

**ORDINANCE NO. 7
SERIES OF 2017**

**AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING A COMBINED PRELIMINARY AND FINAL PLAT
TO RE-SUBDIVIDE LOT 5 OF THE CARBONDALE MARKETPLACE
SUBDIVISION AND A SITE PLAN AND SPECIAL USE PERMIT TO
CONSTRUCT A NEW DRIVE-THROUGH BANK FACILITY UPON LOT 5B**

WHEREAS, on behalf of Crystal River Marketplace, LLC (“Owner”), 1st Bank (“Applicant”) submitted an application to the Town of Carbondale (“Town”) for the approval of a preliminary plat and a final subdivision plat (“Final Plat”) to re-subdivide Lot 5 of the Carbondale Marketplace Subdivision (the “subject property”) as described on the Final Plat recorded in the Garfield County real property records on _____ 2017 at Reception No. _____, into two lots to be known as Lot 5A and Lot 5B, for site plan approval to develop a bank facility upon Lot 5B, and for a special use permit to authorize a drive-through bank facility; and

WHEREAS, after required public notices, the Town’s Planning and Zoning Commission reviewed these requests at a noticed public hearing on February 23, 2017 and recommended approval with conditions; and

WHEREAS, after required public notices, the Town’s Board of Trustees conducted a public hearing on these requests on April 25, 2017, during which public hearing the Board of Trustees heard and considered the statements of Town staff, the Applicant’s and Owner’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 preliminary and final subdivision plat approval should be granted, with conditions, for the following reasons:

- a. The proposed subdivision complies with all applicable use, density, development, and design standards set forth in the Carbondale Municipal Code;
- b. The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision is designed to minimize land disturbance and maximize the amount of open space in the development and accomplishes the purposes and intent of this Code. No critical wildlife, tree/vegetation or riparian areas are present on-site;
- c. Evidence has been presented that that provision has been made to connect to the Town’s public water supply system;

- d. Evidence has been presented that provision has been made for a public sewage disposal system;
- e. The application includes evidence that all areas of the proposed subdivision that may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed use of these areas are compatible with such conditions;
- f. There are no identified natural hazards including flood and wildfire present on the site;
- g. The application provides a clear assumption of responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision;
- h. There is no phasing of development;
- i. The proposed subdivision is consistent with the subdivision conceptual plan as approved with the Carbondale Marketplace Subdivision;
- j. The proposed subdivision is consistent with Comprehensive Plan and other adopted Town policies and plans, including all adopted transportation plans or streets/roadway plans;
- k. The proposed final plat conforms to the approved preliminary plat and incorporates all recommended changes, modifications, and conditions attached to the approval of the preliminary plat;
- l. The development will substantially comply with all requirements of this Code; and
- m. The development will comply with the applicable technical standards and specifications adopted by the Town; and

WHEREAS, the Board of Trustees also finds and determines that site plan approval should be approved to allow development of a bank facility upon Lot 5B, with conditions, for the following reasons:

- a. The proposed site plan is consistent with the Comprehensive Plan as the building is the focal point by being located closer to Highway 133, and there is a pedestrian/bike friendly feel while accommodating automobile access. The parking lot will be screened from Highway 133 by enhanced landscaping;

- b. The proposed site plan is consistent with the approved Carbondale Marketplace Final Subdivision Plat;
- c. The proposed site plan complies with all applicable development and design standards set forth in this Code; and
- d. Traffic generated by the proposed development is adequately served by existing streets within Carbondale; and

WHEREAS, the Board of Trustees also finds and determines that a special use permit should be approved to authorize drive-through bank facilities upon Lot 5B, with conditions, for the following reasons:

- a. The proposed development meets the purposes of the zone district in which it will be located and all of the criteria and regulations specified for such use in that zone district, including but not limited to height, setbacks and lot coverage;
- b. The proposed development shall be required to comply with all applicable fire, building, occupancy and other municipal code provisions adopted by the Town of Carbondale for the protection of public health, safety and welfare;
- c. The proposed development will adequately mitigate traffic impacts in a neighborhood;
- d. The proposed development does not have an adverse effect upon the character of surrounding uses;
- e. The impacts of the proposed use on adjacent properties and the surrounding neighborhood have been minimized in a satisfactory manner;
- f. The impacts of the use, including but not limited to its design and operation, parking and loading, traffic, noise, access to air and light, impacts on privacy of adjacent uses, and others, shall not create a nuisance and such impacts shall be borne by the owners of the property on which the proposed use is located rather than by adjacent properties or the neighborhood; and
- g. Access to the site is adequate for the proposed use, considering the width of adjacent streets and alleys, and safety; and

WHEREAS, the Board of Trustees also finds and determines that certain conditions of approval should be imposed so that the project will be developed consistent with the purposes of Chapter 17 of the Carbondale Municipal Code. All of those

conditions shall be met by making certain changes to the draft Final Plat and other documents submitted as part of the application and by virtue of the terms and conditions of a Subdivision Improvements Agreement to be entered into between the Town and the Owner and recorded contemporaneously with the revised Final Plat.

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

1. The Applicant's and Owner's requests for preliminary and final subdivision plat approval to re-subdivide Lot 5 of the Carbondale Marketplace Subdivision into two lots, Lots 5A and 5B, and site plan and special use permit approval to authorize development of a new drive-through bank facility upon Lot 5B, are hereby approved, subject to the conditions set forth below.

2. All development shall be consistent with the final site plan and architectural renderings approved by the Town concurrent with this application, or pursuant to such plans approved by the Town in a subsequent site plan application for future development of Lot 5A, which shall remain vacant until such future site plan approval.

3. The Final Plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the Final Plat within ninety (90) days of the effective date of this Ordinance. Lot 5A shall be marked on the plat as "RESERVED FOR FUTURE DEVELOPMENT." The following plat notes shall be included on the Final Plat:

a. A plat note shall cross-reference by Reception Number to recorded copies of Ordinance No. 5, Series of 2016, the master subdivision improvements agreement recorded pursuant to that ordinance, this Ordinance, the subdivision improvements agreement to be recorded pursuant to this Ordinance, and the Declaration of Covenants, Conditions and Restrictions that includes a common assessment mechanism for maintenance of the private irrigation system to be shared by Lots 2, 3, 4, and 5B.

b. A plat note shall indicate that no development may occur upon Lot 5A until a site plan is approved or that lot, at which time the Town may require additional public improvements, right-of-way and/or water right dedications as required to serve the scope of development shown on such future site plan(s), including , including a public street connection to the Industry Place right-of-way, as well as the construction of sidewalks, curb, gutter, landscape strips and street trees.

c. A plat note indicating that no more than 0.78 acres of land area may be irrigated upon Lot 5B, that an irrigated area limitation will be established for Lot 5A at the time of future site plan approval, and that all irrigation shall be

served by non-potable irrigation systems supplied by the Rockford Ditch and that no treated water from the Town's municipal system shall be used for outdoor irrigation.

4. Approval of the application shall also be subject to the following conditions:

a. All conditions of Ordinance No. 21, Series of 1997, recorded in the Office of the Garfield County Clerk & Recorder on March 13, 1998 at Reception No. 521822 shall remain in full force and effect unless otherwise expressly approved by the Board of Trustees by subsequent ordinance.

b. The Owner shall submit final engineering and construction drawings to the Town prior to recordation of the Final Plat.

c. Contemporaneous with recordation of the Final Plat, the Owner and the Town shall enter into a Subdivision Improvements Agreement ("SIA") acceptable to the Town setting forth all terms and conditions approved by the Board of Trustees. Said SIA shall also generally set forth all of the obligations of the Applicant in connection with this development, including, without limitation, obligations relating to installation of utilities and construction of other improvements on the subject property and off site. All required public improvements shall be completed within two years of the date of recordation of the Final Plat. The Owner shall record the SIA with the Garfield County Clerk and Recorder contemporaneously with recording of the Final Plat. The Owner shall also submit a letter of credit in a form acceptable to the Town Attorney securing the public improvements described in this Ordinance and the SIA for a period extending at least 30 days following the deadline for completion of the public improvements.

d. The Owner shall be responsible for the construction and cost of all infrastructure improvements. The construction of the infrastructure shall be completed within two years of recordation of the Final Plat, unless such timeline is extended by the Board of Trustees in its discretion for good cause shown. If no construction has started by this deadline, the Town may revoke or amend these approvals.

e. The Owner's engineer's estimate of the anticipated cost of public improvements shall be updated to reflect all required public improvements, subject to Town review and approval, prior to recordation of the Final Plat. A final estimate stamped by a Colorado-registered professional engineer shall be attached to and incorporated in the SIA.

f. Engineered construction plans for utilities shall be subject to review and approval by the Town's Utilities and Public Works Directors prior to

issuance of any building permit. The Applicant shall repair Town streets after utility lines are installed as per the Public Works Manual. Upon completion of construction, as-builts of all public and private utility locations shall be provided to the Town in accordance with the SIA.

g. A construction management plan must be included in the SIA to minimize the effects of construction upon the environment. The construction management plan shall include reclamation requirements, including re-grading and re-seeding, in the event that ongoing construction ceases prior to completion, and that the security held by the Town pursuant to the SIA may be applied to perform reclamation if the Owner fails to do so.

h. Contemporaneous with recordation of the Final Plat, the Owner shall dedicate all public streets, public sidewalks, and any other public right-of-way areas or easements depicted on the Final Plat, to the Town of Carbondale by General Warranty Deed free and clear of all encumbrances except any which may be expressly accepted by the Town after reviewing a title insurance commitment.. Owner shall also provide title insurance coverage to the Town evidencing that such dedications and conveyances are free and clear of all encumbrances except any which may be expressly accepted by the Town after reviewing a title insurance commitment. The final title policy shall issue to the Town with coverage in the amount of at least \$250,000.00. Any title insurance premiums, including any additional premium(s) necessary to delete the "standard" title exceptions from the final title policy, shall be paid by the Owner. Any security interest in such property or easements in favor of Owner's lender shall be released or subordinated prior to or contemporaneous with dedication on the Final Plat. A current title insurance commitment shall be provided to the Town for review no later than ten (10) days prior to dedication to the Town and recordation of the Final Plat. The Owner shall also pay all property taxes assessed against the dedicated property for periods through date of conveyance to the Town, even if such charges are billed by Garfield County after the date of conveyance to the Town.

i. A fee-in-lieu of highway improvements in the amount of \$25,000 shall be paid prior to issuance of any building permits for the new bank facilities to be located upon Lot 5B. Additional fees-in-lieu of highway improvements may be assessed against Lot 5A at the time of site plan approval for Lot 5A.

j. All irrigation shall be from non-potable water sources supplied by the Rockford Ditch through a private non-potable irrigation system, the construction, operation, maintenance and replacement of which shall be paid for by a commercial owner's association that levies assessments against all properties within the Carbondale Marketplace Subdivision. No more than 33,977 s.f. (0.78 acres) of lawn and garden areas upon Lot 5B shall be irrigated. Approximately 5.75 shares of Rockford Ditch stock are required for this irrigation. For indoor

potable water use, the bank building (including bank facilities, drinking fountain, and two restrooms) upon Lot 5B will require another 0.75 shares of Rockford Ditch shares. So, a total of approximately 6.5 shares of Rockford Ditch stock are required to support these uses. The Colorado Rocky Mountain School (CRMS), which originally annexed these properties, has already dedicated sufficient Rockford Ditch shares to cover these uses upon Lot 5B. Future water requirements for Lot 5A shall be considered at the time of site plan approval for Lot 5A, and additional water rights dedication requirements (possible additional Rockford Ditch stock dedications by CRMS) and/or irrigation limitations may be imposed at that time.

k. All development upon Lot 5B shall conform with the approved landscape plan that will be attached to the SIA, which plan includes street trees to screen the view of the parking lot from Highway 133. These trees shall be maintained, and periodically replaced, in perpetuity by the owner of Lot 5B.

l. Separate sign permits shall be obtained from the Town for all outdoor signage prior to installation in accordance with the Carbondale Municipal Code.

m. There shall be an unobstructed width of 6 ft. for the sidewalk adjacent to the parking lot upon Lot 5B to be demonstrated and confirmed prior to issuance of a building permit for Lot 5B.

n. The floor plans for the proposed bank building upon Lot 5B shall be revised to reflect an on-site changing room and shower facilities in the bank building prior to issuance of a building permit.

o. A "No Idling" sign shall be installed and maintained by the owner of Lot 5B at the drive-through at all times when the drive-through facility is in operation.

m. All applicable water and sewer system development fees shall be paid for Lot 5B prior to issuance of a building permit for the new drive-through banking facility.

5. All other representations of the Applicant, the Owner, and their respective representatives made before the Board of Trustees during public hearings shall be considered additional conditions of approval of the Final Plat.

6. The Owner shall be required to pay and reimburse the Town for all professional and staff fees as set forth in the SIA.

7. This Ordinance and the associated SIA are both entirely contingent upon the final effectiveness and recordation of Ordinance No. 5, Series of 2016 and the

associated SIA and Final Subdivision Plat for the Carbondale Marketplace Subdivision, which provide in part for the creation of Lot 5, which is the parcel to be subdivided and developed pursuant to this Ordinance. This Ordinance shall not be published and shall not be deemed effective until such contingencies take place. If this prior approval documentation for the Carbondale Marketplace Subdivision is not finalized and recorded within 180 days of the date of passage of this Ordinance, this Ordinance and all of the various approvals set forth herein and in the associated SIA shall likewise be deemed null, void, and of no further force or effect unless this deadline is extended by the Board of Trustees by ordinance for good cause shown after extension of the deadline for recordation of the Final Subdivision Plat for the Carbondale Marketplace Subdivision pursuant to Ordinance No. 5, Series of 2016.

INTRODUCED, READ AND PASSED this 25th day of April, 2017.

THE TOWN OF CARBONDALE

By:



Dan Richardson, Mayor

ATTEST:



Cathy Derby, Town Clerk



**SUBDIVISION IMPROVEMENTS AGREEMENT
CARBONDALE MARKETPLACE SUBDIVISION
RE-SUBDIVISION OF LOT 5
TOWN OF CARBONDALE, COLORADO**

THIS AGREEMENT is made and entered into between the Town of Carbondale, Colorado (“Town”), and Crystal River Marketplace, LLC, a Colorado 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 the Developer agree to the truth and the accuracy of the following:

a. Developer is the owner in fee simple of Lot 5 of the Carbondale Marketplace Subdivision (the “subject property”) as described on the Final Plat recorded in the Garfield County real property records on _____ 2017 at Reception No. _____ “the Development.”

b. Developer has submitted to the Town an application for approval of a Final Subdivision Plat for the Re-subdivision of Lot 5 into two lots, to be known as Lots 5A and 5B, Carbondale Marketplace Subdivision (“Final Plat”), as well as an application for site plan review and special use permit to authorize construction of a drive-through banking facility upon Lot 5B, and desires the Town to approve the same (all three of these requests are collectively referred to herein as the “Application”).

c. Future development upon Lot 5 is affected by prior documentation associated with the prior annexation of said land into the Town of Carbondale upon application of the Colorado Rocky Mountain School, including but not limited to Ordinance No. 11--Series of 1979, Ordinance No. 21--Series of 1997, and a related agreement entitled “Carbondale-Colorado Rocky Mountain School Inc. Water Dedication Agreement, 1989” effective March 15, 1990 (the “1989 CRMS Agreement”), as well as Ordinance No. 5, Series of 2016, dated _____ and recorded at Reception No. _____, and that certain related Subdivision Improvements Agreement for the Carbondale Marketplace Subdivision dated _____ and recorded at Reception No. _____. These prior approvals and agreements shall continue to govern Lot 5 except to the extent amended by this Agreement, the Approval Ordinance (defined below) or the Final Plat, as approved by the Town and recorded in the Office of the Garfield County Clerk and Recorder subsequent to the execution of this Agreement. Such conditions shall be in addition to applicable provisions of the Carbondale Municipal Code and the Carbondale Public Works Manual, and building codes that also regulate development of this project.

d. The terms of this Agreement shall constitute the Subdivision Improvements Agreement between the Town and the Developer regarding the re-subdivision of Lot 5, Carbondale Marketplace Subdivision.

e. The obtaining of final subdivision plat approval for the re-subdivision of Lot 5, Carbondale Marketplace Subdivision, will inure to the Developer's benefit.

f. The Developer recognizes and acquiesces in the jurisdiction and the power of the Town to impose the restrictions and conditions required of the 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 as 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 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 the Developer made in the Application and in statements during the meetings and public hearings before the Town 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 representations of the 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 the Developer has submitted a draft Final Plat and site plan for Lot 5B which shall be in a form acceptable to and approved by Town staff. If any changes are proposed, revised drafts shall be submitted to the Town for approval prior to recording. Following Town approval, the Final Plat and site plan shall be recorded by the Developer.

c. That the public improvements required to be completed by the Developer in conjunction with the Town's approval of the Final Plat ("Public Improvements") and other obligations of the Developer shall be secured prior to recording the Final Plat and site plan. Said public improvements are described herein and the estimated cost thereof is set forth on *Exhibit A*, attached hereto and incorporated herein by this reference.

d. That the Developer hereby agreed to comply with all of the terms and conditions of the Approval Ordinance and this Agreement.

3. Subdivision Approval.

The Town hereby accepts and approves the re-subdivision of Lot 5, Carbondale Marketplace Subdivision, into two lots, to be known as Lots 5A and 5B. The Final Plat shall be recorded within 90 days of the effective date of the Approval Ordinance, unless such timeline is extended by the Board of Trustees in its discretion for good cause shown.

All public street rights-of-way and utility easements shown on the Final Plat shall be dedicated to the Town on the Final Plat and also by separate general warranty deed concurrently with recordation of the Final Plat, and with owner’s title insurance coverage provided to the Town, all as required by the Approval Ordinance.

Construction and maintenance of all required public improvements within public rights-of-way and easements shall remain the obligation of the Developer until formal acceptance by the Town. After acceptance, the Town shall assume maintenance responsibility for all public improvements located within public streets and easements, with the exception that the Town will not accept maintenance responsibility for private water or sewer service lines.

Lot 5A shall be marked on the Final plat as “reserved for future development.” The Developer or any future owner of Lot 5A shall be required to go apply for and obtain site plan approval from the Town prior to any development upon Lot 5A. The process for such approval shall be determined by the site plan requirements set forth in the Town’s Unified Development Code (“UDC”) (Chapter 17 of the Carbondale Municipal Code). To the extent that any additional public improvements will be required to support development upon Lot 5A, the Town may require separate additional improvements agreements at the time of site plan approval for Lot 5A containing terms and conditions similar to those set forth in this Agreement for purposes of requiring and securing additional public improvements and public right-of-way and easement dedications that may be associated with future development of Lot 5A. No building permits or other development authorizations shall issue for development upon Lot 5A until compliance with these conditions.

Likewise, the Town is contemporaneously approving a site plan for Lot 5B contemporaneously with this Agreement, a copy of which is attached as *Exhibit C*. This approved site plan includes a new approx. 5500 s.f. drive-through banking facility, as well as associated parking areas, landscaping, lighting, and drainage features. If a building permit is not issued for the new banking facility, and construction of that facility does not commence within two years of the date of recordation of the Final Plat, then the site plan approval for Lot 5B shall be deemed to have lapsed, and Lot 5B shall also then be deemed to as reserved for future development in the same manner as Lot 5A unless/until a new site plan is approved by the Town in the same manner as outlined in the preceding paragraph above. At that time the Town shall have the right to require and secure any additional public improvements and right-of-way/easement dedications that may be associated with the scope of development contemplated by any such new site plan for Lot 5B.

4. Additional Conditions of Approval/Improvements.

Developer hereby agrees to the following conditions of approval by the Town for installation of the Public Improvements:

a. The Developer has presented to the Town and the Town has approved all engineered plans and specifications necessary and required for construction and installation of the Public Improvements, as provided herein and in the Annexation Agreement (“Engineered Plans and Specifications”). In addition to the requirements expressly set forth in this Agreement and the Annexation Agreement, the Engineered Plans and Specifications include the documents listed below that are incorporated herein by reference:

Description	Sheet Number	Date
Cover Sheet	C1.0	12/14/2016
Existing Conditions	C1.1	12/14/2016
Site Plan	C2.0	12/14/2016
Grading and Drainage Plan	C3.0	12/14/2016
Parker Drive Plan & Profile	C3.1	12/14/2016
Utility Plan	C4.0	12/14/2016
Sanitary Sewer Plan & Profile	C4.1	12/14/2016
Site Details	C5.0	12/14/2016
Water Details	C5.1	12/14/2016
Landscape Plan	L1.0	12/16/2016
Landscape Plan	L2.0	12/16/2016

The Town Engineer and the Town Building Official shall have authority to require additional detailed drawings, clarifications, and/or corrections to these documents prior to the issuance of building permits for the project.

b. The estimated cost of completion of the required Public Improvements is \$211,220.90 according to the cost estimates prepared and certified by a Colorado-registered professional engineer that are attached as *Exhibit A* hereto. The Public Improvements shall be constructed and installed in accordance with the Engineered Plans and Specifications heretofore approved by the Town. The Developer agrees to pay the entire cost of installation and construction of all of such Public Improvements and shall install and construct the same within one year of the date of recordation of the Final Plat.

c. The Public Improvements to be installed are generally described as follows and more particularly described on the Engineered Plans and Specifications to wit:

(i) Streets and Parking Areas. All public streets and parking areas shall be constructed by the Developer in accordance with the Engineered Plans and Specifications and the Town’s Public Works Manual.

(ii) Drainage. All construction shall be in accordance with the Drainage Report prepared by Sopris Engineering, LLC for 1st Bank dated December 16, 2016. All drainage infrastructure (including dry wells) located upon Lot 5B shall be permanently maintained, repaired and replaced by the owner of Lot 5B. Drainage infrastructure located within Town rights-of-way shall be maintained by the Town after formal acceptance and expiration of applicable warranty periods. At the time of site plan approval for Lot 5A, the Town

may require additional drainage engineering for Lot 5A prior to approval of a site plan or any building authorizations.

(iii) 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. The 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.

(iv) 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. The 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(b)(xii), below.

(b) All sewer service lines, except as provided in this Subsection 4(c)(iv)(b), shall be owned and maintained from the main sewer line connection to the building by the owner(s) of the property or properties receiving service from such line.

(v) 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. The existing Xcel overhead power line along Main Street shall be placed underground at the time of development or re-subdivision of Lot 1. The applicant shall underground the overhead Holy Cross Electric line from the north property line to the south property line of the Development, including placing it under Main Street, as part of the Public Improvements.

(vi) Project Lighting. All lighting on the site shall be installed as required by the Town. Design and spacing of lighting shall be in accordance with standards approved by the Town.

(vii) 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.

(viii) 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 soils report prepared by HP Geotech, Inc. dated October 17, 2000 and updated January 11, 2002 has been submitted to the Town. In addition to complying with such report, the following additional soils testing or reporting shall be required: (1) during construction of roads through the Development, since there could be some local unstable materials, the Town Engineer shall inspect the subgrade by witnessing a proof rolling before any other road work proceeds with base course or pavement, as per section 4.3.22 of the Town's Public Works Manual; and (2) the Town may require additional site-specific soils reports at the time of excavation upon inspection by the Developer's engineer or Town Staff. Additional soils testing or reports may also be required at the time of development of Lot 5A as a condition of any site plan or building permit approval.

(x) Dust/Street Cleanup. During construction, the 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. The 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 concrete street cuts made by the Developer shall be cut and replaced at existing construction joints and only full panels. Any asphalt street cuts made by the 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, the 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 (with the exception of highway improvements within the Highway 133 right-of-way, but including utilities and any other improvements installed by the Developer within the Highway 133 right-of-way). Additionally, the 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. The Developer may elect to have the Town Engineer prepare these required GIS as-builts at the 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 Recordings of Sewer Lines. At completion of sewer line installations, video recordings and logs showing interior of pipes shall be provided to Town in an acceptable electronic format.

(xv) Stub-outs. The 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.

(xvi) Landscaping. Landscape improvements within public rights-of-way shall be installed in accordance with the Engineered Plans and Specifications and the Landscape Plan attached as *Exhibit B*. The proposed landscaping upon Lot 5B adjacent to Highway 133 and within the public right-of-way along the highway shall be designed to complement and be of similar palette to the landscaping design and materials established by DHM Design as part of the recent Highway 133 landscaping improvements (e.g. wood mulch versus rock mulch) for continuous and harmonious landscaping treatment along the Highway 133 frontage.

(xvii) Non-potable irrigation systems/Rockford Ditch relocation. As part of the Public Improvements, the Developer shall extend both the private and public, non-potable irrigation systems that serve Lots 2, 3 and 4 and adjacent public rights-of-way to the respective private and public irrigated areas shown on the Final Plat or Landscape Plan (*Exhibit B*). The private irrigation system shall be owned, operated, maintained and replaced as needed in perpetuity by the owners association for the Carbondale Marketplace Subdivision pursuant to a declaration of covenants that establishes an owners' association and common assessments for these obligations, and the public irrigation system shall be owned and maintained by the Town pursuant to the terms of Ordinance No. 5, Series of 2016. No more than 33,977 s.f. (0.78 acres) of lawn and garden areas upon Lot 5B shall be irrigated. All outdoor irrigation shall be via a private piped and pressurized non-potable irrigation systems supplied by the Rockford Ditch. No areas upon Lot 5A may be irrigated until a site plan for Lot 5A is approved by the Town in the future and additional shares in the Rockford Ditch Association are conveyed to the Town in order to satisfy water rights dedication obligations associated with the development contemplated by said site plans. An irrigated area limitation for Lot 5A shall also be established at that time. No outdoor irrigation upon Lots 5A or 5B shall be supplied with potable water from the Town's municipal system. Prior to recordation of the Final Plat, a final agreement between the Developer and the Rockford Ditch Company for relocation of the Rockford Ditch and installing new diversion point(s) to supply the private non-potable water system for the Development shall be submitted to the Town.

(xviii) Dry-Up Covenant. The construction of streets, sidewalks, driveways, parking lots and buildings within the Development will result in the dry-up of land that has historically been irrigated using the Rockford Ditch water rights that will be dedicated to the Town. Any and all consumptive use credit attributable to such permanent dry-up shall be owned and controlled by and may be used by or for the benefit of the Town as the Town in its sole discretion deems appropriate. The Developer hereby releases and relinquishes any ownership or claim of ownership to said consumptive use credits. This provision regarding dry-up shall constitute a covenant that touches, concerns and runs with the land in perpetuity and shall be binding on the Developer, its successors and assigns.

(xix) Fire protection. A “Knox” box shall be installed in the new bank building upon Lot 5B prior to issuance of a Certificate of Occupancy. The installation of the Knox Box shall be subject to the review and approval of the Fire District.

(xx) Potential additional right-of-way dedications. At the time of any future development of Lot 5A, the then-owner of Lot 5A may be required to dedicate public right-of-way necessary to establish a road connection from Lots 2 and 4 to the future Industry Way roundabout.

d. All Public Improvements associated with the Final Plat and other obligations of the Developer shall be secured prior to recording the Final Plat as set forth below. Said Public Improvements are described herein and the estimated costs thereof are set forth in *Exhibit A*, attached hereto and incorporated herein by this reference.

e. All development fees required by the Approval Ordinance shall be paid to the Town on or before execution hereof by the Town.

f. Upon completion of portions of the Public Improvements, Developer will cause its engineers (who shall have been actively engaged in observing the construction of the Public Improvements and be registered in the State of Colorado) to provide a written certification that the Public 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 Phase Plats until all information required by this paragraph is provided to the Town.

5. Construction Management.

The Developer shall submit a Construction Management Plan to the Town prior to issuance of any building permits. 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. 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. The Developer shall have a pre-construction meeting with Town representatives in attendance.

6. Inspections

During the installation by the Developer of the Public 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 the Developer and any contractor or subcontractor working on its behalf in connection with the work in progress.

c. Require the Developer to obtain and pay for inspections, soils composition tests, compaction tests, concrete tests, asphalt 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 cost of which will be reimbursed by the 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 the 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, the 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

The 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 the Developer to correct the defect in material or workmanship. Due to seasonal constraints, the Town agrees to consider separate acceptance of completion of required landscaping after other

required Public Improvements are accepted, provided that: (1) between the time of acceptance of the other Public Improvements and the time of acceptance of the landscaping, the Town may continue to withhold a portion of the Security in to secure completion of the landscaping; (2) after acceptance of the landscaping by the Town, the Developer shall warrant the landscaping against all defects in materials and workmanship, including replacement of any trees or shrubs that should become dead or diseased, for two full growing seasons (defined to extend from April 1 through October 30 in two consecutive years) following acceptance; and (3) the Town may condition separate acceptance of landscaping upon the requirement that Developer provide additional warranty security as described below in Section 15 throughout the term of the required two-season warranty period.

9. Legal Compliance

The Developer shall comply with all state, federal and local laws, ordinances, rules, and regulations, including, by way of example, Chapter 17 of the Carbondale Municipal Code (the UDC) and all other ordinances and regulations of the Town relating to streets, water lines, and sewer lines, including the Town's Public Works Manual. The 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. At time of acceptance, upon request of the Town, the Developer shall provide the Town with a bill of sale conveying the Public Improvements, free and clear of any encumbrances, and an itemized list of the actual cost of construction of each of the Public Improvements.

11. Certificates and Permits

No certificate of occupancy shall be issued for or relating to any structure or improvement within the Development until full completion by the Developer of all Public Improvements within the Development as described in this Agreement. Except as provided in this Section 11, nothing herein shall limit the obligations of the 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 the Developer of any improvement, but only as is provided in Section 16, below. No extension of time for completion shall impair the Town's rights under any instrument of security described in Section 15, *below*, 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

Public street improvements to be installed by the Developer shall not be installed until all master/main utility lines to be placed in or under the streets have been completely installed.

13. Repairs

The Developer shall repair and repave all streets and roads of the Town damaged by the Developer's installation of improvements and utilities external to the Development, and shall repair and repave all Town owned property damaged by the installation of improvements or utilities within the Development by the Developer or those acting under it or on its behalf. 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 the Developer, at its option the Town may undertake all work necessary to install and complete all the Public Improvements which the Developer must complete pursuant to Section 4 of this Agreement. If the Town does so, the 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

The Developer has prepared an engineered preliminary cost estimate for all Public Improvements to be installed by the Developer to be dedicated for the use of the public or in publicly conveyed land, rights-of-way and easements which shall be approved by the Town, prior to the recordation of the Final Plat. A copy of the preliminary cost estimate in the amount of \$211,220.90 is attached as *Exhibit A* and incorporated herein by this reference. To secure its obligations to install the Public Improvements described above, the Developer shall obtain and deliver to the Town the following security:

Prior to recordation of the Final Plat, Developer shall deliver an unconditional, irrevocable letter of credit ("Security") in the amount of \$211,220.90 ("Security"). The form of the Security shall be subject to approval by the Town Attorney and shall be issued by a State or National chartered commercial bank (the "Bank") and shall, among other things, entitle the Town to draw on the Security by presentation to the Bank of a certificate that the Developer is in default in its obligations to install Public 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. The Security shall remain effective for at least one year, or 30 days following the deadline for completion of the Public Improvements set forth above in Section 4.b, whichever is longer. And, subject to the release procedures set forth below, the Security shall provide for automatic extension for successive one year periods unless, at least 90 days prior to the then

applicable expiration date, the Town receives notification from the Bank (via certified U.S. Mail, return receipt requested) that the Bank does not elect to extend the expiration date.

The Developer shall pay all costs incurred in obtaining the Security. If the 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, the Developer will be allowed to apply for partial releases of the Security. If a partial release is desired, the Developer shall cause its engineer to provide the Town with a written application stating what Public Improvements have been completed and the amount of the Security for which partial release is sought. The Developer's engineer shall certify that the Public 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. Once reviewed and approved by the Public Works/Utility Departments, the Town Engineer, and any independent inspector hired by the Town, and after the Developer has reimbursed the Town for any legal or engineering fees incurred by the Town during project review, the request will be submitted to the Board of Trustees for final review and approval at a regular meeting. If authorized by the Board of Trustees to do so, Town staff may review and approve requests for partial releases of the Security. The documentation associated with any such partial releases shall be in a form approved by the Town. Notwithstanding the foregoing, the Developer shall in no event be entitled to the release of more than ninety percent (90%) of the cost of Public Improvements prior to the completion and acceptance of all Public 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. Except to the extent that the acceptance of landscaping may be deferred until a later date in accordance with Section 8, above, such warranties will only commence upon the Town Engineer's certification that all required Public 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 any additional security required by the Town to continue to guaranty completion of any required landscaping that is not complete at the time of acceptance of the other Public Improvements.

Upon Developer's completion of 100% of the Public Improvements required by this Agreement (or that all required Public Improvements are complete other than landscaping), the Developer shall have its engineer provide the Town Engineer with certification that all Public Improvements have been completed as to approved designs, all required as-builts (in both survey and GIS format), and a request for formal acceptance (provided that the Developer's engineer shall separately request the Colorado Department of Transportation (CDOT) to accept completion of any highway improvements within the right-of-way for State Highway 133). The Town Engineer shall timely provide the Developer's Engineer with a list of any items requiring correction or completion. Upon the Town Engineer's satisfaction that all required Public Improvements are completed as required (or that all required Public Improvements other than landscaping are completed as required), CDOT's confirmation of satisfactory completion of required highway improvements, and confirmation of receipt of all required as-builts, the Town Engineer shall timely recommend to the Town's Board of Trustees that the completed Public

Improvements be formally accepted. Then, the Town shall timely schedule an agenda item for a regular 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. Within thirty (30) days after formal acceptance, the entire remaining amount of the Security shall be released, provided that an amount equal to ten percent (10%) of the original amount of the Security (as determined by the Town, in its discretion) shall remain in place (plus any additional amount retained by the Town to guaranty completion of landscaping), subject to the provisions of the of the following sentence, to benefit the Town. The warranty periods under Section 8 hereof shall continue to be guaranteed through retention of the Security as set forth above or the Developer may provide cash deposits or replacement security to secure the warranty, in amounts and forms acceptable to the Town.

16. Extension of Due Date

The construction completion date for installation of Public Improvements required in Section 3 may be extended for a reasonable time by the Town, after a written request from the Developer and any third party that provided security to the Town to guaranty completion of the Public Improvements, and after a hearing before the Board of Trustees and approval of associated approval ordinances and/or amendments to the Annexation Agreement, if the Developer demonstrates delay occurred through no fault of the Developer and for reasons beyond the Developer's control. No certificate of occupancy shall be issued during any extension of time granted hereunder for the completion of those Public Improvements described in Section 4 above unless specifically approved by the Board of Trustees.

17. Non-Suit

The Town's approval of this Development 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 Development. Neither the 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 Development.

18. Benefit/Assignment

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. The Developer's obligations under this Agreement shall not be wholly assigned except pursuant to a written assignment approved by the Town of Carbondale and provision of replacement security acceptable to the Town pursuant to Section 15, above. However, the parties agree and acknowledge that, after execution and recording of this Agreement and the Final Plat, the Developer may convey ownership of Lot 5B to 1st Bank. Upon request, the Town shall promptly consider a written amendment of this Agreement for purposes of allowing 1st Bank to become a co-signatory and joint obligee pursuant to this Agreement.

19. Non-Waiver

Any indulgence by the Town to the Developer as to the performance of any portion of this Agreement and any waiver by the Town as to the 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 the 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 the 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 the 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 the 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 or warranty security for the purpose of undertaking completion or remediation work on the Public Improvements after providing Developer with the ten-day notice specified below. The Security or warranty security may be applied by the Town toward all costs incurred in remedying the 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 the 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 the Developer ten (10) days written notice of intent to take any action under this Section during which ten (10) day period, the 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, any claims by the Surety or the Bank 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. This indemnification shall include the assignment to the Town of the proceeds of any insurance policy insuring the Developer or its successors-in-interest. The 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 the 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: Planning 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: Crystal River Marketplace, LLC
c/o Briston Peterson, Manager, and Scott Miller, Manager
20 Sunset Drive, Unit 1
Basalt, CO 81621

29. Recording Fees

The 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 the 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 the Developer and such statement shall in no event subject the Town to any affirmative liability whatsoever to the 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:

CRYSTAL RIVER MARKETPLACE, LLC
a Colorado limited liability company

By: _____
Briston Peterson, Manager

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this _____ day of _____ 2017, by Briston Peterson as Manager of Crystal River Marketplace, LLC, a Colorado limited liability company.

Witness my hand and official
My commission expires:

Notary Public

EXHIBIT A

PUBLIC IMPROVEMENTS COST ESTIMATE

[INSERT]

EXHIBIT B
LANDSCAPE PLAN

[INSERT]

EXHIBIT C

APPROVED SITE PLAN
(FOR NEW DRIVE-THROUGH BANK FACILITY ON LOT 5B)

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