring Fork Beer Company so our money will stay in the community. Hope you can make the event.

Sincerely,

Amy Kimberly
Carbondale Arts
Exhibit E: CRCC Load-in & Load-out Specifications and Rules

West Entrance: Doors must remain closed during the function and no load-out allowed from this exit due to noise concerns from neighbors.

North Parking Lot

South Parking Lot

North Gym Entrance—No Vehicles on lawn and doors must remain closed during function.

South Entrance Load-in & Out

North Entrance Load-in & Out

No Vehicles allowed on Promenade Walkway

X Exits that will have security
O Liquor Serving Areas
___ Border of Liquor Area
January 23, 2017

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

Ladies and Gentlemen:

I am writing on behalf of Amy Kimberly, who is representing the Carbondale Council of Arts & Humanity. The Town of Carbondale Recreation Department has given CCAH and the Green is the New Black Fashion Show permission to use the Carbondale Recreation Center for the special event fashion show to be held March 10 & 11, 2017.

Sincerely,

[Signature]

Eric Brendlinger
Recreation Center Manager
Town of Carbondale
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

Carbondale Arts

is a

Nonprofit Corporation

formed or registered on 07/10/1974 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871275446.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/17/2017 that have been posted, and by documents delivered to this office electronically through 01/24/2017 @ 11:00:38.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/24/2017 @ 11:00:38 in accordance with applicable law. This certificate is assigned Confirmation Number 10036299.

Secretary of State of the State of Colorado

*************************************************************************
End of Certificate*************************************************************************
TOWN OF CARBONDALE
RECREATION & COMMUNITY CENTER
RENTAL AGREEMENT

(FOR SPECIAL EVENTS OF MORE THAN 250 PARTICIPANTS)

This Agreement is made and entered into by and between the Town of Carbondale (TOWN), a home rule municipality of the State of Colorado and Carbodale Arts (RENTER) for the following function ____________________________ whose address and contact information is as follows:
Street of PO Box ____________________________
City ____________________________ State  CD  Zip Code  81623
Work Phone # ____________________________ Home Phone # ____________________________ Cell # ____________________________ e-mail ____________________________
Fax # ____________________________

The parties do hereby agree to the following:

1. PREMISE:
   The site of the ______________ (EVENT NAME) shall take place at the Carbondale Recreation & Community Center Premises (inside & outside) referred to as "CRCC".
   (RENTER) is hereby granted an exclusive right of use according to the following schedule:

<table>
<thead>
<tr>
<th>DATE &amp; DAY</th>
<th>TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>TUESDAY 3/7</td>
<td>10 am - 11 pm</td>
</tr>
<tr>
<td>TUESDAY 3/7</td>
<td>9 am - 11 pm</td>
</tr>
<tr>
<td>TUESDAY 3/7</td>
<td>9 am - 11 pm</td>
</tr>
</tbody>
</table>

   Above total use of CRCC is ______ hours.

   1.1 (RENTER) anticipates that the total number of attendees (including ______ staff & volunteers, and ______ guests & performers) at the EVENT will be approximately ______ people.

2. EVENT MANAGEMENT PLAN:
(RENTER) shall provide EVENT MANAGEMENT PLAN to Town of Carbondale Recreation Center Manager by ______________. This Event Management Plan requires a written narrative that covers each of the topic items listed below. Please use both the corresponding Letter listed & Topic Item (bold print) as a "Heading" for your required narrative.

   A) Names of EVENT ORGANIZERS & STAFF PERSONNEL assisting and their phone numbers (including cell phone #)
   B) SET-UP PLAN (describe set-up prior to actual event)
   C) SITE MAP of CRCC (town provided) that shows locations where everything is taking place
   D) EVENT SCHEDULE (listing set-up times, event times, and take-down/cleanup times)
   E) MAP OF LIQUOR LICENSE POINT OF SALE (with locations of entrance/exit gates, security personnel, and fencing locations (if applicable) used to secure & prevent alcohol taken off premise)
   F) CROWD MANAGEMENT PLAN (describe staff & security approach to unruly patron behavior, alcohol intoxication, illegal drug use/possession, refusal to leave if requested)
   G) ON-SITE PARKING MANAGEMENT PLAN (describe north parking lot staffing)
   H) OFF-SITE TRAFFIC & PARKING MANAGEMENT PLAN (may be required - #2.5 below)
   I) LOADING & UNLOADING PLAN (describe policy & procedure for getting equipment in)
   J) CONCESSIONAIRE LOCATIONS (describe locations & required Town sales tax submittal)
   K) SIGNAGE PLAN (describe signs RENTER is providing; see list below)
   - Kinds of shoes prohibited on gym floor to prevent damage (discuss with CRCC staff)
CRCC Special Event rental agreement 250 plus participants

- Smoking area, dance floor area, portable toilet area, parking signs, emergency access, etc.
- No carry-in or carry-out of alcohol or glass on CRCC PREMISE for public events.
- No open containers of alcohol allowed on CRCC PREMISE (except in licensed area)
- No cameras, cell phones, recording devices (optional depending upon event)
- No dogs allowed on CRCC PREMISE
- No unauthorized vending on CRCC PREMISE Vendors must have a current Town Sales Tax License

L) TRASH PLAN (see below #3)

M) SANITATION TOILET PLAN (additional portable toilets may be required - see below #4)

2.1. (RENTER) shall be responsible for maintaining an emergency access to CRCC, to the satisfaction of TOWN and/or the Carbondale & Rural Fire Protection District.

2.2. (RENTER) understands that vehicles are not allowed on grass or xeriscape areas within outside CRCC PREMISE, and only within designated parking areas. Loading and unloading plan required.

2.3. (RENTER) shall coordinate with Recreation Center Manager and/or Police Chief that adequate security is provided within CRCC before, during and after event.

2.4. (RENTER) shall be responsible for paying for all property, equipment, and facility damage (whether inside or outside) to CRCC as a result of hosting this special event. If damage deposit funds held by TOWN are insufficient to cover damage, (RENTER) shall be required to pay any additional repair costs plus 15% once notified by TOWN to do so by a certain time or date.

5. (RENTER) may be required to provide for the management of pedestrians, bicycles, and vehicular traffic at all EVENT activity locations, including the CRCC, its north parking lot, Colorado Avenue, 4th Street and 6th Street. If required, an OFF-SITE TRAFFIC & PARKING MANAGEMENT PLAN shall be delivered to the Recreation Center Manager by 2/11/2001, who will coordinate and get approval for this plan by the Public Works Department and Police Department.

3. TRASH PLAN:
(RENTER) shall provide for the pick-up and removal of all trash and recyclable materials, both on and off the EVENT site, which results from hosting the EVENT (town dumpster(s) on site may not be used).

1. It is the responsibility of (RENTER) to collect refuse from CRCC at the close of the EVENT. (RENTER) may comply by (1) hiring a trash contractor who provides appropriate container(s); (2) provides Town approved containers at its expense; or (3) provides a refuse removal plan that prevents the accumulation of refuse.

3.2. (RENTER) shall provide a plan or their contract for removal of trash and recyclable materials so that it occurs no later than 1/1/00 from within CRCC, and no later than 1/1/00 from off the CRCC Premises.

4. SANITATION TOILET PLAN:

4.1. Additional outside sanitation portable toilets may be required at CRCC for EVENT. (RENTER) may be required to contract with a Sanitation Provider to install two (2) to six (6) portable toilets at CRCC depending on number of expected attendees. If required, a written plan for locating and maintaining portable toilets shall be provided to Recreation Center Manager. (RENTER) shall remove all waste disposal in accordance with
applicable State laws, and all portable toilet facilities shall be removed from CRCC Premises no later than ___________.

4.2 (RENTER) is responsible for keeping clean and stocking toilet paper within portable toilets from beginning to end of EVENT.

4.3 (RENTER) shall provide their staff to ensure CRCC inside bathrooms are kept clean, sanitary, and picked up during EVENT. Notify Rec. Dept. staff if toilet paper is needed.

5. CRCC RENTAL USER FEE & CLEANUP/DAMAGE DEPOSIT FEE:
5.1 (RENTER) shall submit payment in the form of a check, cash, or credit card (Master card, Visa, Discover) payable to: CARBONDALE RECREATION & COMMUNITY CENTER, for the CRCC RENTAL AGREEMENT USER FEE.

5.2 A separate transaction with check, cash or credit card payable to: TOWN OF CARBONDALE, for the CRCC CLEANUP/DAMAGE DEPOSIT FEE.

5.3 These fees must be paid in full to Recreation Center Manager no later than ___________.

All or a portion of the cleanup/damage deposit fee may be utilized by the TOWN for the purpose of payment of unforeseen costs necessary to insure and protect public safety during the EVENT, and to ensure the terms and conditions of this RENTAL AGREEMENT are fulfilled including cleaning fees after the event. The deposit shall not limit (RENTER) from liability for such expenses in excess of the Cleanup/Damage Deposit Fee submitted. If no damage is present, the damage deposit will be returned within 30 days after completion of (RENTER) use of the CRCC. The TOWN has the right to deduct from the damage deposit for losses sustained or amounts owed by the (RENTER) pursuant to this Agreement which may take longer than 30 days. An itemized list of deductions will be provided. (RENTER) understands that should illegal presence, consumption of alcoholic beverages or controlled substances occur on CRCC premises during the event by (RENTER) or guests, the full amount of the Damage Deposit may be forfeited to TOWN for violation of state and local liquor laws and the function may be terminated at the time of infraction.

6. LICENSES, PERMITS, AND FEES:
(RENTER) shall adhere to all local and state requirements regarding business licenses, taxes, vending, and special event permits and policies.

7. TOWN OF CARBONDALE SPECIAL EVENT MALIT LIQUOR PERMIT REQUIREMENTS: (For Non-profits only)
(RENTER) shall submit to Carbondale Town Clerk, Cathy Derby, the following required listed items by ___________:

(a) Town of Carbondale Special Event Liquor License Application (provided by Town Clerk or available on the Town of Carbondale Website, www.carbondalegov.org under the forms banner) accompanied by a $50.00 per day fee (check payable to: Town of Carbondale)
8. **INDEMNIFICATION:**
(RENTER) agrees to indemnify Town of Carbondale, the Carbondale Recreation & Community Center, its officers, agents and employees, and to hold them harmless as to any claim, liability or damages, including attorney fees and court costs, arising out of, or directly or indirectly resulting from the conduct of the EVENT.

9. **INSURANCE:** applicable to events open to the public, not applicable for private, invitation only events.
(RENTER) shall obtain general liability insurance coverage in an amount and form acceptable to the (TOWN), naming the TOWN OF CARBONDALE as an additional insured and insuring TOWN OF CARBONDALE and its officers, agents and employees against any and all liability and damages which may arise out of or directly or indirectly result from the conduct of the EVENT. The minimum limits and requirements of the coverage shall include:
* $1,000,000 per occurrence primary coverage, and $2,000,000 annual aggregate
* Host and general liquor liability insurance in the same amounts listed above
* $1,000,000 personal and advertising injury coverage; and
* $50,000 fire damage.
Certificates of insurance shall be provided to CARBONDALE Town Clerk by [Signature]
and a copy to the Recreation Center Manager by [Signature].

10. **CANCELLATION OF EVENT:**
The EVENT may be canceled by the Town of Carbondale Town Manager, the Recreation Department Director, the Recreation Center Manager, or his/her designee, if the terms of this Agreement are not substantially fulfilled in a timely manner, or in the event of an unforeseen catastrophic event or act of God. In the event of such cancellation, TOWN shall remit to (RENTER) all damage deposits minus any expenditures incurred by CRCC. Neither party shall be liable to the other for any lost profits, lost revenues or consequential damages in the event of such cancellation. The renter will forfeit 100% of reservation deposit, which is 50% of the facility rental fee if they fail to cancel rental within one week (7 days) of the event. If the rental is cancelled 7 days or more in advance the renter will lose 10% of their reservation deposit as a booking fee due to our inability up until that time to rent the space and potential lost revenue.

11. **RELEASE OF LIABILITY:**
TOWN or CRCC assumes no responsibility whatsoever, for any non-municipal property used within CRCC PREMISES, and TOWN is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to any person or property of (RENTER), its employees, agents and concessionaires, or of any performer or spectator that may be sustained by reason of the occupancy of CRCC PREMISES under this Agreement.

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

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

---

**RECREATION CENTER MANAGER REVIEW AND COMMENTS:**

- carpet tiles underneath heavy equipment and stage furniture
- use of lift by Atchley or Volunteer use not allowed

RECOMMENDATION: **APPROVAL**

Conditions Suggested: __________________________________________

---

**PARKS & RECREATION DIRECTOR REVIEW AND COMMENTS:**

- Tips Training Volunteer security adult and youth to
**ATTACHMENT N**

**RECOMMENDATION:**  
- APPROVAL  
- DENIAL

**CONDITIONS SUGGESTED:**

---

**POLICE CHIEF REVIEW AND COMMENTS:** if needed

---

**RECOMMENDATION:**  
- APPROVAL  
- DENIAL

**CONDITIONS SUGGESTED:**

---

**TOWN MANAGER REVIEW AND COMMENTS:** if needed

---

**RECOMMENDATION:**  
- APPROVAL  
- DENIAL

**CONDITIONS SUGGESTED:**

---

**TOWN OF CARBONDALE:**

Town Manager (if needed)  

\[Signature\]  

2/7/17  

**DATE**

---

**(EVENT NAME):**  

\[Green in the New Black\]

Event Organizer Signature  

Amy Kimberley  

2/2/16  

**DATE**  

Event organizer name/printed  

Amy Kimberley  

Date

---

**EVENT REQUIREMENTS APPROVED:**

Eric Brendlinger  

Parks & Recreation Director  

3/7/2017  

**DATE**

---

**LIQUOR LICENSING APPROVAL:**

\[Applied for\]  

Cathy Derby  

Town Clerk  

2/7/17  

**DATE**
EXHIBIT A: Security

Security: An adequate number of properly trained and qualified security guards, that work for a bonded & insured company, whose main business purpose is to conduct event security, shall be provided, at RENTER cost, by RENTER, if deemed necessary by TOWN staff. Security is required for all events that are invitation only/private rentals of CRCC space when alcohol is served. Non-profit sponsored public events that have processed a Special Event Liquor License, may have this requirement waived, if they can provide an adequate number of trained volunteers and a comprehensive event management plan that mitigates staff concerns for public safety, event monitoring and the following of applicable federal and state laws.

General Guidelines:

a. RENTER is required to provide security for special events over 150 people at the CRCC.

b. Until the security personnel arrive, alcohol at the event will not be allowed to be served.

c. Security is required to arrive fifteen (15) minutes prior to the beginning of the event. Based on the number of people and type of event, one (1) to five (5) officers are required to remain continuously for the duration of the event and until the premises have been completely vacated and locked.

d. Security personnel shall:
1. Monitor to ensure that no under-age alcohol consumption or illegal drug use occurs.
2. Monitor for fighting or other inappropriate behavior.
3. Monitor event to ensure that only expected / invited persons are admitted to the event.
4. Monitor the number of persons admitted based on the Agreement.
5. Monitor rental space and all associated public areas.
6. Monitor event attendees to ensure that they remain in appropriate areas and not in off-limits areas in or around the facility.
7. Monitor parking lot area hourly.
8. Other appropriate duties related to security and event monitoring as requested by person-in-charge of event and / or Event Coordinator.

**Events without alcohol Security Ratios** (# of Participants: Security Personnel)

<table>
<thead>
<tr>
<th>Range</th>
<th>Security Personnel</th>
<th># Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-149</td>
<td>0-1 security personnel</td>
<td>_______</td>
</tr>
<tr>
<td>150-250</td>
<td>1-2 security personnel</td>
<td>_______</td>
</tr>
<tr>
<td>250-600</td>
<td>3-5 security personnel</td>
<td>_______</td>
</tr>
</tbody>
</table>

**Events with alcohol Security Ratios** (# of Participants: Security Personnel)

<table>
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<td>0-2 security personnel</td>
<td>_______</td>
</tr>
<tr>
<td>150-250</td>
<td>2-3 security personnel</td>
<td>_______</td>
</tr>
<tr>
<td>250-600</td>
<td>4-5 security personnel</td>
<td>_______</td>
</tr>
</tbody>
</table>

**For private / invitation only events:** Attach a signed copy of security contract, displaying number of security guards and hours they will be employed for your function. Security must be present anytime alcohol is served and must remain until the facility is locked up and staff has safely exited the premises & the property. Contract Due date: ___________ Date received: ___________

**For Non-Profit Special Events with liquor licenses:** Event management plan satisfies security requirement. _____ Yes _____ No (If not, event must comply by hiring a security company and providing a signed copy of security contract, with # of security guards & hours.) Contract Due date: ___________ Date received: ___________

I have read the above Agreement, and will comply with it during my use of the CRCC Premises.

Renter Signature: ___________________________ Name Printed: ___________________________ Date: 2/2/17

---

**Exhibit B: Occupancy Loads and Fee Structures**

CRCC facilities to be used.* Maximum capacity for entire building cannot exceed 1,483 None of the fire exits can be blocked with renter equipment and all exit signs must always be visible and on.

**Gymnasium** Net Floor Area: 6,300 Sq. Ft.
Occupant Load (concentrated, chairs only not fixed): 900
Occupant Load (standing space): 1,260
Occupant Load (unconcentrated, tables & chairs): 420

**Activity Multi Purpose Room** Net Floor Area: 315 Sq. Ft.
Occupant Load (concentrated, chairs only not fixed): 45
Occupant Load (standing space): 63
Occupant Load (unconcentrated, tables & chairs): 21

**Lobby** Net Floor Area: 798 Sq. Ft.
Occupant Load (standing space): 160
<table>
<thead>
<tr>
<th>Amenity</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
<th>Room Rental Fee</th>
<th>Damage Deposit</th>
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</thead>
<tbody>
<tr>
<td>Full Gymnasium Rental</td>
<td>$93 / $128</td>
<td>$450 / $630</td>
<td>$300 / $600</td>
<td>x 3 days = $1,350</td>
<td></td>
</tr>
<tr>
<td>Kitchen</td>
<td>$35 / $49</td>
<td>$175 / $245</td>
<td>$100 / $200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$50 / $62</td>
<td>$150 / $210</td>
<td>$100 / $200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lobby &amp; Patio</td>
<td>$23 / $32</td>
<td>$115 / $160</td>
<td>$100 / $200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entire Facility (closed)</td>
<td>$186 / $274</td>
<td>$980 / $1,370</td>
<td>$1000 / $2000</td>
<td>x2 = $2740</td>
<td></td>
</tr>
<tr>
<td>After Hours &amp; Gym Buff*</td>
<td>$24 / hr/staff + rental fees</td>
<td></td>
<td>21 hours = $504*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stage or Curtains</td>
<td>$24 / hr/staff + rental fees</td>
<td></td>
<td>waived due to volunteers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*11hr after hrs + 6 hrs gym buff = 17 hr + 2hr x 2 staff skylight blackout

<table>
<thead>
<tr>
<th>Amenity</th>
<th>Per hour</th>
<th>Day rate (6 + hours)</th>
<th>Deposit</th>
<th>Room Rental Fee</th>
<th>Damage Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Gymnasium Rental</td>
<td>$115 / $160</td>
<td>$575 / $800</td>
<td>$300 / $600</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kitchen</td>
<td>$46 / $64</td>
<td>$230 / $320</td>
<td>$100 / $200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi-purpose room</td>
<td>$35 / $49</td>
<td>$175 / $245</td>
<td>$100 / $200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lobby &amp; Patio</td>
<td>$29 / $32</td>
<td>$115 / $160</td>
<td>$100 / $200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entire Facility (closed)</td>
<td>$241 / $338</td>
<td>$1205 / $1690</td>
<td>$1000 / $2000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>After Hours &amp; Gym Buff</td>
<td>$24 / hr/total + rental fees</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stage or Curtains</td>
<td>$24 / hr/total + rental fees</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Underlined = rental rates for functions serving alcohol from 250 participants and up

<table>
<thead>
<tr>
<th>Equipment &amp; Amenities</th>
<th>Equipment rental fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCD Projector</td>
<td>$50</td>
</tr>
<tr>
<td>Overhead Projector</td>
<td>$20</td>
</tr>
<tr>
<td>Screen (6 ft x 9 ft)</td>
<td>$20</td>
</tr>
<tr>
<td>TV/VCR or DVD cart</td>
<td>$20</td>
</tr>
<tr>
<td>Slide Projector</td>
<td>$20</td>
</tr>
<tr>
<td>Stand Up Podium Microphone</td>
<td>$20</td>
</tr>
<tr>
<td>2 speaker sound system w/ wireless mic</td>
<td>$50</td>
</tr>
<tr>
<td>CD Music Player</td>
<td>$10</td>
</tr>
<tr>
<td>Chairs (250 included w/rental)</td>
<td>$1 each additional</td>
</tr>
<tr>
<td>Curtain (5 sections total) 20ft tall x10 wide</td>
<td>$30 per section</td>
</tr>
<tr>
<td>Stage (4 ft by 8 ft sections: 12 sections)</td>
<td>$15 per section</td>
</tr>
<tr>
<td>Easel w/paper or Dry Erase Board</td>
<td>$10</td>
</tr>
<tr>
<td>Bounce House</td>
<td>$75 plus staff time</td>
</tr>
<tr>
<td>Subtotal Room Rental</td>
<td>$4,090.00</td>
</tr>
<tr>
<td>Subtotal Equipment Rental</td>
<td>$150.00</td>
</tr>
<tr>
<td>Additional staff/ after hours</td>
<td>$504.00</td>
</tr>
<tr>
<td>Total Facility Fees</td>
<td>$4,744.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reservation Deposit</th>
<th>Paid Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>50% of facility charge</td>
<td>Paid Date</td>
</tr>
<tr>
<td>Balance Due</td>
<td>$4,744.00</td>
</tr>
<tr>
<td>Refundable Damage Deposit Amount</td>
<td>$2,000.00</td>
</tr>
</tbody>
</table>

(Received Date: Date of Return)

Expiration Date: Name on Card: CVC:
Please read and initial all responsibilities of the Renter before during and after your party, if you have any questions about these policies please ask a manager so we can explain these policies better. If policies are broken it will result in a loss of your security deposit in the amount that it takes to remedy the situation.

- Tables and chairs will be left in the lobby or gym. It is the renter’s responsibility to set up all tables and chairs in the renter’s designated spots.

- After event is over tables must be wiped down with disinfectant and stored back in the activity closet. Staff will be available to show where these tables should be stored.

- All chairs must be stacked back on the chair carts, 20 chairs high, and stored at Town Hall in the storage area. CRCC staff can show you exact location for storage. Any chairs that appear dirty must be wiped down.

- It is the renter’s responsibility to cover the surface of the floor with carpet tiles. Carpet tiles should be placed under all rented tables and chairs, sound equipment or anything that may have heavy use and potential wear and tear on the floor must be covered with tiles.

- Carpet tiles should be cleaned off at the end of the event and placed back on the carpet tile caddy in the Gym Storage area.

- It is the Renter’s responsibility to dispose of all garbage accumulated at their event. Garbage left outside or inside the facility will result in loss of part of your security deposit.

- CRCC staff are NOT responsible to clean the facility during or after the rental. Their duties are to supervise the renter’s cleanup and assist with any questions the renters or guests may have. CRCC are responsible for setting up and taking down the stage, curtains and any sound equipment rented.

- All spaces rented must be cleaned up properly, please see below:

  **Kitchen:** The kitchen countertops should be wiped down with disinfectant spray. Any appliances used such as the refrigerator, stove, dishwasher, and microwave should be cleaned to its original state. Everything brought into the kitchen should be moved out by the end of your rental period. The floor should be swept and mopped.

  **Gym:** Everything must be out of the gym by the end of your rental agreement which includes: tables and chairs, sound and lighting equipment, carpet tiles, garbage cans, decorations, and etc. The gym floor should be swept including under the bleachers, and any large spills should be hand mopped by the renter. CRCC staff will be responsible to buff out the floor the following day with our scrubber. Any damage to the floor will be noted on your rental agreement and taken out of your security deposit. If gym is not properly cleaned up by the end of the night you will be charged additional fees for staff time to clean up any messes.

  **Bathrooms:** It is the renter’s responsibility to clean the bathrooms at the end of the night. All bathrooms must be swept and mopped if needed. Any toilets or sinks that are dirty must be cleaned. If trash is overflowing one must remove the trash and put in new trash liners. CRCC staff will be available to assist in changing out toilet paper.

  **Lobby:** The lobby must be swept and mopped at the end of the night. It is the Renter’s responsibility to wipe down all lobby furniture. Trash cans should be emptied and trash disposed of.

  **Outside Patio:** The patio must be swept. Tables wiped down. All garbage disposed of.

  **Activity Room/Multipurpose Room:** It is the Renter’s responsibility to have everything out of the activity room by the end of the rental agreement. Floor should be vacuumed. Tables and chairs used in this room should be put away. The small bathroom inside this room should be cleaned properly. All trash should be discarded.
**EXHIBIT D**

**CRCC Special Event Rental 250 plus participants**

**Rental Check List for Damage Deposit Return**

Following rental, all rooms used by (RENTER) will be thoroughly checked by CRCC staff. Any infraction of the Agreement or CRCC Policies may result in a portion or all of damage deposit being retained by TOWN. User agrees to reimburse the TOWN for any cost that exceeds the damage deposit. Signing of this document does not release User from these obligations. Please Sign that you have read and understood this exhibit.

Date:

RENTER

<table>
<thead>
<tr>
<th></th>
<th>Scheduled</th>
<th>Actual Usage</th>
<th>Notes: Additional staff cleaning or repair time will be deducted at the rate of $40/hr/staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Set-Up began</td>
<td>9/6/19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time Clean-up Ended</td>
<td>3/11/19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Guests</td>
<td>500</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Check List:**

- Tables & Chairs Clean/Undamaged
- Trash Bagged and removed from facility (Town Dumpster not available for Event Trash)
- Spills Mopped/Floor Clean
- Decorations Removed
- Facility Equipment intact (Furnishings, Lamps Etc.)
- Bathrooms show no obvious wear or filth
- Other Renter Equipment Removed
- Lobby clean
- Kitchen Clean
- Gymnasium Floor
- Activity/flex room clean
## Equipment Rent

<table>
<thead>
<tr>
<th>Equipment Rented: (TV, Podium, microphone, etc.)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Patio and Balcony furniture clean/undamaged</td>
<td></td>
</tr>
<tr>
<td>Outside area clean/undamaged</td>
<td></td>
</tr>
</tbody>
</table>

### Key Returned, if issued
- [ ] Yes
- [ ] No
- [ ] NA

### Other / Report of Incident
- Police Called? Incident Report filled out?

Total amount charged:

---

Signature of Coordinator/Attendant___________________________ Date_________________________
Green Is the New Black Fashion Extravaganza Event Management

Event Organizers and Staff
Amy Kimberly - 618.1104
Evan Cree - Event Venue - 618.1280
Alta Otto - Tickets - 379.5403

Set-Up Plan
Monday, March 6th after Rec Center closes, Alchemy Sound begins set-up with lights. Carbondale Arts has access to gym at 6am and o'clock on Tuesday, March 7th. Rec Center staff sets up curtains in the morning. Runway arrives at 2:00 pm. Sound Loads in Tuesday morn as well. Carbondale Arts will hold tech rehearsals on Tuesday, Wed. and Thursday evenings. Access to kitchen and small room will be needed on Friday and Saturday only. Bar and Lobby set-up happens on Friday morning.

c. Site Map - Included

Event Schedule
Tuesday, March 7 - Set Construction and Load In
Wed. March 8 - Finish set and rehearsals/Backstage set-up
Thursday, March 9 - Finishing touches/rehearsal/chair set-up
Friday, March 10 - Bar Set-up by noon/Lobby set-up by one pm/
Doors open: 7 pm/Show starts @8 pm/ Show over by 10 pm
Saturday, March 11 - Cleaning at 7 am/Trunk Sale @ 2-4 pm/
Doors open: 7 pm/Show@ 8 pm/clean-up and break-down @10 pm

e. Included

Crowd Management
Carbondale Arts procures experienced Bar Managers and security to insure our events go smoothly. Luckily we have a large pool of talent from many years of Mountain Fair. Amy Kimberly will also be on hand. We have one paid security and would work with him if there was an unruly
person to remove. If that person was not responding to us then we would call the police to handle it. We do have ID checkers for drinking and have had many very successful events with very few problems.

Parking
Parking has never been an issue. At this point we have no plans for anything other than Security to give it checks before and after show.

Loading and Unloading
Load In will take place from the front of the Rec Center quietly on Monday evening. Load-In will take place in back of Rec Center during the day on Wed/Thurs. Load Out will take place in front of building at end of show so as not to disturb neighbors.

Concessions
Map shows concessions. Designer wares will be set up in lobby. Bar will be set-up in kitchen and to the left of the kitchen in gym. Carbondale Arts pays monthly sales tax on sales and those will be reflected for the month of March.

Signage
Carbondale Arts provides needed signage including “over 21” “no exits” and No smoking, “no alcohol beyond this point” etc.

Trash and Sanitation
Carbondale Arts works with MRI and provides one porta pottie for night of the performances for audience and one in the back for performers. Carbondale Arts contracts with Evergreen Events for recycling and trash removal. We use volunteers to help with this removal.
Exhibit E: CRCC Load-in & Load-out Specifications and Rules

- West Entrance: Doors must remain closed during the function and no load-out allowed from this exit due to noise concerns from neighbors.

- North Gym Entrance - No vehicles on lawn and doors must remain closed during function.

- South Entrance Load-in & Out

- North Entrance Load-in & Out

- No Vehicles allowed on Promenade Walkway

X Exits that will have security
O Liquor Serving Areas
___ Border of Liquor Area
CROSS Special Event rental agreement 250 plus participants

- Tickets/Volunteer Check-in
- Bar & Concessions
- Porta Potties
PROBLEM STATEMENT

Housing Cost
Workspace Cost
Housing Availability
No Revenue Source
DECISION POINT

1.) Submit Letter of Intent in March
2.) Apply in June
2.) Commit to up to $35,000 toward Artspace Market & Feasibility Studies Phase One. Possible match grant support
PROGRESS REPORT

2010 State Creative Industries Initiated
2013 Carbondale Arts leads efforts toward Creative District
2014 State accepts Carbondale into program, planning grant
2015 State initiates Space to Create
2016 Designated Carbondale Creative District- $45k invested
2016 CA/District and Town Staff meet Space to Create/Artspace
March 2017 Letter of Intent Due
June 2017 Space to Create application due
WHAT IS SPACE TO CREATE?

State Program to create affordable housing and working spaces for creative sector in 9 rural & mountain communities.
WHAT DOES PROGRAM OFFER?

Access to Advisors
Access to $1m Grant
Potential Developer
Financial Analysis
Revenue Creativity
NOW

Carbondale Creative District/CA and Town staff have done much of the legwork but only municipality can apply.

Town would guarantee local funding for study by Artspace, State funds rest of cost. Possible DOLA planning grant.
HOW- WE HAVE SOME EXPERIENCE

1. Identify Possible projects and Assess Interest
2. Meetings with State and Artspace
3. Assess Municipal Interest in Market Study *** We Are Here
4. Apply to Program
5. Space to Create Selects Community
6. Artspace Market & Feasibility Study
7. Project Selection- Yes/No
8. Predevelopment-Additional Town $
9. Final Decision
10. Design
11. Construction/renovation
12. Occupancy
WHO IS ARTSPACE?

Mission is to create, foster, and preserve affordable space for artists and arts organizations.
WHAT IS ARTSPACE?

Developer
Property Manager
Consultant
Every Artspace project has a revenue gap, typically 40% even after LIHTC. Must Be... Creative
WHO ARE CREATIVES?
BRAINSTORM LEVEL POSSIBILITIES

Third Street
SAW
RFTA
WHAT IF IT LOOKS GOOD?

Town Would be Asked Commit to 10% of Pre-Development Costs
WHO ELSE IS LIKELY TO APPLY?

Paonia
Crested Butte
HOW IS COMMUNITY SELECTED?

✓ Creatives Concentration
✓ Adaptive Reuse Opportunity
✓ Development Property
✓ Local $ Commitment
✓ Ability to Execute
WHAT ARE DELIVERABLES?

- Preliminary Feasibility Study
- Market Demand Study
Might Not Be Selected
Study Says Won’t Work
No Future Local Funding
Not Big Enough for Tax Credits
Might Not Find Artspace a Fit
DECISION POINT

1.) Submit Letter of Intent in March
2.) Apply in June
2.) Commit to up to $35,000 toward Artspace Market & Feasibility Studies Phase One
DECISION POINT IN CONTEXT

March- Town Direction
April- Refine Possibilities & Outreach
April/May- Prepare Application
June- Submit
August-Dec. State Selection
2018 Market/Feasibility Study
"If you want to build a ship, don't drum up people to collect wood and don't assign them tasks and work, but rather teach them to long for the endless immensity of the sea."  ~Antoine De Saint Exupery
TITLE: Thompson Park – Phase 2 – Final Approval Documents

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS:
- Ordinance Approving Thompson Park - Phase 2 Subdivision Plat
- Thompson Park - Phase 2 Subdivision Improvements Agreement
- Engineer’s Estimate for Improvements
- Landscape Plan
- Phase 2 Final Plat
- Declaration of Covenants
- Declaration of Covenant – Real Estate Transfer Assessment
- Deed Restriction – Affordable Housing Units (AMI)

BACKGROUND

On October 25, 2016, the Board approved the Thompson Park - Phase 2 Subdivision Plat application. The subdivision would allow the construction of sixteen (16) multifamily units including three affordable housing units.

DISCUSSION

Attached please find the ordinance approving the Phase 2 Subdivision Plat for the Board’s consideration. This document memorializes approval of the Phase 2 Subdivision Plat and authorizes recordation of the plat. Also attached is the Master Subdivision Improvements Agreement (SIA).

The balance of the documents were reviewed during the land use process. The documents reflect the Board’s approval of the development and were reviewed and approved by Town Staff, including the Town Attorney. No Board action is required on these documents.

RECOMMENDATION

Staff recommends that the following motion be approved: Approve Ordinance for the Thompson Park Subdivision – Phase 2 and Phase 2 Subdivision Improvements Agreement.

Prepared By: Janet Buck, Planning Director
ORDINANCE NO. 3
SERIES OF 2017

AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING THE THOMPSON PARK SUBDIVISION PHASE 2 FINAL PLAT
AND MAJOR SITE PLAN REVIEW

WHEREAS, Cerise Park, LLC, a Delaware limited liability company (“Applicant”), has submitted an application for the contemporaneous approval of a combined Preliminary and Final Plat (“Phase 2 Plat”) and Major Site Plan Review (“Site Plan”) in order to develop 16 new townhomes within Parcel 2, Thompson Park Subdivision, according to the Master Plat thereof recorded in the Garfield County real property records on May 19, 2015 at Reception No. 862909 (“Subject Property”); and

WHEREAS, after all required notices, the Planning and Zoning Commission of the Town of Carbondale reviewed this application at a noticed public hearing held on September 8, 2016 and continued on October 6, 2016, and recommended approval of this application with conditions; and

WHEREAS, after all required notices, the Board of Trustees conducted a noticed public hearing on this application on October 25, 2016, during which public hearing the Board of Trustees heard and considered the statements of Town staff, the Applicant’s representatives, and members of the public, and reviewed and considered all other relevant documents and information presented at such hearing, all as required by law; and

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

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

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

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

iv. The applicant has provided evidence that provision has been made for a public sewage disposal system;
v. The applicant will be required to provide evidence to show that all areas of the proposed subdivision that may involve soil or topographical conditions presenting hazards and that the proposed use of these areas are compatible with such conditions;

vi. The applicant has provided evidence to show that all areas of the proposed subdivision do not involve natural hazards including flood and wildfire;

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

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

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

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

WHEREAS, the Board of Trustees 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 conceptual subdivision plat, which was approved as part of the Thompson Park annexation initial zoning;

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

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

WHEREAS, the Board of Trustees finds that certain conditions of approval should be imposed so that said subdivision will be developed consistent with the purposes of Title 17 of the Carbondale Municipal Code and the terms of the Annexation and Development Agreement Relating to the Thompson Park Property, Town of Carbondale, recorded in the Office of the Garfield County Clerk and Recorder on March 16, 2012, Reception No. 816055, as amended by the First, Second, Third, Fourth, Fifth,
Sixth, and Seventh Amendments to the same, which amendments were recorded at Reception Nos. 854368, 847651, 851116, 859604, 859605, 862912 and 881125 (said agreement, as amended, is referred to herein as the “Annexation Agreement”). Exhibit C to the Annexation Agreement sets forth the Thompson Park Development Plan, which terms and conditions apply to the Development in addition to applicable provisions of the Carbondale Municipal Code. All of these conditions shall be met by making certain changes to the Phase 2 Plat and other documents submitted as part of the application and by virtue of the terms and conditions of the Phase 2 Subdivision Improvements Agreement (“Phase 2 SIA”) to be entered into between the Town and Applicant and recorded contemporaneously with the Phase 2 Plat.

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

1. **Approval of Phase 2 Plat.** The Board of Trustees hereby grants final plat approval for the Phase 2 Plat, subject to compliance with all terms and conditions of this Ordinance, the Phase 2 SIA, and the Annexation Agreement. The Phase 2 Plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the Phase 2 Plat within 90 days after the date of adoption of this Ordinance. The Phase 2 Plat shall include the following plat notes:

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

   b. The residential lots shown hereon are all part of a common interest community governed by the Master Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Garfield Clerk and Recorder on __________, 2016, at Reception No. __________________________. Such Declaration includes common expense budgeting, assessment, and collection procedures for the purposes of funding common expenses, including upkeep of private common areas as well as operation, maintenance, repair and replacement of certain infrastructure located within public rights-of-way, including open sections of irrigation ditches and a private irrigation system, as well as upkeep of all landscaped areas within public rights-of-way.

   c. A Declaration of Covenant—Real Estate Transfer Assessment (“RETA”) in a form approved by the Town of Carbondale has
be recorded in the Office of the Garfield County Clerk & Recorder, Reception No. ______________, for purposes of establishing a transfer assessment of one-half percent (0.005) of the gross sales price at the time of initial sale, and one percent (0.01) of the gross sales price of each subsequent sale, payable to the Town of Carbondale at the time of future resales of Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

d. Lots 1, 2, and 3 are subject to a Deed Restriction recorded in the Office of the Garfield County Clerk & Recorder on ______________ at Reception No. ____________________ for purposes of establishing income qualifications, and occupancy and resale restrictions, to preserve the affordability of residential units located upon these three Lots.

e. There shall be non-exclusive public access and utility easements for the benefit of the Town of Carbondale throughout the Private Road Parcel and the Private Alley Parcel for purposes of allowing perpetual public access, ingress/egress, and the construction, operation, maintenance and repair of public utilities to be located within these Parcels, including but not limited to public water and sewer mains to be placed within these Parcels. Neither the Private Road Parcel nor the Private Alley Parcel shall be signed as private property or in any way that limits public access to or use of streets and sidewalks to be constructed within these areas. Despite the public having access to these Parcels, the homeowners association for the Thompson Park Subdivision shall have perpetual responsibility for maintenance, repair and replacement of all sidewalks, curbs, gutters, drainage and paved street areas within these Parcels.

2. Approval of Major Site Plan Review. The Board of Trustees hereby grants Major Site Plan Review approval for Parcel 2 of the Thompson Park Subdivision, subject to all terms and conditions of this Ordinance, the Phase 2 SIA and the Annexation Agreement. The final site plan shall be delivered to the Town’s Community Development Director prior to recording of the Phase 2 Plat.

3. Phase 2 Subdivision Improvements Agreement. The Applicant and the Town shall enter into a Phase 2 SIA acceptable to the Town setting forth all terms and conditions approved by the Board of Trustees. Said Phase 2 SIA shall generally set forth all of the obligations of the Applicant in connection with the infrastructure for Phase 2, including, without limitation, obligations relating to installation of utilities, construction of roadways, and construction of other improvements on the subject property as well as off-site improvements. The Phase 2 SIA shall be recorded with the Garfield County Clerk and Recorder contemporaneously with the Phase 2 Plat. Prior to recordation of the Phase
2 Plat or the Phase 2 SIA, the Applicant shall also submit the security required by Section 15 of the Phase 2 SIA to secure required public improvements, in form and with terms approved by the Town Attorney. All conditions of the Phase 2 SIA are incorporated as conditions of this Ordinance. The Applicant shall be responsible for the construction and cost of all infrastructure improvements. The construction of the infrastructure shall be initiated and completed according to the timelines set forth in the Phase 2 SIA. If construction is not timely commenced and completed, the Town may revoke or amend this subdivision approval.

4. **Dedication of Public Easements.** The Phase 2 Plat shall include dedications to the Town of public utility, access and snow storage easements. Prior to dedication, the Applicant shall provide the Town Attorney with an updated title commitment showing that such dedications and conveyances shall be free and clear of all encumbrances, except those shown on the Phase 2 Plat, or subject only to such exceptions as may be approved by the Town Attorney. Any lender with a lien against the Subject Property shall sign consents and lien subordinations for the Phase 2 Plat and the Phase 2 SIA.

5. **Master Declaration of Covenants.** A Master Declaration of Covenants, Conditions and Restrictions (“Master Declaration”) for the Thompson Park Subdivision in the form approved by Town staff and the Town attorney shall be recorded contemporaneously with the Phase 2 Plat. The Applicant shall also incorporate a homeowners association as a Colorado non-profit corporation to hold title to all common areas in accordance with the Colorado Common Interest Ownership Act prior to recordation of the Phase 2 Plat. No properties outside of the Thompson Park Subdivision shall be included in the common interest community for the Thompson Park Subdivision without prior approval of the Board of Trustees. At the time of future subdivision of Parcels 3 and 4 and into residential lots, those lots shall be incorporated into the common interest community and commence paying assessments for common expenses in the same manner as the lots shown on the Phase 2 Plat. Affordable housing units shall have full voting rights but shall only pay 50% of the assessments levied against free market residential units within the community. These provisions of the Master Declaration shall not be amended in the future except with advance approval of the Town’s Board of Trustees.

6. **Real Estate Transfer Assessment (RETA).** Pursuant to the Annexation Agreement, Applicant agreed to record a Real Estate Transfer Assessment against all free market residential lots or units within the Thompson Park Subdivision. The RETA, in a form approved by the Town Attorney, shall be recorded contemporaneously with the Phase 2 Plat and shall not be amended or revoked in the future without prior approval of the Board of Trustees.

7. **Affordable Housing Deed Restriction.** Lots 1, 2 and 3 shall be subject to a Deed Restriction to be recorded in the Office of the Garfield County Clerk & Recorder for purposes of establishing income qualifications, and occupancy and resale
restrictions, to preserve the affordability of residential units located upon these three Lots. The Applicant shall execute and record the Deed Restriction in a form approved by Town staff and the Town Attorney contemporaneously with the Phase 2 Plat.

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

   a. All conditions of the Annexation and Development Agreement ("Annexation Agreement") recorded as Reception Number 816055 and recorded on March 16, 2012 remain in effect and in full force. All development shall comply with the Phase 2 SIA and the Annexation Agreement. To the extent that the Phase 2 Plat and/or the Phase 2 Site Plan vary from the standards set forth in the Thompson Park Development Plan attached to the Annexation Agreement as Exhibit C, including in particular building design and street, sidewalk and trail layout standards, these differences are approved in the discretion of the Board of Trustees and shall not exempt future development upon Parcels 3 and 4 from all terms of the Annexation Agreement, as amended.

   b. The final landscape plan shall be subject to review and approval by the Town Arborist prior to recordation of the Phase 2 Plat.

   c. The final shading analysis shall be subject to review and approval by the Building Official prior to the issuance of any residential building permits.

   d. Final construction drawings of all required public and private improvements shall be subject to the review and approval of Town Staff and the Town Engineer prior to recordation of the Phase 2 Plat.

   e. At all times and throughout all phases of construction, public vehicular access shall be maintained to the Historic House Parcel either from State Highway 133 (to the north) or North Bridge Drive (to the south), and at no time during construction shall both accesses be shut off at the same time unless otherwise permitted by the Town. On days that Ross Montessori School ("RMS") is in session, Developer shall ensure that its contractors and subcontractors utilize their best efforts to minimize heavy truck traffic relating to construction in Thompson Park (including deliveries of building materials, concrete, etc.) through the intersection of Lewie’s Lane and Highway 133 and upon Lewie’s Lane adjacent to RMS during the hours of 7:30 to 8:30 am and 2:45 to 3:30 pm, and Developer shall require its contractors and subcontractors to cooperate with RMS with respect to any reasonable request for reduced speed limits or monitors to supervise the safety of school children and to maintain the efficient flow of school-related traffic. However, nothing in this paragraph
8.e shall restrict the Town’s Chief of Police or his designee from implementing additional traffic control restrictions that he deems necessary to protect public safety. The Applicant shall also implement reasonable and appropriate dust control measures. The bike path/sidewalk along Graceland Court adjacent to Lots 4, 5, and 6 shall remain open and fenced during construction to continue to allow safe access between the School and Triangle Park; provided that said bike path may be temporarily moved, with appropriate signage, to accommodate construction, upon condition that any such temporary relocation shall be subject to the prior approval of the Public Works Director, who may require plans and specifications and/or additional security to guarantee the restoration of the current bike path upon completion of construction. All staging areas on Parcel 2 shall be located as far away from the School as reasonably practicable. The dust control plan, fencing for the bike path, and staging areas shall be subject to review and approval by the Town’s Public Works Director.

f. The sewer services for Lots 1, 2 and 3 shall be connected via a longer public collector line from the interceptor with two manholes and short and straight service lines. There shall be three separate services. The final sewer service connection plan shall be subject to review and approval by the Town Utilities Director and Town Engineer.

g. The Engineer’s Estimate of cost of required improvements shall be increased to include revegetation, landscaping and irrigation within public rights of way and a 10% contingency. A revised final estimate shall be signed and stamped by Applicant’s engineer and attached to the Phase 2 SIA prior to recordation.

i. The Phase 2 Plat shall be revised to reflect a snow storage easement upon Lot 3 prior to recordation for the benefit of the Thompson Park Homeowners Association (the Town shall have no responsibility to plow private streets).

j. There shall be perpetual public pedestrian, bicycle and vehicle access across and upon all private roads, and all private roadways shown on the Phase 2 Plat shall be signed at each connection with public roadways in a manner acceptable to the Public Works Director without any restriction as to public access and use.

k. No certificates of occupancy shall issue for residences upon Lots 1, 2, 3, 4, 5 or 6, nor shall any of these Lots be individually sold by the Applicant, until all public and private improvements to be completed within the Private Alley Parcel, including deep utilities, shallow utilities, asphalt paving, and concrete curb and gutters, but excepting landscaping, are certified by Developer’s engineer as being complete according to all
applicable plans and specifications, and thereafter inspected and approved by the Town.

l. No certificates of occupancy shall issue for residences upon Lots 7, 8, 9, 10, 11, 12, 13, 14, 15 or 16, nor shall any of these Lots be individually sold by the Applicant, until all public and private improvements to be completed within the Private Road Parcel, including deep utilities, shallow utilities, asphalt paving, and concrete curb and gutters, but excepting landscaping, are certified by Developer’s engineer as being complete according to all applicable plans and specifications, and thereafter inspected and approved by the Town.

m. No certificates of occupancy shall issue for residences located upon Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 or 16 until certificates of occupancy issue for required affordable housing units upon Lots 1, 2, and 3.

9. **Fees.** The following fees shall be paid by the Applicant prior to recordation of the Phase 2 Plat:

a. A $13,245 fee in lieu of water rights dedication shall be paid by Applicant to the Town prior to recordation of the Phase 2 Plat;

b. The following fee shall be paid by Applicant to the Carbondale and Rural Fire Protection District, with proof of payment provided to the Town, prior to recordation of the Phase 2 subdivision plat:

   16 lots x $730 = $11,680

c. The following fees shall be paid by Applicant to the Roaring Fork School District, with proof of payment provided to the Town, prior to recordation of the Phase 2 Plat:

   Two one-bedroom x $162 = $324
   One two-bedroom x $219 = $219
   Thirteen three-bedroom x $656 = $8,528

   Total Fees Due = $9,071

d. The Applicant shall reimburse the Town for any outstanding reimbursable legal or engineering expenses incurred through the date of recordation.

10. **Other representations.** All other representations of the Applicant and its representatives made in written submittals to the Town or during Town public hearings shall be considered additional conditions of approval of the Phase 2 Plat.
11. **Cost reimbursement.** The Applicant shall be required to pay and reimburse the Town for professional and outside consultant fees pursuant to the Annexation Agreement, for recording fees, and for additional review and inspection expenses as set forth in the Phase 2 SIA.

12. **Recording.** A copy of this Ordinance shall be recorded in the Office of the Garfield County Clerk and Recorder at the expense of the Developer. The terms and conditions of this Ordinance, which touch and concern the 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 ____ day of ____________, 2017.

THE TOWN OF CARBONDALE

By: _________________________________

Dan Richardson, Mayor

ATTEST:

______________________________

Cathy Derby, Town Clerk
EXHIBIT A

ATTACH legal description of subject property.
PHASE 2 SUBDIVISION IMPROVEMENTS AGREEMENT
THOMPSON PARK SUBDIVISION
TOWN OF CARBONDALE, COLORADO

THIS AGREEMENT is made and entered into between the Town of Carbondale, Colorado (“Town”), and Cerise Park, LLC, a Delaware limited liability company (referred to herein as “Developer”), to become effective ____________, 2017, regardless of the date when the parties actually sign it.

1. Recitals

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

   a. Developer is the owner in fee simple of that real property described on the Exhibit A attached hereto and incorporated herein by reference, and the real property depicted therein shall be referred to as the “Development.”

   b. Developer has submitted to the Town an application for combined preliminary and final plat approval for the Thompson Park Subdivision Phase 2 Final Plat (“Phase 2 Plat”), and for major site plan review for Phase 2 of the Thompson Park Subdivision project, and desires for the Town to approve the same.

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

   d. The terms of this Agreement shall constitute the Phase 2 Subdivision Improvements Agreement between the Town and Developer.

   e. The obtaining of subdivision and site plan approval for Phase 2 of the Thompson Park development will inure to Developer's benefit.
f. Developer recognizes and acquiesces in the jurisdiction and the power of the Town to impose the restrictions and conditions required of Developer in this Agreement, joins in the imposition of them, and agrees to perform each and every one of them.

g. On ____________, 2017, the Board of Trustees of the Town of Carbondale, after holding all necessary public hearings, approved Ordinance No. ____, Series of 2017 (the “Approval Ordinance”), which document is recorded in the Office of the Garfield County Clerk and Recorder at Reception No. __________. The terms and conditions of the Approval Ordinance are incorporated herein by this reference as if set forth herein verbatim, and the approvals cited above are contingent upon the express condition that all of the obligations and duties set forth in this Agreement, the Annexation Agreement, and the Approval Ordinance are faithfully performed by the Developer.

2. Specific Conditions.

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

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

b. That Developer has submitted a Phase 2 Plat in a form acceptable to and approved by Town staff. If any changes are proposed, a revised draft shall be submitted to the Town for approval prior to recording. A final Phase 2 Plat shall be prepared and submitted to the Town for approval. Following Town approval, the Phase 2 Plat shall be recorded by the Town at the cost of Developer.

c. That the public improvements (“Public Improvements”) and certain of the private improvements (“Secured Private Improvements”) required to be completed by Developer in conjunction with the Town’s approval of the Phase 2 Plat and other obligations of Developer shall be secured prior to recording the Phase 2 Plat.

d. That all development fees and professional fees which are the obligation of Developer pursuant to the Annexation Agreement and Chapter 1 of Article 8 of the Carbondale Municipal Code are paid on or before execution hereof by the Town.
e. That Developer shall comply with all of the terms and conditions of the Approval Ordinance, the Annexation Agreement, and this Agreement.

3. Subdivision Approval.

The Town hereby accepts and approves the re-subdivision of Parcel 2 of the Thompson Park Subdivision into 18 parcels consisting of 16 residential lots (Lots 1-16, inclusive) and two common areas, the Private Road Parcel and the Private Alley Parcel. These common areas shall be owned and maintained by the homeowners association for the Thompson Park subdivision and used for construction, operation, maintenance, repair and replacement of sidewalks, curb and gutter, drainage features, paved private street areas, and public and private utility purposes, as well as for general public access purposes, all subject to the terms and conditions of the Approval Ordinance, the Annexation Agreement, this Agreement, and the performance of all of these conditions and agreements by Developer. The public easement dedications set forth below shall be included on the final Phase 2 Plat and shall be free and clear of all encumbrances, excepting any encumbrances that may be accepted by the Town after review of current title insurance commitments, as more fully described below. Any lenders holding liens upon the Development property shall execute a lien subordination and consent with regard to the content of the Phase 2 Plat and this Agreement.


Developer hereby agrees to the following conditions of approval by the Town for installation of the Public Improvements:

a. Developer has presented to the Town and the Town has approved the engineered plans and specifications prepared by Gamba & Associates, Inc. listed below (“Engineered Plans and Specifications”) necessary and required for construction and installation of the Public and Secured Private Improvements:

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<thead>
<tr>
<th>TITLE</th>
<th>SHEET</th>
<th>DATE</th>
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<tbody>
<tr>
<td>Private Road Plan and Profile</td>
<td>Sheet 2</td>
<td>9-27-16</td>
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<tr>
<td>Private Alley Plan and Profile</td>
<td>Sheet 3</td>
<td>7-8-16</td>
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<tr>
<td>Road Typical Sections and Details</td>
<td>Sheet 4</td>
<td>9-6-16</td>
</tr>
<tr>
<td>Sewer Plan and Profile</td>
<td>Sheet 5</td>
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<tr>
<td>Sanitary Sewer Details</td>
<td>Sheet 6</td>
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<tr>
<td>Water Distribution System Plan/Profile</td>
<td>Sheet 7</td>
<td>9-6-16</td>
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<td>Water Distribution System Details</td>
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<td>7-8-16</td>
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<td>Shallow Utilities and Irrigation System Plan</td>
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<td>Irrigation System Details</td>
<td>Sheet 10</td>
<td>7-17-16</td>
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<td>Storm Drainage Plan</td>
<td>Sheet 11</td>
<td>7-8-16</td>
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b. The estimated cost of completion of all required Public Improvements and Secured Private Improvements, including 10% contingency, is $275,371.06 according to the cost estimate prepared and certified by a Colorado-registered professional engineer that is attached as Exhibit B hereto. Although not required to be dedicated to the Town when completed, this Agreement shall also require completion of certain private infrastructure prior to issuance of certificates of occupancy for residences, including curbs and gutters, drainage, landscaping, irrigation, and paved access to residential lots across the Private Street Parcel and the Private Alley Parcel, provided that the installation of landscaping need not occur until the next growing season when irrigation water is available through the Town Ditch system. The Public and Secured Private Improvements shall be constructed and installed in accordance with the Engineered Plans and Specifications heretofore approved by the Town. Developer agrees to pay the entire cost of installation and construction of all of such Public and required private Improvements and shall install and construct the same within the deadlines set forth below in Section 11, unless an extension of such deadlines is approved pursuant to Section 16.

c. The Public Improvements to be installed are generally described as follows and are more particularly described on the Engineered Plans and Specifications to wit:

(i) Drainage. All construction shall be in accordance with the Drainage Report prepared by Gamba & Associates, Inc., dated January 30, 2015, and approved by the Town in connection with the Master Plat of the Thompson Park Subdivision, as well as the Stormwater Analysis prepared by Gamba & Associates, Inc., dated July 8, 2016.

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

(iii) Sanitary Sewage Collection System.

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

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

(iv) Electric. Underground electrical wiring shall be installed in accordance with requirements and plans and specifications approved by Xcel Energy, and all plans for installation shall be submitted to the Town for its approval prior to installation.

(v) Project Lighting. A street light shall be placed at each of the outside corners (northeast and southeast corners) of the Private Roadway Parcel to illuminate the turns in a type, manner and location acceptable to the Public Works Director. Any lighting on the site shall be installed in accordance with Town regulations. Design and spacing of lighting shall be in accordance with standards approved by the Town.

(vi) Underground Communication Systems. Underground communication systems shall be installed in accordance with requirements and plans and specifications of CenturyLink and Comcast, as approved by the Town.

(vii) Gas Distribution System. The natural gas distribution system shall be installed in accordance with the requirements and plans and specifications of Black Hills Energy, and shall be submitted to the Town for its approval prior to installation.

(viii) Signs. All street signs and traffic control devices, as required by the Town, shall be installed as required by the Manual on Uniform Traffic Control Devices (MUTCD) and as required and approved by the Town.

(ix) Soils Testing. A preliminary soils report prepared by Hepworth-Pawlak Geotech, Inc., dated January 30, 2015 has been submitted to the Town. This report includes a cursory review for the entire project and was not meant to support site specific construction. Developer has also submitted a soils report specific to Phase 2 prepared by Hepworth-Pawlak Geotech, Inc., dated July 27, 2016. The Town may require additional site-specific soils reports at the time of excavation upon inspection by Developer’s engineer or Town Staff. Additional soils reports addressing foundations and dry wells may also be required prior to issuance of any building permits.

(x) Dust/Street Cleanup. During construction, Developer shall comply with all reasonable directives of the Town to suppress dust and shall take steps to require that all construction traffic be free of mud when entering public streets within the Town of Carbondale. Developer shall promptly clean up such mud or other debris from the construction site on Town streets.
(xi) **Street Cuts.** Except as otherwise provided below in Section 12, any street cuts made by Developer shall be full-width cuts ten (10) feet in both directions and repaved with a lay-down machine.

(xii) **As-Builts (survey and GIS).** Upon completion of the project, Developer will have a Colorado-registered Professional Surveyor who has personally inspected the site prepare and submit to the Town one electronic copy of surveyed as-builts showing all of the public improvements constructed. Additionally, Developer will have GIS as-builts prepared and submitted to the Town electronically, which GIS as-builts shall include a GIS shapefile of all utilities with a data point for each piece of infrastructure with a photo, installation date, manufacturer, model and site specific field notes. The GIS as-built file shall be insertable into the Town’s GIS system. Developer may elect to have the Town Engineer prepare these required GIS as-builts at Developer’s expense, or to have an alternative Colorado-registered professional engineer perform these services.

(xiii) **Computer Construction Drawings.** An electronic computer file in CAD format of the as-built construction drawings referred to in the prior paragraph will also be submitted to the Town upon completion of the improvements required by this Agreement.

(xiv) **Video Recording of Sewer Line.** At completion of sewer line installation, a video recording and log showing interior of pipe shall be provided to Town in an acceptable electronic format.

(xv) **Stub-outs.** Developer shall clearly mark with steel or wooden posts stub-outs for all utilities and swing ties, and depth to these stub-outs from permanent objects shall be on the as-builts.

d. The private improvements to be installed by Developer are generally described as follows and more particularly described on the Engineered Plans and Specifications; provided, Security shall only be required for those certain Secured Private Improvements specifically identified on Exhibit B:

(i) **Streets and Parking Areas.** All paved street access areas, sidewalks, curbs, gutters, and parking areas, including those within the Private Alley Parcel and the Private Street Parcel, shall be constructed by Developer in accordance with the Engineered Plans and Specifications.

(ii) **Landscaping.** Landscape improvements within public rights-of-way and upon the Private Alley Parcel and Private Road Parcel shall be installed in accordance with the Engineered Plans and Specifications and the Town-approved landscape plan attached as **Exhibit D.** Prior to commencement, the landscape plan shall be
revised to show species, caliper, and location of all plantings, which additional details shall be subject to review and approval by the Community Development Director. Only landscaping within the public rights-of-way shall be secured as set forth in Exhibit B. Notwithstanding the deadlines to complete all Public Improvements and Secured Private Improvements, the Developer may defer installation of landscaping until after completion of any other construction activities that could potentially damage the landscaping and, if necessary, during the next growing season when irrigation water will be available, provided that any required security for the landscaping improvements remains in place.

(iii) Non-potable irrigation system. All outdoor irrigation for the Development shall be supplied by a private, non-potable irrigation system to be owned, operated, maintained, repaired and replaced by the homeowners association for the Thompson Park Subdivision, except for the Historic House Parcel and areas immediately adjacent to the Ross Montessori School (“RMS”) (including the landscape strip in the public right of way) as provided in the Master Subdivision Improvements Agreement recorded as Reception No. 862913, as amended, and other written agreements between Developer, the Town, and/or RMS. The irrigated areas within public rights-of-way at the entrances to the Thompson Park Subdivision located on the east side of Lewie’s Lane and north of the Private Alley shown on the Phase 2 Plat shall also be connected to the system referred to in the first sentence of this paragraph prior to the Town’s acceptance of the Public Improvements required hereunder. Only that portion of the irrigation system within the public right-of-way shall be secured as set forth in Exhibit B.

e. All Public Improvements and Secured Private Improvements shall be secured prior to recording the Phase 2 Plat as set forth below. Said Public and Secured Private Improvements are described herein and the estimated costs thereof are set forth in Exhibit B, attached hereto and incorporated herein by this reference.

f. All development fees which are the obligation of Developer pursuant to the Approval Ordinance shall be paid on or before execution hereof by the Town.

g. Developer shall dedicate all public easements depicted upon the Phase 2 Plat to the Town of Carbondale free and clear of all encumbrances. Developer shall also provide a current title insurance commitment to the Town evidencing that such dedications are free and clear of all encumbrances except any which may be expressly accepted by the Town after reviewing a title insurance commitment. Any title insurance premiums shall be paid by Developer. Any security interest in such easements in favor of Developer’s lender shall be released or subordinated prior to or contemporaneously with the dedications on the Phase 2 Plat. A current title insurance commitment shall be provided to the Town for review no later than ten (10) days prior to dedications to the Town and recordation of the Phase 2 Plat.
h. Upon completion of portions of the Public and Secured Private Improvements, Developer will cause its engineers (who shall have been actively engaged in observing the construction of the Public and Secured Private Improvements and be registered in the State of Colorado) to provide a written certification that the Public and/or Secured Private Improvements have been completed, to the best of their knowledge and professional judgment, in conformance with all standards, plans and specifications as submitted to and previously approved by the Town, or the pertinent utility supplier. As-built plans shall be submitted with these certifications in the form described in Section 4.b.xii, above. The Town may withhold or suspend the processing of building permits, certificates of occupancy, or plats for future phases until all information required by this paragraph is provided to the Town.

5. Construction Management.

Developer has submitted a Construction Management Plan to the Town dated July 8, 2016 prepared by Gamba & Associates, Inc. The terms and conditions of such Plan are incorporated fully herein as terms and conditions of this Agreement, provided that in the case of any inconsistency between the terms of such Plan and the terms of this Agreement, this Agreement shall govern, and additionally that the Plan shall provide that: (1) on days that RMS is in session, Developer’s contractors and subcontractors shall utilize their best efforts to minimize heavy truck traffic relating to construction in Thompson Park (including deliveries of building materials, concrete, etc.) through the intersection of Lewie’s Lane and Highway 133 and upon Lewie’s Lane adjacent to RMS during the hours of 7:30 to 8:30 am and 2:45 to 3:30 pm, and Developer’s contractors and subcontractors shall cooperate with RMS with respect to any reasonable request for reduced speed limits or monitors to supervise the safety of school children and to maintain the efficient flow of school-related traffic; (2) reasonable and appropriate dust control measures shall be implemented; (3) the bike path/sidewalk along Graceland Court adjacent to Lots 4, 5 and 6 shall remain open and fenced during construction to continue to allow safe access between RMS and Triangle Park, provided that said bike path may be temporarily moved, with appropriate signage, to accommodate construction upon condition that prior to any relocation the plan for temporarily re-routing the path shall be subject to review and approval by the Public Works Director, who may require additional financial security to the Town to guarantee restoration of the current bike path upon completion of construction; (4) all staging areas on Parcel 2 shall be located as far from RMS as is reasonably practicable; (5) the dust control plan, fencing for the bike path and staging area shall be subject to review and approval by the Town’s Public Works Director; and (6) after construction is completed, all soils that are disturbed during construction shall be reseeded, irrigated to re-establish vegetation, and thereafter kept reasonably free of noxious weeds. Developer or Developer’s representatives shall have a pre-construction meeting with Town representatives in attendance. However, nothing in this Section 5 shall restrict the Town’s Chief of Police or his designee from implementing additional traffic control restrictions that he deems necessary to protect public safety.
6. Inspections

During the installation by Developer of the Public and Secured Private Improvements described in Section 4 above, the Town may:

a. Inspect the work in progress with such personnel as the Town deems necessary.

b. Require the production and inspection of the plans and specifications of Developer and any contractor or subcontractor working on its behalf in connection with the work in progress.

c. Require Developer to obtain and pay for inspections, soils composition tests, compaction tests, cement tests, or such other tests of materials and work as may be necessary in the Town's opinion to ensure that the work in progress is being performed according to the Town's specifications and the Engineered Plans and Specifications.

d. Any Town inspector shall have the authority to immediately order that all construction in the Development be suspended if the inspector determines that such a stop work order is needed to protect the Town’s interest, or in the event of a violation of this Agreement, the Carbondale Municipal Code, or any sewer and water utility installation requirements. The Town may utilize staff personnel for inspections, or hire an outside inspector, in either case the reasonable cost of which will be reimbursed by Developer.

7. Non-Liability upon Approval and Acceptance

The Town’s approval of the Engineered Plans and Specifications shall not be deemed an adoption of them or a representation or warranty to Developer or any other person or entity that the Engineered Plans and Specifications, or any work performed under them, is fit for the purpose intended or otherwise safe.

The Town's approval of the Engineered Plans and Specifications, acceptance of the installation of the Public Improvements described below, or the use and maintenance of such Public Improvements shall not be deemed to be any of the activities listed in C.R.S. 24-10-106(a)(1) for which sovereign immunity is waived. No action or inaction by the Town in connection with its approval of this Development shall be deemed a waiver of its sovereign immunity.

The Town does not warrant or make any representations whatsoever concerning the suitability of its public improvements, including water distribution system, sewer system, or any other device or system owned or controlled by the Town which may be used in improving or serving the Development. Without limiting the foregoing, Developer
assumes the risk of all costs associated with installations for improving or serving the Development as described above and of all costs necessary to improve or serve the Development.

8. **Warranties**

Developer shall warrant the installation of the Public Improvements described in Section 4 above against all defects in materials and workmanship for a period of two (2) years after the date of acceptance of the work by the Town, and all curative work under this warranty shall itself be warranted for an additional one year period or the expiration of the original two (2) year warranty, whichever is greater. In the event of any defect, the Town may require Developer to correct the defect in material or workmanship. The Secured Private Improvements shall not be warranty to the Town, but any contractor’s warranty shall be assigned to the homeowners’ association along with any conveyance of such improvements to the association. No warranty security shall be required for any private improvements.

9. **Legal Compliance**

Developer shall comply with all state, federal and local laws, ordinances, rules, and regulations, including, by way of example, Title 17 of the Carbondale Municipal Code pertaining to zoning and subdivisions (the Unified Development Code or “UDC”), all other ordinances and regulations of the Town relating to streets, water lines, and sewer lines, including the Town’s Public Works Manual. Developer, or its successors in interest, shall pay all system improvement fees for utilities as required by the Town’s ordinances and regulations in effect as of the date of application for the tap, provided that if connection is not made to said system before expiration of the associated building permit, Developer shall pay any additional system improvement fees which may be applicable under Town Code in effect on the date of actual connection.

10. **Dedications and Conveyances to Town**

Upon completion and acceptance of those Public Improvements described in Section 4 above, such Public Improvements shall be the property of the Town, without further action of either party, except as otherwise herein provided.

11. **Certificates and Permits**

No certificate of occupancy shall be issued for or relating to any structure or improvement within the Development until the Public Improvements and other required private improvements have been completed by Developer as described in this Agreement and the Approval Ordinance. As acknowledged in the Approval Ordinance, Developer
may phase the completion of the Public Improvements and required private improvements as follows:

   a. All Public Improvements and all required private improvements contemplated within the Private Alley Parcel, including deep and shallow utilities, curb and gutter, and asphalt paving, but excluding landscaping (which may be deferred until the next growing season), shall be completed within one (1) year of the date of recordation of the Phase 2 Plat, and no certificates of occupancy shall issue for Lots 1, 2, 3, 4, 5, or 6 until Developer’s engineer provides written certification to the Town that the improvements described in this Section 11(a) are complete according to all applicable plans and specifications, and such improvements are inspected and approved by the Town; and

   b. All remaining Public Improvements and required private improvements, including all required private improvements contemplated within the Private Roadway Parcel such as deep and shallow utilities, curb and gutter, and asphalt paving, but excluding landscaping (which may be deferred until the next growing season), shall be completed within two (2) years of the date of recordation of the Phase 2 Plat, and no certificates of occupancy shall issue for Lots 7, 8, 9, 10, 11, 12, 13, 14, 15 or 16 until Developer’s engineer provides written certification to the Town that the improvements described in this Section 11(b) are complete according to all applicable plans and specifications and such improvements are inspected and approved by the Town.

   It is further provided that the affordable housing units upon Lots 1, 2 and 3 must be completed prior to issuance of certificates of occupancy for free market housing units on any other Lots.

   Except as provided in this Section 11, nothing herein shall limit the obligations of Developer imposed by any of the Town's ordinances concerning the issuance of a certificate of occupancy. Without limiting any of its rights under this Agreement, the Town may, but need not, issue certificates of occupancy and grant extensions of time for the completion of construction and the installation by Developer of any improvement, but only as is provided in Paragraph 16, below. No extension of time for completion shall impair the Town's rights under any instrument of security described in Paragraph 15, and the parties obligated under such security instrument shall be deemed to have consented to the Town's extension of time whether the Town gives actual notice or not to the party liable on the instrument of security.

12. Improvement Sequence

Specific sections of public or private street improvements to be installed by Developer shall not be installed until all master/main utility lines to be placed in or under the applicable street section have been completely installed.

   Any future water and sewer services lines to be installed across any portion of the
paved surface of Lewie’s Lane shall include repair and replacement of the street surface of Lewie’s Lane as follows: the initial utility trench cuts shall be saw cut for the full depth of the asphalt. After the utility is installed and backfilled as per the Town’s Public Works Manual, Developer shall roto-mill and replace 2 inches of the existing 4-inch depth of asphalt for the entire street width along the entire frontage of each parcel or 10 feet beyond the asphalt disturbance, whichever is greater. The Town may require security to guaranty performance and completion of this requirement as a condition of the issuance of any building permit. The Town and Developer acknowledge that no improvements are presently contemplated by the Plans and Specifications to require cutting the existing pavement of Lewie’s Lane.

13. Repairs

To the extent, if any, that Developer’s installation of improvements or utilities to serve the Development causes damage to public roads in Thompson Park or other Town-owned roadways outside of Thompson Park, Developer shall repair and repave such damaged streets and roads. The road repairs shall be full width of the pavement and ten feet in either direction from the outermost edges of the damage (i.e., if the damage is ten feet long the repaving would be thirty feet long by the width of the street).

14. Completion by Town

In addition to all other remedies, upon default hereunder by Developer, at its option the Town may undertake all work necessary to install and complete all the Public Improvements which Developer must complete pursuant to Section 4 of this Agreement. If the Town does so, Developer shall pay for all costs expended by the Town, including, but not limited to, costs for materials, labor of Town employees, and labor of non-Town employees utilized on the job, plus fifteen percent (15%) of such costs for overhead and administrative time and costs.

15. Security

Developer has prepared an engineered preliminary cost estimate for all Public Improvements to be installed by Developer to be dedicated for the use of the public or in publicly conveyed land, rights-of-way and easements, which is attached as Exhibit B and incorporated herein by this reference. The cost estimate also includes the cost of those certain Secured Private Improvements for which security is required by this Agreement. To secure its obligations to install the Public Improvements and Secured Private Improvements described above, Developer shall obtain and deliver to the Town the following Security (defined below):

a. Prior to recordation of the Phase 2 Plat, Developer shall deliver an unconditional, irrevocable letter of credit or a cash deposit to the Town in the amount of $275,371.06 (“Security”). The form of any letter of credit shall be subject to approval by
the Town Attorney, and any letter of credit shall be issued by a State or National chartered
commmercial bank (the “Bank”) approved by the Town and shall, among other things, entitle
the Town to draw on the Security by presentation to the issuing Bank of a certificate that
Developer is in default in its obligations to install Public Improvements or Secured Private
Improvements under this Agreement, that a sum certain is required to cure the default, and
that the Bank shall forthwith deliver the sum certain to the Town. Any cash deposit may be
subject to a separate escrow agreement between Developer and the Town, subject to the
Town’s right to review and approve the terms of any such escrow agreement. The Security
shall remain effective for at least two years, or 30 days following the deadline for
completion of the Public Improvements set forth above in Section 11, whichever is longer.
And, subject to the release procedures set forth below, the Security shall provide for
automatic extensions for successive one year periods unless, at least 90 days prior to the
then-applicable expiration date, the Town receives notification from the issuing Bank (via
certified U.S. Mail, return receipt requested) that the Bank does not elect to extend the
expiration date.

Unless otherwise agreed in writing by the Town, the Security shall be irrevocable
and shall remain in place and effective until the Town has formally accepted completion of
the Public and Secured Private Improvements and the warranty security required
hereunder. Developer shall pay all costs incurred in obtaining the Security. If Developer
fails to install improvements or otherwise perform as required above, the Town may pursue
its remedies under the Security. Nothing herein shall limit any other remedies available to
the Town.

As construction progresses, Developer will be allowed to apply for a partial release
of the Security. If a partial release is desired, Developer shall cause its engineer to provide
the Town with a written application stating what Public and/or Secured Private
Improvements have been completed and the amount of the Security for which partial
release is sought. Developer's engineer shall certify that the Public and/or Secured Private
Improvements for which the partial release of the security is sought have been installed and
completed according to the terms hereof, Engineered Plans and Specifications and all
Carbondale Municipal Code and Public Works Manual requirements, as applicable. Once
reviewed and approved by the Public Works/Utility Departments, the Town Engineer, and
any independent inspector hired by the Town, and after Developer has reimbursed the
Town for any legal or engineering fees due pursuant to Article 8 of Chapter 1 of the
Municipal Code and the Annexation Agreement, the request will be timely submitted to the
Board of Trustees for final review and approval at a regular meeting. The documentation
associated with any such partial release shall be in a form approved by the Town.
Notwithstanding the foregoing, Developer shall in no event be entitled to the release of
more than eighty percent (80%) of the estimated cost of the Public and Secured Private
Improvements shown on Exhibit B prior to the completion and acceptance of all Public and
Secured Private Improvements required hereunder. The Town’s partial release of the
Security shall not constitute formal acceptance by the Town for purposes of commencing
the warranties required by Section 8. Such warranties will commence upon the Town
Engineer’s certification that all required Public and Secured Private Improvements are 100% complete, and the Board of Trustees’ review and approval of the release of all Security, excepting the warranty security required by the following paragraph and provided that the Developer may request and the Town shall process acceptance of the Public and Secured Private Improvements, and commencement of the two-year warranty period for the same, notwithstanding incompletion of required landscaping, provided that the Security shall remain in place to guarantee completion of required landscaping by the next growing season when irrigation water is available as set forth above in Section 4.d.ii.

Upon Developer’s completion of 100% of the Public and Secured Private Improvements required by this Agreement (provided that completion of landscaping may be deferred until the next growing season per Section 4.d.ii), Developer shall have its engineer provide the Town Engineer with certification that all Public and Secured Private Improvements (other than any deferred landscaping) have been completed in accordance with the approved Plans and Specifications, all required as-builts (in both survey and GIS format), and a request for formal acceptance of the Public Improvements. The Town Engineer shall timely provide Developer’s Engineer with a list of any items requiring correction or completion. Upon the Town Engineer’s satisfaction that all required Public and Secured Private Improvements have been completed as required, and confirmation of receipt of all required as-builts, the Town Engineer shall timely recommend to the Town’s Board of Trustees that the Public Improvements be formally accepted, and that any remaining amount of the corresponding Security for such Public Improvements or completed Secured Private Improvements be fully released (less any portion retained to guarantee completion of landscaping). Then, the Town shall timely schedule an agenda item for a public meeting of the Board of Trustees in order for the Board to review and approve formal acceptance of the Public Improvements. The warranty period shall commence upon the Board of Trustees’ vote to approve formal acceptance of the Public Improvements. Within thirty (30) days after formal acceptance, the entire remaining amount of the Security (less any amount retained to guarantee completion of landscaping) shall be released, provided that an amount equal to ten percent (10%) of the original amount of the Security for the Public Improvements (but not the Secured Private Improvements) shall remain in place (or Developer may provide a cash deposit, letter of credit, or other replacement security to secure the warranty, in an amount and in a form acceptable to the Town, which replacement security would be substituted for release of the entire amount of the Security).

16. Extension of Due Date

The construction completion date for installation of Public and Secured Private Improvements required in Section 11 may be extended for a reasonable time by the Town, after a written request from Developer and any third party that provided security to the Town to guaranty completion of the Public and Secured Private Improvements. Town Staff shall have the discretion to grant one extension of up to six (6) months, but any further extensions shall require approval by the Board of Trustees at a public meeting. Any such
extension shall be conditioned upon Developer continuing to post Security in amounts and with terms required above to guarantee completion of all required Public and Secured Private Improvements, for a period extending at least 30 days longer than any extended completion deadline.

17. Non-Suit

The Town's approval of the Phase 2 Plat and this Agreement shall not make it liable for any loss or damage suffered within or by use of the Development for any act, condition or omission occurring or arising out of or in connection with the Town's approval of the Phase 2 Plat. Neither Developer nor anyone acting through it shall attempt to hold the Town liable for any loss or damages arising out of or in connection with the Town's approval of the Phase 2 Plat.

18. Benefit

The provisions of this Agreement shall bind and inure to the benefit of the parties, their assigns as allowed by this Agreement, and their successors-in-interest of all kinds.

19. Non-Waiver

Any indulgence by the Town to Developer as to the performance of any portion of this Agreement and any waiver by the Town as to Developer's performance or non-performance of any part of this Agreement shall not be deemed or considered to be an indulgence or waiver of any other part of this Agreement or any subsequent non-performance by Developer.

20. Breach by Developer; Town's Remedies

In the event of a breach of any of the terms and conditions of this Agreement by Developer, the Town may take such action as the Town deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship, which action may include the following:

a. The refusal to issue to Developer any building permit or certificate of occupancy.

b. The recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or his designee, stating that the terms and conditions of this Agreement have been materially breached by-Developer. Upon the recording of such an affidavit, no lots or parcels may be sold, conveyed or further developed within the property until the default has been cured; an affidavit signed by the Town Manager or his designee and approved by the Board of Trustees stating that the default has been cured shall remove this restriction.
c. Drawing upon the Security for the purpose of undertaking completion or remediation work on the Public and/or Secured Private Improvements after providing Developer with the ten-day notice specified below. The Security may be applied by the Town toward all costs incurred in remedying Developer’s default, including inspections, testing, and legal and engineering services.

d. The refusal to consider further development plans, building permits or certificates of occupancy within the Development.

e. Any other right or remedy available at law or in equity.

Should the Town prevail in any action to enforce this Agreement or any associated ordinances or approvals against Developer, the Town shall be awarded its court costs, attorneys’ fees, and an amount to compensate the Town for the time of its employees or any experts in the preparation of and/or participation in such action.

Unless necessary to protect the immediate health, safety, and welfare of the Town, and where reasonably practicable to do so, the Town Manager shall provide Developer ten (10) days written notice of intent to take any action under this Section during which ten (10) day period Developer may cure the breach described in said notice and prevent further action by the Town.

21. **Indemnification/Insurance.**

Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the subdivision of the Development, including, without limitation, indemnification against any claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and any amendments thereof, and any claims by the issuer of the Security against the Town with regard to any claim or draw by the Town upon the Security. This indemnification shall include actual attorney's fees and costs incurred in the event that any party brings an action against the Town for any of the approvals described herein. The parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this section. Therefore, the parties hereto agree to reasonably cooperate to prevent duplicate expenses incurred as a result of the indemnification herein described. Developer shall be obligated to reimburse the Town for all legal or other expenses reasonably incurred by the Town in connection with investigation or defense of any such loss or claim. The Developer shall also cause the Town to be named as an additional insured under the terms of the liability insurance policy maintained by the Developer. A certificate showing such insurance shall be provided to the Town prior to commencement of any work by the Developer, which insurance shall not be
subject to cancellation or non-renewal without at least fifteen (15) days prior written notice to the Town.

22. Waiver of Defects

In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein or in the other documentation being executed contemporaneously, and concerning the procedure, substance, and form of the ordinances or resolutions approving the Development and adopting this Agreement.

23. Final Agreement

To the extent that this Agreement is in conflict with any prior agreement between the parties, this Agreement supersedes and controls with respect to said areas of conflict. In all other respects, said prior agreements shall remain in full force and effect.

24. Modifications

This Agreement shall not be amended, except by subsequent written agreement of the parties.

25. Release of Liability

It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town of Carbondale Code and Ordinances and the laws of the State of Colorado, and that Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town officers or agents or their designees which is subsequently held unlawful by a court of law.

26. Invalid Provision

If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

27. Governing Law
The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.

28. Notice

All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective upon delivery or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Town: Community Development Director
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

with copy to: Mark E. Hamilton, Esq.
Holland & Hart, LLP
600 E. Main St, Suite 104
Aspen, CO 81611

Developer: Cerise Park, LLC
c/o Frieda K. Wallison, Manager
1880 Lazy O Road
Old Snowmass, CO 81654

with copy to: David McConaughy, Esq.
Garfield & Hecht, P.C.
901 Grand Avenue #201
Glenwood Springs, CO 81601

29. Recording Fees

Developer shall pay for the costs of recording this Agreement and any documents which may be recorded according to the terms of this Agreement.

30. Titles

The Section titles in this Agreement are for convenience only and are not to be used to construe or interpret this Agreement.
31. **Estoppel/Completion.**

The Town agrees that it will, at any time and from time to time, within thirty (30) days following receipt of a written request from Developer or an independent third party who is a proposed or existing lender, seller or purchaser of property within the Development, execute, acknowledge and deliver to the party making such request, a statement certifying: (i) that this Agreement has not been modified, supplemented or amended and is in full force and effect (or if there have been any such modifications, supplements or amendments, reference to the same will be made); and (ii) that to the best of the Town's knowledge and belief, the obligations of Developer hereunder requiring performance prior to the time of the request, have been performed in compliance with this Agreement (or, if there has been default in such performance, reference to the same will be made). Such statement shall not constitute a waiver by the Town of any claims against Developer and such statement shall in no event subject the Town to any affirmative liability whatsoever to Developer or to any independent third party, notwithstanding the negligence or other inadvertent failure of the Town to investigate, disclose, or correct any deficiency in performance. Prior to or at the time the Town delivers any such statement, the party making such request shall pay to the Town its reasonable costs and attorneys’ fees incurred in preparing, executing and delivering such statement.

THE TOWN OF CARBONDALE

a Colorado home rule municipal corporation

By: ________________________________

Dan Richardson, Mayor  (date)

ATTEST:

______________________________

Cathy Derby, Town Clerk

STATE OF COLORADO  )

) ss.

COUNTY OF GARFIELD  )

The above and foregoing document was acknowledged before me this __________ day of ____________________ 2017, by Dan Richardson, as Mayor for the Town of Carbondale and by Cathy Derby as Town Clerk for the Town of Carbondale.

Witness my hand and official seal.
My commission expires:

Notary Public
DEVELOPER:

CERISE PARK, LLC
a Delaware limited liability company

By: ____________________________________________
Frieda K. Wallison, Manager

Date: ________________

STATE OF COLORADO  )
) ss.
COUNTY OF _____________ )

The above and foregoing document was acknowledged before me this __________ day of ____________________ 2017, by Frieda K. Wallison as Manager of Cerise Park, LLC, a Delaware limited liability company.

Witness my hand and official
My commission expires:

__________________________
Notary Public
EXHIBIT A

LEGAL DESCRIPTION

[INSERT]
EXHIBIT B

PUBLIC AND SECURED PRIVATE IMPROVEMENTS COST ESTIMATE

[INSERT]
EXHIBIT C

LANDSCAPE PLAN

[INSERT]
## THOMPSON PARK - PHASE 2
CONSTRUCTION COST ESTIMATE FOR REQUIRED PUBLIC IMPROVEMENTS
JANUARY 4, 2017

<table>
<thead>
<tr>
<th>Bid Item</th>
<th>Sys.</th>
<th>Construction Item</th>
<th>Units</th>
<th>Estimated Quantities</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>Sawcut and Remove and Dispose of Asphalt on Existing Bikepath at Road and Alley Crossings</td>
<td>SY</td>
<td>137.7</td>
<td>$5.00</td>
<td>$688.51</td>
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<tr>
<td>2</td>
<td></td>
<td>Compacted earthwork fill from on-site excavation for Bikepaths</td>
<td>CY</td>
<td>27</td>
<td>$14.25</td>
<td>$388.37</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>Off-site Disposal of Excess Earthwork Cut Material for Bike Path Construction</td>
<td>CY</td>
<td>27</td>
<td>$12.50</td>
<td>$340.68</td>
</tr>
<tr>
<td>4</td>
<td>Bikepaths</td>
<td>Subgrade Preparation - Scarify &amp; recompact insitu soil under bike paths</td>
<td>SY</td>
<td>363.4</td>
<td>$2.25</td>
<td>$817.63</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Install Aggregate Base Course for Bikepaths (6-inch depth)</td>
<td>TONS</td>
<td>137.6</td>
<td>$36.38</td>
<td>$5,005.89</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Install 3-inch thick HBP on Bikepath</td>
<td>TONS</td>
<td>67.1</td>
<td>$109.40</td>
<td>$7,340.74</td>
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<tr>
<td>7</td>
<td></td>
<td>Install Handicap Ramps with Warning Strips at Intersections of Bikepaths and Streets</td>
<td>EA</td>
<td>7</td>
<td>$608.00</td>
<td>$4,256.00</td>
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<tr>
<td>8</td>
<td></td>
<td>Traffic Control at Access Point onto Lewie's Lane</td>
<td>LS</td>
<td>1</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Subtotal of Road, Sidewalks and Bikepaths</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$20,337.82</strong></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>Install 8&quot; SDR-35 PVC gravity sewer pipe</td>
<td>LF</td>
<td>454</td>
<td>$52.60</td>
<td>$23,871.46</td>
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<tr>
<td>10</td>
<td></td>
<td>Install 48&quot; dia. gravity sewer manhole</td>
<td>EA</td>
<td>6</td>
<td>$5,593.00</td>
<td>$33,558.00</td>
</tr>
<tr>
<td></td>
<td>Sewer System</td>
<td>Sawcut and Remove and Dispose of Asphalt on Bikepath along Highway 133 at Sewer Service Crossing</td>
<td>SY</td>
<td>19.1</td>
<td>$9.00</td>
<td>$171.90</td>
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<tr>
<td>11</td>
<td></td>
<td>Install Aggregate Base Course (6-inch depth) on Bikepath Along Highway 6</td>
<td>TONS</td>
<td>5.9</td>
<td>$47.00</td>
<td>$277.30</td>
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<td></td>
<td></td>
<td>Install hot bituminous pavement (3-inch depth) on Bikepath Along Highway 6</td>
<td>TONS</td>
<td>3.2</td>
<td>$304.00</td>
<td>$972.80</td>
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<td><strong>Subtotal of Sewer System</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$58,851.46</strong></td>
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</tbody>
</table>
## THOMPSON PARK - PHASE 2
### CONSTRUCTION COST ESTIMATE FOR REQUIRED PUBLIC IMPROVEMENTS
#### JANUARY 4, 2017

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<tr>
<th>Bid Item</th>
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<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Water System</td>
<td>Install 8” Class 52 D.I.P. Potable Water Pipe</td>
<td>LF</td>
<td>535</td>
<td>$93.00</td>
<td>$49,743.84</td>
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<tr>
<td>13</td>
<td>Water System</td>
<td>Install 6” Class 52 D.I.P. Potable Water Pipe</td>
<td>LF</td>
<td>15</td>
<td>$62.00</td>
<td>$930.00</td>
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<tr>
<td>14</td>
<td>Water System</td>
<td>Install Fire Hydrant with Mainline Tees &amp; 6” Gate Valves</td>
<td>EA</td>
<td>1</td>
<td>$6,242.00</td>
<td>$6,242.00</td>
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<tr>
<td></td>
<td></td>
<td><strong>Subtotal of Water System</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$56,915.84</strong></td>
</tr>
<tr>
<td>15</td>
<td>Erosion Control</td>
<td>Install Wire Reinforced Silt Fence and Maintain during Construction</td>
<td>LF</td>
<td>1252</td>
<td>$7.00</td>
<td>$8,764.00</td>
</tr>
<tr>
<td>16</td>
<td>Erosion Control</td>
<td>Install Filter Socks, Gravel Bag Filters or Approved Equal at Drainage Inlets and Maintain during Construction</td>
<td>LF</td>
<td>16</td>
<td>$10.00</td>
<td>$160.00</td>
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<tr>
<td></td>
<td></td>
<td><strong>Construct Gravel Tracking Reduction Area at Primary Access onto Lewie’s Lane and Maintain during Construction</strong></td>
<td>SF</td>
<td>1,200</td>
<td>$6.00</td>
<td>$7,200.00</td>
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<tr>
<td></td>
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<td><strong>Subtotal of Erosion Control Measures</strong></td>
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<td></td>
<td><strong>$16,124.00</strong></td>
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<tr>
<td>20</td>
<td>Irrigation Infrastructure</td>
<td>Install 24” dia ADS-N12 Irrigation Culvert</td>
<td>LF</td>
<td>3</td>
<td>$56.00</td>
<td>$168.00</td>
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<tr>
<td>21</td>
<td>Irrigation Infrastructure</td>
<td>Install Diverstion Structure with Canal Gate Assembly</td>
<td>LS</td>
<td>1</td>
<td>$3,500.00</td>
<td>$3,500.00</td>
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<td>22</td>
<td>Irrigation Infrastructure</td>
<td>Install 12” dia ADS-N12 Irrigation Culvert</td>
<td>LF</td>
<td>4</td>
<td>$35.00</td>
<td>$140.00</td>
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<td>23</td>
<td>Irrigation Infrastructure</td>
<td>Install Nyloplast Inline Basin (30-inch Dia.) for Irrigation Diversion System</td>
<td>EA</td>
<td>1</td>
<td>$2,821.00</td>
<td>$2,821.00</td>
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<tr>
<td>24</td>
<td>Irrigation Infrastructure</td>
<td>Install 8” dia SCH 40 PVC Irrigation Piping between Pump Station components</td>
<td>LF</td>
<td>25</td>
<td>$35.00</td>
<td>$869.05</td>
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<tr>
<td>25</td>
<td>Irrigation Infrastructure</td>
<td>Install 60” dia. Precast Concrete Manhole with 30” dia. cover for Irrigation System Pump Station</td>
<td>LS</td>
<td>1</td>
<td>$7,500.00</td>
<td>$7,500.00</td>
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<tr>
<td>26</td>
<td>Irrigation Infrastructure</td>
<td>Install Irrigation Pumps, Controls and Housing for Pump Station</td>
<td>LS</td>
<td>1</td>
<td>$5,000.00</td>
<td>$5,000.00</td>
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<tr>
<td>27</td>
<td>Irrigation Infrastructure</td>
<td>Trench Excavation, Conduit Placement and Backfill for Primary Irrigation System Piping</td>
<td>LF</td>
<td>1,249</td>
<td>$26.50</td>
<td>$33,110.16</td>
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<td></td>
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<td><strong>Subtotal of Drainage and Irrigation</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$53,108.21</strong></td>
</tr>
</tbody>
</table>
## THOMPSON PARK - PHASE 2
### CONSTRUCTION COST ESTIMATE FOR REQUIRED PUBLIC IMPROVEMENTS
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</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td></td>
<td>Mobilization</td>
<td>LS</td>
<td>1</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
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<tr>
<td>19</td>
<td></td>
<td>Miscellaneous</td>
<td>LS</td>
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<td>$35,000.00</td>
<td>$35,000.00</td>
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**Subtotal of Miscellaneous Items**

**$45,000.00**

**SUB-TOTAL ESTIMATED CONSTRUCTION COST FOR PUBLIC IMPROVEMENTS**

**$250,337.33**

<table>
<thead>
<tr>
<th>10% MISCELLANEOUS AND CONTINGENCY</th>
<th>%</th>
<th>10</th>
<th><strong>$25,033.73</strong></th>
</tr>
</thead>
</table>

**TOTAL ESTIMATED CONSTRUCTION COST FOR PUBLIC IMPROVEMENTS**

**$275,371.06**

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(Stamp: "COLOMBINO REGIS"
"L-18-17" DATE)

Page 3 of 3
LANDSCAPE PLANTING NOTES

1. Refer to Civil Engineer's Utility and Precise Grading Plans for Utility Location Information Only. If Quantities on Plant List differ from Graphic Indications, then prior to digging or shipping of plant materials, landscape architect to review plant materials at source or by photographs.

2. Exact locations of plant materials to be approved by the landscape architect in sections. If any part of this plan cannot be followed due to site conditions, contact the landscape architect for direction as to how to proceed.

3. Verify Plant Counts and Square Footages: Quantities are provided as owner responsibility. If quantites differ from plant list approved by project architect, park engineer shall prevail.

4. Contact the local underground utility services for utility location and adjacent paving or header. (Check Mulch Depth and if Seeed or Sodded lawns).

5. Perform excavation in the vicinity of underground utilities with care and if necessary, by hand. The contractor shall not be responsible for the accuracy or the location of the underground utilities.

6. Trees shall be planted not less than 12" below finished grade as it bore to existing.

7. Provide matching forms and sizes for plant materials within each species and size described on the engineering.

8. Prune newly planted trees only as directed by landscape architect.

9. Finishing Grades of perennial beds and revegetated areas to be 1/2 inches below existing.

10. Landscape architect to review plant materials at source or by photographs.

11. See additional information for irrigation survey and location.

12. Cut and remove burlap from top 1/3 of rootball.

13. Verify locations of existing site improvements installed under other sections, if any part of the plant list is too close or too far due to site conditions, contact landscape architect after completion plant materials to conform.

14. Verify locations of pertinent site improvements installed under other sections, if any part of the plant list is too close or too far due to site conditions, contact landscape architect after completion plant materials to conform.

15. Tree List

   Deciduous Trees (total # of deciduous trees 97)
   Deciduous Shrubs (total # of shrubs 121)

   Coniferous Trees (total # of coniferous trees 3)

   Shrub List

   Tree Legend

   Landscape Seed Mixes

   Pawnee Butte Seed Mixes - Native Prairie Grass Mix
   Pawnee Butte Seed Mixes - Rocky Mountain Wildflower Mix (VE)

   Tree List

   Coniferous Trees (total # of coniferous trees 3)
   Deciduous Trees (total # of deciduous trees 97)
   Deciduous Shrubs (total # of shrubs 121)

   Shrub List

   Tree Legend

   Landscape Seed Mixes

   Pawnee Butte Seed Mixes - Native Prairie Grass Mix
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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THOMPSON PARK SUBDIVISION

This Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision (this “Declaration”) is made this ____ day of _______________, 2017, by Cerise Park, LLC, a Delaware limited liability company.

RECITALS

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

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

C. Declarant desires to subject the real estate described herein to the terms and conditions set forth herein.

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

DECLARATION

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

Article 1: Definitions and Exhibits

Section 1.1 Definitions. The following initially capitalized terms when used in this Declaration shall have the meanings specified below:
“Act” means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes §§38-33.3-101 et seq., as amended. In the event the Act is repealed, the terms of the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

“Allocation Percentage” means the share of any Assessments, expressed as a fraction, to be allocated to each Lot as shown on Exhibit B hereto. The formula for determining the Allocation Percentage is also shown on Exhibit B. The Allocation Percentage for each Lot shall be equal except that the Allocation Percentage for each Deed Restricted Lot shall be approximately 50% of the Allocation Percentage of any Free Market Lot. Said percentage shall not be changed without prior approval from the Town of Carbondale Board of Trustees.

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

“Annual Budget” is defined in Section 6.1.

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

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


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

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

“Common Assessments” is defined in Section 6.3.

“Common Elements” means any real property or easement interest in real property together with all Improvements thereon and personal property owned or held by the Association for the primary benefit of all or some of the Owners and the Property as a whole or a portion thereof, and this term includes both General Common Elements and Limited Common Elements.

“Common Expenses” means, except for those costs and expenses expressly excluded below, all costs and expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws including, without limitation: all costs of insuring, operating, managing, administering, securing, protecting, cleaning, maintaining, repairing, renewing, replacing or restoring (to the extent not covered by insurance or condemnation proceeds) the Common Elements and public rights-of-way and open ditch channels within the Property;
taxes on any property owned by the Association, if payable by the Association; and funding of working capital and reasonable reserves for such costs and expenses.

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

“Delinquency Costs” is defined in Section 6.8.

“Deed Restriction Agreement” means the Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy, and Resale of Certain Lots within the Thompson Park Subdivision, Phase 2, Town Of Carbondale, Garfield County, Colorado (“Deed Restriction Agreement”), recorded at Reception No. __________. Additional Deed Restriction Agreements may be recorded against future lots as additional phases are platted.

“Deed Restricted Lot” means those Lots within the Property that are subject to the Deed Restriction Agreement. Additional Lots within the Property may become Deed Restricted Lots in future supplements to this Declaration as additional phases are platted.

“Design Guidelines” means the detailed design guidelines required by Section 10 of the Development Plan and recorded as Reception No. ______________, as may be amended with approval of the Town of Carbondale.

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

“Director” means a member of the Board.

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

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

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

“Future Development Parcels” means Parcels 3 and 4 of the Property as described in Exhibit A which are undeveloped and not subdivided into Lots.

“General Common Element” means a Common Element owned or held by the Association for the benefit of all of the Owners and the Property as a whole.
“Guest” means any Person rightfully present on or in rightful possession of any portion of the Property, including, without limitation, (a) a tenant of an Owner or of the Association or (b) an agent, employee, contractor, licensee, invitee, shareholder, partner, Owner or guest of an Owner, the Association or a tenant of either of them.

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

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

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

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

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

“Lot” means each of the lots or parcels described and numbered as Lots through on Exhibit B of this Declaration and shown on the Plat. All of the Lots together with the Common Elements comprise the “Property”. A Lot may also be described as a “Unit.”

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

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

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

“Notice to Comply” is defined in Section 7.12.
“Owner” means a Person or Persons who is the owner of fee simple title of Record to a Lot from time to time, but excluding the Association. The term “Owner” shall not include (a) a contract purchaser except a contract vendee under an installment land sales contract; (b) the vendor under an installment sales contract; or (c) a Person holding an interest in a Lot merely as security for the performance of an obligation, unless and until such a security holder becomes an owner in fee simple of such Lot.

“Party Wall” means any common wall adjoining two or more Residences along the boundary between Lots and shall be deemed to include the roofing underlying the portion of the roof over, and the utility lines within, a common wall.

“Permitted” means allowed pursuant to or not inconsistent with the provisions of this Declaration, the Bylaws, the Rules (if any) and in compliance with Law.

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

“Plat” means the ________________________ that was recorded on _____ at Reception No. ________ in Garfield County, Colorado, as such land survey plat is amended or supplemented of Record from time to time. The initial Plat may show blocks of Lots with estimated boundary lines for such Lots, in which case one or more amended Plats shall be recorded with the final Lot boundary lines based on a survey of as-built conditions to determine the location of final boundaries and the location of any Party Walls, if applicable.

“Property” means the real property legally described on Exhibit A along with any and all Improvements now in place or hereafter constructed thereon.

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

“Reserve Fund” is defined in Section 6.1.

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

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

“RETA” means the real estate transfer assessment due upon sale of the Lots pursuant to the document recorded with the Garfield County Clerk and Recorder as Reception No.
(the “RETA Covenant”) or as the RETA Covenant may be amended in the future if authorized by the Town of Carbondale. The RETA may apply to additional Lots identified in future supplements to this Declaration as additional phases are platted.

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

“Special Assessments” is defined in Section 6.4.

“Specific Assessments” is defined in Section 6.5.

“Thompson Park” means the planned community located on the Property that is subject to this Declaration.

Section 1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Declaration.

<table>
<thead>
<tr>
<th>Exhibit A</th>
<th>Legal Description of the Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit B</td>
<td>List of Lots, Allocation Percentages, and Allocation Percentage formula</td>
</tr>
</tbody>
</table>

Article 2: The Community.

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

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

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

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

“Lot ____, THOMPSON PARK SUBDIVISION, PHASE __, according to the _______ Plat recorded ______________, 2017 at Reception No. ____________, as amended by the Amended Plat thereof recorded ________, 20__ at Reception No. ____________, in the real estate records of Garfield County, State of Colorado and according to the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision recorded __________________,
2017 at Reception No. __________ of the real estate records of Garfield County, State of Colorado.”

**Article 3: Easements.**

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

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

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

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

Section 3.5 Easements for Encroachments. In the event that any portion of any Improvement on or for the benefit of any Lot or Common Elements now or hereafter encroaches upon any other Lot or Common Elements, the Owners hereby establish and grant an easement for the continued existence and maintenance of such encroachment which shall continue for so long as such encroachment exists and which shall burden the Lot or Common Elements encroached upon and benefit the Lot or Common Elements on which is located or which is benefited by such Improvement. In no event, however, shall an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lot(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of the Owner claiming the benefit of such easement.
Section 3.6  **Rules.** The Board may adopt and enforce Rules pursuant to this Declaration governing the use of all easements created under this Declaration for the benefit of the Owners and their Guests.

Section 3.7  **Association Easements Over the Lots.** There is hereby created and established for the benefit of the Association easements over, across, within and through the Lots as may be necessary for the Association to perform the duties and functions it is obligated or permitted to perform under this Declaration.

Section 3.8  **Private Roadways.** The Plat may include private roadways, paths or trails as Common Elements to be owned and maintained by the Association, and each Owner shall have a right of ingress and egress over and across any such roadways, paths, or trails; provided, however, that if any such roadways, paths, or trails are designated on the Plat as Limited Common Elements, then easement rights of Owners shall be limited to those Owners of Lots specifically benefited by such Limited Common Elements.

Section 3.9.  **Party Walls.**

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

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

3.9.3 The Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring sewage, water, utilities, and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient, and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural support or the sound transmission coefficient of the Party Wall.
3.9.4 Declarant hereby grants to the Association and its representatives and agents a nonexclusive easement to enter upon and use the Property on which a Party Wall is located as may be necessary or appropriate to perform the duties and functions that the Association may be obligated or permitted to perform under this Declaration.

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

Article 4: Covenants, Conditions and Restrictions.

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

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

Section 4.3 Permitted Use of the Lots Generally. Except to the extent expressly permitted by this Declaration, the Lots shall be improved and used solely for the construction of homes, with one Residence per Lot. Lot Owners shall be entitled to the quiet use and enjoyment of their Lot and Residence and shall not interfere with the right of other Owners to the same.

Section 4.4 Design Guidelines. Every Improvement on any Lot shall comply with the Design Guidelines to the extent applicable to such Lot. In the event of any conflict between this Declaration and the Design Guidelines, the Design Guidelines shall control. The Board shall serve as the architectural control committee required by Section 10 of the Development Plan. Prior to construction of any Improvement, except for landscaping or non-structural Improvements located entirely within a structure or within any private courtyard on a Lot, the Owner shall apply to the Board for approval. The Board shall have the authority to adopt Rules concerning the submittal and review process which may include (among other things) fees, a requirement for plans stamped by a licensed architect or engineer, and a requirement for the applicant to reimburse the Association for the costs of any architect or other professional consultant retained by the Board. The Town of Carbondale shall also have the right, but not the obligation, to enforce the Design Guidelines. The design review process shall not apply to construction or landscaping by Declarant. The initial Design Guidelines are set forth in Exhibit — attached to this Declaration and incorporated into this Declaration by reference. The Design Guidelines may be amended as provided for therein. An amendment to the Design Guidelines shall not constitute an amendment to this Declaration; such amendment is therefore not subject to Section 9.2 of this Declaration.

Section 4.4.1 Non-Liability for Design Review. The Board will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it.
Neither the Board nor any individual Board member will be liable to any person for any official act of the Board in connection with submitted plans and specifications, except to the extent that the Board or any individual Board member acted with malice or performed any intentional wrongful acts. Approval by the Board does not necessarily assure approval by the appropriate governmental body or the Town of Carbondale. Notwithstanding that the Board has approved plans and specifications, neither the Board nor any of its members will be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Improvement(s). Neither the Association, nor the Board, nor any agent thereof, nor Declarant, nor any of Declarant’s partners, employees, agents, or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, the Design Guidelines, the Development Plan, or the Rules, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Association will defend and indemnify its Board members in any such suit or proceeding which may arise by reason of the Board’s decisions; provided, however, that the Association will not be obligated to indemnify a member of the Board to the extent that any such member is adjudged to be liable for malice or intentional wrongful acts in the performance of his or her duty as a member of the Board, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 4.5 Domestic Pets. Household pets, such as dogs and cats, must be under the Owner’s physical control at all times including the use of leashes when on Common Elements. Owners shall be responsible for immediately cleaning and removing all droppings. Livestock is not permitted on the Property.

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

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

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

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

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

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

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

Section 4.14 Transfer Assessment. All sales, transfers, or conveyances of any Lot shall be subject to payment of the RETA pursuant to the terms of the RETA Covenant and subject to the exceptions stated therein attached to this Declaration and incorporated in this Declaration by reference. The RETA may apply to additional Lots identified in future supplements to this Declaration as additional phases are platted.

Section 4.15 Deed Restricted Housing. The Deed Restricted Lots have been designated for deed-restricted affordable housing and shall be subject to additional restrictions to be
included in the recorded deeds for such Lots and the applicable Deed Restriction Agreement. This restriction applies to Lots 1, 2, and 3 of Phase 2 and may apply to additional Lots identified in future supplements to this Declaration as additional phases are platted.

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

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

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

Section 4.19 Solar Devices and Design. All Residences located within the Property shall be designed and constructed to accommodate solar energy devices as provided for in the Design Guidelines. All provisions in this Declaration and the Design Guidelines regarding solar energy devices shall comply with applicable state statutes regarding the same, including, but not necessarily limited to, C.R.S. § 38-30-168.

Article 5: Association

Section 5.1 Organization. The Association is a non-profit Colorado corporation created for the purpose of administering and managing certain aspects of Thompson Park pursuant to its Articles and Bylaws and any other Rules or restrictions. Neither the Articles, Bylaws, Rules or other restrictions promulgated by the Association shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In
case of conflict between this Declaration and the Articles, Bylaws or other restrictions, this Declaration shall control.

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

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

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

Section 5.5 Bylaws. The Board may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws shall not be inconsistent with the provisions of this Declaration. The Bylaws may include, without limitation, provisions regarding the appointment or election of the Board and the appointment or election of officers of the Association, subject to the terms of this Declaration.

Section 5.6 Adoption of Rules. This Declaration, the Articles, the Bylaws, and the Design Guidelines establish a framework of affirmative and negative covenants, conditions, easements and restrictions that govern Thompson Park. The RETA Covenant and Deed Restriction Agreement also impose additional restrictions on all or some of the Lots. The Board shall be authorized to and shall have the power to adopt, amend and enforce rules applicable
within Thompson Park with respect to any Lot, Common Element or function of the Association, and to implement the provisions of this Declaration, including but not limited to, Rules to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate animals; to assure fullest enjoyment of use; to regulate signs; to regulate use of any and all Common Elements to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within the Property; and to protect and preserve property and property rights. No Rule shall conflict with the terms of this Declaration, the Bylaws, the Articles, RETA Covenant, Deed Restriction Agreement, or Design Guidelines. The Rules may be modified, cancelled, limited or exceptions created thereto, or expanded from time to time. Any amendment of or addition to the Rules may be made upon the affirmative vote of a majority of the Board. Except as may be set forth in this Declaration, all Rules shall comply with the following provisions:

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

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

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

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

Section 5.7 Functions and Duties of the Association. The Association shall perform each of the following duties for the benefit of its members:

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

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

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

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

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

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

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

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

(e) **Enforcement.** To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in the Restrictions, and to perform all other acts reasonably necessary to enforce any of the provisions of the Restrictions, including, without limitation, the suspension of Membership privileges and the imposition of fines on Owners or Guests who violate or permit violations of the Restrictions.
(f) Management Company. To retain the services of a professional management company to manage some or all of the affairs of the Association.

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

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

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

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

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

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

(m) Art. The Association shall have the authority to purchase, install, maintain repair and replace works of art on the Common Elements including the area designated on the Plat as the Art Easement; provided, no sculpture or other art installed by Declarant shall be removed, altered or replaced without Declarant’s prior written consent during the term of the Art Easement as described below in Section 7.4.

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

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

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

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

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

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

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

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

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

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

**ARTICLE 6: Financial Matters and Assessments**

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

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

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

(a) Payment. The Board shall assess Common Assessments against the Owner of each Lot based on the Annual Budget in accordance with the Allocation Percentage. Each Owner is obligated to pay the Association the Common Assessments made against such Owner’s Lot, and the payment shall be due on the first day of each fiscal quarter, in (4) equal installments, or in another reasonable manner designated by the Board. The Board’s failure to fix the Common Assessments prior to the commencement of any Fiscal Year shall not be deemed a waiver or modification of any of the provisions of this Declaration or a release of any Owner from its obligations to pay Common Assessments or any installments of them for that Fiscal Year, but the Common Assessments fixed for the preceding Fiscal Year shall continue until the Board fixes the new Common Assessment.

(b) Adjustment. To the extent that payments of Common Assessments during the balance of any Fiscal Year are inadequate or more than required to meet the Association’s obligations intended to be covered by such Common Assessments, the Board may amend the Annual Budget and increase the Common Assessments for the balance of such Fiscal Year by giving not less than 30 days’ prior notice to all Owners. Alternatively, in the event that payments of Common Assessments during the balance of any Fiscal Year are more than required to meet the Association’s obligations, the Association may, at its discretion, put the surplus into the Reserve Fund instead of amending the Annual Budget as provided in this subsection.
(c) **Reconciliation.** After the end of each Fiscal Year, the Board may reconcile the actual Common Expenses incurred by the Association during that Fiscal Year against the Common Assessments that the Association received and intended to cover such Common Expenses. To the extent that the Owners have paid more than the actual Common Expenses, the Board may either (i) credit the overpayments against the Owners’ Common Assessments for the next Fiscal Year; or (ii) deposit the overpayments into the Reserve Fund.

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

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

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

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

(c) to cover any costs or expenses that are recoverable as Specific Assessments pursuant to other provisions of this Declaration.

Section 6.6 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner shall become liens against such Owner’s Lot which may be foreclosed or otherwise collected as provided in this Declaration.

Section 6.7 **Commencement of Assessments.** The obligation to pay Common Assessments, Special Assessments and Specific Assessments is a continuing obligation.

Section 6.8 **Payment of Assessment; Notice and Acceleration.** Each Owner shall pay all Assessments assessed against such Owner’s Lot by the Association in accordance with the terms of this Declaration. Each Assessment is a separate, distinct and personal debt and obligation of the Owner against whose Lot the Assessment is assessed. All Assessments are payable in full without offset for any reason whatsoever. Each Owner’s obligation to pay
Assessments is entirely independent of any obligation of the Association to the Owner or any other Owner to that Owner. Any Assessment or installment of an Assessment not paid within five days after it becomes due is delinquent. If an Assessment or installment of an Assessment is delinquent, the Association may recover all of the following (collectively, the “Delinquency Costs”): (a) interest from the date due at the rate of 18% per annum; (b) late charges and other monetary penalties imposed by the Association pursuant to any Governing Document; and (c) all collection and enforcement costs, including reasonable attorneys’ fees and expenses, incurred by the Association. If an Assessment or installment of an Assessment is delinquent, the Association may notify the Owner of the delinquency and state in the notice (i) the amount of the delinquent Assessment or installment; (ii) the Delinquency Costs accrued to date; and (iii) the date by which the delinquent Assessment or installment and all associated Delinquency Costs must be paid. If the Association gives such a notice and the delinquent Assessment or installment of a n Assessment and all associated Delinquency Costs are not paid in full by the due date specified in the notice, then the Association, at its option, may declare all unpaid installments of the subject Assessment for the current Fiscal Year to be immediately due and payable in full without further demand or notice and may enforce the collection of the Assessment (including any installments whose due dates were accelerated).

Section 6.9 Enforcement of Assessments. If any Assessment is not fully paid within five (5) days after the same becomes due and payable, then as often as the same may happen, (i) Delinquency Costs shall begin to accrue from the date due until the date of payment, (ii) the Association may accelerate the remaining payments in accordance with Section 6.8, (iii) the Association may thereafter bring an action at law or in equity or both against any Owner personally obligated to pay the same, and (iv) the Association may bring an action to foreclose its lien against the particular Lot as provided in the Act and herein in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

(a) Suit. The Association may bring a suit or suits at law to enforce the Owner’s obligation to pay a delinquent Assessment (including any installments whose due dates are accelerated by the Association pursuant to Section 6.8) and associated Delinquency Costs. Each action shall be brought in the name of the Association. The judgment rendered in the action shall include costs and reasonable attorneys’ fees in an amount adjudged by the court against the defaulting Owner. Upon full satisfaction of the judgment, the Association, by one of its officers, shall execute and deliver to the judgment debtor an appropriate satisfaction of the judgment.

(b) Lien and Foreclosure. Assessments (including any installments whose due dates are accelerated by the Association pursuant to Section 6.8) and associated Delinquency Costs constitute a continuing mortgage lien on the Lots against which they are assessed from the date due. Such lien shall be perfected upon the Recording of this Declaration and no further claim shall be required. If an Assessment is delinquent, if
the Association gives a notice concerning the delinquency and if the delinquent Assessment is not paid in full by the due date specified in the notice, then the Association may foreclose the lien securing the Assessment, any installments whose due dates are accelerated by the Association pursuant to Section 6.8, and any associated Delinquency Costs in accordance with the laws of the State of Colorado. The Association may undertake and conduct such foreclosure in the manner for foreclosure of mortgages under the laws of Colorado.

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

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

Section 6.10 Purchaser’s Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments levied against the Lot, and notwithstanding the Association’s perpetual lien upon a Lot for such Assessments, all purchasers shall be jointly and severally liable with the prior Lot Owner(s) for any and all unpaid Assessments against such Lot, without prejudice to any such purchaser’s right to recover from any prior Lot Owner any amounts paid thereon by such purchaser. A purchaser’s obligation to pay Assessments shall commence upon the date on which the purchaser becomes the Owner of a Lot. For Assessment purposes, the date a purchaser becomes a Lot Owner shall be determined as follows:

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

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

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

Section 6.11 Waiver of Homestead Exemption; Subordination of Association’s Lien for Assessments. By acceptance of a deed or other instrument of a transfer of a Lot, each Owner irrevocably waives the homestead exemption provided in C.R.S. §38-41-201, as amended. The Association’s perpetual lien on a Lot for Assessments shall be superior to all other liens and encumbrances except the following:

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

(b) To the extent permitted under the Act, the lien of any First Mortgagee, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been subsequent to the date of the attachment of the Association’s liens (except that the Association’s priority lien under the Act shall remain superior to the First Mortgagee).

All other persons or entities not holding the liens described in (a) or (b) above and obtaining a lien or encumbrance on any Lot after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association’s future liens for Assessments, interest, late charges, costs, expenses, and attorney’s fees as provided herein, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

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

Section 6.12 Owners not Exempt from Liability. No Owner is exempt from liability for payment of Assessment by waiver of the use or enjoyment of any portion of the Common Elements, by abandonment of its Lot, or otherwise.
Section 6.13  Reallocated. If any Assessment remains unpaid for more than six months after it is first due, the Association may treat the unpaid Assessment as a Common Expense to be assessed against all Lots other than Deed Restricted Lots; provided, however, that if the Association subsequently collects all or any part of the unpaid Assessment, through foreclosure of its lien or otherwise, then any Owner who has paid a portion of the unpaid Assessment as a Common Expense is entitled to a credit (in an amount equal to its pro rata share of the amount of the unpaid Assessment that the Owner paid that was subsequently collected by the Association) against any Common Assessments subsequently due from that Owner.

Section 6.14  Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

Section 6.15 Disputes and Records. Any Owner or an Owner’s authorized representative may inspect the books and records of the Association during regular business hours upon reasonable notice. If an Owner disputes the amount of any Assessment against its Lot and is unable to resolve the issue through an inspection of the Association’s books and records, the Owner will continue to pay in a timely manner the full amount of the disputed Assessment until, if ever, it is finally determined that the amount is incorrect (in which case the Association will promptly refund any overpayment). If the Owner fails to pay the disputed Assessment while the dispute is pending, the Association may immediately pursue any of its remedies for the failure (including, without limitation, suit against the Owner and/or foreclosure of the Association’s lien against the Owner’s Lot), and the pendency of the dispute is not a bar or defense to any actions by the Association.

Section 6.16 Certificate. Within 21 calendar days after receiving a written request from any Owner, Mortgagee or designee of either of them, or any title company, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association’s registered agent, the Association will furnish to the requesting party a certificate executed on behalf of the Association and addressed to the requesting party, stating that any unpaid Assessment due from the requesting Owner or Owner of the Lot encumbered by the requesting Mortgagee’s Mortgage, or stating that there are no unpaid Assessments due from such Owner, as the case may be. A certificate furnished by the Association pursuant to this Section 6.16 is binding upon the Owner and the Association. The Association may charge the Owner of any Lot for which such a certificate is furnished pursuant to this Section 6.16, and the Owner will pay as a Specific Assessment, a reasonable fee for the preparation of the certificate in an amount determined by the Association from time to time.
ARTICLE 7: Declarant’s Reserved Rights

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

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

Section 7.3 Supplemental Declaration and Development Rights. Declarant shall have the right to create additional Lots and Common Elements within the Future Development Parcels, which Lots shall automatically become part of Thompson Park and be subject to this Declaration, and to record one or more additional Plats regarding the same. Upon recording each new Plat, Declarant shall amend Exhibit B to incorporate the new Lots into the table in Exhibit B and to recalculate the Allocation Percentages for the new Lots and existing Lots pursuant to the formula set forth in Exhibit B. Such amendment shall be recorded in the Garfield County real property records. The Future Development Parcels as shown on the Master Plat may be developed and platted in any order determined by Declarant in its sole discretion. Declarant or the Association may annex real property adjacent to the Property into Thompson Park according to the procedures set forth in the Act upon prior approval of such annexation by the Town of
Carbondale Board of Trustees. Following annexation, Exhibit B and the Allocation Percentages therein shall be amended as appropriate. The rights of Declarant and any successor or specific assign to exercise such rights to annex additional real property shall expire 50 years after the date of recording of this Declaration.

Section 7.4 **Art Easement.** Declarant shall have the right to install, remove, or replace a sculpture or other work of art to be selected by Developer in its sole discretion within the Art Easement shown on the Plat, which easement is expressly reserved to Declarant for a period of 20 years from the date of recording of this Declaration. Once installed, any such works of art shall be maintained and repaired by the Association.

Section 7.5 **No Amendment.** Nothing in this Article 7 shall be amended without the express written consent of Declarant.

**ARTICLE 8: Insurance and Indemnity**

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

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

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

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

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

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

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

Section 8.2 **Owner’s Insurance.** Each Owner of a Lot shall obtain insurance, at its own expense, to the extent and in the amount the Owner deems necessary to protect its interests.

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

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

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

ARTICLE 9: Miscellaneous Provisions

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

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

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

Section 9.4 Persons Entitled to Enforce this Declaration. The Association and any Owner (including Declarant so long as it owns any of the real property shown on the Master Plat) shall each have the right to enforce any or all of the Restrictions contained in this Declaration against all or any portion of the Property and the Owner(s) thereof; provided, however, that no Owner shall be permitted to bring any enforcement action under this Declaration unless the Association declines to bring a similar action. The Association shall be deemed to have declined to bring an enforcement action if (a) an Owner gives notice to the Association in accordance with Section 9.3, that such Owner intends to bring an enforcement action (which notice shall specify the Restriction at issue and shall briefly summarize the circumstances prompting such action), and (b) the Association gives notice to such Owner, in accordance with Section 9.3, that the Association declines to enforce the Restriction or the Association fails to initiate an enforcement action or otherwise cause compliance with the Restriction within 60 days after the date of such Owner’s notice to the Association. The right of enforcement shall include the right to bring an action for damages as well as any equitable relief, including any action to enjoin any violation or specifically enforce the Restriction or other provision of this Declaration.

Section 9.5 Violations Constituting a Nuisance. Any violation of any Restriction or other provisions of this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

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

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

Section 9.8 No Implied Waivers. Failure to enforce any Restriction or other provision of this Declaration shall not operate as a waiver of that Restriction or provision or of any other Restriction or provision of this Declaration.
Section 9.9  **Costs and Attorneys’ Fees.**  In any action or proceeding under this Declaration, the party determined by the court or arbitrator, as the case may be, to be the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys’ fees and expenses.

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

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

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

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

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

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

Executed this _____ day of ___________, 2017.
Cerise Park, LLC, a Delaware limited liability company

By: __________________________

Print Name:___________________

Title:________________________

State of COLORADO )

) ss.

County of _________

The foregoing instrument, Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision, was acknowledged before me this ___ day of ____________, 2017 by Frieda Wallison as Manager of Cerise Park, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: ________________

____________________________________

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

Lot List and Allocation Percentages

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<tr>
<th>Lot</th>
<th>Allocation Percentage</th>
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<tbody>
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<tr>
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<td>.5/14.5</td>
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</tr>
<tr>
<td>FDP 4</td>
<td>0/14.5</td>
</tr>
</tbody>
</table>

**Allocation Percentage Formula:**

1. Each Free Market Lot counts for 1 unit
2. Each Deed Restricted Lot counts for .5 units
3. Future Development Parcels count for zero (0) units
4. The Allocation Percentage shall equal 100%
5. There are **13** Free Market Lots, **3** Deed Restricted Lots, and **2** Future Development Parcels for a total of **14.5** units
7. Each Deed Restricted Lot = .5/14.5
8. Each Future Development Parcel = 0/14.5
9. **13** Free Market Lots x 1/14.5 = 13/14.5
10. **3** Deed Restricted Lots x .5/14.5 = 1.5/14.5
11. **2** Future Development Parcels x 0/14.5 = 0/14.5
12. 13/14.5 + 1.5/14.5 + 0/14.5 = 14.5/14.5 = 100%
DECLARATION OF COVENANT – REAL ESTATE TRANSFER ASSESSMENT
THOMPSON PARK SUBDIVISION, PHASE 2
TOWN OF CARBONDALE, COLORADO

THIS DECLARATION OF COVENANT – REAL ESTATE TRANSFER ASSESSMENT
(“Covenant”) is made and executed this ___ day of ________________, 2017, (the “Effective Date”), by Cerise Park, LLC, a Delaware limited liability company and/or its assigns (the “Declarant”).

RECOLTALS

WHEREAS, the Declarant is the owner of 100% of the real property described as continuing to be owned by the Declarant in the Thompson Park Subdivision Master Plat (“Master Plat”), recorded in the Garfield County real property records at Reception No. 862909 (“Property”); and

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

WHEREAS, the Declarant and the Town entered into an Annexation and Development Agreement, Reception No. 816055, which was subsequently amended several times, (as amended, the “Annexation Agreement”) setting forth additional terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, as additional consideration for the Town’s agreeing to annex the Property into the Town and consistent with Section 11 of the Annexation Agreement, Declarant offered and agreed to impose a real estate transfer assessment (“RETA”) upon on the sale of each Lot other than deed restricted affordable Lots or as otherwise provided in this Covenant; and

WHEREAS, the Town approved a final plat for Parcel 2 of the Property, which was recorded on ____________________, 2017 as Reception No. _____________ (the “Phase 2 Plat”), which Phase 2 Plat created the first residential units and lots to be subject to the RETA; and

WHEREAS, the RETA shall be payable to the Town of Carbondale (“Town”) and the proceeds thereof used by the Town for open space, affordable housing, or transportation purposes to mitigate the impacts of the development of the Property on the Town; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement’s RETA provision as hereinafter described; and

WHEREAS, unless otherwise expressly exempted herein, each person acquiring any interest in any portion of any residential lot depicted on the Phase 2 Plat shall be deemed for all purposes to have assented and agreed, as an essential condition of any conveyance, to the provisions of this Covenant, to have agreed to comply with this Covenant, and to have waived any
right to challenge or contest the provisions hereof or to seek any refund or abatement of the fee payable hereunder.

SECTION 1
DEFINITIONS

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

1. “Consideration” shall refer to and includes the actual cash paid and/or value of a Lot delivered in return for the transfer of ownership or title to any portion of or interest in a Lot and shall include the amount of any liens, mortgage, or other encumbrance given to secure the purchase price, or any part thereof, remaining unpaid on such Lot at the time of sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-municipal governmental corporation or district for taxes, special benefits or improvements.

2. “Conveyance” shall refer to and includes any conveyance of ownership or title to any portion of or interest in a Lot as evidenced by any deed or instrument or writing wherein or whereby title to such portion of or interest in the Lot is granted or conveyed subject to the exclusions provided herein. A portion of a Lot may only be conveyed upon further subdivision approval by the Town. Conveyance of “ownership” for the purposes of this Covenant includes the transfer to another person or entity of more than fifty percent (50%) of the ownership interest in a corporate entity when said corporate entity owns any portion of or interest in a Lot.

3. “Lot” means any of lots 1 through 16 as depicted on the Phase 2 Plat; provided, however, Lots 1, 2 and 3 are subject to the exception set forth below in Section 3(A)(4).

SECTION 2
COVENANT

Declarant hereby covenants and binds the Lots as follows:

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares, covenants, and agrees that, except as provided in Section 3 of this Covenant, a RETA based on a percentage of the Consideration paid on the Conveyance of any portion of or interest in a Lot shall be due and payable by the grantor at the time of transfer or Conveyance and shall apply to each Conveyance or transfer of any portion of or interest in a Lot. The RETA imposed on the initial sale by the Declarant of a portion of or ownership interest in a Lot shall be one-half percent (.5%) of the Consideration for the sale thereof. The RETA imposed on each subsequent Conveyance of any portion of or interest in a Lot shall be one percent (1%) of the Consideration for each such Conveyance. In the event of a Conveyance of “ownership” as
described in Section 1(A)(2), the RETA imposed on such a Conveyance shall be one percent (1%) of the Consideration paid for the corporate entity ownership interest.

B. Unless Declarant is the grantor of a Conveyance of any portion of or interest in a Lot, Declarant shall not be responsible for payment of the RETA to the Town.

C. All RETA funds shall be paid directly to the Town. All amounts received by the Town pursuant to this Covenant shall be accounted for in a separate fund. A portion of the funds may be used to administer the collection of the RETA provided herein. The balance of the funds shall be used by the Town for open space, affordable housing, or transportation purposes or to further mitigate the impacts of development of the Property on Town resources.

D. Declarant acknowledges and agrees that the obligations imposed by this Covenant are related to and touch and concern the Lots since the RETA funds are required to be used for the purposes specified in Section 2(B) above and were agreed to by Declarant as additional consideration for the Town’s annexing the Property into the Town.

E. Upon execution hereof, this Covenant shall be recorded in the Garfield County, Colorado, real property records.

SECTION 3
EXCEPTIONS

A. Notwithstanding anything to the contrary in this Covenant, the RETA shall not apply to the following:

1. The bulk sale of any undeveloped parcel or parcels depicted on the Master Plat;

2. Transfers of a portion of or interest in a Lot without consideration, including gifts and charitable donations;

3. Transfers for estate planning purposes where the grantor and grantee are (a) family members or (b) corporate entities in which the individuals or principals (including the settlors of any trust) in the grantor entity are family members of the individuals or principals (including the beneficiaries of any trust) in the grantee entity;

4. Any transfer of title or change of interest in real property by reason of death, will, decree, or distribution;

5. The Conveyance or transfer of any deed-restricted affordable housing Lot or unit;
6. Transfers made pursuant to mergers or consolidation of corporate entities or by a subsidiary to a parent corporation which do not result in a change of control of the Lot and do not otherwise involve the payment of Consideration for the Lot;

7. Any Conveyance of ownership from one or more individuals or from an entity to an entity where the individuals or principals in the grantee entity are the same as the individuals or the principals in the grantor;

8. Transfers to secure a debt or other obligation, or transfers or releases of property which is security for a debt or other obligation;

9. Any deed or Conveyance under execution, sale, foreclosure sale under a power of sale or court decree of lien foreclosure; sheriff’s deed; public trustee’s deed; or treasurer’s deed;

10. Any transaction in which the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the state, is either the grantor or grantee;

11. Any mineral deed or royalty deed;

12. Any deed or conveyance made and delivered without consideration for the purposes of confirming, correcting, modifying, or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds on titles; or granting easements, rights-of-way or licenses;

13. Any decree or order of a court of record determining or vesting title, including, without limitation, the final award of title pursuant to a condemnation proceeding, a dissolution of marriage proceeding, quiet title proceeding, partition proceeding (provided that no Consideration for the Lot is paid in connection therewith), or otherwise.

14. Any lease of a portion of or interest in a Lot, provided such lease by its terms does not exceed 50 years; or

15. Any transfer to a descendant of the Manager of Declarant. “Descendant” shall mean children, grandchildren, and the lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in
the Colorado Probate Code which defines the relationship of adoptees and persons born out of wedlock.

B. In the event any document or transaction which is exempt from the RETA herein imposed does not contain language clearly showing its intent and character, the grantor or grantee may apply for and obtain from the Town a certificate of exemption which may be affixed to the applicable deed or instrument of transfer. In the event of a determination by the Town favorable to the applicant, any amount previously deposited or so much thereof as may be allowed by the Town shall be promptly refunded to the applicant.

C. Upon written request by any interested party, the Town shall issue a written statement setting forth the amount of any unpaid RETA with respect to any specific portion of or interest in the Lot identified in such request. Such statement shall be furnished as soon as reasonably practicable, but in no event later than 30 days after receipt of the request, and shall be binding on the Town. If no statement is furnished to the inquiring party within such 30 day period, then the Town shall have no right to assert any claim for any unpaid RETA with respect to such property which was due as of the date of the request.

D. In the event any future fee or charge is imposed by the Town on the transfers defined herein for which the RETA is payable, full credit shall be given against sums due under such future fee or charge for all payments made pursuant to this Covenant.

SECTION 4
PENALTIES AND ENFORCEMENT

A. Any RETA imposed by this Covenant, if not paid when due, shall bear simple interest at a rate of eighteen percent (18%) per annum until so paid. The amount of the RETA imposed by this Covenant and interest due thereon is hereby imposed upon each Lot or any portion of or interest in a Lot as provided herein. If the RETA is not paid when due, such assessment and interest, if any, shall constitute a lien in the amount thereof on the portion of the Lot transferred, and said lien shall continue until the amount of the lien is paid in full or until it is discharged of record by foreclosure of a senior lien or otherwise. Such lien may be foreclosed in the same manner as a deed of trust, through the public trustee, through the District Court of Garfield County, Colorado, or by any other means available to the Town under law.

B. This Covenant is made for the express benefit of the owners and occupants of the Property and for the additional express benefit of the Town. The Town shall have the right and power to bring suit for either legal or equitable relief for any breach, default, or lack of compliance with the provisions of this Covenant, provided that no suit may be filed until the Town and the Declarant or its successors and assigns is provided with written notice of such breach or lack of compliance and fails to cure such breach or lack of compliance within ten (10) days after the mailing of such notice. Further, the Town shall have the right to refuse to further process and/or
deny any building permit, certificate of occupancy, or development application with regard to any portion of a Lot for which a RETA is owed and not paid.

C. Declarant shall not have any obligation to enforce this Covenant, and the failure of any party to pay any RETA payable hereunder shall not constitute a default by Declarant hereunder or under the Annexation Agreement between Declarant and the Town. All costs of enforcement of this Covenant shall be borne by the Town.

D. Any remedies provided for herein shall be cumulative, not exclusive, and shall be in addition to any other remedies available to the Town at law.

SECTION 5
MISCELLANEOUS

A. **Severability.** Any determination by any court of competent jurisdiction that any provision of this covenant is invalid or unenforceable shall not affect the validity or enforceability of any other portion of this Covenant.

B. **Amendment.** This Covenant shall not be amended or terminated without the advance written consent of the Town of Carbondale acting by and through its Board of Trustees. If the Town provides such consent, no amendment shall be effective unless it is contained in a written instrument signed and acknowledged by the Declarant or its successors or assigns and duly recorded in the real property records of Garfield County, Colorado.

C. **Term.** Except as provided herein, the term of this Covenant shall be perpetual.

D. **Colorado law.** The interpretation, enforcement, and any other matters relative to this Covenant shall be construed and determined in accordance with the laws of the State of Colorado. Any legal action involving this Covenant shall be brought in Garfield County District Court.

E. **Binding on Successors.** The provisions of this Covenant shall run with the Lots and be binding on all persons or entities who hereafter acquire any interest in a Lot, whether as an owner, renter, mortgage beneficiary, or otherwise.

F. **Encumbrance.** Until terminated, each and every provision of this Covenant shall be deemed incorporated in each deed or other instrument by which any right, title, or interest in any portion of a Lot is granted, devised, or conveyed, whether or not set forth or referred to in such deed or other instrument, except as otherwise provided herein.

[Space Intentionally Left Blank]
IN WITNESS WHEREOF, the Declarant has executed this instrument on the day and year first written above.

DECLARANT:

CERISE PARK, LLC
a Delaware limited liability company

__________________________
Frieda K. Wallison, Manager

STATE OF COLORADO )
COUNTY OF _________ ) ss.

The foregoing instrument was acknowledged before me this __ day of ________________, 2017, by Frieda K. Wallison, Manager of Cerise Park, LLC.

WITNESS my hand and official seal.

My commission expires: ______________________

__________________________
Notary Public
LIENHOLDER CONSENT AND SUBORDINATION

The undersigned, being the holder of liens on the herein described Property pursuant to a Deed of Trust recorded as Reception No. 863380 in the Office of the Clerk and Recorder of Garfield County, Colorado, hereby consents and subordinates the liens of its deed of trust to the foregoing Declaration of Covenant (Real Estate Transfer Assessment).

FIRST WESTERN TRUST BANK

By: ________________________________
Name: 
Title: 
Dated: ________________________________

STATE OF ___________________ )
 )ss.
County of ______________________ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this __ day of _____________, 2017, by ______________________________ as the ________________ of First Western Trust Bank.

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

________________________________________
Notary Public

9549958_1.docx
DEED RESTRICTION
THOMPSON PARK SUBDIVISION, PHASE 2
TOWN OF CARBONDALE, COLORADO

DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON
PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY,
COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING
THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON
PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY,
COLORADO (“Agreement”) is made and executed this __ day of ________________, 2017, (the
“Effective Date”), by Cerise Park, LLC, a Delaware limited liability company and/or its assigns
(the “Declarant”), for the benefit of and enforceable by the Board of Trustees of the Town of
Carbondale, Colorado (the “Town”) and the Garfield County Housing Authority (“GCHA”), a
duly constituted housing authority established pursuant to Colorado law (together, the
“Beneficiaries”).

RECITALS

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

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

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

WHEREAS, Section 10 of the Annexation Agreement requires that 20% of the units or lots
developed on the Property be deed-restricted to be affordable to purchasers earning not more than 80%
of the Garfield County area median income (“AMI”); and

WHEREAS, as indicated on the plat, the Property is subdivided into 16 lots; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators,
representatives, successors, and assigns, desires to comply with the Annexation Agreement’s
affordable housing requirements by restricting the use of Lots 1, 2, and 3 of the Property
(“Restricted Lots”) as hereinafter described.
NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare, covenant, and agree as follows:

SECTION 1
DEFINITIONS

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

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

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

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

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

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

6. “Qualified Buyer” or “Qualified Buyers” shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed eighty percent (80%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.

7. “Owner,” as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an “Owner” hereunder only during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.
8. “Permitted Capital Improvements” is defined on Exhibit A attached hereto and incorporated herein by this reference.

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

SECTION 2
DECLARATION

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

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

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

SECTION 3
USE AND OCCUPANCY OF THE RESTRICTED LOTS

A. Except as otherwise provided herein, the use and occupancy of the Restricted Lots is limited exclusively to housing for Qualified Buyers owning the Restricted Lots and their families. Each Restricted Lot shall be utilized as an Owner’s sole and exclusive place of residence.
B. An Owner, in connection with the purchase of a Restricted Lot, must: (a) occupy the Restricted Lot as his or her sole place of residence, as explained in the Guidelines, during the time that he or she is the Owner of a Restricted Lot; (b) not engage in any business activity on or in such Restricted Lot, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines for the duration of the Owner’s ownership of the Restricted Lot; and (d) sell, convey, or otherwise transfer such Restricted Lot only in accordance with this Agreement and the Guidelines.

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

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

SECTION 4
SALE OF RESTRICTED LOTS; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:

1. Deliver a written notice of its intent to sell a Restricted Lot (the “Notice of Sale”) to the Town and GCHA prior to offering the Restricted Lot for sale; and

2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and
3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list the Restricted Lot for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual resale price. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

C. In no event shall a Restricted Lot be sold by an Owner for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Restricted Lot paid by the Owner selling the Restricted Lot divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982 84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics (“Consumer Price Index”), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements and/or Required Improvements. In determining the improvement costs, only the Owner’s actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner’s “sweat equity” or to any appreciation in the value of the improvements. Notwithstanding the foregoing, in no event shall the Maximum Resale Price be less than the Owner's purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements and Required Improvements (except as limited in Paragraph C of this Section 4). The full amount of any monetary grant from a federal, state, or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale Price.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA, OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

D. To qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;
2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and

3. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements.

Notwithstanding anything else contained in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller’s customary closing costs or to accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective Qualified Buyer.

G. Prior to an Owner’s entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall not enter into a sales contract for the sale of a Restricted Lot with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with Section 4(C). The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (hereinafter referred to as “Non-Qualified Transferee(s)”), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to a Restricted Lot, the Restricted Lot shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in Section 4(B) above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Restricted Lot shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the
event the Non-Qualified Transferee(s) elect to sell the Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Restricted Lot. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.

2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.

3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.

4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.

5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.

**SECTION 5**

**RENTAL OF A RESTRICTED LOT**

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA’s conditions of approval, rent a Restricted Lot. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy, and all other qualifications established by the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be “Owner’s cost” prorated on a monthly basis. “Owner’s cost,” as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner’s assessments, utilities remaining in Owner’s name, plus an
additional Twenty Dollars ($20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including Section 3.

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

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

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

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

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

SECTION 7
GRIEVANCE PROCEDURES

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

B. Filing a Grievance.
1. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.

2. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.

3. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.

4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.

2. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.

3. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.

4. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

SECTION 8
REMEDIES

A. This Agreement shall constitute covenants running with the Restricted Lot, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.
B. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney’s fees.

C. Each and every conveyance of a Restricted Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

D. In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of a Restricted Lot by an Owner, or as specified in Section 4(H). The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner’s purchase price of the Restricted Lot as referred to in Section 4 of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in Section 4 of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9
DEFAULT/FORECLOSURE

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, “First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Restricted Lot to secure a loan used to purchase the Restricted Lot. An Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Restricted Lot, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.

B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a Qualified Buyer of a Restricted Lot.

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

D. Upon notification of a default as provided in Section 9(C), above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of a Restricted Lot pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner’s financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to Section 4 of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in Section 9(C), above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner’s behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney’s fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Restricted Lot in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Restricted Lot. Otherwise, Owner’s indebtedness to the Town shall be satisfied from the Owner’s proceeds at closing upon sale of the Restricted Lot. The provisions of this Section 9(E) are not subject to the provisions of Section 9(A) limiting the amount of secured indebtedness.

F. The Town shall be a “person with an interest in the property……” as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a “contract vendee” pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 et seq. Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale (“NED”) pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town’s sole discretion, to purchase the Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Restricted
Lot, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the Town timely exercises its option, the closing on the purchase of the Restricted Lot shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Restricted Lot free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to cure the default by paying off the indebtedness secured by the Restricted Lot which is the subject of the pending foreclosure action, then to Owner’s closing costs, then to the payment of other indebtedness secured by the Restricted Lot, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town’s option to purchase the Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town’s option to purchase the Restricted Lot in the event that any subsequent NED is filed.

G. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Restricted Lot made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such Lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Restricted Lot if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of Section 4(H) of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.

SECTION 10
GENERAL PROVISIONS

A. Notices. Any notices, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided in this subsection or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:
To Declarant:
c/o Garfield & Hecht, P.C.
420 7th Street, Suite 100
Glenwood Springs, Colorado 81601

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

To Owner: as set forth in each recorded Memorandum of Acceptance for each
Restricted Lot

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

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

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

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

F. Section Headings. Paragraph or section headings within this Agreement are
inserted solely for convenience of reference and are not intended to, and shall not govern, limit or
aid in the construction of any terms or provisions contained herein.

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

H. Waiver. No claim of waiver, consent, or acquiescence with respect to any
provision of this Agreement shall be valid against any party hereto except on the basis of a written
instrument executed by the Parties. However, the Party for whose benefit a condition is inserted
herein shall have the unilateral right to waive such condition in writing.
I. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

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

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

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

M. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner’s or lender’s rights under this Agreement, and when such amendment has been approved by the Town.

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

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

DECLARANT:

Cerise Park, LLC

a Delaware limited liability company

Frieda K. Wallison, Manager
Cerise Park, LLC
STATE OF COLORADO  )
COUNTY OF _________  ) ss.

The foregoing instrument was acknowledged before me this __day of ______________, 2017, by Frieda K. Wallison, Manager of Cerise Park, LLC.

WITNESS my hand and official seal.

My commission expires: ______________________

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

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

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

STATE OF COLORADO    )
                      ) ss.
COUNTY OF ___________ )

The above and foregoing document was acknowledged before me by Katherine Gazunis this ___ day of _________________, 2017.

Witness my hand and official seal.
My commission expires:

[Signature]
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 ____________ ) 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 ____________________, 2017.

Witness my hand and official seal.
My commission expires:

__________________________________________
Notary Public
EXHIBIT A
PERMITTED CAPITAL IMPROVEMENTS

1. The term “Permitted Capital Improvements” as used in the Agreement shall only include the following:

   a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacements, and/or maintenance improvements;
   
   b. Improvements for energy and water conservation;
   
   c. Improvements for the benefit of seniors and/or handicapped persons;
   
   d. Improvements for health and safety protection devices;
   
   e. Improvements to add and/or finish permanent/fixed storage space;
   
   f. Improvements to finish unfinished space;
   
   g. Garages;
   
   h. The cost of adding decks and any extension thereto;
   
   i. Landscaping; and
   
   j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall NOT include the following:

   a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;
   
   b. Improvements required to repair, replace, and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting, and other similar items; or
   
   c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined in the Agreement.
EXHIBIT B

MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _______________________________ (“Owner”) has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: ___________________________________________________________________, according to the Final Plat thereof recorded ______________ (date), as Reception No. _____________ (“Property”), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner acknowledges and agrees to the terms, conditions, and restrictions found in that certain instrument entitled DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO recorded on _________________ as Reception Number _________________ in the Office of the Clerk and Recorder of Garfield County, Colorado (“Agreement”); and

NOW, THEREFORE, as required by the Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Owner agrees and acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions, and requirements thereof. In particular, Owner acknowledges and agrees that the Town of Carbondale shall be entitled to exercise the rights and options as set forth in Section 9 of the Agreement in the event of a default as described therein, and that the Owner will be required to document the cost of and obtain approval for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows

   a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is $________________.

   b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:

                                         ______________________________________
                                         ______________________________________
                                         ______________________________________
3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER

__________________________________   Dated: _______________________
Name:

STATE OF COLORADO   )
COUNTY OF ___________ ) ss.

The above and foregoing document was acknowledged before me this ____ day of ________________, 20__, by __________________________________.
Witness my hand and official seal.
My commission expires:

__________________________________________
Notary Public

OWNER:

__________________________________   Dated: _______________________
Name:

STATE OF COLORADO   )
COUNTY OF ___________ ) ss.

The above and foregoing document was acknowledged before me this ____ day of ________________, 20__, by __________________________________.
Witness my hand and official seal.
My commission expires:

__________________________________________
Notary Public
BOARD OF TRUSTEES

ATTACHMENT Q

TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Memorandum

Item No: 14
Attachment: Q
Meeting Date: 2/14/2017

TITLE: Heritage Storage Annexation Petition

SUBMITTING DEPARTMENT: Planning

ATTACHMENTS: Resolution 3 of 2017
Petition for Annexation
Location Map

BACKGROUND

Staff has received a Petition for Annexation for a parcel containing approximately 2.602 acres located to the North of the Xcel substation.

DISCUSSION

Per state statutes as noted in the resolution attached, The Board of Trustees will need to determine that the petition is in compliance with the Municipal Annexation Act of 1965. Staff has determined that the petition and application are in compliance. If the petition is deemed to be in compliance, then the Board will schedule a Public Hearing no less than 30 days and no longer than 60 days from the date of the resolution. This Public hearing may take place on March 28th, 2017. The purpose of the hearing will be to determine if the proposed annexation is in compliance and eligible for annexation.

RECOMMENDATION

Staff recommends the following motion be approved: Move to approve Resolution No. 3 of 2017 establishing a date time and place for a public hearing to determine compliance with state statutes concerning an annexation petition submitted to the Town.

Prepared By: John Leybourne
RESOLUTION NO. 3
SERIES OF 2017

A RESOLUTION OF BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, FINDING SUBSTANTIAL COMPLIANCE WITH SECTION 31-12-107(1), C.R.S.; ESTABLISHING A DATE, TIME AND PLACE FOR A PUBLIC HEARING TO DETERMINE COMPLIANCE WITH SECTIONS 31-2-104 AND 31-12-105, C.R.S.; AUTHORIZING PUBLICATION OF NOTICE OF SAID HEARING; AND AUTHORIZING THE COMMENCEMENT OF ZONING PROCEDURES FOR LAND IN THE AREA PROPOSED TO BE ANNEXED

WHEREAS, the Town Clerk has received and has referred to the Board of Trustees a Petition for Annexation ("Petition") dated November 16, 2016 from Huntington, LP, on behalf of the property owner, 133 Limited Partnership ("Petitioner"), for the annexation of certain real property described as follows into the Town of Carbondale, Colorado:

a parcel of land situated in Lot 16 of Section 28, Township 7 South, Range 88 West of the Sixth Principal Meridian, being more particularly described as follows: beginning at a point on the Westerly right-of-way line of Colorado State Highway No. 133, whence the East Quarter corner of said Section 28 bears North 24°43'21" East, 2372.8 feet; thence South 01°16'00" East, 511.89 feet along said Westerly right-of-way line; thence leaving said Westerly right-of-way line along the boundary of that Exception Parcel described in that document recorded as Reception No. 232893 South 88°44'00" West, 195.0 feet; thence continuing along said boundary South 01°16'00" East, 49.14 feet to a point on the Northeasterly right-of-way line of the Denver and Rio Grande Western Railroad; thence leaving said boundary North 33°10'35" West, 47.30 feet along said Northeasterly right-of-way line; thence leaving said Northeasterly right-of-way North 01°16'00" West, 520.88 feet; thence North 88°44'00" East, 220.00 feet to the point of beginning. Containing 2.602 acres more or less.

and,

WHEREAS, the Petition alleges that the requirements of Section 31-12-104, C.R.S., and Section 31-12-105, C.R.S., exist or have been met; and

WHEREAS, the Petitioner owns 100% of the affected property and has signed the Petition; and

WHEREAS, an Annexation Map of the proposed "Stein Annexation" has been duly filed along with said Petition as required by Section 31-12-107(1)(d), C.R.S.; and
WHEREAS, section 31-12-107(1)(g), C.R.S., requires the Board of Trustees to determine whether the Petition is in substantial compliance with the requirements of the Municipal Annexation Act; and

WHEREAS, the form of the Petition substantially complies with the applicable requirements of the Municipal Annexation Act of 1965.

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

1. Pursuant to Section 31-12-107(1)(g), C.R.S., the form of the Petition is hereby deemed to be in substantial compliance with C.R.S. section 31-12-107(1). The procedures outlined in Sections 31-12-108, 31-12-109 and 31-12-110, C.R.S, shall be followed.

2. The Board of Trustees hereby determines that it shall hold a public hearing to determine if the proposed annexation complies with C.R.S. sections 31-12-104 and 31-12-105, and to establish whether or not said area is eligible for annexation pursuant to the Municipal Annexation Act of 1965, C.R.S. section 31-12-101 et seq., as amended; said hearing to be held at a regular meeting of the Board of Trustees on the 28th day of March, 2017 (not less than 30 nor more than 60 days after the date of this resolution) at the Carbondale Town Hall, 511 Colorado Avenue, Carbondale, CO.

3. The Town Clerk shall give public notice as follows: A copy of this resolution shall constitute notice that, on the given date and at the given time set by the Board of Trustees, the Board of Trustees shall hold a hearing for the purpose of determining and finding whether the area proposed to be annexed meets the applicable requirements of Sections 31-12-104 and 31-12-105, C.R.S, and is considered eligible for annexation. Said notice shall be published once a week for four consecutive weeks in a paper of general circulation, with the first publication to occur at least 30 days prior to the hearing. The proof of publication shall be returned when the publication is completed, and the certificate of the owner, editor or manager of the newspaper in which said notice if published shall be proof thereof. At least 25 days prior to the hearing, a copy of this resolution and the Petition, as filed, shall also be sent via registered mail by the Town Clerk to the Garfield County Board of County Commissioners, the Garfield County Attorney, and to the Roaring Fork School District, and to any special districts having territory within the area to be annexed.

4. Town staff is hereby directed to initiate appropriate zoning procedures with regard to the territory proposed to be annexed.

INTRODUCED, READ, AND PASSED this 14th day of February, 2017.

TOWN OF CARBONDALE
By: __________________________
Dan Richardson, Mayor

ATTEST:

______________________________
Catherine Derby, Town Clerk

9554250_1.DOC
PETITION FOR ANNEXATION

TO THE TOWN CLERK AND THE BOARD OF TRUSTEES OF THE TOWN
OF CARBONDALE, COLORADO:

Re: 2.602 Acre parcel Owned by 133 Limited Partnership

PURSUANT to the Municipal Annexation Act of 1965, Part 1, Article 12, Title
31, of the Colorado Revised Statutes, as amended (the "Act"), the
undersigned hereby petitions and requests the Board of Trustees of the Town
of Carbondale, Colorado, to approve and complete the annexation of that
certain unincorporated territory located in the County of Garfield, State of
Colorado, described below and referred to herein as the "Annexation Parcel."

IN SUPPORT OF THIS PETITION, THE PETITIONER ALLEGES:

1. It is desirable and necessary that the Annexation Parcel as
described on Exhibit A be annexed to the Town of Carbondale,
Colorado;

2. All requirements of Sections 31-12-104 and 31-12-105 of the Act,
and in particular those relating to contiguity, exist or have been met;

3. The signers of the petition comprise the landowners of more than
fifty percent of the territory included in the area proposed to be
annexed;

4. This annexation will not have the effect of extending a portion of
the municipal boundary more than three (3) miles from the point of
such municipal boundary;

5. A community of interest exists between the area proposed to
be annexed and the Town of Carbondale, Colorado;

6. The area proposed to be annexed is urban or will be urbanized in
the near future;

7. The area proposed to be annexed is integrated with or is capable
of being integrated with the Town of Carbondale, Colorado;

8. As set forth in the Act, in establishing the boundaries of any territory
to be annexed, no land held in identical ownership, whether
consisting of one tract or parcel of real estate or two or more
contiguous tracts or parcels of real estate, is divided into separate
parts or parcels without the written consent of the landowners
thereof unless such tracts or parcels are separated by a dedicated
street, road or other public way. By signing this Petition, the
undersigned landowners hereby give the written consent, in the
event it is required (NA);
9. As set forth in the Act, in establishing the boundaries of the territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty (20) acres or more (which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of Two Hundred Thousand Dollars for ad valorem tax purposes for the year next preceding the annexation) is included without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. By signing this Petition, the undersigned landowners hereby give the written consent in the event it is required (NA);

10. No annexation proceedings have been commenced for the annexation to any municipality other than the Town of Carbondale of all or part of the territory described below;

11. The annexation proposed in this Petition will not result in the detachment of any area from any school district and the attachment of the same area to another school district;

12. The signatures of all the landowners included within the area proposed to be annexed, the mailing address of each such signer, the legal description of the land owned by such signer and the date of signing of each signature are set forth below and all of the petitioners signed this Petition for Annexation within 180 days prior to the date of its filing with the Town of Carbondale;

13. In establishing the boundaries of the area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of such street or alley is included within the area annexed (NA);

14. This Petition for Annexation satisfies the requirements of Article 11, Section 30, of the Colorado Constitution in that it is signed by persons comprising more than 50% of the land owners of the area proposed to be annexed who own more than 50% of said area, excluding public streets and alleys;

15. In the event an Annexation Agreement satisfactory to both the petitioners and the Town of Carbondale, Colorado, is not entered into and fully executed on or before the date that the ordinance to effectuate the annexation contemplated in this Petition for Annexation is finally adopted, the petitioners may withdraw their signatures from this Petition for Annexation, the effect of which shall be as if no Petition had been executed and filed with the Town of Carbondale;
16. This Petition is accompanied by an Annexation Map containing, among other things, the following information:

   a. A written legal description of the boundaries of the Annexation Parcel and the total area proposed to be annexed to the Town of Carbondale, Colorado.

   b. A map showing the boundary of each Annexation Parcel and the total area proposed to be annexed to the Town of Carbondale, Colorado;

   c. Within the annexation boundary map, a showing of the location of each ownership tract of unplatted land and the boundaries and plat numbers of all platted lands; and

   d. Next to the boundary of each Annexation Parcel is a drawing of the contiguous boundary of the Town.

18. None of the territory proposed to be annexed to the Town of Carbondale, Colorado, is presently a part of any incorporated city, city and county, or town;

19. Attached to this Petition is the affidavit of each circulator of this Petition stating that each signature hereon is the signature of the person whose name it purports to be.

20. Whenever from the context it appears appropriate, each term stated in either the singular or plural will include the other, and pronouns stated in either the masculine, feminine, or neuter gender will include each of the other genders.

THEREFORE, the petitioners respectfully request that following a public hearing on this Petition for Annexation, the Board of Trustees of the Town of Carbondale, Colorado, approve the annexation of the Annexation Parcel to said Town.
NAME, MAILING ADDRESS, SIGNATURE AND DATE OF SIGNING OF EACH OWNER AND PURCHASER OF THE ANNEXATION PARCEL.

OWNER/PETITIONER:

133 Limited Partnership
1010 Nottingham Place
Johnson City, TN 37604

By: Mary Ann Hyde, Manager 11-16-16

Date
AFFIDAVIT OF CIRCULATOR

STATE OF COLORADO, )
COUNTY OF GARFIELD, )

Affiant, being of lawful age and first being sworn
upon oath, deposeth and saith:

1. Affiant is the circulator of the foregoing Petition for Annexation
consisting of 5 pages, including this page.

2. Affiant provided the signatory with both a copy of the Petition
for Annexation and the attached Annexation Map to be filed with the
Town of Carbondale, as referred to in said Petition.

3. Affiant personally witnessed the signature(s) appearing on the
foregoing Petition for Annexation and the signature appearing
thereon is the signature of the person whose name it purports to be.

Further, Affiant sayeth not.

Dated this 18 day of November 2016.

Mary Ann Hyde

Affiant / Circulator

STATE OF COLORADO, )
COUNTY OF Washi

Subscribed and sworn to before me this 18 day of November
2016 by Mary Ann Hyde

Witness my hand and official seal.

Kevin Wyer

Notary Public
TOWN OF CARBONDALE
PUBLIC WORKS
511 Colorado Avenue
Carbondale, CO 81623

Board of Trustees Agenda Memorandum

Item No: 15Q

Meeting Date: February 14, 2017

TITLE: Town Engineering Services Agreement

SUBMITTING DEPARTMENT: Public Works

ATTACHMENTS: Agreement for Professional Services

BACKGROUND
On December 9, 2016, the Town solicited proposals for engineering services from local engineering firms. The proposals were to include the company's experience in several different key areas, specific project experience for the company's main Town contacts, references and a fee schedule. The Town received and evaluated proposals from three companies: SGM, JVA, and Roaring Fork Engineering.

DISCUSSION
Proposals were received on January 6, 2017. Staff reviewed them and, based on the fact that all three companies seemed able to provide quality engineering services to the Town, decided to hold interviews with the key town contacts from each company. These interviews were held on January 19, 2017. Following the interviews, staff discussed the interviews and checked references. Ultimately the consensus of staff was to recommend that Board enter into a professional services agreement with Roaring Fork Engineering (RFE).

RFE is a local company, established in 2012, with offices at 592 Highway 133. While staff believes that any of the three companies would be able to provide quality engineering services to the town, the fact that RFE is a local company set them apart from the other two companies for the following reasons:

- **Proximity** - Since the company is located in Carbondale, it affords both Town staff and RFE staff the opportunity to meet on short notice to discuss issues that may arise during design and construction of both public and private projects.
- **Familiarity with the Community** - While all three companies are familiar with Carbondale based on past work experience, the primary and secondary
Town contacts for RFE are both residents of Carbondale, and are thus familiar with the community on a professional and personal level.

- Ancillary Cost- All three companies provided similar hourly rates for staff time. However, since RFE is a local company, additional costs such as mileage should be minimized.

**FISCAL ANALYSIS**
The term of attached agreement is five-years. It does provide that the Town may terminate the agreement if we are not satisfied with the services being provided. It also provides mechanisms intended to manage the Town’s cost over the term of the agreement. They include:

- The Town’s approval of a not-to-exceed budget prior to commencement of work on assigned projects.
- Billing on a time and materials basis.
- Inflationary controls on annual increases to RFE’s fee schedule based on the lower of the Employment Cost Index or 3 percent.

**RECOMMENDED MOTION**
Staff recommends that the following motion be approved:  **I move to authorize the Mayor to sign the attached five-year agreement for professional services with Roaring Fork Engineering.**

Prepared by: Kevin Schorzman

______________________________
Town Manager
AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT FOR PROFESSIONAL SERVICES is made effective the 14th day of February, 2017 between the TOWN OF CARBONDALE, a Colorado home rule municipal corporation ("Town"), and ROARING FORK ENGINEERING, a Colorado Limited Liability Company ("Consultant").

WITNESSETH:

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

1. Scope of Agreement. Consultant agrees to provide Engineering Services, as more fully identified in the 2016 Request for Proposals for Professional Engineering Services, for the Town of Carbondale, Colorado.

2. Consideration. The Town agrees to compensate Consultant for its’ fees and services in an amount as established within the Professional's submittal for the scope of work identified in the Request for Proposals. On assigned projects, the Town and Consultant will develop a project budget which includes a not-to-exceed without prior authorization cost. However, actual billing and payment will be on a time and materials basis based on the Consultant’s current fee schedule. In no case will the project billing exceed the approved budget unless agreed to by the Town in advance. The Town will not agree to additional project billing unless the scope of the original project has changed significantly. Work beyond the scope of work shall be performed on a time and materials basis based upon the hourly rates identified in the cost estimate table as described in the Professional’s submittal. All work shall be approved by the Town prior to incurring costs on a project. The Town and Consultant agree that over the term of this agreement, it may be necessary for the Consultant to adjust their fee schedule annually to account for changes in the cost of doing business. The Consultant agrees that they will provide the Town an updated fee schedule by December 1st of the current year if they are proposing to adjust the fee schedule for the following year. If an updated fee schedule is not provided to the Town prior to December 1st of the current year, the existing fee schedule will remain in place for the next year. The Consultant further agrees that increases in their fee schedule will be limited to the lower of the following:

- The percentage change in the Employment Cost Index (ECI) (not seasonally adjusted) for private industry workers in the management, professional and related occupational group for the 12-months ended in September of the year prior to the year of the proposed increase.

- Three percent (3%)
For example: If the Consultant is proposing an increase to their fee schedule for 2018, the increase shall be limited to the lower of 3%, or the ECI (not seasonally adjusted) for private industry workers in the management, professional and related occupational group for the 12-months ended in September of 2017, as reported by the Bureau of Labor Statistics.

3. **Term and Renewal.** This Agreement shall be effective as of the date of its execution by both parties and shall extend five (5) years unless earlier terminated pursuant to paragraph 13, subject to and conditioned upon annual budgeting by the Town for Consultant’s services pursuant to Section 10, below. Should the Town fail to budget for Consultant’s services in any budget year, then this Agreement shall not renew and shall automatically terminate. This Agreement may also be terminated by the Town for at any time pursuant to Section 13, below.

4. **Non-Exclusive.** This Agreement shall not be deemed to be an exclusive agreement. From time to time, the Town, at its sole discretion, may contract with firms other than the Consultant to provide services similar to or related to those offered by the Consultant that are not listed in the 2016 Request for Proposals for Professional Engineering Services, for the Town of Carbondale, Colorado. Examples include but are not limited to geotechnical investigations, and structural or other specialized engineering work. The Town also intends to continue to separately contract for certain other specialized services including water rights engineering, hydrology, wetlands permitting, GIS/mapping services, and surveying, on an as-needed basis.

5. **Status.** Consultant is an independent consultant and shall not be considered an employee of the Town for any purpose.

6. **Standard of Care.** The standard of care applicable to Consultant’s services will be the same degree of care, skill, and diligence normally employed by professionals performing the same or similar services. Consultant will re-perform any services not meeting this standard without additional compensation. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, or opinion produced pursuant to this Agreement. Consultant does not guarantee that the documents and products are without error. However, the Consultant does agree to reimburse the Town for costs incurred by the Town attributable to the Consultant’s errors.

7. **Indemnity.** Consultant shall hold harmless and indemnify the Town from and against any damages awarded against the Town, or incurred by the Town in defense of any claim (including reasonable attorneys’ fees, costs or expert witness fees), related to the professional negligence or intentional wrongful conduct of Consultant or its sub-consultants, and their respective officers, employees and agents.
8. **Insurance.** Consultant and any sub-consultants shall maintain workers’ compensation, automotive liability, and general liability insurance coverage with at least the following minimum limits: General Liability - $1,000,000 per occurrence/$2,000,000 Aggregate; Automobile - $1,000,000 combined single limit, with a Hired & Non-owned Auto clause; Workers Compensation — Colorado State Statutory Limits. Consultant shall also maintain professional liability insurance with coverage limits of $1,000,000 per occurrence/$1,000,000 Aggregate. The Town and its employees shall be named as an additional insured under the general liability policy, which shall specifically insure Consultant’s indemnity obligations pursuant to the preceding Section 7, above. Every policy required above shall be primary insurance, shall contain a waiver of subrogation provision against the Town and its, officers, employees and agents, and any insurance carried by the Town, its officers, or employees, or agents shall be excess and not contributory insurance to that provided by the Consultant. The additional insured endorsement shall not contain an exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above. Certificates of insurance shall be completed by the Consultant’s insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate the Agreement, or at its discretion may procure or renew any such policy or an extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Consultant upon demand, or the Town may offset the cost of the premiums against any monies due to Consultant from the Town. The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other rights immunities and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the District, its officers or employees.

9. **Town Engineer-Defined.** When used in official Town documents (Municipal Code, Unified Development Code, Public Works Manual, etc.) the term “Town Engineer” is defined as an engineer licensed to practice in the State of Colorado who is directly employed by the Town. If the Town does not directly employ an engineer licensed to practice in the State of Colorado, the primary Town contact from the Consultant will serve in this capacity.

10. **Governmental Immunity/TABOR.** Nothing herein shall be interpreted as a waiver of governmental immunity, to which the Town would otherwise be entitled under § 24-10-101, et seq., C.R.S., as amended. This contract is also
11. **Immigration Compliance.** The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract nor contract with any subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

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

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

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

12. **Employees, Subcontractors and Assignees.** The providing of professional services required under paragraph 1 of this Agreement shall be the responsibility of Consultant. Consultant may employ or subcontract with additional persons to assist in the performance of this Agreement. Supervision and payment of any such persons shall be the sole and exclusive responsibility of Consultant. Notwithstanding the foregoing, however, this Agreement shall not be assigned by Consultant to a third party without the prior express written consent of the Town.
13. **Termination.** If at any time the Town is dissatisfied with the services of Consultant for any reason whatsoever, the Town may terminate this Agreement effective immediately upon the delivery of written notice to Consultant. In the event of any such termination, the Town shall pay Consultant for services rendered through the date of termination.

14. **Agreement Administration and Notice.** For purposes of administering this Agreement, the Town Manager hereby appoints the Carbondale Public Works Director, to represent the Town in carrying out the purposes and intent of this Agreement. Any notices required to be given pursuant to this Agreement shall be delivered as follows:

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

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

To the Consultant: Richard Goulding, Principal in Charge
Roaring Fork Engineering
592 Highway 133
Carbondale, CO 81623

15. **Responsibilities.** Consultant shall be responsible for all damages to persons or property caused by the Consultant, its agents, employees or sub consultants, to the extent caused by its negligent acts, errors and omissions hereunder.

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

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

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

**IN WITNESS WHEREOF,** the parties hereto have hereunto set their hands this 14th day of February, 2017.

**TOWN OF CARBONDALE**

a Colorado home rule municipal corporation

By: ____________________________

Dan Richardson, Mayor

---

ATTEST:

Cathy Derby, Town Clerk

**APPROVED AS TO FORM**

By: ____________________________

Mark Hamilton, Town Attorney
CONSULTANT
ROARING FORK ENGINEERING, LLC

By: [Signature]
Richard Goulding as Manager of
Roaring Fork Engineering, LLC

STATE OF COLORADO  )
COUNTY OF GARFIELD  ) ss.

The foregoing AGREEMENT FOR PROFESSIONAL SERVICES was acknowledged before me this 8th day of February, 2017 by Richard Goulding.

Witness my hand and official seal.

My commission expires: Aug 11 2018

[Signature]
Anna Karen Ramirez-Pavon
Notary Public

ANNA KAREN RAMIREZ-PAVON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20144031397
My Commission Expires August 11, 2018
Board of Trustees Agenda Memorandum

Item No: 16
Attachment: S
Meeting Date: 2/14/17

TITLE: RFTA – Letter Supporting HB 17-1018

SUBMITTING DEPARTMENT: Town Manager

ATTACHMENTS:
- Draft letter of Support to Senate Local Government Committee
- Support Sheet provided by RFTA Staff
- Support Letter from RFTA to House Transportation and Energy Committee
- E-mails from CML

BACKGROUND:

RFTA staff has requested the Mayor consider signing a letter supporting a bill that would extend a current law until January 1, 2029 that authorizes a regional transportation authority to impose a uniform mill levy of up to 5 mills. The current authorization is scheduled to be repealed on January 1, 2019. Any property tax imposed by RFTA will need to be approved by the voters of the district in a TABOR election. The Town supported similar legislation last year that was not approved. HB 17-1018 has been approved by the House and has been assigned to the Senate Local Government Committee.

DISCUSSION:

No RTA in the state has utilized a property tax under this legislation. RFTA is currently evaluating the potential of going to the voters for a property tax for long term capital needs.

The Colorado Municipal League has inquired as to the Town’s stance on this draft legislation and testified in favor of the bill during the House hearings.

RECOMMENDATION

Town Staff recommends that the Board of Trustees provide direction to the Mayor on their support to sign the requested letter.

Prepared By: Jay Harrington

_________________________
Jay Harrington
Town Manager
February 14, 2017

Honorable Senator Beth Martinez Humenik
Chair, Senate Local Government Committee
Colorado State Capitol
200 East Colfax, Room 346
Denver, Colorado 80203

Re: Support for HB-1018

Dear Chairman Martinez Humenik and Honorable Committee Members:

In 2009, the Roaring Fork Transportation Authority (RFTA) and the Pikes Peak Regional Transportation Authority asked the Legislature to consider adding a property tax authorization to the Regional Transportation Authority (RTA) Law. The Legislature approved the amendment to authorize a uniform mill levy of up to 5 mills, with voter approval, but included a sunset provision on January 1, 2019. RFTA is seeking an amendment to the RTA Law that would extend the 5 mill property tax authorization to January 1, 2029.

RFTA, which is comprised of eight member jurisdictions, is the regional public transit agency serving communities in the Colorado State Highway 82 corridor from Glenwood Springs to Aspen, and the I-70 corridor from Glenwood Springs to Rifle, an area encompassing roughly 70 linear miles. RFTA is the second largest transit agency in Colorado and the largest rural transit agency in the United States. RFTA requires a super majority board approval to move forward with a property tax question.

Between 1976, when transit service first began in the region, to 2014, RFTA bus ridership has grown from approximately 312,000 trips per year to nearly 5 million, a 1400% increase. In September 2013, RFTA implemented VelociRFTA, the nation’s first rural Bus Rapid Transit system. According to on-board surveys conducted from 2006 to 2014, over 60% of RFTA commuter bus trips are for work-related purposes and nearly 50% of RFTA’s ridership has an annual household income of $35,000 or less.

Capital funding has been challenging, with the price of one fully-equipped commuter coach, capable of operating on Compressed Natural Gas, rising to over $730,000 in 2015. Every 12 to 15 years, RFTA must replace over 80 buses in its fleet. State and Federal capital funding grants are unpredictable and inadequate to enable timely fleet replacement, while maintaining transit service operations to meet growing demand. Additional dedicated local capital funding maybe
needed to support RFTA's long-term capital replacement needs, so that public transit services aren’t negatively impacted.

Robust local and regional transit services with adequate dedicated capital funding are critical to the state’s mobility, economy, and quality of life. RFTA and other Regional Transportation Authorities need the ability to plan for and seek voter approval of property increases to support their capital replacement needs beyond the current sunset on this authorization. For this reason, I encourage the Senate Local Government Committee to support this worthwhile and much needed Bill Concerning Extension for a Regional Transportation Authority to Impose a Uniform Mill Levy on all Taxable Property within its boundaries.

Sincerely,

Dan Richardson
Mayor
Please support HB17-1018, concerning extension of the authorization for a Regional Transportation Authority to seek voter approval for a uniform mill levy on all taxable property within its territory.

Under current statute, regional transportation authorities may ask voters for revenue to fund regional transportation from three sources: sales tax of up to 1%, a uniform property tax of up to 5 mills, and a 2% visitor benefit tax. The authorization to ask voters for a property tax mill levy or an increase in such a levy now sunsets in January 2019. This bill would extend that authority to 2029.

Problem and Need

This bill is needed for several reasons:

1. It takes time and resources to reach out to stakeholders. Planning for a successful referendum can take several years and an election should not be undertaken if the economic climate isn’t suitable. RTA’s should not be forced to go to the voters if the timing isn’t right just because the property tax authorization is due to sunset on January 1, 2019.

2. Costs of construction, capital items, and buses have continued to increase.

3. Capital costs for buses have especially increased, while FTA - Federal Transit Administration- matches have decreased, thus placing a larger cost burden on local government.

4. As defined by the Federal Transit Administration, transit buses have a useful life of 12 years or 600,000 miles of service. Buses must be replaced every 12 – 15 years and the price of buses is increasing by inflation each year.

5. Regional Transportation Authorities require a stable, dedicated, source of funding for capital replacement. Depending upon seating capacity (35 – 57 seats) fully-equipped transit buses that operate on natural gas, cost approximately $550,000 to $750,000 each.

6. The Roaring Fork Transportation Authority has approximately 90 buses in its fleet. Passage of a 1 – 2 mill property tax will help to make RFTA sustainable over the long term by enabling it to pay off debt and to pay as it goes for future bus replacements and other capital investments for equipment and infrastructure. State and Federal funding is inadequate and cannot be relied upon for capital replacement.

7. HB17 - 1018 caps the maximum uniform mill levy for Regional Transportation Authorities at 5 mills.

8. RTAs must go to their voters.

9. By passing HB17 - 1018, we extend the property tax authorization now so as to eliminate uncertainty about the continuation of the authorization beyond January 2019, and to avoid a rush or a crisis to get the extension passed in 2018. Further, this enables RTAs to fully reach out to the public long before a ballot issue is placed before the voters, rather than rushing to beat the current 2019 sunset.
January 20, 2017

Diane Mitsch-Bush, Chairman
Honorable Members of the House Transportation and Energy Committee
Colorado State Capitol
200 East Colfax
Denver, Colorado 80203

Dear Chairman Mitsch-Bush and Honorable Members:

This letter is in support of HB 17-1018. In 2009, the Roaring Fork Transportation Authority (RFTA) and the Pikes Peak Regional Transportation Authority asked the Legislature to consider adding a property tax authorization to the Regional Transportation Authority (RTA) Law. The Legislature approved the amendment to authorize a uniform mill levy of up to 5 mills, with voter approval, but included a provision that will require the property tax authorization to sunset on January 1, 2019. HB 17-1018 would amend the RTA Law to extend the 5 mill property tax authorization until January 1, 2029.

RFTA, which is comprised of eight member jurisdictions, is the regional public transit agency serving communities in the Colorado State Highway 82 corridor from Glenwood Springs to Aspen, and the I-70 corridor from Glenwood Springs to Rifle, an area encompassing roughly 70 linear miles. RFTA is the second largest transit agency in Colorado and the largest rural transit agency in the United States.

Between 1976, when transit service first began in the region, and 2016, RFTA bus ridership has grown from approximately 312,000 trips per year to over 5 million, a 1500% increase. In September 2013, RFTA implemented VelociRFTA, the nation’s first rural Bus Rapid Transit service. According to on-board surveys conducted in 2016, approximately 77% of RFTA commuter bus trips are for work-related purposes. Nearly 50% of RFTA’s system-wide riders have an annual household income of $35,000 or less.
Capital funding has been challenging, with the price of one fully-equipped commuter coach, capable of operating on Compressed Natural Gas, rising to over $750,000 in 2017. Every 12 to 15 years, RFTA must replace over 80 buses in its fleet. State and Federal capital funding grants are unpredictable and inadequate to enable RFTA to replace its fleet on a timely basis, while maintaining transit service operations for which there is growing demand. Additional dedicated local capital funding is essential to support RFTA’s long-term capital replacement needs, so that vital public transit services aren’t negatively impacted.

Robust local and regional transit services with adequate dedicated capital funding are critical to the state’s mobility, economy, and quality of life. RFTA and other Regional Transportation Authorities need and deserve the ability to plan for and seek voter approval of modest property increases to support their capital replacement needs beyond the current sunset on this authorization. For this reason, I encourage the House Transportation and Energy Committee to support the passage of HB 17-1018.

Sincerely,

George Newman, Chairman
Roaring Fork Transportation Authority
Jay Harrington

From: Dianne Criswell <dcriswell@cml.org>
Sent: Tuesday, January 31, 2017 12:20 PM
To: Jay Harrington
Subject: RE: HB17-1018 -- Extending RTA Property Tax Authority

Dear Jay,

HB-1018 passed out of the House today and is off to the Senate.

If you folks have a strong interest in the bill, you might consider updating your letter of support from last year in consultation with your RTA to the Senate Transportation Chair. Here’s his contact info: https://openstates.org/co/legislators/COL000099/randy-baumgardner/

The other step you might consider, again if you have a strong interest in the bill, is to let your senators know your position (could cc. them on a letter to Sen. Baugartner, Senate Transpo Chair). You can look up your General Assembly members at this site: http://statisticalatlas.com/state/Colorado/Overview

If you do decide to draft a letter of support, I would be grateful for a courtesy copy.

You folks can decide what’s best for you – and I will be testifying in support of the bill in the Senate.

Sincerely,
Dianne

From: Jay Harrington [mailto:jharrington@carbondaleco.net]
Sent: Wednesday, January 25, 2017 3:23 PM
To: Dianne Criswell
Subject: RE: HB17-1018 -- Extending RTA Property Tax Authority

Hi Dianne:
I will check with RFTA on this and see if they plan to request another letter from us.
Thanks
Jay

From: Dianne Criswell [mailto:dcriswell@cml.org]
Sent: Wednesday, January 25, 2017 12:51 PM
To: Jay Harrington
Subject: RE: HB17-1018 -- Extending RTA Property Tax Authority

Thank you for the reply (and quick turn-around). I’d recalled that you folks wrote a letter last year, but couldn’t locate it in my files (so thank you very much for attaching that). CML will testify in support of the bill today.

If you folks are interested in submitting another letter of support, let me know. This bill should make it out of the House – and we will need to make a strong case in the Senate.

Thank you again,
Dianne
Hi Dianne:
We have not discussed this yet in 2017 but did send a letter supporting a similar effort last year (a copy attached). There is some discussion that RFTA may request a property tax in 2018 to support capital needs.
Thanks
Jay

From: Dianne Criswell [mailto:dcriswell@cml.org]
Sent: Tuesday, January 24, 2017 3:27 PM
To: Jay Harrington
Subject: HB17-1018 -- Extending RTA Property Tax Authority

Dear Jay,

Does Carbondale have an opinion about this bill [link: http://leg.colorado.gov/bill-search?search_api_views_fulltext=hb17-1018&field_chamber=All&field_bill_type=All&field_sessions=All&sort_bef_combine=search_api_relevance%20DESC] which would extend the authority of an RTA (like Gunnison Valley RTA) to ask voters for a property tax increase? Currently, the authority to go to the ballot for that expires in 2019.

If you have any opinion, or any information about any plans your RTA might have to move forward on a property tax, please let me know ASAP. CML has not taken a position on the bill, but we have a member who is in support and would like me to testify on the bill tomorrow when it’s scheduled in H. Transportation.

Apologies for the short notice, and my thanks in advance for any input you might have.

Sincerely,

Dianne Criswell, J.D.
Legislative & Policy Advocate
Colorado Municipal League
1144 Sherman Street, Denver, CO 80203
(p) 303-831-6411 / 866-578-0936 • (f) 303-860-8175
dcriswell@cml.org • www.cml.org

Is there a citizen leader, volunteer, or municipal employee making a difference in your city or town? Nominate them for a municipal hero award!

This e-mail may contain an advertisement or solicitation. To refuse future commercial e-mail solicitations from this sender, please respond accordingly to dcriswell@cml.org.
MINUTES
ENVIRONMENTAL BOARD
NOVEMBER 28, 2016

CALL TO ORDER
Julia Farwell called the meeting to order at 6:08 pm on November 28, 2016 in the Town Hall
meeting room.

ROLL CALL
The following members were present for roll call:

E-board Members: Amanda Poindexter, Member
                 Jason White, Member
                 Julia Farwell, Chair
                 Matt Gwost, Member
                 Natalie Fuller, Member
                 Patrick Hunter, Member

Town Staff Present: Mark O'Meara, Town Liaison
                   Angie Sprang, Board Administrator

Observers & Guests: Alyssa Rendell
                   Brad Davis, CORE Representative

PERSONS PRESENT NOT ON THE AGENDA
There was no one present who wished to address the Board.

CONSENT AGENDA
Motion Passed: Approval of Environment Board Meeting Minutes October 24, 2016. Julia Farwell
moved to approve the minutes from October 24, 2016. Matt Gwost seconded the motion, and it
was unanimously approved.

NEW MEMBERSHIP APPLICATION
Motion Passed: E-board application of Keelin Shaffrath was reviewed and discussed. Matt Gwost
moved to approve Keelin Shaffrath's application requesting E-board regular voting membership,
and to send the application to the Board of Trustees (BOT) for final approval. Julia Farwell
seconded the motion, and it was unanimously approved.

UPDATES
E-board Survey Update: Brad Davis, noted that the survey will remain open until December 1,
2016, and that presently 420 survey responses have been received. The results showed a
significant support for the climate action plan, and the main purpose of conducting the survey was to
gauge the level of town support for the Climate Action Plan.

Brad Davis will send all E-board members survey open ended comment responses via email. Brad
continued that the open ended comments showed no significant trends.

On December 1, 2016, the survey will be closed and the results will be posted on the Town's
website. Brad Davis, will purchase prizes and will notify the winners.

Brad continued that results showed a 70%+ approval rating for a plastic bag ban, and a 60%+
approval for a plastic bottle ban. Discussion ensued regarding ban options, and the board noted that
the word "ban" is very strong and may not be the best route because of its impact on small
businesses. A more productive route may be first providing additional education and outreach
initiatives geared toward small businesses regarding use of plastic bags and their impact on the
environment. The importance of having educational materials available in both English and Spanish was stressed.

Jason White and Patrick Hunter suggested potentially reducing the square footage of businesses allowed to utilize plastic bags, by presenting a proposal to the BOT to modify the current plastic bag ordinance. Jason White also proposed a $0.20 charge per plastic bag, where $0.10 per plastic bag purchased is owed to the Town of Carbondale and comes due with businesses sales taxes. This was a favored idea and is reserved for further discussion, after more outreach and education is conducted.

Patrick Hunter will contact the local Co-Op, and Jason White will contact Ace Hardware, both will inquire about how reducing or eliminating the use of plastic bags will impact their business. They will also provide education regarding the impact of plastic bag use on the environment. They will inquire about the idea of imposing a charge per plastic bag. Patrick & Jason will bring their findings to the board for further discussion.

**Wood Burning, Public Service Announcement (PSA):** Discussion ensued regarding PSA’s for wood burning. Brad Davis will talk with his public relations contact to see how or if we can initiate and coordinate the timing of the Town of Carbondale’s wood burning newspaper advertisements and radio PSA’s with other initiatives throughout the Roaring Fork Valley. Brad will bring this information back to the next board meeting.

*Motion Passed:* Natalie Fuller moved to petition the BOT to allocate funding for two months of newspaper advertisements to raise wood burning awareness. Jason White seconded the motion, and it was unanimously approved.

*Motion Passed:* Jason White moved to petition the BOT for budget approval of $600 per month, for two consecutive months, for a total of $1,200, to pay for wood burning radio PSA’s. Patrick Hunter seconded the motion, and it was unanimously approved.

Jason White will create a memo for both motions, and will submit it to Cathy Derby, Town Clerk & Mark O’Meara, E-board Town Liaison, on or before December 6, 2016 for inclusion in the BOT agenda.

**Idling Ordinance, Letter to the BOT:** Natalie Fuller read a letter she wrote to the BOT regarding idling for feedback and approval by the E-board. All praised Natalie for her work on the memo.

*Motion Passed:* Natalie Fuller motioned to present the idling letter to the BOT at their meeting on December 13, 2016. Patrick Hunter seconded the motion, and it was unanimously approved.

Natalie continued, if the letter is approved by the BOT, it could be beneficial to run additional advertisements and radio PSA’s to create awareness on idling. This was a favorable idea amongst board members, and was reserved for further discussion.

**FUTURE E-BOARD PLANS**

**Waste Diversion:** Jason White is interested in updating the waste diversion ordinance, which has been a work in progress since 2009 and was last addressed in late 2015. The board discussed possibly creating some bi-lingual educational materials geared toward waste diversion (i.e. continuing work on the “Roaring Fork Recycling Guide” project, and creating flyers for volunteers to hand out to passersby on the street, a “how-to” composting guide, talking to schools). Mark O’Meara will talk with the public works director to gauge interest and need in the E-board working on the ordinance update project.

Future E-board Plans: Patrick Hunter and the board agreed to reserve this discussion for a future meeting in the interest of time.
ADJOURNMENT
The November 28, 2016, regular meeting adjourned at 8:10 p.m. The next scheduled meeting is TBD.

Respectfully submitted,

Angie Sprang
Board & Commissions Clerk
MINUTES
ENVIRONMENTAL BOARD
DECEMBER 30, 2016

CALL TO ORDER
Julia Farwell called the meeting to order at 6:18 pm on December 30, 2016 in the Town Hall meeting room.

ROLL CALL
The following members were present for roll call:

E-board Members:  Amanda Poindexter, Member
                   Julia Farwell, Chair
                   Keelin Schaffrath, Member
                   Natalie Fuller, Member
                   Patrick Hunter, Member

Town Staff Present:  Mark O’Meara, Town Liaison
                     Heather Henry, BOT Liaison
                     Angie Sprang, Board Administrator

Observers & Guests:  Alyssa Rendell
                    Richard Votero

PERSONS PRESENT NOT ON THE AGENDA
Richard Votero addressed the board. He spoke to the recently passed idling ordinance, which amended section 8-3-10 of the municipal code reducing the idling time from ten minutes to two minutes, certain exemptions apply. Richard suggested a public education "Drive & Warm Up" campaign geared toward informing the community of health and environmental impacts from idling.

CONSENT AGENDA
This item was reserved.

IDLING ORDINANCE
Natalie Fuller addressed the Board of Trustees (BOT) on December 12, 2016, on the topic of idling, and returned to the E-board with follow up items. Natalie’s proposed two minute idling time revision of section 8-3-10 was approved by the BOT, and the ticket price will be the equivalent of a parking ticket fee, $25 plus a $7.50 surcharge.

Discussion ensued regarding the fee, and it was unanimously agreed that Julia Farwell will check with the police department after one year to revisit the fee arrangement. Data collection over the course of the year will show if the ordinance revisions, community education, and outreach initiatives are working.

Discussion ensued regarding the needs of officers issuing tickets to enforce the ordinance. Natalie Fuller & Julia Farwell will work with Chief Gene Schilling to ensure officer needs are incorporated in the design. Heather Henry suggested presenting a revision of the former idling ordinance flyer, which was in door hanger format, to see if that would meet the needs of officers, community education, and community outreach initiatives. This was a favored idea among all board members.

Heather Henry suggested starting with local businesses that already have “No Idling” signage; such as, City Market, the Post Office, and local banks. Heather suggested the Eboard provide flyers and ordinance information empowering them to promote their idling reduction initiatives. Mark O’Meara suggested contacting Police Chief, Gene Schilling, and Public Works Director, Kevin Schorzman to ensure they’re included on the discussion. Mark continued that stickers regarding idling reduction
may be a cost effective alternative to having metal signage printed to aid local businesses in idling reduction initiatives. Julia Ferwell and Natalie Fuller will follow up to initiate conversations with the Eboard, Chief Schilling, and Kevin Schorzman.

Natalie Fuller proposed that the advisory board place Sopris Sun advertisements relating to the new idling ordinance. To run the ads two times each month the cost is $560 per month, and Natalie proposed running the ads for two consecutive months in January and February. The board will revisit this topic in March and discuss the idea of summer ads.

**Motion Passed:** Natalie Fuller moved to petition the BOT to allocate funding for two months of newspaper advertisements to raise idling ordinance awareness, in both English and Spanish, and at a total cost of $1,120. Julia Farwell seconded the motion, and it was unanimously approved.

**CLIMATE ACTION PLAN**
Amanda Poindexter reviewed and shared the municipal, renewable, action, and waste plans from the Climate Action Plan that the Chain Waste Diversion Sub-Committee has been working on. Amanda noted that the goal is a desired net zero by 2050. Work will continue via the sub-committee. When the time comes, the Eboard will offer feedback, and the plan will be presented to the BOT for feedback. Then if the BOT approves of the draft, the public will be addressed to gauge community support for the plans.

Patrick Hunter proposed a Climate Action Plan campaign using social media and tools such as YouTube to encourage under represented population(s) involvement. Patrick continued with recommendations for a concrete implementation plan in regard to execution of the campaign.

Patrick proposed the collection of digital traffic counters to gather growth impact metrics of the new City Market building plans, to quantify how growth may impact the Climate Action Plan proposal. Julia Farwell shared CDOT traffic counter information with the board, which is available to the public online at www.CODOT.gov.

Mark O'Meara encouraged the board could cross reference the Climate Action Plan with the green building code to ensure alignment. The board could make a review request with CLEER and/or CORE, to ensure the plans are going to “marry well.”

**DANDELION DAYS**
Discussion ensued regarding organization and planning of the annual Dandelion Days events. The board agreed that Keelin Schaffrath, Natalie Fuller, and Patrick Hunter will work together on a sub-committee to plan the events and facilitate the vendors. Keelin, is in possession of the Dandelion Days book, detailing previous event plans. Keelin showed a great deal of interest in the planning portion of Dandelion Days, and will take the lead on the committee.

Alyssa Rendell, former Eboard member, suggested that they make the format new, fresh, and creative. This was a highly favored idea among the board.

**WOOD BURING PSA's**
Julia Farwell followed up on Sopris Sun wood burning PSA's. Discussion ensued, and Patrick Hunter will finalize and run the advertisements in the Sopris Sun.

**BOARD OF TRUSTEES WORK SESSION**
Julia Farwell reminded the board of their coming work session with the Board of Trustees. She will be in email contact to firm up the date, and will send out a reminder email to the board soon.

**ADJOURNMENT**
The December 30, 2016, regular meeting adjourned at 8:28 p.m. The next regular meeting is scheduled on January 23, 2017 at 6:00 pm.
Respectfully submitted,

Angie Sprang
Board & Commissions Clerk
Town of Carbondale  
511 Colorado Avenue  
Carbondale, CO  81623  

January 27, 2017  

Dear Board of Trustees,  

The Roaring Fork High School Project Graduation committee and students would like to thank you for the $600 grant and use of the community room for our upcoming project graduation event on the night of graduation this year.  

The grant monies and space will provide a safe place for graduating seniors to celebrate on graduation night.  

Sincerely,  

[Signature]  
Cathy Derby  
Chair, Project Graduation  

Roaring Fork High School  
Project Graduation  
Roaring Fork School District  
FEIN #84-6012220
27 January 2017

**Town of Carbondale**
Attn: Jay Harrington - Town Manager and Carbondale Board of Trustees
511 Colorado Avenue
Carbondale, Colorado 81623

Dear Mr. Harrington and Board of Trustees-

The Family Resource Center of the Roaring Fork Schools would like to express our gratitude for the Community Grant recently awarded to our agency. This $1,245 grant will be utilized throughout our 2016-17 academic year to connect Carbondale students, schools and the community to improve overall student health, well-being and academic achievement.

The Family Resource Center works to remove non-academic achievement barriers by linking students and their families with essential services such as dental, vision and medical care; mental health resources; food and warm clothing; housing and utility assistance; as well as tutoring enrichment activities. In addition, our bilingual and biliterate staff facilitates evidenced based parenting class courses throughout the year to improve overall family functioning and increase household self-sufficiency.

The Family Resource Center of the Roaring Fork Schools values our continued partnership with the Town of Carbondale. Your philanthropic investment will influence student success and strengthen families by providing essential services necessary for students to be ready to learn every day.

Sincerely,

[Signature]

Lisa McPherson, MNM
Development Director